

HOUSE BILL 378

C1

(9lr1898)

ENROLLED BILL

—Economic Matters / Judicial Proceedings—

Introduced by **Delegate Feldman**

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.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Corporations – Corporate Documents, Distributions, Fractional Shares, and**
3 **Redemption of Stock**

4 FOR the purpose of repealing a certain requirement that the original or a certified
5 copy of the bylaws of a corporation, including amendments to them, be kept at
6 the corporation’s principal office; authorizing a corporation to eliminate
7 fractional shares of stock by rounding up, but not down, to a full share of stock;
8 increasing the amount of the aggregate net asset value of shares that a
9 corporation may redeem from a stockholder under certain circumstances;
10 authorizing a corporation to make distributions from certain net earnings under
11 certain circumstances; authorizing a certain statement of affairs of a corporation
12 to be placed on file, in a certain form, at the corporation’s principal office or at
13 any other office or agency specified in the bylaws of the corporation; requiring a
14 written request for certain persons to inspect and copy certain documents of a
15 corporation; requiring a corporation, within a certain time period after a certain

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.



1 request for a certain document is presented to an officer or the resident agent of
2 the corporation, to have the requested document available on file at the
3 corporation's principal office; making certain clarifying and conforming changes;
4 and generally relating to corporate documents, fractional shares, and
5 redemption of stock.

6 BY repealing and reenacting, with amendments,
7 Article – Corporations and Associations
8 Section 2–110, 2–214(a), ~~2–308~~, 2–310.1, ~~2–311(a)~~, 2–313, and 2–512
9 Annotated Code of Maryland
10 (2007 Replacement Volume and 2008 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Corporations and Associations
13 Section 2–510
14 Annotated Code of Maryland
15 (2007 Replacement Volume and 2008 Supplement)

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

18 **Article – Corporations and Associations**

19 2–110.

20 (a) The bylaws may contain any provisions not inconsistent with law or the
21 charter of the corporation for the regulation and management of the affairs of the
22 corporation.

23 (b) The bylaws may divide the directors of the corporation into classes and
24 specify the term of office of each class.

25 (c) [The original or a certified copy of the bylaws, including any amendments
26 to them, shall be kept at the corporation's principal office.

27 (d)] (1) In this subsection, “facts ascertainable outside the bylaws” include:

28 (i) An action or determination by any person, including the
29 corporation, its board of directors, an officer or agent of the corporation, and any other
30 person affiliated with the corporation;

31 (ii) Any agreement or other document; or

32 (iii) Any other event.

33 (2) Any provision of the bylaws permitted under subsection (a) of this
34 section may be made dependent upon facts ascertainable outside the bylaws.

1 2-214.

2 (a) A corporation may, but is not obliged to:

3 (1) Issue fractional shares of stock;

4 (2) Eliminate a fractional interest by rounding [off] UP to a full share
5 of stock;

6 (3) Arrange for the disposition of a fractional interest by the person
7 entitled to it;

8 (4) Pay cash for the fair value of a fractional share of stock determined
9 as of the time when the person entitled to receive it is determined; or

10 (5) Issue scrip or other evidence of ownership which:

11 (i) Entitles its holder to exchange scrip or other evidence of
12 ownership aggregating a full share for a certificate which represents the share; and

13 (ii) Unless otherwise provided, does not entitle its holder to
14 exercise voting rights, receive dividends, or participate in the assets of the corporation
15 in the event of liquidation.

16 2-308.

17 (a) Subject to the limitations of subsection (b) of this section, any surplus
18 which arises from a reduction of stated capital becomes capital surplus and may be
19 made the basis of:

20 (1) A distribution or payment to stockholders; and

21 (2) A reduction of the liability of stockholders whose shares of stock are
22 not fully paid.

23 (b) [The] EXCEPT AS PROVIDED IN § 2-311(A)(2) OF THIS SUBTITLE,
24 THE net assets of the corporation which remain after a distribution, payment, or
25 reduction of liability shall be at least equal to the aggregate preferential amount
26 payable in the event of voluntary liquidation to the holders of all stock having rights
27 preferred to the rights of holders who received the distribution, payment, or whose
28 liability was reduced.

29 2-310.1.

30 (a) This section applies only to a corporation registered as an open-end
31 company under the Investment Company Act of 1940.

1 (b) Subject to the provisions of § 2-311 of this subtitle, if authorized by its
2 board of directors, a corporation may redeem shares of its stock from any stockholder
3 if the corporation's charter expressly provides for the redemption of shares of its stock
4 from any stockholder.

5 (c) ~~(1)~~ Subject to the provisions of § 2-311 of this subtitle, unless prohibited by
6 its charter, in the case of a corporation whose charter does not expressly provide for
7 the redemption of shares of its stock, the corporation may redeem shares of its stock
8 from any stockholder if ~~the following conditions are met:~~

9 ~~(i)~~ (I) The aggregate net asset value of the shares to be redeemed from
10 the stockholder is, as of the date of the redemption, ~~[\$500]~~ **\$1,000** or less; and

11 ~~(ii)~~ (II) Written notice of the redemption ~~is given~~ to the stockholder of
12 record ~~that~~:

13 ~~(i)~~ 1. Is mailed first-class to the ~~shareholder's~~ **STOCKHOLDER'S**
14 last known address of record;

15 ~~(ii)~~ 2. States that all of the shares will be redeemed; and

16 ~~(iii)~~ 3. Establishes a date for the redemption which is at least 45
17 days from the date of the notice.

18 ~~(iv)~~ (2) The price to be paid for shares redeemed under this subsection
19 shall be the aggregate net asset value of the shares at the close of business on the date
20 of the redemption.

21 ~~(v)~~ (3) If certificates representing the shares to be redeemed under this
22 subsection have been issued and are not surrendered for cancellation on the date of
23 redemption:

24 (i) The corporation may withhold payment for the redeemed
25 shares until the certificates are surrendered for cancellation; and

26 (ii) Except for the right to receive payment of the redemption
27 price, the stockholder shall cease to have any rights as a stockholder of the corporation
28 on the date of redemption.

29 ~~(vi)~~ (4) If the aggregate net asset value of the shares to be redeemed
30 under this subsection should increase to an amount greater than ~~[\$500]~~ **\$1,000**
31 between the date of the notice of redemption and the date of the redemption, then the
32 notice of redemption shall have no further force or effect.

33 2-311.

1 (a) **(1)** No distribution may be made if, after giving effect to the
2 distribution:

3 **[(1)] (I)** The corporation would not be able to pay indebtedness of the
4 corporation as the indebtedness becomes due in the usual course of business; or

5 **[(2)] (II)** ~~[The]~~ **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
6 **SUBSECTION, THE** corporation's total assets would be less than the sum of the
7 corporation's total liabilities plus, unless the charter permits otherwise, the amount
8 that would be needed, if the corporation were to be dissolved at the time of the
9 distribution, to satisfy the preferential rights upon dissolution of stockholders whose
10 preferential rights on dissolution are superior to those receiving the distribution.

11 **(2)** **A CORPORATION MAY MAKE A DISTRIBUTION FROM:**

12 **(I)** **THE NET EARNINGS OF THE CORPORATION FOR THE**
13 **FISCAL YEAR IN WHICH THE DISTRIBUTION IS MADE;**

14 **(II)** **THE NET EARNINGS OF THE CORPORATION FOR THE**
15 **PRECEDING FISCAL YEAR; OR**

16 **(III)** **THE SUM OF THE NET EARNINGS OF THE CORPORATION**
17 **FOR THE PRECEDING EIGHT FISCAL QUARTERS.**

18 2-313.

19 (a) The president or, if provided in the bylaws, some other executive officer of
20 each corporation shall prepare annually a full and correct statement of the affairs of
21 the corporation, to include a balance sheet and a financial statement of operations for
22 the preceding fiscal year.

23 (b) Except as provided in subsection (c) of this section, the statement of
24 affairs shall be submitted at the annual meeting of stockholders and, within 20 days
25 after the meeting, placed on file at the corporation's principal office **OR AT ANY**
26 **OTHER OFFICE OR AGENCY SPECIFIED IN THE BYLAWS OF THE CORPORATION,**
27 **IN WRITTEN FORM OR IN ANY OTHER FORM THAT MAY BE CONVERTED WITHIN A**
28 **REASONABLE TIME INTO WRITTEN FORM FOR VISUAL INSPECTION.**

29 (c) If a corporation is not required to hold an annual meeting of stockholders
30 under a charter or bylaw provision adopted in accordance with § 2-501 of this title, the
31 statement of affairs shall be placed on file at the corporation's principal office **OR AT**
32 **ANY OTHER OFFICE OR AGENCY SPECIFIED IN THE BYLAWS OF THE**
33 **CORPORATION,** within 120 days after the end of the fiscal year, **IN WRITTEN FORM**

1 **OR IN ANY OTHER FORM THAT MAY BE CONVERTED WITHIN A REASONABLE TIME**
2 **INTO WRITTEN FORM FOR VISUAL INSPECTION.**

3 2-510.

4 One or more stockholders of a corporation may confer the right to vote or
5 otherwise represent their stock to a trustee by:

6 (1) Entering into a written voting trust agreement which specifies the
7 terms and conditions of the voting trust;

8 (2) Depositing an executed copy of the agreement with the corporation
9 at its principal office; and

10 (3) Transferring their stock for purposes of the agreement to a trustee.

11 2-512.

12 (a) Any stockholder, holder of a voting trust certificate in a corporation, or
13 his agent, **ON WRITTEN REQUEST**, may inspect and copy during usual business hours
14 any of the following corporate documents:

15 (1) Bylaws;

16 (2) Minutes of the proceedings of the stockholders;

17 (3) Annual statements of affairs; and

18 (4) Voting trust agreements [on file] **DEPOSITED WITH THE**
19 **CORPORATION** at the corporation's principal office **IN ACCORDANCE WITH**
20 **§ 2-510(2) OF THIS SUBTITLE.**

21 **(B) WITHIN 7 DAYS AFTER A REQUEST FOR DOCUMENTS MADE UNDER**
22 **SUBSECTION (A) OF THIS SECTION IS PRESENTED TO AN OFFICER OR THE**
23 **RESIDENT AGENT OF A CORPORATION, THE CORPORATION SHALL HAVE THE**
24 **REQUESTED DOCUMENTS AVAILABLE ON FILE AT ITS PRINCIPAL OFFICE.**

25 [(b)] (C) (1) Any stockholder or holder of a voting trust certificate in a
26 corporation other than an open-ended investment company may present to any officer
27 or resident agent of the corporation a written request for a statement showing all stock
28 and securities issued by the corporation during a specified period of not more than 12
29 months before the date of the request.

30 (2) Within 20 days after a request is made under this subsection, the
31 corporation shall prepare and have available on file at its principal office a sworn

1 statement of its president or treasurer or one of its vice-presidents or assistant
2 treasurers which states:

3 (i) The number of shares or amounts of each class of stock or
4 other securities issued during the specified period;

5 (ii) The consideration received per share or unit, which may be
6 aggregated as to all issuances for the same consideration per share or unit; and

7 (iii) The value of any consideration other than money as set in a
8 resolution of the board of directors.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2009.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.