

HOUSE BILL 741

C1, D3

11r1211
CF SB 601

By: **Delegate Feldman**

Introduced and read first time: February 10, 2011

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts – Directors and Trustees –**
3 **Duties and Immunity from Liability**

4 FOR the purpose of clarifying the duties of a director of a corporation and the manner
5 in which a director must act; clarifying that a director who acts in accordance
6 with a certain provision of law shall have certain immunity from liability;
7 clarifying that a director of a corporation is not required to act solely because of
8 the effect the act may have on, or the amount or type of consideration offered or
9 paid to stockholders in, certain transactions involving the corporation; clarifying
10 that any act of a director of a corporation relating to or affecting certain
11 transactions involving the corporation may not be subject to a certain duty or
12 scrutiny; repealing a limitation on the enforcement of a duty of a director;
13 clarifying that certain provisions of law displace any duties of a director under
14 common law, are the sole source of duties of a director of a corporation to the
15 corporation or its stockholders, and apply to any act of a director; clarifying the
16 circumstances under which a director of a corporation is immune from certain
17 liability; making certain provisions of law relating to certain duties and
18 immunity from liability of a director of a corporation applicable to a trustee of a
19 real estate investment trust; defining a certain term; providing for the
20 application of certain provisions of this Act; making certain conforming and
21 stylistic changes; stating the intent of the General Assembly; and generally
22 relating to directors of a corporation.

23 BY repealing and reenacting, with amendments,
24 Article – Corporations and Associations
25 Section 2–405.1, 3–410(d), and 8–601.1
26 Annotated Code of Maryland
27 (2007 Replacement Volume and 2010 Supplement)

28 BY repealing and reenacting, with amendments,
29 Article – Courts and Judicial Proceedings

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 5-417
2 Annotated Code of Maryland
3 (2006 Replacement Volume and 2010 Supplement)

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

6 **Article – Corporations and Associations**

7 2-405.1.

8 **(A) IN THIS SECTION, “ACT” INCLUDES, AS THE CONTEXT REQUIRES:**

9 **(1) AN ACT, AN OMISSION, A FAILURE TO ACT, OR A**
10 **DETERMINATION MADE NOT TO ACT; OR**

11 **(2) TO ACT, OMIT TO ACT, FAIL TO ACT, OR MAKE A**
12 **DETERMINATION NOT TO ACT.**

13 **(B) THIS SECTION APPLIES TO ACTS OF AN INDIVIDUAL WHO:**

14 **(1) IS OR WAS A DIRECTOR OF A CORPORATION; AND**

15 **(2) IS ACTING OR ACTED AS A DIRECTOR OF A CORPORATION.**

16 **[(a)] (C) A director OF A CORPORATION shall [perform his duties as a**
17 **director, including his duties as a member of a committee of the board on which he**
18 **serves] ACT:**

19 **(1) In good faith;**

20 **(2) In a manner [he] THE DIRECTOR reasonably believes to be in the**
21 **best interests of the corporation; and**

22 **(3) With the care that an ordinarily prudent person in a like position**
23 **would use under similar circumstances.**

24 **[(b)] (D) (1) [In performing his duties, a] A director is entitled to rely on**
25 **any information, opinion, report, or statement, including any financial statement or**
26 **other financial data, prepared or presented by:**

27 **(i) An officer or employee of the corporation whom the director**
28 **reasonably believes to be reliable and competent in the matters presented;**

1 (ii) A lawyer, certified public accountant, or other person, as to a
2 matter which the director reasonably believes to be within the person's professional or
3 expert competence; or

4 (iii) A committee of the board on which the director does not
5 serve, as to a matter within its designated authority, if the director reasonably
6 believes the committee to merit confidence.

7 (2) A director is not acting in good faith if [he] **THE DIRECTOR** has
8 any knowledge concerning the matter in question which would cause such reliance to
9 be unwarranted.

10 [(c)] **(E)** A [person] **DIRECTOR** who [performs his duties] **ACTS** in
11 accordance with [the standard provided in] **SUBSECTION (C) OF** this section shall
12 have the immunity from liability described under § 5–417 of the Courts [and Judicial
13 Proceedings] Article.

14 [(d)] **(F)** [The duty of the directors] **A DIRECTOR** of a corporation [does not
15 require them] **IS NOT REQUIRED** to:

16 (1) Accept, recommend, or respond on behalf of the corporation to any
17 proposal by an acquiring person as defined in § 3–801 of this article;

18 (2) Authorize the corporation to redeem any rights under, modify, or
19 render inapplicable, a stockholder rights plan;

20 (3) Elect on behalf of the corporation to be subject to or refrain from
21 electing on behalf of the corporation to be subject to any or all of the provisions of Title
22 3, Subtitle 8 of this article;

23 (4) Make a determination under the provisions of Title 3, Subtitle 6 or
24 Subtitle 7 of this article; or

25 (5) Act [or fail to act] solely because of:

26 (i) The effect the act [or failure to act] may have on [an] **ANY**
27 acquisition or potential acquisition of control of the corporation **OR ON ANY OTHER**
28 **TRANSACTION OR POTENTIAL TRANSACTION INVOLVING THE CORPORATION;** or

29 (ii) The amount or type of any consideration that may be offered
30 or paid to stockholders **OF THE CORPORATION** in [an] **ANY** acquisition **OR**
31 **POTENTIAL ACQUISITION OF CONTROL OF THE CORPORATION OR IN ANY OTHER**
32 **TRANSACTION OR POTENTIAL TRANSACTION INVOLVING THE CORPORATION.**

33 [(e)] **(G)** [An] **ANY** act of a director of a corporation is presumed to [satisfy
34 the standards of] **COMPLY WITH** subsection [(a)] **(C)** of this section.

1 **[(f)] (H) [An] ANY** act of a director **OF A CORPORATION** relating to or
 2 affecting **[an] ANY** acquisition or a potential acquisition of control of **[a] THE**
 3 corporation **OR ANY OTHER TRANSACTION OR POTENTIAL TRANSACTION**
 4 **INVOLVING THE CORPORATION** may not be subject to a higher duty or greater
 5 scrutiny than is applied to any other act of a director.

6 **[(g)]** Nothing in this section creates a duty of any director of a corporation
 7 enforceable otherwise than by the corporation or in the right of the corporation.]

8 **(I) THIS SECTION:**

9 **(1) DISPLACES ANY DUTIES OF A DIRECTOR UNDER COMMON**
 10 **LAW;**

11 **(2) IS THE SOLE SOURCE OF DUTIES OF A DIRECTOR TO THE**
 12 **CORPORATION OR THE STOCKHOLDERS OF THE CORPORATION, WHETHER OR**
 13 **NOT A DECISION HAS BEEN MADE TO SELL THE CORPORATION OR ENTER INTO**
 14 **ANY OTHER TRANSACTION INVOLVING THE CORPORATION; AND**

15 **(3) APPLIES TO ANY ACT OF A DIRECTOR, INCLUDING AN ACT AS A**
 16 **MEMBER OF A COMMITTEE OF THE BOARD OF DIRECTORS.**

17 3-410.

18 (d) Dissolution of a corporation does not subject the directors of **[a] THE**
 19 corporation to **[a standard of conduct] ANY DUTIES** other than the **[standards of**
 20 **conduct for] DUTIES OF** directors **[set forth] PROVIDED** in **[§ 2-405.1] § 2-405.1(C)**
 21 of this article.

22 8-601.1.

23 Sections 2-201(c), 2-313, **[2-405.1(d) through (g),] 2-502(e), [and] 2-504(f)**
 24 **AND, EXCEPT AS OTHERWISE PROVIDED IN § 8-601 OF THIS SUBTITLE OR IN THE**
 25 **DECLARATION OF TRUST, § 2-405.1** of this article shall apply to real estate
 26 investment trusts.

27 **Article – Courts and Judicial Proceedings**

28 5-417.

29 **(A) IN THIS SECTION, “ACT” HAS THE MEANING STATED IN § 2-405.1 OF**
 30 **THE CORPORATIONS AND ASSOCIATIONS ARTICLE.**

1 **(B)** A [person] **PRESENT OR FORMER DIRECTOR OF A CORPORATION** who
2 [performs the duties of that person] **WHILE A DIRECTOR ACTS OR ACTED** in
3 accordance with the [standard] **DUTIES OF DIRECTORS** provided [under §
4 2–405.1] **IN § 2–405.1(C)** of the Corporations and Associations Article has no liability
5 [by reason of being or having been a director of a corporation] **IN ANY ACTION BASED**
6 **ON AN ACT OF THE DIRECTOR.**

7 **SECTION 2. AND BE IT FURTHER ENACTED,** That it is the intent of the
8 General Assembly that the changes made to §§ 2–405.1 and 3–410(d) of the
9 Corporations and Associations Article and to § 5–417 of the Courts and Judicial
10 Proceedings Article by Section 1 of this Act confirm and ratify the duties of directors of
11 a corporation and the immunity from liability of directors in effect before the effective
12 date of this Act.

13 **SECTION 3. AND BE IT FURTHER ENACTED,** That the repeal under Section
14 1 of this Act of § 2–405.1(g) of the Corporations and Associations Article, which
15 requires that a duty of a director may be enforced solely by or in the right of the
16 corporation, reflects the intent of the General Assembly that the determination of
17 whether or not a stockholder of a corporation may maintain a direct action against a
18 director should be controlled by applicable case law.

19 **SECTION 4. AND BE IT FURTHER ENACTED,** That this Act shall take effect
20 June 1, 2011.