

SENATE BILL 556

C1

(8lr2947)

ENROLLED BILL

—*Judicial Proceedings/Economic Matters*—

Introduced by **Senator Gladden**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Corporations – Objecting Stockholders – Right to Fair Value of Stock**

3 FOR the purpose of altering the circumstances under which a stockholder of a
4 Maryland corporation who objects to certain transactions may demand and
5 receive the fair value of the stockholder's stock; authorizing a stockholder to
6 demand the fair value of stock listed on a national securities exchange under
7 certain circumstances; repealing obsolete references to certain securities
8 quotations systems; altering the definition of "beneficial owner" under the
9 Maryland Business Combination Act to exclude, under certain circumstances, a
10 person that holds a revocable proxy from a stockholder; defining certain terms;
11 making certain stylistic and conforming changes; and generally relating to
12 rights of objecting stockholders.

13 BY repealing and reenacting, with amendments,
14 Article – Corporations and Associations

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.

Italics indicate opposite chamber/conference committee amendments.



Section 3-201, 3-202(c), and 3-601(d)
Annotated Code of Maryland
(2007 Replacement Volume)

BY adding to
Article – Corporations and Associations
Section 3-202(d) and (e)
Annotated Code of Maryland
(2007 Replacement Volume)

BY repealing and reenacting, without amendments,
Article – Corporations and Associations
Section 3–601(a)
Annotated Code of Maryland
(2007 Replacement Volume)

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

Article – Corporations and Associations

17 3-201.

18 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (B) "AFFILIATE" HAS THE MEANING STATED IN § 3-601 OF THIS TITLE.

21 (c) "ASSOCIATE" HAS THE MEANING STATED IN § 3-601 OF THIS TITLE.

24 (1) INDIVIDUALLY OR WITH ANY OF ITS AFFILIATES OR
25 ASSOCIATES, BENEFICIALLY OWNS VOTING STOCK, DIRECTLY OR INDIRECTLY:

26 (2) INDIVIDUALLY OR WITH ANY OF ITS AFFILIATES OR
27 ASSOCIATES, HAS:

4 (3) EXCEPT SOLELY BY VIRTUE OF A REVOCABLE PROXY, HAS ANY
5 AGREEMENT, ARRANGEMENT, OR UNDERSTANDING FOR THE PURPOSE OF
6 ACQUIRING, HOLDING, VOTING, OR DISPOSING OF VOTING STOCK WITH ANY
7 OTHER PERSON THAT BENEFICIALLY OWNS, OR THE AFFILIATES OR ASSOCIATES
8 OF WHICH BENEFICIALLY OWN, DIRECTLY OR INDIRECTLY, THE VOTING STOCK.

15 [(a)] (F) (1) [In this subsection,] “**SUCCESSOR**”, except [as provided in
16 subsection (b) of this section, “successor”] **WHEN USED WITH RESPECT TO A SHARE**
17 **EXCHANGE**, includes a corporation which amends its charter in a way which alters
18 the contract rights, as expressly set forth in the charter, of any outstanding stock,
19 unless the right to do so is reserved by the charter of the corporation.

20 [(b)] (2) [When] “**SUCCESSOR**”, WHEN used with [reference] **RESPECT** to
21 a share exchange, [“successor”] means the corporation the stock of which was acquired
22 in the share exchange.

23 (G) "VOTING STOCK" HAS THE MEANING STATED IN § 3-601 OF THIS
24 TITLE.

25 3-202.

26 (c) Unless the transaction is governed by § 3-602 of this title or is exempted
27 by § 3-603(b) of this title, a stockholder may not demand the fair value of the
28 stockholder's stock and is bound by the terms of the transaction if:

29 (1) [The] EXCEPT AS ~~OTHERWISE~~ PROVIDED IN SUBSECTION (D)
30 OF THIS SECTION, ANY SHARES OF THE CLASS OR SERIES OF THE stock [is] ARE
31 listed on a national securities exchange[, is designated as a national market system
32 security on an interdealer quotation system by the National Association of Securities
33 Dealers, Inc., or is designated for trading on the NASDAQ Small Cap Market]:

4 (ii) With respect to any other transaction, on the record date for
5 determining stockholders entitled to vote on the transaction objected to;

6 (2) The stock is that of the successor in a merger, unless:

10 (ii) The stock is to be changed or converted in whole or in part in
11 the merger into something other than either stock in the successor or cash, scrip, or
12 other rights or interests arising out of provisions for the treatment of fractional shares
13 of stock in the successor;

18 (4) The charter provides that the holders of the stock are not entitled
19 to exercise the rights of an objecting stockholder under this subtitle; or

20 (5) The stock is that of an open-end investment company registered
21 with the Securities and Exchange Commission under the Investment Company Act of
22 1940 and the value placed on the stock in the transaction is its net asset value.

23 (D) WITH RESPECT TO A MERGER, CONSOLIDATION, OR SHARE
24 EXCHANGE, A STOCKHOLDER OF A MARYLAND CORPORATION WHO OTHERWISE
25 WOULD BE BOUND BY THE TERMS OF THE TRANSACTION UNDER SUBSECTION
26 (C)(1) OF THIS SECTION MAY DEMAND THE FAIR VALUE OF THE STOCKHOLDER'S
27 STOCK IF:

(II) CASH IN LIEU OF FRACTIONAL SHARES OF STOCK OR
FRACTIONAL DEPOSITORY RECEIPTS DESCRIBED IN ITEM (I) OF THIS ITEM; OR

(III) ANY COMBINATION OF THE STOCK, DEPOSITORY RECEIPTS, AND CASH IN LIEU OF FRACTIONAL SHARES OR FRACTIONAL DEPOSITORY RECEIPTS DESCRIBED IN ITEMS (I) AND (II) OF THIS ITEM;

(2) THE DIRECTORS AND EXECUTIVE OFFICERS OF THE CORPORATION WERE THE BENEFICIAL OWNERS, IN THE AGGREGATE, OF 5 PERCENT OR MORE OF THE OUTSTANDING VOTING STOCK OF THE CORPORATION AT ANY TIME WITHIN THE 1-YEAR PERIOD ENDING ON:

(I) THE DAY THE STOCKHOLDERS VOTED ON THE TRANSACTION OBJECTED TO; OR

(II) WITH RESPECT TO A MERGER UNDER § 3-106 OF THIS TITLE, THE EFFECTIVE DATE OF THE MERGER; AND

(3) UNLESS THE STOCK IS HELD IN ACCORDANCE WITH A COMPENSATORY PLAN OR ARRANGEMENT APPROVED BY THE BOARD OF DIRECTORS OF THE CORPORATION AND THE TREATMENT OF THE STOCK IN THE TRANSACTION IS APPROVED BY THE BOARD OF DIRECTORS OF THE CORPORATION, ANY STOCK HELD BY PERSONS DESCRIBED IN ITEM (2) OF THIS SUBSECTION, AS PART OF OR IN CONNECTION WITH THE TRANSACTION AND WITHIN THE 1-YEAR PERIOD DESCRIBED IN ITEM (2) OF THIS SUBSECTION, WILL BE OR WAS CONVERTED INTO OR EXCHANGED FOR STOCK OF A PERSON, OR AN AFFILIATE OF A PERSON, WHO IS A PARTY TO THE TRANSACTION ON TERMS THAT ARE NOT AVAILABLE TO ALL HOLDERS OF STOCK OF THE SAME CLASS OR SERIES.

(E) IF DIRECTORS OR EXECUTIVE OFFICERS OF THE CORPORATION ARE BENEFICIAL OWNERS OF STOCK IN ACCORDANCE WITH § 3-201(D)(2)(I) OF THIS SUBTITLE, THE STOCK IS CONSIDERED OUTSTANDING FOR PURPOSES OF DETERMINING BENEFICIAL OWNERSHIP BY A PERSON UNDER SUBSECTION (D)(2) OF THIS SECTION.

30 3-601.

(a) In this subtitle the following words have the meanings indicated.

32 (d) "Beneficial owner", when used with respect to any voting stock, means a
33 person THAT:

1 (1) [That, individually] **INDIVIDUALLY** or with any of its affiliates or
2 associates, beneficially owns voting stock, directly or indirectly; [or]

3 (2) [That, individually] **INDIVIDUALLY** or with any of its affiliates or
4 associates, has:

10 (ii) [The] EXCEPT SOLELY BY VIRTUE OF A REVOCABLE
11 PROXY, THE right to vote voting stock [pursuant to] IN ACCORDANCE WITH any
12 agreement, arrangement, or understanding; or

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 June 1, 2008.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.