

HOUSE BILL 1234

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By: **Delegate Feldman**

Introduced and read first time: February 21, 2007

Assigned to: Rules and Executive Nominations

Re-referred to: Economic Matters, March 5, 2007

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 2007

CHAPTER _____

1 AN ACT concerning

2 **Maryland General Corporation Law – Altering and Updating Corporate**
3 **Procedures and Miscellaneous Provisions**

4 FOR the purpose of repealing a provision requiring a corporation to give written notice
5 of the amount, time, and place of payment on subscriptions to each subscriber;
6 repealing certain provisions requiring a corporation to give uniform written
7 notice of that a call by the board of directors for payment on subscriptions be
8 uniform as to stock of any class; clarifying that stockholders ~~only have~~
9 preemptive rights, for of a corporation formed on or after a certain date, ~~only~~
10 have certain preemptive rights if the charter expressly provides for them,
11 repealing a certain provision requiring a corporation to send certain information
12 to a stockholder at a certain time and that stockholders of a corporation formed
13 before that date have certain preemptive rights unless and until the charter
14 expressly provides otherwise; requiring a corporation to send certain
15 information to a stockholder on request; ~~clarifying that notice shall be sent~~
16 without charge to the stockholder; ~~repealing a requirement to send certain~~
17 information to the stockholder at the time of issue or transfer of stock; ~~clarifying~~
18 establishing that a certain resignation ~~is enforceable~~ of a director may provide
19 that it will be effective at a later time or on the occurrence of an event and is
20 irrevocable on the occurrence of the event; authorizing the board of directors of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 a corporation to delegate power to a ~~certain~~ committee to recommend to
 2 stockholders the election of directors ~~to stockholders~~; authorizing the board of
 3 directors of a corporation to ~~authorize a certain~~ delegate power to a committee
 4 ~~to establish~~ authorize or fix certain terms of stock and terms for the issuance of
 5 stock if the board of directors has established a method or procedure for
 6 determining the maximum aggregate offering price of shares to be issued;
 7 ~~adding limited liability companies and managers of limited liability companies~~
 8 ~~to a certain definition~~ altering the definition of "director" as it relates to certain
 9 indemnification provisions so as to include certain directors of corporations who
 10 serve in certain capacities in connection with a limited liability company,
 11 including serving as a manager of a limited liability company; repealing limiting
 12 certain requirements imposed on making advance payments of expenses for
 13 indemnification of a director; authorizing a corporation to hold its annual
 14 meeting in the manner provided in its bylaws; expanding a certain notice
 15 provision to require notice of certain stockholder actions to be given to a broader
 16 class group of stockholders; establishing for a certain type of corporation that
 17 the presence of a certain number of votes at a meeting of stockholders of a
 18 ~~certain type of corporation~~ constitutes a quorum unless its charter or bylaw
 19 provides otherwise; authorizing a corporation to hold its annual meeting at any
 20 ~~time provided in the bylaws;~~ establishing that articles of merger, consolidation,
 21 or share exchange may provide the number and names of directors and officers
 22 of the surviving corporation, or persons acting in similar positions, if the
 23 persons in those positions are changed in the transaction; making certain
 24 stylistic changes; and generally relating to the law of corporations and
 25 associations.

26 BY repealing and reenacting, with amendments,
 27 Article – Corporations and Associations
 28 Section 2–202, 2–205, 2–210(c), 2–406, 2–411(a) and (b), 2–418(a)(1), (e), and (f),
 29 2–501(c), 2–505(b), and 2–506
 30 Annotated Code of Maryland
 31 (1999 Replacement Volume and 2006 Supplement)

32 BY adding to
 33 Article – Corporations and Associations
 34 Section 3–109(e)
 35 Annotated Code of Maryland
 36 (1999 Replacement Volume and 2006 Supplement)

37 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 38 MARYLAND, That the Laws of Maryland read as follows:

39 **Article – Corporations and Associations**

1 2-202.

2 (a) A subscription for stock of a corporation which is not yet formed is
3 irrevocable for a period of [three] **3** months, unless:

4 (1) The subscription agreement provides otherwise; or

5 (2) Every subscriber consents to the revocation of the subscription.

6 (b) Unless the subscription agreement provides otherwise, a subscription is
7 not void or unenforceable solely because less than all of the authorized stock is
8 subscribed for.

9 (c) [(1)] Unless the subscription agreement provides otherwise, a
10 subscription for stock, whether made before or after the corporation is formed, shall be
11 paid in full or in installments at the times set by the board of directors.

12 [(2)] The corporation shall give at least ten days written notice of the
13 amount, time, and place of payment to each subscriber at his address as it appears on
14 the records of the corporation.

15 (3) Any call made by the board of directors for payment on
16 subscriptions shall be uniform as to all stock of the same class.]

17 2-205.

18 (a) [Unless] **FOR A CORPORATION INCORPORATED ON OR AFTER**
19 **OCTOBER 1, 1995, UNLESS** the charter expressly grants such rights to the
20 stockholder, a stockholder does not have any preemptive right to subscribe to:

21 (1) Any additional issue of stock; or

22 (2) Any security convertible into an additional issue of stock.

23 (b) **FOR A CORPORATION INCORPORATED BEFORE OCTOBER 1, 1995, A**
24 **STOCKHOLDER SHALL HAVE PREEMPTIVE RIGHTS AS AND TO THE EXTENT IN**
25 **EXISTENCE BEFORE OCTOBER 1, 1995, UNLESS AND UNTIL EXPRESSLY**
26 **CHANGED OR TERMINATED BY CHARTER AMENDMENT.**

27 (C) (1) A stockholder to whom a preemptive right has been granted may
28 waive the preemptive right.

1 (2) A written waiver of a preemptive right is irrevocable even though
2 it is not supported by consideration.

3 2–210.

4 (c) Unless the charter or bylaws provide otherwise, the board of directors of a
5 corporation may authorize the issue of some or all of the shares of any or all of its
6 classes or series without certificates. The authorization does not affect shares already
7 represented by certificates until they are surrendered to the corporation. [At the time
8 of issue or transfer of] **FOR** shares **ISSUED** without certificates, **ON REQUEST BY A**
9 **STOCKHOLDER**, the corporation shall send the stockholder, **WITHOUT CHARGE**, a
10 written statement of the information required on certificates by § 2–211 of this
11 subtitle.

12 2–406.

13 (a) The stockholders of a corporation may remove any director, with or
14 without cause, by the affirmative vote of a majority of all the votes entitled to be cast
15 generally for the election of directors, except:

16 (1) As provided in subsection (b) of this section;

17 (2) As otherwise provided in the charter of the corporation; or

18 (3) For a corporation that has elected to be subject to § 3–804(a) of this
19 article.

20 (b) Unless the charter of the corporation provides otherwise:

21 (1) If the stockholders of any class or series are entitled separately to
22 elect one or more directors, a director elected by a class or series may not be removed
23 without cause except by the affirmative vote of a majority of all the votes of that class
24 or series;

25 (2) If a corporation has cumulative voting for the election of directors
26 and less than the entire board is to be removed, a director may not be removed without
27 cause if the votes cast against [his] **THE DIRECTOR’S** removal would be sufficient to
28 elect [him] **THE DIRECTOR** if then cumulatively voted at an election of the entire
29 board of directors, or, if there is more than one class of directors, at an election of the
30 class of directors of which [he] **THE DIRECTOR** is a member; and

1 (3) If the directors have been divided into classes, a director may not
2 be removed without cause.

3 **(C) A RESIGNATION OF A DIRECTOR GIVEN IN WRITING OR BY**
4 **ELECTRONIC TRANSMISSION MAY PROVIDE THAT:**

5 **(1) IT WILL BE EFFECTIVE AT A LATER TIME OR ON THE**
6 **OCCURRENCE OF AN EVENT; AND**

7 **(2) IT IS IRREVOCABLE ON THE OCCURRENCE OF THE EVENT.**

8 2-411.

9 (a) The board of directors of a corporation may:

10 (1) Appoint from among its members an executive committee and
11 other committees composed of one or more directors; and

12 (2) Delegate to these committees any of the powers of the board of
13 directors, except the power to:

14 (i) Authorize dividends on stock, except as provided in §
15 2-309(d) of this title;

16 (ii) Issue stock other than as provided in subsection (b) of this
17 section;

18 (iii) Recommend to the stockholders any action which requires
19 stockholder approval, **OTHER THAN THE ELECTION OF DIRECTORS;**

20 (iv) Amend the bylaws; or

21 (v) Approve any merger or share exchange which does not
22 require stockholder approval.

23 **(b) If the board of directors has given general authorization for the issuance**
24 **of stock providing for or establishing a method or procedure for determining the**
25 **maximum number OR THE MAXIMUM AGGREGATE OFFERING PRICE of shares to be**
26 **issued, a committee of the board, in accordance with that general authorization or any**
27 **stock option or other plan or program adopted by the board, may authorize or fix the**
28 **terms of stock subject to classification or reclassification and the terms on which any**
29 **stock may be issued, including all terms and conditions required or permitted to be**

1 established or authorized by the board of directors under §§ 2-203 and 2-208 of this
2 title.

3 2-418.

4 (a) (1) "Director" means any person who is or was a director of a
5 corporation and any person who, while a director of a corporation, is or was serving at
6 the request of the corporation as a director, officer, partner, trustee, employee,
7 ~~MANAGER~~, or agent of another foreign or domestic corporation, partnership, joint
8 venture, trust, **LIMITED LIABILITY COMPANY**, other enterprise, or employee benefit
9 plan **OR A MANAGER OF A LIMITED LIABILITY COMPANY.**

10 (e) (1) Indemnification under subsection (b) of this section may not be
11 made by the corporation unless authorized for a specific proceeding after a
12 determination has been made that indemnification of the director is permissible in the
13 circumstances because the director has met the standard of conduct set forth in
14 subsection (b) of this section.

15 (2) Such determination shall be made:

16 (i) By the board of directors by a majority vote of a quorum
17 consisting of directors not, at the time, parties to the proceeding, or, if such a quorum
18 cannot be obtained, then by a majority vote of a committee of the board consisting
19 solely of one or more directors not, at the time, parties to such proceeding and who
20 were duly designated to act in the matter by a majority vote of the full board in which
21 the designated directors who are parties may participate;

22 (ii) By special legal counsel selected by the board of directors or
23 a committee of the board by vote as set forth in subparagraph (i) of this paragraph, or,
24 if the requisite quorum of the full board cannot be obtained therefor and the
25 committee cannot be established, by a majority vote of the full board in which directors
26 who are parties may participate; or

27 (iii) By the stockholders.

28 (3) Authorization of indemnification and determination as to
29 reasonableness of expenses shall be made in the same manner as the determination
30 that indemnification is permissible. However, if the determination that
31 indemnification is permissible is made by special legal counsel, authorization of
32 indemnification and determination as to reasonableness of expenses shall be made in
33 the manner specified in [subparagraph (ii) of] paragraph [(2)] **(2)(II)** of this
34 subsection for selection of such counsel.

1 (4) Shares held by directors who are parties to the proceeding may not
2 be voted on the subject matter under this subsection.

3 (f) (1) Reasonable expenses incurred by a director who is a party to a
4 proceeding may be paid or reimbursed by the corporation in advance of the final
5 disposition of the proceeding upon receipt by the corporation of:

6 (i) A written affirmation by the director of the director's good
7 faith belief that the standard of conduct necessary for indemnification by the
8 corporation as authorized in this section has been met; and

9 (ii) A written undertaking by or on behalf of the director to
10 repay the amount if it shall ultimately be determined that the standard of conduct has
11 not been met.

12 (2) The undertaking required by [subparagraph (ii) of] paragraph [(1)]
13 **(1)(II)** of this subsection shall be an unlimited general obligation of the director but
14 need not be secured and may be accepted without reference to financial ability to make
15 the repayment.

16 (3) Payments under this subsection shall be made as provided by the
17 charter, bylaws, or contract or as specified in subsection [(e)] **(E)(2)** of this section.

18 2-501.

19 (c) (1) Except as provided in paragraph (2) of this subsection, the meeting
20 shall be held[:

21 (i) At] **AT** the time **OR IN THE MANNER** provided in the
22 bylaws[; or

23 (ii) If the bylaws specify a period not exceeding 31 days during
24 which the meeting may be held, at a time within that period set by the board of
25 directors].

26 (2) If a corporation is required under [paragraph (1) of] subsection
27 [(b)] **(B)(1)** of this section to hold a meeting of stockholders to elect directors, the
28 meeting shall be held no later than 120 days after the occurrence of the event
29 requiring the meeting.

30 2-505.

1 (b) (1) Unless the charter requires otherwise, the holders of any class of
2 stock, other than common stock entitled to vote generally in the election of directors,
3 may take action or consent to any action by delivering a consent in writing or by
4 electronic transmission of the stockholders entitled to cast not less than the minimum
5 number of votes that would be necessary to authorize or take the action at a
6 stockholders meeting if the corporation gives notice of the action to each holder of the
7 class of stock not later than 10 days after the effective time of the action.

8 (2) If authorized by the charter of a corporation, the holders of
9 common stock entitled to vote generally in the election of directors may take action or
10 consent to any action by delivering a consent in writing or by electronic transmission
11 of the stockholders entitled to cast not less than the minimum number of votes that
12 would be necessary to authorize or take the action at a stockholders meeting if the
13 corporation gives notice of the action **NOT LATER THAN 10 DAYS AFTER THE**
14 **EFFECTIVE DATE OF THE ACTION** to each holder of the class of common stock [not
15 later than 10 days after the effective date of the action] **AND TO EACH**
16 **STOCKHOLDER WHO, IF THE ACTION HAD BEEN TAKEN AT A MEETING, WOULD**
17 **HAVE BEEN ENTITLED TO NOTICE OF THE MEETING.**

18 2-506.

19 (a) Unless this article or the charter of a corporation provides otherwise, at a
20 meeting of stockholders:

21 (1) The presence in person or by proxy of stockholders entitled to cast
22 a majority of all the votes entitled to be cast at the meeting constitutes a quorum; and

23 (2) A majority of all the votes cast at a meeting at which a quorum is
24 present is sufficient to approve any matter which properly comes before the meeting.

25 (b) Subject to other provisions of this article, unless the charter of a
26 corporation provides otherwise, if two or more classes of stock are entitled to vote
27 separately on any matter for which this article requires approval by [two thirds]
28 **TWO-THIRDS** of all the votes entitled to be cast, the matter shall be approved by [two
29 thirds] **TWO-THIRDS** of all the votes of each class.

30 (c) (1) **THIS SUBSECTION APPLIES TO A CORPORATION:**

31 (i) **WITH A CLASS OF EQUITY SECURITIES REGISTERED**
32 **UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND AT LEAST THREE**
33 **DIRECTORS WHO ARE NOT OFFICERS OR EMPLOYEES OF THE CORPORATION; OR**

1 **(II) REGISTERED AS AN OPEN-END INVESTMENT COMPANY**
2 **UNDER THE INVESTMENT COMPANY ACT OF 1940.**

3 **(2) UNLESS THE CHARTER OR THE BYLAWS PROVIDE OTHERWISE,**
4 **AT A MEETING OF STOCKHOLDERS THE PRESENCE, IN PERSON OR BY PROXY, OF**
5 **A MAJORITY OF ALL VOTES ENTITLED TO BE CAST AT THE MEETING**
6 **CONSTITUTES A QUORUM.**

7 **(3) UNDER THIS SECTION, A QUORUM PROVISION IN THE BYLAWS**
8 **MAY NOT BE LESS THAN ONE-THIRD OF THE VOTES ENTITLED TO BE CAST AT**
9 **THE MEETING.**

10 3-109.

11 **(E) ARTICLES OF CONSOLIDATION, MERGER, OR SHARE EXCHANGE MAY**
12 **PROVIDE:**

13 **(1) THE NUMBER AND NAMES OF THOSE DIRECTORS OR**
14 **TRUSTEES OF THE SUCCESSOR, OR PERSONS ACTING IN SIMILAR POSITIONS,**
15 **WHO WILL HOLD THOSE POSITIONS AS OF THE EFFECTIVE TIME OF THE**
16 **CONSOLIDATION, MERGER, OR SHARE EXCHANGE, IF THE PERSONS SERVING IN**
17 **THOSE POSITIONS WILL BE CHANGED IN THE CONSOLIDATION, MERGER, OR**
18 **SHARE EXCHANGE; AND**

19 **(2) THE TITLES AND NAMES OF ONE OR MORE OFFICERS OF THE**
20 **SUCCESSOR, OR PERSONS ACTING IN SIMILAR POSITIONS, WHO WILL HOLD**
21 **THOSE POSITIONS AS OF THE EFFECTIVE TIME OF THE CONSOLIDATION,**
22 **MERGER, OR SHARE EXCHANGE, IF THE PERSONS SERVING IN THE POSITIONS**
23 **WILL BE CHANGED IN THE CONSOLIDATION, MERGER, OR SHARE EXCHANGE.**

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 June 1, 2007.