

Department of Legislative Services
 Maryland General Assembly
 2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 481

(Senator Feldman)

Judicial Proceedings

Economic Matters

Corporations - Maryland General Corporation Law - Miscellaneous Provisions

This bill establishes jurisdictional rules for adjudicating internal corporate claims and prohibits a Maryland corporation with capital stock from imposing liability on a stockholder who is party to an internal corporate claim for attorney’s fees or other expenses of the corporation or any other party in connection with an internal corporate claim. These provisions also apply to real estate investment trusts (REITs). The bill specifies that the director of a corporation or the trustee of a REIT, after the bill’s effective date, consents to the corporation’s or REIT’s resident agent, or the State Department of Assessments and Taxation (SDAT) if there is no resident agent, as the agent on whom service of process may be made for specified civil actions. The bill also authorizes the expedited processing of certified lists of charter documents and certain other certificates and alters various other provisions of the Corporations and Associations Article concerning the execution of documents, the certification of beneficial owners of stock, the forfeiture of a corporate charter, the consolidation or conversion of a nonstock corporation, and resident agents of corporations, limited partnerships, and statutory trusts.

Fiscal Summary

State Effect: Special fund revenues for SDAT increase by as much as \$3,600 in FY 2018 and by as much as \$4,800 annually beginning in FY 2019 as the department charges an additional \$20 for the expedited processing of specified documents. Expenditures are not affected as the bill’s requirements relating to service of process can be handled with existing resources.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	\$3,600	\$4,800	\$4,800	\$4,800	\$4,800
Expenditure	0	0	0	0	0
Net Effect	\$3,600	\$4,800	\$4,800	\$4,800	\$4,800

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Internal Corporate Claims

The bill defines an “internal corporate claim” as a claim, including a claim brought by or in the right of a corporation, (1) based on an alleged breach by a director, an officer, or a stockholder of a duty owed to the corporation or its stockholders or a standard of conduct applicable to directors; (2) arising under the Corporations and Associations Article; or (3) arising under the charter or bylaws of the corporation.

The bill prohibits the charter or bylaws of a corporation with capital stock from imposing liability on a stockholder who is party to an internal corporate claim for the attorney’s fees or expenses of the corporation or any other party in connection with an internal corporate claim. The prohibition also applies to REITs.

The bill authorizes the charter or bylaws of a corporation to require, consistent with applicable jurisdictional requirements, that any internal corporate claim be brought only in courts sitting in one or more specified jurisdictions. However, the charter or bylaws of a corporation *may not prohibit* bringing an internal corporate claim in the courts of Maryland or a federal court sitting in Maryland. The authorization for such a requirement does not apply to an existing provision contained in the charter or bylaws of a corporation on the bill’s effective date (October 1, 2017), unless and until the provision is altered or repealed by an amendment to the charter and bylaws of the corporation. The jurisdictional requirements also apply to REITs.

Certified List of Charter Documents

The bill establishes an additional \$20 fee for expedited processing of a certified list of the charter documents of a Maryland corporation or any certificate of a Maryland limited partnership, limited liability partnership, or limited liability company recorded or filed with SDAT.

Signature and Seal on Certificates for Stock and Other Securities

The bill permits *any officer* of a corporation to countersign a stock certificate; under existing law, only the secretary, the assistant secretary, the treasurer, or an assistant treasurer may do so.

Certification of Stock Registered in the Name of a Stockholder for Account of Another Person

Under the bill, the charter or bylaws of a corporation may authorize (unless specifically prohibited by the charter or bylaws) the board of directors to adopt by resolution a procedure by which a stockholder of the corporation may certify in writing to the corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder.

Procedures for Revival of a Forfeited Charter

The bill eases the requirements for procedures related to articles of revival for a corporation. Specifically, *any two* of the last acting officers of a corporation (rather than only the president or vice president and the secretary or treasurer) must sign and acknowledge articles of revival and file them for recordation with SDAT.

Powers of Directors on Forfeiture

Under the bill, when the charter of a Maryland corporation has been forfeited, until a court appoints a receiver, the directors of the corporation must manage its assets for purposes of liquidation. Unless and until articles of revival are filed, the director must (1) collect and distribute the assets, applying them to the payment, satisfaction, and discharge of existing debts and obligations of the corporation, including necessary expenses of liquidation and (2) distribute the remaining assets among the stockholders.

The directors may (1) carry out the contracts of the corporation; (2) sell all or any part of the assets of the corporation at public or private sale; (3) sue or be sued in the name of the corporation; and (4) do all other acts consistent with law and the charter of the corporation necessary or proper to liquidate the corporation and wind up its affairs.

The bill repeals the provision of law specifying that the director-trustees govern by majority vote.

Forfeiture of the charter of a corporation does not subject a director of the corporation to a standard of conduct other than the ordinarily prudent person standard of conduct set forth in the Corporation and Associations Article.

Consolidation, Merger, and Transfer of Assets of Nonstock Corporations

The bill also establishes that a nonstock corporation may convert only into a foreign corporation that does not have the authority to issue stock. The conversion must be completed in accordance with requirements under Title 3 of the Corporations and Associations Article. Except as specified, a conversion of a nonstock corporation organized to hold title to property for a labor organization, and for related purposes, must be approved by the same affirmative vote of the members of the corporation that the constitution or bylaws of the labor organization requires for the same action.

Resident Agents

The bill expands who or what entity may be designated as a resident agent by repealing the requirement that the resident agent of a corporation, limited partnership, or statutory trust be either an individual who resides in the State or a Maryland corporation.

Service of Process

An individual who accepts the election or appointment as, or who serves as, the director of a corporation or the trustee of a REIT after the bill's effective date consents to the resident agent designated by the corporation or REIT, or consents to SDAT (if there is no resident agent), as the agent on whom service of process may be made for civil actions brought (1) by or against the corporation or REIT and to which the individual is a necessary and proper party or (2) against the individual for an internal corporate claim, as defined in the bill. The director's or trustee's consent is effective whether or not the individual is a director or trustee at the time the civil action is commenced. The director or trustee also consents that any process served in accordance with the bill's requirements has the same legal force and validity as if served on the individual. The appointment of a resident agent or SDAT as the agent for service of process is irrevocable.

Current Law:

Expedited Charter Documents

A certificate of status of a corporation, partnership, limited partnership, limited liability partnership, limited liability company, or a name reservation can be requested for expedited processing. The additional fee is \$20. However, a "long form" certified list of the charter documents of a corporation of Maryland or any certificates of a limited partnership, limited liability partnership, or a limited liability company of Maryland recorded or filed with SDAT may not be processed on an expedited basis.

Execution of Articles

State law establishes requirements for the execution of documents that are an integral part of the corporate structure. Articles supplementary and articles of amendment, restatement, amendment and restatement, consolidation, merger, share exchange, transfer, conversion, extension, and articles of dissolution (as specified) must be signed and acknowledged, then witnessed or attested to by corporate officers as enumerated in State law. Other officers may also be designated as signatories or witnesses, if authorized by the articles of incorporation.

Signature and Seal on Certificates for Stock and Other Securities

Each stock certificate must be signed by the president, a vice president, the chief executive officer, the chief operating officer, the chief financial officer, the chairman of the board, or the vice chairman of the board and countersigned by the secretary, an assistant secretary, the treasurer, or an assistant treasurer.

Certification of Stock Registered in the Name of a Stockholder for Account of another Person

If authorized under the charter or bylaws of a corporation, the board of directors may adopt by resolution a procedure by which a stockholder of the corporation may certify in writing to the corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder.

Procedures for Revival of a Forfeited Charter

The charter of any corporation which is forfeited for nonpayment of taxes, unemployment insurance contributions, or reimbursement payments or failure to file an annual report may be revived in a specified manner. The last acting president or vice president and the secretary or treasurer of the corporation must sign and acknowledge articles of revival and file them for record with SDAT.

Powers of Directors on Forfeiture

When the charter of a Maryland corporation has been forfeited, until a court appoints a receiver, the directors of the corporation become the trustees of its assets for purposes of liquidation. The director-trustees are vested in their capacity as trustees with full title to all the assets of the corporation. They must (1) collect and distribute the assets, applying them to the payment, satisfaction, and discharge of existing debts and obligations of the corporation, including necessary expenses of liquidation and (2) distribute the remaining assets among the stockholders.

The director-trustees may (1) carry out the contracts of the corporation; (2) sell all or any part of the assets of the corporation at public or private sale; (3) sue or be sued in their own names as trustees or in the name of the corporation; and (4) do all other acts consistent with law and the charter of the corporation necessary or proper to liquidate the corporation and end its affairs.

The director-trustees govern by majority vote.

Consolidation, Merger, and Transfer of Assets of Nonstock Corporations

A nonstock corporation may consolidate or merge only with another nonstock corporation. A consolidation, merger, or transfer of assets of a nonstock corporation must be completed in accordance with requirements under Title 3 of the Corporations and Associations Article. Except as specified, a proposed consolidation, merger, or transfer of assets of a nonstock corporation organized to hold title to property for a labor organization, and for related purposes, must be approved by the same affirmative vote of the members of the corporation that the constitution or bylaws of the labor organization requires for the same action.

Resident Agents

A corporation, limited partnership, or statutory trust must have (1) a principal office in this State and (2) at least one resident agent who is either an individual that resides in this State or a Maryland corporation.

However, under the Corporations and Associations Article, “resident agent” means an individual residing in this State or a Maryland corporation *or limited liability company* whose name, address, and designation as a resident agent are filed or recorded with SDAT in accordance with the law.

Service of Process

Service of process must be made in accordance with the Maryland Rules. Generally, service is made upon an individual by serving the individual or an agent authorized by appointment or by law to receive service of process for the individual. Service is made upon a corporation by serving its resident agent, president, secretary, or treasurer; if the corporation has no resident agent, or a good faith effort to serve the resident agent or the specified corporate officers has failed, service may be made upon other corporate officers and persons expressly or impliedly authorized to receive service of process. Service may also be made upon a corporation or other entity that is required by statute to have a resident agent by serving two copies of the summons, complaint, and other filed papers upon SDAT if (1) the entity has no resident agent; (2) the resident agent is dead or is no longer at the

address maintained by SDAT; or (3) two good faith attempts on separate days to serve the resident agent have failed.

Under the Courts and Judicial Proceedings Article, when process is served on SDAT, the director of SDAT must record the date and time of the service and forward a copy of the process and notice of service to the defendant at the defendant's mailing address or principal place of business.

Background: The bill is a result of recommendations by the Committee on Corporation Law of the Business Law Section of the Maryland State Bar Association. According to the committee, it regularly reviews the Corporations and Associations Article in an attempt to clarify unclear provisions and eliminate outdated language.

State Fiscal Effect: Special fund revenues increase minimally due to the establishment of an additional \$20 fee for the expedited processing of the long form for charter documents of corporations. SDAT advises that it receives approximately 20 requests to process these documents per month. Therefore, assuming all of these requests are for expedited processing under the bill, special fund revenues increase by as much as \$3,600 in fiscal 2018, which reflects the bill's October 1, 2017 effective date, and by as much as \$4,800 annually thereafter.

The bill expands the types of civil actions for which SDAT is explicitly authorized to receive service of process. SDAT advises that it receives approximately 2,400 service of process filings per year. Although SDAT may receive additional filings as a result of the bill, which must be forwarded to appropriate entities, the Department of Legislative Services advises that SDAT can likely absorb these requirements with existing resources.

Additional Information

Prior Introductions: SB 1065 of 2016, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1544, was referred to the House Rules and Executive Nominations Committee, but no further action was taken.

Cross File: HB 744 (Delegates Kramer and West) - Economic Matters.

Information Source(s): Judiciary (Administrative Office of the Courts); State Department of Assessments and Taxation; Maryland State Bar Association; Department of Legislative Services

Fiscal Note History: First Reader - February 15, 2017
fn/kdm Third Reader - March 15, 2017
Revised - Amendment(s) - March 15, 2017

Analysis by: Sasika Subramaniam

Direct Inquiries to:
(410) 946-5510
(301) 970-5510