

SENATE BILL 136

C1
SB 893/18 – JPR

9lr0951

By: **Senators Waldstreicher and West**
Introduced and read first time: January 21, 2019
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations – Corporate Records and Electronic Transmission**

3 FOR the purpose of authorizing certain records of a corporation to be maintained by means
4 of any information storage device, method, or electronic network or database,
5 including a distributed electronic network or database, under certain circumstances;
6 requiring a corporation to convert a record maintained in a certain manner into a
7 clearly legible written form on request of a certain person; providing that, if the
8 records of a corporation are maintained in a certain manner, a certain clearly legible
9 written form of a record shall be admissible as evidence and accepted for certain
10 purposes, under certain circumstances; providing that a certain electronic
11 transmission is not effective until the later of the posting of certain information to a
12 certain electronic network or database or the giving of a certain notice; authorizing
13 certain communications, consents, and requests to be made by means of a certain
14 electronic transmission; making conforming changes; altering a certain definition;
15 and generally relating to corporate records and electronic transmissions.

16 BY repealing and reenacting, without amendments,
17 Article – Corporations and Associations
18 Section 1–101(a)
19 Annotated Code of Maryland
20 (2014 Replacement Volume and 2018 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Corporations and Associations
23 Section 1–101(m), 2–111, 2–209, 2–210(c), 2–313, 2–504(a) and (c), 2–505, 2–510,
24 2–512, and 2–513
25 Annotated Code of Maryland
26 (2014 Replacement Volume and 2018 Supplement)

27 BY adding to
28 Article – Corporations and Associations

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Section 2–114 and 2–115
2 Annotated Code of Maryland
3 (2014 Replacement Volume and 2018 Supplement)

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

6 **Article – Corporations and Associations**

7 1–101.

8 (a) In this article, unless the context clearly requires otherwise, the following
9 words have the meanings indicated.

10 (m) (1) “Electronic transmission” means any form of communication, not
11 directly involving the physical transmission of paper, that creates a record that:

12 (i) May be retained, retrieved, and reviewed by a recipient of the
13 communication; and

14 (ii) May be reproduced directly in paper form by a recipient through
15 an automated process.

16 (2) “Electronic transmission” includes:

17 (i) Electronic mail;

18 (ii) Facsimile transmission; [and]

19 (iii) Internet transmission; AND

20 **(IV) THE USE OF OR PARTICIPATION IN ONE OR MORE**
21 **ELECTRONIC NETWORKS OR DATABASES, INCLUDING ONE OR MORE DISTRIBUTED**
22 **ELECTRONIC NETWORKS OR DATABASES.**

23 2–111.

24 (a) Each corporation shall [keep] **MAINTAIN, OR CAUSE TO BE MAINTAINED ON**
25 **ITS BEHALF**, correct and complete:

26 (1) Books and records of its accounts and transactions; and

27 (2) Minutes of the proceedings of its stockholders and board of directors
28 and of any executive or other committee when exercising any of the powers of the board of
29 directors.

1 (b) (1) The books and records of a corporation may be in written form or in any
2 other form [which can be converted within a reasonable time into written form for visual
3 inspection] **THAT COMPLIES WITH § 2-114 OF THIS SUBTITLE.**

4 (2) Minutes shall be recorded in written form but may be maintained in the
5 form of a reproduction **OR IN ANY OTHER FORM THAT COMPLIES WITH § 2-114 OF THIS**
6 **SUBTITLE.**

7 **2-114.**

8 (A) **THIS SECTION APPLIES TO ANY BOOKS OR RECORDS MAINTAINED BY OR**
9 **ON BEHALF OF A CORPORATION, INCLUDING:**

10 (1) **BYLAWS;**

11 (2) **MINUTES OF THE PROCEEDINGS OF THE STOCKHOLDERS;**

12 (3) **ANNUAL STATEMENTS OF AFFAIRS;**

13 (4) **STOCK LEDGERS;**

14 (5) **RECORDS OF ISSUANCES, TRANSFERS, AND CANCELLATIONS OF**
15 **SHARES OF STOCK; AND**

16 (6) **VOTING TRUST AGREEMENTS.**

17 (B) **THE RECORDS OF A CORPORATION MAY BE MAINTAINED BY MEANS OF**
18 **ANY INFORMATION STORAGE DEVICE, METHOD, OR ELECTRONIC NETWORK OR**
19 **DATABASE, INCLUDING A DISTRIBUTED ELECTRONIC NETWORK OR DATABASE, IF:**

20 (1) **THE RECORDS CAN BE CONVERTED WITHIN A REASONABLE TIME**
21 **INTO CLEARLY LEGIBLE WRITTEN FORM FOR VISUAL INSPECTION; AND**

22 (2) **WITH RESPECT TO RECORDS MAINTAINED ON AN ELECTRONIC**
23 **LEDGER OR DISTRIBUTED ELECTRONIC LEDGER, THE RECORDS CAN BE USED FOR**
24 **THE PURPOSE OF:**

25 (I) **MAKING A PROPER DETERMINATION WITH RESPECT TO**
26 **STOCKHOLDERS UNDER § 2-511(A) OF THIS TITLE; AND**

27 (II) **PREPARING A LIST OF STOCKHOLDERS IN ACCORDANCE**
28 **WITH § 2-513(B)(2) OF THIS TITLE.**

29 (C) **A CORPORATION SHALL CONVERT A RECORD MAINTAINED IN**

1 ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION INTO A CLEARLY LEGIBLE
2 WRITTEN FORM ON REQUEST OF ANY PERSON WHO IS ENTITLED TO INSPECT THE
3 RECORD UNDER THIS TITLE.

4 (D) (1) THIS SUBSECTION APPLIES TO RECORDS OF A CORPORATION
5 THAT ARE MAINTAINED IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.

6 (2) IF A WRITTEN FORM ACCURATELY PORTRAYS A RECORD, A
7 CLEARLY LEGIBLE WRITTEN FORM PREPARED FROM OR BY MEANS OF THE
8 INFORMATION STORAGE DEVICE, METHOD, OR ELECTRONIC NETWORK OR
9 DATABASE USED TO MAINTAIN THE RECORD SHALL BE ADMISSIBLE AS EVIDENCE
10 AND ACCEPTED FOR ALL OTHER PURPOSES TO THE SAME EXTENT THAT AN
11 ORIGINAL WRITTEN RECORD OF THE SAME INFORMATION WOULD HAVE BEEN.

12 2-115.

13 (A) THIS SECTION APPLIES TO THE ELECTRONIC TRANSMISSION, BY MEANS
14 OF AN ELECTRONIC NETWORK OR DATABASE, INCLUDING A DISTRIBUTED
15 ELECTRONIC NETWORK OR DATABASE, OF ANY COMMUNICATION, CONSENT, OR
16 REQUEST UNDER THIS TITLE, INCLUDING:

17 (1) A STATEMENT OF THE INFORMATION, IN ACCORDANCE WITH
18 § 2-210(C) OF THIS TITLE;

19 (2) AN ANNUAL STATEMENT OF THE AFFAIRS OF A CORPORATION, IN
20 ACCORDANCE WITH § 2-313(B) OF THIS TITLE;

21 (3) CORPORATE DOCUMENTS, IN ACCORDANCE WITH § 2-512 OF THIS
22 TITLE; AND

23 (4) ANY NOTICE TO A STOCKHOLDER.

24 (B) AN ELECTRONIC TRANSMISSION DESCRIBED UNDER SUBSECTION (A) OF
25 THIS SECTION IS NOT EFFECTIVE UNTIL THE LATER OF:

26 (1) THE POSTING OF THE INFORMATION TO THE ELECTRONIC
27 NETWORK OR DATABASE; OR

28 (2) THE GIVING OF A SEPARATE NOTICE TO THE INTENDED
29 RECIPIENT OF THE INFORMATION THAT THE INFORMATION HAS BEEN POSTED TO
30 THE ELECTRONIC NETWORK OR DATABASE.

31 2-209.

1 (a) Each corporation shall maintain, **OR CAUSE TO BE MAINTAINED ON ITS**
2 **BEHALF**, a stock ledger which contains:

3 (1) The name and address of each stockholder; and

4 (2) The number of shares of stock of each class [which] **OR SERIES THAT**
5 the stockholder holds.

6 (b) The stock ledger may be in written form or in any other form [which can be
7 converted within a reasonable time into written form for visual inspection] **THAT**
8 **COMPLIES WITH § 2-114 OF THIS TITLE.**

9 (c) The original or a duplicate of the stock ledger shall be [kept] **MAINTAINED:**

10 (1) **BY THE CORPORATION** at the principal office of the corporation or at
11 any other office or agency specified in the bylaws; **OR**

12 (2) **BY OR ON BEHALF OF THE CORPORATION IN ANY FORM THAT**
13 **COMPLIES WITH § 2-114 OF THIS TITLE.**

14 2-210.

15 (c) (1) Unless the charter or bylaws provide otherwise, the board of directors
16 of a corporation may authorize the issue of some or all of the shares of any or all of its
17 classes or series without certificates.

18 (2) The authorization under paragraph (1) of this subsection does not affect
19 shares already represented by certificates until they are surrendered to the corporation.

20 (3) For shares issued without certificates, on request by a stockholder, the
21 corporation shall send the stockholder, without charge, a [written] statement **IN WRITING**
22 **OR BY ELECTRONIC TRANSMISSION** of the information required on certificates by
23 § 2-211 of this subtitle.

24 2-313.

25 (a) The president or, if provided in the bylaws, some other executive officer of each
26 corporation shall prepare, **OR CAUSE TO BE PREPARED**, annually a full and correct
27 statement of the affairs of the corporation, to include a balance sheet and a financial
28 statement of operations for the preceding fiscal year.

29 (b) Except as provided in subsection (c) of this section, the statement of affairs
30 shall be submitted at the annual meeting of stockholders and, within 20 days after the
31 meeting[, placed]:

1 **(1) PLACED** on file at the corporation's principal office or at any other office
2 or agency specified in the bylaws of the corporation, in written form; or

3 **(2) OTHERWISE MAINTAINED BY OR ON BEHALF OF THE**
4 **CORPORATION** in any other form that [may be converted within a reasonable time into
5 written form for visual inspection] **COMPLIES WITH § 2-114 OF THIS TITLE.**

6 (c) If a corporation is not required to hold an annual meeting of stockholders
7 under a charter or bylaw provision adopted in accordance with § 2-501 of this title, **WITHIN**
8 **120 DAYS AFTER THE END OF THE FISCAL YEAR**, the statement of affairs shall be
9 [placed]:

10 **(1) PLACED** on file at the corporation's principal office or at any other office
11 or agency specified in the bylaws of the corporation[, within 120 days after the end of the
12 fiscal year,] in written form; or

13 **(2) OTHERWISE MAINTAINED BY OR ON BEHALF OF THE**
14 **CORPORATION** in any other form that [may be converted within a reasonable time into
15 written form for visual inspection] **COMPLIES WITH § 2-114 OF THIS TITLE.**

16 2-504.

17 (a) Not less than 10 nor more than 90 days before each stockholders' meeting, the
18 secretary of the corporation shall give, **OR CAUSE TO BE GIVEN**, notice in writing or by
19 electronic transmission of the meeting to:

20 (1) Each stockholder entitled to vote at the meeting; and

21 (2) Each other stockholder entitled to notice of the meeting.

22 (c) (1) For purposes of this section, notice is given to a stockholder when it is:

23 (i) Personally [delivered] **PROVIDED** to the stockholder;

24 (ii) Left at the stockholder's residence or usual place of business;

25 (iii) Mailed to the stockholder at the stockholder's address as it
26 appears on the records of the corporation; or

27 (iv) Transmitted to the stockholder by an electronic transmission to
28 any address or number of the stockholder at which the stockholder receives electronic
29 transmissions.

30 (2) **[If] UNLESS THE CHARTER OR BYLAWS PROVIDE OTHERWISE, IF a**

1 corporation has received a request from a stockholder that notice not be sent by electronic
2 transmission, the corporation may not provide notice to the stockholder by electronic
3 transmission.

4 2-505.

5 (a) Except as provided in subsection (b) of this section, any action required or
6 permitted to be taken at a meeting of the stockholders may be taken without a meeting if
7 a unanimous consent which sets forth the action is:

8 (1) **[Given] PROVIDED** in writing or by electronic transmission by each
9 stockholder entitled to vote on the matter; and

10 (2) Filed in paper or electronic form with the records of stockholders
11 meetings.

12 (b) (1) Unless the charter requires otherwise, the holders of any class of stock,
13 other than common stock entitled to vote generally in the election of directors, may take
14 action or consent to any action by **[delivering] PROVIDING** a consent in writing or by
15 electronic transmission of the stockholders entitled to cast not less than the minimum
16 number of votes that would be necessary to authorize or take the action at a stockholders
17 meeting if the corporation gives notice of the action to each holder of the class of stock not
18 later than 10 days after the effective time of the action.

19 (2) If authorized by the charter of a corporation, the holders of common
20 stock entitled to vote generally in the election of directors may take action or consent to any
21 action by **[delivering] PROVIDING** a consent in writing or by electronic transmission of the
22 stockholders entitled to cast not less than the minimum number of votes that would be
23 necessary to authorize or take the action at a stockholders meeting if the corporation gives
24 notice of the action not later than 10 days after the effective date of the action to each holder
25 of the class of common stock and to each stockholder who, if the action had been taken at a
26 meeting, would have been entitled to notice of the meeting.

27 (c) Any consent authorized by this section shall be **[delivered] PROVIDED** to the
28 corporation by delivery to its principal office in the State, its resident agent, or the officer
29 or agent of the corporation that **[has custody of the book] MAINTAINS, OR CAUSES TO BE**
30 **MAINTAINED ON BEHALF OF THE CORPORATION, THE RECORDS** in which proceedings
31 of minutes of stockholders meetings are recorded.

32 (d) A stockholder may **[deliver] PROVIDE** the consent authorized by this section
33 **[in]:**

34 (1) **BY ELECTRONIC TRANSMISSION; OR**

35 (2) **IN** paper form, by hand, **OR** by certified or registered mail, return
36 receipt requested**[, or by electronic transmission].**

1 (e) The board of directors may adopt reasonable procedures for [delivering]
2 **PROVIDING** consents instead of holding a meeting under this section.

3 (f) (1) A [written] consent [may not take effect] **UNDER THIS SECTION IS**
4 **NOT EFFECTIVE** unless [written] consents [signed] **AUTHORIZED** by a sufficient number
5 of stockholders to take action are [delivered] **PROVIDED** to the corporation **IN WRITING**
6 **OR BY ELECTRONIC TRANSMISSION** within 60 days after the date of the earliest consent
7 in accordance with procedures adopted under subsection (e) of this section.

8 (2) (i) A person, whether or not then a stockholder, may assent to an
9 action by a consent that will be effective at a future time that is no later than 60 days after
10 the consent is [delivered] **PROVIDED** to the corporation or its agent.

11 (ii) The effective time of a consent under this paragraph may include
12 a time determined on the happening of an event that occurs no later than 60 days after the
13 consent is [delivered] **PROVIDED** to the corporation or its agent.

14 (iii) A consent under this paragraph shall be deemed to have been
15 given at the effective time if the person:

- 16 1. Is a stockholder at the effective time; and
- 17 2. Did not revoke the consent before the effective time.

18 (3) Unless otherwise provided in the consent, a consent under this
19 subsection is revocable before the effective time.

20 (g) Any charter documents filed with the Department in accordance with an
21 action taken under this section may provide that the action was approved by the
22 stockholders in the manner provided by this section.

23 2-510.

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

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

28 (2) [Depositing] **PROVIDING** an executed copy of the **VOTING TRUST**
29 agreement [with] **TO** the corporation at its principal office **OR BY ELECTRONIC**
30 **TRANSMISSION**; and

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

1 2-512.

2 (a) Any stockholder, holder of a voting trust certificate in a corporation, or his
3 agent, on [written] request **PROVIDED IN WRITING OR BY ELECTRONIC TRANSMISSION**,
4 may inspect and copy during usual business hours any of the following corporate
5 documents:

6 (1) Bylaws;

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

8 (3) Annual statements of affairs; and

9 (4) Voting trust agreements [deposited with] **PROVIDED TO** the
10 corporation [at the corporation's principal office] in accordance with § 2-510(2) of this
11 subtitle.

12 (b) Within 7 days after a request for documents made under subsection (a) of this
13 section is [presented] **PROVIDED** to an officer [or] **OF A CORPORATION**, the resident
14 agent of a corporation, **OR AN AGENT DESIGNATED BY A CORPORATION TO MAINTAIN**
15 **CORPORATE DOCUMENTS ON THE CORPORATION'S BEHALF**, the corporation shall
16 [have]:

17 (1) **HAVE** the requested documents available on file at its principal office;
18 **OR**

19 (2) **MAKE THE REQUESTED DOCUMENTS AVAILABLE BY ELECTRONIC**
20 **TRANSMISSION.**

21 (c) (1) Any stockholder or holder of a voting trust certificate in a corporation
22 other than an open-ended investment company may [present] **PROVIDE** to any officer [or]
23 **OF THE CORPORATION, THE** resident agent of the corporation, **OR ANY AGENT**
24 **DESIGNATED BY THE CORPORATION TO MAINTAIN CORPORATE DOCUMENTS ON THE**
25 **CORPORATION'S BEHALF**, a [written] request **IN WRITING OR BY ELECTRONIC**
26 **TRANSMISSION** for a statement showing all stock and securities issued by the corporation
27 during a specified period of not more than 12 months before the date of the request.

28 (2) Within 20 days after a request is made under this subsection, the
29 corporation shall prepare and have available on file at its principal office **OR MAKE**
30 **AVAILABLE BY ELECTRONIC TRANSMISSION** a sworn statement of its president or
31 treasurer or one of its vice-presidents or assistant treasurers which states:

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

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

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

5 2-513.

6 (a) One or more persons who together are and for at least six months have been
7 stockholders of record or holders of voting trust certificates of at least 5 percent of the
8 outstanding stock of any class of a corporation may:

9 (1) In person or by agent, on [written] request **IN WRITING OR BY**
10 **ELECTRONIC TRANSMISSION**, inspect and copy during usual business hours the
11 corporation's books of account and its stock ledger;

12 (2) [Present] **PROVIDE** to any officer [or] **OF THE CORPORATION, THE**
13 resident agent of the corporation, **OR ANY AGENT DESIGNATED BY THE CORPORATION**
14 **TO MAINTAIN CORPORATE DOCUMENTS ON THE CORPORATION'S BEHALF**, a [written]
15 request **IN WRITING OR BY ELECTRONIC TRANSMISSION** for a statement of its affairs;
16 and

17 (3) In the case of any corporation which does not maintain the original or
18 a duplicate stock ledger at its principal office, [present] **PROVIDE** to any officer [or] **OF**
19 **THE CORPORATION, THE** resident agent of the corporation, **OR ANY AGENT DESIGNATED**
20 **BY THE CORPORATION TO MAINTAIN CORPORATE DOCUMENTS ON THE**
21 **CORPORATION'S BEHALF**, a [written] request **IN WRITING OR BY ELECTRONIC**
22 **TRANSMISSION** for a list of its stockholders.

23 (b) Within 20 days after a request for information is made under subsection (a) of
24 this section, the corporation shall prepare and have available on file at its principal office
25 **OR MAKE AVAILABLE BY ELECTRONIC TRANSMISSION:**

26 (1) In the case of a request for a statement of affairs, a statement verified
27 under oath by its president or treasurer or one of its vice-presidents or assistant treasurers
28 which sets forth in reasonable detail the corporation's assets and liabilities as of a
29 reasonably current date; and

30 (2) In the case of a request for a list of stockholders, a list verified under
31 oath by one of its officers or its stock transfer agent or registrar which sets forth the name
32 and address of each stockholder and the number of shares of each class which the
33 stockholder holds.

34 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
35 October 1, 2019.