SENATE BILL 879

By: Senator Waldstreicher
Introduced and read first time: February 7, 2022
Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Corporations and Associations – Ratification of Defective Corporate Acts

FOR the purpose of establishing a process by which a defective corporate act may be ratified by a corporation or its stockholders; requiring a corporation ratifying a defective corporate act that would have required a filing with the State Department of Assessments and Taxation to file articles of validation with the Department; authorizing an adversely affected person or entity to file an action contesting a ratification under this Act; applying this Act to real estate investment trusts; and generally relating to the ratification of defective corporate acts.

BY repealing and reenacting, with amendments,
Article – Corporations and Associations
Section 1–101(f), 1–203(b)(1), 1–301, and 8–601.1
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,
Article – Corporations and Associations
Section 1–101(g)
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

BY adding to
Article – Corporations and Associations
Section 2–701 through 2–707 to be under the new subtitle “Subtitle 7. Ratification of Defective Corporate Acts”
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
Article – Corporations and Associations

1 1–101.

3 (f) (1) “Charter” includes:

4 (i) A charter granted by special act of the General Assembly;

5 (ii) Articles or certificate of incorporation;

6 (iii) Amended articles or certificate of incorporation;

7 (iv) Articles of restatement, if approved as described in § 2–609 of this article;

8 (v) Articles of amendment and restatement; and

9 (vi) Articles or agreements of consolidation.

11 (2) “Charter” includes the documents referred to in paragraph (1) of this subsection, either as:

13 (i) Originally passed or accepted for record; or

14 (ii) Amended, corrected, or supplemented by special act of the General Assembly, articles of amendment, articles of amendment and reduction, articles of extension, articles supplementary, articles or agreements of merger, articles of revival, [or] a certificate of correction, OR ARTICLES OF VALIDATION.

18 (g) “Charter document” means any:

19 (1) Document enumerated in subsection (f) of this section; and

20 (2) Articles of reduction, articles of transfer, articles of merger, articles of share exchange, articles of conversion, articles of dissolution, and stock issuance statements.

23 1–203.

24 (b) (1) Except as provided in paragraph (10) of this subsection, for each of the following documents, the nonrefundable processing fee is $100:

26 Document
27 Articles of incorporation
28 Articles of amendment
29 Articles of extension
1 Articles of restatement of charter
2 Articles of amendment and restatement
3 Articles supplementary
4 Articles of share exchange
5 Articles of consolidation or merger
6 Articles of revival for stock corporation
7 Articles of revival for nonstock corporation
8 Articles of conversion
9 ARTICLES OF VALIDATION

10 1–301.

11 (a) Articles supplementary and articles of amendment, restatement, amendment
12 and restatement, consolidation, merger, share exchange, conversion, [and] extension, AND
13 VALIDATION and, except as provided in § 3–406(b) of this article, articles of dissolution
14 shall be executed as follows:

15 (1) They shall be signed and acknowledged for each corporation, statutory
16 trust, or real estate investment trust party to the articles, by its chairman or vice chairman
17 of the board of directors or board of trustees, by its chief executive officer, chief operating
18 officer, chief financial officer, president, or one of its vice presidents, or, if authorized by the
19 bylaws or resolution of the board of directors or board of trustees, by any other officer or
20 agent of the corporation, statutory trust, or real estate investment trust;

21 (2) They shall be witnessed or attested by the secretary, treasurer, chief
22 financial officer, assistant treasurer, or assistant secretary of each corporation, statutory
23 trust, or real estate investment trust party to the articles, or, if authorized by the bylaws
24 or resolution of the board of directors or board of trustees, by any other officer or agent of
25 the corporation, statutory trust, or real estate investment trust;

26 (3) They shall be signed and acknowledged for each other entity party to
27 the articles by a person authorized to act for the entity by law or by the governing document;
28 and

29 (4) The matters and facts set forth in the articles with respect to
30 authorization and approval shall be verified under oath as follows:

31 (i) With respect to any Maryland corporation, statutory trust, or
32 real estate investment trust party to the articles, by the chairman or the secretary of the
33 meeting at which the articles or transaction were approved, by the chairman or vice
34 chairman of the board of directors or board of trustees, by the chief executive officer, chief
35 operating officer, chief financial officer, president, vice president, secretary, or assistant
36 secretary of the corporation, statutory trust, or real estate investment trust, or, if
37 authorized in accordance with item (1) of this subsection, by any other officer or agent of
38 the corporation, statutory trust, or real estate investment trust;

39 (ii) With respect to any foreign corporation party to articles of
consolidation, merger, or share exchange, by the chief executive officer, chief operating officer, chief financial officer, president, vice president, secretary, or assistant secretary of the corporation; and

(iii) With respect to any other Maryland or foreign entity party to the articles, by a person authorized by law or by the governing document to act for the entity.

(b) All other instruments required to be filed with the Department may be signed:

(1) By the chairman or vice chairman of the board of directors, the chief executive officer, chief operating officer, president, or any vice president and witnessed or attested by the secretary or any assistant secretary, or by any other officer or agent of the corporation who is authorized by the bylaws or resolution of the board of directors to perform the duties usually performed by the secretary;

(2) If it appears from the instrument that there are no such officers, by a majority of the directors or by such directors as may be designated by the board and the instrument so states; or

(3) If it appears from the instrument that there are no officers or directors, by the holders of a majority of outstanding stock.

SUBTITLE 7. RATIFICATION OF DEFECTIVE CORPORATE ACTS.

2–701.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “CORPORATE ACT” MEANS ANY ACT TAKEN BY OR ON BEHALF OF A CORPORATION BY THE BOARD OF DIRECTORS, A COMMITTEE OF THE BOARD OF DIRECTORS, OR THE STOCKHOLDERS OF THE CORPORATION.

(C) “DEFECTIVE CORPORATE ACT” MEANS:

(1) ANY CORPORATE ACT PURPORTEDLY TAKEN THAT, AT THE DATE OF THE DEFECTIVE CORPORATE ACT, WOULD HAVE BEEN WITHIN THE POWER OF THE CORPORATION BUT IS VOID OR VOIDABLE DUE TO A FAILURE OF AUTHORIZATION; OR

(2) AN OVERISSUE.

(D) “FAILURE OF AUTHORIZATION” MEANS A CORPORATE ACT THAT:

(1) THE CORPORATION FAILED TO AUTHORIZE OR APPROVE; AND
(2) IS VOID OR VOIDABLE.

(E) “OVERISSUE” MEANS THE PURPORTED ISSUANCE BY A CORPORATION OF STOCK OF:

(1) A CLASS OR SERIES IN EXCESS OF THE NUMBER OF SHARES OF THE CLASS OR SERIES THAT THE CORPORATION HAS THE POWER TO ISSUE UNDER § 2–201(A) OF THIS TITLE OR THE CORPORATION’S CHARTER AT THE TIME OF ISSUANCE; OR

(2) ANY CLASS OR SERIES THAT IS NOT AUTHORIZED FOR ISSUANCE BY THE CORPORATION’S CHARTER.

(F) (1) “PUTATIVE STOCK” MEANS STOCK THAT CANNOT BE DETERMINED BY THE BOARD OF DIRECTORS TO BE VALID STOCK.

(2) “PUTATIVE STOCK” INCLUDES STOCK ISSUED UPON EXERCISE OF RIGHTS, OPTIONS, WARRANTS, OR THEIR SECURITIES CONVERTIBLE INTO OR EXERCISABLE FOR STOCK, PURPORTEDLY CREATED OR ISSUED AS A RESULT OF A DEFECTIVE CORPORATE ACT.

(G) “VALID STOCK” MEANS STOCK THAT HAS BEEN DULY AUTHORIZED AND VALIDLY ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE.

2–702.

(A) THE BOARD OF DIRECTORS OF A CORPORATION MAY RATIFY A DEFECTIVE CORPORATE ACT BY ADOPTING A RESOLUTION STATING:

(1) (i) THE DEFECTIVE CORPORATE ACT TO BE RATIFIED; AND

(ii) IF THE DEFECTIVE CORPORATE ACT INVOLVED THE ISSUANCE OF PUTATIVE STOCK, THE NUMBER OF SHARES AND THE CLASS OR SERIES OF PUTATIVE STOCK ISSUED;

(2) THE DATE OF THE DEFECTIVE CORPORATE ACT;

(3) THE NATURE OF THE FAILURE OF AUTHORIZATION OF THE DEFECTIVE CORPORATE ACT; AND

(4) (i) IF THE BOARD OF DIRECTORS COULD HAVE AUTHORIZED THE DEFECTIVE CORPORATE ACT WITHOUT STOCKHOLDER ACTION AT THE DATE OF
THE DEFECTIVE CORPORATE ACT, THAT THE BOARD OF DIRECTORS RATIFIES THE
DEFECTIVE CORPORATE ACT; OR

(II) IF THE BOARD OF DIRECTORS COULD NOT HAVE
AUTHORIZED THE DEFECTIVE CORPORATE ACT WITHOUT STOCKHOLDER ACTION AT
THE DATE OF THE DEFECTIVE CORPORATE ACT, THAT THE BOARD OF DIRECTORS
SUBMITS THE RATIFICATION FOR CONSIDERATION AT A MEETING OF THE
STOCKHOLDERS.

(B) IF A RATIFICATION IS SUBMITTED FOR CONSIDERATION AT A MEETING
OF THE STOCKHOLDERS UNDER SUBSECTION (A)(4)(II) OF THIS SECTION, THE
STOCKHOLDERS MAY RATIFY THE DEFECTIVE CORPORATE ACT BY ADOPTING A
RESOLUTION STATING:

(1) (I) THE DEFECTIVE CORPORATE ACT TO BE RATIFIED; AND

(II) IF THE DEFECTIVE CORPORATE ACT INVOLVED THE
ISSUANCE OF PUTATIVE STOCK, THE NUMBER OF SHARES AND THE CLASS OR SERIES
OF PUTATIVE STOCK ISSUED;

(2) THE DATE OF THE DEFECTIVE CORPORATE ACT; AND

(3) THAT THE STOCKHOLDERS RATIFY THE DEFECTIVE CORPORATE
ACT.

(C) (1) THE QUORUM AND VOTING REQUIREMENTS APPLICABLE TO
RATIFICATION UNDER THIS SECTION SHALL BE THE APPROVAL STANDARD
REQUIRING THE GREATER OF:

(I) THE REQUIREMENTS THAT WOULD BE APPLICABLE TO THE
DEFECTIVE CORPORATE ACT PROPOSED TO BE RATIFIED AT THE TIME OF
RATIFICATION; OR

(II) THE REQUIREMENTS THAT WOULD HAVE BEEN APPLICABLE
TO THE DEFECTIVE CORPORATE ACT ON THE DATE OF THE DEFECTIVE CORPORATE
ACT.

(2) UNLESS OTHERWISE REQUIRED BY THE CHARTER OR BYLAWS OF
A CORPORATION IN EFFECT AT THE TIME OF A DEFECTIVE CORPORATE ACT, IF THE
DEFECTIVE CORPORATE ACT IS THE ELECTION OF A DIRECTOR, RATIFICATION OF
THE DEFECTIVE CORPORATE ACT SHALL REQUIRE A MAJORITY OF THE VOTES CAST
AT A MEETING AT WHICH A QUORUM IS PRESENT.
(3) Holders of putative stock on the record date for determining which stockholders are entitled to vote on a ratification submitted to stockholders under this section shall not be entitled to vote or be counted for quorum purposes in any vote to consider ratification.

(D) Ratification of a defective corporate act under this section shall make the ratified defective corporate act binding on the corporation in accordance with § 2–703 of this subtitle.

2–703.

(A) (1) Except as provided in paragraph (2) of this subsection, ratification of a defective corporate act becomes effective on the date that the board of directors adopts a resolution under § 2–702(a) of this subtitle or, if required by this subtitle, the date that stockholders adopt a resolution under § 2–702(b) of this subtitle.

(2) If the defective corporate act would have required a filing with the Department, ratification of the defective corporate act becomes effective on the later of:

(i) The date that articles of validation filed in accordance with § 2–705 of this subtitle are accepted for record by the Department; or

(ii) The date established in the articles of validation.

(B) A defective corporate act ratified in accordance with this subtitle shall not be void or voidable as a result of the failure of authorization identified by the board of directors in a statement under § 2–702(a).

2–704.

(A) If ratification of a defective corporate act requires approval by stockholders, the secretary of the corporation shall give notice of the proposed ratification to all stockholders entitled to notice of the meeting and holders of putative stock as of the date of the defective corporate act in accordance with § 2–504 of this title.

(B) (1) Except as provided in paragraph (2) of this subsection, if ratification of a defective corporate act does not require approval by
STOCKHOLDERS, NOTICE TO STOCKHOLDERS OF THE RATIFICATION SHALL BE
DEEMED TO BE GIVEN WHEN THE BOARD OF DIRECTORS ADOPTS A RESOLUTION IN
ACCORDANCE WITH § 2–702(A) OF THIS SUBTITLE.

(2) IN THE CASE OF A CORPORATION WITH A CLASS OF EQUITY
SECURITIES REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934,
NOTICE TO STOCKHOLDERS OF A RATIFICATION THAT DOES NOT REQUIRE
APPROVAL OF STOCKHOLDERS SHALL BE DEEMED TO BE GIVEN WHEN THE
RATIFICATION HAS BEEN DISCLOSED IN A DOCUMENT PUBLICLY FILED WITH THE
SECURITIES AND EXCHANGE COMMISSION.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
THE NOTICE REQUIRED BY THIS SECTION SHALL BE PROVIDED TO:

(I) HOLDERS OF PUTATIVE STOCK AS OF THE DATE OF THE
DEFECTIVE CORPORATE ACT;

(II) WHERE NOTICE IS REQUIRED UNDER SUBSECTION (A) OF
THIS SECTION, HOLDERS OF PUTATIVE STOCK AS OF THE RECORD DATE OF THE
MEETING; AND

(III) WHERE NOTICE IS REQUIRED UNDER SUBSECTION (B) OF
THIS SECTION, HOLDERS OF PUTATIVE STOCK AS OF THE DATE ON WHICH THE
BOARD OF DIRECTORS ADOPTED A RESOLUTION RATIFYING THE DEFECTIVE
CORPORATE ACT.

(2) NOTICE IS NOT REQUIRED TO BE GIVEN TO HOLDERS OF
PUTATIVE STOCK Whose IDENTITIES OR ADDRESSES CANNOT BE REASONABLY
DETERMINED FROM THE RECORDS OF THE CORPORATION.

2–705.

(A) (1) IF A DEFECTIVE CORPORATE ACT RATIFIED UNDER THIS
SUBTITLE WOULD HAVE REQUIRED THE FILING OF A CHARTER DOCUMENT WITH THE
DEPARTMENT UNDER ANY PROVISION OF THIS ARTICLE, THE CORPORATION SHALL
FILE ARTICLES OF VALIDATION IN ACCORDANCE WITH THIS SECTION.

(2) IF A CHARTER DOCUMENT THAT WAS REQUIRED TO BE FILED
WITH RESPECT TO THE DEFECTIVE CORPORATE ACT WAS NOT FILED, THE ARTICLES
OF VALIDATION REQUIRED BY THIS SECTION SHALL BE FILED IN LIEU OF THE
CHARTER DOCUMENT THAT WAS NOT FILED.

(B) THE ARTICLES OF VALIDATION REQUIRED BY THIS SECTION SHALL
INCLUDE:

(1) THE TITLE AND DATE OF ANY CHARTER DOCUMENT PREVIOUSLY FILED WITH RESPECT TO THE DEFECTIVE CORPORATE ACT AND ANY CHARTER DOCUMENT THAT AMENDED, SUPPLEMENTED, OR CORRECTED THAT CHARTER DOCUMENT;

(2) A STATEMENT DESCRIBING THE DEFECTIVE CORPORATE ACT;

(3) THE DATE OF THE DEFECTIVE CORPORATE ACT;

(4) A STATEMENT THAT THE DEFECTIVE CORPORATE ACT WAS RATIFIED IN ACCORDANCE WITH THIS SUBTITLE AND A DESCRIPTION OF THE RATIFICATION;

(5) THE TIME THAT THE RATIFICATION IS TO BECOME EFFECTIVE, PROVIDED THAT THE TIME IS NOT MORE THAN 30 DAYS AFTER THE ARTICLES OF VALIDATION ARE ACCEPTED FOR RECORD; AND

(6) (I) A STATEMENT THAT A CHARTER DOCUMENT WAS PREVIOUSLY FILED WITH RESPECT TO THE DEFECTIVE CORPORATE ACT, AND NO CHANGE TO THE CHARTER DOCUMENT IS REQUIRED;

(II) 1. A STATEMENT THAT A CHARTER DOCUMENT WAS PREVIOUSLY FILED WITH RESPECT TO THE DEFECTIVE CORPORATE ACT;

2. A STATEMENT DESCRIBING THE CHANGES BEING MADE TO THE CHARTER DOCUMENT; AND

3. ANY OTHER INFORMATION REQUIRED BY THIS ARTICLE; OR

(III) 1. A STATEMENT THAT A CHARTER DOCUMENT WAS NOT PREVIOUSLY FILED WITH RESPECT TO THE DEFECTIVE CORPORATE ACT AND THAT A CHARTER DOCUMENT WAS REQUIRED TO BE FILED;

2. A CITATION TO THE PROVISION OF THIS ARTICLE UNDER WHICH THE CHARTER DOCUMENT WAS REQUIRED TO BE FILED; AND

3. ANY OTHER INFORMATION REQUIRED BY THIS ARTICLE.

2–706.
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(A) UPON APPLICATION BY ANY PERSON OR ENTITY CLAIMING TO BE
SUBSTANTIALLY AND ADVERSELY AFFECTED BY A RATIFICATION UNDER THIS
SUBTITLE, A COURT MAY:

(1) DETERMINE THE VALIDITY OF ANY RATIFICATION UNDER THIS
SUBTITLE; OR

(2) MODIFY OR WAIVE ANY OF THE PROCEDURES REQUIRED BY THIS
SUBTITLE TO RATIFY A DEFECTIVE CORPORATE ACT.

(B) AN ACTION UNDER THIS SECTION SHALL BE BROUGHT WITHIN 120 DAYS
AFTER:

(1) IF THE RATIFICATION WAS APPROVED BY STOCKHOLDERS, THE
DATE ON WHICH RATIFICATION OCCURRED; OR

(2) IF NOTICE WAS GIVEN OR DEEMED GIVEN WITHIN 60 DAYS AFTER
THE RATIFICATION, THE DATE ON WHICH NOTICE WAS GIVEN OR DEEMED GIVEN TO
STOCKHOLDERS IN ACCORDANCE WITH THIS SUBTITLE.

2–707.

NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO REQUIRE THAT
RATIFICATION OF A DEFECTIVE CORPORATE ACT UNDER THIS SUBTITLE BE THE
EXCLUSIVE MEANS OF VALIDATING A DEFECTIVE CORPORATE ACT OR TO LIMIT THE
ABILITY OF A CORPORATION TO FILE CERTIFICATES OR CHARTER DOCUMENTS IN
ACCORDANCE WITH ANY OTHER PROVISION OF THIS ARTICLE.

8–601.1.

Sections 2–113, 2–201(c), 2–309(a) and (e), 2–313, 2–502(e), 2–503(b), [and] 2–504(f),
AND 2–701 THROUGH 2–707 of this article and, except as otherwise provided in § 8–601
of this subtitle or in the declaration of trust, § 2–405.1 of this article shall apply to real
estate investment trusts.

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