

SENATE BILL 58

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(PRE-FILED)

3lr0902
CF HB 209

By: **Senators West and Waldstreicher**

Requested: November 18, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 15, 2023

CHAPTER _____

1 AN ACT concerning

2 **Corporations and Associations – Revisions**

3 FOR the purpose of altering certain provisions governing the issuance of stock, convertible
4 securities, and scrip; clarifying the authority of corporations to hold annual meetings
5 by remote communication; clarifying the application of certain provisions of law to
6 the conversion of a corporation; requiring a real estate investment trust that
7 voluntarily dissolves to file a notice of termination with the State Department of
8 Assessments and Taxation; authorizing the charter or bylaws of a nonstock
9 corporation to provide for the service of certain ex officio directors; providing for the
10 application of certain provisions of law regarding voting rights to statutory trusts;
11 and generally relating to corporations and associations.

12 BY repealing and reenacting, with amendments,
13 Article – Corporations and Associations
14 Section 2–203, 2–210, 2–214, 2–501(b), 2–503(c), 4–601, 4A–402(a)(5), 5–202(b), and
15 8–502
16 Annotated Code of Maryland
17 (2014 Replacement Volume and 2022 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Corporations and Associations
20 Section 2–501(a), 2–503(a), and 4A–402(a)(8)(viii) and (9)
21 Annotated Code of Maryland
22 (2014 Replacement Volume and 2022 Supplement)

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.



1 BY adding to
2 Article – Corporations and Associations
3 Section 12–307
4 Annotated Code of Maryland
5 (2014 Replacement Volume and 2022 Supplement)

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

8 **Article – Corporations and Associations**

9 2–203.

10 (a) Before the issuance of stock or convertible securities, the board of directors
11 shall adopt a resolution that:

12 (1) Authorizes the issuance;

13 (2) Sets the minimum consideration for the stock or convertible securities
14 or a formula for its determination; and

15 (3) Fairly describes any consideration other than money.

16 (b) In the absence of actual fraud in the transaction, the minimum consideration
17 stated in the charter or determined by the board of directors in its resolution is conclusive
18 for all purposes.

19 (c) For purposes of this section, the consideration for stock issued as a stock
20 dividend is the resulting capitalization of surplus.

21 (d) This section does not apply to the issuance of stock or convertible securities as
22 part of:

23 (1) A reclassification of stock effected by amendment of the charter; or

24 (2) A consolidation, merger, [or] share exchange, **OR CONVERSION**,
25 including a consolidation, merger, [or] share exchange, **OR CONVERSION** to which a wholly
26 owned subsidiary of the corporation is a party.

27 (e) If its issuance is authorized in accordance with this subtitle, stock with par
28 value and securities convertible into stock with par value may be issued as full paid and
29 nonassessable even if the price or value of the consideration received is less than the par
30 value of the stock issued or the stock into which the securities are convertible.

1 (f) Notwithstanding any other provision of this section or § 2–204 or § 2–206 of
2 this subtitle, a corporation may issue stock or other securities of the corporation pursuant
3 to § 2–103(13) of this title without consideration of any kind.

4 2–210.

5 (a) Except as provided in subsections (b) and (c) of this section, each stockholder
6 is entitled to stock certificates [which] **THAT** represent and certify the shares of stock [he]
7 **THE STOCKHOLDER** holds in the corporation.

8 (b) A stock certificate may not be issued until the stock represented by it is fully
9 paid.

10 (c) (1) Unless the charter or bylaws provide otherwise, the board of directors
11 of a corporation may authorize the issue of some or all of the shares of any or all of its
12 classes or series without certificates.

13 (2) The authorization under paragraph (1) of this subsection does not affect
14 shares already represented by certificates until they are surrendered to the corporation.

15 (3) For shares issued without certificates, on request by a stockholder, the
16 corporation shall send the stockholder, without charge, a statement in writing or by
17 electronic transmission of the information required on certificates by § 2–211 of this
18 subtitle.

19 **(D) A CORPORATION MAY NOT ISSUE A STOCK CERTIFICATE IN BEARER**
20 **FORM.**

21 2–214.

22 (a) A corporation may, but is not obliged to:

23 (1) Issue fractional shares of stock;

24 (2) Eliminate a fractional interest by rounding up to a full share of stock;

25 (3) Arrange for the disposition of a fractional interest by the person entitled
26 to it;

27 (4) Pay cash for the fair value of a fractional share of stock determined as
28 of the time when the person entitled to receive it is determined; or

29 (5) Issue scrip or other evidence of ownership which:

30 (i) Entitles its holder to exchange scrip or other evidence of
31 ownership aggregating a full share for a certificate which represents the share; and

1 (ii) Unless otherwise provided, does not entitle its holder to exercise
2 voting rights, receive dividends, or participate in the assets of the corporation in the event
3 of liquidation.

4 (b) The board of directors may impose any reasonable condition on the issuance
5 of the scrip or other evidence of ownership, including a condition that:

6 (1) It becomes void if not exchanged for a certificate representing a full
7 share of stock before a specified date;

8 (2) The corporation may sell the stock for which the scrip or other evidence
9 of ownership is exchangeable and distribute the proceeds to the holders; or

10 (3) The proceeds of a sale under paragraph (2) of this subsection are
11 forfeited to the corporation if not claimed within a specified period not less than three years
12 from the date the scrip or other evidence of ownership was originally issued.

13 **(C) A CORPORATION MAY NOT ISSUE A CERTIFICATE REPRESENTING SCRIP**
14 **IN BEARER FORM.**

15 **(D) FOR SCRIP ISSUED WITHOUT A CERTIFICATE, ON REQUEST BY A**
16 **SCRIPHOLDER, THE CORPORATION SHALL DELIVER TO THE SCRIPHOLDER,**
17 **WITHOUT CHARGE, A STATEMENT IN WRITING OR BY ELECTRONIC TRANSMISSION OF**
18 **THE INFORMATION REQUIRED TO BE ON A CERTIFICATE UNDER § 2-211 OF THIS**
19 **SUBTITLE.**

20 2-501.

21 (a) Each corporation shall hold an annual meeting of its stockholders to elect
22 directors and transact any other business within its powers.

23 (b) (1) If the charter or bylaws of a corporation [registered under] **THAT IS AN**
24 **INVESTMENT COMPANY AS DEFINED IN** the Investment Company Act of 1940 so
25 provides, the corporation is not required to hold an annual meeting in any year in which
26 the election of directors is not required to be acted upon under the Investment Company
27 Act of 1940.

28 (2) If a corporation is required under paragraph (1) of this subsection to
29 hold a meeting of stockholders to elect directors, the meeting shall be designated as the
30 annual meeting of stockholders for that year.

31 2-503.

32 (a) Unless the charter provides otherwise, meetings of stockholders shall be held
33 as is:

1 (1) Provided in the charter or bylaws; or

2 (2) Set by the board of directors under the provisions of the charter or
3 bylaws.

4 (c) If authorized by the board of directors and subject to any guidelines and
5 procedures that the board adopts, stockholders and proxy holders not physically present at
6 the meeting of the stockholders, may, by remote communication:

7 (1) Participate in the meeting of the stockholders; and

8 (2) Be considered present in person and may vote at the meeting of the
9 stockholders, whether the meeting is held at a designated place or **PARTIALLY OR** solely
10 by remote communication, if:

11 (i) The corporation implements reasonable measures to verify that
12 each person considered present and authorized to vote at the meeting by remote
13 communication is a stockholder or proxy holder;

14 (ii) The corporation implements reasonable measures to provide the
15 stockholders and proxy holders a reasonable opportunity to participate in the meeting and
16 to vote on matters submitted to the stockholders, including an opportunity to read or hear
17 the proceedings of the meeting substantially concurrently with the proceedings; and

18 (iii) In the event any stockholder or proxy holder votes or takes other
19 action at the meeting by remote communication, a record of the vote or other action is
20 maintained by the corporation.

21 4–601.

22 (A) **[A] SUBJECT TO SUBSECTION (B) OF THIS SECTION**, A consolidation,
23 merger, share exchange, **[or]** transfer of assets, **OR CONVERSION** of a close corporation
24 shall be made in accordance with the provisions of Title 3 of this article.

25 (B) **[However, approval] APPROVAL** of a proposed consolidation or merger, a
26 transfer of **[its]** assets, **A CONVERSION**, or an acquisition of **[its]** stock in a share exchange
27 requires the affirmative vote of every stockholder of the **CLOSE** corporation.

28 4A–402.

29 (a) Except for the requirement set forth in § 4A–404 of this subtitle that certain
30 consents be in writing, members may enter into an operating agreement not inconsistent
31 with the articles of organization to regulate or establish any aspect of the affairs of the
32 limited liability company, the conduct of its business, or the relations of its members,
33 including provisions establishing:

1 (5) (i) The right to have and a procedure for having a member's
2 membership interest evidenced by a certificate issued by the limited liability company,
3 which may NOT be issued in bearer form [only if specifically allowed by the operating
4 agreement];

5 (ii) The procedure for assignment, pledge, or transfer of any
6 membership interest represented by the certificate; and

7 (iii) Any other provisions dealing with the certificate;

8 (8) Procedures relating to:

9 (viii) Any other matter with respect to the exercise of voting rights by
10 members; or

11 (9) That a membership interest, an economic interest, or a noneconomic
12 interest may or shall be transferred or assigned in whole or in part to one or more persons,
13 including on the occurrence of any of the events described in § 4A-606 of this title,
14 regardless of whether the persons to whom the interest is transferred or assigned are
15 members.

16 5-202.

17 (b) Notwithstanding any other provision of this article, the charter or bylaws of a
18 nonstock corporation may:

19 (1) Divide the directors or members of the corporation into classes;

20 (2) Prescribe the tenure and conditions of service of its directors, but no
21 class of directors may be elected to serve for a period shorter than the interval between
22 annual meetings unless:

23 (i) All or a class of directors must be members; and

24 (ii) Qualifications for membership have the effect of shortening their
25 tenure of service;

26 (3) **PROVIDE THAT AN INDIVIDUAL MAY SERVE AS A DIRECTOR BY**
27 **REASON OF SERVING IN A SPECIFIED OFFICE OR POSITION WITHIN OR OUTSIDE THE**
28 **CORPORATION AND PRESCRIBE THAT THE INDIVIDUAL SHALL SERVE AS A DIRECTOR**
29 **DURING THE INDIVIDUAL'S SERVICE IN THE SPECIFIED OFFICE OR POSITION;**

30 (4) Prescribe the rights, privileges, and qualifications of its members;

31 [(4)] (5) Prescribe the manner of giving notice of any meeting of its
32 members;

1 ~~[(5)] (6)~~ Provide for the number or proportion of voting members whose
2 presence in person or by proxy constitutes a quorum at any meeting of its members;

3 ~~[(6)] (7)~~ Provide that any action may be taken or authorized by any
4 number or proportion of the votes of all its members or all its directors entitled to vote;

5 ~~[(7)] (8)~~ Deny or limit the right of its members to vote by proxy;

6 ~~[(8)] (9)~~ Provide for the right of members to vote by mail or by electronic
7 transmission on a stated proposal or for the election of directors or any officers who are
8 elected by members;

9 ~~[(9)] (10)~~ Regulate the management of the business and affairs of the
10 corporation; and

11 ~~[(10)] (11)~~ Regulate the exercise or allocation of voting power between or
12 among the directors and members.

13 8-502.

14 (a) A real estate investment trust may terminate its existence by voluntary
15 dissolution **IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION.** [The
16 Department shall be notified of the effective date of the dissolution.]

17 (b) [A real estate investment trust may curtail or cease its trust activities by
18 partially or completely distributing its assets.]

19 **(1) IN ORDER TO TERMINATE ITS EXISTENCE, A REAL ESTATE**
20 **INVESTMENT TRUST MUST FILE A NOTICE OF TERMINATION WITH THE DEPARTMENT**
21 **THAT INCLUDES:**

22 **(I) THE NAME OF THE REAL ESTATE INVESTMENT TRUST;**

23 **(II) 1. A STATEMENT THAT THE TERMINATION OF THE REAL**
24 **ESTATE INVESTMENT TRUST BY VOLUNTARY DISSOLUTION WAS APPROVED IN THE**
25 **MANNER AND BY THE VOTE REQUIRED BY LAW AND BY THE DECLARATION OF TRUST**
26 **OF THE REAL ESTATE INVESTMENT TRUST; AND**

27 **2. A STATEMENT DETAILING THE MANNER OF**
28 **APPROVAL;**

29 **(III) ALL OTHER PROVISIONS THE BOARD OF THE REAL ESTATE**
30 **INVESTMENT TRUST CONSIDERS NECESSARY TO DISSOLVE AND TERMINATE THE**
31 **REAL ESTATE INVESTMENT TRUST; AND**

1 (IV) A STATEMENT THAT THE REAL ESTATE INVESTMENT TRUST
2 IS DISSOLVED AND TERMINATED.

3 (2) THE NOTICE OF TERMINATION SHALL BE EXECUTED BY:

4 (I) THE CHAIRMAN OR VICE CHAIRMAN OF THE BOARD OF
5 TRUSTEES;

6 (II) THE CHIEF EXECUTIVE OFFICER;

7 (III) THE CHIEF OPERATING OFFICER;

8 (IV) THE CHIEF FINANCIAL OFFICER;

9 (V) THE PRESIDENT OR A VICE PRESIDENT; OR

10 (VI) IF AUTHORIZED BY THE BYLAWS OR A RESOLUTION OF THE
11 BOARD OF TRUSTEES, ANY OTHER OFFICER OR AGENT OF THE REAL ESTATE
12 INVESTMENT TRUST.

13 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
14 THE REAL ESTATE INVESTMENT TRUST IS DISSOLVED AND TERMINATED ON THE
15 LATER OF:

16 (I) THE TIME THAT THE DEPARTMENT ACCEPTS THE NOTICE
17 OF TERMINATION FOR RECORD; OR

18 (II) THE TIME ESTABLISHED BY THE NOTICE OF TERMINATION,
19 NOT TO EXCEED 30 DAYS AFTER THE NOTICE IS ACCEPTED FOR RECORD.

20 (2) THE REAL ESTATE INVESTMENT TRUST CONTINUES TO EXIST FOR
21 THE PURPOSE OF:

22 (I) PAYING, SATISFYING, AND DISCHARGING ANY EXISTING
23 DEBTS OR OBLIGATIONS;

24 (II) COLLECTING AND DISTRIBUTING ASSETS; AND

25 (III) TAKING ALL OTHER ACTIONS REQUIRED TO LIQUIDATE AND
26 WIND UP ITS BUSINESS AND AFFAIRS.

1 ~~[(c)]~~ **(D)** (1) The Attorney General may institute proceedings to dissolve a
2 real estate investment trust ~~[which]~~ **THAT** has abused, misused, or failed to use its powers.

3 **(2)** The proceedings shall be brought in the manner and on the grounds
4 provided in Title 3, Subtitle 5 of this article with respect to dissolution of a corporation for
5 misuse of its franchise.

6 ~~[(2)]~~ **(3)** The venue of an action under this subsection is in a county where
7 an officer or resident agent of the real estate investment trust is located.

8 **12-307.**

9 **(A) NOTWITHSTANDING § 3-709 OF THIS ARTICLE, THE PROVISIONS OF**
10 **TITLE 3, SUBTITLE 7 OF THIS ARTICLE APPLY TO A STATUTORY TRUST FORMED ON**
11 **OR AFTER OCTOBER 1, 2023, THAT IS A CLOSED-END INVESTMENT COMPANY AS**
12 **DEFINED IN THE INVESTMENT COMPANY ACT OF 1940.**

13 **(B) NOTWITHSTANDING § 3-709 OF THIS ARTICLE, THE GOVERNING**
14 **INSTRUMENT OF A STATUTORY TRUST FORMED BEFORE OCTOBER 1, 2023, THAT IS**
15 **A CLOSED-END INVESTMENT COMPANY AS DEFINED IN THE INVESTMENT COMPANY**
16 **ACT OF 1940 MAY PROVIDE THAT TITLE 3, SUBTITLE 7 OF THIS ARTICLE APPLIES**
17 **TO THE STATUTORY TRUST.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2023.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.