

# SENATE BILL 681

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CF 5lr1848

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By: **Senators Feldman and Raskin**

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of clarifying the rights of a subscriber for shares of stock of a corporation;  
4 providing that an individual, whether or not then a director, may assent to an action  
5 by a consent that will be effective at a future time under certain circumstances;  
6 providing that a person, whether or not then a stockholder, may assent to an action  
7 by a consent that will be effective at a future time under certain circumstances;  
8 providing that certain consents shall be deemed to have been given at the effective  
9 time under certain circumstances; providing that certain consents are revocable before  
10 the effective time unless otherwise provided in the consents; altering the  
11 circumstances under which certain mergers may be approved by the board of directors  
12 of a corporation, without a meeting of the stockholders; defining certain terms; making  
13 certain conforming and stylistic changes; and generally relating to the Maryland  
14 General Corporation Law.

15 BY adding to

16 Article – Corporations and Associations  
17 Section 2–202(d) and 2–408(d)  
18 Annotated Code of Maryland  
19 (2014 Replacement Volume)

20 BY repealing and reenacting, with amendments,

21 Article – Corporations and Associations  
22 Section 2–408(d), 2–505(f), and 3–106.1(a) and (c)  
23 Annotated Code of Maryland  
24 (2014 Replacement Volume)

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

27 **Article – Corporations and Associations**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 2-202.

2 (D) UNLESS THE SUBSCRIPTION AGREEMENT PROVIDES OTHERWISE, A  
3 SUBSCRIBER HAS NO VOTING OR OTHER RIGHTS WITH RESPECT TO THE STOCK  
4 SUBSCRIBED FOR UNTIL THE STOCK IS ISSUED AND FULLY PAID.

5 2-408.

6 (D) (1) AN INDIVIDUAL, WHETHER OR NOT THEN A DIRECTOR, MAY  
7 ASSENT TO AN ACTION BY A CONSENT THAT WILL BE EFFECTIVE AT A FUTURE TIME  
8 THAT IS NO LATER THAN 60 DAYS AFTER THE CONSENT IS DELIVERED TO THE  
9 CORPORATION OR ITS AGENT.

10 (2) THE EFFECTIVE TIME OF A CONSENT UNDER THIS SUBSECTION  
11 MAY INCLUDE A TIME DETERMINED ON THE HAPPENING OF AN EVENT THAT OCCURS  
12 NO LATER THAN 60 DAYS AFTER THE CONSENT IS DELIVERED TO THE CORPORATION  
13 OR AN AGENT OF THE CORPORATION.

14 (3) A CONSENT UNDER THIS SUBSECTION SHALL BE DEEMED TO HAVE  
15 BEEN GIVEN AT THE EFFECTIVE TIME IF THE INDIVIDUAL:

16 (I) IS A DIRECTOR AT THE EFFECTIVE TIME; AND

17 (II) DID NOT REVOKE THE CONSENT BEFORE THE EFFECTIVE  
18 TIME.

19 (4) UNLESS OTHERWISE PROVIDED IN THE CONSENT, A CONSENT  
20 UNDER THIS SUBSECTION IS REVOCABLE BEFORE THE EFFECTIVE TIME.

21 [(d)] (E) (1) The charter may provide that one or more directors or a class of  
22 directors shall have more or less than one vote per director on any matter.

23 (2) If the charter provides that one or more directors shall have more or  
24 less than one vote per director on any matter, every reference in this article to a majority  
25 or other proportion of directors shall refer to a majority or other proportion of votes entitled  
26 to be cast by the directors.

27 2-505.

28 (f) (1) A written consent may not take effect unless written consents signed  
29 by a sufficient number of stockholders to take action are delivered to the corporation within  
30 60 days after the date [on which] OF the earliest consent [is dated] in accordance with  
31 procedures adopted under subsection (e) of this section.

1           **(2) (I) A PERSON, WHETHER OR NOT THEN A STOCKHOLDER, MAY**  
2 **ASSENT TO AN ACTION BY A CONSENT THAT WILL BE EFFECTIVE AT A FUTURE TIME**  
3 **THAT IS NO LATER THAN 60 DAYS AFTER THE CONSENT IS DELIVERED TO THE**  
4 **CORPORATION OR ITS AGENT.**

5           **(II) THE EFFECTIVE TIME OF A CONSENT UNDER THIS**  
6 **PARAGRAPH MAY INCLUDE A TIME DETERMINED ON THE HAPPENING OF AN EVENT**  
7 **THAT OCCURS NO LATER THAN 60 DAYS AFTER THE CONSENT IS DELIVERED TO THE**  
8 **CORPORATION OR ITS AGENT.**

9           **(III) A CONSENT UNDER THIS PARAGRAPH SHALL BE DEEMED TO**  
10 **HAVE BEEN GIVEN AT THE EFFECTIVE TIME IF THE PERSON:**

11                   **1. IS A STOCKHOLDER AT THE EFFECTIVE TIME; AND**

12                   **2. DID NOT REVOKE THE CONSENT BEFORE THE**  
13 **EFFECTIVE TIME.**

14           **(3) UNLESS OTHERWISE PROVIDED IN THE CONSENT, A CONSENT**  
15 **UNDER THIS SUBSECTION IS REVOCABLE BEFORE THE EFFECTIVE TIME.**

16 3-106.1.

17           **(a) (1) In this section the following words have the meanings indicated.**

18                   **(2) “Acquiring entity” means the Maryland corporation or other entity, as**  
19 **defined in § 3-901 of this title, consummating a tender or exchange offer under this section.**

20                   **(3) “CONSUMMATE” MEANS TO IRREVOCABLY ACCEPT, FOR**  
21 **PURCHASE OR EXCHANGE, STOCK TENDERED IN ACCORDANCE WITH A TENDER OR**  
22 **EXCHANGE OFFER.**

23                   **(4) “DEPOSITORY” MEANS AN AGENT APPOINTED TO CONSUMMATE**  
24 **AN OFFER DESCRIBED IN THIS SECTION.**

25                   **(5) “RECEIVED” MEANS:**

26                   **(I) FOR CERTIFICATED SHARES, PHYSICAL RECEIPT OF A**  
27 **STOCK CERTIFICATE AND TRANSFER OF THE STOCK CERTIFICATE INTO THE**  
28 **DEPOSITORY’S ACCOUNT; AND**

29                   **(II) FOR UNCERTIFICATED SHARES, RECEIPT BY THE**  
30 **DEPOSITORY OF CONFIRMATION OF THE TRANSFER OF THE SHARES INTO THE**  
31 **DEPOSITORY’S ACCOUNT.**

1            [(3)] (6)        “Stockholder” includes a shareholder of a real estate investment  
2 trust.

3            [(4)] (7)        (i)        “Subject corporation” means the Maryland corporation  
4 that is the subject of a tender or exchange offer under this section.

5                            (ii)        “Subject corporation” includes a Maryland real estate investment  
6 trust as defined in Title 8 of this article.

7            (c)        (1)        Notwithstanding § 3–105 of this subtitle, unless the charter of a  
8 corporation or declaration of trust of a real estate investment trust provides otherwise, a  
9 merger of a subject corporation with or into an acquiring entity may be effected under this  
10 section if:

11                            [(1)] (I)        The shares of the subject corporation are registered under the  
12 Securities [and] Exchange Act of 1934 immediately prior to the execution of the agreement  
13 to merge by the subject corporation;

14                            [(2)] (II)        The agreement to merge expressly **ALLOWS OR REQUIRES THE**  
15 **MERGER TO BE EFFECTED UNDER THIS SECTION AND** provides that the merger [shall  
16 be governed by this section and] shall be effected following the consummation of the offer  
17 described in item (3) of this subsection;

18                            [(3)] (III)        [An] **SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN**  
19 acquiring entity consummates a tender or exchange offer for any and all of the outstanding  
20 shares of the subject corporation that would, except for the application of this section,  
21 entitle the holder of the outstanding shares to vote on the merger on the terms provided in  
22 the agreement to merge;

23                            [(4)] (IV)        Following the consummation of the offer, **THE STOCK**  
24 **IRREVOCABLY ACCEPTED FOR PURCHASE OR EXCHANGE IN ACCORDANCE WITH THE**  
25 **OFFER AND RECEIVED BY THE DEPOSITORY BEFORE THE EXPIRATION OF THE**  
26 **OFFER, TOGETHER WITH THE STOCK OTHERWISE OWNED BY** the acquiring entity  
27 **[owns], A PERSON THAT OWNS, DIRECTLY OR INDIRECTLY, ALL OF THE**  
28 **OUTSTANDING EQUITY INTEREST IN THE ACQUIRING ENTITY, AND A DIRECT OR**  
29 **INDIRECT WHOLLY OWNED SUBSIDIARY OF THE ACQUIRING ENTITY OR A PERSON**  
30 **THAT OWNS, DIRECTLY OR INDIRECTLY, ALL OF THE OUTSTANDING EQUITY**  
31 **INTEREST IN THE ACQUIRING ENTITY, EQUALS** at least that percentage of the shares,  
32 and of each class or series of the shares, of the subject corporation that would, except for  
33 the application of this section, be required to approve the merger under this article and the  
34 charter of the subject corporation;

35                            [(5)] (V)        The acquiring entity merges with or into the subject corporation;  
36 and

1            **[(6)] (VI) [The] EACH** outstanding **[shares] SHARE** of each class or series  
2 of shares of the subject corporation **[not canceled in the merger are] THAT IS THE SUBJECT**  
3 **OF AND NOT IRREVOCABLY ACCEPTED FOR PURCHASE OR EXCHANGE IN THE OFFER**  
4 **IS** converted in the merger into, or into the right to receive, the same amount and kind of  
5 cash, property, rights, or securities paid for shares of the class or series of shares of the  
6 subject corporation **[on consummation of the offer described in item (3) of this subsection]**  
7 **IRREVOCABLY ACCEPTED FOR PURCHASE OR EXCHANGE IN THE OFFER.**

8            **(2) A TENDER OR AN EXCHANGE OFFER UNDER PARAGRAPH (1)(III)**  
9 **OF THIS SUBSECTION MAY EXCLUDE STOCK OF THE SUBJECT CORPORATION THAT IS**  
10 **OWNED AT THE COMMENCEMENT OF THE OFFER BY:**

11            **(I) THE ACQUIRING ENTITY;**

12            **(II) A PERSON THAT OWNS, DIRECTLY OR INDIRECTLY, ALL OF**  
13 **THE OUTSTANDING EQUITY INTEREST IN THE ACQUIRING ENTITY; OR**

14            **(III) A DIRECT OR INDIRECT WHOLLY OWNED SUBSIDIARY OF A**  
15 **PERSON DESCRIBED IN ITEM (I) OR (II) OF THIS PARAGRAPH.**

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