

SENATE BILL 622

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CF HB 702

By: **Senator Raskin**

Introduced and read first time: February 1, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Corporations and Associations – Document Filing and Processing**

3 FOR the purpose of altering the definition of “electronic transmission”, for purposes of
4 provisions of law governing business entities, to clarify that it includes
5 electronic mail, facsimile transmission, and Internet transmission; clarifying
6 the authority of the State Department of Assessments and Taxation to accept
7 documents that are filed for record by electronic transmission; repealing certain
8 obsolete provisions of law relating to filing documents by means of a facsimile
9 device; authorizing the Department, under certain circumstances, to accept
10 certain documents or drafts of certain documents for approval of the documents’
11 sufficiency before the documents are filed with the Department; authorizing the
12 Department to adopt regulations to administer the preclearance process;
13 establishing a certain processing fee for preclearance of certain documents and
14 drafts of certain documents; requiring the fees collected to be credited to a
15 certain fund; establishing a certain fee for processing certain documents on a
16 certain expedited basis; requiring the Department, under certain circumstances,
17 to process certain documents within a certain period of time after the
18 documents are received; requiring an entity to take certain actions if the
19 Department waives the requirement that the written consent of the entity’s
20 resident agent must be filed with the Department; establishing when a certain
21 consent shall be effective; making certain stylistic, conforming, and clarifying
22 changes; defining certain terms; repealing a certain definition; providing for the
23 construction of this Act; and generally relating to filing and processing business
24 entity documents.

25 BY repealing and reenacting, with amendments,
26 Article – Corporations and Associations
27 Section 1–101, 1–201, 1–203, 1–203.2, and 1–208
28 Annotated Code of Maryland
29 (2007 Replacement Volume and 2012 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Corporations and Associations**

4 1–101.

5 (a) In this article, unless the context clearly requires otherwise, the following
6 words have the meanings indicated.

7 (b) “Address” means the post office address, and includes street and number,
8 if any, county or municipal area, and state and, if outside the United States, country.

9 (c) “Articles of transfer” means articles of sale, articles of lease, articles of
10 asset exchange, or articles of transfer.

11 (d) “Assets” means any tangible, intangible, real, or personal property or
12 other assets, including goodwill and franchises.

13 (e) “Business trust” means an unincorporated trust or association, including
14 a common-law trust, a Massachusetts trust, a real estate investment trust as defined
15 in § 8–101 of this article, a statutory trust as defined in § 12–101 of this article, and a
16 foreign statutory trust as defined in § 12–101 of this article, that is engaged in
17 business and in which property is acquired, held, managed, administered, controlled,
18 invested, or disposed of by trustees or the trust for the benefit and profit of any person
19 who may become a holder of a transferable unit of beneficial interest in the trust.

20 (f) (1) “Charter” includes:

21 (i) A charter granted by special act of the General Assembly;

22 (ii) Articles or certificate of incorporation;

23 (iii) Amended articles or certificate of incorporation;

24 (iv) Articles of restatement, if approved as described in § 2–609
25 of this article;

26 (v) Articles of amendment and restatement; and

27 (vi) Articles or agreements of consolidation.

28 (2) “Charter” includes the documents referred to in paragraph (1) of
29 this subsection, either as:

30 (i) Originally passed or accepted for record; or

1 (ii) As amended, corrected, or supplemented by special act of the
2 General Assembly, articles of amendment, articles of amendment and reduction,
3 articles of extension, articles supplementary, articles or agreements of merger, articles
4 of revival, or a certificate of correction.

5 (g) "Charter document" means any:

6 (1) Document enumerated in subsection (f) of this section; and

7 (2) Articles of reduction, articles or agreements of transfer, articles of
8 merger, articles of share exchange, articles of dissolution, and stock issuance
9 statements.

10 (h) "Clerk of the court" means clerk of the circuit court for any county.

11 (i) "Convertible securities" includes:

12 (1) Shares of stock which by their terms are convertible into shares of
13 stock of one or more classes; and

14 (2) Obligations which by their terms are convertible into shares of
15 stock of one or more classes.

16 (j) "County" includes Baltimore City.

17 (k) "Department" means the State Department of Assessments and Taxation.

18 (l) "Director" means a member of the governing body of a corporation,
19 whether designated as a director, trustee, or manager or by any other title.

20 (m) (1) "Electronic transmission" means any form of communication, not
21 directly involving the physical transmission of paper, that creates a record that:

22 [(1)] (I) May be retained, retrieved, and reviewed by a recipient of
23 the communication; and

24 [(2)] (II) May be reproduced directly in paper form by a recipient
25 through an automated process.

26 (2) "ELECTRONIC TRANSMISSION" INCLUDES:

27 (I) ELECTRONIC MAIL;

28 (II) FACSIMILE TRANSMISSION; AND

29 (III) INTERNET TRANSMISSION.

1 (n) "Foreign corporation" means a corporation, association, or joint-stock
2 company organized under the laws of the United States, another state of the United
3 States, a territory, possession, or district of the United States, or a foreign country.

4 (o) "Mail" means to deposit in the United States mails postage prepaid.

5 (p) "Maryland corporation" means a corporation organized and existing
6 under the laws of the State.

7 (q) "Municipal area" means any incorporated or unincorporated city, town, or
8 village.

9 (r) "Person" includes an individual, corporation, business trust, statutory
10 trust, estate, trust, partnership, limited partnership, limited liability company,
11 association, two or more persons having a joint or common interest, or any other legal
12 or commercial entity.

13 (S) "PRECLEARANCE" MEANS APPROVAL OF THE SUFFICIENCY OF A
14 DOCUMENT OR A DRAFT OF A DOCUMENT LISTED IN § 1-203(B)(1) OR (4) OF
15 THIS TITLE BY AN AUTHORIZED AGENT OF THE DEPARTMENT BEFORE THE
16 DOCUMENT IS FILED WITH THE DEPARTMENT.

17 [(s)] (T) "Principal office" means:

18 (1) The place in this State filed or recorded with the Department as
19 the principal office of a corporation or domestic limited partnership; or

20 (2) If there is no principal office designated, the main office of the
21 corporation or domestic limited partnership in this State for the transaction of
22 business.

23 [(t)] (U) "Resident agent" means an individual residing in this State or a
24 Maryland corporation or limited liability company whose name, address, and
25 designation as a resident agent are filed or recorded with the Department in
26 accordance with the provisions of this article.

27 [(u)] (V) "Share exchange" means a transaction:

28 (1) In which a corporation acquires all the issued or all the
29 outstanding shares of stock of one or more classes of another corporation by a
30 stockholder vote under this article; and

31 (2) Which does not affect the corporate existence of either corporation.

32 (W) (1) "SIGN" MEANS:

1 **(I) TO EXECUTE OR OTHERWISE ADOPT A NAME, SYMBOL,**
2 **WORD, MARK, OR PROCESS; AND**

3 **(II) WITH THE PRESENT INTENT TO AUTHENTICATE OR**
4 **ADOPT A RECORD OR IDENTIFY ONESELF.**

5 **(2) “SIGN” INCLUDES:**

6 **(I) A MANUAL SIGNATURE;**

7 **(II) A FACSIMILE SIGNATURE;**

8 **(III) A CONFORMED SIGNATURE; AND**

9 **(IV) AN ELECTRONIC SIGNATURE.**

10 **[(v)] (X)** “Stated capital” means the amount of stated capital determined in
11 accordance with Title 2, Subtitle 3 of this article.

12 **[(w)] (Y)** “Stockholder” means a person who is a record holder of shares of
13 stock in a corporation and includes a member of a corporation organized without stock.

14 **[(x)] (Z)** “Stockholder rights plan” means an agreement or other instrument
15 under which a corporation issues rights to its stockholders that:

16 (1) May be exercised under specified circumstances to purchase stock
17 or other securities of a corporation or any other person; and

18 (2) May become void if owned by a designated person or classes of
19 persons under specified circumstances.

20 **[(y)] (AA)** “Successor” means:

21 (1) A new corporation formed by consolidation;

22 (2) A corporation or other entity surviving a merger;

23 (3) A corporation acquiring stock in a share exchange; or

24 (4) A vendee, lessee, or other transferee in a transfer of assets.

25 **[(z)] (BB)** “Transfer assets”, “transfer its assets”, and “transfer of assets”
26 mean to sell, lease, exchange, or otherwise transfer all or substantially all of the assets
27 of a corporation.

1 1-201.

2 (a) The Department may not accept for record any charter document of a
3 Maryland corporation which does not conform with law. However, any document
4 which purports to be acknowledged may be treated by the Department as properly
5 acknowledged.

6 (b) The Department may not accept for record or filing any charter
7 document, qualification, registration, change of resident agent or principal office,
8 report, service of process or notice, or other document until all required recording,
9 filing, organization and capitalization, and other special fees have been paid to the
10 Department.

11 (c) (1) [In this subsection "facsimile device" means a machine that
12 transmits, receives, and copies documents electronically or telephonically over
13 telecommunication lines.

14 (2) As provided in § 1-203.2 of this subtitle, the] **THE** Department
15 may accept documents that are filed for record by [means of a facsimile device]
16 **ELECTRONIC TRANSMISSION.**

17 [(3)] (2) Documents filed for record by [means of a facsimile device]
18 **ELECTRONIC TRANSMISSION** are subject to the regular filing fees and expedited
19 [filing] **PROCESSING** fees provided in § 1-203 of this subtitle.

20 (D) (1) **ON PAYMENT OF THE REGULAR PROCESSING FEE AND, IF**
21 **APPLICABLE, EXPEDITED PROCESSING FEE PROVIDED IN § 1-203 OF THIS**
22 **SUBTITLE, THE DEPARTMENT MAY ACCEPT FOR PRECLEARANCE ANY**
23 **DOCUMENT OR DRAFT OF ANY DOCUMENT LISTED IN § 1-203(B)(1) OR (4) OF**
24 **THIS SUBTITLE.**

25 (2) **THE DEPARTMENT MAY ADOPT REGULATIONS TO**
26 **ADMINISTER THE PRECLEARANCE PROCESS.**

27 1-203.

28 (a) In addition to any organization and capitalization fee required under §
29 1-204 of this subtitle, subject to subsection (c) of this section, the Department shall
30 collect the fees specified in subsection (b) of this section.

31 (b) (1) Except as provided in paragraph (11) of this subsection, for each of
32 the following documents, the nonrefundable processing fee is \$100:

33 Document
34 Articles of incorporation

- 1 Articles of amendment
- 2 Articles of extension
- 3 Articles of restatement of charter
- 4 Articles of amendment and restatement
- 5 Articles supplementary
- 6 Articles of share exchange
- 7 Articles of consolidation, merger, or transfer
- 8 Articles of dissolution
- 9 Articles of revival for stock corporation
- 10 Articles of revival for nonstock corporation

11 (2) For each of the following documents, the nonrefundable processing
 12 fee is as indicated:

- 13 (i) Notice of change of address of principal office \$25
- 14 (ii) Notice of change of name or address of resident agent ... \$25,
 15 up to a maximum of \$30,000 for a bulk filing
- 16 (iii) Certificate of correction \$25
- 17 (iv) Any other documents \$25

18 (3) (i) For each of the following documents which are filed but not
 19 recorded, the nonrefundable processing fee is as indicated:

- 20 Reservation of a corporate, limited partnership, limited liability
 21 partnership or limited liability company name \$25
- 22 Original registration of name of a foreign corporation to end of
 23 calendar year \$100
- 24 Renewal of registration of name of a foreign corporation for one
 25 calendar year \$100
- 26 Documents in connection with the qualification of a foreign
 27 corporation to do intrastate business in this State..... \$100
- 28 Application for registration of a foreign limited partnership, a foreign
 29 limited liability partnership, or a foreign limited liability
 30 company \$100
- 31 Other documents..... \$6

32 (ii) For each of the following documents which are filed but not
 33 recorded, the filing fee is as indicated:

- 34 Annual report of a Maryland corporation, except a charitable or
 35 benevolent institution, nonstock corporation, savings and loan
 36 corporation, credit union, family farm, and banking
 37 institution \$300

1	Annual report of a foreign corporation subject to the jurisdiction of	
2	this State, except a national banking association, savings and	
3	loan association, credit union, nonstock corporation, and	
4	charitable and benevolent institution	\$300
5	Annual report of a Maryland savings and loan association, banking	
6	institution, or credit union or of a foreign savings and loan	
7	association, national banking association, or credit union that is	
8	subject to the jurisdiction of this State.....	\$300
9	Annual report of a Maryland limited liability company, limited	
10	liability partnership, limited partnership, or of a foreign limited	
11	liability company, foreign limited liability partnership, or	
12	foreign limited partnership, except a family farm.....	\$300
13	Annual report of a business trust.....	\$300
14	Annual report of a real estate investment trust or foreign statutory	
15	trust doing business in this State.....	\$300
16	Annual report of a family farm.....	\$100

17 (4) For each of the following documents recorded or filed the
 18 nonrefundable processing fee is \$100:

19 (i) Certificate of limited partnership, certificate of limited
 20 liability partnership, articles of organization of a limited liability company, certificate
 21 of trust of a business trust, including certificates of amendment and certificates of
 22 cancellation, certificates of reinstatement, and articles of reinstatement; and

23 (ii) Any statement filed by a partnership under Title 9A of this
 24 article.

25 (5) For issuing each of the following certificates, the nonrefundable
 26 processing fee is as indicated:

27	Type of Instrument	Special Fee
28	Certificate of status of a corporation, partnership, limited partnership,	
29	limited liability partnership, or limited liability company of this	
30	State or of a foreign corporation, foreign partnership, foreign	
31	limited partnership, foreign limited liability partnership, or	
32	foreign limited liability company.....	\$20
33	Certified list of the charter papers of a corporation of this State or any	
34	certificates of a limited partnership, limited liability	
35	partnership, or a limited liability company of this State	
36	recorded or filed with the Department.....	\$20
37	Certificate of compliance by a foreign corporation, foreign limited	
38	partnership, foreign limited liability partnership, or foreign	
39	limited liability company with requirements of law in respect of	
40	qualification or registration	\$20
41	Certificate of withdrawal of registration or qualification	\$20
42	Certificate of any paper recorded or filed in the Department's office.....	\$20

1 (6) For a duplicate of a certificate mentioned in paragraph (5) of this
2 subsection which is issued at the same time as the original, the fee is \$1, and for a
3 copy of any other paper recorded or filed with the Department, the fee is \$1 per page.

4 (7) (i) For acceptance of service of process or notice on the
5 Department, the Department shall charge a fee of \$50.

6 (ii) Each county and Baltimore City is exempt from the fee
7 under subparagraph (i) of this paragraph.

8 (8) For processing each of the following documents on an expedited
9 basis, the additional fee is as indicated:

10	RECORDING ANY DOCUMENT, INCLUDING FINANCING	
11	STATEMENTS, OR SUBMITTING FOR PRECLEARANCE ANY	
12	DOCUMENT LISTED IN PARAGRAPH (1) OR (4) OF THIS	
13	SUBSECTION, IF PROCESSING UNDER § 1-203.2(B)(1) OF	
14	THIS SUBTITLE IS REQUESTED	\$425
15	Recording any document, including financing statements, OR	
16	SUBMITTING FOR PRECLEARANCE ANY DOCUMENT LISTED	
17	IN PARAGRAPH (1) OR (4) OF THIS SUBSECTION, IF	
18	PROCESSING UNDER § 1-203.2(B)(1) IS NOT REQUESTED	\$50
19	Certificate of status of a corporation, partnership, limited partnership,	
20	limited liability partnership, or limited liability company, or a	
21	name reservation.....	\$20
22	A copy of any document recorded or filed with the Department, or a	
23	corporate abstract.....	\$20
24	Application for a ground rent redemption or a ground rent	
25	extinguishment, or payment of a redemption or extinguishment	
26	amount to the former owner of the ground rent	\$50

27 (9) A nonrefundable processing fee for a request by paper document
28 for an extension of the date for submitting an annual report under § 14-704 of the
29 Tax – Property Article is \$20.

30 (10) A nonrefundable processing fee for return of an original document
31 is \$5.

32 (11) A nonrefundable processing fee for articles of incorporation of a
33 nonstock corporation that is organized to operate as a not-for-profit entity under §
34 501(c)(3), (4), or (6) of the Internal Revenue Code is \$150.

35 (12) A fee for the nonpayment of a check or other negotiable instrument
36 that was presented to the Department as payment for any of the other fees imposed
37 under this section is \$30.

1 **(13) A NONREFUNDABLE PROCESSING FEE FOR PRECLEARANCE**
2 **OF A DOCUMENT OR DRAFT OF A DOCUMENT LISTED IN PARAGRAPH (1) OR (4)**
3 **OF THIS SUBSECTION IS \$275.**

4 (c) For each fee identified under subsection (b) of this section as
5 nonrefundable, the Department shall adopt regulations to specify the conditions under
6 which the fee shall be nonrefundable and the conditions under which the fee may be
7 applied to a resubmission of a document for filing, recording, or processing.

8 (d) The [fee] **FEES** collected under subsection [(b)(10)] **(B)(8), (10), AND**
9 **(13)** of this section shall be credited to the fund established under § 1–203.3 of this
10 subtitle.

11 (e) Of the \$150 collected under subsection (b)(11) of this section, \$50 shall be
12 credited to the Maryland Not–For–Profit Development Center Program Fund
13 established under § 5–1204 of the Economic Development Article.

14 1–203.2.

15 (a) [The] **ON PAYMENT OF THE FEE PROVIDED IN § 1–203(B)(8) OF THIS**
16 **SUBTITLE, THE** Department shall process documents on an expedited basis [upon the
17 payment of the fee provided in § 1–203(b)(8) of this subtitle] **AS PROVIDED IN**
18 **SUBSECTION (B) OF THIS SECTION.**

19 (b) **(1) THE DEPARTMENT SHALL PROCESS DOCUMENTS FILED WITH**
20 **THE DEPARTMENT AT LEAST 2 HOURS BEFORE THE DEPARTMENT’S CLOSE OF**
21 **BUSINESS WITHIN 2 HOURS AFTER THE DOCUMENTS ARE RECEIVED.**

22 **(2) [The Department shall, to] TO** the extent practicable, **THE**
23 **DEPARTMENT SHALL** process **ALL OTHER** documents [filed in person on an
24 expedited basis] on the same day that the documents are received.

25 (c) The Department shall adopt regulations governing the **MANNER OF**
26 **FILING AND** processing of documents on an expedited basis, including reasonable
27 limitations on filing documents of unusual volume or length.

28 [(d) The fees collected under § 1–203(b)(8) of this subtitle shall be credited to
29 the fund established under § 1–203.3 of this subtitle.]

30 1–208.

31 (a) Notwithstanding any other provision of this title, an entity that is
32 required to have a resident agent may not designate a person as a resident agent
33 without first obtaining the person’s written consent.

1 (b) (1) **(I)** [An] **UNLESS WAIVED BY THE DEPARTMENT, AN** entity
2 shall file a resident agent's written consent with the Department.

3 **[(2)] (II)** The consent shall be effective [upon] **ON** acceptance by the
4 Department.

5 **(2) (I)** **IF THE FILING OF A RESIDENT AGENT'S WRITTEN**
6 **CONSENT IS WAIVED BY THE DEPARTMENT, AN ENTITY SHALL:**

7 **1. CERTIFY TO THE DEPARTMENT THAT THE**
8 **WRITTEN CONSENT OF THE RESIDENT AGENT HAS BEEN OBTAINED;**

9 **2. MAINTAIN A COPY OF THE WRITTEN CONSENT IN**
10 **ITS RECORDS; AND**

11 **3. PROVIDE A COPY OF THE WRITTEN CONSENT TO**
12 **THE DEPARTMENT ON REQUEST.**

13 **(II) THE CONSENT SHALL BE EFFECTIVE ON CERTIFICATION**
14 **TO THE DEPARTMENT THAT THE CONSENT HAS BEEN OBTAINED.**

15 (c) Subsections (a) and (b) of this section do not apply to resident agents
16 designated before October 1, 1998.

17 (d) A person designated a resident agent may resign without paying the fee
18 under § 1-203(b)(2) of this subtitle.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be
20 construed to invalidate or otherwise affect any filings made with the State
21 Department of Assessments and Taxation before the effective date of this Act.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 2013.