

CHAPTER 295

(Senate Bill 626)

AN ACT concerning

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

FOR the purpose of repealing a certain requirement that the original or a certified copy of the bylaws of a corporation, including amendments to them, be kept at the corporation's principal office; authorizing a corporation to eliminate fractional shares of stock by rounding up, but not down, to a full share of stock; increasing the amount of the aggregate net asset value of shares that a corporation may redeem from a stockholder under certain circumstances; *authorizing a corporation to make distributions from certain net earnings under certain circumstances*; authorizing a certain statement of affairs of a corporation to be placed on file, in a certain form, at the corporation's principal office or at any other office or agency specified in the bylaws of the corporation; requiring a written request for certain persons to inspect and copy certain documents of a corporation; requiring a corporation, within a certain time period after a certain request for a certain document is presented to an officer or the resident agent of the corporation, to have the requested document available on file at the corporation's principal office; making certain clarifying and conforming changes; and generally relating to corporate documents, fractional shares, and redemption of stock.

BY repealing and reenacting, with amendments,

Article – Corporations and Associations

Section 2-110, 2-214(a), ~~2-308~~, 2-310.1, ~~2-311(a)~~, 2-313, and 2-512

Annotated Code of Maryland

(2007 Replacement Volume and 2008 Supplement)

BY repealing and reenacting, without amendments,

Article – Corporations and Associations

Section 2-510

Annotated Code of Maryland

(2007 Replacement Volume and 2008 Supplement)

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

Article – Corporations and Associations

2-110.

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

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

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

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

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

(ii) Any agreement or other document; or

(iii) Any other event.

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

2-214.

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

(1) Issue fractional shares of stock;

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

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

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

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

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

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

2-308.

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

(1) A distribution or payment to stockholders; and

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

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

2-310.1.

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

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

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

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

~~(2)~~ **(II)** Written notice of the redemption ~~is given~~ to the stockholder of record ~~that:~~

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

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

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

~~(3)~~ **(2)** The price to be paid for shares redeemed under this subsection shall be the aggregate net asset value of the shares at the close of business on the date of the redemption.

~~(4)~~ **(3)** If certificates representing the shares to be redeemed under this subsection have been issued and are not surrendered for cancellation on the date of redemption:

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

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

~~(5)~~ **(4)** If the aggregate net asset value of the shares to be redeemed under this subsection should increase to an amount greater than [~~\$500~~] **\$1,000** between the date of the notice of redemption and the date of the redemption, then the notice of redemption shall have no further force or effect.

2-311.

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

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

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

(2) A CORPORATION MAY MAKE A DISTRIBUTION FROM:

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

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

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

2-313.

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

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

(c) If a corporation is not required to hold an annual meeting of stockholders under a charter or bylaw provision adopted in accordance with § 2-501 of this title, the statement of affairs shall be placed on file at the corporation's principal office **OR AT ANY OTHER OFFICE OR AGENCY SPECIFIED IN THE BYLAWS OF THE CORPORATION,** within 120 days after the end of the fiscal year, **IN WRITTEN FORM OR IN ANY OTHER FORM THAT MAY BE CONVERTED WITHIN A REASONABLE TIME INTO WRITTEN FORM FOR VISUAL INSPECTION.**

2-510.

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

- (1) Entering into a written voting trust agreement which specifies the terms and conditions of the voting trust;
- (2) Depositing an executed copy of the agreement with the corporation at its principal office; and
- (3) Transferring their stock for purposes of the agreement to a trustee.

2-512.

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

- (1) Bylaws;
- (2) Minutes of the proceedings of the stockholders;
- (3) Annual statements of affairs; and

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

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

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

(2) Within 20 days after a request is made under this subsection, the corporation shall prepare and have available on file at its principal office a sworn statement of its president or treasurer or one of its vice-presidents or assistant treasurers which states:

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

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

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

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

Approved by the Governor, May 7, 2009.