

SENATE BILL 431

C1

2lr1670
CF HB 999

By: **Senators West and Waldstreicher**

Introduced and read first time: January 26, 2022

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 25, 2022

CHAPTER _____

1 AN ACT concerning

2 **Corporations and Associations – Revisions**

3 FOR the purpose of revising laws relating to the formation, organization, and operation of
4 corporations; repealing certain redundant and obsolete provisions; correcting certain
5 references; authorizing a certain dissent to be submitted by electronic transmission;
6 adding limited liability companies to the list of entity types that certain persons may
7 serve in certain capacities and be eligible for insurance provided by certain other
8 corporations; clarifying certain procedures relating to the abandonment of certain
9 proposed consolidations, mergers, or share exchanges; allowing a corporation to
10 dissolve, subject to a certain limitation, at the time established under the articles of
11 dissolution; and generally relating to corporations and associations.

12 BY repealing and reenacting, with amendments,

13 Article – Corporations and Associations

14 Section 1–101(f)(1)(iv) and (p)(1) and (4), 2–103(1), 2–104(b)(9) and (10), 2–208(a)(2),
15 2–208.1(a)(2), 2–410, 2–411(a)(2), 2–418(k)(1), 2–503(b) and (c), 2–509(b),
16 2–606.1(a), 3–105(a), 3–106.1(e)(1), 3–108(a) and (b), 3–109(b)(8), 3–408(a),
17 and 8–501(h)(1)

18 Annotated Code of Maryland

19 (2014 Replacement Volume and 2021 Supplement)

20 BY adding to

21 Article – Corporations and Associations

22 Section 2–104(b)(11)

23 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2014 Replacement Volume and 2021 Supplement)

2 BY repealing

3 Article – Corporations and Associations

4 Section 2–502.1

5 Annotated Code of Maryland

6 (2014 Replacement Volume and 2021 Supplement)

7 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

8 That the Laws of Maryland read as follows:

9 **Article – Corporations and Associations**

10 1–101.

11 (f) (1) “Charter” includes:

12 (iv) Articles of restatement[, if approved as described in § 2–609 of
13 this article];

14 (p) “Governing document” means:

15 (1) The [articles or certificate of incorporation] **CHARTER** and the bylaws
16 of a Maryland corporation or a foreign corporation;

17 (4) The declaration of trust or governing instrument of a business trust **OR**
18 **A REAL ESTATE INVESTMENT TRUST**; or

19 2–103.

20 Unless otherwise provided by law or its charter, a Maryland corporation has the
21 general powers, whether or not they are set forth in its charter, to:

22 (1) Have perpetual existence[, although existence may be limited to a
23 specified period if the limitation is stated in a charter provision adopted after May 31,
24 1908];

25 2–104.

26 (b) The articles of incorporation may include:

27 (9) A provision that allows the board of directors, in considering a potential
28 acquisition of control of the corporation, to consider the effect of the potential acquisition of
29 control on:

1 (i) Stockholders, employees, suppliers, customers, and creditors of
2 the corporation; and

3 (ii) Communities in which offices or other establishments of the
4 corporation are located; [and]

5 (10) A provision that contains a future effective date for the articles of
6 incorporation that is not later than 30 days after the articles are accepted by the
7 Department for record; AND

8 **(11) IF ADOPTED AFTER MAY 31, 1908, A PROVISION STATING THAT:**

9 **(I) THE EXISTENCE OF THE CORPORATION IS LIMITED TO A**
10 **SPECIFIC PERIOD; OR**

11 **(II) THE EXISTENCE OF THE CORPORATION SHALL BE LIMITED**
12 **TO A SPECIFIC PERIOD THAT SHALL BE CONTINUED, EXTENDED, OR TERMINATED ON**
13 **THE OCCURRENCE OF AN EVENT, AN ACTION, OR A DETERMINATION SET FORTH IN**
14 **THE CHARTER.**

15 2-208.

16 (a) (2) The [board] CORPORATION may not issue any of the stock that is
17 classified or reclassified prior to the time the articles supplementary are effective, as
18 provided in this section.

19 2-208.1.

20 (a) (2) The [board] CORPORATION may not issue any of the newly authorized
21 stock prior to the time the articles supplementary are effective, as provided in this section.

22 2-410.

23 (a) A director of a corporation who is present at a meeting of its board of directors
24 at which action on any corporate matter is taken is presumed to have assented to the action
25 unless:

26 (1) [He] THE DIRECTOR announces [his] THE DIRECTOR'S dissent at the
27 meeting; and

28 (2) (i) [His] THE dissent is entered in the minutes of the meeting;

29 (ii) [He] THE DIRECTOR files [his written] THE dissent to the
30 action IN WRITING with OR BY ELECTRONIC TRANSMISSION TO the secretary of the
31 meeting before the meeting is adjourned; or

1 (iii) [He] **THE DIRECTOR** forwards [his written] **THE** dissent within
2 24 hours after the meeting is adjourned[,] **TO THE SECRETARY OF THE MEETING OR THE**
3 **SECRETARY OF THE CORPORATION** by [certified]:

4 1. **CERTIFIED** mail, return receipt requested, bearing a
5 postmark from the United States Postal Service[, to the secretary of the meeting or the
6 secretary of the corporation]; **OR**

7 2. **ELECTRONIC TRANSMISSION.**

8 (b) The right to dissent does not apply to a director who:

9 (1) Voted in favor of the action; or

10 (2) Failed to make [his] **THE DIRECTOR'S** dissent known at the meeting.

11 2-411.

12 (a) The board of directors of a corporation may:

13 (2) Delegate to these committees any of the powers of the board of directors,
14 except the power to:

15 (i) [Issue] **AUTHORIZE THE ISSUANCE OF** stock other than as
16 provided in subsection (b) of this section;

17 (ii) Recommend to the stockholders any action which requires
18 stockholder approval, other than the election of directors;

19 (iii) Amend the bylaws; or

20 (iv) Approve any merger or share exchange which does not require
21 stockholder approval.

22 2-418.

23 (k) (1) A corporation may purchase and maintain insurance on behalf of any
24 person who is or was a director, officer, employee, or agent of the corporation, or who, while
25 a director, officer, employee, or agent of the corporation, is or was serving at the request of
26 the corporation as a director, officer, partner, trustee, employee, or agent of another foreign
27 or domestic corporation, partnership, joint venture, trust, **LIMITED LIABILITY COMPANY**,
28 other enterprise, or employee benefit plan against any liability asserted against and
29 incurred by such person in any such capacity or arising out of such person's position,
30 whether or not the corporation would have the power to indemnify against liability under
31 the provisions of this section.

1 [2-502.1.

2 (a) Unless restricted by the charter or bylaws of the corporation, a corporation
3 may allow stockholders to participate in a meeting by means of a conference telephone or
4 other communications equipment if all persons participating in the meeting can read or
5 hear the proceedings of the meeting substantially concurrently with the proceedings.

6 (b) Participation in a meeting by the means authorized by subsection (a) of this
7 section constitutes presence in person at the meeting.]

8 2-503.

9 (b) If the board of directors is authorized to determine the place of a meeting of
10 the stockholders, the board **OF DIRECTORS** may determine that the meeting not be held at
11 any place, but instead may be held partially or solely by [means of] remote communication,
12 as authorized by subsection (c) of this section.

13 (c) If authorized by the board of directors and subject to any guidelines and
14 procedures that the board adopts, stockholders and proxy holders not physically present at
15 [a] **THE** meeting of the stockholders, **MAY**, by [means of] remote communication:

16 (1) [May participate] **PARTICIPATE** in the meeting of the stockholders;
17 and

18 (2) [May be] **BE** considered present in person and may vote at the meeting
19 of the stockholders, whether the meeting is held at a designated place or solely by [means
20 of] remote communication, if:

21 (i) The corporation implements reasonable measures to verify that
22 each person considered present and authorized to vote at the meeting by [means of] remote
23 communication is a stockholder or proxy holder;

24 (ii) The corporation implements reasonable measures to provide the
25 stockholders and proxy holders a reasonable opportunity to participate in the meeting and
26 to vote on matters submitted to the stockholders, including an opportunity to read or hear
27 the proceedings of the meeting substantially concurrently with the proceedings; and

28 (iii) In the event any stockholder or proxy holder votes or takes other
29 action at the meeting by [means of] remote communication, a record of the vote or other
30 action is maintained by the corporation.

31 2-509.

32 (b) (1) Shares of a corporation's own stock owned directly or indirectly by it
33 may not be voted at any meeting and may not be counted in determining the total number
34 of outstanding shares entitled to be voted at any given time unless they are held by it in a

1 fiduciary capacity, in which case they may be voted and shall be counted in determining
2 the total number of outstanding shares at any given time.

3 (2) Shares of its own stock are considered owned indirectly by the
4 corporation if owned by another corporation **OR ENTITY** in which the corporation owns
5 shares **OR INTERESTS** entitled to cast a majority of all the votes entitled to be cast by
6 **HOLDERS OF** all shares **OR INTERESTS** outstanding and entitled to vote.

7 2-606.1.

8 (a) A [board] **CORPORATION** may not issue any of the stock that is classified,
9 reclassified, or newly authorized by an amendment before the time the amendment is
10 effective, as provided in § 2-610.1 of this subtitle.

11 3-105.

12 (a) A consolidation, merger, share exchange, or transfer of assets shall be
13 approved in the manner provided by this section, except that:

14 (1) A merger of a 90% or more owned subsidiary with or into its parent
15 need be approved only in accordance with the provisions of § 3-106 of this subtitle;

16 (2) A merger of a Maryland corporation in accordance with § 3-106.1 of this
17 subtitle need be approved only in the manner provided in § 3-106.1 of this subtitle;

18 **(3) A MERGER OF A MARYLAND CORPORATION IN ACCORDANCE WITH**
19 **§ 3-106.2 OF THIS SUBTITLE NEED ONLY BE APPROVED IN THE MANNER PROVIDED**
20 **IN § 3-106.2 OF THIS SUBTITLE;**

21 **[(3)] (4)** A share exchange need be approved by a Maryland successor only
22 by its board of directors and by any other action required by its charter;

23 **[(4)] (5)** A transfer of assets need be approved by a Maryland transferee
24 corporation only by its board of directors and by any other action required by its charter;

25 **[(5)] (6)** A foreign corporation party to the transaction shall have the
26 transaction advised, authorized, and approved in the manner and by the vote required by
27 its charter and the laws of the place where it is organized;

28 **[(6)] (7)** A merger need be approved by a Maryland successor corporation
29 only by a majority of its entire board of directors if:

30 (i) The merger does not reclassify or change the terms of any class
31 or series of its stock that is outstanding immediately before the merger becomes effective
32 or otherwise amend its charter and the number of its shares of stock of such class or series
33 outstanding immediately after the effective time of the merger does not increase by more

1 than 20% of the number of its shares of the class or series of stock that is outstanding
2 immediately before the merger becomes effective; or

3 (ii) There is no stock outstanding or subscribed for and entitled to be
4 voted on the merger;

5 ~~[(7)]~~ (8) A business trust party to a merger shall have the merger advised,
6 authorized, and approved in the manner and by the vote required by its declaration of trust
7 and the laws of the place where it is organized; and

8 ~~[(8)]~~ (9) A consolidation, merger, or share exchange shall be approved by
9 a Maryland corporation registered as an open-end investment company under the
10 Investment Company Act of 1940 only by a majority of the entire board of directors and in
11 the manner and by the vote required under the Investment Company Act of 1940.

12 3-106.1.

13 (e) (1) Unless waived by all stockholders who, except for the application of this
14 section, would be entitled to vote on the merger, at least 20 business days before the articles
15 are filed with the Department[,] an acquiring entity that owns less than all of the
16 outstanding shares of the subject corporation as of immediately before the effective time of
17 the merger must have given notice of the transaction to each of the subject corporation's
18 stockholders of record who, except for the application of this section, would be entitled to
19 vote on the merger on the date that notice is given or on a record date fixed for that purpose
20 that is not more than 10 days before the date that notice is given.

21 3-108.

22 (a) A proposed consolidation, merger, or share exchange may be abandoned before
23 the effective date of the articles:

24 (1) If the articles so provide, by majority vote of the entire board of directors
25 of any one corporation party to the articles [or of], the entire board of trustees of any one
26 business trust party to the articles, **OR THE GOVERNING BODY OF ANY OTHER ENTITY**
27 **PARTY TO THE ARTICLES;** or

28 (2) Unless the articles provide otherwise, by majority vote of the entire
29 board of directors of each Maryland corporation party to the articles [and of], the entire
30 board of trustees of each Maryland business trust party to the articles, **AND THE**
31 **GOVERNING BODY OF EACH OTHER MARYLAND ENTITY PARTY TO THE ARTICLES.**

32 (b) If the articles have been filed with the Department, notice of the abandonment
33 shall be given promptly to the Department **BY:**

34 **(1) IF ABANDONED PURSUANT TO SUBSECTION (A)(1) OF THIS**
35 **SECTION, ANY ONE PARTY TO THE ARTICLES; OR**

1 **(2) IF ABANDONED PURSUANT TO SUBSECTION (A)(2) OF THIS**
2 **SECTION, EACH PARTY TO THE ARTICLES.**

3 3–109.

4 (b) Articles of consolidation, merger, or share exchange shall contain the terms
5 and conditions of the transaction and the manner of carrying it into effect, including:

6 (8) A statement that the terms and conditions of the transaction set forth
7 in the articles were advised, authorized, and approved by each corporation, partnership,
8 limited partnership, limited liability company, or business trust party to the articles in the
9 manner and by the vote required by its charter [or], declaration of trust, **OR OTHER**
10 **GOVERNING DOCUMENT** and the laws of the place where it is organized, and a statement
11 of the manner of approval; and

12 3–408.

13 (a) Except as provided in subsection (b) of this section, the corporation is dissolved
14 [when the Department accepts its articles of dissolution for record] **ON THE LATER OF:**

15 **(1) THE TIME THE DEPARTMENT ACCEPTS THE ARTICLES OF**
16 **DISSOLUTION FOR RECORD; OR**

17 **(2) THE TIME ESTABLISHED UNDER THE ARTICLES, NOT TO EXCEED**
18 **30 DAYS AFTER THE ARTICLES ARE ACCEPTED FOR RECORD.**

19 8–501.

20 (h) (1) The [board of trustees] **REAL ESTATE INVESTMENT TRUST** may not
21 issue any of the shares that are classified, reclassified, or newly authorized by an
22 amendment to the declaration of trust before the time the amendment is filed with the
23 Department.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2022.