C1 3lr0902 (PRE–FILED) CF 3lr1160

By: Senators West and Waldstreicher

Requested: November 18, 2022

Introduced and read first time: January 11, 2023

Assigned to: Judicial Proceedings

A BILL ENTITLED

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)
- 23 BY adding to
- 24 Article Corporations and Associations
- 25 Section 12–307
- 26 Annotated Code of Maryland
- 27 (2014 Replacement Volume and 2022 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 MARYLAND,
2	That the Laws of Maryland read as follows:

Article – Corporations and Associations

4 2-203.

- 5 (a) Before the issuance of stock or convertible securities, the board of directors 6 shall adopt a resolution that:
- 7 (1) Authorizes the issuance;
- 8 (2) Sets the minimum consideration for the stock or convertible securities 9 or a formula for its determination; and
- 10 (3) Fairly describes any consideration other than money.
- 11 (b) In the absence of actual fraud in the transaction, the minimum consideration 12 stated in the charter or determined by the board of directors in its resolution is conclusive 13 for all purposes.
- 14 (c) For purposes of this section, the consideration for stock issued as a stock dividend is the resulting capitalization of surplus.
- 16 (d) This section does not apply to the issuance of stock or convertible securities as 17 part of:
- 18 (1) A reclassification of stock effected by amendment of the charter; or
- 19 (2) A consolidation, merger, [or] share exchange, **OR CONVERSION**, 20 including a consolidation, merger, [or] share exchange, **OR CONVERSION** to which a wholly 21 owned subsidiary of the corporation is a party.
- 22 (e) If its issuance is authorized in accordance with this subtitle, stock with par 23 value and securities convertible into stock with par value may be issued as full paid and 24 nonassessable even if the price or value of the consideration received is less than the par 25 value of the stock issued or the stock into which the securities are convertible.
- 26 (f) Notwithstanding any other provision of this section or $\S 2-204$ or $\S 2-206$ of this subtitle, a corporation may issue stock or other securities of the corporation pursuant to $\S 2-103(13)$ of this title without consideration of any kind.
- 29 2-210.

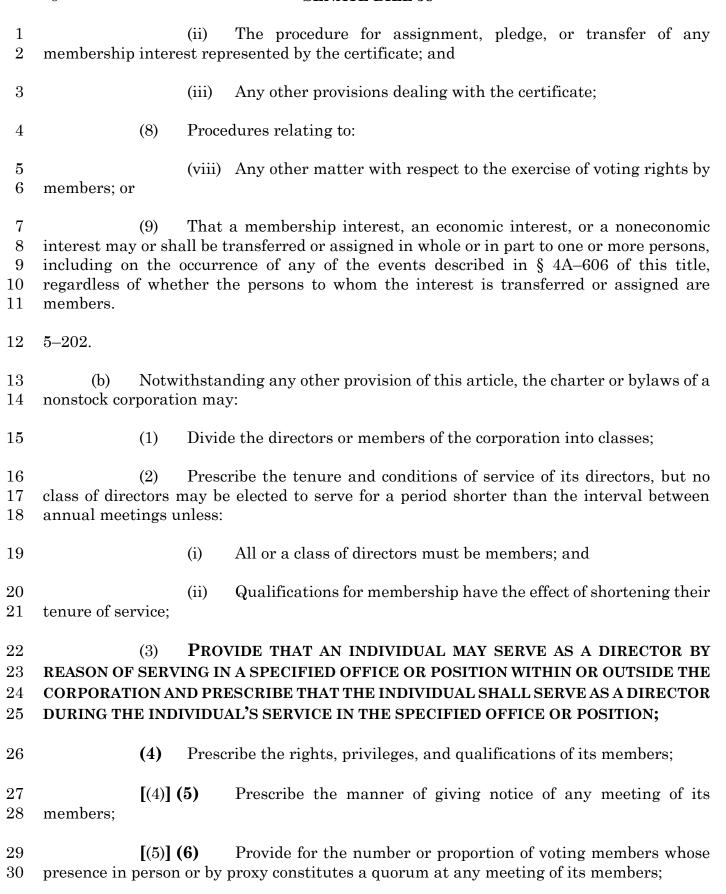
- 1 (a) Except as provided in subsections (b) and (c) of this section, each stockholder 2 is entitled to stock certificates [which] THAT represent and certify the shares of stock [he] THE STOCKHOLDER holds in the corporation. 3 4 A stock certificate may not be issued until the stock represented by it is fully (b) 5 paid. 6 (c) (1) Unless the charter or bylaws provide otherwise, the board of directors 7 of a corporation may authorize the issue of some or all of the shares of any or all of its 8 classes or series without certificates. 9 The authorization under paragraph (1) of this subsection does not affect 10 shares already represented by certificates until they are surrendered to the corporation. 11 (3)For shares issued without certificates, on request by a stockholder, the 12 corporation shall send the stockholder, without charge, a statement in writing or by 13 electronic transmission of the information required on certificates by § 2-211 of this subtitle. 14 A CORPORATION MAY NOT ISSUE A STOCK CERTIFICATE IN BEARER 15 (D) 16 FORM. 2-214.17 (a) A corporation may, but is not obliged to: 18 19 (1) Issue fractional shares of stock; 20 (2) Eliminate a fractional interest by rounding up to a full share of stock; 21Arrange for the disposition of a fractional interest by the person entitled (3)22 to it; 23 Pay cash for the fair value of a fractional share of stock determined as **(4)** 24of the time when the person entitled to receive it is determined; or 25 Issue scrip or other evidence of ownership which: (5)26 Entitles its holder to exchange scrip or other evidence of 27 ownership aggregating a full share for a certificate which represents the share; and 28 Unless otherwise provided, does not entitle its holder to exercise 29 voting rights, receive dividends, or participate in the assets of the corporation in the event
- 31 (b) The board of directors may impose any reasonable condition on the issuance 32 of the scrip or other evidence of ownership, including a condition that:

of liquidation.

- 1 (1) It becomes void if not exchanged for a certificate representing a full 2 share of stock before a specified date;
- 3 (2) The corporation may sell the stock for which the scrip or other evidence 4 of ownership is exchangeable and distribute the proceeds to the holders; or
- 5 (3) The proceeds of a sale under paragraph (2) of this subsection are 6 forfeited to the corporation if not claimed within a specified period not less than three years 7 from the date the scrip or other evidence of ownership was originally issued.
- 8 (C) A CORPORATION MAY NOT ISSUE A CERTIFICATE REPRESENTING SCRIP 9 IN BEARER FORM.
- 10 **(D)** FOR SCRIP ISSUED WITHOUT A CERTIFICATE, ON REQUEST BY A SCRIPHOLDER, THE CORPORATION SHALL DELIVER TO THE SCRIPHOLDER, WITHOUT CHARGE, A STATEMENT IN WRITING OR BY ELECTRONIC TRANSMISSION OF THE INFORMATION REQUIRED TO BE ON A CERTIFICATE UNDER § 2–211 OF THIS SUBTITLE.
- 15 2–501.
- 16 (a) Each corporation shall hold an annual meeting of its stockholders to elect 17 directors and transact any other business within its powers.
- 18 (b) (1) If the charter or bylaws of a corporation [registered under] THAT IS AN
 19 INVESTMENT COMPANY AS DEFINED IN the Investment Company Act of 1940 so
 20 provides, the corporation is not required to hold an annual meeting in any year in which
 21 the election of directors is not required to be acted upon under the Investment Company
 22 Act of 1940.
- 23 (2) If a corporation is required under paragraph (1) of this subsection to 24 hold a meeting of stockholders to elect directors, the meeting shall be designated as the 25 annual meeting of stockholders for that year.
- 26 2–503.
- 27 (a) Unless the charter provides otherwise, meetings of stockholders shall be held 28 as is:
- 29 (1) Provided in the charter or bylaws; or
- 30 (2) Set by the board of directors under the provisions of the charter or 31 bylaws.

- 1 (c) If authorized by the board of directors and subject to any guidelines and 2 procedures that the board adopts, stockholders and proxy holders not physically present at 3 the meeting of the stockholders, may, by remote communication:
 - (1) Participate in the meeting of the stockholders; and
- 5 (2) Be considered present in person and may vote at the meeting of the stockholders, whether the meeting is held at a designated place or **PARTIALLY OR** solely by remote communication, if:
- 8 (i) The corporation implements reasonable measures to verify that 9 each person considered present and authorized to vote at the meeting by remote 10 communication is a stockholder or proxy holder;
- 11 (ii) The corporation implements reasonable measures to provide the 12 stockholders and proxy holders a reasonable opportunity to participate in the meeting and 13 to vote on matters submitted to the stockholders, including an opportunity to read or hear 14 the proceedings of the meeting substantially concurrently with the proceedings; and
- 15 (iii) In the event any stockholder or proxy holder votes or takes other 16 action at the meeting by remote communication, a record of the vote or other action is 17 maintained by the corporation.
- 18 4-601.

- 19 **(A)** [A] SUBJECT TO SUBSECTION (B) OF THIS SECTION, A consolidation, 20 merger, share exchange, [or] transfer of assets, OR CONVERSION of a close corporation 21 shall be made in accordance with the provisions of Title 3 of this article.
- (B) [However, approval] APPROVAL of a proposed consolidation or merger, a transfer of [its] assets, A CONVERSION, or an acquisition of [its] stock in a share exchange requires the affirmative vote of every stockholder of the CLOSE corporation.
- 25 4A-402.
- 26 (a) Except for the requirement set forth in § 4A-404 of this subtitle that certain 27 consents be in writing, members may enter into an operating agreement not inconsistent 28 with the articles of organization to regulate or establish any aspect of the affairs of the 29 limited liability company, the conduct of its business, or the relations of its members, 30 including provisions establishing:
- 31 (5) (i) The right to have and a procedure for having a member's membership interest evidenced by a certificate issued by the limited liability company, which may **NOT** be issued in bearer form [only if specifically allowed by the operating agreement];



- [(6)] **(7)** 1 Provide that any action may be taken or authorized by any 2 number or proportion of the votes of all its members or all its directors entitled to vote; 3 [(7)] **(8)** Deny or limit the right of its members to vote by proxy; 4 [(8)] **(9)** Provide for the right of members to vote by mail or by electronic transmission on a stated proposal or for the election of directors or any officers who are 5 elected by members; 6 7 [(9)] **(10)** Regulate the management of the business and affairs of the 8 corporation; and 9 [(10)] (11) Regulate the exercise or allocation of voting power between or 10 among the directors and members. 11 8-502.12 (a) A real estate investment trust may terminate its existence by voluntary dissolution IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION. [The 13 Department shall be notified of the effective date of the dissolution. 14 15 (b) A real estate investment trust may curtail or cease its trust activities by 16 partially or completely distributing its assets. 17 IN ORDER TO TERMINATE ITS EXISTENCE, A REAL ESTATE **(1)** INVESTMENT TRUST MUST FILE A NOTICE OF TERMINATION WITH THE DEPARTMENT 18 19 THAT INCLUDES: 20 **(I)** THE NAME OF THE REAL ESTATE INVESTMENT TRUST; 21 (II)A STATEMENT THAT THE TERMINATION OF THE REAL 1. 22 ESTATE INVESTMENT TRUST BY VOLUNTARY DISSOLUTION WAS APPROVED IN THE 23MANNER AND BY THE VOTE REQUIRED BY LAW AND BY THE DECLARATION OF TRUST 24OF THE REAL ESTATE INVESTMENT TRUST; AND 252. Α **STATEMENT DETAILING** THE **MANNER** OF 26 APPROVAL; 27 (III) ALL OTHER PROVISIONS THE BOARD OF THE REAL ESTATE 28 INVESTMENT TRUST CONSIDERS NECESSARY TO DISSOLVE AND TERMINATE THE
- 30 (IV) A STATEMENT THAT THE REAL ESTATE INVESTMENT TRUST 31 IS DISSOLVED AND TERMINATED.

REAL ESTATE INVESTMENT TRUST; AND

1	(2)	THE	NOTICE OF TERMINATION SHALL BE EXECUTED BY:
2 3	TRUSTEES;	(I)	THE CHAIRMAN OR VICE CHAIRMAN OF THE BOARD OF
4		(II)	THE CHIEF EXECUTIVE OFFICER;
5		(III)	THE CHIEF OPERATING OFFICER;
6		(IV)	THE CHIEF FINANCIAL OFFICER;
7		(v)	THE PRESIDENT OR A VICE PRESIDENT; OR
8 9 10		ΓΕΈS,	IF AUTHORIZED BY THE BYLAWS OR A RESOLUTION OF THE ANY OTHER OFFICER OR AGENT OF THE REAL ESTATE
11 12 13	, , , , ,		EPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, ESTMENT TRUST IS DISSOLVED AND TERMINATED ON THE
14	OF TERMINATION	(I) FOR I	THE TIME THAT THE DEPARTMENT ACCEPTS THE NOTICE RECORD; OR
16 17		(II) 0 day	THE TIME ESTABLISHED BY THE NOTICE OF TERMINATION, S AFTER THE NOTICE IS ACCEPTED FOR RECORD.
18	(2) THE PURPOSE OF:		REAL ESTATE INVESTMENT TRUST CONTINUES TO EXIST FOR
20 21	DEBTS OR OBLIGA	(I) TION	PAYING, SATISFYING, AND DISCHARGING ANY EXISTING S;
22		(II)	COLLECTING AND DISTRIBUTING ASSETS; AND
23 24	WIND UP ITS BUSI	(III) NESS	TAKING ALL OTHER ACTIONS REQUIRED TO LIQUIDATE AND AND AFFAIRS.
25 26		(1) ent tru	The Attorney General may institute proceedings to dissolve a ust [which] THAT has abused, misused, or failed to use its powers.

- 1 **(2)** The proceedings shall be brought in the manner and on the grounds provided in Title 3, Subtitle 5 of this article with respect to dissolution of a corporation for misuse of its franchise.
- 4 **[(2)] (3)** The venue of an action under this subsection is in a county where 5 an officer or resident agent of the real estate investment trust is located.
- 6 **12-307.**
- 7 (A) NOTWITHSTANDING § 3-709 OF THIS ARTICLE, THE PROVISIONS OF 8 TITLE 3, SUBTITLE 7 OF THIS ARTICLE APPLY TO A STATUTORY TRUST FORMED ON 9 OR AFTER OCTOBER 1, 2023, THAT IS A CLOSED-END INVESTMENT COMPANY AS 10 DEFINED IN THE INVESTMENT COMPANY ACT OF 1940.
- 11 (B) NOTWITHSTANDING § 3–709 OF THIS ARTICLE, THE GOVERNING
 12 INSTRUMENT OF A STATUTORY TRUST FORMED BEFORE OCTOBER 1, 2023, THAT IS
 13 A CLOSED-END INVESTMENT COMPANY AS DEFINED IN THE INVESTMENT COMPANY
 14 ACT OF 1940 MAY PROVIDE THAT TITLE 3, SUBTITLE 7 OF THIS ARTICLE APPLIES
 15 TO THE STATUTORY TRUST.
- SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.