

SENATE BILL 459

C1

5lr1844
CF HB 521

By: **Senator Feldman**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts – Directors and Trustees –**
3 **Duties and Immunity From Liability**

4 FOR the purpose of clarifying the duties of a director of a corporation and the manner in
5 which a director must act; clarifying that a director who acts in accordance with a
6 certain provision of law shall have certain immunity from liability; clarifying that a
7 director of a corporation is not required to act solely because of the effect the act may
8 have on, or the amount or type of consideration offered or paid to stockholders in,
9 certain transactions involving the corporation; clarifying that an act of a director of
10 a corporation relating to or affecting certain transactions involving the corporation
11 may not be subject to a certain duty or scrutiny; repealing a limitation on the
12 enforcement of a duty of a director; clarifying that certain provisions of law are the
13 sole source of duties of a director of a corporation to the corporation or its
14 stockholders, and apply to any act of a director; clarifying the circumstances under
15 which a director of a corporation is immune from certain liability; making certain
16 provisions of law relating to certain duties and immunity from liability of a director
17 of a corporation applicable to a trustee of a real estate investment trust; defining a
18 certain term; providing for the application of certain provisions of this Act; making
19 certain conforming and stylistic changes; and generally relating to directors of a
20 corporation.

21 BY repealing and reenacting, with amendments,
22 Article – Corporations and Associations
23 Section 2–401(a), 2–405.1, and 8–601.1
24 Annotated Code of Maryland
25 (2014 Replacement Volume)

26 BY repealing and reenacting, with amendments,
27 Article – Courts and Judicial Proceedings
28 Section 5–417
29 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2013 Replacement Volume and 2014 Supplement)

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

Article – Corporations and Associations

2–401.

(a) [The] **ALL** business and affairs of a corporation, **WHETHER OR NOT IN THE ORDINARY COURSE**, shall be managed **BY OR** under the direction of a board of directors.

2–405.1.

(A) IN THIS SECTION, “ACT” INCLUDES, AS THE CONTEXT REQUIRES:

(1) AN ACT, AN OMISSION, A FAILURE TO ACT, OR A DETERMINATION MADE NOT TO ACT; OR

(2) TO ACT, OMIT TO ACT, FAIL TO ACT, OR MAKE A DETERMINATION NOT TO ACT.

(B) THIS SECTION APPLIES TO ACTS OF AN INDIVIDUAL WHO:

(1) IS OR WAS A DIRECTOR OF A CORPORATION; AND

(2) IS ACTING OR ACTED AS A DIRECTOR OF A CORPORATION.

[(a)] (C) A director OF A CORPORATION shall [perform his duties as a director, including his duties as a member of a committee of the board on which he serves] ACT:

(1) In good faith;

(2) In a manner [he] THE DIRECTOR reasonably believes to be in the best interests of the corporation; and

(3) With the care that an ordinarily prudent person in a like position would use under similar circumstances.

[(b)] (D) (1) [In performing his duties, a] A director is entitled to rely on any information, opinion, report, or statement, including any financial statement or other financial data, prepared or presented by:

(i) An officer or employee of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

1 (ii) A lawyer, certified public accountant, or other person, as to a
2 matter which the director reasonably believes to be within the person's professional or
3 expert competence; or

4 (iii) A committee of the board on which the director does not serve, as
5 to a matter within its designated authority, if the director reasonably believes the
6 committee to merit confidence.

7 (2) A director is not acting in good faith if [he] **THE DIRECTOR** has any
8 knowledge concerning the matter in question which would cause [such] **THE** reliance to be
9 unwarranted.

10 [(c)] **(E)** A [person] **DIRECTOR** who [performs his duties] **ACTS** in accordance
11 with the standard **OF CONDUCT** provided in this section shall have the immunity from
12 liability described under § 5-417 of the Courts and Judicial Proceedings Article.

13 [(d)] **(F)** The [duty of the directors of a corporation] **STANDARD OF CONDUCT**
14 **PROVIDED IN THIS SECTION** does not require [them] **A DIRECTOR OF A CORPORATION**
15 to:

16 (1) [Accept] **ACT TO ACCEPT**, recommend, or respond on behalf of the
17 corporation to [any] A proposal by an acquiring person as defined in § 3-801 of this article;

18 (2) [Authorize] **ACT TO AUTHORIZE** the corporation to redeem any rights
19 under, modify, or render inapplicable, a stockholder rights plan;

20 (3) [Elect] **ACT TO ELECT** on behalf of the corporation to be subject to or
21 refrain from electing on behalf of the corporation to be subject to any or all of the provisions
22 of Title 3, Subtitle 8 of this article;

23 (4) [Make] **ACT TO MAKE** a determination under the provisions of Title 3,
24 Subtitle 6 or Subtitle 7 of this article; or

25 (5) Act [or fail to act] solely because of:

26 (i) The effect the act [or failure to act] may have on an acquisition
27 or potential acquisition of control of the corporation; or

28 (ii) The amount or type of [any] consideration that may be offered or
29 paid to stockholders **OF THE CORPORATION** in an acquisition **OR POTENTIAL**
30 **ACQUISITION OF CONTROL OF THE CORPORATION**.

31 [(e)] **(G)** An act of a director of a corporation is presumed to [satisfy the
32 standards of subsection (a)] **BE IN ACCORDANCE WITH SUBSECTION (C)** of this section.

1 **[(f)] (H)** An act of a director **OF A CORPORATION** relating to or affecting an
2 acquisition or a potential acquisition of control of **[a] THE corporation OR ANY OTHER**
3 **TRANSACTION OR POTENTIAL TRANSACTION INVOLVING THE CORPORATION** may not
4 be subject to a higher duty or greater scrutiny than is applied to any other act of a director.

5 **[(g)]** Nothing in this section creates a duty of any director of a corporation
6 enforceable otherwise than by the corporation or in the right of the corporation.]

7 **(I) THIS SECTION:**

8 **(1) IS THE SOLE SOURCE OF DUTIES OF A DIRECTOR TO THE**
9 **CORPORATION OR THE STOCKHOLDERS OF THE CORPORATION, WHETHER OR NOT A**
10 **DECISION HAS BEEN MADE TO ENTER INTO AN ACQUISITION OR POTENTIAL**
11 **ACQUISITION OF CONTROL OF THE CORPORATION OR ENTER INTO ANY OTHER**
12 **TRANSACTION INVOLVING THE CORPORATION; AND**

13 **(2) APPLIES TO ANY ACT OF A DIRECTOR, INCLUDING AN ACT AS A**
14 **MEMBER OF A COMMITTEE OF THE BOARD OF DIRECTORS.**

15 8-601.1.

16 Sections 2-201(c), 2-313, **[2-405.1(d) through (g),]** 2-502(e), and 2-504(f) **OF THIS**
17 **ARTICLE AND, EXCEPT AS OTHERWISE PROVIDED IN § 8-601 OF THIS SUBTITLE OR**
18 **IN THE DECLARATION OF TRUST, § 2-405.1** of this article shall apply to real estate
19 investment trusts.

20 **Article – Courts and Judicial Proceedings**

21 5-417.

22 **(A) IN THIS SECTION, “ACT” HAS THE MEANING STATED IN § 2-405.1 OF THE**
23 **CORPORATIONS AND ASSOCIATIONS ARTICLE.**

24 **(B) A [person] PRESENT OR FORMER DIRECTOR OF A CORPORATION** who
25 **[performs the duties of that person] WHILE A DIRECTOR ACTS OR ACTED** in accordance
26 with the standard **OF CONDUCT** provided **[under] IN § 2-405.1** of the Corporations and
27 Associations Article has no liability **[by reason of being or having been a director of a**
28 **corporation] IN ANY ACTION BASED ON AN ACT OF THE DIRECTOR.**

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2015.