SENATE BILL 58

C1 3lr0902 (PRE–FILED) 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

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Corporations and Associations - Revisions

- FOR the purpose of altering certain provisions governing the issuance of stock, convertible securities, and scrip; clarifying the authority of corporations to hold annual meetings by remote communication; clarifying the application of certain provisions of law to the conversion of a corporation; requiring a real estate investment trust that voluntarily dissolves to file a notice of termination with the State Department of Assessments and Taxation; authorizing the charter or bylaws of a nonstock corporation to provide for the service of certain ex officio directors; providing for the application of certain provisions of law regarding voting rights to statutory trusts; and generally relating to corporations and associations.
- 12 BY repealing and reenacting, with amendments,
- 13 Article Corporations and Associations
 - 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.

<u>Underlining</u> indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.



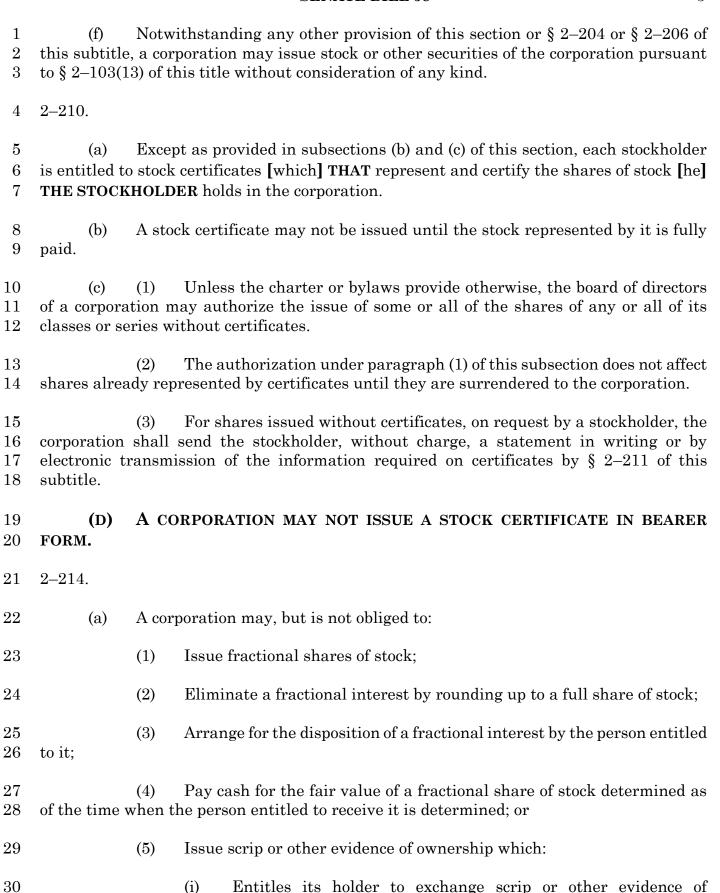
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1 2 3 4 5	BY adding to Article – Corporations and Associations Section 12–307 Annotated Code of Maryland (2014 Replacement Volume and 2022 Supplement)
6 7	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:
8	Article – Corporations and Associations
9	2–203.
10 11	(a) Before the issuance of stock or convertible securities, the board of directors shall adopt a resolution that:
12	(1) Authorizes the issuance;
13 14	(2) Sets the minimum consideration for the stock or convertible securities or a formula for its determination; and
15	(3) Fairly describes any consideration other than money.
16 17 18	(b) In the absence of actual fraud in the transaction, the minimum consideration stated in the charter or determined by the board of directors in its resolution is conclusive for all purposes.
19 20	(c) For purposes of this section, the consideration for stock issued as a stock dividend is the resulting capitalization of surplus.
21 22	(d) This section does not apply to the issuance of stock or convertible securities as part of:
23	(1) A reclassification of stock effected by amendment of the charter; or
24 25 26	(2) A consolidation, merger, [or] share exchange, OR CONVERSION , including a consolidation, merger, [or] share exchange, OR CONVERSION to which a wholly owned subsidiary of the corporation is a party.
27 28	(e) If its issuance is authorized in accordance with this subtitle, stock with par value and securities convertible into stock with par value may be issued as full paid and

nonassessable even if the price or value of the consideration received is less than the par

value of the stock issued or the stock into which the securities are convertible.



ownership aggregating a full share for a certificate which represents the share; and

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- 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 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.
- 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.
- $31 \quad 2-503.$
- 32 (a) Unless the charter provides otherwise, meetings of stockholders shall be held 33 as is:

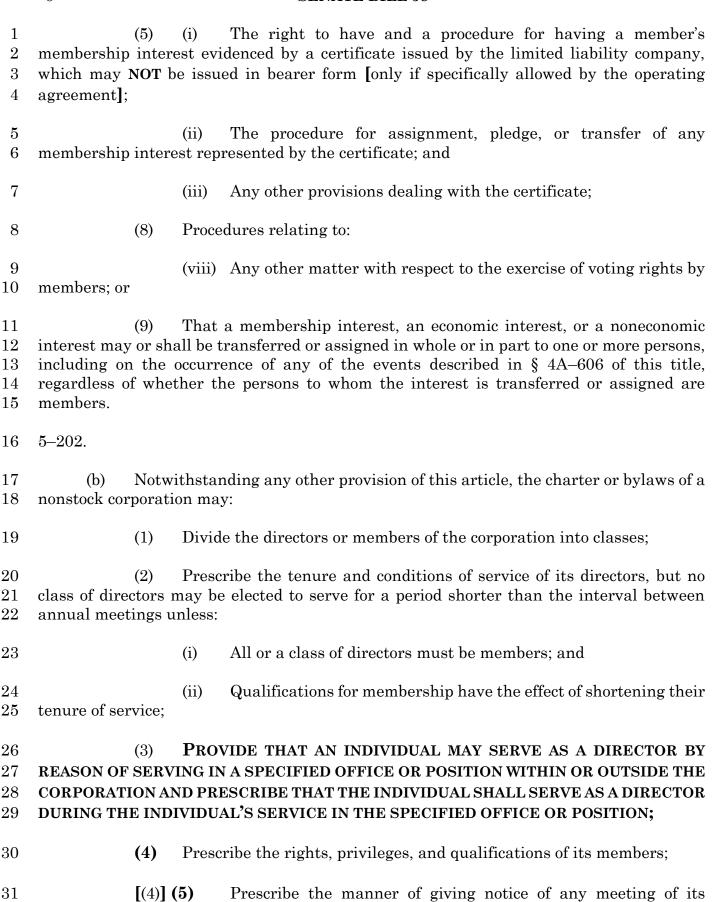
1 Provided in the charter or bylaws; or (1) 2 Set by the board of directors under the provisions of the charter or (2)3 bylaws. 4 If authorized by the board of directors and subject to any guidelines and 5 procedures that the board adopts, stockholders and proxy holders not physically present at 6 the meeting of the stockholders, may, by remote communication: 7 Participate in the meeting of the stockholders; and (1) 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 by remote communication, if: 10 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 The corporation implements reasonable measures to provide the 15 stockholders and proxy holders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear 16 17 the proceedings of the meeting substantially concurrently with the proceedings; and 18 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. 214-601. 22[A] SUBJECT TO SUBSECTION (B) OF THIS SECTION, A consolidation, 23merger, share exchange, [or] transfer of assets, OR CONVERSION of a close corporation 24shall be made in accordance with the provisions of Title 3 of this article. 25[However, approval] APPROVAL of a proposed consolidation or merger, a (B) 26 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. 2728 4A-402.29 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,

including provisions establishing:

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members:



$\frac{1}{2}$	[(5)] (6) Provide for the number or proportion of voting members whose presence in person or by proxy constitutes a quorum at any meeting of its members;
3 4	[(6)] (7) Provide that any action may be taken or authorized by any 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 7 8	[(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 elected by members;
9 10	[(9)] (10) Regulate the management of the business and affairs of the corporation; and
11 12	[(10)] (11) Regulate the exercise or allocation of voting power between or among the directors and members.
13	8–502.
14 15 16	(a) A real estate investment trust may terminate its existence by voluntary dissolution IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION. [The Department shall be notified of the effective date of the dissolution.]
17 18	(b) [A real estate investment trust may curtail or cease its trust activities by partially or completely distributing its assets.]
19 20 21	(1) IN ORDER TO TERMINATE ITS EXISTENCE, A REAL ESTATE INVESTMENT TRUST MUST FILE A NOTICE OF TERMINATION WITH THE DEPARTMENT THAT INCLUDES:
22	(I) THE NAME OF THE REAL ESTATE INVESTMENT TRUST;
23 24 25 26	(II) 1. A STATEMENT THAT THE TERMINATION OF THE REAL ESTATE INVESTMENT TRUST BY VOLUNTARY DISSOLUTION WAS APPROVED IN THE MANNER AND BY THE VOTE REQUIRED BY LAW AND BY THE DECLARATION OF TRUST OF THE REAL ESTATE INVESTMENT TRUST; AND
27 28	2. A STATEMENT DETAILING THE MANNER OF APPROVAL;

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(III) ALL OTHER PROVISIONS THE BOARD OF THE REAL ESTATE

INVESTMENT TRUST CONSIDERS NECESSARY TO DISSOLVE AND TERMINATE THE

REAL ESTATE INVESTMENT TRUST; AND

$\frac{1}{2}$	(IV) A STATEMENT THAT THE REAL ESTATE INVESTMENT TRUST IS DISSOLVED AND TERMINATED.
3	(2) THE NOTICE OF TERMINATION SHALL BE EXECUTED BY:
4 5	(I) THE CHAIRMAN OR VICE CHAIRMAN OF THE BOARD OF 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 11 12	(VI) IF AUTHORIZED BY THE BYLAWS OR A RESOLUTION OF THE BOARD OF TRUSTEES, ANY OTHER OFFICER OR AGENT OF THE REAL ESTATE INVESTMENT TRUST.
13 14 15	(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION THE REAL ESTATE INVESTMENT TRUST IS DISSOLVED AND TERMINATED ON THE LATER OF:
16 17	(I) THE TIME THAT THE DEPARTMENT ACCEPTS THE NOTICE OF TERMINATION FOR RECORD; OR
18 19	(II) THE TIME ESTABLISHED BY THE NOTICE OF TERMINATION NOT TO EXCEED 30 DAYS AFTER THE NOTICE IS ACCEPTED FOR RECORD.
20 21	(2) THE REAL ESTATE INVESTMENT TRUST CONTINUES TO EXIST FOR THE PURPOSE OF:
22 23	(I) PAYING, SATISFYING, AND DISCHARGING ANY EXISTING DEBTS OR OBLIGATIONS;
24	(II) COLLECTING AND DISTRIBUTING ASSETS; AND
25 26	(III) TAKING ALL OTHER ACTIONS REQUIRED TO LIQUIDATE AND WIND UP ITS BUSINESS AND AFFAIRS.

1 2	[(c)] (D) (1) The Attorney General may institute proceedings to dissolve a real estate investment trust [which] THAT has abused, misused, or failed to use its powers.
3 4 5	(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.
6 7	[(2)] (3) The venue of an action under this subsection is in a county where an officer or resident agent of the real estate investment trust is located.
8	12–307.
9 10 11 12	(A) NOTWITHSTANDING § 3–709 OF THIS ARTICLE, THE PROVISIONS OF TITLE 3, SUBTITLE 7 OF THIS ARTICLE APPLY TO A STATUTORY TRUST FORMED ON OR AFTER OCTOBER 1, 2023, THAT IS A CLOSED-END INVESTMENT COMPANY AS DEFINED IN THE INVESTMENT COMPANY ACT OF 1940.
13 14 15 16 17	(B) NOTWITHSTANDING § 3–709 OF THIS ARTICLE, THE GOVERNING INSTRUMENT OF A STATUTORY TRUST FORMED BEFORE OCTOBER 1, 2023, THAT IS A CLOSED-END INVESTMENT COMPANY AS DEFINED IN THE INVESTMENT COMPANY ACT OF 1940 MAY PROVIDE THAT TITLE 3, SUBTITLE 7 OF THIS ARTICLE APPLIES TO THE STATUTORY TRUST.
18 19	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.
	Approved:
	Governor.
	President of the Senate.
	Speaker of the House of Delegates.