

HOUSE BILL 781

C1

1lr1296
CF SB 263

By: **Delegate Dumais**

Introduced and read first time: January 29, 2021

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: February 28, 2021

CHAPTER _____

1 AN ACT concerning

2 **Corporations and Real Estate Investment Trusts – Miscellaneous**

3 FOR the purpose of clarifying that the charter or bylaws of a corporation may require that
4 any internal corporate claim be brought only in certain specified courts; repealing
5 the authority of certain corporations to effect a certain reverse stock split; altering
6 the circumstances under which certain boards of directors may remove certain
7 officers or agents of a corporation; altering the manner in which a corporation may
8 allow stockholders to participate in a certain meeting; authorizing a certain meeting
9 of the stockholders to be held partially or solely by means of remote communication;
10 repealing a requirement that, on a certain request, the board of directors provide a
11 place for a meeting of the stockholders; prohibiting a board of directors from issuing
12 stock authorized by an amendment before the time the amendment is effective;
13 providing that stock issued before the time the amendment with respect to the stock
14 is effective shall cease to be voidable at the time the amendment becomes effective;
15 providing that a right or liability accrued by reason of the issuance of the stock before
16 the time the amendment is effective shall be extinguished at the time the
17 amendment becomes effective under certain circumstances; authorizing the majority
18 of the entire board of directors to approve certain articles of amendment without
19 action by stockholders; providing that shares issued by a real estate investment trust
20 before the time the articles supplementary with respect to the shares are effective
21 shall cease to be voidable at the time the articles supplementary become effective;
22 providing that a right or liability accrued by reason of the issuance of the shares
23 before the time the articles supplementary are effective shall be extinguished at the
24 time the articles supplementary become effective under certain circumstances;
25 prohibiting a board of trustees from issuing certain shares by an amendment before

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



the time the amendment is filed with the State Department of Assessments and Taxation; providing that shares issued before the time the amendment with respect to the shares is effective shall cease to be voidable at the time the amendment becomes effective; providing that a right or liability accrued by reason of the issuance of the shares before the time the amendment is effective shall be extinguished at the time the amendment becomes effective under certain circumstances; providing that certain provisions of law authorizing stockholders to meet by remote communication apply to real estate investment trusts; repealing a duplicative provision of law; altering certain definitions; making a technical correction; making conforming changes; and generally relating to corporations and real estate investment trusts.

BY repealing and reenacting, with amendments,
Article – Corporations and Associations
Section 2–113, 2–309(e), 2–413, 2–502.1, 2–503(b), 2–607(a), 3–701(d) and (e),
3–702(b) and (c), 8–203(c) through (h), 8–501, and 8–601.1
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,
Article – Corporations and Associations
Section 2–604(b), 3–701(a), 3–702(a), and 8–203(b)
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

BY adding to
Article – Corporations and Associations
Section 2–606.1 and 8–203(c)
Annotated Code of Maryland
(2014 Replacement Volume and 2020 Supplement)

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

Article – Corporations and Associations

2–113.

(a) The charter or bylaws of a corporation with capital stock may not impose liability on a stockholder who is a party to an internal corporate claim for the attorney's fees or expenses of the corporation or any other party in connection with an internal corporate claim.

(b) (1) Except as provided in paragraph (2) of this subsection, the charter or bylaws of a corporation may require, consistent with applicable jurisdictional requirements, that any internal corporate claim be brought only in [courts sitting in one or more specified jurisdictions]:

(I) SPECIFIED CIRCUIT COURTS OF THE STATE OR A FEDERAL COURT SITTING IN THE STATE; OR

(II) 1. COURTS SITTING IN ONE OR MORE SPECIFIED JURISDICTIONS OUTSIDE THE STATE; AND

2. SPECIFIED CIRCUIT COURTS OF THE STATE OR A FEDERAL COURT SITTING IN THE STATE.

(2) (i) This paragraph does not apply to a provision contained in the charter or bylaws of a corporation on October 1, 2017, unless and until the provision is altered or repealed by an amendment to the charter or bylaws of the corporation, as applicable.

(ii) The charter or bylaws of a corporation may not prohibit bringing an internal corporate claim in the courts of this State or a federal court sitting in this State. 2–309.

(e) (1) This subsection applies to a corporation[:

(i) With] **WITH** a class of equity securities registered under the Securities Exchange Act of 1934[; or

(ii) Registered as an open–end investment company under the Investment Company Act of 1940].

(2) Unless prohibited by the charter of a corporation by reference to this subsection or the subject matter of this subsection, the board of directors of the corporation may amend the charter, with the approval of a majority of the board of directors and without stockholder action, to effect a reverse stock split that results in a combination of shares of stock at a ratio of not more than 10 shares of stock into one share of stock in any 12–month period.

(3) Within 20 days after the effective date of the reverse stock split, the corporation shall give written notice of the reverse stock split to each holder of record of the combined shares of stock as of the effective date.

2–413.

(a) Unless the bylaws provide otherwise, the board of directors shall elect the officers.

(b) Unless the bylaws provide otherwise, an officer serves for one year and until his successor is elected and qualifies.

(c) (1) [If the] **THE** board of directors [in its judgment finds that the best interests of the corporation will be served, it] may remove any officer or agent of the corporation.

(2) The removal of an officer or agent does not prejudice any of his contract rights.

(d) Unless the bylaws provide otherwise, the board of directors may fill a vacancy which occurs in any office.

2-502.1.

(a) Unless restricted by the charter or bylaws of the corporation, a corporation may allow stockholders to participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can **READ OR** hear [each other at the same time] **THE PROCEEDINGS OF THE MEETING SUBSTANTIALLY CONCURRENTLY WITH THE PROCEEDINGS.**

(b) Participation in a meeting by the means authorized by subsection (a) of this section constitutes presence in person at the meeting.

2-503.

(b) [(1) Subject to paragraph (2) of this subsection, if] **IF** the board of directors is authorized to determine the place of a meeting of the stockholders, the board may determine that the meeting not be held at any place, but instead may be held **PARTIALLY OR** solely by means of remote communication, as authorized by subsection (c) of this section.

[(2) At the request of a stockholder, the board of directors shall provide a place for a meeting of the stockholders.]

2-604.

(b) A charter amendment by a Maryland corporation registered as an open-end investment company under the Investment Company Act of 1940 shall be approved by a majority of the entire board of directors and in the manner and by the vote required under the Investment Company Act of 1940.

2-606.1.

(A) A BOARD MAY NOT ISSUE ANY OF THE STOCK THAT IS CLASSIFIED, RECLASSIFIED, OR NEWLY AUTHORIZED BY AN AMENDMENT BEFORE THE TIME THE AMENDMENT IS EFFECTIVE, AS PROVIDED IN § 2-610.1 OF THIS SUBTITLE.

(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION:

(1) THE STOCK ISSUED BY A CORPORATION BEFORE THE TIME THE AMENDMENT WITH RESPECT TO THE STOCK IS EFFECTIVE SHALL CEASE TO BE VOIDABLE AS A RESULT OF THE FAILURE TO FILE ARTICLES OF AMENDMENT OR ARTICLES OF AMENDMENT AND RESTATEMENT AT THE TIME THE AMENDMENT BECOMES EFFECTIVE; AND

(2) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF THE STOCK BY A CORPORATION BEFORE THE TIME THE AMENDMENT BECOMES EFFECTIVE SHALL BE EXTINGUISHED AT THE TIME THE AMENDMENT BECOMES EFFECTIVE, EXCEPT TO THE EXTENT THAT THE PERSON HAVING THE RIGHT OR LIABILITY HAS ACTED DETRIMENTALLY IN RELIANCE ON THE RIGHT OR LIABILITY SOLELY BY REASON OF THE ISSUANCE OF THE STOCK.

2-607.

(a) Articles of amendment shall set forth the amendment and state:

(1) That the amendment was advised by the board of directors and approved by the stockholders; or

(2) That the amendment was approved by a majority of the entire board of directors and that:

(i) No stock entitled to be voted on the matter was outstanding or subscribed for at the time of approval; or

(ii) The amendment is limited to a change expressly authorized by § 2-105(a)(13) of this title or **§ 2-604(B) OR** § 2-605 of this subtitle to be made without action by the stockholders.

3-701.

(a) In this subtitle the following words have the meanings indicated.

(d) (1) "Control share acquisition" means the acquisition, directly or indirectly, by any person, of ownership of, or the power to direct the exercise of voting power with respect to, issued and outstanding control shares.

(2) "Control share acquisition" does not include the acquisition of shares:

(i) Before November 4, 1988;

(ii) Under a contract made before November 4, 1988;

(iii) Under the laws of descent and distribution;

(iv) Under the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this subtitle;

(v) Under a merger, consolidation, or share exchange effected under Subtitle 1 of this title if the corporation is a party to the merger, consolidation, or share exchange; [or]

(vi) Within one-tenth or more but less than one-fifth of all voting power of outstanding shares of stock of the corporation before June 1, 2000;

(VII) AT A TIME WHEN THE CORPORATION IS NOT SUBJECT TO THIS SUBTITLE; OR

(VIII) IN ACCORDANCE WITH A CONTRACT ENTERED INTO AT A TIME WHEN THE CORPORATION IS NOT SUBJECT TO THIS SUBTITLE.

(3) Unless the acquisition entitles any person, directly or indirectly, to exercise or direct the exercise of voting power in the election of directors in excess of the range of voting power previously authorized or attained under an acquisition that is exempt under paragraph (2) of this subsection, “control share acquisition” does not include the acquisition of shares of a corporation in good faith and not for the purpose of circumventing this subtitle by or from:

(i) Any person whose voting rights have previously been authorized by stockholders in compliance with this subtitle; or

(ii) Any person whose previous acquisition of shares of stock of the corporation would have constituted a control share acquisition but for paragraph (2) of this subsection.

(e) (1) “Control shares” means shares of stock that, except for this subtitle, would, if aggregated with all other shares of stock of the corporation (including shares the acquisition of which is excluded from “control share acquisition” in subsection (d)(2) of this section) owned by a person or in respect of which that person is entitled to exercise or direct the exercise of voting power, except solely by virtue of a revocable proxy, entitle that person, directly or indirectly, to exercise or direct the exercise of the voting power of shares of stock of the corporation in the election of directors within any of the following ranges of voting power:

(i) One-tenth or more, but less than one-third of all voting power;

(ii) One-third or more, but less than a majority of all voting power;

or

(iii) A majority or more of all voting power.

(2) “Control shares” includes [shares]:

(I) **SHARES** of stock of a corporation only to the extent that the acquiring person, following the acquisition of the shares, is entitled, directly or indirectly, to exercise or direct the exercise of voting power within any level of voting power set forth in this section for which approval has not been obtained previously under § 3–702 of this subtitle; **AND**

(II) **SHARES OF STOCK ACQUIRED WITHIN ANY RANGE OF VOTING POWER DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION, EVEN IF THE INITIAL SHARES ACQUIRED WITHIN THE APPLICABLE RANGE OF VOTING POWER ARE EXCLUDED FROM A CONTROL SHARE ACQUISITION.**

3–702.

(a) (1) Holders of control shares of the corporation acquired in a control share acquisition have no voting rights with respect to the control shares except to the extent approved by the stockholders at a meeting held under § 3–704 of this subtitle by the affirmative vote of two-thirds of all the votes entitled to be cast on the matter, excluding all interested shares.

(2) A charter provision permitted by § 2–104(b)(5) of this article may not apply to the proportion of votes required by paragraph (1) of this subsection.

(b) This subtitle does not apply to the voting rights of shares of stock if the acquisition of the shares specifically, generally, or generally by types, as to specifically identified or unidentified existing or future stockholders or their affiliates or associates, has been approved or exempted by a provision contained in the charter or bylaws and adopted at any time before the acquisition of [the] **CONTROL** shares.

(c) This subtitle does not apply to:

(1) A close corporation as defined in § 4–101(b) of this article;

(2) A corporation having fewer than 100 beneficial owners of its stock;

(3) A corporation registered under the Investment Company Act of 1940 as an open end investment company; or

(4) A corporation registered under the Investment Company Act of 1940 as a closed end investment company unless its board of directors adopts a resolution to be subject to this subtitle on or after June 1, 2000[, provided that the resolution shall not be effective with respect to any person who has become a holder of control shares before the time that the resolution is adopted].

8–203.

(b) If, under a power contained in the declaration of trust, the board of trustees classifies or reclassifies any unissued shares by setting or changing the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, or terms or conditions of redemption, the board, before issuing any of the shares, shall file articles supplementary for record with the Department which shall include:

(1) A description of the shares, including the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, and terms and conditions of redemption, as set or changed by the board of trustees; and

(2) A statement that the shares have been classified or reclassified by the board of trustees under the authority contained in the declaration of trust.

(C) NOTWITHSTANDING SUBSECTION (B) OF THIS SECTION:

(1) THE SHARES ISSUED BY A REAL ESTATE INVESTMENT TRUST BEFORE THE TIME THE ARTICLES SUPPLEMENTARY WITH RESPECT TO THE SHARES IS EFFECTIVE SHALL CEASE TO BE VOIDABLE AS A RESULT OF THE FAILURE TO FILE ARTICLES SUPPLEMENTARY AT THE TIME THE AMENDMENT BECOMES EFFECTIVE; AND

(2) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF THE SHARES BEFORE THE TIME THE ARTICLES SUPPLEMENTARY BECOME EFFECTIVE SHALL BE EXTINGUISHED AT THE TIME THE ARTICLES SUPPLEMENTARY BECOME EFFECTIVE, EXCEPT TO THE EXTENT THAT THE PERSON HAVING THE RIGHT OR LIABILITY HAS ACTED DETRIMENTALLY IN RELIANCE ON THE RIGHT OR LIABILITY SOLELY BY REASON OF THE ISSUANCE OF THE STOCK.

[(c)] (D) (1) In this subsection, “facts ascertainable outside the declaration of trust” includes:

(i) An action or determination by any person, including the real estate investment trust, the board of trustees of the real estate investment trust, an officer or agent of the real estate investment trust, or any other person affiliated with the real estate investment trust;

(ii) The contents of any agreement to which the real estate investment trust is a party or any other document; and

(iii) Any other event.

(2) Any of the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, or terms or conditions of redemption of any class or series of shares may be made dependent upon facts ascertainable outside the declaration of trust and may vary among holders of the shares, provided that the manner in which such facts or variations will operate upon the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, or terms or conditions of redemption of such class or series of shares is clearly and expressly set forth in the declaration of trust.

[(d)] (E) If the real estate investment trust has authority to issue shares of more than one class, the certificate evidencing the shares shall contain on its face or back a full statement or summary of:

(1) The designations and any preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends or distributions, qualifications, and terms and conditions of redemption of the shares of each class which the real estate investment trust is authorized to issue; and

(2) If the real estate investment trust is authorized to issue any preferred or special class in series:

(i) The differences in the relative rights and preferences between the shares of each series to the extent they have been set; and

(ii) The authority of the board of trustees to set the relative rights and preferences of subsequent series.

[(e)] (F) (1) A summary of the information required by subsection **[(d)] (E)** of this section, as included in a registration statement permitted to become effective under the Federal Securities Act of 1933, is an acceptable summary for the purposes of this section.

(2) Instead of a full statement or summary, the certificate may state that the real estate investment trust will furnish a full statement of the information required by subsection **[(d)] (E)** of this section to any holder of shares on request and without charge.

[(f)] (G) Unless the declaration of trust provides otherwise, the trustees of a real estate investment trust may authorize the issue of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the real estate investment trust. For shares issued without certificates, on request of the shareholder, the real estate investment trust shall send without charge to the shareholder a written statement of the information required on certificates by subsection **[(d) or] (e) OR (F)** of this section.

[(g)] (H) Articles supplementary shall be executed in the manner required by Title 1 of this article.

1 **[(h)] (I)** Except as provided in § 8–204 of the Commercial Law Article, the fact
2 that a certificate does not contain or refer to a restriction on transferability or ownership
3 that is adopted after the date of issuance of the certificate does not mean that the restriction
4 is invalid or unenforceable.

5 8–501.

6 (a) Except as provided in § 8–202(c) or § 8–203(a)(8) of this title, a declaration of
7 trust may be amended only as provided in this section.

8 (b) The board of trustees of a real estate investment trust proposing an
9 amendment to its declaration of trust shall:

10 (1) Adopt a resolution which sets forth the proposed amendment and
11 declares that it is advisable; and

12 (2) Direct that the proposed amendment be submitted for consideration by
13 the shareholders.

14 (c) (1) If the proposed amendment is to be considered at a meeting of the
15 shareholders, notice which states that a purpose of the meeting will be to act upon the
16 proposed amendment shall be given by the real estate investment trust in the manner
17 required by its declaration of trust or bylaws to:

18 (i) Each shareholder entitled to vote on the proposed amendment;
19 and

20 (ii) Each shareholder not entitled to vote on the proposed
21 amendment if the contract rights of the shareholder's shares, as expressly set forth in the
22 declaration of trust, would be altered by the amendment.

23 (2) The notice shall include a copy of the amendment or a summary of the
24 changes it will affect.

25 (d) The proposed amendment shall be approved by the shareholders of the real
26 estate investment trust by the affirmative vote or written consent of two thirds of all the
27 votes entitled to be cast on the matter.

28 (e) (1) A declaration of trust may permit the board of trustees, with the
29 approval of two thirds of its members, and without action by the shareholders, to amend
30 the declaration of trust from time to time to qualify as a real estate investment trust under
31 the Internal Revenue Code or under this title.

32 (2) Notwithstanding subsections (b) and (d) of this section, unless
33 prohibited in the declaration of trust by reference to this subsection or to the subject matter
34 of this subsection, a majority of the entire board of trustees, without action by the

shareholders, may amend the declaration of trust in any respect in which the charter of a corporation may be amended in accordance with § 2–605 of this article.

(f) (1) In this subsection, “reverse share split” means a combination of outstanding shares of beneficial interest of a real estate investment trust into a lesser number of shares of beneficial interest of the same class without any change to the aggregate par value of the outstanding shares.

(2) This subsection applies to a real estate investment trust with a class of equity securities registered under the Securities Exchange Act of 1934.

(3) Unless prohibited in the declaration of trust by reference to this subsection or to the subject matter of this subsection, the board of trustees of a real estate investment trust may amend the declaration of trust, with the approval of a majority of the board of trustees and without shareholder action, to effect a reverse share split that results in a combination of shares of beneficial interest at a ratio of not more than 10 shares into 1 share in any 12-month period.

(4) Within 20 days after the effective date of a reverse share split authorized under this subsection, the real estate investment trust shall give written notice of the reverse share split to each holder of record of the combined shares of beneficial interest as of the effective date.

(g) Articles of amendment shall be executed for the real estate investment trust in the manner required by § 1–301 of this article and filed for record with the Department.

(H) (1) THE BOARD OF TRUSTEES MAY NOT ISSUE ANY OF THE SHARES THAT ARE CLASSIFIED, RECLASSIFIED, OR NEWLY AUTHORIZED BY AN AMENDMENT TO THE DECLARATION OF TRUST BEFORE THE TIME THE AMENDMENT IS FILED WITH THE DEPARTMENT.

(2) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION:

(I) THE SHARES ISSUED BY A REAL ESTATE INVESTMENT TRUST BEFORE THE TIME THE AMENDMENT WITH RESPECT TO THE SHARES IS EFFECTIVE SHALL CEASE TO BE VOIDABLE AS A RESULT OF THE FAILURE TO FILE THE AMENDMENT OR THE ARTICLES OF AMENDMENT AND RESTATEMENT AT THE TIME THE AMENDMENT OR THE ARTICLES ARE FILED; AND

(II) A RIGHT OR LIABILITY ACCRUED BY REASON OF THE ISSUANCE OF THE SHARES BEFORE THE TIME THE AMENDMENT IS FILED SHALL BE EXTINGUISHED AT THE TIME THE AMENDMENT OR THE ARTICLES OF AMENDMENT AND RESTATEMENT ARE FILED, EXCEPT TO THE EXTENT THAT THE PERSON HAVING THE RIGHT OR LIABILITY HAS ACTED DETRIMENTALLY IN RELIANCE ON THE RIGHT OR LIABILITY SOLELY BY REASON OF THE ISSUANCE OF THE SHARES.

1 8-601.1.

2 Sections 2-113, 2-201(c), 2-309(a) and (e), 2-313, 2-502(e), **2-503(B)**, and 2-504(f)
3 of this article and, except as otherwise provided in § 8-601 of this subtitle or in the
4 declaration of trust, § 2-405.1 of this article shall apply to real estate investment trusts.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2021.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.