

HOUSE BILL 100

C1

0lr1525
CF 0lr1008

By: **Delegate Feldman**

Introduced and read first time: January 15, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations – Directors – Factors Considered in Best Interests of**
3 **Corporation**

4 FOR the purpose of authorizing a director of a corporation, in considering the best
5 interests of the corporation and its shareholders, to consider certain factors and
6 other appropriate factors consistent with the business judgment rule; providing
7 that this Act does not create or abrogate certain duties owed by a director or
8 impose a certain duty, obligation, or liability on a director or create a right or
9 cause of action against, or basis for standing to sue, a director; making stylistic
10 changes; and generally relating to the directors of corporations.

11 BY repealing and reenacting, with amendments,
12 Article – Corporations and Associations
13 Section 2–405.1
14 Annotated Code of Maryland
15 (2007 Replacement Volume and 2009 Supplement)

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

18 **Article – Corporations and Associations**

19 2–405.1.

20 (a) A director shall perform [his] **THE** duties [as] **OF** a director, including
21 [his] duties as a member of a committee of the board on which [he] **THE DIRECTOR**
22 serves:

23 (1) In good faith;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) In a manner [he] **THE DIRECTOR** reasonably believes to be in the
2 best interests of the corporation; and

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

5 (b) (1) In performing [his] **THE** duties **OF A DIRECTOR**, a director is
6 entitled to rely on any information, opinion, report, or statement, including any
7 financial statement or other financial data, prepared or presented by:

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

10 (ii) A lawyer, certified public accountant, or other person, as to a
11 matter which the director reasonably believes to be within the person's professional or
12 expert competence; or

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

16 (2) A director is not acting in good faith if [he] **THE DIRECTOR** has
17 any knowledge concerning the matter in question which would cause such reliance to
18 be unwarranted.

19 **(C) (1) IN PERFORMING THE DUTIES OF A DIRECTOR, A DIRECTOR**
20 **MAY, IN CONSIDERING THE BEST INTERESTS OF THE CORPORATION AND ITS**
21 **SHAREHOLDERS, CONSIDER, WITHOUT LIMITATION, THE FOLLOWING FACTORS**
22 **AND OTHER APPROPRIATE FACTORS THAT ARE CONSISTENT WITH THE**
23 **BUSINESS JUDGMENT RULE, TO THE EXTENT THE DIRECTOR CONSIDERS THEM**
24 **APPROPRIATE:**

25 **(I) THE LONG-TERM AND THE SHORT-TERM INTERESTS OF**
26 **THE CORPORATION AND ITS SHAREHOLDERS; AND**

27 **(II) THE EFFECTS THAT THE CORPORATION'S ACTIONS MAY**
28 **HAVE IN THE SHORT TERM OR IN THE LONG TERM ON ANY OF THE FOLLOWING:**

29 **1. THE PROSPECTS FOR POTENTIAL GROWTH,**
30 **DEVELOPMENT, PRODUCTIVITY, AND PROFITABILITY OF THE CORPORATION;**

31 **2. THE ECONOMY OF THE STATE AND THE NATION;**

32 **3. THE CORPORATION'S EMPLOYEES, SUPPLIERS,**
33 **CUSTOMERS, AND CREDITORS;**

1 4. COMMUNITY AND SOCIETAL CONSIDERATIONS;
2 AND

3 5. THE ENVIRONMENT.

4 (2) NOTHING IN THIS SUBSECTION:

5 (I) CREATES A DUTY OWED BY A DIRECTOR TO A PERSON
6 OR ENTITY TO CONSIDER OR AFFORD A PARTICULAR WEIGHT TO AN INTEREST
7 OR FACTOR DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION OR
8 ABROGATES A DUTY OF A DIRECTOR, EITHER STATUTORY OR RECOGNIZED BY
9 COMMON LAW OR COURT DECISIONS, INCLUDING A DUTY SET FORTH IN
10 SUBSECTION (A) OF THIS SECTION; OR

11 (II) IMPOSES ON A DIRECTOR A LEGAL OR EQUITABLE DUTY,
12 OBLIGATION, OR LIABILITY, OR CREATES A RIGHT OR CAUSE OF ACTION
13 AGAINST, OR BASIS FOR STANDING TO SUE, A DIRECTOR.

14 [[c]] (D) A person who performs his duties in accordance with the standard
15 provided in this section shall have the immunity from liability described under
16 § 5–417 of the Courts and Judicial Proceedings Article.

17 [[d]] (E) The duty of the directors of a corporation does not require them to:

18 (1) Accept, recommend, or respond on behalf of the corporation to any
19 proposal by an acquiring person as defined in § 3–801 of this article;

20 (2) Authorize the corporation to redeem any rights under, modify, or
21 render inapplicable, a stockholder rights plan;

22 (3) Elect on behalf of the corporation to be subject to or refrain from
23 electing on behalf of the corporation to be subject to any or all of the provisions of Title
24 3, Subtitle 8 of this article;

25 (4) Make a determination under the provisions of Title 3, Subtitle 6 or
26 Subtitle 7 of this article; or

27 (5) Act or fail to act solely because of:

28 (i) The effect the act or failure to act may have on an
29 acquisition or potential acquisition of control of the corporation; or

30 (ii) The amount or type of any consideration that may be offered
31 or paid to stockholders in an acquisition.

1 **[(e)] (F)** An act of a director of a corporation is presumed to satisfy the
2 standards of subsection (a) of this section.

3 **[(f)] (G)** An act of a director relating to or affecting an acquisition or a
4 potential acquisition of control of a corporation may not be subject to a higher duty or
5 greater scrutiny than is applied to any other act of a director.

6 **[(g)] (H)** Nothing in this section creates a duty of any director of a
7 corporation enforceable otherwise than by the corporation or in the right of the
8 corporation.

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2010.