

SENATE BILL 865

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8lr3186
CF HB 1095

By: **Senator Feldman**

Introduced and read first time: February 5, 2018

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 14, 2018

CHAPTER _____

1 AN ACT concerning

2 **Corporations – Maryland General Corporation Law – Miscellaneous Provisions**

3 FOR the purpose of clarifying the term of a certain director of a corporation elected to fill a
4 vacancy; altering the authority of and circumstances in which certain holders of
5 stock may take certain action or consent to a certain action by delivering a consent
6 in writing or by electronic transmission; altering a certain voting process of
7 stockholders of different classes; clarifying the time by which a parent corporation is
8 required to provide a certain notice in a certain merger; altering a certain notice
9 requirement for a certain parent corporation in a certain merger; providing that a
10 certain merger is effected under certain circumstances, rather than authorizing the
11 merger to be effected under certain circumstances; altering a certain notice
12 requirement for a certain acquiring entity in a certain merger; specifying the
13 effective time of a certain merger or consolidation involving a foreign limited
14 partnership, a foreign limited liability company, or a foreign partnership; altering
15 the powers of a real estate investment trust; and generally relating to the Maryland
16 General Corporation Law and real estate investment trusts.

17 BY repealing and reenacting, with amendments,

18 Article – Corporations and Associations

19 Section 2–407(c), 2–505(b), 2–506(b), 3–106(d)(1), 3–106.1(c)(1) and (e)(1),
20 3–113(b)(1), and 8–301(4)

21 Annotated Code of Maryland

22 (2014 Replacement Volume and 2017 Supplement)

23 BY repealing and reenacting, without amendments,

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 Article – Corporations and Associations
2 Section 3–804(c)
3 Annotated Code of Maryland
4 (2014 Replacement Volume and 2017 Supplement)

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

7 **Article – Corporations and Associations**

8 2–407.

9 (c) (1) **[A] UNLESS THE CORPORATION HAS ELECTED TO BE SUBJECT TO**
10 **§ 3–804(C)(3) OF THIS ARTICLE**, A director elected by the board of directors to fill a
11 vacancy serves until the next annual meeting of stockholders and until his successor is
12 elected and qualifies.

13 (2) A director elected by the stockholders to fill a vacancy which results
14 from the removal of a director serves for the balance of the term of the removed director.

15 2–505.

16 (b) (1) Unless the charter requires otherwise, the holders of any class **OR**
17 **SERIES** of stock, other than **SHARES OF** common stock entitled to vote generally in the
18 election of directors, may take action or consent to any action by delivering a consent in
19 writing or by electronic transmission of the stockholders entitled to cast not less than the
20 minimum number of votes that would be necessary to authorize or take the action at a
21 stockholders meeting **AT WHICH ALL STOCKHOLDERS ENTITLED TO VOTE ON THE**
22 **ACTION WERE PRESENT AND VOTED** if the corporation gives notice of the action to each
23 holder of the class **OR SERIES** of stock not later than 10 days after the effective time of the
24 action.

25 (2) If authorized by the charter of a corporation, the holders of **SHARES OF**
26 common stock entitled to vote generally in the election of directors may take action or
27 consent to any action by delivering a consent in writing or by electronic transmission of the
28 stockholders entitled to cast not less than the minimum number of votes that would be
29 necessary to authorize or take the action at a stockholders meeting **AT WHICH ALL**
30 **STOCKHOLDERS ENTITLED TO VOTE ON THE ACTION WERE PRESENT AND VOTED** if
31 the corporation gives notice of the action not later than 10 days after the effective date of
32 the action to each holder of **SHARES OF** the class **OR SERIES** of common stock and to each
33 stockholder who, if the action had been taken at a meeting, would have been entitled to
34 notice of the meeting.

35 2–506.

1 (b) Subject to other provisions of this article, unless the charter of a corporation
2 provides otherwise, if two or more classes **OR SERIES** of stock are entitled to vote separately
3 on any matter for which this article requires approval by two-thirds of all the votes entitled
4 to be cast, the matter shall be approved by two-thirds of all the votes of each class **OR**
5 **SERIES ENTITLED TO VOTE ON THE MATTER.**

6 3-106.

7 (d) (1) Unless waived by all stockholders who, except for the application of this
8 section, would be entitled to vote on the merger, at least ~~30~~ **10** days before the articles are
9 filed with the Department[,], a parent corporation which owns less than all of the
10 outstanding stock of the subsidiary as of immediately before the effective time of the merger
11 must have given notice of the transaction to each of the subsidiary's stockholders of record
12 who, except for the application of this section, would be entitled to vote on the merger on
13 the date of giving of the notice or on a record date fixed for that purpose which is not more
14 than 10 days before the date of giving notice.

15 3-106.1.

16 (c) (1) Notwithstanding § 3-105 of this subtitle, unless the charter of a
17 corporation or declaration of trust of a real estate investment trust provides otherwise, a
18 merger of a subject corporation with or into an acquiring entity [may be] **IS** effected under
19 this section if:

20 (i) The shares of the subject corporation are registered under the
21 Securities Exchange Act of 1934 immediately prior to the execution of the agreement to
22 merge by the subject corporation;

23 (ii) The agreement to merge expressly allows or requires the merger
24 to be effected under this section and provides that the merger shall be effected following
25 the consummation of the offer described in item (iii) of this paragraph;

26 (iii) Subject to paragraph (2) of this subsection, an acquiring entity
27 consummates a tender or exchange offer for any and all of the outstanding shares of the
28 subject corporation that would, except for the application of this section, entitle the holder
29 of the outstanding shares to vote on the merger on the terms provided in the agreement to
30 merge;

31 (iv) Following the consummation of the offer, the stock irrevocably
32 accepted for purchase or exchange in accordance with the offer and received by the
33 depository before the expiration of the offer, together with the stock otherwise owned by
34 the acquiring entity, a person that owns, directly or indirectly, all of the outstanding equity
35 interest in the acquiring entity, and a direct or indirect wholly owned subsidiary of the
36 acquiring entity or a person that owns, directly or indirectly, all of the outstanding equity
37 interest in the acquiring entity, equals at least that percentage of the shares, and of each
38 class or series of the shares, of the subject corporation that would, except for the application

1 of this section, be required to approve the merger under this article and the charter of the
2 subject corporation;

3 (v) The acquiring entity merges with or into the subject corporation;
4 and

5 (vi) Each outstanding share of each class or series of shares of the
6 subject corporation that is the subject of and not irrevocably accepted for purchase or
7 exchange in the offer is converted in the merger into, or into the right to receive, the same
8 amount and kind of cash, property, rights, or securities paid for shares of the class or series
9 of shares of the subject corporation irrevocably accepted for purchase or exchange in the
10 offer.

11 (e) (1) Unless waived by all stockholders who, except for the application of this
12 section, would be entitled to vote on the merger, at least [30] 10 days before the articles
13 are filed with the Department, an acquiring entity that owns less than all of the
14 outstanding shares of the subject corporation as of immediately before the effective time of
15 the merger must have given notice of the transaction to each of the subject corporation's
16 stockholders of record who, except for the application of this section, would be entitled to
17 vote on the merger on the date that notice is given or on a record date fixed for that purpose
18 that is not more than 10 days before the date that notice is given.

19 3-113.

20 (b) (1) If the successor in a consolidation or merger is a foreign corporation[or],
21 a foreign business trust, **A FOREIGN LIMITED PARTNERSHIP, A FOREIGN LIMITED**
22 **LIABILITY COMPANY, OR A FOREIGN PARTNERSHIP**, the consolidation or merger is
23 effective as of the later of:

24 (i) The time specified by the law of the place where the successor is
25 organized; or

26 (ii) The time the Department accepts the articles of consolidation or
27 merger for record.

28 3-804.

29 (c) (1) Notwithstanding any provision in the charter or bylaws, this subsection
30 applies to a vacancy that results from:

31 (i) An increase in the size of the board of directors; or

32 (ii) The death, resignation, or removal of a director.

33 (2) Each vacancy on the board of directors of a corporation may be filled
34 only by the affirmative vote of a majority of the remaining directors in office, even if the
35 remaining directors do not constitute a quorum.

1 (3) Any director elected to fill a vacancy shall hold office:

2 (i) For the remainder of the full term of the class of directors in
3 which the vacancy occurred; and

4 (ii) Until a successor is elected and qualifies.

5 8-301.

6 A real estate investment trust has the power to:

7 (4) Make contracts **AND GUARANTEES**, incur liabilities, and borrow
8 money;

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2018.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.