

SENATE BILL 263

C1

(PRE-FILED)

1lr1386
CF HB 781

By: **Senators West and Waldstreicher**

Requested: October 30, 2020

Introduced and read first time: January 13, 2021

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 23, 2021

CHAPTER _____

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts – Miscellaneous**

3 FOR the purpose of clarifying that the charter or bylaws of a corporation may require that
4 any internal corporate claim be brought only in certain specified courts; repealing
5 obsolete language on the authority of certain corporations to effect a certain reverse
6 stock split; altering the circumstances under which certain boards of directors may
7 remove certain officers or agents of a corporation; altering the manner in which a
8 corporation may allow stockholders to participate in a certain meeting; authorizing
9 a certain meeting of the stockholders to be held partially or solely by means of remote
10 communication; repealing a requirement that, on a certain request, the board of
11 directors provide a place for a meeting of the stockholders; prohibiting a board of
12 directors from issuing stock authorized by an amendment before the time the
13 amendment is effective; providing that stock issued before the time the amendment
14 with respect to the stock is effective shall cease to be voidable at the time the
15 amendment becomes effective; providing that a right or liability accrued by reason
16 of the issuance of the stock before the time the amendment is effective shall be
17 extinguished at the time the amendment becomes effective under certain
18 circumstances; authorizing the majority of the entire board of directors to approve
19 certain articles of amendment without action by stockholders; providing that shares
20 issued by a real estate investment trust before the time the articles supplementary
21 with respect to the shares are effective shall cease to be voidable at the time the
22 articles supplementary become effective; providing that a right or liability accrued
23 by reason of the issuance of the shares before the time the articles supplementary
24 are effective shall be extinguished at the time the articles supplementary become

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 effective under certain circumstances; prohibiting a board of trustees from issuing
2 certain shares by an amendment before the time the amendment is filed with the
3 State Department of Assessments and Taxation; providing that shares issued before
4 the time the amendment with respect to the shares is effective shall cease to be
5 voidable at the time the amendment becomes effective; providing that a right or
6 liability accrued by reason of the issuance of the shares before the time the
7 amendment is effective shall be extinguished at the time the amendment becomes
8 effective under certain circumstances; providing that certain provisions of law
9 authorizing stockholders to meet by remote communication apply to real estate
10 investment trusts; repealing a duplicative provision of law; altering certain
11 definitions; making a technical correction; making conforming changes; and
12 generally relating to corporations and real estate investment trusts.

13 BY repealing and reenacting, with amendments,

14 Article – Corporations and Associations

15 Section 2–113, 2–309(e), 2–413, 2–502.1, 2–503(b), 2–607(a), 3–701(d) and (e),
16 3–702(b) and (c), 8–203(c) through (h), 8–501, and 8–601.1

17 Annotated Code of Maryland

18 (2014 Replacement Volume and 2020 Supplement)

19 BY repealing and reenacting, without amendments,

20 Article – Corporations and Associations

21 Section 2–604(b), 3–701(a), 3–702(a), and 8–203(b)

22 Annotated Code of Maryland

23 (2014 Replacement Volume and 2020 Supplement)

24 BY adding to

25 Article – Corporations and Associations

26 Section 2–606.1 and 8–203(c)

27 Annotated Code of Maryland

28 (2014 Replacement Volume and 2020 Supplement)

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

30 That the Laws of Maryland read as follows:

31 **Article – Corporations and Associations**

32 2–113.

33 (a) The charter or bylaws of a corporation with capital stock may not impose
34 liability on a stockholder who is a party to an internal corporate claim for the attorney’s
35 fees or expenses of the corporation or any other party in connection with an internal
36 corporate claim.

37 (b) (1) Except as provided in paragraph (2) of this subsection, the charter or
38 bylaws of a corporation may require, consistent with applicable jurisdictional

1 requirements, that any internal corporate claim be brought only in [courts sitting in one or
2 more specified jurisdictions]:

3 **(I) SPECIFIED CIRCUIT COURTS OF THE STATE OR A FEDERAL**
4 **COURT SITTING IN THE STATE; OR**

5 **(II) 1. COURTS SITTING IN ONE OR MORE SPECIFIED**
6 **JURISDICTIONS OUTSIDE THE STATE; AND**

7 **2. SPECIFIED CIRCUIT COURTS OF THE STATE OR A**
8 **FEDERAL COURT SITTING IN THE STATE.**

9 (2) (i) This paragraph does not apply to a provision contained in the
10 charter or bylaws of a corporation on October 1, 2017, unless and until the provision is
11 altered or repealed by an amendment to the charter or bylaws of the corporation, as
12 applicable.

13 (ii) The charter or bylaws of a corporation may not prohibit bringing
14 an internal corporate claim in the courts of this State or a federal court sitting in this State.

15 2–309.

16 (e) (1) This subsection applies to a corporation[:

17 (i) With] **WITH** a class of equity securities registered under the
18 Securities Exchange Act of 1934[: or

19 (ii) Registered as an open–end investment company under the
20 Investment Company Act of 1940].

21 (2) Unless prohibited by the charter of a corporation by reference to this
22 subsection or the subject matter of this subsection, the board of directors of the corporation
23 may amend the charter, with the approval of a majority of the board of directors and
24 without stockholder action, to effect a reverse stock split that results in a combination of
25 shares of stock at a ratio of not more than 10 shares of stock into one share of stock in any
26 12–month period.

27 (3) Within 20 days after the effective date of the reverse stock split, the
28 corporation shall give written notice of the reverse stock split to each holder of record of the
29 combined shares of stock as of the effective date.

30 2–413.

31 (a) Unless the bylaws provide otherwise, the board of directors shall elect the
32 officers.

1 (b) Unless the bylaws provide otherwise, an officer serves for one year and until
2 his successor is elected and qualifies.

3 (c) (1) [If the] **THE** board of directors [in its judgment finds that the best
4 interests of the corporation will be served, it] may remove any officer or agent of the
5 corporation.

6 (2) The removal of an officer or agent does not prejudice any of his contract
7 rights.

8 (d) Unless the bylaws provide otherwise, the board of directors may fill a vacancy
9 which occurs in any office.

10 2-502.1.

11 (a) Unless restricted by the charter or bylaws of the corporation, a corporation
12 may allow stockholders to participate in a meeting by means of a conference telephone or
13 other communications equipment if all persons participating in the meeting can **READ OR**
14 **hear [each other at the same time] THE PROCEEDINGS OF THE MEETING**
15 **SUBSTANTIALLY CONCURRENTLY WITH THE PROCEEDINGS.**

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

18 2-503.

19 (b) [(1) Subject to paragraph (2) of this subsection, if] **IF** the board of directors
20 is authorized to determine the place of a meeting of the stockholders, the board may
21 determine that the meeting not be held at any place, but instead may be held **PARTIALLY**
22 **OR** solely by means of remote communication, as authorized by subsection (c) of this section.

23 [(2) At the request of a stockholder, the board of directors shall provide a
24 place for a meeting of the stockholders.]

25 2-604.

26 (b) A charter amendment by a Maryland corporation registered as an open-end
27 investment company under the Investment Company Act of 1940 shall be approved by a
28 majority of the entire board of directors and in the manner and by the vote required under
29 the Investment Company Act of 1940.

30 **2-606.1.**

31 **(A) A BOARD MAY NOT ISSUE ANY OF THE STOCK THAT IS CLASSIFIED,**
32 **RECLASSIFIED, OR NEWLY AUTHORIZED BY AN AMENDMENT BEFORE THE TIME THE**
33 **AMENDMENT IS EFFECTIVE, AS PROVIDED IN § 2-610.1 OF THIS SUBTITLE.**

1 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION:

2 (1) THE STOCK ISSUED BY A CORPORATION BEFORE THE TIME THE
3 AMENDMENT WITH RESPECT TO THE STOCK IS EFFECTIVE SHALL CEASE TO BE
4 VOIDABLE AS A RESULT OF THE FAILURE TO FILE ARTICLES OF AMENDMENT OR
5 ARTICLES OF AMENDMENT AND RESTATEMENT AT THE TIME THE AMENDMENT
6 BECOMES EFFECTIVE; AND

7 (2) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF
8 THE STOCK BY A CORPORATION BEFORE THE TIME THE AMENDMENT BECOMES
9 EFFECTIVE SHALL BE EXTINGUISHED AT THE TIME THE AMENDMENT BECOMES
10 EFFECTIVE, EXCEPT TO THE EXTENT THAT THE PERSON HAVING THE RIGHT OR
11 LIABILITY HAS ACTED DETRIMENTALLY IN RELIANCE ON THE RIGHT OR LIABILITY
12 SOLELY BY REASON OF THE ISSUANCE OF THE STOCK.

13 2-607.

14 (a) Articles of amendment shall set forth the amendment and state:

15 (1) That the amendment was advised by the board of directors and
16 approved by the stockholders; or

17 (2) That the amendment was approved by a majority of the entire board of
18 directors and that:

19 (i) No stock entitled to be voted on the matter was outstanding or
20 subscribed for at the time of approval; or

21 (ii) The amendment is limited to a change expressly authorized by §
22 2-105(a)(13) of this title or **§ 2-604(B) OR** § 2-605 of this subtitle to be made without action
23 by the stockholders.

24 3-701.

25 (a) In this subtitle the following words have the meanings indicated.

26 (d) (1) "Control share acquisition" means the acquisition, directly or indirectly,
27 by any person, of ownership of, or the power to direct the exercise of voting power with
28 respect to, issued and outstanding control shares.

29 (2) "Control share acquisition" does not include the acquisition of shares:

30 (i) Before November 4, 1988;

- 1 (ii) Under a contract made before November 4, 1988;
- 2 (iii) Under the laws of descent and distribution;
- 3 (iv) Under the satisfaction of a pledge or other security interest
4 created in good faith and not for the purpose of circumventing this subtitle;
- 5 (v) Under a merger, consolidation, or share exchange effected under
6 Subtitle 1 of this title if the corporation is a party to the merger, consolidation, or share
7 exchange; [or]
- 8 (vi) Within one-tenth or more but less than one-fifth of all voting
9 power of outstanding shares of stock of the corporation before June 1, 2000;

10 **(VII) AT A TIME WHEN THE CORPORATION IS NOT SUBJECT TO**
11 **THIS SUBTITLE; OR**

12 **(VIII) IN ACCORDANCE WITH A CONTRACT ENTERED INTO AT A**
13 **TIME WHEN THE CORPORATION IS NOT SUBJECT TO THIS SUBTITLE.**

14 (3) Unless the acquisition entitles any person, directly or indirectly, to
15 exercise or direct the exercise of voting power in the election of directors in excess of the
16 range of voting power previously authorized or attained under an acquisition that is exempt
17 under paragraph (2) of this subsection, "control share acquisition" does not include the
18 acquisition of shares of a corporation in good faith and not for the purpose of circumventing
19 this subtitle by or from:

20 (i) Any person whose voting rights have previously been authorized
21 by stockholders in compliance with this subtitle; or

22 (ii) Any person whose previous acquisition of shares of stock of the
23 corporation would have constituted a control share acquisition but for paragraph (2) of this
24 subsection.

25 (e) (1) "Control shares" means shares of stock that, except for this subtitle,
26 would, if aggregated with all other shares of stock of the corporation (including shares the
27 acquisition of which is excluded from "control share acquisition" in subsection (d)(2) of this
28 section) owned by a person or in respect of which that person is entitled to exercise or direct
29 the exercise of voting power, except solely by virtue of a revocable proxy, entitle that person,
30 directly or indirectly, to exercise or direct the exercise of the voting power of shares of stock
31 of the corporation in the election of directors within any of the following ranges of voting
32 power:

33 (i) One-tenth or more, but less than one-third of all voting power;

1 (ii) One-third or more, but less than a majority of all voting power;
2 or

3 (iii) A majority or more of all voting power.

4 (2) "Control shares" includes [shares]:

5 (I) **SHARES** of stock of a corporation only to the extent that the
6 acquiring person, following the acquisition of the shares, is entitled, directly or indirectly,
7 to exercise or direct the exercise of voting power within any level of voting power set forth
8 in this section for which approval has not been obtained previously under § 3-702 of this
9 subtitle; **AND**

10 (II) **SHARES OF STOCK ACQUIRED WITHIN ANY RANGE OF**
11 **VOTING POWER DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, EVEN IF THE**
12 **INITIAL SHARES ACQUIRED WITHIN THE APPLICABLE RANGE OF VOTING POWER ARE**
13 **EXCLUDED FROM A CONTROL SHARE ACQUISITION.**

14 3-702.

15 (a) (1) Holders of control shares of the corporation acquired in a control share
16 acquisition have no voting rights with respect to the control shares except to the extent
17 approved by the stockholders at a meeting held under § 3-704 of this subtitle by the
18 affirmative vote of two-thirds of all the votes entitled to be cast on the matter, excluding
19 all interested shares.

20 (2) A charter provision permitted by § 2-104(b)(5) of this article may not
21 apply to the proportion of votes required by paragraph (1) of this subsection.

22 (b) This subtitle does not apply to the voting rights of shares of stock if the
23 acquisition of the shares specifically, generally, or generally by types, as to specifically
24 identified or unidentified existing or future stockholders or their affiliates or associates,
25 has been approved or exempted by a provision contained in the charter or bylaws and
26 adopted at any time before the acquisition of [the] **CONTROL** shares.

27 (c) This subtitle does not apply to:

28 (1) A close corporation as defined in § 4-101(b) of this article;

29 (2) A corporation having fewer than 100 beneficial owners of its stock;

30 (3) A corporation registered under the Investment Company Act of 1940 as
31 an open end investment company; or

32 (4) A corporation registered under the Investment Company Act of 1940 as
33 a closed end investment company unless its board of directors adopts a resolution to be

1 subject to this subtitle on or after June 1, 2000[, provided that the resolution shall not be
2 effective with respect to any person who has become a holder of control shares before the
3 time that the resolution is adopted].

4 8-203.

5 (b) If, under a power contained in the declaration of trust, the board of trustees
6 classifies or reclassifies any unissued shares by setting or changing the preferences,
7 conversion or other rights, voting powers, restrictions, limitations as to dividends or
8 distributions, qualifications, or terms or conditions of redemption, the board, before issuing
9 any of the shares, shall file articles supplementary for record with the Department which
10 shall include:

11 (1) A description of the shares, including the preferences, conversion and
12 other rights, voting powers, restrictions, limitations as to dividends or distributions,
13 qualifications, and terms and conditions of redemption, as set or changed by the board of
14 trustees; and

15 (2) A statement that the shares have been classified or reclassified by the
16 board of trustees under the authority contained in the declaration of trust.

17 (C) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION:

18 (1) THE SHARES ISSUED BY A REAL ESTATE INVESTMENT TRUST
19 BEFORE THE TIME THE ARTICLES SUPPLEMENTARY WITH RESPECT TO THE SHARES
20 IS EFFECTIVE SHALL CEASE TO BE VOIDABLE AS A RESULT OF THE FAILURE TO FILE
21 ARTICLES SUPPLEMENTARY AT THE TIME THE AMENDMENT BECOMES EFFECTIVE;
22 AND

23 (2) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF
24 THE SHARES BEFORE THE TIME THE ARTICLES SUPPLEMENTARY BECOME
25 EFFECTIVE SHALL BE EXTINGUISHED AT THE TIME THE ARTICLES SUPPLEMENTARY
26 BECOME EFFECTIVE, EXCEPT TO THE EXTENT THAT THE PERSON HAVING THE RIGHT
27 OR LIABILITY HAS ACTED DETRIMENTALLY IN RELIANCE ON THE RIGHT OR
28 LIABILITY SOLELY BY REASON OF THE ISSUANCE OF THE STOCK.

29 [(c)] (D) (1) In this subsection, "facts ascertainable outside the declaration of
30 trust" includes:

31 (i) An action or determination by any person, including the real
32 estate investment trust, the board of trustees of the real estate investment trust, an officer
33 or agent of the real estate investment trust, or any other person affiliated with the real
34 estate investment trust;

35 (ii) The contents of any agreement to which the real estate
36 investment trust is a party or any other document; and

1 (iii) Any other event.

2 (2) Any of the preferences, conversion or other rights, voting powers,
3 restrictions, limitations as to dividends or distributions, qualifications, or terms or
4 conditions of redemption of any class or series of shares may be made dependent upon facts
5 ascertainable outside the declaration of trust and may vary among holders of the shares,
6 provided that the manner in which such facts or variations will operate upon the
7 preferences, conversion or other rights, voting powers, restrictions, limitations as to
8 dividends or distributions, qualifications, or terms or conditions of redemption of such class
9 or series of shares is clearly and expressly set forth in the declaration of trust.

10 [(d)] (E) If the real estate investment trust has authority to issue shares of more
11 than one class, the certificate evidencing the shares shall contain on its face or back a full
12 statement or summary of:

13 (1) The designations and any preferences, conversion and other rights,
14 voting powers, restrictions, limitations as to dividends or distributions, qualifications, and
15 terms and conditions of redemption of the shares of each class which the real estate
16 investment trust is authorized to issue; and

17 (2) If the real estate investment trust is authorized to issue any preferred
18 or special class in series:

19 (i) The differences in the relative rights and preferences between
20 the shares of each series to the extent they have been set; and

21 (ii) The authority of the board of trustees to set the relative rights
22 and preferences of subsequent series.

23 [(e)] (F) (1) A summary of the information required by subsection [(d)] (E) of
24 this section, as included in a registration statement permitted to become effective under
25 the Federal Securities Act of 1933, is an acceptable summary for the purposes of this
26 section.

27 (2) Instead of a full statement or summary, the certificate may state that
28 the real estate investment trust will furnish a full statement of the information required
29 by subsection [(d)] (E) of this section to any holder of shares on request and without charge.

30 [(f)] (G) Unless the declaration of trust provides otherwise, the trustees of a real
31 estate investment trust may authorize the issue of some or all of the shares of any or all of
32 its classes or series without certificates. The authorization does not affect shares already
33 represented by certificates until they are surrendered to the real estate investment trust.
34 For shares issued without certificates, on request of the shareholder, the real estate
35 investment trust shall send without charge to the shareholder a written statement of the
36 information required on certificates by subsection [(d) or] (e) OR (F) of this section.

1 **[(g)] (H)** Articles supplementary shall be executed in the manner required by
2 Title 1 of this article.

3 **[(h)] (I)** Except as provided in § 8–204 of the Commercial Law Article, the fact
4 that a certificate does not contain or refer to a restriction on transferability or ownership
5 that is adopted after the date of issuance of the certificate does not mean that the restriction
6 is invalid or unenforceable.

7 8–501.

8 (a) Except as provided in § 8–202(c) or § 8–203(a)(8) of this title, a declaration of
9 trust may be amended only as provided in this section.

10 (b) The board of trustees of a real estate investment trust proposing an
11 amendment to its declaration of trust shall:

12 (1) Adopt a resolution which sets forth the proposed amendment and
13 declares that it is advisable; and

14 (2) Direct that the proposed amendment be submitted for consideration by
15 the shareholders.

16 (c) (1) If the proposed amendment is to be considered at a meeting of the
17 shareholders, notice which states that a purpose of the meeting will be to act upon the
18 proposed amendment shall be given by the real estate investment trust in the manner
19 required by its declaration of trust or bylaws to:

20 (i) Each shareholder entitled to vote on the proposed amendment;
21 and

22 (ii) Each shareholder not entitled to vote on the proposed
23 amendment if the contract rights of the shareholder's shares, as expressly set forth in the
24 declaration of trust, would be altered by the amendment.

25 (2) The notice shall include a copy of the amendment or a summary of the
26 changes it will affect.

27 (d) The proposed amendment shall be approved by the shareholders of the real
28 estate investment trust by the affirmative vote or written consent of two thirds of all the
29 votes entitled to be cast on the matter.

30 (e) (1) A declaration of trust may permit the board of trustees, with the
31 approval of two thirds of its members, and without action by the shareholders, to amend
32 the declaration of trust from time to time to qualify as a real estate investment trust under
33 the Internal Revenue Code or under this title.

1 (2) Notwithstanding subsections (b) and (d) of this section, unless
2 prohibited in the declaration of trust by reference to this subsection or to the subject matter
3 of this subsection, a majority of the entire board of trustees, without action by the
4 shareholders, may amend the declaration of trust in any respect in which the charter of a
5 corporation may be amended in accordance with § 2–605 of this article.

6 (f) (1) In this subsection, “reverse share split” means a combination of
7 outstanding shares of beneficial interest of a real estate investment trust into a lesser
8 number of shares of beneficial interest of the same class without any change to the
9 aggregate par value of the outstanding shares.

10 (2) This subsection applies to a real estate investment trust with a class of
11 equity securities registered under the Securities Exchange Act of 1934.

12 (3) Unless prohibited in the declaration of trust by reference to this
13 subsection or to the subject matter of this subsection, the board of trustees of a real estate
14 investment trust may amend the declaration of trust, with the approval of a majority of the
15 board of trustees and without shareholder action, to effect a reverse share split that results
16 in a combination of shares of beneficial interest at a ratio of not more than 10 shares into 1
17 share in any 12–month period.

18 (4) Within 20 days after the effective date of a reverse share split
19 authorized under this subsection, the real estate investment trust shall give written notice
20 of the reverse share split to each holder of record of the combined shares of beneficial
21 interest as of the effective date.

22 (g) Articles of amendment shall be executed for the real estate investment trust
23 in the manner required by § 1–301 of this article and filed for record with the Department.

24 **(H) (1) THE BOARD OF TRUSTEES MAY NOT ISSUE ANY OF THE SHARES**
25 **THAT ARE CLASSIFIED, RECLASSIFIED, OR NEWLY AUTHORIZED BY AN AMENDMENT**
26 **TO THE DECLARATION OF TRUST BEFORE THE TIME THE AMENDMENT IS FILED WITH**
27 **THE DEPARTMENT.**

28 **(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION:**

29 **(I) THE SHARES ISSUED BY A REAL ESTATE INVESTMENT TRUST**
30 **BEFORE THE TIME THE AMENDMENT WITH RESPECT TO THE SHARES IS EFFECTIVE**
31 **SHALL CEASE TO BE VOIDABLE AS A RESULT OF THE FAILURE TO FILE THE**
32 **AMENDMENT OR THE ARTICLES OF AMENDMENT AND RESTATEMENT AT THE TIME**
33 **THE AMENDMENT OR THE ARTICLES ARE FILED; AND**

34 **(II) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE**
35 **ISSUANCE OF THE SHARES BEFORE THE TIME THE AMENDMENT IS FILED SHALL BE**
36 **EXTINGUISHED AT THE TIME THE AMENDMENT OR THE ARTICLES OF AMENDMENT**
37 **AND RESTATEMENT ARE FILED, EXCEPT TO THE EXTENT THAT THE PERSON HAVING**

1 THE RIGHT OR LIABILITY HAS ACTED DETRIMENTALLY IN RELIANCE ON THE RIGHT
2 OR LIABILITY SOLELY BY REASON OF THE ISSUANCE OF THE SHARES.

3 8-601.1.

4 Sections 2-113, 2-201(c), 2-309(a) and (e), 2-313, 2-502(e), **2-503(B)**, and 2-504(f)
5 of this article and, except as otherwise provided in § 8-601 of this subtitle or in the
6 declaration of trust, § 2-405.1 of this article shall apply to real estate investment trusts.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2021.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.