

Senator West - SB 431 - Corporate Revisions FAV.pd

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February 17, 2022

The Senate Judicial Proceedings Committee
2 East Miller Senate Building
Annapolis, MD, 21401
The Honorable William C. Smith Jr.

Re: SB 431 – Corporations and Associations – Revisions

Dear Chairman Smith and members of the Committee,

This is the annual bill sponsored by the Business Law Section of the Maryland State Bar Association to clean up various and miscellaneous technical issues in the State's business law statutes.

Fortunately, as in recent years, Bill Carlson is with us today to explain the modest changes contained in this bill and to answer your questions. I will start things off with a brief overview of the very few substantive changes that would be effected by passage of this bill.

The Maryland General Corporation Law permits stockholder meetings to be held in person or virtually. The deletion of Section 2-502.1 of the Corporations and Associations Article and the accompanying revisions to Section 2-503 clarify the how stockholders may participate in virtual stockholder meetings and match how virtual meetings of large groups are run in practice. Presently, Section 2-502.1 and Section 2-503 are seen as duplicative, saying the same thing, twice, in two different ways, which has caused confusion.

Senate Bill 431 also clarifies the procedure in section 3-108 of the Corporations and Associations Article for abandoning a merger before it is effective. Finally, it makes explicit the date upon which a corporation will be considered dissolved.

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**2022 REPORT OF THE COMMITTEE ON CORPORATION LAW
OF THE SECTION ON BUSINESS LAW OF THE MARYLAND STATE BAR ASSOCIATION
WITH RESPECT TO**

**SENATE BILL 431/HOUSE BILL 999
“CORPORATIONS AND ASSOCIATIONS - REVISIONS”**

I. INTRODUCTION AND BACKGROUND

The Committee on Corporation Law of the Section on Business Law of the Maryland State Bar Association monitors the Maryland General Corporation Law, the Maryland REIT Law, and the application and utility of other Maryland business-related laws. To that end, the Committee on Corporation Law regularly proposes “Miscellaneous” Bills relating to corporations and REITs and, on occasion, Bills on specific topics to the General Assembly of the State of Maryland.

This Session’s “Corporations and Associations - Revisions” Bill, SB 431 and HB 999, which have been cross-filed, addresses several revisions and clarifications.

OUR COMMITTEE IS FAVORABLE IN SUPPORT OF SB 431 AND HB 999.

II. “CORPORATIONS AND ASSOCIATIONS - REVISIONS” PROPOSALS

Clarifying that a Corporation’s Term of Existence May Be Continued, Extended, or Terminated upon Certain Events

While most corporations have perpetual existence, corporations may exist for only a term stated in the Articles of Incorporation (e.g., ten years). In practice, corporations with a limited term, particularly some closed-end ’40 Act investment funds, may start with a stated term and, upon certain subsequent events that are described in the Articles of Incorporation, the existence of the corporation may switch from term to perpetual, the term may be extended, or the corporation will be dissolved. New subsection (11) in Section 2-104(b), which previously was stated in part in Section 2-103(1), clarifies this accepted practice.

Clarifying Rules for Participation by Stockholders in Virtual Stockholder Meetings

The Maryland General Corporation Law permits stockholder meetings to be held in person or virtually. The deletion of Section 2-502.1 and the accompanying revisions to Section 2-503 clarify

the how stockholders may participate in virtual stockholder meetings and match how virtual meetings of large groups are run in practice. For example, in video conferences with large numbers, the host may mute participants until a participant raises her or his virtual hand and is called to speak, avoiding participants speaking over each other. Presently, Section 2-502.1 and Section 2-503 are seen as duplicative, saying the same thing, twice, in two different ways, which has caused confusion.

Permitting Articles of Dissolution to be Filed with a Later Effective Date

The amendment to Section 3-109(b) would permit a corporation to file Articles of Dissolution with a later effective date (so long as the later effective date does not exceed thirty days after the filing of the Articles). “Later effective date” filings are permitted for Articles of Merger, Articles of Amendment, and Articles of Conversion. This new provision would be particularly helpful for corporations desiring to dissolve as of the last day of the calendar year (for tax purposes) or on any other significant date. This provision would have been useful in 2021, when the SDAT closed its offices on Friday, December 31, which was a business day.

Authorizing a Director to File a Dissent by Electronic Transmission

The Maryland General Corporation Law permits a director to file a dissent to an action approved by the board of directors. The amendment to Section 2-410 (a) would permit a director to file her or his dissent to an action by the board of directors not only by announcing her or his dissent at the meeting or submitting or mailing a written dissent, but also by E-mail or other electronic transmission.

Other Clarifications and Changes

SB 431 and HB 999 also provide several other clarifications and corrections, including the following:

- Clarifying the procedure in section 3-108 for abandoning a merger before it is effective.
- For consistency, including references to certain entities that are missing from certain provisions.
- Deleting the comma in Section 3-106.1 for clarity, just as the same comma was deleted in 2019 from Section 3-106. 2019 Acts, Ch. 289.

Respectfully submitted,

MSBA Section of Business Law, Committee on
Corporation Law

William E. Carlson, Chair
Scott R. Wilson, Vice Chair

February 15, 2022