

HOUSE BILL 996

C1

2lr2855
CF SB 879

By: **Delegate Brooks**

Introduced and read first time: February 10, 2022

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of establishing a process by which a defective corporate act may be ratified
4 by a corporation or its stockholders; requiring a corporation ratifying a defective
5 corporate act that would have required a filing with the State Department of
6 Assessments and Taxation to file articles of validation with the Department;
7 authorizing an adversely affected person or entity to file an action contesting a
8 ratification under this Act; applying this Act to real estate investment trusts; and
9 generally relating to the ratification of defective corporate acts.

10 BY repealing and reenacting, with amendments,
11 Article – Corporations and Associations
12 Section 1–101(f), 1–203(b)(1), 1–301, and 8–601.1
13 Annotated Code of Maryland
14 (2014 Replacement Volume and 2021 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article – Corporations and Associations
17 Section 1–101(g)
18 Annotated Code of Maryland
19 (2014 Replacement Volume and 2021 Supplement)

20 BY adding to
21 Article – Corporations and Associations
22 Section 2–701 through 2–707 to be under the new subtitle “Subtitle 7. Ratification of
23 Defective Corporate Acts”
24 Annotated Code of Maryland
25 (2014 Replacement Volume and 2021 Supplement)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
27 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 1–101.

3 (f) (1) “Charter” includes:

4 (i) A charter granted by special act of the General Assembly;

5 (ii) Articles or certificate of incorporation;

6 (iii) Amended articles or certificate of incorporation;

7 (iv) Articles of restatement, if approved as described in § 2–609 of
8 this article;

9 (v) Articles of amendment and restatement; and

10 (vi) Articles or agreements of consolidation.

11 (2) “Charter” includes the documents referred to in paragraph (1) of this
12 subsection, either as:

13 (i) Originally passed or accepted for record; or

14 (ii) Amended, corrected, or supplemented by special act of the
15 General Assembly, articles of amendment, articles of amendment and reduction, articles of
16 extension, articles supplementary, articles or agreements of merger, articles of revival, [or]
17 a certificate of correction, **OR ARTICLES OF VALIDATION.**

18 (g) “Charter document” means any:

19 (1) Document enumerated in subsection (f) of this section; and

20 (2) Articles of reduction, articles of transfer, articles of merger, articles of
21 share exchange, articles of conversion, articles of dissolution, and stock issuance
22 statements.

23 1–203.

24 (b) (1) Except as provided in paragraph (10) of this subsection, for each of the
25 following documents, the nonrefundable processing fee is \$100:

26 Document

27 Articles of incorporation

28 Articles of amendment

29 Articles of extension

1 Articles of restatement of charter
2 Articles of amendment and restatement
3 Articles supplementary
4 Articles of share exchange
5 Articles of consolidation or merger
6 Articles of revival for stock corporation
7 Articles of revival for nonstock corporation
8 Articles of conversion
9 **ARTICLES OF VALIDATION**

10 1–301.

11 (a) Articles supplementary and articles of amendment, restatement, amendment
12 and restatement, consolidation, merger, share exchange, conversion, [and] extension, **AND**
13 **VALIDATION** and, except as provided in § 3–406(b) of this article, articles of dissolution
14 shall be executed as follows:

15 (1) They shall be signed and acknowledged for each corporation, statutory
16 trust, or real estate investment trust party to the articles, by its chairman or vice chairman
17 of the board of directors or board of trustees, by its chief executive officer, chief operating
18 officer, chief financial officer, president, or one of its vice presidents, or, if authorized by the
19 bylaws or resolution of the board of directors or board of trustees, by any other officer or
20 agent of the corporation, statutory trust, or real estate investment trust;

21 (2) They shall be witnessed or attested by the secretary, treasurer, chief
22 financial officer, assistant treasurer, or assistant secretary of each corporation, statutory
23 trust, or real estate investment trust party to the articles, or, if authorized by the bylaws
24 or resolution of the board of directors or board of trustees, by any other officer or agent of
25 the corporation, statutory trust, or real estate investment trust;

26 (3) They shall be signed and acknowledged for each other entity party to
27 the articles by a person authorized to act for the entity by law or by the governing document;
28 and

29 (4) The matters and facts set forth in the articles with respect to
30 authorization and approval shall be verified under oath as follows:

31 (i) With respect to any Maryland corporation, statutory trust, or
32 real estate investment trust party to the articles, by the chairman or the secretary of the
33 meeting at which the articles or transaction were approved, by the chairman or vice
34 chairman of the board of directors or board of trustees, by the chief executive officer, chief
35 operating officer, chief financial officer, president, vice president, secretary, or assistant
36 secretary of the corporation, statutory trust, or real estate investment trust, or, if
37 authorized in accordance with item (1) of this subsection, by any other officer or agent of
38 the corporation, statutory trust, or real estate investment trust;

39 (ii) With respect to any foreign corporation party to articles of

1 consolidation, merger, or share exchange, by the chief executive officer, chief operating
2 officer, chief financial officer, president, vice president, secretary, or assistant secretary of
3 the corporation; and

4 (iii) With respect to any other Maryland or foreign entity party to the
5 articles, by a person authorized by law or by the governing document to act for the entity.

6 (b) All other instruments required to be filed with the Department may be signed:

7 (1) By the chairman or vice chairman of the board of directors, the chief
8 executive officer, chief operating officer, president, or any vice president and witnessed or
9 attested by the secretary or any assistant secretary, or by any other officer or agent of the
10 corporation who is authorized by the bylaws or resolution of the board of directors to
11 perform the duties usually performed by the secretary;

12 (2) If it appears from the instrument that there are no such officers, by a
13 majority of the directors or by such directors as may be designated by the board and the
14 instrument so states; or

15 (3) If it appears from the instrument that there are no officers or directors,
16 by the holders of a majority of outstanding stock.

17 **SUBTITLE 7. RATIFICATION OF DEFECTIVE CORPORATE ACTS.**

18 **2-701.**

19 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
20 INDICATED.

21 (B) "CORPORATE ACT" MEANS ANY ACT TAKEN BY OR ON BEHALF OF A
22 CORPORATION BY THE BOARD OF DIRECTORS, A COMMITTEE OF THE BOARD OF
23 DIRECTORS, OR THE STOCKHOLDERS OF THE CORPORATION.

24 (C) "DEFECTIVE CORPORATE ACT" MEANS:

25 (1) ANY CORPORATE ACT PURPORTEDLY TAKEN THAT, AT THE DATE
26 OF THE DEFECTIVE CORPORATE ACT, WOULD HAVE BEEN WITHIN THE POWER OF
27 THE CORPORATION BUT IS VOID OR VOIDABLE DUE TO A FAILURE OF
28 AUTHORIZATION; OR

29 (2) AN OVERISSUE.

30 (D) "FAILURE OF AUTHORIZATION" MEANS A CORPORATE ACT THAT:

31 (1) THE CORPORATION FAILED TO AUTHORIZE OR APPROVE; AND

1 **(2) IS VOID OR VOIDABLE.**

2 **(E) “OVERISSUE” MEANS THE PURPORTED ISSUANCE BY A CORPORATION**
3 **OF STOCK OF:**

4 **(1) A CLASS OR SERIES IN EXCESS OF THE NUMBER OF SHARES OF**
5 **THE CLASS OR SERIES THAT THE CORPORATION HAS THE POWER TO ISSUE UNDER §**
6 **2-201(A) OF THIS TITLE OR THE CORPORATION’S CHARTER AT THE TIME OF**
7 **ISSUANCE; OR**

8 **(2) ANY CLASS OR SERIES THAT IS NOT AUTHORIZED FOR ISSUANCE**
9 **BY THE CORPORATION’S CHARTER.**

10 **(F) (1) “PUTATIVE STOCK” MEANS STOCK THAT CANNOT BE DETERMINED**
11 **BY THE BOARD OF DIRECTORS TO BE VALID STOCK.**

12 **(2) “PUTATIVE STOCK” INCLUDES STOCK ISSUED UPON EXERCISE OF**
13 **RIGHTS, OPTIONS, WARRANTS, OR THEIR SECURITIES CONVERTIBLE INTO OR**
14 **EXERCISABLE FOR STOCK, PURPORTEDLY CREATED OR ISSUED AS A RESULT OF A**
15 **DEFECTIVE CORPORATE ACT.**

16 **(G) “VALID STOCK” MEANS STOCK THAT HAS BEEN DULY AUTHORIZED AND**
17 **VALIDLY ISSUED IN ACCORDANCE WITH THE PROVISIONS OF THIS TITLE.**

18 **2-702.**

19 **(A) THE BOARD OF DIRECTORS OF A CORPORATION MAY RATIFY A**
20 **DEFECTIVE CORPORATE ACT BY ADOPTING A RESOLUTION STATING:**

21 **(1) (I) THE DEFECTIVE CORPORATE ACT TO BE RATIFIED; AND**

22 **(II) IF THE DEFECTIVE CORPORATE ACT INVOLVED THE**
23 **ISSUANCE OF PUTATIVE STOCK, THE NUMBER OF SHARES AND THE CLASS OR SERIES**
24 **OF PUTATIVE STOCK ISSUED;**

25 **(2) THE DATE OF THE DEFECTIVE CORPORATE ACT;**

26 **(3) THE NATURE OF THE FAILURE OF AUTHORIZATION OF THE**
27 **DEFECTIVE CORPORATE ACT; AND**

28 **(4) (I) IF THE BOARD OF DIRECTORS COULD HAVE AUTHORIZED**
29 **THE DEFECTIVE CORPORATE ACT WITHOUT STOCKHOLDER ACTION AT THE DATE OF**

1 THE DEFECTIVE CORPORATE ACT, THAT THE BOARD OF DIRECTORS RATIFIES THE
2 DEFECTIVE CORPORATE ACT; OR

3 (II) IF THE BOARD OF DIRECTORS COULD NOT HAVE
4 AUTHORIZED THE DEFECTIVE CORPORATE ACT WITHOUT STOCKHOLDER ACTION AT
5 THE DATE OF THE DEFECTIVE CORPORATE ACT, THAT THE BOARD OF DIRECTORS
6 SUBMITS THE RATIFICATION FOR CONSIDERATION AT A MEETING OF THE
7 STOCKHOLDERS.

8 (B) IF A RATIFICATION IS SUBMITTED FOR CONSIDERATION AT A MEETING
9 OF THE STOCKHOLDERS UNDER SUBSECTION (A)(4)(II) OF THIS SECTION, THE
10 STOCKHOLDERS MAY RATIFY THE DEFECTIVE CORPORATE ACT BY ADOPTING A
11 RESOLUTION STATING:

12 (1) (I) THE DEFECTIVE CORPORATE ACT TO BE RATIFIED; AND

13 (II) IF THE DEFECTIVE CORPORATE ACT INVOLVED THE
14 ISSUANCE OF PUTATIVE STOCK, THE NUMBER OF SHARES AND THE CLASS OR SERIES
15 OF PUTATIVE STOCK ISSUED;

16 (2) THE DATE OF THE DEFECTIVE CORPORATE ACT; AND

17 (3) THAT THE STOCKHOLDERS RATIFY THE DEFECTIVE CORPORATE
18 ACT.

19 (C) (1) THE QUORUM AND VOTING REQUIREMENTS APPLICABLE TO
20 RATIFICATION UNDER THIS SECTION SHALL BE THE APPROVAL STANDARD
21 REQUIRING THE GREATER OF:

22 (I) THE REQUIREMENTS THAT WOULD BE APPLICABLE TO THE
23 DEFECTIVE CORPORATE ACT PROPOSED TO BE RATIFIED AT THE TIME OF
24 RATIFICATION; OR

25 (II) THE REQUIREMENTS THAT WOULD HAVE BEEN APPLICABLE
26 TO THE DEFECTIVE CORPORATE ACT ON THE DATE OF THE DEFECTIVE CORPORATE
27 ACT.

28 (2) UNLESS OTHERWISE REQUIRED BY THE CHARTER OR BYLAWS OF
29 A CORPORATION IN EFFECT AT THE TIME OF A DEFECTIVE CORPORATE ACT, IF THE
30 DEFECTIVE CORPORATE ACT IS THE ELECTION OF A DIRECTOR, RATIFICATION OF
31 THE DEFECTIVE CORPORATE ACT SHALL REQUIRE A MAJORITY OF THE VOTES CAST
32 AT A MEETING AT WHICH A QUORUM IS PRESENT.

1 **(3) HOLDERS OF PUTATIVE STOCK ON THE RECORD DATE FOR**
2 **DETERMINING WHICH STOCKHOLDERS ARE ENTITLED TO VOTE ON A RATIFICATION**
3 **SUBMITTED TO STOCKHOLDERS UNDER THIS SECTION SHALL NOT BE ENTITLED TO**
4 **VOTE OR BE COUNTED FOR QUORUM PURPOSES IN ANY VOTE TO CONSIDER**
5 **RATIFICATION.**

6 **(D) RATIFICATION OF A DEFECTIVE CORPORATE ACT UNDER THIS SECTION**
7 **SHALL MAKE THE RATIFIED DEFECTIVE CORPORATE ACT BINDING ON THE**
8 **CORPORATION IN ACCORDANCE WITH § 2-703 OF THIS SUBTITLE.**

9 **2-703.**

10 **(A) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**
11 **RATIFICATION OF A DEFECTIVE CORPORATE ACT BECOMES EFFECTIVE ON THE**
12 **DATE THAT THE BOARD OF DIRECTORS ADOPTS A RESOLUTION UNDER § 2-702(A)**
13 **OF THIS SUBTITLE OR, IF REQUIRED BY THIS SUBTITLE, THE DATE THAT**
14 **STOCKHOLDERS ADOPT A RESOLUTION UNDER § 2-702(B) OF THIS SUBTITLE.**

15 **(2) IF THE DEFECTIVE CORPORATE ACT WOULD HAVE REQUIRED A**
16 **FILING WITH THE DEPARTMENT, RATIFICATION OF THE DEFECTIVE CORPORATE**
17 **ACT BECOMES EFFECTIVE ON THE LATER OF:**

18 **(I) THE DATE THAT ARTICLES OF VALIDATION FILED IN**
19 **ACCORDANCE WITH § 2-705 OF THIS SUBTITLE ARE ACCEPTED FOR RECORD BY THE**
20 **DEPARTMENT; OR**

21 **(II) THE DATE ESTABLISHED IN THE ARTICLES OF VALIDATION.**

22 **(B) A DEFECTIVE CORPORATE ACT RATIFIED IN ACCORDANCE WITH THIS**
23 **SUBTITLE SHALL NOT BE VOID OR VOIDABLE AS A RESULT OF THE FAILURE OF**
24 **AUTHORIZATION IDENTIFIED BY THE BOARD OF DIRECTORS IN A STATEMENT UNDER**
25 **§ 2-702(A).**

26 **2-704.**

27 **(A) IF RATIFICATION OF A DEFECTIVE CORPORATE ACT REQUIRES**
28 **APPROVAL BY STOCKHOLDERS, THE SECRETARY OF THE CORPORATION SHALL GIVE**
29 **NOTICE OF THE PROPOSED RATIFICATION TO ALL STOCKHOLDERS ENTITLED TO**
30 **NOTICE OF THE MEETING AND HOLDERS OF PUTATIVE STOCK AS OF THE DATE OF**
31 **THE DEFECTIVE CORPORATE ACT IN ACCORDANCE WITH § 2-504 OF THIS TITLE.**

32 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, IF**
33 **RATIFICATION OF A DEFECTIVE CORPORATE ACT DOES NOT REQUIRE APPROVAL BY**

1 STOCKHOLDERS, NOTICE TO STOCKHOLDERS OF THE RATIFICATION SHALL BE
2 DEEMED TO BE GIVEN WHEN THE BOARD OF DIRECTORS ADOPTS A RESOLUTION IN
3 ACCORDANCE WITH § 2-702(A) OF THIS SUBTITLE.

4 (2) IN THE CASE OF A CORPORATION WITH A CLASS OF EQUITY
5 SECURITIES REGISTERED UNDER THE SECURITIES EXCHANGE ACT OF 1934,
6 NOTICE TO STOCKHOLDERS OF A RATIFICATION THAT DOES NOT REQUIRE
7 APPROVAL OF STOCKHOLDERS SHALL BE DEEMED TO BE GIVEN WHEN THE
8 RATIFICATION HAS BEEN DISCLOSED IN A DOCUMENT PUBLICLY FILED WITH THE
9 SECURITIES AND EXCHANGE COMMISSION.

10 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
11 THE NOTICE REQUIRED BY THIS SECTION SHALL BE PROVIDED TO:

12 (I) HOLDERS OF PUTATIVE STOCK AS OF THE DATE OF THE
13 DEFECTIVE CORPORATE ACT;

14 (II) WHERE NOTICE IS REQUIRED UNDER SUBSECTION (A) OF
15 THIS SECTION, HOLDERS OF PUTATIVE STOCK AS OF THE RECORD DATE OF THE
16 MEETING; AND

17 (III) WHERE NOTICE IS REQUIRED UNDER SUBSECTION (B) OF
18 THIS SECTION, HOLDERS OF PUTATIVE STOCK AS OF THE DATE ON WHICH THE
19 BOARD OF DIRECTORS ADOPTED A RESOLUTION RATIFYING THE DEFECTIVE
20 CORPORATE ACT.

21 (2) NOTICE IS NOT REQUIRED TO BE GIVEN TO HOLDERS OF
22 PUTATIVE STOCK WHOSE IDENTITIES OR ADDRESSES CANNOT BE REASONABLY
23 DETERMINED FROM THE RECORDS OF THE CORPORATION.

24 2-705.

25 (A) (1) IF A DEFECTIVE CORPORATE ACT RATIFIED UNDER THIS
26 SUBTITLE WOULD HAVE REQUIRED THE FILING OF A CHARTER DOCUMENT WITH THE
27 DEPARTMENT UNDER ANY PROVISION OF THIS ARTICLE, THE CORPORATION SHALL
28 FILE ARTICLES OF VALIDATION IN ACCORDANCE WITH THIS SECTION.

29 (2) IF A CHARTER DOCUMENT THAT WAS REQUIRED TO BE FILED
30 WITH RESPECT TO THE DEFECTIVE CORPORATE ACT WAS NOT FILED, THE ARTICLES
31 OF VALIDATION REQUIRED BY THIS SECTION SHALL BE FILED IN LIEU OF THE
32 CHARTER DOCUMENT THAT WAS NOT FILED.

33 (B) THE ARTICLES OF VALIDATION REQUIRED BY THIS SECTION SHALL

1 INCLUDE:

2 (1) THE TITLE AND DATE OF ANY CHARTER DOCUMENT PREVIOUSLY
3 FILED WITH RESPECT TO THE DEFECTIVE CORPORATE ACT AND ANY CHARTER
4 DOCUMENT THAT AMENDED, SUPPLEMENTED, OR CORRECTED THAT CHARTER
5 DOCUMENT;

6 (2) A STATEMENT DESCRIBING THE DEFECTIVE CORPORATE ACT;

7 (3) THE DATE OF THE DEFECTIVE CORPORATE ACT;

8 (4) A STATEMENT THAT THE DEFECTIVE CORPORATE ACT WAS
9 RATIFIED IN ACCORDANCE WITH THIS SUBTITLE AND A DESCRIPTION OF THE
10 RATIFICATION;

11 (5) THE TIME THAT THE RATIFICATION IS TO BECOME EFFECTIVE,
12 PROVIDED THAT THE TIME IS NOT MORE THAN 30 DAYS AFTER THE ARTICLES OF
13 VALIDATION ARE ACCEPTED FOR RECORD; AND

14 (6) (I) A STATEMENT THAT A CHARTER DOCUMENT WAS
15 PREVIOUSLY FILED WITH RESPECT TO THE DEFECTIVE CORPORATE ACT, AND NO
16 CHANGE TO THE CHARTER DOCUMENT IS REQUIRED;

17 (II) 1. A STATEMENT THAT A CHARTER DOCUMENT WAS
18 PREVIOUSLY FILED WITH RESPECT TO THE DEFECTIVE CORPORATE ACT;

19 2. A STATEMENT DESCRIBING THE CHANGES BEING
20 MADE TO THE CHARTER DOCUMENT; AND

21 3. ANY OTHER INFORMATION REQUIRED BY THIS
22 ARTICLE; OR

23 (III) 1. A STATEMENT THAT A CHARTER DOCUMENT WAS NOT
24 PREVIOUSLY FILED WITH RESPECT TO THE DEFECTIVE CORPORATE ACT AND THAT
25 A CHARTER DOCUMENT WAS REQUIRED TO BE FILED;

26 2. A CITATION TO THE PROVISION OF THIS ARTICLE
27 UNDER WHICH THE CHARTER DOCUMENT WAS REQUIRED TO BE FILED; AND

28 3. ANY OTHER INFORMATION REQUIRED BY THIS
29 ARTICLE.

30 2-706.

1 (A) UPON APPLICATION BY ANY PERSON OR ENTITY CLAIMING TO BE
2 SUBSTANTIALLY AND ADVERSELY AFFECTED BY A RATIFICATION UNDER THIS
3 SUBTITLE, A COURT MAY:

4 (1) DETERMINE THE VALIDITY OF ANY RATIFICATION UNDER THIS
5 SUBTITLE; OR

6 (2) MODIFY OR WAIVE ANY OF THE PROCEDURES REQUIRED BY THIS
7 SUBTITLE TO RATIFY A DEFECTIVE CORPORATE ACT.

8 (B) AN ACTION UNDER THIS SECTION SHALL BE BROUGHT WITHIN 120 DAYS
9 AFTER:

10 (1) IF THE RATIFICATION WAS APPROVED BY STOCKHOLDERS, THE
11 DATE ON WHICH RATIFICATION OCCURRED; OR

12 (2) IF NOTICE WAS GIVEN OR DEEMED GIVEN WITHIN 60 DAYS AFTER
13 THE RATIFICATION, THE DATE ON WHICH NOTICE WAS GIVEN OR DEEMED GIVEN TO
14 STOCKHOLDERS IN ACCORDANCE WITH THIS SUBTITLE.

15 **2-707.**

16 NOTHING IN THIS SUBTITLE MAY BE CONSTRUED TO REQUIRE THAT
17 RATIFICATION OF A DEFECTIVE CORPORATE ACT UNDER THIS SUBTITLE BE THE
18 EXCLUSIVE MEANS OF VALIDATING A DEFECTIVE CORPORATE ACT OR TO LIMIT THE
19 ABILITY OF A CORPORATION TO FILE CERTIFICATES OR CHARTER DOCUMENTS IN
20 ACCORDANCE WITH ANY OTHER PROVISION OF THIS ARTICLE.

21 8-601.1.

22 Sections 2-113, 2-201(c), 2-309(a) and (e), 2-313, 2-502(e), 2-503(b), [and] 2-504(f),
23 AND **2-701 THROUGH 2-707** of this article and, except as otherwise provided in § 8-601
24 of this subtitle or in the declaration of trust, § 2-405.1 of this article shall apply to real
25 estate investment trusts.

26 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 2022.