

SENATE BILL 544

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By: **Senators Waldstreicher and West**

Introduced and read first time: January 25, 2024

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Associations – Ratification of Defective Corporate Acts –**
3 **Alterations**

4 FOR the purpose of altering the process by which a defective corporate act may be ratified;
5 altering rules for certain legal actions by persons claiming to be adversely affected
6 by a ratification; and generally relating to the ratification of defective corporate acts.

7 BY repealing and reenacting, with amendments,
8 Article – Corporations and Associations
9 Section 2–701 through 2–707
10 Annotated Code of Maryland
11 (2014 Replacement Volume and 2023 Supplement)

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

14 **Article – Corporations and Associations**

15 2–701.

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

17 (b) [“Corporate act” means any act taken by or on behalf of a corporation by the
18 board of directors, a committee of the board of directors, or the stockholders of the
19 corporation.

20 (c)] “Date of the defective corporate act” means:

21 (1) The date and the time a defective corporate act was purportedly taken;
22 or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) If the exact time is unknown, the date and approximate time a defective
2 corporate act was purportedly taken.

3 [(d)] (C) “Defective corporate act” means:

4 (1) Any corporate act purportedly taken that, at the date of the defective
5 corporate act, would have been within the power of the corporation but is void or voidable
6 due to a failure of authorization; or

7 (2) An overissue.

8 [(e)] (D) “Failure of authorization” means the failure of a corporation to
9 authorize, approve, or otherwise effect a corporate act in compliance with the Maryland
10 General Corporation Law, its charter or bylaws, any action taken by its board of directors,
11 a committee of its board of directors, or its stockholders, or any plan or agreement to which
12 the corporation is a party, if and to the extent that the failure would render the corporate
13 act void or voidable.

14 [(f)] (E) “Overissue” means the purported issuance by a corporation of stock of:

15 (1) A class or series in excess of the number of shares of the class or series
16 that the corporation has the power to issue under § 2–201(a) of this title or the corporation’s
17 charter at the time of **THE PURPORTED** issuance; or

18 (2) Any class or series that is not authorized for issuance by the
19 corporation’s charter **AT THE TIME OF THE PURPORTED ISSUANCE**.

20 [(g)] (F) “Putative stock” means [stock]:

21 (1) **STOCK**, including stock **PURPORTEDLY** issued upon exercise of rights,
22 options, warrants, or other securities convertible into or exercisable for stock[:

23 (1) Purportedly], **PURPORTEDLY** created or issued as a result of a
24 defective corporate act, that but for the failure of authorization would constitute valid stock;
25 [and]

26 (2) [That] **STOCK PURPORTEDLY ISSUED IN AN OVERISSUE; AND**

27 (3) **STOCK THAT** cannot be determined by the board of directors to be valid
28 stock.

29 [(h)] (G) “Valid stock” means stock that has been duly authorized and validly
30 issued in accordance with the provisions of this title.

31 2–702.

1 (a) The board of directors of a corporation may ratify a defective corporate act
2 **UNDER THIS SUBTITLE** by adopting a resolution stating:

3 (1) (i) The defective corporate act to be ratified; and

4 (ii) If the defective corporate act involved the issuance of putative
5 stock, the number of shares and the class or series of putative stock [issued];

6 (2) The date of the defective corporate act;

7 (3) The nature of the failure of authorization of the defective corporate act;
8 and

9 (4) (i) If [the board of directors could have authorized or approved the
10 defective corporate act without] stockholder [approval at the date of the defective corporate
11 act and stockholder action is not required as of the date of ratification,] **ACTION IS NOT
12 REQUIRED UNDER SUBSECTION (B) OF THIS SECTION**, that the board of directors
13 ratifies the defective corporate act; or

14 (ii) If stockholder [approval] **ACTION** is required [at the time of]
15 **UNDER SUBSECTION (B) OF THIS SECTION, THAT THE BOARD OF DIRECTORS
16 APPROVES THE** ratification [or if the board of directors could not have authorized or
17 approved] **OF** the defective corporate act [without stockholder approval at the date of the
18 defective corporate act or stockholder action is required as of the date of ratification, that
19 the board of directors] **AND** directs that the ratification be submitted for consideration at a
20 meeting of the stockholders.

21 (b) **(1)** [If a ratification is submitted for consideration at a meeting of the
22 stockholders under subsection (a)(4)(ii) of this section, the stockholders may ratify the
23 defective corporate act by adopting a resolution stating:] **RATIFICATION OF A DEFECTIVE
24 CORPORATE ACT APPROVED IN A RESOLUTION ADOPTED UNDER SUBSECTION (A) OF
25 THIS SECTION SHALL BE SUBMITTED FOR CONSIDERATION AT A MEETING OF THE
26 STOCKHOLDERS IF STOCKHOLDER APPROVAL IS REQUIRED OR WOULD HAVE BEEN
27 REQUIRED ON THE DATE OF THE DEFECTIVE CORPORATE ACT BY ANY PROVISION
28 OF:**

29 **(I) THE MARYLAND GENERAL CORPORATION LAW;**

30 **(II) THE CHARTER OR BYLAWS OF THE CORPORATION;**

31 **(III) ANY ACTION TAKEN BY THE BOARD OF DIRECTORS, A
32 COMMITTEE OF THE BOARD OF DIRECTORS, OR THE STOCKHOLDERS; OR**

1 (IV) ANY PLAN OR AGREEMENT TO WHICH THE CORPORATION IS
2 A PARTY IN EFFECT AT THE TIME A RESOLUTION WAS ADOPTED UNDER SUBSECTION
3 (A) OF THIS SECTION.

4 [(1)] (2) TO RATIFY A DEFECTIVE CORPORATE ACT UNDER THIS
5 SUBSECTION, THE STOCKHOLDERS SHALL ADOPT A RESOLUTION STATING:

6 (i) The defective corporate act to be ratified; [and]

7 (ii) If the defective corporate act involved the issuance of putative
8 stock, the number of shares and the class or series of putative stock [issued];

9 [(2)] (III) The date of the defective corporate act; and

10 [(3)] (IV) That the stockholders ratify the defective corporate act.

11 (c) (1) The quorum and voting requirements applicable to [ratification]
12 ACTION BY THE BOARD OF DIRECTORS OR THE STOCKHOLDERS TO RATIFY A
13 DEFECTIVE CORPORATE ACT under this section shall be the approval standard requiring
14 the [greater] LARGER NUMBER OR portion of votes under:

15 (i) The requirements that would be applicable to the defective
16 corporate act proposed to be ratified at the time of ratification; or

17 (ii) The requirements that would have been applicable to the
18 defective corporate act on the date of the defective corporate act.

19 (2) (i) [Unless otherwise required by the charter or bylaws of a
20 corporation then in effect or in effect at the time of a defective corporate act, if the defective
21 corporate act is] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH,
22 APPROVAL BY STOCKHOLDERS OF THE RATIFICATION OF the election of a director[,
23 ratification of the defective corporate act] shall require a majority of the votes cast at a
24 meeting at which a quorum is present.

25 (ii) IF THE CHARTER OR BYLAWS OF THE CORPORATION IN
26 EFFECT AT THE TIME OF THE RATIFICATION OF THE DEFECTIVE CORPORATE ACT OR
27 IN EFFECT AT THE TIME OF THE DEFECTIVE CORPORATE ACT REQUIRES OR
28 REQUIRED A LARGER NUMBER OR PORTION OF VOTES CAST BY STOCKHOLDERS, BY
29 HOLDERS OF ANY CLASS OR SERIES OF STOCK, OR BY ANY SPECIFIED
30 STOCKHOLDERS TO ELECT THE DIRECTOR, THEN THE AFFIRMATIVE VOTE OF THE
31 LARGER NUMBER OR PORTION OF VOTES CAST SHALL BE REQUIRED TO RATIFY
32 ELECTION OF THE DIRECTOR.

1 **(3)** The presence or approval of holders of stock of any class or series of
2 which no stock is [then] outstanding **AT THE TIME OF RATIFICATION** or of any person
3 that is no longer a stockholder may not be required.

4 **[(3)] (4)** Holders of putative stock on the record date for determining
5 which stockholders are entitled to vote on a ratification submitted to stockholders under
6 this section shall not be entitled to vote or be counted for quorum purposes in any vote to
7 consider ratification.

8 (d) Ratification of a defective corporate act under this section shall make the
9 ratified defective corporate act binding on the corporation in accordance with § 2-703 of
10 this subtitle.

11 2-703.

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

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

18 (i) The [date] **TIME** that articles of validation filed in accordance
19 with § 2-705 of this subtitle are accepted for record by the Department; or

20 (ii) The [date] **TIME** established in the articles of validation, not to
21 exceed 30 days after the articles are accepted for record.

22 (b) Beginning at the time ratification is effective and without regard to the
23 120-day period during which a claim may be brought under [§ 2-707(b)] **§ 2-706(B)** of this
24 subtitle:

25 (1) A defective corporate act ratified in accordance with this subtitle is not
26 void or voidable as a result of the failure of authorization identified in a board action under
27 § 2-702(a) of this subtitle and shall be deemed a valid corporate act effective as of the date
28 of the defective corporate act;

29 (2) [The issuance of putative] **PUTATIVE** stock purportedly issued
30 pursuant to a defective corporate act identified in a board action under § 2-702(a) of this
31 subtitle is not void or voidable and shall be deemed valid stock as of the time it was
32 purportedly issued; and

33 (3) Any corporate act taken after a defective corporate act ratified in
34 accordance with this subtitle in reliance on the defective corporate act having been validly

1 effected, and any subsequent defective corporate act resulting from the original defective
2 corporate act, shall be valid as of the time the act was taken.

3 2-704.

4 (a) If ratification of a defective corporate act requires approval by stockholders
5 **UNDER § 2-702(B) OF THIS SUBTITLE**, the secretary of the corporation shall give notice
6 of the proposed ratification to all stockholders entitled to notice of the meeting in
7 accordance with § 2-504 of this title, stockholders as of the date of the defective corporate
8 act, and holders of putative stock.

9 (b) (1) [Except as provided in paragraph (2) of this subsection, if ratification
10 of] **IF** a defective corporate act [does not require approval] **IS RATIFIED BY THE BOARD**
11 **OF DIRECTORS IN ACCORDANCE WITH § 2-702(A) OF THIS SUBTITLE WITHOUT**
12 **ACTION** by stockholders, **AND NOTICE IS NOT REQUIRED UNDER SUBSECTION (A) OF**
13 **THIS SECTION**, notice of the ratification may be given to stockholders as of the ratification
14 and as of the date of the defective corporate act and holders of putative stock [when the
15 board of directors adopts a resolution in accordance with § 2-702(a) of this subtitle].

16 (2) In the case of a corporation with a class of equity securities registered
17 under the Securities Exchange Act of 1934, notice of a ratification **THAT DOES NOT**
18 **REQUIRE APPROVAL OF STOCKHOLDERS** shall be deemed to be given when the
19 ratification has been **PUBLICLY** disclosed in a document [publicly] **FURNISHED TO OR**
20 filed with the Securities and Exchange Commission.

21 (c) (1) Except as provided in paragraph (2) of this subsection, notice given to
22 holders of putative stock in accordance with this section shall be [provided] **GIVEN** to:

23 (i) Holders of putative stock as of the date of the defective corporate
24 act;

25 (ii) Where notice is required under subsection (a) of this section,
26 holders of putative stock as of the record date of the meeting; and

27 (iii) Where notice is given under subsection (b) of this section, holders
28 of putative stock as of the date on which the board of directors adopted a resolution ratifying
29 the defective corporate act.

30 (2) Notice is not required to be given to holders of putative stock whose
31 identities or addresses cannot be reasonably determined from the records of the
32 corporation.

33 2-705.

1 (a) (1) If a defective corporate act ratified under this subtitle would have
2 required the filing of a charter document with the Department under any provision of this
3 article, the corporation shall file articles of validation in accordance with this section.

4 (2) If a charter document that was required to be filed with respect to the
5 defective corporate act was not filed, the articles of validation required by this section shall
6 be filed in lieu of the charter document that was not filed.

7 (b) [The articles] **ARTICLES** of validation required by this section shall include:

8 (1) The title and date of filing of any charter document previously filed with
9 respect to the defective corporate act and any charter document that amended,
10 supplemented, or corrected that charter document;

11 (2) A statement describing the defective corporate act;

12 (3) The date of the defective corporate act;

13 (4) A statement that the defective corporate act was ratified in accordance
14 with this subtitle and a description of the **MANNER OF** ratification; **AND**

15 (5) [The time that the ratification is to become effective; and

16 (6)] (i) [A statement that] **IF** a charter document was previously filed
17 with respect to the defective corporate act[,] and no change to the charter document is
18 required **TO RATIFY THE DEFECTIVE CORPORATE ACT UNDER § 2-702 OF THIS**
19 **SUBTITLE, A STATEMENT THAT NO CHANGE IS MADE TO THE CHARTER DOCUMENT;**

20 (ii) [1. A statement that] **IF** a charter document was previously
21 filed with respect to the defective corporate act **AND A CHANGE TO THE CHARTER**
22 **DOCUMENT IS REQUIRED TO RATIFY THE DEFECTIVE CORPORATE ACT UNDER §**
23 **2-702 OF THIS SUBTITLE, A STATEMENT DESCRIBING THE CHANGE AND ALL**
24 **INFORMATION REQUIRED TO BE INCLUDED UNDER THIS TITLE; OR**

25 [2. A statement describing the changes being made to the
26 charter document; and

27 3. Any other information required by this article; or]

28 (iii) [1. A statement that] **IF** a charter document was not
29 previously filed with respect to the defective corporate act and [that a] **THE DEFECTIVE**
30 **CORPORATE ACT RATIFIED UNDER § 2-702 OF THIS SUBTITLE WOULD HAVE**
31 **REQUIRED A CHARTER DOCUMENT TO BE FILED UNDER THIS TITLE, A STATEMENT**
32 **OF THE SECTION OF THIS TITLE UNDER WHICH THE** charter document was required to

1 be filed[;] **AND ANY INFORMATION REQUIRED TO BE INCLUDED IN THE CHARTER**
2 **DOCUMENT UNDER THAT SECTION.**

3 [2. A citation to the provision of this article under which the
4 charter document was required to be filed; and

5 3. Any other information required by this article.]

6 2–706.

7 (a) Upon application by the corporation, any successor entity to the corporation,
8 any director of the corporation, any record or beneficial holder of valid stock or putative
9 stock, any record or beneficial holder of putative stock as of the date of the defective
10 corporate act, any holder of a voting trust certificate, any holder of a voting trust certificate
11 as of the date of the defective corporate act, or any other person claiming to be substantially
12 and adversely affected by a ratification under this subtitle, a court **OF THE STATE OR A**
13 **FEDERAL COURT SITTING IN THE STATE** may:

14 (1) Determine the validity of any ratification under this subtitle; [or] **AND**

15 (2) Modify or waive any of the procedures required by this subtitle to ratify
16 a defective corporate act.

17 (b) An action under this section shall be brought within 120 days after:

18 (1) If the ratification was approved by stockholders, **AND THE NOTICE**
19 **REQUIRED BY § 2–704(A) OF THIS SUBTITLE WAS GIVEN PRIOR TO THE**
20 **STOCKHOLDER ACTION**, the date on which ratification [occurred] **BECAME EFFECTIVE;**
21 or

22 (2) If notice was given or deemed given within 60 days after the
23 ratification, the date on which notice was given or deemed given to stockholders and any
24 holders of putative stock in accordance with **§ 2–704(B) OF** this subtitle.

25 2–707.

26 (a) Nothing in this subtitle may be construed to require that ratification of a
27 defective corporate act under this subtitle be the exclusive means of ratifying or validating
28 a defective corporate act or to limit the [ability] **RIGHT** of a corporation to file certificates
29 or charter documents in accordance with any other provision of this article.

30 (b) The absence or failure of ratification in accordance with this subtitle shall not,
31 of itself, affect the validity or effectiveness of any corporate act otherwise lawfully ratified,
32 nor may it create a presumption that any corporate act is or was a defective corporate act
33 or void or voidable.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2024.