

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 973  
Economic Matters

(Delegate Waldstreicher)

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Directors of Corporations - Duties and Standard of Conduct

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This bill specifies that the statutory duties of a director (1) are owed directly to the corporation and indirectly to the stockholders; (2) do not eliminate common law fiduciary duties of a director owed directly to the stockholders, including specified duties; and (3) do not limit the rights of a stockholder to bring a direct action against a director for breach of common law fiduciary duties. The bill also alters provisions relating to the liability of a director in a direct action for breach of common law fiduciary duties owed to stockholders by a director, as specified.

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Fiscal Summary

**State Effect:** The bill does not materially affect State finances or operations.

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

**Small Business Effect:** Potential minimal.

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Analysis

**Bill Summary/Current Law:**

*Statutory Duties of Conduct*

Under the Corporations and Associations Article, the business and affairs of a corporation must be managed under the direction of a board of directors. A director of a corporation must perform the duties of a director (1) in good faith; (2) in a manner the director reasonably believes to be in the corporation's best interest; and (3) with the care that an

ordinarily prudent person in a like position would use under similar circumstances. Additionally, in performing his or her duties, a director may reasonably rely on any officer or employee of the corporation, a professional such as a lawyer or certified public accountant, or a committee of the board on which the director does not serve. A director is not acting in good faith if he or she has any knowledge concerning the matter in question which causes such reliance to be unwarranted.

Chapters 170 and 171 of 2016 establish that all business and affairs of a corporation, whether or not in the ordinary course, must be managed by or under the direction of a board of directors. Further, an “act” includes not only an act but also an omission, a failure to act, or a determination not to act. The statute setting forth the standard of care of a director applies to an individual who is or was a director of a corporation and is acting or was acting in the individual’s official capacity as a director of a corporation. A director is not required to act solely because of the amount or type of any consideration that may be offered or paid to stockholders in a potential acquisition of control of the corporation.

Chapters 170 and 171 also establish that the statutory duties of a director are the sole source of duties of a director to the corporation or the stockholders of the corporation, *whether or not a decision has been made to enter into an acquisition or potential acquisition of control of the corporation or enter into any other transaction involving the corporation*. The bill repeals these provisions and also specifies that the statutory duties are owed directly to the corporation and indirectly to the stockholders.

#### *Director Immunity from Liability*

Chapters 170 and 171 of 2016 also clarify that the immunity from liability of a director of a corporation applies to a present or former director who acts or acted in accordance with the statutory standard of conduct and applies in any action based on an act of the director.

The bill specifies that these provisions do not apply to or limit liability in a direct action brought by a stockholder for breach of a common law fiduciary duty owed directly to a stockholder by a director.

#### *Charter Provisions Governing Director Liability*

The charter of a corporation may include any provision expanding or limiting the liability of its directors and officers to the corporation or its stockholders for money damages but may not include any provision that restricts or limits the liability of its directors or officers to the corporation or its stockholders with respect to receipt of improper benefits or court judgments and causes of action, as specified. Such provisions do not apply to an action brought by or on behalf of a State governmental entity against a director or officer of specified entities, including banking institutions.

The bill specifies that these provisions also do not apply to a direct action brought by a stockholder for breach of a common law fiduciary duty owed directly to a stockholder by a director.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - February 12, 2018  
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