

# SENATE BILL 696

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CF HB 743

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By: **Senator Gladden**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 11, 2008

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## 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 certain provision of law requiring a corporation to give  
5 certain written notice of the amount, time, and place of payment on  
6 subscriptions for stock to each subscriber; repealing a certain provision of law  
7 requiring that a call by the board of directors for payment on subscriptions be  
8 uniform as to all stock of the same class; clarifying that stockholders of a  
9 corporation formed on or after a certain date do not have certain preemptive  
10 rights unless the charter expressly grants the rights, and that stockholders of a  
11 corporation formed before that date have certain preemptive rights unless and  
12 until expressly changed or terminated by charter amendment; altering the  
13 circumstances under which a corporation is required to send certain information  
14 to a stockholder; requiring the information to be sent on request of a stockholder  
15 and without charge to the stockholder; authorizing a resignation of a director  
16 given in a certain manner to provide that it will be effective at a later time or on  
17 the occurrence of an event and that it is irrevocable under certain  
18 circumstances; authorizing the board of directors of a corporation to delegate to  
19 certain committees the power to recommend to stockholders the election of  
20 directors; altering the circumstances under which a committee of a board of  
21 directors may authorize or fix the terms of certain stock and the terms on which  
22 any stock may be issued; altering the definition of “director” as it relates to  
23 certain indemnification provisions to include certain directors of corporations  
24 who serve in certain capacities in connection with a limited liability company;  
25 limiting certain requirements imposed on making advance payments of  
26 expenses for indemnification of a director; authorizing a corporation to hold its

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**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 annual meeting in the manner provided in its bylaws; requiring a corporation to  
 2 give notice of an action taken by stockholders without a meeting to each  
 3 stockholder who, if the action had been taken at a meeting, would have been  
 4 entitled to notice of the meeting; providing that, for certain corporations, the  
 5 presence of a certain number of votes at a meeting of stockholders constitutes a  
 6 quorum under certain circumstances; authorizing articles of merger,  
 7 consolidation, or share exchange to provide certain information relating to the  
 8 directors, trustees, and officers of the successor, or of persons acting in similar  
 9 positions, if the persons in those positions will be changed in the merger,  
 10 consolidation, or share exchange; making certain stylistic changes; and  
 11 generally relating to corporations and altering and updating the Maryland  
 12 General Corporation Law.

13 BY repealing and reenacting, with amendments,  
 14 Article – Corporations and Associations  
 15 Section 2–202, 2–205, 2–210(c), 2–406, 2–411(a) and (b), 2–418(a)(3) and (f),  
 16 2–501(c), 2–505(b), and 2–506  
 17 Annotated Code of Maryland  
 18 (2007 Replacement Volume)

19 BY adding to  
 20 Article – Corporations and Associations  
 21 Section 3–109(f)  
 22 Annotated Code of Maryland  
 23 (2007 Replacement Volume)

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

26 **Article – Corporations and Associations**

27 2–202.

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

30 (1) The subscription agreement provides otherwise; or

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

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

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

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

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

6 2-205.

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

10           (1) Any additional issue of stock; or

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

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

16           (c) (1) A stockholder to whom a preemptive right has been granted may  
17 waive the preemptive right.

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

20 2-210.

21           (c) (1) Unless the charter or bylaws provide otherwise, the board of  
22 directors of a corporation may authorize the issue of some or all of the shares of any or  
23 all of its classes or series without certificates.

24           (2) The authorization **UNDER PARAGRAPH (1) OF THIS**  
25 **SUBSECTION** does not affect shares already represented by certificates until they are  
26 surrendered to the corporation.

27           (3) [At the time of issue or transfer of] **FOR** shares **ISSUED** without  
28 certificates, **ON REQUEST BY A STOCKHOLDER**, the corporation shall send the  
29 stockholder, **WITHOUT CHARGE**, a written statement of the information required on  
30 certificates by § 2-211 of this subtitle.

31 2-406.

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

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

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

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

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

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

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

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

21 (c) **A RESIGNATION OF A DIRECTOR GIVEN IN WRITING OR BY**  
22 **ELECTRONIC TRANSMISSION MAY PROVIDE THAT:**

23 (1) **THE RESIGNATION WILL BE EFFECTIVE AT A LATER TIME OR**  
24 **ON THE OCCURRENCE OF AN EVENT;**

25 (2) **THE RESIGNATION IS IRREVOCABLE ON THE OCCURRENCE OF**  
26 **THE EVENT; AND**

27 (3) **IF THE RESIGNATION WILL BE EFFECTIVE ON THE FAILURE OF**  
28 **THE DIRECTOR TO RECEIVE A SPECIFIED VOTE FOR REELECTION, THE**  
29 **RESIGNATION IS IRREVOCABLE.**

30 2–411.

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

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

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

5                   (i) Authorize dividends on stock, except as provided in §  
6 2-309(d) of this title;

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

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

11                   (iv) Amend the bylaws; or

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

14           (b) If the board of directors has given general authorization for the issuance  
15 of stock providing for or establishing a method or procedure for determining the  
16 maximum number **OR THE MAXIMUM AGGREGATE OFFERING PRICE** of shares to be  
17 issued, a committee of the board, in accordance with that general authorization or any  
18 stock option or other plan or program adopted by the board, may authorize or fix the  
19 terms of stock subject to classification or reclassification and the terms on which any  
20 stock may be issued, including all terms and conditions required or permitted to be  
21 established or authorized by the board of directors under §§ 2-203 and 2-208 of this  
22 title.

23 2-418.

24           (a) (3) "Director" means any person who is or was a director of a  
25 corporation and any person who, while a director of a corporation, is or was serving at  
26 the request of the corporation as a director, officer, partner, trustee, employee, or  
27 agent of another foreign or domestic corporation, partnership, joint venture, trust,  
28 **LIMITED LIABILITY COMPANY**, other enterprise, or employee benefit plan.

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

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

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

4 (2) The undertaking required by paragraph (1)(ii) of this subsection  
5 shall be an unlimited general obligation of the director but need not be secured and  
6 may be accepted without reference to financial ability to make the repayment.

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

9 2-501.

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

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

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

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

21 2-505.

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

29 (2) If authorized by the charter of a corporation, the holders of  
30 common stock entitled to vote generally in the election of directors may take action or  
31 consent to any action by delivering a consent in writing or by electronic transmission  
32 of the stockholders entitled to cast not less than the minimum number of votes that  
33 would be necessary to authorize or take the action at a stockholders meeting if the  
34 corporation gives notice of the action **NOT LATER THAN 10 DAYS AFTER THE**  
35 **EFFECTIVE DATE OF THE ACTION** to each holder of the class of common stock [not  
36 later than 10 days after the effective date of the action] **AND TO EACH**

1 **STOCKHOLDER WHO, IF THE ACTION HAD BEEN TAKEN AT A MEETING, WOULD**  
2 **HAVE BEEN ENTITLED TO NOTICE OF THE MEETING.**

3 2-506.

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

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

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

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

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

16 (i) **HAS A CLASS OF EQUITY SECURITIES REGISTERED**  
17 **UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND AT LEAST THREE**  
18 **DIRECTORS WHO ARE NOT OFFICERS OR EMPLOYEES OF THE CORPORATION; OR**

19 (ii) **IS REGISTERED AS AN OPEN-END INVESTMENT**  
20 **COMPANY UNDER THE INVESTMENT COMPANY ACT OF 1940.**

21 (2) **UNLESS THE CHARTER OR BYLAWS OF A CORPORATION**  
22 **PROVIDE OTHERWISE, AT A MEETING OF STOCKHOLDERS THE PRESENCE, IN**  
23 **PERSON OR BY PROXY, OF A MAJORITY OF ALL VOTES ENTITLED TO BE CAST AT**  
24 **THE MEETING CONSTITUTES A QUORUM.**

25 (3) **FOR PURPOSES OF THIS SUBSECTION, A QUORUM PROVISION**  
26 **IN THE BYLAWS OF A CORPORATION MAY NOT BE LESS THAN ONE-THIRD OF THE**  
27 **VOTES ENTITLED TO BE CAST AT THE MEETING.**

28 3-109.

29 (f) **ARTICLES OF CONSOLIDATION, MERGER, OR SHARE EXCHANGE MAY**  
30 **PROVIDE:**

31 (1) **THE NUMBER AND NAMES OF THE DIRECTORS OR TRUSTEES**  
32 **OF THE SUCCESSOR, OR OF PERSONS ACTING IN SIMILAR POSITIONS, WHO WILL**  
33 **HOLD THOSE POSITIONS AS OF THE EFFECTIVE TIME OF THE CONSOLIDATION,**

1 MERGER, OR SHARE EXCHANGE, IF THE PERSONS SERVING IN THOSE POSITIONS  
2 WILL BE CHANGED IN THE CONSOLIDATION, MERGER, OR SHARE EXCHANGE;  
3 AND

4 (2) THE TITLES AND NAMES OF ONE OR MORE OFFICERS OF THE  
5 SUCCESSOR, OR OF PERSONS ACTING IN SIMILAR POSITIONS, WHO WILL HOLD  
6 THOSE POSITIONS AS OF THE EFFECTIVE TIME OF THE CONSOLIDATION,  
7 MERGER, OR SHARE EXCHANGE, IF THE PERSONS SERVING IN THOSE POSITIONS  
8 WILL BE CHANGED IN THE CONSOLIDATION, MERGER, OR SHARE EXCHANGE.

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.