

Chapter 288

(Senate Bill 136)

AN ACT concerning

Corporations – Corporate Records and Electronic Transmission

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

BY repealing and reenacting, without amendments,

Article – Corporations and Associations

Section 1–101(a)

Annotated Code of Maryland

(2014 Replacement Volume and 2018 Supplement)

BY repealing and reenacting, with amendments,

Article – Corporations and Associations

Section 1–101(m), 2–111, 2–209, 2–210(c), 2–313, 2–504(a) and (c), 2–505, 2–510,
2–512, and 2–513

Annotated Code of Maryland

(2014 Replacement Volume and 2018 Supplement)

BY adding to

Article – Corporations and Associations

Section 2–114 and 2–115

Annotated Code of Maryland

(2014 Replacement Volume and 2018 Supplement)

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

Article – Corporations and Associations

1–101.

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

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

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

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

(2) “Electronic transmission” includes:

(i) Electronic mail;

(ii) Facsimile transmission; [and]

(iii) Internet transmission; **AND**

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

2–111.

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

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

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

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

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

2–114.

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

- (1) BYLAWS;**
- (2) MINUTES OF THE PROCEEDINGS OF THE STOCKHOLDERS;**
- (3) ANNUAL STATEMENTS OF AFFAIRS;**
- (4) STOCK LEDGERS;**
- (5) RECORDS OF ISSUANCES, TRANSFERS, AND CANCELLATIONS OF SHARES OF STOCK; AND**
- (6) VOTING TRUST AGREEMENTS.**

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

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

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

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

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

(C) A CORPORATION SHALL CONVERT A RECORD MAINTAINED IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION INTO A CLEARLY LEGIBLE WRITTEN FORM ON REQUEST OF ANY PERSON WHO IS ENTITLED TO INSPECT THE RECORD UNDER THIS TITLE.

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

(2) IF A WRITTEN FORM ACCURATELY PORTRAYS A RECORD, A

CLEARLY LEGIBLE WRITTEN FORM PREPARED FROM OR BY MEANS OF THE INFORMATION STORAGE DEVICE, METHOD, OR ELECTRONIC NETWORK OR DATABASE USED TO MAINTAIN THE RECORD SHALL BE ADMISSIBLE AS EVIDENCE AND ACCEPTED FOR ALL OTHER PURPOSES TO THE SAME EXTENT THAT AN ORIGINAL WRITTEN RECORD OF THE SAME INFORMATION WOULD HAVE BEEN.

2-115.

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

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

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

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

(4) ANY NOTICE TO A STOCKHOLDER.

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

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

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

2-209.

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

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

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

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

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

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

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

2-210.

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

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

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

2-313.

(a) The president or, if provided in the bylaws, some other executive officer of each corporation shall prepare, **OR CAUSE TO BE PREPARED**, 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]:

(1) 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

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

(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, **WITHIN 120 DAYS AFTER THE END OF THE FISCAL YEAR**, the statement of affairs shall be [placed]:

(1) **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

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

2–504.

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

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

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

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

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

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

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

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

(2) **[If] UNLESS THE CHARTER OR BYLAWS PROVIDE OTHERWISE, IF** a corporation has received a request from a stockholder that notice not be sent by electronic transmission, the corporation may not provide notice to the stockholder by electronic transmission.

2–505.

(a) Except as provided in subsection (b) of this section, any action required or permitted to be taken at a meeting of the stockholders may be taken without a meeting if

a unanimous consent which sets forth the action is:

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

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

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

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

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

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

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

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

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

(f) (1) A [written] consent [may not take effect] **UNDER THIS SECTION IS NOT EFFECTIVE** unless [written] consents [signed] **AUTHORIZED** by a sufficient number of stockholders to take action are [delivered] **PROVIDED** to the corporation **IN WRITING**

OR BY ELECTRONIC TRANSMISSION within 60 days after the date of the earliest consent in accordance with procedures adopted under subsection (e) of this section.

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

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

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

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

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

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

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] **PROVIDING** an executed copy of the **VOTING TRUST** agreement [with] **TO** the corporation at its principal office **OR BY ELECTRONIC TRANSMISSION**; 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 **PROVIDED IN WRITING OR BY ELECTRONIC TRANSMISSION**, 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 [deposited with] **PROVIDED TO** 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] **PROVIDED** to an officer [or] **OF A CORPORATION**, the resident agent of a corporation, **OR AN AGENT DESIGNATED BY A CORPORATION TO MAINTAIN CORPORATE DOCUMENTS ON THE CORPORATION'S BEHALF**, the corporation shall [have]:

- (1) **HAVE** the requested documents available on file at its principal office;
- OR**
- (2) **MAKE THE REQUESTED DOCUMENTS AVAILABLE BY ELECTRONIC TRANSMISSION.**

(c) (1) Any stockholder or holder of a voting trust certificate in a corporation other than an open-ended investment company may [present] **PROVIDE** to any officer [or] **OF THE CORPORATION, THE** resident agent of the corporation, **OR ANY AGENT DESIGNATED BY THE CORPORATION TO MAINTAIN CORPORATE DOCUMENTS ON THE CORPORATION'S BEHALF**, a [written] request **IN WRITING OR BY ELECTRONIC TRANSMISSION** 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 **OR MAKE AVAILABLE BY ELECTRONIC TRANSMISSION** 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.

2-513.

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

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

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

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

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

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

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

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

Approved by the Governor, April 30, 2019.