

# SENATE BILL 364

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CF HB 295

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By: **Senator Raskin**

Introduced and read first time: February 3, 2011

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Corporations – Maryland General Corporation Law – Miscellaneous**  
3 **Provisions**

4 FOR the purpose of repealing certain provisions of law relating to dividends payable in  
5 shares of one class of a corporation's stock to holders of shares of another class  
6 of the corporation's stock; clarifying that all business and affairs of a  
7 corporation, whether or not in the ordinary course, must be managed under the  
8 direction of the corporation's board of directors; requiring each nominee for  
9 director of a corporation to have the qualifications required by the charter or  
10 bylaws of the corporation; providing that a director of a corporation holds office  
11 until the time the director ceases to have certain qualifications under certain  
12 circumstances; clarifying that certain directors hold over and continue to serve  
13 as directors under certain circumstances; clarifying the circumstances under  
14 which certain actions may be taken without a meeting of the board of directors  
15 or a committee of the board; clarifying that certain references to a majority or  
16 other proportion of directors refer to a majority or other proportion of votes  
17 entitled to be cast by the directors; repealing a certain provision of law that  
18 requires the board of directors to provide a place for a meeting of the  
19 stockholders under certain circumstances; altering the circumstances under  
20 which certain mergers need be approved by a Maryland successor corporation  
21 only by a majority of its entire board of directors; altering the information that  
22 must be included in articles of consolidation, merger, share exchange, or  
23 transfer if the successor is a certain business entity; repealing certain  
24 provisions of law requiring the president or a director of a corporation the  
25 charter of which has been revived to call a meeting of the stockholders for a  
26 certain purpose; and generally relating to the Maryland General Corporation  
27 Law.

28 BY repealing and reenacting, with amendments,  
29 Article – Corporations and Associations

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 2-309(c), 2-401(a), 2-403(a), 2-404(b), 2-405, 2-408(c) and (d),  
2 2-503(b), 3-105(a), and 3-109(a)  
3 Annotated Code of Maryland  
4 (2007 Replacement Volume and 2010 Supplement)

5 BY repealing  
6 Article – Corporations and Associations  
7 Section 3-511  
8 Annotated Code of Maryland  
9 (2007 Replacement Volume and 2010 Supplement)

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

12 **Article – Corporations and Associations**

13 2-309.

14 (c) (1) A division of issued shares into a greater number of shares of the  
15 same class without any change in the aggregate amount of stated capital is a stock  
16 split, and a division with a change in the aggregate amount of stated capital is a stock  
17 dividend within the meaning of this subsection.

18 (2) If authorized by its board of directors and unless the charter  
19 provides otherwise, shares may be issued by a corporation, without consideration to  
20 the holders of one or more classes or series of stock, as a stock split or a stock dividend.

21 (3) If a stock dividend is payable in a corporation's own stock with par  
22 value, the shares shall be issued at par value and, at the time the stock dividend is  
23 paid, the corporation shall transfer from surplus to stated capital an amount at least  
24 equal to the aggregate par value of the shares to be issued.

25 (4) If a stock dividend is payable in a corporation's own stock without  
26 par value, the board of directors shall adopt at the time the stock dividend is declared  
27 a resolution which sets the aggregate amount to be attributed to stated capital with  
28 respect to the shares that constitute the stock dividend and, at the time the stock  
29 dividend is paid, the corporation shall transfer at least that amount from surplus to  
30 stated capital.

31 [(5) A dividend payable in shares of one class of a corporation's stock  
32 may not be declared or paid to the holders of shares of another class of stock unless the  
33 payment has been:

34 (i) Approved by the board of directors in accordance with  
35 specific authority in the charter; or

1 (ii) Approved at a meeting of stockholders by the affirmative  
2 vote of a majority of all the votes entitled to be cast on the matter of each class entitled  
3 to vote on it.]

4 2-401.

5 (a) [The] **ALL** business and affairs of a corporation, **WHETHER OR NOT IN**  
6 **THE ORDINARY COURSE**, shall be managed under the direction of a board of  
7 directors.

8 2-403.

9 (a) Each director **AND EACH NOMINEE FOR DIRECTOR** of a corporation  
10 shall have the qualifications required by the charter or bylaws of the corporation.

11 2-404.

12 (b) (1) Except as provided in paragraph (2) of this subsection, at each  
13 annual meeting of stockholders, the stockholders shall elect directors to hold office  
14 until the earlier of:

15 (i) The next annual meeting of stockholders and until their  
16 successors are elected and qualify; [or]

17 (ii) The time provided in the terms of any class or series of stock  
18 pursuant to which such directors are elected; **OR**

19 **(III) THE TIME A DIRECTOR CEASES TO HAVE THE**  
20 **QUALIFICATIONS THAT WERE REQUIRED BY THE CHARTER OR BYLAWS OF THE**  
21 **CORPORATION AT THE TIME THE DIRECTOR WAS ELECTED, IF THE CHARTER OR**  
22 **BYLAWS REQUIRES THE DIRECTOR'S TERM TO END UPON A FAILURE TO HAVE**  
23 **THOSE QUALIFICATIONS.**

24 (2) Except for a corporation that has elected to be subject to § 3-803 of  
25 this article, if the directors are divided into classes, the term of office may be provided  
26 in the bylaws, except that:

27 (i) The term of office of a director may not be longer than 5  
28 years or, except in the case of an initial or substitute director, shorter than the period  
29 between annual meetings; and

30 (ii) The term of office of at least one class shall expire each year.

31 2-405.

1 (a) **[In] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IN**  
2 case of failure to elect directors at the designated time, the directors holding over shall  
3 continue to **[manage the business and affairs] SERVE AS DIRECTORS** of the  
4 corporation until their successors are elected and qualify.

5 **(B) IF THE NUMBER OF DIRECTORS TO BE ELECTED AT THE**  
6 **DESIGNATED TIME, TOGETHER WITH THE NUMBER OF DIRECTORS WHO**  
7 **OTHERWISE WOULD HOLD OVER, EXCEEDS THE NUMBER OF DIRECTORS WHO**  
8 **WERE TO BE ELECTED, THEN THE DIRECTORS WHO WILL HOLD OVER AND**  
9 **CONTINUE TO SERVE AS DIRECTORS OF THE CORPORATION UNTIL THEIR**  
10 **SUCCESSORS ARE ELECTED AND QUALIFY SHALL BE DETERMINED:**

11 **(1) BY A MAJORITY VOTE OF THE DIRECTORS ELECTED AT THE**  
12 **DESIGNATED TIME AND, IF THE BOARD IS CLASSIFIED, ANY DIRECTORS WHOSE**  
13 **TERMS DID NOT EXPIRE AT THE DESIGNATED TIME, WHETHER OR NOT**  
14 **SUFFICIENT TO CONSTITUTE A QUORUM; OR**

15 **(2) AS OTHERWISE PROVIDED IN THE CHARTER OR BYLAWS OF**  
16 **THE CORPORATION.**

17 **[(b)] (C)** A director not elected annually in accordance with § 2-501(b) of  
18 this title shall be deemed to be continuing in office and shall not be deemed to be  
19 holding over under subsection (a) **OR (B)** of this section until after the time at which  
20 an annual meeting is required to be held under § 2-501(b) of this title or the charter or  
21 bylaws of the corporation.

22 2-408.

23 (c) Any action required or permitted to be taken at a meeting of the board of  
24 directors or of a committee of the board may be taken without a meeting if a  
25 unanimous consent which sets forth the action is:

26 (1) Given in writing or by electronic transmission by each member of  
27 the board or committee **ENTITLED TO VOTE ON THE MATTER**; and

28 (2) Filed in paper or electronic form with the minutes of proceedings of  
29 the board or committee.

30 (d) (1) The charter may provide that one or more directors or a class of  
31 directors shall have more or less than one vote per director on any matter.

32 (2) If the charter provides that one or more directors shall have more  
33 or less than one vote per director on any matter, every reference in this article to a  
34 majority or other proportion of directors shall refer to a majority or other proportion of  
35 votes **[of] ENTITLED TO BE CAST BY** the directors.

1 2-503.

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

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

9 3-105.

10 (a) A consolidation, merger, share exchange, or transfer of assets shall be  
11 approved in the manner provided by this section, except that:

12 (1) A merger of a 90 percent or more owned subsidiary with or into its  
13 parent need be approved only in accordance with the provisions of § 3-106 of this  
14 subtitle;

15 (2) A share exchange need be approved by a Maryland successor only  
16 by its board of directors and by any other action required by its charter;

17 (3) A transfer of assets need be approved by a Maryland transferee  
18 corporation only by its board of directors and by any other action required by its  
19 charter;

20 (4) A foreign corporation party to the transaction shall have the  
21 transaction advised, authorized, and approved in the manner and by the vote required  
22 by its charter and the laws of the place where it is organized;

23 (5) A merger need be approved by a Maryland successor corporation  
24 only by a majority of its entire board of directors if:

25 (i) The merger does not reclassify or change the terms of any  
26 class or series of its stock that is outstanding immediately before the merger becomes  
27 effective or otherwise amend its charter [and the number of its shares of stock of such  
28 class or series outstanding immediately after the effective time of the merger does not  
29 increase by more than 20 percent of the number of its shares of the class or series of  
30 stock that is outstanding immediately before the merger becomes effective]; or

31 (ii) There is no stock outstanding or subscribed for and entitled  
32 to be voted on the merger; and

33 (6) A business trust party to a merger shall have the merger advised,  
34 authorized, and approved in the manner and by the vote required by its declaration of  
35 trust and the laws of the place where it is organized.

1 3-109.

2 (a) Articles of consolidation, merger, share exchange, or transfer shall  
3 contain the terms and conditions of the transaction and the manner of carrying it into  
4 effect, including:

5 (1) A statement:

6 (i) In a merger, consolidation, or share exchange, that each  
7 party to the articles agrees to merge, to consolidate to form a new corporation, or to  
8 acquire stock or have its stock acquired in a share exchange, as the case may be; or

9 (ii) In a transfer, that the transferor agrees to sell, lease,  
10 exchange, or transfer all or substantially all of its property and assets;

11 (2) The name and place of incorporation or organization of:

12 (i) Each party to the articles; and

13 (ii) The successor corporation in a consolidation, merger, or  
14 share exchange or the successor domestic partnership, limited partnership or limited  
15 liability company in a merger;

16 (3) As to each foreign corporation:

17 (i) The date of its incorporation;

18 (ii) A statement whether it is incorporated under general law or  
19 by special act and, if incorporated by special act, the chapter number and year of  
20 passage; and

21 (iii) If the corporation is registered or qualified to do business in  
22 this State, the date of its registration or qualification;

23 (4) As to each foreign business trust:

24 (i) The date of its organization; and

25 (ii) If the business trust is registered or qualified to do business  
26 in this State, the date of its registration or qualification;

27 (5) As to each foreign partnership, limited partnership or limited  
28 liability company:

29 (i) The date of its formation; and

1 (ii) If the foreign partnership, limited partnership or limited  
2 liability company is registered or qualified to do business in this State, the date of its  
3 registration or qualification;

4 (6) The name, address, and principal place of business of the  
5 transferee in a transfer of assets;

6 (7) Each county in this State where:

7 (i) Each corporation, partnership, limited partnership, limited  
8 liability company, and business trust party to the articles has its principal office; and

9 (ii) Any of the parties in a consolidation, merger, or transfer,  
10 other than the successor, owns an interest in land;

11 (8) If the successor is a foreign corporation, foreign partnership,  
12 limited partnership, limited liability company, or a foreign business trust:

13 (i) The location of its principal office in the place where it is  
14 organized; and

15 (ii) The name and address of its resident agent in [this State]  
16 **THE PLACE WHERE IT IS ORGANIZED;**

17 (9) A statement that the terms and conditions of the transaction set  
18 forth in the articles were advised, authorized, and approved by each corporation,  
19 partnership, limited partnership, limited liability company, or business trust party to  
20 the articles in the manner and by the vote required by its charter or declaration of  
21 trust and the laws of the place where it is organized, and a statement of the manner of  
22 approval; and

23 (10) Every other provision necessary to effect the consolidation, merger,  
24 share exchange, or transfer of assets.

25 [3-511.

26 (a) Except as provided in subsection (b) of this section, promptly after the  
27 charter of the corporation is revived, the president or a director of the corporation shall  
28 call a meeting of the stockholders to elect a full board of directors, giving notice in the  
29 manner required by Title 2 of this article.

30 (b) The president or a director of a corporation registered under the  
31 Investment Company Act of 1940 shall not be required to call a meeting of  
32 stockholders to elect a full board of directors until the corporation is required to hold  
33 an annual meeting under § 2-501 of this article.]

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   June 1, 2011.