

SENATE BILL 865

C1

8lr3186
CF 8lr3212

By: **Senator Feldman**

Introduced and read first time: February 5, 2018

Assigned to: Judicial Proceedings

A BILL ENTITLED

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; providing that a certain
9 merger is effected under certain circumstances, rather than authorizing the merger
10 to be effected under certain circumstances; altering a certain notice requirement for
11 a certain acquiring entity in a certain merger; specifying the effective time of a
12 certain merger or consolidation involving a foreign limited partnership, a foreign
13 limited liability company, or a foreign partnership; altering the powers of a real
14 estate investment trust; and generally relating to the Maryland General Corporation
15 Law and real estate investment trusts.

16 BY repealing and reenacting, with amendments,
17 Article – Corporations and Associations
18 Section 2–407(c), 2–505(b), 2–506(b), 3–106(d)(1), 3–106.1(c)(1) and (e)(1),
19 3–113(b)(1), and 8–301(4)
20 Annotated Code of Maryland
21 (2014 Replacement Volume and 2017 Supplement)

22 BY repealing and reenacting, without amendments,
23 Article – Corporations and Associations
24 Section 3–804(c)
25 Annotated Code of Maryland
26 (2014 Replacement Volume and 2017 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Corporations and Associations**

2 2–407.

3 (c) (1) **[A] UNLESS THE CORPORATION HAS ELECTED TO BE SUBJECT TO**
 4 **§ 3–804(C)(3) OF THIS ARTICLE,** A director elected by the board of directors to fill a
 5 vacancy serves until the next annual meeting of stockholders and until his successor is
 6 elected and qualifies.

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

9 2–505.

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

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

29 2–506.

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

35 3–106.

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

9 3-106.1.

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

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

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

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

25 (iv) Following the consummation of the offer, the stock irrevocably
26 accepted for purchase or exchange in accordance with the offer and received by the
27 depository before the expiration of the offer, together with the stock otherwise owned by
28 the acquiring entity, a person that owns, directly or indirectly, all of the outstanding equity
29 interest in the acquiring entity, and a direct or indirect wholly owned subsidiary of the
30 acquiring entity or a person that owns, directly or indirectly, all of the outstanding equity
31 interest in the acquiring entity, equals at least that percentage of the shares, and of each
32 class or series of the shares, of the subject corporation that would, except for the application
33 of this section, be required to approve the merger under this article and the charter of the
34 subject corporation;

35 (v) The acquiring entity merges with or into the subject corporation;
36 and

37 (vi) Each outstanding share of each class or series of shares of the
38 subject corporation that is the subject of and not irrevocably accepted for purchase or
39 exchange in the offer is converted in the merger into, or into the right to receive, the same

1 amount and kind of cash, property, rights, or securities paid for shares of the class or series
2 of shares of the subject corporation irrevocably accepted for purchase or exchange in the
3 offer.

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

12 3-113.

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

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

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

21 3-804.

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

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

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

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

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

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

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

33 8-301.

1 A real estate investment trust has the power to:

2 (4) Make contracts **AND GUARANTEES**, incur liabilities, and borrow
3 money;

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