

# HOUSE BILL 973

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By: **Delegate Waldstreicher**

Introduced and read first time: February 5, 2018

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Directors of Corporations – Duties and Standard of Conduct**

3 FOR the purpose of specifying that a certain statutory standard of conduct is the sole source  
4 of duties owed by a director of a corporation directly to the corporation and indirectly  
5 to the stockholders of the corporation; repealing a certain provision of law regarding  
6 the application of a certain statutory standard of conduct when a decision has been  
7 made to enter into a certain transaction; providing that a certain statutory standard  
8 of conduct does not eliminate certain common law fiduciary duties owed directly to  
9 the stockholders of a corporation or limit the rights of a stockholder to bring a direct  
10 action against a director for certain purposes; providing that certain provisions of  
11 law concerning the liability of a director of a corporation do not apply to certain  
12 actions; and generally relating to the duties and standard of conduct of directors of  
13 corporations.

14 BY repealing and reenacting, with amendments,  
15 Article – Corporations and Associations  
16 Section 2–405.1  
17 Annotated Code of Maryland  
18 (2014 Replacement Volume and 2017 Supplement)

19 BY repealing and reenacting, with amendments,  
20 Article – Courts and Judicial Proceedings  
21 Section 5–417 and 5–418  
22 Annotated Code of Maryland  
23 (2013 Replacement Volume and 2017 Supplement)

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

26 **Article – Corporations and Associations**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 2–405.1.

2 (a) In this section, “act” includes, as the context requires:

3 (1) An act, an omission, a failure to act, or a determination made not to act;

4 or

5 (2) To act, omit to act, fail to act, or make a determination not to act.

6 (b) This section applies to acts of an individual who:

7 (1) Is or was a director of a corporation; and

8 (2) Is acting or was acting in the individual’s official capacity as a director  
9 of a corporation.

10 (c) A director of a corporation shall act:

11 (1) In good faith;

12 (2) In a manner the director reasonably believes to be in the best interests  
13 of the corporation; and

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

16 (d) (1) A director is entitled to rely on any information, opinion, report, or  
17 statement, including any financial statement or other financial data, prepared or presented  
18 by:

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

21 (ii) A lawyer, certified public accountant, or other person, as to a  
22 matter which the director reasonably believes to be within the person’s professional or  
23 expert competence; or

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

27 (2) A director is not acting in good faith if the director has any knowledge  
28 concerning the matter in question which would cause the reliance to be unwarranted.

29 (e) A director who acts in accordance with the standard of conduct provided in  
30 this section shall have the immunity from liability described under § 5–417 of the Courts  
31 and Judicial Proceedings Article.

1 (f) The standard of conduct provided in this section does not require a director of  
2 a corporation to:

3 (1) Act to accept, recommend, or respond on behalf of the corporation to a  
4 proposal by an acquiring person as defined in § 3–801 of this article;

5 (2) Act to authorize the corporation to redeem any rights under, modify, or  
6 render inapplicable, a stockholder rights plan;

7 (3) Act to elect on behalf of the corporation to be subject to or refrain from  
8 electing on behalf of the corporation to be subject to any or all of the provisions of Title 3,  
9 Subtitle 8 of this article;

10 (4) Act to make a determination under the provisions of Title 3, Subtitle 6  
11 or Subtitle 7 of this article; or

12 (5) Act solely because of:

13 (i) The effect the act may have on an acquisition or potential  
14 acquisition of control of the corporation; or

15 (ii) The amount or type of consideration that may be offered or paid  
16 to stockholders of the corporation in an acquisition or a potential acquisition of control of  
17 the corporation.

18 (g) An act of a director of a corporation is presumed to be in accordance with  
19 subsection (c) of this section.

20 (h) An act of a director of a corporation relating to or affecting an acquisition or a  
21 potential acquisition of control of the corporation or any other transaction or potential  
22 transaction involving the corporation may not be subject to a higher duty or greater  
23 scrutiny than is applied to any other act of a director.

24 (i) This section:

25 (1) Is the sole source of duties of a director **OWED DIRECTLY** to the  
26 corporation [or] **AND INDIRECTLY TO** the stockholders of the corporation[, whether or not  
27 a decision has been made to enter into an acquisition or a potential acquisition of control of  
28 the corporation or enter into any other transaction involving the corporation]; and

29 (2) Applies to any act of a director, including an act as a member of a  
30 committee of the board of directors.

31 **(J) THIS SECTION DOES NOT:**

1           **(1) ELIMINATE THE COMMON LAW FIDUCIARY DUTIES OF A DIRECTOR**  
2 **OWED DIRECTLY TO THE STOCKHOLDERS OF A CORPORATION, INCLUDING THE**  
3 **DUTIES THAT EXIST IN CONNECTION WITH:**

4           **(I) DISCLOSURES MADE TO THE STOCKHOLDERS BY THE**  
5 **DIRECTOR WHEN SOLICITING A STOCKHOLDER VOTE OR RECOMMENDING THAT**  
6 **STOCKHOLDERS TENDER SHARES PURSUANT TO A TENDER OFFER; AND**

7           **(II) THE AMOUNT OR VALUE OF CONSIDERATION TO BE**  
8 **RECEIVED BY STOCKHOLDERS IN CONNECTION WITH A SALE OR MERGER OF THE**  
9 **CORPORATION; OR**

10           **(2) LIMIT THE RIGHTS OF A STOCKHOLDER TO BRING A DIRECT**  
11 **ACTION AGAINST A DIRECTOR FOR A BREACH OF A COMMON LAW FIDUCIARY DUTY**  
12 **OWED DIRECTLY TO THE STOCKHOLDER.**

13                           **Article – Courts and Judicial Proceedings**

14 5–417.

15           (a) In this section, “act” has the meaning stated in § 2–405.1 of the Corporations  
16 and Associations Article.

17           (b) A present or former director of a corporation who while a director acts or acted  
18 in accordance with the standard of conduct provided in § 2–405.1 of the Corporations and  
19 Associations Article has no liability in any action based on an act of the director.

20           **(C) THIS SECTION DOES NOT APPLY TO OR LIMIT THE LIABILITY OF A**  
21 **PRESENT OR FORMER DIRECTOR OF A CORPORATION IN A DIRECT ACTION BROUGHT**  
22 **BY A STOCKHOLDER OF THE CORPORATION FOR A BREACH OF A COMMON LAW**  
23 **FIDUCIARY DUTY OWED DIRECTLY TO THE STOCKHOLDER.**

24 5–418.

25           (a) The charter, as defined under § 1–101 of the Corporations and Associations  
26 Article, of a Maryland corporation may include any provision expanding or limiting the  
27 liability of its directors and officers to the corporation or its stockholders for money  
28 damages, but may not include any provision that restricts or limits the liability of its  
29 directors or officers to the corporation or its stockholders:

30           (1) To the extent that it is proved that the person actually received an  
31 improper benefit or profit in money, property, or services for the amount of the benefit or  
32 profit in money, property, or services actually received;

33           (2) To the extent that a judgment or other final adjudication adverse to the

1 person is entered in a proceeding based on a finding in the proceeding that the person's  
2 action, or failure to act, was the result of active and deliberate dishonesty and was material  
3 to the cause of action adjudicated in the proceeding; or

4 (3) With respect to any action described in subsection (b) of this section.

5 (b) This section does not apply to:

6 (1) [an] AN action brought by or on behalf of a State governmental entity,  
7 receiver, conservator, or depositor against a director or officer of:

8 [(1)] (I) A banking institution as defined in § 1–101 of the Financial  
9 Institutions Article;

10 [(2)] (II) A credit union as described in § 6–301 of the Financial  
11 Institutions Article;

12 [(3)] (III) A savings and loan association as defined in § 8–101 of the  
13 Financial Institutions Article; or

14 [(4)] (IV) A subsidiary of a banking institution, credit union, or savings  
15 and loan association described in this subsection; OR

16 (2) A DIRECT ACTION BROUGHT BY A STOCKHOLDER OF A  
17 CORPORATION FOR A BREACH OF A COMMON LAW FIDUCIARY DUTY OWED BY A  
18 DIRECTOR OF THE CORPORATION DIRECTLY TO THE STOCKHOLDER.

19 (c) This section may not be construed to affect the liability of a person in any  
20 capacity other than the person's capacity as a director or officer.

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