

MAINE STATE LEGISLATURE

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DATE: 3-28-02

(Filing No. H-1037)

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 283, L.D. 361, Bill, "An Act to Adopt the Model Business Corporation Act in Maine"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

PART A

Sec. A-1. 13-A MRSA, as amended, is repealed.

Sec. A-2. 13-C MRSA is enacted to read:

TITLE 13-C

MAINE BUSINESS CORPORATION ACT

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER 1

GENERAL PROVISIONS

§101. Short title

This Act may be known and cited as the "Maine Business Corporation Act."

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§102. Definitions

2 As used in this Act, unless the context otherwise indicates,
4 the following terms have the following meanings.

6 1. Articles of incorporation. "Articles of incorporation"
8 means the original or restated articles of incorporation and all
10 amendments thereto. "Articles of incorporation" includes
12 articles of merger, articles of consolidation, articles of
14 domestication, articles of conversion, a certificate of
16 incorporation and what has previously been designated as
18 "articles of agreement" for a corporation and certificate of
 organization. "Articles of incorporation" also includes special
 acts of the Legislature chartering corporations that could not be
 organized under general acts. If any document filed under this
 Act restates the articles of incorporation in their entirety, the
 articles do not include any prior documents.

20 2. Authorized shares. "Authorized shares" means the shares
22 of all classes that a domestic or foreign corporation is
 authorized to issue.

24 3. Conspicuous. "Conspicuous" means so written that a
26 reasonable person against whom the writing is to operate should
28 have noticed it. Words that are printed in italics or boldface or
 contrasting color or typed in capitals or underlined are
 conspicuous.

30 4. Corporation; domestic corporation; domestic business
32 corporation. "Corporation," "domestic corporation" or "domestic
34 business corporation" means a corporation for profit or with
 shares, that is not a foreign corporation, incorporated under or
 subject to the provisions of this Act.

36 5. Deliver; delivery. "Deliver" or "delivery" means any
38 method of delivery used in conventional commercial practice,
 including delivery by hand, mail, commercial delivery and
 electronic transmission.

40 6. Distribution. "Distribution" means a direct or indirect
42 transfer of money or other property, except a corporation's own
44 shares, or incurrence of indebtedness by a corporation to or for
46 the benefit of its shareholders in respect of any of its shares.
 A distribution may be in the form of a declaration or payment of
 a dividend; a purchase, redemption or other acquisition of
 shares; a distribution of indebtedness; or otherwise.

48 7. Domestic unincorporated entity. "Domestic
50 unincorporated entity" means an unincorporated entity whose
 internal affairs are governed by the laws of this State.

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2 8. Effective date of notice. "Effective date of notice"
has the meaning set forth in section 103.

4 9. Electronic transmission; electronically transmitted.
6 "Electronic transmission" or "electronically transmitted" means
any process of communication not directly involving the physical
8 transfer of paper that is suitable for the retention, retrieval
and reproduction of information by the recipient.

10 10. Employee. "Employee" includes an officer of a domestic
12 or foreign corporation but does not include a director. A
director may accept duties that make that director also an
14 employee.

16 11. Entity. "Entity" includes a domestic or foreign
18 business corporation; a domestic or foreign nonprofit
corporation; an estate; a partnership; a trust; 2 or more persons
20 having a joint or common economic interest; a domestic or foreign
unincorporated entity; a state; the United States; and a foreign
government.

22 12. Filing entity. "Filing entity" means an unincorporated
24 entity that is created by filing a public organic document.

26 13. Foreign corporation; foreign business corporation.
"Foreign corporation" or "foreign business corporation" means a
28 corporation incorporated for profit under a law other than the
law of this State that would be a business corporation if
30 incorporated under the laws of this State.

32 14. Foreign nonprofit corporation. "Foreign nonprofit
corporation" means a corporation incorporated under a law other
34 than the law of this State that would be a nonprofit corporation
if incorporated under the laws of this State.

36 15. Foreign unincorporated entity. "Foreign unincorporated
38 entity" means an unincorporated entity whose internal affairs are
governed by an organic law of a jurisdiction other than this
40 State.

42 16. Governmental subdivision. "Governmental subdivision"
includes an authority, county, district and municipality.

44 17. Includes. "Includes" denotes a partial definition.

46 18. Individual. "Individual" means a natural person.
48 "Individual" includes the estate of an incompetent or deceased
individual.

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2 19. Interests in an unincorporated entity. "Interests in
an unincorporated entity" means:

4 A. A right to receive distributions from an unincorporated
6 entity either in the ordinary course or upon liquidation,
including as an assignee; or

8 B. A right to vote on issues involving the internal affairs
10 of an unincorporated entity, other than as an agent,
12 assignee, proxy or person responsible for managing the
business and affairs of the unincorporated entity.

14 20. Means. "Means" denotes an exhaustive definition.

16 21. Membership. "Membership" means the rights of a member
in a domestic or foreign nonprofit corporation.

18 22. Nonfiling entity. "Nonfiling entity" means an
20 unincorporated entity that is not created by filing a public
organic document.

22 23. Nonprofit corporation; domestic nonprofit corporation.
24 "Nonprofit corporation" or "domestic nonprofit corporation" means
a corporation incorporated under the laws of this State and
26 subject to the provisions of the Maine Nonprofit Corporation Act.

28 24. Notice. "Notice" has the meaning set forth in section
103.

30 25. Organic document. "Organic document" means a public
organic document or a private organic document.

32 26. Organic law. "Organic law" means the statute governing
34 the internal affairs of a domestic or foreign business or
nonprofit corporation or unincorporated entity.

36 27. Owner liability. "Owner liability" means personal
38 liability for a debt, obligation or liability of a domestic or
foreign business or nonprofit corporation or unincorporated
40 entity that is imposed on a person:

42 A. Solely by reason of the person's status as a
44 shareholder, member or interest holder; or

46 B. By the articles of incorporation, bylaws or an organic
48 document pursuant to a provision of the organic law
authorizing the articles of incorporation, bylaws or an
organic document to make one or more specified shareholders,
members or interest holders liable in their capacity as

1 shareholders, members or interest holders for all or
2 specified debts, obligations or liabilities of the entity.

4 28. Person. "Person" includes an individual and an entity.

6 29. Principal office. "Principal office" means the office
7 so designated in the annual report where the principal executive
8 offices of a domestic or foreign corporation are located.

10 30. Private organic document. "Private organic document"
11 means any document other than the public organic document, if
12 any, that determines the internal governance of an unincorporated
13 entity. When a private organic document has been amended or
14 restated, "private organic document" means the private organic
15 document as last amended or restated.

16 31. Public organic document. "Public organic document"
17 means the document, if any, that is filed as a public record to
18 create an unincorporated entity. When a public organic document
19 has been amended or restated, "public organic document" means the
20 public organic document as last amended or restated.

22 32. Proceeding. "Proceeding" includes a civil suit and
23 criminal, administrative and investigatory action.

24 33. Record date. "Record date" means the date established
25 under chapter 6 or 7 on which a corporation determines the
26 identity of its shareholders and their shareholdings for purposes
27 of this Act. The determinations must be made as of the close of
28 business on the record date unless another time for doing so is
29 specified when the record date is fixed.

30 34. Shareholder. "Shareholder" means the person in whose
31 name shares are registered in the records of a corporation or the
32 beneficial owner of shares to the extent of the rights granted by
33 a nominee certificate on file with a corporation.

34 35. Shares. "Shares" means the units into which the
35 proprietary interests in a corporation are divided.

36 36. Sign; signature. "Sign" or "signature" includes any
37 manual, facsimile, conformed or electronic signature.

38 37. State. "State," when referring to a part of the United
39 States, includes a state or commonwealth and its agencies and
40 governmental subdivisions and a territory or insular possession
41 of the United States and its agencies and governmental
42 subdivisions.

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2 38. Subscriber. "Subscriber" means a person who subscribes
for shares in a corporation, whether before or after
incorporation.

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6 39. Unincorporated entity. "Unincorporated entity" means
an organization or artificial legal person that either has a
8 separate legal existence or has the power to acquire an estate in
real property in its own name and that is not any of the
10 following: a domestic or foreign business or nonprofit
corporation; an estate; a trust; a state; the United States; or a
12 foreign government. "Unincorporated entity" includes, but is not
limited to, a general partnership, limited liability company,
14 limited partnership, business trust, joint stock association and
unincorporated nonprofit association.

16 40. United States. "United States" includes a district,
authority, bureau, commission, department and any other agency of
18 the United States.

20 41. Voting group. "Voting group" means all shares of one
or more classes or series that under the articles of
22 incorporation or this Act are entitled to vote and be counted
together collectively on a matter at a meeting of shareholders.
24 All shares entitled by the articles of incorporation or this Act
to vote generally on a matter are for that purpose a single
26 voting group.

28 42. Voting power. "Voting power" means the current power
to vote in the election of directors.

30 §103. Notice

32 1. Written notice required unless oral notice reasonable.
34 Notice under this Act must be in writing unless oral notice is
reasonable under the circumstances. Notice by electronic
36 transmission constitutes written notice.

38 2. Methods of communicating notice. Notice may be
communicated in person; by mail or other method of delivery; or
40 by telephone, voice mail or other electronic means. If these
forms of personal notice are impracticable, notice may be
42 communicated by a newspaper of general circulation in the area
where published, or by radio, television or other form of public
44 broadcast communication.

46 3. Written notice by corporation; when effective. Written
notice by a domestic or foreign corporation to a shareholder, if
48 in a comprehensible form, takes effect:

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2 A. Upon deposit in the United States mail, if mailed
4 postpaid and correctly addressed to the shareholder's
address shown in the corporation's current record of
shareholders; or

6 B. When electronically transmitted to the shareholder in a
8 manner authorized by the shareholder.

10 4. Written notice to corporation; when effective. Written
12 notice to a domestic or foreign corporation authorized to
14 transact business in this State may be addressed to its clerk or
16 registered agent at its registered office or to the corporation
18 at its principal office shown in its most recent annual report
or, in the case of a foreign corporation that has not yet
delivered an annual report, in its application for a certificate
of authority pursuant to section 130. Except as provided in
subsection 3, written notice, if in a comprehensible form, is
effective at the earliest of the following:

20 A. When received by the addressee;

22 B. Five days after its deposit in the United States mail,
24 if mailed postpaid and correctly addressed; or

26 C. The date shown on the return receipt, if sent by
28 registered or certified mail, return receipt requested, and
the receipt is signed by or on behalf of the addressee.

30 5. Oral notice; when effective. Oral notice is effective
when communicated, if communicated in a comprehensible manner.

32 6. Specific notice requirements govern. If this Act
34 prescribes notice requirements for particular circumstances,
36 those requirements govern. If articles of incorporation or bylaws
prescribe notice requirements not inconsistent with this section
or other provisions of this Act, those requirements govern.

38 7. Computation of time for notice purposes. In computing
40 the time for the giving of any notice required or permitted under
42 this Act, or under the articles or bylaws of a corporation, or a
44 resolution of its shareholders or directors, the day on which the
notice is given is excluded in the computation of time and the
day when the act for which notice is given is to be done is
included in the computation of time, unless the instrument
calling for notice specifically provides otherwise.

46 **§104. Number of shareholders**

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COMMITTEE AMENDMENT

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1. Identified as one shareholder. For purposes of this Act, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

A. Three or fewer co-owners;

B. A corporation, partnership, trust, estate or other entity; and

C. The trustees, guardians, custodians or other fiduciaries of a single trust, estate, or account.

2. Registered in substantially similar names. For purposes of this Act, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

§105. Reservation of power

The Legislature of this State has the power to amend or repeal all or part of this Act at any time, and all domestic and foreign corporations subject to this Act are governed by the amendment or repeal.

SUBCHAPTER 2

FILING DOCUMENTS

§121. Filing requirements

To be entitled to filing with the office of the Secretary of State, a document must satisfy the following requirements and the requirements of any other section of this Act.

1. Filing in office of Secretary of State. Filing of the document in office of the Secretary of State must be permitted or required by this Act.

2. Information. The document must contain the information required by this Act.

3. Form; format. The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

4. English language. The document must be in the English language, except that:

2 A. A corporate name need not be in English if written using
the Roman alphabet or Arabic or Roman numerals; and

4 B. The certificate of existence required of foreign
corporations under section 130 need not be in English if
6 accompanied by a reasonably authenticated English
translation.

8 **5. Executed.** The document must be executed and dated:

10 A. By the chair of the board of directors of a domestic or
12 foreign corporation, by its president or by another of its
officers;

14 B. By an incorporator, if directors have not been selected
16 or the corporation has not been formed;

18 C. By a fiduciary, if the corporation is in the hands of a
receiver, trustee or other court-appointed fiduciary; or

20 D. By the clerk of the corporation.

22 **6. Signature; corporate seal.** The person executing the
24 document shall sign it and state beneath or opposite that
signature the person's name and the capacity in which the person
26 signs. The document may but need not contain a corporate seal,
attestation, acknowledgment or verification.

28 **7. Prescribed form.** If the Secretary of State has
30 prescribed a mandatory form for the document under section 122,
the document must be in or on the prescribed form.

32 **8. Delivery.** The document must be delivered to the office
34 of the Secretary of State for filing. Delivery may be made by
electronic transmission if and to the extent permitted by the
36 Secretary of State.

38 **9. Fee.** At the time of delivery, the correct filing fee
40 and any reinstatement fee or penalty must be paid or provision
for payment made in a manner permitted by the Secretary of State.

42 **§122. Forms**

44 The Secretary of State may prescribe and furnish on request
forms for any documents required or permitted to be filed by this
46 Act. If the Secretary of State so requires, use of these forms is
mandatory.

48 **§123. Filing, service and copying fees**

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- 2 1. Filing fees. The following fees must be paid to the
3 Secretary of State.

- 4 A. For articles of incorporation, the fee is \$125.

- 6 B. For an application for the use of an indistinguishable
7 name, the fee is \$20.

- 8 C. For an application for a reserved name, the fee is \$20.

- 10 D. For a notice of transfer of a reserved name, the fee is
11 \$20.

- 14 E. For an application for a registered name, per month or
15 portion of a month, the fee is \$20.

- 16 F. For an application for renewal of a registered name, the
17 fee is \$200.

- 20 G. For a notice of change of clerk, registered agent or
21 registered office, or a combination thereof, the fee is \$20.

- 22 H. For a notice of change of a registered office for each
23 affected corporation not to exceed a total of 100, the fee
24 is \$20.

- 26 I. For a notice of change of a registered office for each
27 affected corporation in excess of 100, the fee is \$10.

- 30 J. For a notice of resignation of a clerk or registered
31 agent, the fee is \$20.

- 32 K. For an amendment of articles of incorporation, the fee
33 is \$35.

- 34 L. For a restatement of articles of incorporation, the fee
35 is \$80.

- 36 M. For articles of merger or share exchange, the fee is \$80.

- 38 N. For articles of domestication, the fee is \$125.

- 40 O. For articles of charter surrender, the fee is \$70.

- 42 P. For articles of nonprofit conversion, the fee is \$125.

- 44 Q. For articles of domestication and conversion, the fee is
45 \$125.

- 46 R. For articles of entity conversion, the fee is \$125.

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- 2 S. For articles of dissolution, the fee is \$55.
- 4 T. For articles of revocation of dissolution, the fee is
6 \$55.
- 8 U. For an application for reinstatement following
10 administrative dissolution for failure to file an annual
12 report, the fee is \$125. The maximum reinstatement fee may
14 not exceed \$500, regardless of the number of delinquent
16 reports or the period of delinquency.
- 18 V. For an application for reinstatement following
20 administrative dissolution for failure to pay the annual
22 report late filing penalty, the fee is \$25.
- 24 W. For an application for reinstatement following
26 administrative dissolution for failure to appoint or
28 maintain a clerk or registered office, the fee is \$25.
- 30 X. For an application for reinstatement following
32 administrative dissolution for failure to notify the
34 Secretary of State that its clerk or registered office has
36 been changed, that its clerk has resigned or that its
38 registered office has been discontinued, the fee is \$25.
- 40 Y. For a certificate of judicial dissolution, there is no
42 fee.
- 44 Z. For an application for authority, the fee is \$250 .
- 46 AA. For an amended application for authority, the fee is
48 \$70.
- 50 BB. For an application for withdrawal of authority, the fee
 is \$70.
- CC. For an application for transfer of authority, the fee
 is \$70.
- DD. For an annual report, the fee is \$60.
- EE. For failing to deliver an annual report by its due date
 in addition to the annual report filing fee, the fee is \$25.
- FF. For articles of correction, the fee is \$35.
- GG. For a certificate of existence or authorization, the
 fee is \$30.

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- 2 HH. For an application for excuse, the fee is \$20.
- 4 II. For an certificate of resumption, the fee is \$80.
- 6 JJ. For an application for an assumed name, the fee is \$105.
- 8 KK. For an application for a fictitious name adopted by a
10 foreign corporation authorized to transact business in this
12 State because its real name is unavailable, the fee is \$20.
- 14 LL. For an application for termination of an assumed name,
16 the fee is \$20.
- 18 MM. For any other document required or permitted to be
20 filed by this Act, the fee is \$35.

22 2. Process fee. The Secretary of State shall collect a fee
24 of \$20 each time process is served on the Secretary of State
26 under this Act. The party to a proceeding causing service of
28 process is entitled to recover this fee as costs if that party
30 prevails in the proceeding.

32 3. Copying and certifying fees. The Secretary of State
34 shall charge the following fees for copying and certifying the
36 copy of any filed document relating to a domestic or foreign
38 corporation.

- 40 A. For copying, the fee is \$2 per page.
- 42 B. For certifying the copy, the fee is \$5.

44 §124. Expedited service

46 The Secretary of State may provide expedited service for the
48 processing of documents in accordance with this Act. The
50 Secretary of State shall establish a fee schedule and adopt rules
52 to set forth the procedures governing this expedited service.
54 All fees collected as provided by this section must be deposited
56 into a fund for use by the Secretary of State in providing
58 improved filing service.

60 §125. Effective time and date of document

62 Except as provided in section 126, subsection 3, a document
64 accepted for filing takes effect on the date and at the time of
66 filing, as evidenced by such means as the Secretary of State may
68 use for the purpose of recording the date and time of filing,
70 except that:

1. Time specified in document. If the document specifies a time as to its effective time on the date filed, then the document takes effect on the date filed and at the time specified; and

2. Delayed effective date; time. If the document specifies a delayed effective time and date, the document takes effect on the time and date specified, as long as the delayed effective date for the document is not later than the 90th day after the date it is filed. If the document specifies a delayed effective date but does not specify a time, the document is effective at the close of business on the specified date.

§126. Correcting filed document

1. Correction authorized. A domestic or foreign corporation may correct a document filed by the Secretary of State if:

A. The document contains an inaccuracy;

B. The document was defectively executed, attested, sealed, verified or acknowledged; or

C. The electronic transmission of the document was defective.

2. Method of correcting documents. A domestic or foreign corporation may correct a document by preparing articles of correction that:

A. Describe the document, including its filing date, or attach a copy of it to the articles;

B. Specify the inaccuracy or defect to be corrected; and

C. Correct the inaccuracy or defect.

The domestic or foreign corporation shall deliver the articles of correction to the Secretary of State for filing.

3. Effective date of correction. Articles of correction take effect on the effective date of the document they correct except that, as to persons relying on the uncorrected document and adversely affected by the correction, articles of correction take effect when filed.

§127. Filing duty of Secretary of State

1. Duty to file. If a document delivered to the office of the Secretary of State for filing pursuant to this Act satisfies the requirements of section 121, the Secretary of State shall file the document.

2. Recording as filed; acknowledgment. The Secretary of State files a document pursuant to subsection 1 by recording it as filed on the date of receipt. After filing a document, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgement of the date of filing. If the person delivering the document for filing so requests, the acknowledgment must further include the hour and minute of filing.

3. Refusal to file; written explanation. If the Secretary of State refuses to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within 5 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

4. Ministerial. The Secretary of State's duty to file a document under this section is ministerial, and the filing or refusal to file a document does not:

A. Affect the validity or invalidity of the document in whole or part;

B. Relate to the correctness or incorrectness of information contained in the document; or

C. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§128. Appeal Secretary of State's refusal to file document

1. Commencing an appeal. If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the domestic or foreign corporation within 30 days after the return of the document may appeal the refusal to the Superior Court of the county where the corporation's principal office is located or, if there is not a principal office in this State, of Kennebec County. The appeal is commenced by petitioning the court to compel filing of the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

2. Court order. Upon the receipt of a petition filed under subsection 1, the court may summarily order the Secretary of

State to file a document or take other action the court considers appropriate.

3. Appeal court's decision. The court's final decision may be appealed as in other civil proceedings.

§129. Evidentiary effect of copy of filed document

A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State pursuant to section 127 is conclusive evidence that the original document is on file with the Secretary of State.

§130. Certificate of existence; certificate of authority

1. Application. Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authority for a foreign corporation.

2. Contents. A certificate of existence or certificate of authority sets forth:

A. The domestic corporation's corporate name or the foreign corporation's corporate name used in this State;

B. That, if a domestic corporation, the corporation is duly incorporated under the laws of this State and the date of its incorporation;

C. That, if a foreign corporation, the foreign corporation is authorized to transact business in this State;

D. That all fees and penalties owed to this State have been paid if:

(1) Payment is reflected in the records of the Secretary of State; and

(2) Nonpayment affects the existence or authorization of the domestic or foreign corporation;

E. That the corporation's most recent annual report required by section 1621 has been delivered to the Secretary of State;

F. That articles of dissolution relating to that corporation have not been filed; and

2 G. Other facts of record in the office of the Secretary of
3 State that may be requested by the applicant under
4 subsection 1.

6 3. Evidence of existence or authority. Subject to any
7 qualification stated in the certificate, a certificate of
8 existence or certificate of authority issued by the Secretary of
9 State may be relied upon as conclusive evidence that the domestic
10 or foreign corporation is in existence or is authorized to
11 transact business in this State.

12 **§131. Penalty for signing false document**

14 A person commits a Class E crime if that person signs a
15 document pursuant to this Act knowing it is false in any material
16 respect with intent that the document be delivered to the
17 Secretary of State for filing.

18 **SUBCHAPTER 3**

20 **Secretary of State**

22 **§141. Powers**

24 The Secretary of State has the power reasonably necessary to
25 perform the duties required of the Secretary of State by this
26 Act, including the power to make rules not inconsistent with this
27 Act. Rules adopted pursuant to this Act are routine technical
28 rules as defined in Title 5, chapter 375, subchapter II-A.

30 **CHAPTER 2**

32 **INCORPORATION**

34 **§201. Incorporators**

36 One or more persons may serve as the incorporator or
37 incorporators of a corporation by delivering articles of
38 incorporation to the Secretary of State for filing.

40 **§202. Articles of incorporation**

42 1. Required elements. The articles of incorporation of a
43 corporation must set forth:

44 A. A corporate name for the corporation that satisfies the
45 requirements of section 401;

46 B. The number of shares the corporation is authorized to
47 issue and, if there are 2 or more classes of shares, the
48 number of shares in each class;

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2 number of shares and a description of the rights in each
3 class;

4 C. The street address and a mailing address, if different,
5 of the corporation's initial registered office and the name
6 of its initial clerk at that office. For the address, a
7 post office box alone is not sufficient to meet the
8 requirements of this paragraph;

10 D. The name and address of each incorporator; and

12 E. The name and address of the clerk of the corporation.

14 2. Optional elements. The articles of incorporation of a
15 corporation may set forth:

16 A. The names and addresses of the individuals who are to
17 serve as the initial directors;

20 B. A provision not inconsistent with law regarding:

22 (1) The purpose or purposes for which the corporation
23 is organized;

24 (2) Managing the business and regulating the affairs
25 of the corporation;

28 (3) Defining, limiting and regulating the powers of
29 the corporation, its board of directors and its
30 shareholders;

32 (4) A par value for authorized shares or classes of
33 shares; or

34 (5) The imposition of personal liability on
35 shareholders for the debts of the corporation to a
36 specified extent and upon specified conditions;

38 C. Any provision that under this Act is required or
39 permitted to be set forth in the bylaws of the corporation;

42 D. A provision eliminating or limiting the liability of a
43 director to the corporation or its shareholders for money
44 damages for an action taken or a failure to take an action
45 as a director, except liability for:

46 (1) The amount of a financial benefit received by a
47 director to which the director is not entitled;
48

2 (2) An intentional infliction of harm on the
 corporation or its shareholders;

4 (3) A violation of section 833; or

6 (4) An intentional violation of criminal law; and

8 E. A provision permitting or making obligatory
10 indemnification of a director for liability, as defined in
12 section 851, subsection 5, to any person for an action taken
 or a failure to take an action as a director, except
 liability for:

14 (1) Receipt of a financial benefit to which the
16 director is not entitled;

18 (2) An intentional infliction of harm on the
 corporation or its shareholders;

20 (3) A violation of section 833; or

22 (4) An intentional violation of criminal law.

24 3. Enumeration of corporate powers unnecessary. The
26 articles of incorporation of a corporation need not set forth any
 of the corporate powers enumerated in this Act.

28 4. Incorporation prior to effective date of Act. If a
30 corporation was incorporated in this State before the effective
32 date of this Act, the corporation's articles of incorporation as
34 of the effective date of this Act are deemed to include a
36 provision eliminating monetary liability of directors to the
 fullest extent permitted by subsection 2, paragraph D. The
 corporation may, by later amendment approved in accordance with
 section 1002 or 1003, repeal or restrict this limitation of
 liability with regard to conduct of a director that occurs
 subsequent to that amendment.

38 5. Filing of clerk's signed acceptance required. The
40 signed acceptance of the clerk of a corporation must be filed
42 either with or as part of the articles of incorporation.

44 **§203. Incorporation**

46 1. Beginning of corporate existence. Unless a later
48 effective date is specified, the corporate existence of a
 corporation begins when its articles of incorporation are filed.

50 2. Filing constitutes proof of satisfaction of conditions.
 The Secretary of State's filing of the articles of incorporation

2 is conclusive proof that the incorporators satisfied all
3 conditions precedent to incorporation except in a proceeding by
4 the State to cancel or revoke the incorporation or involuntarily
5 dissolve the corporation.

6 **§204. Liability for preincorporation transactions**

8 All persons purporting to act as or on behalf of a
9 corporation, knowing there was no incorporation under this Act,
10 are jointly and severally liable for all liabilities created
11 while so acting.

12 **§205. Organization of corporation**

14 **1. Organizational meeting.** An organizational meeting must
15 be held before or after incorporation in accordance with this
16 subsection.

18 A. If initial directors are named in the articles of
19 incorporation, the initial directors shall hold an
20 organizational meeting, at the call of a majority of the
21 directors, to complete the organization of the corporation
22 by appointing officers, adopting bylaws and carrying on any
23 other business brought before the meeting.

24 B. If initial directors are not named in the articles of
25 incorporation, the incorporator or incorporators shall hold
26 an organizational meeting, at the call of a majority of the
27 incorporators:

28 (1) To elect directors and complete the organization
29 of the corporation; or

30 (2) To elect a board of directors who shall complete
31 the organization of the corporation.

32 **2. Action permitted without organizational meeting.** Action
33 required or permitted by this section to be taken by
34 incorporators at an organizational meeting may be taken without a
35 meeting if the action taken is evidenced by one or more written
36 consents describing the action taken and signed by each
37 incorporator.

38 **3. Location of organizational meeting.** An organizational
39 meeting may be held in or out of this State.

40 **§206. Bylaws**

41

1. Adoption of bylaws. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

2. Contents of bylaws. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or its articles of incorporation.

§207. Emergency bylaws

1. Emergency defined. For purposes of this section, an emergency exists if a quorum of the corporation's directors can not readily be assembled because of some catastrophic event.

2. Emergency bylaws authorized. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during an emergency, including:

A. Procedures for calling a meeting of the board of directors;

B. Quorum requirements for a meeting of the board of directors; and

C. Designation of additional or substitute directors.

3. Effect of nonemergency bylaws. All provisions of the regular bylaws that are consistent with the emergency bylaws remain effective during an emergency. The emergency bylaws are not effective after the emergency ends.

4. Effect of corporate action in accord with emergency bylaws. Corporate action taken in good faith in accordance with the emergency bylaws:

A. Binds the corporation; and

B. May not be used to impose liability on a corporate director, officer, employee or agent.

CHAPTER 3

PURPOSES AND POWERS

§301. Corporate purposes

1. Purpose of engaging in lawful business. A corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

2. Subject to other regulation by this State. A corporation engaging in a business that is subject to regulation under another statute of this State may incorporate under this Act only if permitted by, and subject to all limitations of, the other statute.

§302. General powers

Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power to:

1. Suit. Sue and be sued, complain and defend in its corporate name;

2. Corporate seal. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

3. Bylaws. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for managing the business and regulating the affairs of the corporation;

4. Acquire property. Purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located;

5. Dispose of property. Sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;

6. Interest in obligations of other entity. Purchase, receive, subscribe for or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

7. Incur obligations. Make contracts and guarantees; incur liabilities; borrow money; issue its notes, bonds and other

2 obligations, which may be convertible into or include the option
3 to purchase other securities of the corporation; and secure any
4 of its obligations by mortgage or pledge of any of its property,
5 franchises or income;

6 8. Use of funds. Lend money, invest and reinvest its funds
7 and receive and hold real and personal property as security for
8 repayment;

10 9. Partnership; joint venture. Be a promoter, partner,
11 member, associate or manager of any partnership, joint venture,
12 trust or other entity;

14 10. Conduct business. Conduct its business, locate offices
15 and exercise the powers granted by this Act within or without
16 this State;

18 11. Directors, officers, employees, agents. Elect
19 directors and appoint officers, employees and agents of the
20 corporation, define their duties, fix their compensation and lend
21 them money and credit;

22 12. Establish benefit or incentive plans. Pay pensions and
23 establish pension plans, pension trusts, profit-sharing plans,
24 share-bonus plans, share-option plans and benefit or incentive
25 plans for any or all of its current or former directors,
26 officers, employees and agents;

28 13. Make donations. Make donations for the public welfare
29 or for charitable, scientific or educational purposes;

32 14. Transact business. Transact any lawful business that
33 will aid governmental policy;

34 15. Actions in futherance of corporation. Make payments or
35 donations or do any other lawful act that furthers the business
36 and affairs of the corporation;

38 16. Cease activity. Cease its corporate activities and
39 surrender its corporate franchise;

42 17. Other corporations. Form or acquire control of other
43 corporations;

44 18. Life insurance. Provide, for its benefit, insurance on
45 the life of any of its directors, officers or employees, or on
46 the life of any shareholder;

48

19. Litigation expenses. Reimburse and indemnify
2 litigation expenses of directors, officers and employees, as
provided in chapter 8, subchapter V; and

20. Acquire and dispose of own shares. Purchase and
6 otherwise acquire and dispose of its own shares.

8 **§303. Emergency powers**

10 1. Emergency defined. For the purposes of this section, an
emergency exists if a quorum of the corporation's directors can
12 not readily be assembled because of some catastrophic event.

14 2. Authorized powers in event of emergency. In
anticipation of or during an emergency, the board of directors of
16 a corporation may:

18 A. Modify lines of succession to accommodate the incapacity
of any director, officer, employee or agent; and

20 B. Relocate the principal office, designate alternative
22 principal offices or regional offices, or authorize the
officers to do so.

24 3. Notice of meeting; quorum. During an emergency, unless
26 emergency bylaws pursuant to chapter 2 provide otherwise:

28 A. Notice of a meeting of the board of directors need be
given only to those directors whom it is practicable to
30 reach and may be given in any practicable manner, including
by publication and radio; and

32 B. One or more officers of the corporation present at a
34 meeting of the board of directors may be deemed to be
directors for the meeting, in order of rank and within the
36 same rank in order of seniority, as necessary to achieve a
quorum.

38 4. Effect of corporate action taken during emergency.
40 Corporate action taken in good faith during an emergency under
this section to further the ordinary business affairs of the
42 corporation:

44 A. Binds the corporation; and

46 B. May not be used to impose liability on a corporate
director, officer, employee or agent.

48 **§304. Ultra vires**

50

1 1. Corporate action not subject to challenge. Except as
2 provided in subsection 2, the validity of corporate action may
3 not be challenged on the ground that the corporation lacks or
4 lacked power to act.

6 2. Corporate action subject to challenge. A corporation's
7 power to act may be challenged:

8
9
10 A. In a proceeding by a shareholder against the corporation
11 to enjoin the act;

12 B. In a proceeding by the corporation, directly,
13 derivatively or through a receiver, trustee or other legal
14 representative against an incumbent or former director,
15 officer, employee or agent of the corporation; or

16
17 C. In a proceeding by the Attorney General under section
18 1430.

19
20 3. Available remedies in proceeding by shareholder. In a
21 shareholder's proceeding under subsection 2, paragraph A to
22 enjoin an unauthorized corporate act, the court may enjoin or set
23 aside the act, if equitable and if all affected persons are
24 parties to the proceeding, and may award damages for loss, other
25 than anticipated profits, suffered by the corporation or another
26 party because of enjoining the unauthorized act.

28
29 **CHAPTER 4**

30
31 **NAME**

32 **§401. Corporate name**

33
34
35 1. Prohibition. A corporate name may not contain language
36 stating or implying that the corporation is organized for a
37 purpose other than that permitted by section 301 and the
38 corporation's articles of incorporation.

39
40 2. Distinguishable name. Except as authorized by
41 subsections 3 and 4, a corporate name must be distinguishable on
42 the records of the Secretary of State from:

43
44 A. The name of a corporation, limited liability company,
45 limited liability partnership or limited partnership that is
46 incorporated, organized or authorized to transact business
47 or carry on activities in this State;

48
49 B. Assumed, fictitious, reserved and registered name
50 filings for all entities; and

2 C. Marks registered under Title 10, chapter 301-A.

4 3. Refuse to file name. The Secretary of State, in the
6 Secretary of State's discretion, may refuse to file a name that:

8 A. Consists of or comprises language that is obscene;

10 B. Inappropriately promotes abusive or unlawful activity;

12 C. Falsely suggests an association with public
14 institutions; or

16 D. Violates any other provision of the law of this State
18 with respect to names.

20 4. Authorization to use name. A corporation may apply to
22 the Secretary of State for authorization to use a name that is
24 not distinguishable on the records of the Secretary of State from
26 one or more of the names described in subsection 2. The
28 Secretary of State shall authorize use of the name applied for if:

30 A. The entity in possession of the name consents to the use
32 in writing and submits an undertaking in a form satisfactory
34 to the Secretary of State to change its name to a name that
36 is distinguishable on the records of the Secretary of State
38 from the name of the applicant; or

40 B. The applicant delivers to the Secretary of State a
42 certified copy of the final judgment of a court of competent
44 jurisdiction establishing the applicant's right to use the
46 name applied for in this State.

48 5. Use of another corporation's name. A corporation may
use the name, including the assumed or fictitious name, of
another domestic or foreign corporation that is used in this
State if the other corporation is incorporated or authorized to
transact business in this State and the corporation proposing to
use the name:

A. Has merged with the other corporation;

B. Has been formed by reorganization of the other
corporation; or

C. Has acquired all or substantially all of the assets,
including the corporate name, of the other corporation.

2 6. Determining distinguishability. In determining whether
names are "distinguishable on the records," the Secretary of
4 State shall disregard the following:

6 A. The words or abbreviations of words that describe the
nature of the entity, including "professional association,"
"corporation," "company," "incorporated," "limited,"
8 "limited partnership," "limited liability company," "limited
liability partnership" or "professional corporation";

10 B. The presence or absence of the words or symbols of the
12 words "and," "the" and "a";

14 C. The differences in the use of punctuation,
capitalization or special characters; and

16 D. The differences in the uses of singular and plural forms
18 of words.

20 §402. Reserved name

22 1. Reserve use of name. A person may reserve the exclusive
use of a corporate name, including an assumed or fictitious name,
24 by delivering for filing an application to the Secretary of
State. The application must set forth the name and address of
26 the applicant and the name proposed to be reserved. If the
Secretary of State finds that the corporate name applied for is
28 available, the Secretary of State shall reserve the name for the
applicant's exclusive use for a nonrenewable period of 120 days.

30 2. Transfer of reservation. The owner of a reserved
32 corporate name under subsection 1 may transfer the reservation to
another person by delivering to the Secretary of State a notice
34 of the transfer, signed by the transferor, that states the name
and address of the transferee.

36 §403. Registered name of foreign corporation

38 1. Register corporate name. A foreign corporation may
40 register its corporate name if the name is distinguishable on the
records of the Secretary of State pursuant to section 401.

42 2. Application. To register its corporate name a foreign
44 corporation must deliver to the Secretary of State for filing an
application that:

46 A. Sets forth its corporate name, the state or country and
48 date of its incorporation, the address of its principal
office and a brief description of the nature of the business
50 in which it is engaged; and

2 B. Is accompanied by a certificate of existence or a
4 document of similar import duly authenticated by the
6 Secretary of State or other official having custody of
8 corporate records in the state or country under whose law
the foreign corporation is incorporated. Such certificate
of existence shall have been made not more than 90 days
prior to the delivery of the application for filing.

10 3. Applicant's exclusive use. The corporate name is
12 registered for the foreign corporation's exclusive use upon the
14 effective date of the application until the end of the calendar
year in which the application was filed.

16 4. Renewal of registered name. A foreign corporation whose
18 registration is effective may renew it for a successive year by
20 delivering for filing to the Secretary of State a renewal
22 application that complies with the requirements of subsection 2
between October 1st and December 31st. The renewal application,
when filed, renews the registration for the following calendar
year.

24 5. Qualify as foreign corporation. A foreign corporation
26 whose registration is effective may, after the registration is
28 effective, qualify as a foreign corporation under the registered
30 name or may consent in writing to the use of that name by a
32 corporation incorporated under this Act or by another foreign
corporation authorized to transact business in this State. The
registration terminates when the domestic corporation is
incorporated or the foreign corporation qualifies or consents to
the qualification of another foreign corporation under the
registered name.

34 §404. Assumed or fictitious name of corporation

36 1. Assumed name; defined. As used in this section,
38 "assumed name" includes a trade name, the name of a division not
40 separately incorporated and not used in conjunction with the true
corporate name and any name other than the true name of a
corporation, except a fictitious name.

42 2. Fictitious name; defined. As used in this section,
44 "fictitious name" is a name adopted by a foreign corporation
authorized to transact business in this State because its real
name is unavailable pursuant to section 401.

46 3. Authorized to transact business. Upon complying with
48 this section, a domestic or foreign corporation authorized to
50 transact business in this State may transact its business in this
State under one or more assumed or fictitious names.

2 4. File statement indicating use of assumed or fictitious
3 name. Prior to transacting business in this State under an
4 assumed or fictitious name, a corporation shall execute and
5 deliver for filing, in accordance with section 121, a statement
6 setting forth:

8 A. The corporate name and the address of its registered
9 office;

10 B. That it intends to transact business under an assumed or
11 fictitious name;

12 C. The assumed or fictitious name that it proposes to use;
13 and

14 D. If the assumed or fictitious name is not to be used at
15 all of the corporation's places of business in this State,
16 the locations where it will be used.

17 A separate statement must be executed and delivered for filing
18 with respect to each assumed or fictitious name that the
19 corporation proposes to use.

20 5. Compliance required. Each assumed or fictitious name
21 must comply with the requirements of section 401.

22 6. Enjoin use of assumed or fictitious name. If a
23 corporation uses an assumed or fictitious name without complying
24 with the requirements of this section, the continued use of the
25 assumed or fictitious name may be enjoined upon suit by the
26 Attorney General or by any person adversely affected by the use
27 of the assumed or fictitious name.

28 7. Enjoin use despite compliance. Notwithstanding its
29 compliance with the requirements of this section, the use of an
30 assumed or fictitious name may be enjoined upon suit of the
31 Attorney General or of any person adversely affected by such use
32 if:

33 A. The assumed or fictitious name did not, at the time the
34 statement required by subsection 4 was filed, comply with
35 the requirements of section 401; or

36 B. The assumed or fictitious name is not distinguishable on
37 the records of the Secretary of State from a name in which
38 the plaintiff has prior rights by virtue of the common law
39 or statutory law of unfair competition, unfair trade
40 practices, common law copyright or similar law.

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2 The mere filing of a statement pursuant to subsection 4 does not
3 constitute actual use of the assumed or fictitious name set out
4 in that statement for purposes of determining priority of rights.

5 8. Terminate use of assumed or fictitious name. A
6 corporation may terminate an assumed or fictitious name by
7 executing and delivering, in accordance with section 121, a
8 statement setting forth:

9 A. The name of the corporation and the address of its
10 registered office;

11 B. That it no longer intends to transact business under the
12 assumed or fictitious name; and

13 C. The assumed or fictitious name it intends to terminate.

14 **CHAPTER 5**

15 **OFFICE AND CLERK**

16 **§501. Registered office and clerk**

17 1. Clerk. Each domestic corporation to which this Act
18 applies shall maintain in this State a clerk, who is a natural
19 person resident in this State. The clerk may be, but is not
20 required to be, one of the directors or officers of the
21 corporation, or the clerk may be a person holding no other
22 position with the corporation. The clerk of a corporation is not
23 an officer but performs the functions provided in this Act.

24 2. Registered office. The clerk shall maintain a
25 registered office at some fixed place within this State, which
26 may be, but need not be, the corporation's place of business.
27 The clerk shall perform those duties required of the clerk
28 elsewhere in this Act.

29 3. Acceptance of appointment. Unless the clerk signed the
30 document making the appointment, the appointment of a clerk or a
31 successor clerk on whom process may be served is not effective
32 until the clerk delivers a written statement to the Secretary of
33 State accepting the appointment.

34 4. Change of clerk. A corporation may change its clerk by
35 executing and delivering for filing as provided by section 121 a
36 statement setting forth:

37 A. The name of the corporation;

1 of 8

2 B. The name and address of its current clerk;

4 C. The name and address of its successor clerk; and

6 D. Either:

8 (1) That the change of clerk was duly authorized by
10 the board of directors of the corporation and that the
12 power to appoint the clerk is not reserved to the
 shareholders by the articles or the bylaws; or

14 (2) That the change of clerk was duly authorized by
 the shareholders of the corporation.

16 5. Resignation of clerk. The clerk of a corporation may
18 resign upon filing a written notice of the resignation with the
 Secretary of State and by mailing a copy of the notice to the
20 president or treasurer of the corporation or, if both of those
 offices are vacant, to any of the corporation's directors. The
22 notice filed with the Secretary of State must recite that a copy
 of the notice has been mailed to the corporate officer designated
24 in this subsection and must specify the corporate officer's name
 and corporate office. The resignation takes effect upon the
26 filing of the resignation by the Secretary of State.

28 6. Appointment of new clerk. If a clerk dies, becomes
 incapacitated, resigns or otherwise is unable to perform the
30 clerk's duties, the corporation shall promptly appoint another
 clerk and shall execute and file with the Secretary of State a
32 written statement of the appointment of the new clerk, as
 provided in subsection 4.

34 7. Name or address change. If the name or address of the
 registered office of the clerk of one or more corporations
36 changes from the name or address of the registered office
 appearing on the record in the office of the Secretary of State,
38 the clerk shall execute and deliver for filing, in accordance
 with section 121, a statement setting forth:

40 A. The name of the clerk appearing on the record in the
42 office of the Secretary of State;

44 B. If the current clerk has had a name change, the new name
 of the clerk;

46 C. The address of the registered office appearing on the
48 record in the office of the Secretary of State;

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2 D. If the address of the registered office has changed, the
address of the new registered office;

4 E. The names of each of the corporations of which the clerk
is clerk; and

6 F. A recitation that states that a notice of the change has
8 been sent to each of the corporations.

10 In lieu of the bulk filing, the clerk may file for each such
12 corporation a separate statement containing the information.

14 8. Statement of change. Filing by a corporation of a
statement of a change of its clerk, as provided in subsection 4,
16 constitutes both an appointment of the new clerk named in the
statement of change and a termination of the appointment of its
18 former clerk.

20 9. Clerk named in articles of incorporation. The initial
clerk of a corporation must be named in the articles of
22 incorporation for that corporation. A clerk continues in office
until a successor is chosen and qualifies and the statement
24 required by subsection 4 is filed or until the resignation notice
required by subsection 5 is filed.

26 The articles of incorporation or bylaws may provide that changes
in the clerk and election of a new clerk must be by vote of the
28 shareholders. Unless the articles or bylaws expressly so
provide, changes in the clerk and election of a new clerk must be
30 by resolution of the board of directors.

32 10. Document filed to change clerk. Any document to be
filed by the Secretary of State, the effect of which is to change
34 the clerk, must be signed by the person designated in the
document as the new clerk or in accordance with section 121,
36 subsection 5, paragraph A, B or C.

38 **§502. Service on corporation**

40 1. Service of process; agent. A corporation's clerk is the
corporation's agent for service of process, notice or demand
42 required or permitted by law to be served on the corporation.

44 2. Service by mail. If a corporation has no clerk, or the
clerk can not with reasonable diligence be served, the
46 corporation may be served by registered or certified mail, return
receipt requested, addressed to the president of the corporation
48 at its principal office. Service is perfected under this
subsection at the earliest of:

50

2 A. The date the corporation receives the mail;

4 B. The date shown on the return receipt, if signed on behalf of the corporation; or

6 C. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and
8 correctly addressed.

10 3. Service on corporation not limited. This section does not prescribe the only means or necessarily the required means of
12 servicing a corporation.

14 CHAPTER 6

16 SHARES AND DISTRIBUTIONS

18 SUBCHAPTER I

20 SHARES

22 §601. Authorized shares

24 1. Classes and number of shares authorized. A corporation's articles of incorporation must prescribe the
26 classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of
28 shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class and, prior
30 to the issuance of shares of a class, the preferences, limitations and relative rights of that class must be described
32 in the articles of incorporation. All shares of a class must have preferences, limitations and relative rights identical with
34 those of other shares of the same class, except to the extent otherwise permitted by section 602.

36 2. Voting rights authorized. A corporation's articles of incorporation must authorize one or more classes of shares that
38 together have unlimited voting rights and one or more classes of shares, which may be the same class or classes as those with
40 voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

44 3. Designations, preferences, limitations and relative rights. A corporation's articles of incorporation may authorize
46 one or more classes of shares that:

48 A. Have special, conditional or limited voting rights or no right to vote, except to the extent prohibited by this Act;
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COMMITTEE AMENDMENT "A" to H.P. 283, L.D. 361

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B. Are redeemable or convertible as specified in the articles of incorporation:

(1) At the option of the corporation, the shareholder or another person or upon the occurrence of a designated event;

(2) For cash, indebtedness, securities or other property; or

(3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

C. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative; or

D. Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

The description of the designations, preferences, limitations, and relative rights of share classes in this subsection is not exhaustive.

4. Rules of construction for preferred shares. Unless otherwise provided by this Act or by a corporation's articles of incorporation or by resolution of the board of directors in the case of shares whose terms may be fixed as provided by section 602:

A. Shares that are preferred as to dividends are deemed cumulative preferred shares;

B. Shares that are preferred as to dividends are not entitled to participate in dividends beyond the amount of the stated dividend preference;

C. Shares that are preferred as to dividends are preferred, on liquidation of the corporation, to the extent of the par or stated value of the shares, if any;

D. Shares that are preferred as to liquidation are not entitled to participate in liquidation payments beyond the amount of the liquidation preference stated in the articles of incorporation or implied under paragraph C;

E. If preferred shares cumulative as to dividends are entitled to a preferential payment on liquidation, the

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2 payment must also include the amount of dividends accrued
3 but unpaid as of the date of liquidation;

4 F. Shares that are preferred as to dividends or as to
5 payments upon liquidation are not entitled to vote; and

6
7 G. "Liquidation," "rights upon liquidation" and terms of
8 like import shall refer to the formal dissolution of the
9 corporation. Sale of all the corporate assets or
10 participation of the corporation in a merger or
11 consolidation is not deemed a liquidation.

12 This subsection does not apply to shares already issued or
13 authorized on December 31, 1971.

14
15 **§602. Terms of class or series determined by board of directors**

16
17 **1. Determination by board of directors.** If a corporation's
18 articles of incorporation provide, the board of directors may
19 determine, in whole or part, the preferences, limitations and
20 relative rights within the limits set forth in section 601 of any
21 class of shares before the issuance of any shares of that class
22 or one or more series within a class before the issuance of any
23 shares of that series.

24
25 **2. Series must have distinguishing designation.** Each
26 series of a class must be given a distinguishing designation.

27
28 **3. Identical terms.** A share of a series must have
29 preferences, limitations and relative rights identical with those
30 of all other shares of the same series and, except to the extent
31 otherwise provided in the description of the series, with those
32 of other series of the same class.

33
34 **4. Filing articles of amendment.** Before issuing any shares
35 of a class or series created under this section, the corporation
36 shall deliver to the Secretary of State for filing articles of
37 amendment, which are effective without shareholder action, that
38 set forth:

39 **A. The name of the corporation;**

40
41 **B. The text of the amendment determining the terms of the**
42 **class or series of shares;**

43 **C. The date the amendment was adopted; and**

44
45 **D. A statement that the amendment was duly adopted by the**
46 **board of directors.**

§603. Issued and outstanding shares

2
4 1. Issue number of shares authorized. A corporation may
6 issue the number of shares of each class or series authorized by
its articles of incorporation. Shares that are issued are
outstanding shares until they are reacquired, redeemed, converted
or cancelled.

8
10 2. Limitations on reacquisition, redemption or conversion.
The reacquisition, redemption or conversion of outstanding shares
is subject to the limitations of subsection 3 and to section 6.40.

12
14 3. Requirement. At all times that shares of the
corporation are outstanding, there must be outstanding:

16 A. One share that has, or more shares that together have,
18 unlimited voting rights; and

20 B. One share that is, or more shares that together are,
22 entitled to receive the net assets of the corporation upon
dissolution.

§604. Fractional shares

24
26 1. Authorization. A corporation may:

28 A. Issue fractions of a share or pay in money the value of
fractions of a share;

30 B. Arrange for disposition of fractional shares by the
shareholders; or

32
34 C. Issue scrip in registered or bearer form entitling the
holder to receive a full share upon surrendering enough
scrip to equal a full share.

36
38 2. Scrip. Each certificate representing scrip must be
conspicuously labeled "scrip" and must contain the information
required by section 626, subsection 2.

40
42 3. Rights. The holder of a fractional share is entitled to
exercise the rights of a shareholder, including the right to
vote, to receive dividends and to participate in the assets of
44 the corporation upon liquidation. The holder of scrip is not
entitled to any of these rights unless the scrip provides for
46 them.

48
50 4. Conditions. The board of directors may authorize the
issuance of scrip subject to any condition it considers
desirable, including:

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- 2 A. That the scrip will become void if not exchanged for
- 4 full shares before a specified date; and
- 6 B. That the shares for which the scrip is exchangeable may
- 8 be sold and the proceeds paid to the scripholders.

SUBCHAPTER II

ISSUANCE OF SHARES

§621. Subscription for shares before incorporation

14 1. Revocability. A subscription for shares entered into

16 before incorporation is irrevocable for 6 months unless the

18 subscription agreement provides a longer or shorter period or all

20 the subscribers agree to revocation.

22 2. Payment terms. The board of directors of a corporation

24 may determine the payment terms of a subscription for shares that

26 was entered into before incorporation, unless the subscription

agreement specifies the payment terms. A call for payment by the

board of directors must be uniform as far as practicable as to

all shares of the same class or series, unless the subscription

agreement specifies otherwise.

28 3. Receipt of consideration. Shares issued pursuant to

30 subscriptions entered into before incorporation are fully paid

32 and nonassessable when the corporation receives the consideration

specified in the subscription agreement.

34 4. Default; rescission. If a subscriber defaults in

36 payment of money or property under a subscription agreement

38 entered into before incorporation, the corporation may collect

40 the amount owed as any other debt. Alternatively, unless the

subscription agreement provides otherwise, the corporation may

rescind the agreement and may sell the shares if the debt remains

unpaid for more than 20 days after the corporation sends written

demand for payment to the subscriber.

42 5. Contract. A subscription agreement entered into after

44 incorporation is a contract between the subscriber and the

corporation subject to section 622.

§622. Issuance of shares

48 1. Reservation of powers. The powers granted in this

50 section to the board of directors of a corporation may be

reserved to the shareholders by the articles of incorporation.

2 2. Consideration. The board of directors of a corporation
3 may authorize shares to be issued for consideration consisting of
4 any tangible or intangible property or benefit to the
5 corporation, including cash, promissory notes, services
6 performed, contracts for services to be performed or other
7 securities of the corporation.

8
9 3. Determination of adequate consideration. Before the
10 corporation issues shares, its board of directors must determine
11 that the consideration received or to be received for shares to
12 be issued is adequate. The determination by the board of
13 directors is conclusive insofar as the adequacy of consideration
14 for the issuance of shares relates to whether the shares are
15 validly issued, fully paid and nonassessable.

16
17 4. Fully paid; nonassessable. When the corporation
18 receives the consideration for which its board of directors
19 authorized the issuance of shares under subsection 3, those
20 shares issued are fully paid and nonassessable.

21 5. Escrow. The corporation may place in escrow shares
22 issued for a contract for future services or benefits or for a
23 promissory note or may make other arrangements to restrict the
24 transfer of the shares and may credit distributions in respect of
25 the shares against their purchase price until the services are
26 performed, the note is paid or the benefits received. If the
27 services are not performed, the note is not paid or the benefits
28 are not received, the shares escrowed or restricted and the
29 distributions credited may be cancelled in whole or part.

30
31 **§623. Liability of shareholders**

32
33 1. Liability for paying consideration. A purchaser from a
34 corporation of that corporation's own shares is not liable to the
35 corporation or its creditors with respect to the shares except to
36 pay the consideration for which the shares were authorized to be
37 issued or specified in the subscription agreement.

38
39 2. Personal liability. Unless otherwise provided in a
40 corporation's articles of incorporation, a shareholder of a
41 corporation is not personally liable for the acts or debts of the
42 corporation except that the shareholder may become personally
43 liable by reason of the shareholder's acts or conduct.

44
45 **§624. Share dividends**

46
47 1. Pro rata shares. Unless a corporation's articles of
48 incorporation provide otherwise, shares may be issued pro rata
49 and without consideration to the corporation's shareholders or to
50

2 the shareholders of one or more classes or series of shares. An
3 issuance of shares under this subsection is a share dividend.

4 2. Shares of different classes. Shares of one class or
5 series may not be issued as a share dividend in respect of shares
6 of another class or series unless:

8 A. The articles of incorporation so authorize;

10 B. A majority of the votes entitled to be cast by the class
11 or series to be issued approves the issue; or

12 C. There are no outstanding shares of the class or series
13 to be issued.

16 3. Record date. If a corporation's board of directors does
17 not fix the record date for determining shareholders entitled to
18 a share dividend, the record date is the date the board of
19 directors authorizes the share dividend.

20 **§625. Share options**

22 A corporation may issue rights, options or warrants for the
23 purchase of shares of the corporation. Its board of directors
24 shall determine the terms upon which the rights, options or
25 warrants are issued, their form and content and the consideration
26 for which the shares are to be issued.

28 **§626. Form and content of certificates**

30 1. Certificate not required. Shares may but need not be
31 represented by certificates. Unless this Act or another law
32 expressly provides otherwise, whether the shares are represented
33 by certificates or not does not affect the rights and obligations
34 of shareholders.

36 2. Content of certificate. At a minimum each share
37 certificate must state on its face:

40 A. The name of the issuing corporation and that the
41 corporation is organized under the laws of this State;

42 B. The name of the person to whom issued; and

44 C. The number and class of shares and the designation of
45 the series, if any, the certificate represents.

48 3. Classes. If the issuing corporation is authorized to
49 issue different classes of shares or different series within a
50 class, the designations, relative rights, preferences and

2 limitations applicable to each class and the variations in
3 rights, preferences and limitations determined for each series
4 and the authority of its board of directors to determine
5 variations for future series must be summarized on the front or
6 back of each certificate. Alternatively, each certificate may
7 state conspicuously on its front or back that the corporation
8 will furnish the shareholder this information on request in
9 writing and without charge.

10 4. Signatures. Each share certificate must be signed,
11 either manually or in facsimile, by:

12 A. Two officers designated in the bylaws;

14 B. The clerk and an officer designated in the bylaws; or

16 C. The corporation's board of directors.

18 A share certificate may bear the corporate seal or its facsimile.

20 5. Signatory no longer holds office. If the person who
21 signed a share certificate pursuant to subsection 4 no longer
22 holds office when the certificate is issued, the certificate is
23 nevertheless valid.

24 **§627. Shares without certificates**

26 1. Authorization. Unless the articles of incorporation or
27 bylaws provide otherwise, the board of directors of a corporation
28 may authorize the issue of some or all of the shares of any or
29 all of its classes or series of shares without certificates. The
30 authorization does not affect shares already represented by
31 certificates until they are surrendered to the corporation.

32 2. Written statement. Within a reasonable time after the
33 issue or transfer of shares without certificates, the corporation
34 shall send the shareholder a written statement of the information
35 required on certificates by section 626, subsections 2 and 3 and,
36 if applicable, section 628.

37 **§628. Restriction on transfer of shares and other securities**

38 1. Share includes. For purposes of this section, "share"
39 includes a security convertible into or carrying a right to
40 subscribe for or acquire shares.

41 2. Imposition of restrictions. A corporation's articles of
42 incorporation or bylaws, an agreement among shareholders or an
43 agreement between shareholders and the corporation may impose
44 restrictions on the transfer or registration of transfer of
45 shares.

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2 shares of the corporation. A restriction does not affect shares
4 issued before the restriction was adopted unless the holders of
6 the shares are parties to the restriction agreement or voted in
8 favor of the restriction.

10 3. Existence of restriction must be made known. A
12 restriction on the transfer or registration of transfer of shares
14 is valid and enforceable against the holder or a transferee of
16 the holder if the restriction is authorized by this section and
18 its existence is noted conspicuously on the front or back of the
20 certificate or is contained in the information statement required
22 by section 627, subsection 2. Unless so noted, a restriction is
24 not enforceable against a person who has no knowledge of the
26 restriction.

28 4. Purpose of restriction. A restriction on the transfer
30 or registration of transfer of shares is authorized:

32 A. To maintain the corporation's status when it is
34 dependent on the number or identity of its shareholders;

36 B. To preserve exemptions under federal or state securities
38 law; or

40 C. For any other reasonable purpose.

42 5. Authorized restrictions. A restriction on the transfer
44 or registration of transfer of shares may:

46 A. Obligate the shareholder first to offer the corporation
48 or other persons, separately, consecutively or
50 simultaneously, an opportunity to acquire the restricted
52 shares;

54 B. Obligate the corporation or other persons, separately,
56 consecutively or simultaneously, to acquire the restricted
58 shares;

60 C. Require the corporation, the holders of any class of its
62 shares or another person to approve the transfer of the
64 restricted shares if the requirement is not manifestly
66 unreasonable; or

68 D. Prohibit the transfer of the restricted shares to
70 designated persons or classes of persons if the prohibition
72 is not manifestly unreasonable.

74 §629. Expense of issue

A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

SUBCHAPTER III

SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

§641. Shareholders' preemptive rights

1. Share includes. For purposes of this section, "share" includes a security convertible into or carrying a right to subscribe for or acquire shares.

2. No preemptive right absent statement in articles of incorporation. The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation provide.

3. Statement. A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or containing words of similar import, means that the principles set out in paragraphs A to F apply except to the extent the articles of incorporation expressly provide otherwise.

A. The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them.

B. A shareholder may waive that shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

C. There is no preemptive right with respect to:

(1) Shares issued as compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

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2 (3) Shares authorized in articles of incorporation
 that are issued within 6 months from the effective date
 of incorporation; or

4 (4) Shares sold otherwise than for money.

6 D. Holders of shares of any class without general voting
8 rights but with preferential rights to distributions or
 assets have no preemptive rights with respect to shares of
10 any class.

12 E. Holders of shares of any class with general voting
 rights but without preferential rights to distributions or
14 assets have no preemptive rights with respect to shares of
 any class with preferential rights to distributions or
16 assets unless the shares with preferential rights are
 convertible into or carry a right to subscribe for or
18 acquire shares without preferential rights.

20 F. Shares subject to preemptive rights that are not
 acquired by shareholders may be issued to any person for a
22 period of one year after being offered to shareholders at a
 consideration set by the corporation's board of directors
24 that is not lower than the consideration set for the
 exercise of preemptive rights. An offer at a lower
26 consideration or after the expiration of one year is subject
 to the shareholders' preemptive rights.

28 **§642. Corporation's acquisition of its own shares**

30 1. Acquisition. A corporation may acquire its own shares.
32 Shares so acquired constitute authorized but unissued shares.

34 2. Prohibition on reissuance. If a corporation's articles
 of incorporation prohibit the reissue of the acquired shares, the
36 number of authorized shares is reduced by the number of shares
 acquired.

40 **SUBCHAPTER IV**

42 **DISTRIBUTIONS**

44 **§651. Distributions to shareholders**

46 1. Distributions. A board of directors of a corporation
 may authorize and the corporation may make distributions to its
48 shareholders subject to restriction by the articles of
 incorporation and the limitation in subsection 3.

50

2 2. Record date. If the board of directors of a corporation
3 does not fix the record date for determining shareholders
4 entitled to a distribution, other than one involving a purchase,
5 redemption or other acquisition of the corporation's shares, then
6 the record date is the date the board of directors authorizes the
7 distribution.

8 3. Distribution prohibited. A distribution may not be made
9 if, after giving the distribution effect:

10 A. The corporation would not be able to pay its debts as
11 they become due in the usual course of business; or

12 B. The corporation's total assets would be less than the
13 sum of its total liabilities plus, unless the articles of
14 incorporation permit otherwise, the amount that would be
15 needed, if the corporation were to be dissolved at the time
16 of the distribution, to satisfy the preferential rights upon
17 dissolution of shareholders whose preferential rights are
18 superior to those receiving the distribution.

19 4. Basis for determination. The board of directors of a
20 corporation may base a determination that a distribution is not
21 prohibited under subsection 3 either on financial statements
22 prepared on the basis of accounting practices and principles that
23 are reasonable in the circumstances or on a fair valuation or
24 other method that is reasonable in the circumstances.

25 5. Effect measured. Except as provided in subsection 7,
26 the effect of a distribution under subsection 3 is measured:

27 A. In the case of distribution by purchase, redemption or
28 other acquisition of the corporation's shares, as of the
29 earlier of the date money or other property is transferred
30 or debt incurred by the corporation or the date the
31 shareholder ceases to be a shareholder with respect to the
32 acquired shares;

33 B. In the case of any other distribution of indebtedness,
34 as of the date the indebtedness is distributed; and

35 C. In all other cases, as of the date the distribution is
36 authorized if the payment occurs within 120 days after the
37 date of authorization or the date the payment is made if it
38 occurs more than 120 days after the date of authorization.

39 6. Indebtedness to shareholder. A corporation's
40 indebtedness to a shareholder incurred by reason of a
41 distribution made in accordance with this section is at parity
42 with the indebtedness to the shareholder incurred by reason of a
43 distribution made in accordance with this section.

with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

7. Indebtedness issued as a distribution. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection 3 if the terms of the indebtedness provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

8. Application. This section does not apply to distributions in liquidation under chapter 14.

CHAPTER 7

SHAREHOLDERS

SUBCHAPTER I

MEETINGS

§701. Annual meeting

1. Timing of meeting. A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with its bylaws.

2. Place. Annual shareholders' meetings may be held in or out of the State at the place stated in or fixed in accordance with a corporation's bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings must be held at the corporation's principal office.

3. Failure to hold meeting. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

§702. Special meeting

1. Special meeting required. A corporation shall hold a special meeting of its shareholders:

A. On call of the board of directors or the person or persons authorized to do so by its articles of incorporation or bylaws; or

2 B. If the holders of at least 10% of all the votes entitled
4 to be cast on an issue proposed to be considered at the
6 proposed special meeting sign, date and deliver to the
8 corporation one or more written demands for the meeting
10 describing the purpose or purposes for which it is to be
12 held, except that the articles of incorporation may fix a
14 lower percentage or a higher percentage not exceeding 25% of
16 all the votes entitled to be cast on any issue proposed to
18 be considered. Unless otherwise provided in the articles of
20 incorporation, a written demand for a special meeting may be
22 revoked by a writing to that effect received by the
24 corporation prior to the receipt by the corporation of
26 demands sufficient in number to require the holding of a
28 special meeting.

2 2. Record date for determining entitlement to special
4 meeting. If not otherwise fixed under section 703 or 707, the
6 record date for determining shareholders entitled to demand a
8 special meeting is the date the first shareholder signs the
10 demand.

2 3. Place of special meetings. Special meetings may be held
4 in or out of this State at the place stated in or fixed in
6 accordance with the corporation's bylaws. If no place is stated
8 or fixed in accordance with the bylaws, special meetings must be
10 held at the corporation's principal office.

2 4. Scope of special meeting. Only business within the
4 purpose or purposes described in the meeting notice required by
6 section 705, subsection 3 may be conducted at a special meeting.

32 **§703. Court-ordered meeting**

34 1. Shareholder application. The Superior Court of the
36 county in which a corporation's principal office is located, or,
38 if the principal office is not located in this State, in which
40 its registered office is located, may summarily order a meeting
42 to be held:

44 A. On application of any shareholder of the corporation
46 entitled to participate in an annual meeting if an annual
48 meeting was not held within the earlier of 6 months after
the end of the corporation's fiscal year or 15 months after
its last annual meeting; or

B. On application of a shareholder who signed a demand for
a special meeting valid under section 702 if:

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(1) Notice of the special meeting was not given within 30 days after the date the demand was delivered to the corporation's secretary; or

(2) The special meeting was not held in accordance with the notice required by section 705, subsection 3.

2. Court may prescribe specifics. The Superior Court may fix the time and place of a meeting ordered pursuant to this section, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters and enter other orders necessary to accomplish the purpose or purposes of the meeting.

§704. Action without meeting

1. Permissible action without meeting. Action required or permitted by this Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. Record date. If not otherwise fixed under section 703 or 707, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection 1. Written consent is not effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date appearing on a consent delivered to the corporation in the manner required by this section, written consents signed by all shareholders entitled to vote on the action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

3. Effect of signed consent. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

4. Notice to nonvoting shareholders. If this Act requires that notice of a proposed action be given to nonvoting

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shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this Act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

§705. Notice of meeting

1. Notification to shareholders. A corporation shall notify shareholders of the date, time and place of each annual or special shareholders' meeting no fewer than 10 days, or 3 days for close corporations, nor more than 60 days before the meeting date. Unless this Act or the corporation's articles of incorporation require otherwise, the corporation is required only to give notice to shareholders entitled to vote at the meeting.

2. Annual meeting; description of purpose not required. Unless this Act or a corporation's articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3. Special meeting; description of purpose required. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

4. Record date. If not otherwise fixed under section 703 or 707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

5. Adjournment to new date, time or place. Unless a corporation's bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

§706. Waiver of notice

1. Shareholder may waive notice. A shareholder may waive any notice required by this Act or a corporation's articles of incorporation or bylaws before or after the date and time stated

in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. Attendance of meeting. A shareholder's attendance at a meeting:

A. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

B. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

§707. Record date

1. **Establishment of record date.** A corporation's bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

2. **Limitation on date.** A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

3. **Determination effective.** A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

4. **Court-ordered meeting.** If a court orders a shareholders' meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

§708. Conduct of meeting

1. **Chair presides.** At each meeting of a corporation's shareholders under this chapter, a chair shall preside. The

2 chair must be appointed as provided in the bylaws or, in the
absence of such provision, by the board of directors.

4 2. Order of business. The chair, unless the corporation's
6 articles of incorporation or bylaws provide otherwise, shall
determine the order of business and has the authority to
8 establish rules for the conduct of a meeting held pursuant to
this chapter.

10 3. Fairness of rules. Rules adopted for the meeting and
12 the conduct of a meeting held pursuant to this chapter must be
fair to shareholders.

14 4. Announcement when polls close. The chair of a meeting
16 held pursuant to this chapter shall announce at the meeting when
the polls close for each matter voted upon. If no announcement
18 is made, the polls are deemed to have closed upon the final
adjournment of the meeting. After the polls close, no ballots,
20 proxies or votes nor any revocations or changes thereto may be
accepted.

22
24 **SUBCHAPTER II**

26 **VOTING**

28 **§721. Shareholders list for meeting**

30 1. List of shareholders' names. After fixing a record date
32 for a meeting called pursuant to subchapter I, a corporation
shall prepare an alphabetical list of the names of all its
34 shareholders who are entitled to notice of a shareholders'
meeting. The list must be classified by voting group, and within
36 each voting group by class or series of shares, and must show the
address of and number of shares held by each shareholder. In the
38 case of a close corporation, the requirement of a shareholders
list may be satisfied by a stock transfer book or records, which
40 need not be maintained in alphabetized order and need not contain
the addresses of shareholders so long as the address of each
42 shareholder is otherwise maintained in the records of the
corporation.

44 2. Available for inspection. The shareholders list must be
46 available for inspection by any shareholder, beginning 2 business
days after notice of the meeting for which the list was prepared
48 is given, or the next business day in the case of a close
corporation that has provided fewer than 10 days' notice of such
50 meeting, and continuing through the meeting, at the corporation's
principal office or at a place identified in the meeting notice
in the city where the meeting will be held. A shareholder or the

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shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of section 1602, subsection 4, to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

3. Inspection of list. The corporation shall make the shareholders list available at the meeting, and a shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

4. Refusal by corporation. If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect the shareholders list before or at the meeting or copy the list as permitted by subsection 2, the Superior Court of the county where a corporation's principal office is located, or, if there is no principal office located in this State, where the corporation's registered office is located, on application of the shareholder may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

5. Effect of unavailability of shareholders list. Refusal or failure to prepare or make available the shareholders list does not affect the validity of action taken at the meeting.

§722. Voting entitlement of shares

1. Entitlement to vote. Except as provided in subsections 2 and 4 or unless a corporation's articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote. The articles of incorporation may grant, either absolutely or conditionally, to the holders of bonds, debentures or other obligations of the corporation the power to vote on specified matters, including the election of directors. This power may not be terminated except upon written assent of the holders of 2/3 in the aggregate face amount of such bonds, debentures or other obligations. When this power has been granted to holders of bonds, debentures or other obligations of a corporation, the term "shareholder," whenever used in this Act, includes holders of such obligations to the extent necessary to give effect to their voting power so granted.

2. Ownership of shares by 2nd corporation. Absent special circumstances, a share of a corporation is not entitled to vote if it is owned, directly or indirectly, by a 2nd corporation, domestic or foreign, and the first corporation owns, directly or

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indirectly, a majority of the shares entitled to vote for directors of the 2nd corporation.

3. Voting of shares held in fiduciary capacity. Subsection 2 does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

4. Redeemable shares. Redeemable shares are not entitled to vote after notice of redemption is mailed to the shareholders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an irrevocable obligation to pay the shareholders the redemption price on surrender of the shares.

§723. Proxies

1. Voting authorized. A shareholder may vote the shareholder's shares in person or by proxy.

2. Appointment of proxy. A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent or the shareholder's attorney-in-fact authorized the transmission.

3. Appointment of proxy effective. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election appointed pursuant to section 731 or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

4. Appointment of proxy revocable. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

A. A pledgee;

B. A person who purchased or agreed to purchase the shares;

C. A creditor of the corporation who extended the credit under terms requiring the appointment;

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2 D. An employee of the corporation whose employment contract
requires the appointment; or

4 E. A party to a voting agreement created under section 742.

6 5. Death or incapacity of shareholder. The death or
incapacity of a shareholder who appointed a proxy does not affect
8 the right of a corporation to accept the proxy's authority unless
notice of the death or incapacity is received by the secretary or
10 other officer or agent authorized to tabulate votes before the
proxy exercises the proxy's authority under the appointment.

12 6. Appointment revoked when interest extinguished. An
14 appointment made irrevocable under subsection 4 is revoked when
the interest with which it is coupled is extinguished.

16 7. Transfer of shares subject to irrevocable appointment.
18 A transferee for value of shares subject to an irrevocable
appointment may revoke the appointment if the transferee did not
20 know of the existence of the irrevocable appointment when the
transferee acquired the shares and the existence of the
22 irrevocable appointment was not noted conspicuously on the
certificate representing the shares or on the information
24 statement for shares without certificates.

26 8. Acceptance of proxy's vote. Subject to section 725 and
to any express limitation on the proxy's authority stated in the
28 appointment form or electronic transmission, a corporation is
entitled to accept the proxy's vote or other action as that of
30 the shareholder making the appointment.

32 9. Proxies given by holders of corporation's obligations.
The provisions of subsections 1 to 7 apply to proxies given by
34 the holders of a corporation's bonds, debentures or other
obligations when a right to vote is conferred upon such holders
36 by the articles of incorporation of a corporation, as permitted
by section 722, subsection 1.

38 **§724. Shares held by nominees**

40 1. Recognition of beneficial owner as shareholder. A
42 corporation may establish a procedure by which the beneficial
owner of shares that are registered in the name of a nominee is
44 recognized by the corporation as the shareholder. The extent of
this recognition may be determined in the procedure.

46 2. Procedure for recognition. The procedure under
48 subsection 1 may set forth:

50 A. The types of nominees to which it applies:

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- 2 B. The rights or privileges that the corporation recognizes
 in a beneficial owner;
- 4
- 6 C. The manner in which the procedure is selected by the
 nominee;
- 8 D. The information that must be provided when the procedure
 is selected;
- 10
- 12 E. The period for which selection of the procedure is
 effective; and
- 14 F. Other aspects of the rights and duties created.

§725. Corporation's acceptance of votes

18 1. Corresponding name. If the name signed on a vote,
20 consent, waiver or proxy appointment corresponds to the name of a
 shareholder, the corporation, if acting in good faith, is
22 entitled to accept the vote, consent, waiver or proxy appointment
 and give it effect as the act of the shareholder.

24 2. Different name. If the name signed on a vote, consent,
 waiver or proxy appointment does not correspond to the name of
26 its shareholder, the corporation, if acting in good faith, is
 nevertheless entitled to accept the vote, consent, waiver or
28 proxy appointment and give it effect as the act of the
 shareholder if:

30 A. The shareholder is an entity and the name signed
32 purports to be that of an officer or agent of the entity;

34 B. The name signed purports to be that of an administrator,
 executor, guardian or conservator representing the
36 shareholder and, if the corporation requests, evidence of
 fiduciary status acceptable to the corporation has been
38 presented with respect to the vote, consent, waiver or proxy
 appointment;

40 C. The name signed purports to be that of a receiver or
42 trustee in bankruptcy of the shareholder and, if the
 corporation requests, evidence of this status acceptable to
44 the corporation has been presented with respect to the vote,
 consent, waiver or proxy appointment;

46 D. The name signed purports to be that of a pledgee,
48 beneficial owner or attorney-in-fact of the shareholder and,
 if the corporation requests, evidence acceptable to the
50 corporation of the signatory's authority to sign for the

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2 shareholder has been presented with respect to the vote,
consent, waiver or proxy appointment; or

4 E. Two or more persons are the shareholder as cotenants or
fiduciaries and the name signed purports to be the name of
6 at least one of the co-owners and the person signing appears
to be acting on behalf of all the co-owners.

8
10 3. Rejection authorized. A corporation is entitled to
reject a vote, consent, waiver or proxy appointment if the
secretary or other officer or agent authorized to tabulate votes,
12 acting in good faith, has reasonable basis for doubt about the
validity of the signature on it or about the signatory's
14 authority to sign for the shareholder.

16 4. Not liable for damages. A corporation and its officer
or agent who accept or reject a vote, consent, waiver or proxy
18 appointment in good faith and in accordance with the standards of
this section or section 723, subsection 2 are not liable in
20 damages to the shareholder for the consequences of the acceptance
or rejection.

22
24 5. Corporate action valid. Corporate action based on the
acceptance or rejection of a vote, consent, waiver or proxy
appointment under this section is valid unless a court of
26 competent jurisdiction determines otherwise.

28 **§726. Shares held by minor**

30 If the record owner of shares is a minor and the shares are
voted under this subchapter by the minor, a guardian or other
32 legal representative of the minor or a natural or adoptive parent
of the minor, the minor may not thereafter disaffirm or avoid
34 that vote.

36 **§727. Quorum and voting requirements for voting groups**

38 1. Quorum. Shares entitled to vote as a separate voting
group may take action on a matter at a meeting only if a quorum
40 of those shares exists with respect to that matter. Unless the
corporation's articles of incorporation or this Act provides
42 otherwise, a majority of the votes entitled to be cast on the
matter by the voting group constitutes a quorum of that voting
44 group for action on that matter.

46 2. Share represented deemed present. Once a share is
represented for any purpose at a meeting, it is deemed present
48 for quorum purposes for the remainder of the meeting and for any
adjournment of that meeting unless a new record date is or must
50 be set for that adjourned meeting.

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2 3. Voting requirement. If a quorum exists, action on a
4 matter, other than the election of directors, by a voting group
is approved if the votes cast within the voting group favoring
6 the action exceed the votes cast opposing the action unless the
corporation's articles of incorporation or this Act requires a
greater number of affirmative votes.

8
10 4. Altering quorum or voting requirement. An amendment of
a corporation's articles of incorporation adding, changing or
12 deleting a quorum or voting requirement for a voting group
greater than specified in subsection 1 or 3 is governed by
14 section 729.

16 5. Election of directors. The election of directors is
governed by section 730.

18 6. Application to mutual insurer. This section does not
20 apply to any mutual insurer as defined in Title 24-A, section 401.

22 **§728. Action by single and multiple voting groups**

24 1. Voting by single voting group. If a corporation's
articles of incorporation or this Act provides for voting by a
single voting group on a matter, action on that matter is taken
26 when voted upon by that voting group as provided in section 727.

28 2. Voting by multiple voting groups. If a corporation's
articles of incorporation or this Act provides for voting by 2 or
30 more voting groups on a matter, action on that matter is taken
only when voted upon by each of those voting groups counted
32 separately as provided in section 727. Action may be taken by
one voting group on a matter even though no action is taken by
34 another voting group entitled to vote on the matter.

36 **§729. Greater quorum or voting requirements**

38 1. Greater number may be required. A corporation's
articles of incorporation may provide for a greater quorum or
40 voting requirement for shareholders or voting groups of
shareholders than is provided for by this Act.

42
44 2. Amendment of articles of incorporation. An amendment to
a corporation's articles of incorporation that adds, changes or
46 deletes a greater quorum or voting requirement must meet the same
quorum requirement and be adopted by the same vote and voting
48 requirements then in effect or proposed to be adopted, whichever
is greater.

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§730. Voting for directors; cumulative voting

2
4 1. Election by plurality. Unless otherwise provided in a
6 corporation's articles of incorporation, directors are elected by
8 a plurality of the votes cast by the shares entitled to vote in
10 the election at a meeting at which a quorum is present.

12 2. No right to cumulate votes. Shareholders do not have a
14 right to cumulate their votes for directors unless a
16 corporation's articles of incorporation so provide.

18 3. Cumulate votes; method. A statement included in a
20 corporation's articles of incorporation that "all or a designated
22 voting group of shareholders are entitled to cumulate their votes
24 for directors," or containing words of similar import, means that
26 the shareholders designated are entitled to multiply the number
28 of votes they are entitled to cast by the number of directors for
30 whom they are entitled to vote and cast the product for a single
32 candidate or distribute the product among 2 or more candidates.

34 4. Requirements. Shares otherwise entitled to vote
36 cumulatively may not be voted cumulatively at a particular
38 meeting unless:

40 A. The meeting notice or proxy statement accompanying the
42 notice states conspicuously that cumulative voting is
44 authorized; or

46 B. A shareholder who has the right to cumulate votes gives
48 notice to the corporation not less than 48 hours before the
50 time set for the meeting of the shareholder's intent to
cumulate that shareholder's votes during the meeting, and if
one shareholder gives this notice all other shareholders in
the same voting group participating in the election are
entitled to cumulate their votes without giving further
notice.

§731. Inspectors of election

40 1. Appointment of inspector. A corporation having any
42 shares listed on a national securities exchange or regularly
44 traded in a market maintained by one or more members of a
46 national or affiliated securities association shall, and any
48 other corporation may, appoint one or more inspectors to act at a
meeting of shareholders and make a written report of the
inspectors' determinations. Each inspector shall take and sign
an oath faithfully to execute the duties of inspector with strict
impartiality and according to the best of the inspector's ability.

50 2. Duties of inspector. An inspector shall:

2 A. Ascertain the number of shares outstanding and the
3 voting power of each;

4 B. Determine the shares represented at a meeting;

6 C. Determine the validity of proxies and ballots;

8 D. Count all votes; and

10 E. Determine the result.

12 3. Officer; employee. An inspector may be an officer or
14 employee of the corporation.

16 **SUBCHAPTER III**

18 **VOTING TRUSTS AND AGREEMENTS**

20 **§741. Voting trusts**

22 1. Creation of voting trust. One or more shareholders may
24 create a voting trust, conferring on a trustee the right to vote
26 or otherwise act for them, by signing an agreement setting out
28 the provisions of the trust, which may include anything
30 consistent with its purpose, and transferring their shares to the
32 trustee. When a voting trust agreement is signed, the trustee
shall prepare a list of the names and addresses of all owners of
beneficial interests in the trust, together with the number and
class of shares each transferred to the trust, and deliver copies
of the list and agreement to the corporation's principal office.

34 2. Effective date of voting trust. A voting trust becomes
36 effective on the date the first shares subject to the trust are
38 registered in the trustee's name. A voting trust is valid for
not more than 21 years after its effective date unless extended
under subsection 3.

40 3. Extension authorized. All or some of the parties to a
42 voting trust may extend it for additional terms of not more than
44 21 years each by signing written consent to the extension. An
46 extension is valid for 21 years from the date the first
shareholder signs the extension agreement. The voting trustee
must deliver copies of the extension agreement and list of
beneficial owners to the corporation's principal office. An
extension agreement binds only those parties signing it.

48 **§742. Voting agreements**

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1 1. Creation of voting agreement. Two or more shareholders
2 may provide for the manner in which they will vote their shares
3 by signing an agreement for that purpose. A voting agreement
4 created under this section is not subject to the provisions of
5 section 741.

6 2. Enforceable. A voting agreement created under this
7 section is specifically enforceable.

10 3. Rescission. Any purchaser of shares for value that are
11 subject to a voting agreement who, at the time of purchase, did
12 not have knowledge of the existence of the agreement is entitled
13 to rescission of the purchase against the transferor of the
14 shares. An action to enforce the right of rescission authorized
15 by this subsection must be commenced within the earlier of 180
16 days after discovery of the existence of the agreement or 2 years
17 after the time of purchase of the shares.

18 §743. Shareholder agreements

20 1. Shareholder agreement effective despite inconsistency
21 with Act. An agreement among the shareholders of a corporation
22 that complies with this section is effective among the
23 shareholders and the corporation even though it is inconsistent
24 with one or more other provisions of this Act in that it:

25 A. Eliminates the board of directors or restricts the
26 discretion or powers of the board of directors;

27 B. Governs the authorization or making of distributions
28 whether or not in proportion to ownership of shares, subject
29 to the limitations in section 651;

30 C. Establishes who are directors or officers of the
31 corporation or their terms of office or manner of selection
32 or removal;

33 D. Governs, in general or in regard to specific matters,
34 the exercise or division of voting power by or between the
35 shareholders and directors or by or among any of them,
36 including use of weighted voting rights or director proxies;

37 E. Establishes the terms and conditions of any agreement
38 for the transfer or use of property or the provision of
39 services between the corporation and any shareholder,
40 director, officer or employee of the corporation or among
41 any of them;

42 F. Transfers to one or more shareholders or other persons
43 all or part of the authority to exercise the corporate
44 rights;

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2 powers or to manage the business and affairs of the
3 corporation, including the resolution of any issue about
4 which there exists a deadlock among directors or
5 shareholders;

6 G. Requires dissolution of the corporation at the request
7 of one or more of the shareholders or upon the occurrence of
8 a specified event or contingency; or

10 H. Otherwise governs the exercise of the corporate powers
11 or the management of the business and affairs of the
12 corporation or the relationship among the shareholders, the
13 directors and the corporation, or among any of them, and is
14 not contrary to public policy.

16 2. Requirements for shareholder agreement. An agreement
17 authorized by this section must comply with each of the following
18 paragraphs.

20 A. The agreement must be set forth:

22 (1) In the articles of incorporation or bylaws and
23 approved by all persons who are shareholders at the
24 time of the agreement; or

26 (2) In a written agreement that is signed by all
27 persons who are shareholders at the time of the
28 agreement and is made known to the corporation.

30 B. The agreement must be subject to amendment only by all
31 persons who are shareholders at the time of the amendment,
32 unless the agreement provides otherwise or unless the
33 amendment is governed by subsection 8.

34 C. The agreement must be valid for an unlimited term,
35 unless the agreement provides otherwise.

38 3. Notation of existence of agreement required. The
39 existence of an agreement authorized by this section must be
40 noted conspicuously on the front or back of each certificate for
41 outstanding shares or on the information statement required by
42 section 627, subsection 2. If at the time of the agreement the
43 corporation has shares outstanding represented by certificates,
44 the corporation shall recall the outstanding certificates and
45 issue substitute certificates that comply with this subsection.
46 The failure to note the existence of the agreement on the
47 certificate or information statement does not affect the validity
48 of the agreement or any action taken pursuant to it. Any
49 purchaser of shares who, at the time of purchase, did not have
50 knowledge of the existence of the agreement is entitled to

2 rescission of the purchase. A purchaser is deemed to have
3 knowledge of the existence of the agreement if its existence is
4 noted on the certificate or information statement for the shares
5 in compliance with this subsection and, if the shares are not
6 represented by a certificate, the information statement is
7 delivered to the purchaser at or prior to the time of purchase of
8 the shares. An action to enforce the right of rescission
9 authorized by this subsection must be commenced within the
10 earlier of 180 days after discovery of the existence of the
11 agreement or 2 years after the time of purchase of the shares.

12 4. Agreement ceases to be effective. An agreement
13 authorized by this section ceases to be effective when shares of
14 the corporation are listed on a national securities exchange or
15 regularly traded in a market maintained by one or more members of
16 a national or affiliated securities association. If the
17 agreement ceases to be effective for any reason, the board of
18 directors may, if the agreement is contained or referred to in
19 the corporation's articles of incorporation or bylaws, adopt an
20 amendment to the articles of incorporation or bylaws, without
21 shareholder action, to delete the agreement and any references to
22 it.

24 5. Limitation on discretion or powers of directors limits
25 liability of directors. An agreement authorized by this section
26 that limits the discretion or powers of the board of directors
27 relieves the directors of, and imposes upon the person or persons
28 in whom such discretion or powers are vested, liability for acts
29 or omissions imposed by law on directors to the extent that the
30 discretion or powers of the directors are limited by the
31 agreement.

32 6. Personal liability on shareholder. The existence or
33 performance of an agreement authorized by this section is not a
34 ground for imposing personal liability on any shareholder for the
35 acts or debts of the corporation even if the agreement or its
36 performance treats the corporation as if it were a partnership or
37 results in failure to observe the corporate formalities otherwise
38 applicable to the matters governed by the agreement.

39 7. Incorporators or subscribers. Incorporators or
40 subscribers for shares may act as shareholders with respect to an
41 agreement authorized by this section if no shares have been
42 issued when the agreement is made.

43 8. Articles of incorporation provide for elimination of
44 board of directors. If the articles of incorporation of a
45 corporation provide for the elimination of the board of
46 directors, the provisions of this subsection apply, except to the
47 provisions of this subsection.

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2 extent an agreement among the shareholders of a corporation that
complies with this section expressly provides otherwise.

4 A. The shareholders of the corporation are deemed directors
for purposes of applying provisions of this Act when the
6 context requires and have the powers of directors under this
8 Act.

10 B. The shareholders of the corporation, when taking actions
required of directors under this Act, have liability to the
12 extent otherwise imposed by law on directors under this Act.

14 C. When acting as directors, shareholders approve a
corporate action by a vote of their shares and not by a per
16 capita vote.

18 D. An amendment to delete a provision that eliminates a
board of directors from the articles of incorporation must
20 be adopted by a majority of the votes entitled to be cast by
22 each voting group entitled to vote as a separate voting
group on that amendment.

24 E. The provisions of subsection 3 do not apply to
certificates of shareholder-managed corporations issued
26 prior to the effective date of this Act but apply to all
certificates or information statements issued by
28 shareholder-managed corporations issued after the effective
date of this Act.

30 F. The principles applicable to shareholder-managed
corporations referred to in this subsection may be varied by
32 or incorporated in an agreement among the shareholders, as
long as that agreement complies with and is governed by the
34 provisions of subsections 1 to 7.

36 **SUBCHAPTER IV**

38 **DERIVATIVE PROCEEDINGS**

40 **§751. Definitions**

42 As used in this subchapter, unless the context otherwise
44 indicates, the following terms have the following meanings.

46 1. Derivative proceeding. "Derivative proceeding" means a
civil suit in the right of a domestic corporation or, to the
48 extent provided in section 758, in the right of a foreign
corporation.

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2 2. Shareholder. "Shareholder" includes a beneficial owner
whose shares are held in a voting trust or held by a nominee on
4 the beneficial owner's behalf.

6 **§752. Standing**

8 A shareholder may not commence or maintain a derivative
proceeding unless the shareholder:

10 1. Shareholder at time of act or omission. Was a
shareholder of the corporation at the time of the act or omission
12 complained of or became a shareholder through transfer by
operation of law from one who was a shareholder at that time; and

14 2. Represents interests. Fairly and adequately represents
16 the interests of the corporation in enforcing the right of the
corporation.

18 **§753. Demand**

20 A shareholder may not commence a derivative proceeding until:

22 1. Written demand. A written demand has been made upon the
24 corporation to take suitable action; and

26 2. Expiration of 90 days. Ninety days have expired from
the date the demand was made, unless the shareholder has earlier
28 been notified that the demand has been rejected by the
corporation or unless irreparable injury to the corporation would
30 result by waiting for the expiration of the 90-day period.

32 **§754. Stay of proceedings**

34 If the corporation commences an inquiry into the allegations
made in the complaint or demand under section 753, the court may
36 stay any derivative proceeding for such period as the court
considers appropriate.

38 **§755. Dismissal**

40 1. Dismissal of proceeding. The court, on motion by the
42 corporation, shall dismiss a derivative proceeding if one of the
groups specified in paragraphs A to C determines, in good faith,
44 after conducting a reasonable inquiry upon which its conclusions
are based, that the maintenance of the derivative proceeding is
46 not in the best interests of the corporation:

48 A. A panel of one or more independent persons appointed by
the court on motion of the corporation. The plaintiff has

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COMMITTEE AMENDMENT "A" to H.P. 283, L.D. 361

2 the burden of proving that the panel or the determination
did not meet the standards required in this subsection;

4 B. A majority of independent directors present and voting
at a meeting of the board of directors if the independent
6 directors constitute a quorum; or

8 C. A majority of a committee consisting of 2 or more
independent directors appointed by majority vote of
10 independent directors present and voting at a meeting of the
board of directors, whether or not such independent
12 directors constituted a quorum.

14 2. Independence of director. Grounds for a director to be
considered not independent for purposes of this section do not
16 include:

18 A. The nomination or election of the director by persons
who are defendants in the derivative proceeding or against
20 whom action is demanded;

22 B. The naming of the director as a defendant in the
derivative proceeding or as a person against whom action is
24 demande;d; or

26 C. The approval by the director of the act being challenged
in the derivative proceeding or demand if the act resulted
28 in no personal benefit to the director.

30 3. Complaint must allege with particularity. If a
derivative proceeding is commenced after a determination has been
32 made rejecting a demand by a shareholder, the complaint must
allege with particularity facts establishing either that a
34 majority of the board of directors did not consist of independent
directors at the time the determination was made or that the
36 requirements of subsection 1 have not been met.

38 4. Burden of proof. If a majority of the board of
directors does not consist of independent directors at the time
40 the determination is made, the corporation has the burden of
proving that the requirements of subsection 1 have been met. If
42 a majority of the board of directors consists of independent
directors at the time the determination is made, the plaintiff
44 has the burden of proving that the requirements of subsection 1
have not been met.

46 **§756. Discontinuance or settlement**

48 A derivative proceeding may not be discontinued or settled
50 without the court's approval. If the court determines that a

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2 proposed discontinuance or settlement will substantially affect
3 the interests of the corporation's shareholders or a class of
4 shareholders, the court shall direct that notice be given to the
5 shareholders affected.

6 **§757. Payment of expenses**

8 On termination of the derivative proceeding the court may:

10 1. Corporation to pay plaintiff's expenses. Order the
11 corporation to pay the plaintiff's reasonable expenses, including
12 attorney's fees, incurred in the proceeding if it finds that the
13 proceeding has resulted in a substantial benefit to the
14 corporation;

16 2. Plaintiff to pay defendant's expenses. Order the
17 plaintiff to pay any defendant's reasonable expenses, including
18 attorney's fees, incurred in defending the proceeding if it finds
19 that the proceeding was commenced or maintained without
20 reasonable cause or for an improper purpose; or

22 3. Improper purpose. Order a party to pay an opposing
23 party's reasonable expenses, including attorney's fees, incurred
24 because of the filing of a pleading, motion or other paper, if it
25 finds after reasonable inquiry that the pleading, motion or other
26 paper was not well grounded in fact or warranted by existing law
27 or a good faith argument for the extension, modification or
28 reversal of existing law and was interposed for an improper
29 purpose, such as to harass or cause unnecessary delay or needless
30 increase in the cost of litigation.

32 **§758. Applicability to foreign corporations**

34 In any derivative proceeding in the right of a foreign
35 corporation, the matters covered by this subchapter, except for
36 sections 754, 756 and 757, are governed by the laws of the
37 jurisdiction of incorporation of the foreign corporation.

38 **CHAPTER 8**

40 **DIRECTORS AND OFFICERS**

42 **SUBCHAPTER I**

44 **BOARD OF DIRECTORS**

46 **§801. Requirement; duties of board of directors**

48 1. Board of directors. Except as provided in section 743,
50 a corporation must have a board of directors.

2 2. Corporate powers. All corporate powers must be
4 exercised by or under the authority of, and the business and
6 affairs of the corporation managed under the direction of, the
8 corporation's board of directors, subject to any limitation set
 forth in an agreement authorized under section 743 or in the
 corporation's articles of incorporation.

10 **§802. Qualifications of directors**

12 The corporation's articles of incorporation or bylaws may
14 prescribe qualifications for directors. A director need not be a
 resident of this State or a shareholder of the corporation unless
 the articles of incorporation or bylaws so prescribe.

16 **§803. Number and election of directors**

18 1. Number of directors. A corporation's board of directors
20 must consist of one or more individuals. The corporation's
22 articles of incorporation or bylaws may fix the number of
 directors or otherwise regulate the size of the board.

24 2. Increase or decrease in number. Unless the
26 corporation's articles of incorporation or bylaws provide
28 otherwise, the number of directors may be increased or decreased
 from time to time by resolution of the shareholders or the
 directors. A decrease in the number of directors may not have
 the effect of shortening the term of any incumbent director.

30 3. Election. Directors are elected at the first annual
32 shareholders' meeting and at each annual meeting thereafter
 unless their terms are staggered under section 806.

34 **§804. Election of directors by certain classes of shareholders**

36 If the corporation's articles of incorporation authorize
38 dividing the shares into classes, the articles may also authorize
40 the election of all or a specified number of directors by the
42 holders of one or more authorized classes of shares. Each class
 of shares entitled to elect one or more directors is a separate
 voting group for purposes of the election of directors.

44 **§805. Terms of directors**

46 1. Terms of initial directors. The terms of the initial
48 directors of a corporation expire at the first shareholders'
 meeting at which directors are elected.

50 2. Terms of subsequent directors. The terms of all other
 directors expire at the next annual shareholders' meeting

2 following their election unless their terms are staggered under
section 806.

4 3. Decrease in number of directors. A decrease in the
6 number of directors does not shorten an incumbent director's term.

8 4. Term of director elected to fill vacancy. The term of a
10 director elected to fill a vacancy expires at the next
12 shareholders' meeting at which directors are elected or, in the
case of staggered terms, at such other time as the corporation's
articles of incorporation may provide.

14 5. Continue service. Despite the expiration of a
16 director's term, the director continues to serve until a
successor is elected and qualifies or until there is a decrease
in the number of directors.

18 **§806. Staggered terms for directors**

20 The corporation's articles of incorporation may provide for
22 staggering the terms of directors by dividing the total number of
directors into 2 or 3 groups, with each group containing, as
24 close as possible, 1/2 or 1/3, as the case may be, of the total.
In that event, the terms of directors in the first group expire
26 at the first annual shareholders' meeting after their election,
the terms of the 2nd group expire at the 2nd annual shareholders'
28 meeting after their election and the terms of the 3rd group, if
any, expire at the 3rd annual shareholders' meeting after their
30 election. At each annual shareholders' meeting thereafter,
directors must be chosen for a term of 2 years or 3 years, as the
32 case may be, to succeed those whose terms expire.

34 **§807. Resignation of directors**

36 1. Notice of resignation. A director may resign at any
time by delivering written notice to the corporation's board of
directors or its chair or to the corporation.

38 2. Effective. A resignation is effective when the notice
40 is delivered unless the notice specifies a later effective date,
42 including, but not limited to, the date on which some specified
future event occurs.

44 **§808. Removal of directors by shareholders**

46 The shareholders may remove one or more directors with or
48 without cause unless the corporation's articles of incorporation
provide that directors may be removed only for cause. A director
50 may be removed by the shareholders only at a meeting called for
the purpose of removing that director and the meeting notice must

2 state that the purpose, or one of the purposes, of the meeting is
removal of the director.

4 1. Removal by voting group. If a director is elected by a
voting group of shareholders, only the shareholders of that
6 voting group may participate in the vote to remove that director.

8 2. Cumulative voting. If cumulative voting is authorized,
a director may not be removed if the number of votes sufficient
10 to elect that director under cumulative voting is voted against
that director's removal. If cumulative voting is not authorized,
12 a director may be removed only by the affirmative vote of at
least 2/3 of the shares entitled to vote on the removal. The
14 corporation's articles of incorporation may require a greater or
lesser vote in order to remove directors but not less than a
16 majority of votes cast, including, but not limited to, the
necessity of a unanimous vote of shareholders or relevant voting
18 group.

20 **§809. Removal of directors by judicial proceeding**

22 1. Removal by Superior Court. The Superior Court of the
county where a corporation's principal office or, if there is no
24 principal office in this State, its registered office is located
may remove a director of the corporation from office in a
26 proceeding commenced by or in the right of the corporation if the
court finds that:

28 A. The director engaged in fraudulent conduct with respect
30 to the corporation or its shareholders, grossly abused the
position of director or intentionally inflicted harm on the
32 corporation; and

34 B. Considering the director's course of conduct and the
inadequacy of other available remedies, removal would be in
36 the best interest of the corporation.

38 2. Comply with requirements. A shareholder proceeding on
behalf of the corporation under subsection 1 shall comply with
40 all of the requirements of chapter 7, subchapter IV, except
section 752, subsection 1.
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44 3. Bar from reelection. The court, in addition to removing
the director, may bar the director from reelection for a period
prescribed by the court.
46

48 4. Other relief. This section does not limit the equitable
powers of the court to order other relief.

50 **§810. Vacancy on board**

2 1. Vacancy. Unless the corporation's articles of
4 incorporation or bylaws provide otherwise, if a vacancy occurs on
6 a board of directors, including a vacancy resulting from an
 increase in the number of directors, the vacancy may be filled:

8 A. By the shareholders;

10 B. By the corporation's board of directors; or

12 C. If the directors remaining in office constitute fewer
14 than a quorum of the board, by the affirmative vote of a
 majority of all the directors remaining in office.

16 2. Voting group. If the vacant office was held by a
18 director elected by a voting group of shareholders, only the
 holders of shares of that voting group are entitled to vote to
 fill the vacancy if it is filled by the shareholders.

20 3. Specified date of vacancy. A vacancy that will occur at
22 a specific later date may be filled before the vacancy occurs but
 the new director may not take office until the vacancy occurs.

24 §811. Compensation of directors

26 Unless the corporation's articles of incorporation or bylaws
28 provide otherwise, the corporation's board of directors may fix
 the compensation of directors.

30 SUBCHAPTER II

32 MEETINGS AND ACTION OF BOARD

34 §821. Meetings

36 1. Location. The corporation's board of directors may hold
 regular or special meetings in or out of this State.

38 2. Participation of directors. Unless the corporation's
40 articles of incorporation or bylaws provide otherwise, the
42 corporation's board of directors may permit any or all directors
44 to participate in a regular or special meeting by, or conduct the
46 meeting through the use of, any means of communication by which
 all directors participating may simultaneously hear each other
 during the meeting. A director participating in a meeting by this
 means is deemed to be present in person at the meeting.

48 §822. Action without meeting

1. Action without meeting. Except to the extent that the corporation's articles of incorporation or bylaws require that action by the corporation's board of directors be taken at a meeting, action required or permitted by this Act to be taken by a corporation's board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

2. Delivery of consents; revocation. Action taken under this section is the act of the corporation's board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken under the consent is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all of the directors.

3. Effect of signed consent. A consent signed under this section has the effect of action taken at a meeting of the corporation's board of directors and may be described as such in any document.

§823. Notice of meeting

1. Regular meetings. Unless the corporation's articles of incorporation or bylaws provide otherwise, regular meetings of the corporation's board of directors may be held without notice of the date, time, place or purpose of the meeting.

2. Special meetings. Unless the corporation's articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the corporation's board of directors must be preceded by at least 2 days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the corporation's articles of incorporation or bylaws.

3. Calling of meeting. Unless the corporation's articles of incorporation or bylaws otherwise provide, special meetings of the corporation's board of directors may be called by the chair of the board, by the president or, if the president is absent or is unable to act, by any vice-president, by any 2 directors or by any other person or persons authorized by the bylaws.

4. Notice of meeting. At the written request of any person permitted to call a special meeting of the corporation's board of directors pursuant to subsection 3, the secretary or clerk shall send notices of the meeting to all the directors or the person calling the meeting may send such notices. The person calling the

special meeting shall set the time of the meeting and, unless the place of meetings is specified in the bylaws or by prior resolution of the directors, the place of the meeting.

§824. Waiver of notice

1. Waive notice of meeting. A director may waive any notice required by this Act, the corporation's articles of incorporation or bylaws before or after the date and time stated in the notice. Except as provided by subsection 2, the waiver must be in writing, signed by the director entitled to the notice and filed with the minutes or corporate records.

2. Attendance at meeting waives requirement of notice. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

3. Objection to action taken at meeting. If a meeting otherwise valid of the corporation's board of directors is held without call or notice when a notice is required, any action taken at the meeting is deemed ratified by a director who did not attend unless, after learning of the action taken and of the impropriety of the meeting, the director makes prompt objection to the action taken.

§825. Quorum and voting

1. Quorum. Unless the corporation's articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this Act, a quorum of a corporation's board of directors consists of:

A. A majority of the fixed number of directors if the corporation has a fixed board size; or

B. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

2. Fixed number of directors. The corporation's articles of incorporation or bylaws may authorize a quorum of a corporation's board of directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined under subsection 1.

2 3. Majority vote. If a quorum is present when a vote is
taken, the affirmative vote of a majority of directors present is
4 the act of the corporation's board of directors unless the
corporation's articles of incorporation or bylaws require the
6 vote of a greater number of directors.

8 4. Dissent; abstention. A director who is present at a
meeting of the corporation's board of directors or a committee of
10 the corporation's board of directors when corporate action is
taken is deemed to have assented to the action taken unless:

12 A. The director objects at the beginning of the meeting or
promptly upon arrival to holding or transacting business at
14 the meeting;

16 B. The director's dissent or abstention from the action
taken is entered in the minutes of the meeting; or

18 C. The director delivers written notice of the director's
20 dissent or abstention to the presiding officer of the
meeting before its adjournment or to the corporation
22 immediately after adjournment of the meeting. The right of
dissent or abstention is not available to a director who
24 votes in favor of the action taken.

26 §826. Committees

28 1. Create committees. Unless the articles of incorporation
or bylaws provide otherwise, a corporation's board of directors
30 may create one or more committees and appoint members of the
corporation's board of directors to serve on them. Each committee
32 must have 2 or more members, who serve at the pleasure of the
corporation's board of directors.

34 2. Approval of committee. The creation of a committee and
36 appointment of members to a committee must be approved by the
greater of:

38 A. A majority of all the directors in office when the
40 action is taken; or

42 B. The number of directors required by the corporation's
44 articles of incorporation or bylaws to take action under
section 825.

46 3. Requirements apply to committees. Sections 821 to 825
apply to committees and their members.

48 4. Authority. To the extent specified by the corporation's
50 board of directors or in the corporation's articles of

incorporation or bylaws, each committee may exercise the authority of the corporation's board of directors under section 801.

5. No authority. A committee may not:

A. Authorize distributions;

B. Approve or propose to shareholders action that this Act requires be approved by shareholders;

C. Fill vacancies on the corporation's board of directors or on any of its committees;

D. Amend a corporation's articles of incorporation pursuant to section 1005;

E. Adopt, amend or repeal a corporation's bylaws;

F. Approve a plan of merger not requiring shareholder approval;

G. Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the corporation's board of directors; or

H. Authorize or approve the issuance or sale or contract for sale of shares or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the corporation's board of directors.

6. Standards of conduct. The creation of, delegation of authority to or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 831.

SUBCHAPTER III

DIRECTORS

§831. Standards of conduct for directors

1. Basic standard of conduct. Each member of the corporation's board of directors when discharging the duties of a director shall act:

2 A. In good faith; and

4 B. In a manner the director reasonably believes to be in
the best interests of the corporation.

6 2. General standard of care. The members of the
corporation's board of directors or a committee of the board,
8 when becoming informed in connection with their decision-making
function or devoting attention to their oversight function, shall
10 discharge their duties with the care that a person in a like
position would reasonably believe appropriate under similar
12 circumstances.

14 3. Permitted delegation. In discharging board or committee
duties, a director who does not have knowledge that makes
16 reliance unwarranted is entitled to rely on the performance by
any of the persons specified in subsection 5, paragraph A or C to
18 whom the board may have delegated, formally or informally by
course of conduct, the authority or duty to perform one or more
20 of the board's functions that are delegable under applicable law.

22 4. Information provided by others. In discharging board or
committee duties, a director who does not have knowledge that
24 makes reliance unwarranted is entitled to rely on information,
opinions, reports or statements, including financial statements
26 and other financial data, prepared or presented by any of the
persons specified in subsection 5.

28 5. Standard for reliance. A director is entitled in
30 accordance with subsection 3 or 4 to rely on:

32 A. One or more officers or employees of the corporation
whom the director reasonably believes to be reliable and
34 competent in the functions performed or the information,
opinions, reports or statements provided;

36 B. Legal counsel, public accountants or other persons
38 retained by the corporation as to matters involving skills
or expertise the director reasonably believes are matters
40 within the particular person's professional or expert
competence or as to which the particular person merits
42 confidence; or

44 C. A committee of the board of directors of which the
director is not a member if the director reasonably believes
46 the committee merits confidence.

48 6. Interests of other constituencies. In discharging their
duties, the directors and officers of the corporation may, in
50 considering the best interests of the corporation and of its

2 shareholders, consider the effects of any action upon employees,
3 suppliers and customers of the corporation, communities in which
4 offices or other establishments of the corporation are located
5 and all other pertinent factors.

6 **§832. Standards of liability for directors**

7 **1. Basis for potential liability.** A director of a
8 corporation is not liable to the corporation or its shareholders
9 for any decision to take or not to take action, or any failure to
10 take any action, as a director, unless the party asserting
11 liability in a proceeding establishes that:

12
13
14 A. Any provision in the corporation's articles of
15 incorporation authorized by section 202, subsection 2,
16 paragraph D or the protection afforded by section 872 for
17 action taken in compliance with section 873 or 874, if
18 interposed as a bar to the proceeding by the director, does
19 not preclude liability; and

20
21 B. The challenged conduct consisted or was the result of:

22
23 (1) Action not in good faith;

24
25 (2) A decision:

26
27 (a) That the director did not reasonably believe
28 to be in the best interests of the corporation; or

29
30 (b) As to which the director was not informed to
31 an extent the director reasonably believed
32 appropriate in the circumstances;

33
34 (3) A lack of objectivity due to the director's
35 familial, financial or business relationship with, or a
36 lack of independence due to the director's domination
37 or control by, another person having a material
38 interest in the challenged conduct when that
39 relationship or domination or control could reasonably
40 be expected to have affected the director's judgment
41 respecting the challenged conduct in a manner adverse
42 to that corporation, and, after a reasonable
43 expectation to that effect has been established, the
44 director did not establish that the challenged conduct
45 was reasonably believed by the director to be in the
46 best interests of the corporation;

47
48 (4) A sustained failure of the director to devote
49 attention to ongoing oversight of the business and
50 affairs of the corporation, or a failure to devote

2 timely attention, by making or causing to be made
4 appropriate inquiry, when particular facts and
6 circumstances of significant concern materialize that
8 would alert a reasonably attentive director to the need
10 therefor; or

12 (5) Receipt of a financial benefit to which the
14 director was not entitled or any other breach of the
16 director's duties to deal fairly with the corporation
18 and its shareholders that is actionable under
20 applicable law.

22 2. Additional elements. In addition to the burden set
24 forth in subsection 1, the party seeking to hold the director
26 liable:

28 A. For money damages has the burden of establishing that:

30 (1) Harm to the corporation or its shareholders has
32 been suffered; and

34 (2) The harm suffered was proximately caused by the
36 director's challenged conduct;

38 B. For money payment under a legal remedy, such as
40 compensation for the unauthorized use of corporate assets,
42 has whatever persuasion burden may be called for to
44 establish that the payment sought is appropriate in the
46 circumstances; or

48 C. For money payment under an equitable remedy, such as
50 profit recovery by or disgorgement to the corporation, has
52 whatever persuasion burden may be called for to establish
54 that the equitable remedy sought is appropriate in the
56 circumstances.

58 3. Other causes of action. This section does not:

60 A. In any instance when fairness is at issue, such as
62 consideration of the fairness of a transaction to the
64 corporation under section 872, subsection 2, paragraph C,
66 alter the burden of proving the fact or lack of fairness
68 otherwise applicable;

70 B. Alter the fact or lack of liability of a director under
72 another section of this Act, such as the provisions
74 governing the consequences of an unlawful distribution under
76 section 833 or a transactional interest under section 872; or

2 C. Affect any rights to which the corporation or a
3 shareholder may be entitled under another law of this State
4 or the United States.

6 **§833. Director's liability for unlawful distributions**

8 1. Personal liability. A director who votes for or assents
9 to a distribution in excess of what may be authorized and made
10 pursuant to section 651, subsection 1 is personally liable to the
11 corporation for the amount of the distribution that exceeds what
12 could have been distributed without violating section 651,
13 subsection 1 if the party asserting liability establishes that
14 when taking the action the director did not comply with section
15 831.

16 2. Contribution; recoupment. A director held liable under
17 subsection 1 for an unlawful distribution is entitled to:

18 A. A contribution from every other director who could be
19 held liable under subsection 1 for the unlawful
20 distribution; and

21 B. Recoupment from each shareholder of the pro rata portion
22 of the amount of the unlawful distribution the shareholder
23 accepted, knowing the distribution was made in violation of
24 section 651, subsection 1.

25 3. Proceeding to enforce liability; 2-year period. A
26 proceeding to enforce the liability of a director under
27 subsection 1 is barred unless it is commenced within 2 years
28 after the date on which the effect of the distribution was
29 measured under section 651, subsection 5 or 7 or as of which the
30 violation of section 651, subsection 1 occurred as the
31 consequence of disregard of a restriction in the corporation's
32 articles of incorporation.

33 4. Proceeding to enforce contribution or recoupment;
34 one-year period. A proceeding to enforce a contribution or
35 recoupment under subsection 2 is barred unless it is commenced
36 within one year after the liability of the claimant has been
37 finally adjudicated under subsection 1.

38 **SUBCHAPTER IV**

39 **OFFICERS**

40 **§841. Required officers**

1. Officers. A corporation must have the officers described in its bylaws or appointed by the corporation's board of directors in accordance with the bylaws.

2. Officer may appoint another officer. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the corporation's board of directors.

3. Preparation of minutes. The bylaws or the corporation's board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

4. Multiple positions. The same individual may simultaneously hold more than one office in a corporation.

§842. Duties of officers

1. Sources of duties. An officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the corporation's board of directors or by direction of an officer authorized by the corporation's board of directors to prescribe the duties of other officers.

2. President's duties. Unless otherwise provided by the bylaws, the officer designated as president has authority to institute or defend legal proceedings whenever the directors or shareholders are deadlocked. Unless they have reason to believe otherwise, persons dealing with a corporation are entitled to assume that the officer designated as president has authority to make, on the corporation's behalf, all contracts that are within the ordinary course of those businesses in which the corporation is already engaged.

§843. Standards of conduct for officers

1. Basic standard of conduct. An officer when performing in the capacity of an officer shall act:

A. In good faith;

B. With the care that a person in a like position would reasonably exercise under similar circumstances; and

C. In a manner the officer reasonably believes to be in the best interests of the corporation.

2 2. Basis for reliance. In discharging duties under section
3 842, an officer who does not have knowledge that makes reliance
4 unwarranted is entitled to rely on:

6 A. The performance of properly delegated responsibilities
7 by one or more employees of the corporation whom the officer
8 reasonably believes to be reliable and competent in
9 performing the responsibilities delegated;

10 B. Information, opinions, reports or statements, including
11 financial statements and other financial data, prepared or
12 presented by one or more employees of the corporation whom
13 the officer reasonably believes to be reliable and competent
14 in the matters presented; or

16 C. Legal counsel, public accountants or other persons
17 retained by the corporation as to matters involving skills
18 or expertise the officer reasonably believes are matters
19 within the particular person's professional or expert
20 competence or as to which the particular person merits
21 confidence.

22 3. Basis for potential liability. An officer is not liable
23 to the corporation or its shareholders for any decision to take
24 or not to take action, or any failure to take any action, as an
25 officer if the duties of the office are performed in compliance
26 with this section. Whether an officer who does not comply with
27 this section has liability depends on applicable law, including
28 those principles of section 832 that have relevance.

30 **§844. Resignation and removal of officers**

32 1. Resignation. An officer may resign at any time by
33 delivering notice to the corporation. A resignation is effective
34 when the notice is delivered unless the notice specifies a later
35 effective time. If a resignation is made effective at a later
36 time, including, but not limited to, the time at which some
37 specified future event occurs and the corporation's board of
38 directors or the appointing officer accepts the future effective
39 time, the corporation's board of directors or the appointing
40 officer may fill the pending vacancy before the effective time if
41 the corporation's board of directors or the appointing officer
42 provides that the successor does not take office until the
43 effective time.

44 2. Removal from office. An officer may be removed at any
45 time with or without cause by:

46 A. The corporation's board of directors;
47
48
49
50

2 B. The officer who appointed that officer, unless the
bylaws or the corporation's board of directors provides
4 otherwise; or

6 C. Any other officer if authorized by the bylaws or the
corporation's board of directors.

8 3. Appointing officer defined. As used in this section,
10 "appointing officer" means the officer, including any successor
to that officer, who appointed the officer resigning or being
12 removed.

14 **§845. Contract rights of officers**

16 1. No implied contract rights. The appointment of an
officer does not itself create contract rights.

18 2. Effect of removal or resignation on contract rights. An
20 officer's removal does not affect the officer's contract rights,
if any, with the corporation. An officer's resignation does not
22 affect the corporation's contract rights, if any, with the
officer.

24 **§846. Clerk**

26 1. Clerk; appointment. The corporation's board of
28 directors shall appoint an individual to fill the position of
clerk, unless the corporation's articles of incorporation
30 reserves appointment of the clerk to the shareholders.

32 2. Duties. The clerk shall perform the functions described
34 in sections 501 and 502. Unless otherwise provided by the
bylaws, the clerk shall keep on file a list of all shareholders
36 of the corporation and keep, in a book kept for that purpose, the
records of all shareholders' meetings, including records of all
38 votes and minutes of the meetings. These records may be kept by
the clerk at the registered office or another office of the
40 corporation to which the clerk has ready access. The clerk may
certify all votes, resolutions and actions of the shareholders
42 and may certify all votes, resolutions and actions of the
corporation's board of directors and its committees.

44 3. Clerk not officer. The clerk is not considered an
46 officer of the corporation in the clerk's capacity as clerk. The
duties of the clerk are ministerial only, and the clerk is not
48 liable in that capacity for any liabilities of the corporation,
including, but not limited to, debts, claims, taxes, fines or
penalties.

50 **SUBCHAPTER V**

INDEMNIFICATION AND ADVANCE FOR EXPENSES

§851. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Corporation. "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

2. Director; officer. "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the director's or officer's duties to the corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

3. Disinterested director. "Disinterested director" means a director who, at the time of a vote referred to in section 854, subsection 3 or a vote or selection referred to in section 856, subsection 2 or 3, is not:

A. A party to the proceeding; or

B. An individual having a familial, financial, professional or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

4. Expenses. "Expenses" includes attorney's fees.

5. Liability. "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

6. Official capacity. "Official capacity" means:

2 A. When used with respect to a director, the office of
4 director in a corporation; and

6 B. When used with respect to an officer, as contemplated in
8 section 857, the office in a corporation held by the officer.

10 "Official capacity" does not include service for any other
12 domestic or foreign corporation or any partnership, joint
14 venture, trust, employee benefit plan or other entity.

16 7. Party. "Party" means an individual who was, is or is
18 threatened to be made a defendant or respondent in a proceeding.

20 8. Proceeding. "Proceeding" means any threatened, pending
22 or completed action, suit or proceeding, whether civil, criminal,
24 administrative, arbitative or investigative and whether formal
26 or informal.

28 **§852. Permissible indemnification**

30 1. Indemnification of director. Except as otherwise
32 provided in this section, a corporation may indemnify an
34 individual who is a party to a proceeding because that individual
36 is a director of the corporation against liability incurred in
38 the proceeding if:

40 A. The individual's conduct was in good faith and the
42 individual reasonably believed:

44 (1) In the case of conduct in the individual's
46 capacity as director, that the individual's conduct was
48 in the best interests of the corporation;

50 (2) In all other cases, that the individual's conduct
 was at least not opposed to the best interests of the
 corporation; and

(3) In the case of any criminal proceeding, the
 individual had no reasonable cause to believe the
 individual's conduct was unlawful; or

B. The individual engaged in conduct for which broader
 indemnification has been made permissible or obligatory
 under a provision of the corporation's articles of
 incorporation as authorized by section 202, subsection 2,
 paragraph E.

2. Employee benefit plan. The conduct of a director with
 respect to an employee benefit plan for a purpose the director

2 reasonably believed to be in the interests of the participants
3 in, and the beneficiaries of, the plan is conduct that satisfies
4 the requirement of subsection 1, paragraph A.

6 3. Termination of proceeding. The termination of a
7 proceeding by judgment, order, settlement or conviction or upon a
8 plea of nolo contendere or its equivalent is not of itself
9 determinative that the director did not meet the relevant
10 standard of conduct described in this section.

12 4. Court order. Unless ordered by a court under section
13 855, subsection 1, paragraph C, a corporation may not indemnify
14 one of its directors:

16 A. In connection with a proceeding by or in the right of
17 the corporation, except for reasonable expenses incurred in
18 connection with the proceeding if it is determined that the
19 director has met the relevant standard of conduct under
20 subsection 1; or

22 B. In connection with any proceeding with respect to
23 conduct for which the director was adjudged liable on the
24 basis that the director received a financial benefit to
25 which the director was not entitled, whether or not
26 involving action in the director's official capacity.

28 **§853. Mandatory indemnification**

30 A corporation shall indemnify a director who was wholly
31 successful, on the merits or otherwise, in the defense of any
32 proceeding to which the director was a party because the director
33 was a director of the corporation against reasonable expenses
34 incurred by the director in connection with the proceeding.

36 **§854. Advance for expenses**

38 1. Advance funds. A corporation may, before final
39 disposition of a proceeding, advance funds to pay for or
40 reimburse the reasonable expenses incurred by a director who is a
41 party to a proceeding because the director is a director of that
42 corporation if the director delivers to the corporation:

44 A. A written affirmation of the director's good faith
45 belief that the director has met the relevant standard of
46 conduct described in section 852 or that the proceeding
47 involves conduct for which liability has been eliminated
48 under a provision of the corporation's articles of
49 incorporation as authorized by section 202, subsection 2,
50 paragraph D; and

2 B. The director's written undertaking to repay any funds
4 advanced if the director is not entitled to mandatory
6 indemnification under section 853 and it is ultimately
8 determined under section 855 or 856 that the director has
10 not met the relevant standard of conduct described in
12 section 852.

8 2. Unlimited obligation. The undertaking required by
10 subsection 1, paragraph B must be an unlimited general obligation
12 of the director but need not be secured and may be accepted
14 without reference to the financial ability of the director to
16 make repayment.

14 3. Authorization. Authorizations under this section must
16 be made:

18 A. By the corporation's board of directors:

20 (1) If there are 2 or more disinterested directors, by
22 a majority vote of all the disinterested directors, a
24 majority of whom for this purpose constitutes a quorum,
26 or by a majority of the members of a committee of 2 or
28 more disinterested directors appointed by a majority
30 vote of all the disinterested directors; or

32 (2) If there are fewer than 2 disinterested directors,
34 by the vote necessary for action by the corporation's
36 board of directors in accordance with section 825,
38 subsection 3, in which authorization directors who do
40 not qualify as disinterested directors may participate;
42 or

44 B. By the shareholders, but shares owned by or voted under
46 the control of a director who at the time does not qualify
48 as a disinterested director may not be voted on the
50 authorization.

38 §855. Court-ordered indemnification; advance for expenses

40 1. Application for indemnification or advance. A director
42 who is a party to a proceeding because that director is a
44 director of the corporation may apply for indemnification or an
46 advance for expenses to the court conducting the proceeding or to
48 another court of competent jurisdiction. After receipt of an
50 application and after giving any notice the court considers
necessary, the court shall:

48 A. Order indemnification if the court determines that the
50 director is entitled to mandatory indemnification under
section 853;

2 B. Order indemnification or an advance for expenses if the
4 court determines that the director is entitled to
6 indemnification or an advance for expenses pursuant to a
8 provision authorized by section 859, subsection 1; or

10 C. Order indemnification or an advance for expenses if the
12 court determines, in view of all the relevant circumstances,
14 that it is fair and reasonable:

16 (1) To indemnify the director; or

18 (2) To advance expenses to the director even if the
20 director has not met the relevant standard of conduct
22 set forth in section 852, subsection 1, failed to
24 comply with section 854 or was adjudged liable in a
26 proceeding referred to in section 852, subsection 4,
28 paragraph A or B, but, if the director was adjudged so
30 liable, the director's indemnification must be limited
32 to reasonable expenses incurred in connection with the
34 proceeding.

22 2. Court determines director entitled to indemnification.

24 If the court determines that the director is entitled to
26 indemnification under subsection 1, paragraph A or to
28 indemnification or an advance for expenses under subsection 1,
30 paragraph B, the court shall also order the corporation to pay
32 the director's reasonable expenses incurred in connection with
34 obtaining the court-ordered indemnification or advance for
expenses. If the court determines that the director is entitled
to indemnification or an advance for expenses under subsection 1,
paragraph C, the court may also order the corporation to pay the
director's reasonable expenses to obtain the court-ordered
indemnification or advance for expenses.

36 §856. Determination and authorization of indemnification

38 1. Indemnify. A corporation may not indemnify a director
40 under section 852 unless authorized for a specific proceeding
42 after a determination has been made that indemnification of the
director is permissible because the director has met the relevant
standard of conduct set forth in section 852.

44 2. Determination of permissibility. A determination under
46 subsection 1 that indemnification is permissible must be made:

48 A. If there are 2 or more disinterested directors, by the
50 corporation's board of directors by a majority vote of all
the disinterested directors, a majority of whom for this
purpose constitutes a quorum, or by a majority of the

2 members of a committee of 2 or more disinterested directors
3 appointed by a majority vote of all the disinterested
4 directors;

6 B. By special legal counsel:

8 (1) Selected in the manner prescribed in paragraph A;
9 or

10 (2) If there are fewer than 2 disinterested directors,
11 selected by the corporation's board of directors in
12 which selection directors who do not qualify as
13 disinterested directors may participate; or

14 C. By the shareholders, but shares owned by or voted under
15 the control of a director who at the time does not qualify
16 as a disinterested director may not be voted on the
17 determination.

20 3. Authorization. Authorization of indemnification must be
21 made in the same manner as the determination that indemnification
22 is permissible, except that if there are fewer than 2
23 disinterested directors or if the determination is made by
24 special legal counsel, authorization of indemnification must be
25 made by those entitled under subsection 2, paragraph B,
26 subparagraph (2) to select special legal counsel.

28 **§857. Indemnification of officers**

30 1. Indemnify. A corporation may indemnify and advance
31 expenses under this subchapter to an officer of the corporation
32 who is a party to a proceeding because that officer is an officer
33 of the corporation:

34 A. To the same extent as a director; and

36 B. If the officer is an officer but not a director, to such
37 further extent as may be provided by the corporation's
38 articles of incorporation, the bylaws, a resolution of the
39 corporation's board of directors or a contract except for:

42 (1) Liability in connection with a proceeding by or in
43 the right of the corporation other than for reasonable
44 expenses incurred in connection with the proceeding; or

46 (2) Liability arising out of conduct that constitutes:

48 (a) Receipt by the officer of a financial benefit
49 to which the officer is not entitled;

50

2 (b) An intentional infliction of harm on the
 corporation or the shareholders; or

4 (c) An intentional violation of criminal law.

6 2. Action of officer. Subsection 1, paragraph B applies to
 an officer who is also a director if the basis on which the
8 officer is made a party to the proceeding is an act or omission
 solely as an officer.

10 3. Mandatory indemnification. An officer who is not a
12 director is entitled to mandatory indemnification under section
 853 and may apply to a court under section 855 for
14 indemnification or an advance for expenses, in each case to the
 same extent to which a director may be entitled to
16 indemnification or an advance for expenses under those provisions.

18 **§858. Insurance**

20 A corporation may purchase and maintain insurance on behalf
 of an individual who is a director or officer of the corporation,
22 or who, while a director or officer of the corporation, serves at
 the corporation's request as a director, officer, partner,
24 trustee, employee or agent of another domestic or foreign
 corporation, partnership, joint venture, trust, employee benefit
26 plan or other entity against liability asserted against or
 incurred by that individual in that capacity or arising from the
28 individual's status as a director or officer, whether or not the
 corporation would have power to indemnify or advance expenses to
30 the individual against the same liability under this subchapter.

32 **§859. Variation by corporate action; application of subchapter**

34 1. Obligatory provision. A corporation may, by a provision
 in its articles of incorporation or bylaws or in a resolution
36 adopted or a contract approved by its board of directors or
 shareholders, obligate itself in advance of the act or omission
38 giving rise to a proceeding to provide indemnification in
 accordance with section 852 or advance funds to pay for or
40 reimburse expenses in accordance with section 854. Any such
 obligatory provision is deemed to satisfy the requirements for
42 authorization referred to in sections 854, subsection 3 and 856,
 subsection 3. Any such provision that obligates the corporation
44 to provide indemnification to the fullest extent permitted by law
 is deemed to obligate the corporation to advance funds to pay for
46 or reimburse expenses in accordance with section 854 to the
 fullest extent permitted by law, unless the provision
48 specifically provides otherwise.

2 2. Indemnify predecessor. Any provision pursuant to
3 subsection 1 may not obligate the corporation to indemnify or
4 advance expenses to a director of a predecessor of the
5 corporation pertaining to conduct with respect to the predecessor
6 unless otherwise specifically provided. Any provision for
7 indemnification or an advance for expenses in the corporation's
8 articles of incorporation or bylaws or a resolution of the
9 corporation's board of directors or shareholders of a predecessor
10 of the corporation in a merger or in a contract to which the
11 predecessor is a party, existing at the time the merger takes
12 effect, is governed by section 1107, subsection 1, paragraph D.

13 3. Limit indemnification. A corporation may, by a
14 provision in its articles of incorporation, limit any of the
15 rights to indemnification or an advance for expenses created by
16 or pursuant to this subchapter.

17 4. Appearance as witness. This subchapter does not limit a
18 corporation's power to pay or reimburse expenses incurred by a
19 director or an officer in connection with the director's or
20 officer's appearance as a witness in a proceeding at a time when
21 the director or officer is not a party.

22 5. Maintain insurance. This subchapter does not limit a
23 corporation's power to indemnify, advance expenses to or provide
24 or maintain insurance on behalf of an employee or agent.

25 **§860. Exclusivity of subchapter**

26 A corporation may provide indemnification or advance
27 expenses to a director or an officer only as permitted by this
28 subchapter.

29 **SUBCHAPTER VI**

30 **DIRECTORS' CONFLICTING-INTEREST TRANSACTIONS**

31 **§871. Definitions**

32 As used in this subchapter, unless the context otherwise
33 indicates, the following terms have the following meanings.

34 1. Conflicting interest. "Conflicting interest" with
35 respect to a corporation means the interest a director of the
36 corporation has respecting a transaction effected or proposed to
37 be effected by the corporation or by a subsidiary of the
38 corporation or any other entity in which the corporation has a
39 controlling interest if:

2 A. Whether or not the transaction is brought before the
4 corporation's board of directors for action, the director
6 knows at the time of commitment that the director or a
8 related person is a party to the transaction or has a
10 beneficial financial interest in or so closely linked to the
transaction and of such financial significance to the
director or a related person that the interest would
reasonably be expected to exert an influence on the
director's judgment if the director were called upon to vote
on the transaction; or

12 B. The transaction is brought, or is of such character and
14 significance to the corporation that it would in the normal
16 course be brought, before the corporation's board of
18 directors for action, and the director knows at the time of
20 commitment that any of the following persons is either a
22 party to the transaction or has a beneficial financial
interest in or so closely linked to the transaction and of
such financial significance to the person that the interest
would reasonably be expected to exert an influence on the
director's judgment if the director were called upon to vote
on the transaction;

24 (1) An entity, other than the corporation, of which
26 the director is a director, general partner, agent or
employee;

28 (2) A person that controls one or more of the entities
30 specified in subparagraph (1) or an entity that is
32 controlled by, or is under common control with, one or
more of the entities specified in subparagraph (1); or

34 (3) An individual who is a general partner, principal
or employer of the director.

36 2. Director's conflicting-interest transaction.
38 "Director's conflicting-interest transaction" with respect to a
40 corporation means a transaction effected or proposed to be
42 effected by the corporation or by a subsidiary of the corporation
or any other entity in which the corporation has a controlling
interest respecting which a director of the corporation has a
conflicting interest.

44 3. Related person. "Related person" means:

46 A. The director's spouse, or the parent or sibling of the
48 spouse; the director's a child, grandchild, sibling or
parent, or the spouse of that child, grandchild, sibling or
parent; an individual having the same home as the director;

2 or a trust or estate of which an individual specified in
this paragraph is a substantial beneficiary; or

4 B. A trust, estate, incapacitated person, conservatee or
minor of which the director is a fiduciary.

6 **4. Required disclosure.** "Required disclosure" means
8 disclosure by the director who has a conflicting interest of:

10 A. The existence and nature of the director's conflicting
interest; and

12 B. All facts known to the director respecting the subject
14 matter of the transaction that an ordinarily prudent person
16 would reasonably believe to be material to a judgment about
whether or not to proceed with the transaction.

18 **5. Time of commitment.** "Time of commitment" respecting a
20 transaction means the time when the transaction is consummated
or, if made pursuant to contract, the time when the corporation
22 or its subsidiary or the entity in which it has a controlling
interest becomes contractually obligated so that its unilateral
24 withdrawal from the transaction would entail significant loss,
liability or other damage.

26 **§872. Judicial action**

28 **1. Nonconflicting-interest transaction not enjoined.** A
30 transaction effected or proposed to be effected by a corporation
or by a subsidiary of the corporation or any other entity in
32 which the corporation has a controlling interest that is not a
director's conflicting-interest transaction may not be enjoined,
34 set aside or give rise to an award of damages or other sanctions
in a proceeding by a shareholder or by or in the right of the
36 corporation because a director of the corporation or any person
with whom or which the director has a personal, economic or other
association has an interest in the transaction.

38 **2. Conflicting-interest transaction not enjoined if**
40 **standards met.** A director's conflicting-interest transaction may
42 not be enjoined, set aside or give rise to an award of damages or
other sanctions in a proceeding by a shareholder or by or in the
44 right of the corporation because the director or any person with
whom or which the director has a personal, economic or other
association has an interest in the transaction if:

46 A. The directors' action respecting the transaction was at
48 any time taken in compliance with section 873;

2 B. The shareholders' action respecting the transaction was
at any time taken in compliance with section 874; or

4 C. The transaction, judged according to the circumstances
at the time of commitment, is established to have been fair
6 to the corporation.

8 **§873. Directors' action**

10 1. Action respecting transaction. A directors' action
respecting a transaction is effective for purposes of section
12 872, subsection 2, paragraph A if the transaction received the
affirmative vote of a majority, but no fewer than 2, of those
14 qualified directors on the corporation's board of directors or on
a duly empowered committee of the board of directors who voted on
16 the transaction after either required disclosure to them, to the
extent the information was not known by them, or compliance with
18 subsection 2, except that action by a committee is effective
under this section only if:

20 A. All of the committee's members are qualified directors;
22 and

24 B. The committee's members are either all the qualified
directors on the board or are appointed by the affirmative
26 vote of a majority of the qualified directors on the board.

28 2. Disclosure: conflicting interest. If a director has a
conflicting interest respecting a transaction, but neither the
30 director nor a related person of the director as defined in
section 871, subsection 3, paragraph A is a party to the
32 transaction, and if the director has a duty under law or
professional canon, or a duty of confidentiality to another
34 person, respecting information relating to the transaction such
that the director may not make the disclosure described in
36 section 871, subsection 4, paragraph B, then disclosure is
sufficient for purposes of subsection 1 if the director:

38 A. Discloses to the directors voting on the transaction the
40 existence and nature of the director's conflicting interest
and informs them of the character and limitations imposed by
42 that duty before their vote on the transaction; and

44 B. Plays no part, directly or indirectly, in their
deliberations or vote.

46 3. Quorum. A majority, but no fewer than 2, of all the
48 qualified directors on the corporation's board of directors or on
a committee of the corporation's board of directors, constitutes
50 a quorum for purposes of action that complies with this section.

2 The directors' action that otherwise complies with this section
3 is not affected by the presence or vote of a director who is not
4 a qualified director.

5 4. Qualified director. For purposes of this section,
6 "qualified director" means, with respect to a director's
7 conflicting-interest transaction, any director who does not have
8 either:

9 A. A conflicting interest respecting the transaction; or

10 B. A familial, financial, professional or employment
11 relationship with a 2nd director who does have a conflicting
12 interest respecting the transaction when that relationship
13 would, in the circumstances, reasonably be expected to exert
14 an influence on the first director's judgment when voting on
15 the transaction.

16 **§874. Shareholders' action**

17 1. Shareholders' action. Shareholders' action respecting a
18 transaction is effective for purposes of section 872, subsection
19 2, paragraph B if a majority of the votes entitled to be cast by
20 the holders of all qualified shares was cast in favor of the
21 transaction after:

22 A. A notice was given to the shareholders describing the
23 director's conflicting-interest transaction;

24 B. Provision to the secretary or other officer or agent of
25 the corporation of the information referred to in subsection
26 4; and

27 C. Required disclosure, as defined in section 871,
28 subsection 4, to the shareholders who voted on the
29 transaction, to the extent the information was not known by
30 them.

31 2. Qualified shares. For purposes of this section,
32 "qualified shares" means any shares entitled to vote with respect
33 to the director's conflicting-interest transaction except shares
34 that, to the knowledge, before the vote, of the secretary or
35 other officer or agent of the corporation authorized to tabulate
36 votes, are beneficially owned or the voting of which is
37 controlled by a director who has a conflicting interest
38 respecting the transaction or by a related person of the
39 director, or both.

40 3. Quorum. A majority of the votes entitled to be cast by
41 the holders of all qualified shares constitutes a quorum for

2 purposes of action that complies with this section. Subject to
3 subsections 4 and 5, shareholders' action that otherwise complies
4 with this section is not affected by the presence of holders of
5 shares that are not qualified shares, or the voting of shares
6 that are not qualified shares.

7 4. Compliance. For purposes of compliance with subsection
8 1, a director who has a conflicting interest respecting the
9 transaction shall, before the shareholders' vote, inform the
10 secretary or other officer or agent of the corporation authorized
11 to tabulate votes of the number and the identity of persons
12 holding or controlling the vote of all shares that the director
13 knows are beneficially owned or the voting of which is controlled
14 by the director or by a related person of the director, or both.

15 5. Failure to comply. If a shareholders' vote does not
16 comply with subsection 1 solely because of a failure of a
17 director to comply with subsection 4 and if the director
18 establishes that the director's failure did not determine and was
19 not intended by the director to influence the outcome of the
20 vote, the court may, with or without further proceedings
21 respecting section 872, subsection 2, paragraph C, take such
22 action respecting the transaction and the director and give such
23 effect, if any, to the shareholders' vote as it considers
24 appropriate in the circumstances.

25 CHAPTER 9

26 DOMESTICATION AND CONVERSION

27 SUBCHAPTER I

28 DOMESTICATION

29 §921. Domestication

30 1. Foreign business corporation may become domestic
31 business corporation. A foreign business corporation may become
32 a domestic business corporation only if the domestication is
33 permitted by the organic law of the foreign corporation. The
34 laws of this State govern the effect of domesticating in this
35 State pursuant to this subchapter.

36 2. Domestic business corporation may become foreign
37 business corporation. A domestic business corporation may become
38 a foreign business corporation only if the domestication is
39 permitted by the laws of the foreign jurisdiction. Regardless of
40 whether the laws of the foreign jurisdiction require the adoption
41 of a plan of domestication, the domestication must be approved by
42 the adoption by the domestic business corporation of a plan of
43 the adoption by the domestic business corporation of a plan of
44 the adoption by the domestic business corporation of a plan of
45 the adoption by the domestic business corporation of a plan of
46 the adoption by the domestic business corporation of a plan of
47 the adoption by the domestic business corporation of a plan of
48 the adoption by the domestic business corporation of a plan of
49 the adoption by the domestic business corporation of a plan of
50 the adoption by the domestic business corporation of a plan of

2 domestication in the manner provided in this subchapter. The
3 laws of the foreign jurisdiction govern the effect of
4 domesticating in that jurisdiction.

5 3. Plan of domestication. A domestic business
6 corporation's plan of domestication in accordance with subsection
7 2 must include:

8 A. The name of the jurisdiction in which the corporation is
9 to be domesticated;

10 B. The terms and conditions of the domestication;

11 C. The manner and basis of reclassifying the shares of the
12 corporation following its domestication into shares or other
13 securities, obligations, rights to acquire shares or other
14 securities, cash, other property or any combination thereof;
15 and

16 D. Any desired amendments to the articles of incorporation
17 of the corporation following its domestication.

18 4. Amend plan. A domestic business corporation's plan of
19 domestication submitted in accordance with subsection 2 may also
20 include a provision that the plan may be amended prior to the
21 filing of the document required by the laws of this State or the
22 other jurisdiction to consummate the domestication, except that
23 after approval of the plan by the shareholders the plan may not
24 be amended to change:

25 A. The amount or kind of shares or other securities,
26 obligations, rights to acquire shares or other securities,
27 cash or other property to be received by the shareholders
28 under the plan;

29 B. The articles of incorporation of the corporation as they
30 will be in effect immediately following the domestication,
31 except for changes permitted by section 1005 or by
32 comparable provisions of the laws of the other jurisdiction;
33 or

34 C. Any of the other terms or conditions of the plan if the
35 change would adversely affect any of the shareholders in any
36 material respect.

37 5. Evidence of indebtedness. If any debt security, note or
38 similar evidence of indebtedness for money borrowed, whether
39 secured or unsecured, or a contract of any kind issued, incurred
40 or executed by a domestic business corporation before July 1,
41 2003 contains a provision applying to a merger of the corporation
42

2 and the document does not refer to a domestication of the
4 corporation, the provision is deemed to apply to a domestication
6 of the corporation until such time after that date as the
8 provision is amended.

6 **§922. Action on plan of domestication**

8 In the case of a domestication of a domestic business
10 corporation, in this section referred to as the "corporation," in
12 a foreign jurisdiction:

12 1. Plan adopted by directors. The plan of domestication
14 must be adopted by the corporation's board of directors:

16 2. Shareholders' approval. After adopting the plan of
18 domestication, the corporation's board of directors shall submit
20 the plan to the shareholders for their approval. The board of
22 directors shall also transmit to the shareholders a
24 recommendation that the shareholders approve the plan, unless the
26 board of directors makes a determination that because of
28 conflicts of interest or other special circumstances the board of
30 directors should not make such a recommendation, in which case
32 the board of directors shall transmit to the shareholders the
34 basis for that determination:

36 3. Conditional submission. The corporation's board of
38 directors may condition its submission of the plan of
40 domestication to the shareholders on any basis:

42 4. Notice of meeting. If the approval of the shareholders
44 of the plan of domestication under subsection 2 is to be given at
46 a meeting, the corporation shall notify each shareholder, whether
48 or not entitled to vote, of the meeting of shareholders at which
50 the plan of domestication is to be submitted for approval. The
notice must state that the purpose, or one of the purposes, of
the meeting is to consider the plan and must contain or be
accompanied by a copy or summary of the plan. The notice must
include or be accompanied by a copy of the corporation's articles
of incorporation as they will be in effect immediately after the
domestication:

5. Majority approval. Unless the corporation's articles of
incorporation or its board of directors acting pursuant to
subsection 3 requires a greater vote, approval of the plan of
domestication requires the approval of the shareholders and, if
any class or series of shares is entitled to vote as a separate
group on the plan, the approval of each such separate voting
group by a majority of all the votes entitled to be cast on the
plan by that voting group. The articles of incorporation may
provide that the plan may be approved by a lesser vote of each

2 voting group entitled to vote on the plan but in no case less
3 than a majority of the votes cast by that voting group at a
4 meeting at which there exists, for each such voting group, a
5 quorum consisting of at least a majority of the votes entitled to
6 be cast on the plan by each voting group entitled to vote on the
7 plan;

8 6. Voting groups. Separate voting by voting groups is
9 required by each class or series of shares that:

10 A. Is to be reclassified under the plan of domestication
11 into other securities, obligations, rights to acquire shares
12 or other securities, cash, other property or any combination
13 thereof;

14 B. Would be entitled to vote as a separate group on a
15 provision of the plan of domestication that, if contained in
16 a proposed amendment to the corporation's articles of
17 incorporation, would require action by separate voting
18 groups under section 1004; or

19 C. Is entitled under the corporation's articles of
20 incorporation to vote as a voting group to approve an
21 amendment of the articles; and

22 7. Merger provisions applicable to domestications. If any
23 provision of the corporation's articles of incorporation or
24 bylaws or of an agreement to which any of the directors or
25 shareholders are parties, adopted or entered into before July 1,
26 2003, applies to a merger of the corporation and that document
27 does not refer to a domestication of the corporation, the
28 provision is deemed to apply to a domestication of the
29 corporation until such time after that date as the provision is
30 amended.

31 §923. Articles of domestication

32 1. Articles of domestication. After the domestication of a
33 foreign business corporation, referred to in this section as the
34 "corporation," has been authorized as required by the laws of the
35 foreign jurisdiction, articles of domestication must be executed
36 by an officer or other duly authorized representative of the
37 corporation. The articles must set forth:

38 A. The name of the corporation immediately before the
39 filing of the articles of domestication and, if that name is
40 unavailable for use in this State or the corporation desires
41 to change its name in connection with the domestication, a
42 name that satisfies the requirements of section 401;

2 B. The jurisdiction of incorporation of the corporation
4 immediately before the filing of the articles of
domestication and the date the corporation was incorporated
in that jurisdiction; and

6 C. A statement that the domestication of the corporation in
8 this State was duly authorized as required by the laws of
the jurisdiction in which the corporation was incorporated
immediately before its domestication in this State.

10 2. Provisions of articles of domestication. The articles
12 of domestication of a corporation must either contain all the
14 provisions that section 202, subsection 1 requires to be set
16 forth in articles of incorporation with any other desired
18 provisions that section 202, subsection 2 permits to be included
in articles of incorporation or have attached articles of
incorporation. In either case, provisions that would not be
required by chapter 10 to be included in restated articles of
incorporation may be omitted.

20 3. Delivery to Secretary of State. The articles of
22 domestication of a corporation must be delivered to the Secretary
24 of State for filing and take effect at the effective time
provided in section 125.

26 4. Certificate of authority. If the corporation is
28 authorized to transact business in this State under chapter 15,
its certificate of authority is cancelled automatically on the
effective date of its domestication.

30 §924. Surrender of charter upon domestication

32 1. Articles of charter surrender. Whenever a domestic
34 business corporation, referred to in this section as the
36 "corporation," has adopted and approved, in the manner required
38 by this subchapter, a plan of domestication providing for the
corporation to be domesticated in a foreign jurisdiction,
articles of charter surrender must be executed on behalf of the
corporation by any officer or other duly authorized
representative. The articles of charter surrender must set forth:

42 A. The name of the corporation;

44 B. A statement that the articles of charter surrender are
46 being filed in connection with the domestication of the
corporation in a foreign jurisdiction;

48 C. A statement that the domestication was duly approved by
50 the shareholders and, if voting by any separate voting group
was required, by each such separate voting group, in the

2 manner required by this Act and the corporation's articles
3 of incorporation; and

4 D. The corporation's new jurisdiction of incorporation.

6 2. Filing of articles of charter surrender. The articles
7 of charter surrender must be delivered by the corporation to the
8 Secretary of State for filing. The articles of charter surrender
9 take effect on the effective time provided in section 125.

10 **§925. Effect of domestication**

12 1. Domestication of foreign business corporation. When a
13 domestication in this State of a foreign business corporation,
14 referred to in this subsection as the "corporation," becomes
15 effective:

16 A. The title to all real and personal property, both
17 tangible and intangible, of the corporation remains in the
18 corporation without reversion or impairment;

19 B. The liabilities of the corporation remain the
20 liabilities of the corporation;

21 C. An action or proceeding pending against the corporation
22 continues against the corporation as if the domestication
23 had not occurred;

24 D. The articles of domestication, or the articles of
25 incorporation attached to the articles of domestication,
26 constitute the articles of incorporation of the corporation;

27 E. The shares of the corporation are reclassified into
28 shares, other securities, obligations, rights to acquire
29 shares or other securities or into cash or other property in
30 accordance with the terms of the domestication as approved
31 under the laws of the foreign jurisdiction, and the
32 shareholders are entitled only to the rights provided by
33 those terms and under those laws; and

34 F. The corporation is deemed to:

35 (1) Be incorporated under the laws of this State for
36 all purposes;

37 (2) Be the same corporation without interruption as
38 the corporation that existed under the laws of the
39 foreign jurisdiction; and

(3) Have been incorporated on the date it was originally incorporated in the foreign jurisdiction.

2. Domestication of domestic business corporation. When a domestication of a domestic business corporation in a foreign jurisdiction becomes effective, that foreign business corporation is deemed to:

A. Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication and that foreign business corporation shall provide a mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State; and

B. Agree to promptly pay the amount, if any, to which the shareholders are entitled under chapter 13.

3. Owner liability. The owner liability of a shareholder in a foreign business corporation that is domesticated in this State, referred to in this subsection as the "corporation," is as provided in this subsection.

A. The domestication does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any owner liability arose before the effective time of the articles of domestication.

B. The shareholder does not have owner liability under the laws of the foreign jurisdiction for any debt, obligation or liability of the corporation that arises after the effective time of the articles of domestication.

C. The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any owner liability preserved by paragraph A as if the domestication had not occurred and the corporation were still incorporated under the laws of the foreign jurisdiction.

D. The shareholder has whatever rights of contribution from other shareholders that are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by paragraph A as if the domestication had not occurred and the corporation were still incorporated under the laws of that jurisdiction.

§926. Abandonment of domestication

1. Abandonment of domestication by domestic business corporation. Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by this subchapter and at any time before the domestication has become effective, it may be abandoned by the corporation's board of directors without action by the shareholders.

If a domestication is abandoned under this subsection after articles of charter surrender have been filed with the Secretary of State but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, executed by an officer or other duly authorized representative of the corporation, must be delivered to the Secretary of State for filing prior to the effective date of the domestication. The statement takes effect upon filing, and the domestication is considered abandoned and does not become effective.

2. Abandonment of domestication by foreign business corporation. If the domestication of a foreign business corporation in this State is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Secretary of State, a statement that the domestication has been abandoned, executed by an officer or other duly authorized representative of the corporation, must be delivered to the Secretary of State for filing. The statement takes effect upon filing, and the domestication is considered abandoned and does not become effective.

SUBCHAPTER II

NONPROFIT CONVERSION

§931. Nonprofit conversion

1. Domestic nonprofit corporation; nonprofit conversion plan. A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion as provided in this subchapter.

2. Foreign nonprofit corporation; nonprofit conversion plan. A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of nonprofit conversion, the foreign nonprofit conversion must be approved by the adoption by the domestic business corporation of a plan of nonprofit conversion in the manner provided in this

2 subchapter. The laws of the foreign jurisdiction govern the
3 effect of the foreign nonprofit conversion.

4 3. Nonprofit conversion plan. A plan of nonprofit
5 conversion pursuant to subsection 1 or 2 must include:

6 A. The terms and conditions of the conversion;

7
8 B. The manner and basis of reclassifying the shares of the
9 corporation following its conversion into memberships, if
10 any, or securities, obligations, rights to acquire
11 memberships or securities, cash, other property or any
12 combination thereof;

13
14 C. Any desired amendments to the articles of incorporation
15 of the corporation following its conversion; and

16
17 D. If the domestic business corporation is to be converted
18 to a foreign nonprofit corporation, a statement naming the
19 jurisdiction in which the corporation will be incorporated
20 after the conversion.

21
22 4. Amendment provision. A plan of nonprofit conversion
23 under this section may also include a provision that the plan may
24 be amended prior to the filing of articles of nonprofit
25 conversion, except that after approval of the plan by the
26 shareholders the plan may not be amended to change:

27
28 A. The amount or kind of memberships or securities,
29 obligations, rights to acquire memberships or securities,
30 cash or other property to be received by the shareholders
31 under the plan;

32
33 B. The articles of incorporation as they will be in effect
34 immediately following the conversion, except for changes
35 permitted by section 1005; or

36
37 C. Any of the other terms or conditions of the plan if the
38 change would adversely affect any of the shareholders in any
39 material respect.

40
41
42 5. Evidence of indebtedness. If any debt security, note or
43 similar evidence of indebtedness for money borrowed, whether
44 secured or unsecured, or a contract of any kind issued, incurred
45 or executed by a domestic business corporation before July 1,
46 2003 contains a provision applying to a merger of the domestic
47 business corporation and the document does not refer to a
48 nonprofit conversion of the domestic business corporation, the
49 provision is deemed to apply to a nonprofit conversion of the

2 domestic business corporation until such time after that date as
3 the provision is amended.

4 **§932. Action on plan of nonprofit conversion**

6 In the case of a conversion of a domestic business
7 corporation to a domestic or foreign nonprofit corporation:

8
9
10 **1. Plan adopted by directors.** The plan of nonprofit
11 conversion must be adopted by the corporation's board of
12 directors;

13
14 **2. Shareholders' approval.** After adopting the plan of
15 nonprofit conversion, the corporation's board of directors shall
16 submit the plan to the shareholders for their approval. The
17 board of directors shall also transmit to the shareholders a
18 recommendation that the shareholders approve the plan, unless the
19 board of directors makes a determination that because of
20 conflicts of interest or other special circumstances the board of
21 directors should not make such a recommendation, in which case
22 the board of directors shall transmit to the shareholders the
23 basis for that determination;

24 **3. Conditional submission.** The corporation's board of
25 directors may condition its submission of the plan of nonprofit
26 conversion to the shareholders on any basis;

27
28 **4. Notice of meeting.** If the approval of the shareholders
29 of the plan of nonprofit conversion is to be given at a meeting,
30 the domestic business corporation shall notify each shareholder
31 of the meeting of shareholders at which the plan of nonprofit
32 conversion is to be submitted for approval. The notice must
33 state that the purpose, or one of the purposes, of the meeting is
34 to consider the plan and must contain or be accompanied by a copy
35 or summary of the plan. The notice must include or be
36 accompanied by a copy of the corporation's articles of
37 incorporation as they will be in effect immediately after the
38 nonprofit conversion;

39
40 **5. Majority approval.** Unless the corporation's articles of
41 incorporation or its board of directors acting pursuant to
42 subsection 3 requires a greater vote, approval of the plan of
43 nonprofit conversion requires the approval of the shareholders by
44 a majority of all the votes entitled to be cast on the plan by
45 that voting group. The articles of incorporation may provide
46 that the plan may be approved by a lesser vote of each voting
47 group entitled to vote on the plan but in no case less than a
48 majority of the votes cast by that voting group at a meeting at
49 which there exists, for each such voting group, a quorum
50 consisting of at least a majority of the votes entitled to be

cast on the plan by each voting group entitled to vote on the plan;

6. Voting groups. In addition to the vote required under subsection 5, separate voting by voting groups is also required by each class or series of shares. Unless the corporation's articles of incorporation or its board of directors acting pursuant to subsection 3 requires a greater vote or a greater number of votes to be present, if the corporation has more than one class or series of shares outstanding, approval of the plan of nonprofit conversion requires the approval of each separate voting group by a majority of the votes entitled to be cast on the nonprofit conversion by that voting group; and

7. Merger of corporation. If any provision of the corporation's articles of incorporation or bylaws or of an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2003, applies to a merger of the domestic business corporation and the document does not refer to a nonprofit conversion of the domestic business corporation, the provision is deemed to apply to a nonprofit conversion of the domestic business corporation until such time after that date as the provision is amended.

§933. Articles of nonprofit conversion

1. Articles of nonprofit conversion. After a plan of nonprofit conversion providing for the conversion of a domestic business corporation, referred to in this section as the "corporation," to a domestic nonprofit corporation has been adopted and approved as required by this Act, articles of nonprofit conversion must be executed on behalf of the corporation by an officer or other duly authorized representative of the corporation. The articles must set forth:

A. The name of the corporation immediately before the filing of the articles of nonprofit conversion and, if that name does not satisfy the requirements of the Maine Nonprofit Corporation Act or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of the Maine Nonprofit Corporation Act; and

B. A statement that the plan of nonprofit conversion was duly approved by the shareholders in the manner required by this Act and the articles of incorporation.

2. Provisions of articles of nonprofit conversion. The articles of nonprofit conversion must either contain all the provisions that the Maine Nonprofit Corporation Act requires to

2 be set forth in articles of incorporation of a domestic nonprofit
3 corporation with any other desired provisions permitted by the
4 Maine Nonprofit Corporation Act or have attached articles of
5 incorporation that satisfy the requirements of the Maine
6 Nonprofit Corporation Act. In either case, provisions that would
7 not be required by chapter 10 to be included in restated articles
8 of incorporation of a domestic nonprofit corporation may be
9 omitted.

10 3. Delivery to Secretary of State. The articles of
11 nonprofit conversion must be delivered to the Secretary of State
12 for filing and take effect at the effective time provided in
13 section 125.

14 **§934. Surrender of charter upon foreign nonprofit conversion**

15 1. Articles of charter surrender. Whenever a domestic
16 business corporation, referred to in this section as the
17 "corporation," has adopted and approved, in the manner required
18 by this subchapter, a plan of nonprofit conversion providing for
19 the corporation to be converted to a foreign nonprofit
20 corporation, articles of charter surrender must be executed on
21 behalf of the corporation by an officer or other duly authorized
22 representative of the corporation. The articles of charter
23 surrender must set forth:

24 A. The name of the corporation;

25 B. A statement that the articles of charter surrender are
26 being filed in connection with the conversion of the
27 corporation to a foreign nonprofit corporation;

28 C. A statement that the foreign nonprofit conversion was
29 duly approved by the shareholders in the manner required by
30 this Act and the corporation's articles of incorporation; and

31 D. The corporation's new jurisdiction of incorporation.

32 2. Filing of articles of charter surrender. The articles
33 of charter surrender must be delivered by the corporation to the
34 Secretary of State for filing. The articles of charter surrender
35 take effect on the effective time provided in section 125.

36 **§935. Effect of nonprofit conversion**

37 1. Conversion to domestic nonprofit corporation. When the
38 conversion of a domestic business corporation to a domestic
39 nonprofit corporation, referred to in this subsection as the
40 "corporation," becomes effective:

2 A. The title to all real and personal property, both
4 tangible and intangible, of the domestic business
corporation remains in the corporation without reversion or
impairment;

6 B. The liabilities of the domestic business corporation
8 remain the liabilities of the corporation;

10 C. An action or proceeding pending against the domestic
12 business corporation continues against the corporation as if
the conversion had not occurred;

14 D. The articles of nonprofit conversion, or the articles of
16 incorporation attached to the articles of nonprofit
conversion, constitute the articles of incorporation of the
corporation;

18 E. The shares of the corporation are reclassified into
20 memberships, securities, obligations, rights to acquire
22 memberships or securities or into cash or other property in
24 accordance with the plan of conversion, and the shareholders
are entitled only to the rights provided in the plan of
nonprofit conversion or to any rights they may have under
chapter 13; and

26 F. The corporation is deemed to:

28 (1) Be a domestic nonprofit corporation for all
30 purposes;

32 (2) Be the same corporation without interruption as
the domestic business corporation; and

34 (3) Have been incorporated on the date that it was
36 originally incorporated as a domestic business
corporation.

38 2. Conversion to foreign nonprofit corporation. When the
40 conversion of a domestic business corporation to a foreign
nonprofit corporation becomes effective, that foreign nonprofit
corporation is deemed to:

42 A. Appoint the Secretary of State as its agent for service
44 of process in a proceeding to enforce the rights of
46 shareholders who exercise appraisal rights in connection
with the conversion; and

48 B. Agree to promptly pay the amount, if any, to which the
50 shareholders are entitled under chapter 13.

§936. Abandonment of nonprofit conversion

1
2
3
4 1. Abandonment of plan. Unless otherwise provided in a
5 plan of nonprofit conversion of a domestic business corporation,
6 after the plan has been adopted and approved as required by this
7 subchapter and at any time before the nonprofit conversion has
8 become effective, the plan may be abandoned by the corporation's
9 board of directors without action by the shareholders.

10 2. Statement of abandonment. If a nonprofit conversion is
11 abandoned under subsection 1 after articles of nonprofit
12 conversion or articles of charter surrender have been filed with
13 the Secretary of State but before the nonprofit conversion has
14 become effective, a statement that the nonprofit conversion has
15 been abandoned in accordance with this section, executed by an
16 officer or other duly authorized representative of the
17 corporation, must be delivered to the Secretary of State for
18 filing prior to the effective date of the nonprofit conversion.
19 The statement takes effect upon filing, and the nonprofit
20 conversion is considered abandoned and does not become effective.

21
22 SUBCHAPTER III

23
24 FOREIGN NONPROFIT DOMESTICATION AND CONVERSION

25
26 §941. Foreign nonprofit domestication and conversion

27
28 A foreign nonprofit corporation may become a domestic
29 business corporation only if the domestication and conversion is
30 permitted by the organic law of the foreign nonprofit
31 corporation. The laws of this State govern the effect of
32 converting to a domestic business corporation pursuant to this
33 subchapter.

34
35 §942. Articles of domestication and conversion

36
37 1. Conversion to domestic business corporation. After the
38 conversion of a foreign nonprofit corporation to a domestic
39 business corporation, referred to in this subsection as the
40 "corporation," has been authorized as required by the laws of the
41 foreign jurisdiction, articles of domestication and conversion
42 must be executed by an officer or other duly authorized
43 representative of the corporation. The articles must set forth:

44
45 A. The name of the corporation immediately before the
46 filing of the articles of domestication and conversion and,
47 if that name is unavailable for use in this State or the
48 corporation desires to change its name in connection with
49 the domestication and conversion, a name that satisfies the
50 requirements of section 401;

2 B. The jurisdiction of incorporation of the corporation
4 immediately before the filing of the articles of
6 domestication and conversion and the date the corporation
8 was incorporated in that jurisdiction; and

10 C. A statement that the domestication and conversion of the
12 corporation in this State was duly authorized as required by
14 the laws of the jurisdiction in which the corporation was
16 incorporated immediately before its domestication and
18 conversion in this State.

20 2. Provision of articles of domestication and conversion.
22 The articles of domestication and conversion executed in
24 accordance with subsection 1 must either contain all the
26 provisions that section 202, subsection 1 requires to be set
28 forth in articles of incorporation with any other desired
30 provisions that section 202, subsection 2 permits to be included
32 in articles of incorporation or have attached articles of
34 incorporation. In either case, provisions that would not be
36 required by chapter 10 to be included in restated articles of
38 incorporation may be omitted.

40 3. Filing with Secretary of State. Articles of
42 domestication and conversion executed in accordance with
44 subsection 1 must be delivered to the Secretary of State for
46 filing and take effect at the effective time provided in section
48 125.

50 4. Certificate of authority. If the foreign nonprofit
52 corporation is authorized to transact business in this State
54 under the provisions of the Maine Nonprofit Corporation Act, its
56 certificate of authority is cancelled automatically on the
58 effective date of its domestication and conversion.

60 §943. Effect of foreign nonprofit domestication and conversion

62 1. Effect of domestication and conversion. When a
64 domestication and conversion of a foreign nonprofit corporation
66 to a domestic business corporation, referred to in this
68 subsection as the "corporation," becomes effective:

70 A. The title to all real and personal property, both
72 tangible and intangible, of the foreign nonprofit
74 corporation remains in the corporation without reversion or
76 impairment;

78 B. The liabilities of the foreign nonprofit corporation
80 remain the liabilities of the corporation;

2 C. An action or proceeding pending against the foreign
4 nonprofit corporation continues against the corporation as
6 if the domestication and conversion had not occurred;

8 D. The articles of domestication and conversion, or the
10 articles of incorporation attached to the articles of
12 domestication and conversion, constitute the articles of
14 incorporation of the corporation;

16 E. Shares, other securities, obligations, rights to acquire
18 shares or other securities of the corporation or cash or
20 other property must be issued or paid as provided pursuant
22 to the laws of the foreign jurisdiction, so long as at least
24 one share is outstanding immediately after the effective
26 time; and

28 F. The corporation is deemed to:

30 (1) Be a domestic business corporation for all
32 purposes;

34 (2) Be the same corporation without interruption as
36 the corporation that existed under the laws of the
38 jurisdiction in which it was formerly domiciled; and

40 (3) Have been incorporated on the date it was
42 originally incorporated in the former jurisdiction.

44 2. Owner liability. The owner liability of a member of a
46 foreign nonprofit corporation that domesticates and converts to a
48 domestic business corporation is as provided in this subsection.

50 A. The domestication and conversion does not discharge any
owner liability under the laws of the foreign jurisdiction
to the extent any such owner liability arose before the
effective time of the articles of domestication and
conversion.

B. The member does not have owner liability under the laws
of the foreign jurisdiction for any debt, obligation or
liability of the corporation that arises after the effective
time of the articles of domestication and conversion.

C. The provisions of the laws of the foreign jurisdiction
continue to apply to the collection or discharge of any
owner liability preserved by paragraph A as if the
domestication and conversion had not occurred and the
domestic business corporation were still incorporated under
the laws of the foreign jurisdiction.

2 D. The member has whatever rights of contribution from
3 other members are provided by the laws of the foreign
4 jurisdiction with respect to any owner liability preserved
5 by paragraph A as if the domestication and conversion had
6 not occurred and the domestic business corporation were
7 still incorporated under the laws of that jurisdiction.

8 **§944. Abandonment of foreign nonprofit domestication and**
9 **conversion**

10 If the domestication and conversion of a foreign nonprofit
11 corporation to a domestic business corporation is abandoned in
12 accordance with the laws of the foreign jurisdiction after
13 articles of domestication and conversion have been filed with the
14 Secretary of State, a statement that the domestication and
15 conversion has been abandoned, executed by an officer or other
16 duly authorized representative of the corporation, must be
17 delivered to the Secretary of State for filing. The statement
18 takes effect upon filing, and the domestication and conversion is
19 considered abandoned and does not become effective.

22 **SUBCHAPTER IV**

24 **ENTITY CONVERSION**

26 **§951. Definitions**

28 As used in this subchapter, unless the context otherwise
29 indicates, the following terms have the following meanings.

32 1. **Converting entity.** "Converting entity" means the
33 domestic business corporation or domestic unincorporated entity
34 that adopts a plan of entity conversion or the foreign
35 unincorporated entity converting to a domestic business
36 corporation.

38 2. **Surviving entity.** "Surviving entity" means the
39 corporation or unincorporated entity as it continues in existence
40 immediately after consummation of an entity conversion pursuant
41 to this subchapter.

42 **§952. Entity conversion authorized**

44 1. **Domestic other entity.** A domestic business corporation
45 may become a domestic unincorporated entity pursuant to a plan of
46 entity conversion. If the organic law of the unincorporated
47 entity does not provide for such a conversion, section 957
48 governs the effect of converting to that form of unincorporated
49 entity.

2 2. Foreign unincorporated entity. A domestic business
4 corporation may become a foreign unincorporated entity only if
6 the entity conversion is permitted by the laws of the foreign
8 jurisdiction. The laws of the foreign jurisdiction govern the
 effect of converting to an unincorporated entity in that
 jurisdiction.

10 3. Entity conversion. A domestic unincorporated entity may
12 become a domestic business corporation. Section 957 governs the
14 effect of converting to a domestic business corporation. If the
16 organic law of a domestic unincorporated entity does not provide
18 procedures for the approval of an entity conversion, the
20 conversion must be adopted and approved, and the entity
22 conversion effectuated, in the same manner as a merger of the
24 unincorporated entity, and its interest holders are entitled to
26 appraisal rights if appraisal rights are available upon any type
28 of merger under the organic law of the unincorporated entity. If
30 the organic law of a domestic unincorporated entity does not
 provide procedures for the approval of either an entity
 conversion or a merger, a plan of entity conversion must be
 adopted and approved, the entity conversion effectuated and
 appraisal rights exercised in accordance with the procedures in
 this subchapter and chapter 13. Without limiting the provisions
 of this subsection, a domestic unincorporated entity whose
 organic law does not provide procedures for the approval of an
 entity conversion is subject to subsection 5 and section 954,
 subsection 7. For purposes of applying this subchapter and
 chapter 13:

32 A. The unincorporated entity and its interest holders,
34 interests and organic documents taken together are deemed to
36 be a domestic business corporation and its shareholders,
 shares and articles of incorporation, respectively and vice
 versa, as the context may require; and

38 B. If the business and affairs of the unincorporated entity
40 are managed by a group of persons that is not identical to
 the interest holders, that group is deemed to be the board
 of directors.

42 4. Authorization to become corporation. A foreign
44 unincorporated entity may become a domestic business corporation
46 if the organic law of the foreign unincorporated entity
48 authorizes it to become a corporation in another jurisdiction.
 The laws of this State govern the effect of conversion to a
 domestic business corporation pursuant to this subchapter.

50 5. Merger of corporation. If any debt security, note or
 similar evidence of indebtedness for money borrowed, whether

2 secured or unsecured, or a contract of any kind issued, incurred
3 or executed by a domestic business corporation before July 1,
4 2003, applies to a merger of the corporation and the document
5 does not refer to an entity conversion of the corporation, the
6 provision is deemed to apply to an entity conversion of the
7 corporation until such time after that date as the provision is
8 amended.

9
10 **§953. Plan of entity conversion**

11 1. Plan of entity conversion. A plan of entity conversion
12 under section 952 must include:

13 A. A statement of the type of unincorporated entity the
14 surviving entity will be and, if the other entity will be a
15 foreign unincorporated entity, its jurisdiction of
16 organization;

17 B. The terms and conditions of the conversion;

18 C. The manner and basis of converting the shares of the
19 domestic business corporation following its conversion into
20 interests or other securities, obligations, rights to
21 acquire interests or other securities, cash, other property,
22 or any combination thereof; and

23 D. The full text of the organic documents of the surviving
24 entity as they will be in effect immediately after
25 consummation of the conversion.

26
27 2. Amendment of plan. A plan of entity conversion may also
28 include a provision that the plan may be amended prior to the
29 filing of articles of entity conversion, except that after
30 approval of the plan by the shareholders the plan may not be
31 amended to change;

32 A. The amount or kind of shares or other securities,
33 interests, obligations, rights to acquire shares, other
34 securities or interests, cash or other property to be
35 received under the plan by the shareholders;

36 B. The organic documents that will be in effect immediately
37 following the conversion, except for changes permitted by a
38 provision of the organic law of the surviving entity
39 comparable to section 1005; or

40 C. Any of the other terms or conditions of the plan if the
41 change would adversely affect any of the shareholders in any
42 material respect.

§954. Action on plan of entity conversion

In the case of an entity conversion of a domestic business corporation, referred to in this section as the "corporation," to a domestic or foreign unincorporated entity:

1. Plan adopted by board. The plan of entity conversion must be adopted by the corporation's board of directors;

2. Shareholders' approval. After adopting the plan of entity conversion, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination;

3. Conditional submission. The corporation's board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis;

4. Notice of meeting. If the approval of the shareholders of the plan of entity conversion under subsection 2 is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic documents of the surviving entity as they will be in effect immediately after the entity conversion;

5. Majority approval. Unless the corporation's articles of incorporation or its board of directors acting pursuant to subsection 3 requires a greater vote, approval of the plan of entity conversion requires the approval of the shareholders at a meeting by a majority of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide that the plan may be approved by a lesser vote of each voting group entitled to vote on the plan but in no case less than a majority of the votes cast by that voting group at a meeting at which there exists, for each such voting group, a quorum consisting of at least a majority of the votes entitled to be cast on the plan by each voting group entitled to vote on the plan;

6. Voting groups. In addition to the vote required under subsection 5, separate voting by voting groups is also required by each class or series of shares. Unless the corporation's articles of incorporation or the board of directors acting pursuant to subsection 3 requires a greater vote or a greater number of votes to be present, if the corporation has more than one class or series of shares outstanding, approval of the plan of entity conversion requires the approval of each such separate voting group by a majority of the votes entitled to be cast on the conversion by that voting group;

7. Merger of corporation. If any provision of the corporation's articles of incorporation or bylaws or of an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2003, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision is deemed to apply to an entity conversion of the corporation until such time after that date as the provision is amended; and

8. Written consent. If as a result of an entity conversion one or more shareholders of the corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of conversion requires the execution by each such shareholder of a separate written consent to become subject to such owner liability.

§955. Articles of entity conversion

1. Conversion to domestic unincorporated entity. After the conversion of a domestic business corporation, referred to in this subsection as the "corporation," to a domestic unincorporated entity has been adopted and approved as required by this Act, articles of entity conversion must be executed on behalf of the corporation by an officer or other duly authorized representative. The articles must:

A. Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must be a name that satisfies the organic law of the surviving entity;

B. State the type of unincorporated entity that the surviving entity will be;

C. Set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this Act and the corporation's articles of incorporation;
and

2 D. If the surviving entity is a filing entity, either
4 contain all the provisions required to be set forth in its
6 public organic document with any other desired provisions
8 that are permitted or have attached a public organic
document; except that, in either case, provisions that would
not be required by chapter 10 to be included in a restated
public organic document may be omitted.

10 2. Conversion to domestic business corporation. After the
12 conversion of a domestic unincorporated entity to a domestic
14 business corporation has been adopted and approved as required by
16 the organic law of the unincorporated entity, articles of entity
conversion must be executed on behalf of the unincorporated
entity by an officer or other duly authorized representative of
the corporation. The articles must:

18 A. Set forth the name of the unincorporated entity
20 immediately before the filing of the articles of entity
22 conversion and the name to which the name of the
unincorporated entity is to be changed, which must be a name
that satisfies the requirements of section 401;

24 B. Set forth a statement that the plan of entity conversion
26 was duly approved in accordance with the organic law of the
unincorporated entity; and

28 C. Either contain all the provisions that section 202,
30 subsection 1 requires to be set forth in articles of
32 incorporation with any other desired provisions that section
34 202, subsection 2 permits to be included in articles of
36 incorporation or have attached articles of incorporation;
except that, in either case, provisions that would not be
required under chapter 10 to be included in restated
articles of incorporation of a domestic business corporation
may be omitted.

38 3. Conversion by law of foreign jurisdiction. After the
40 conversion of a foreign unincorporated entity to a domestic
42 business corporation is authorized as required by the laws of the
44 foreign jurisdiction, articles of entity conversion must be
executed on behalf of the foreign unincorporated entity by an
officer or other duly authorized representative of the
corporation. The articles must:

46 A. Set forth the name of the unincorporated entity
48 immediately before the filing of the articles of entity
50 conversion and the name to which the name of the
unincorporated entity is to be changed, which must be a name
that satisfies the requirements of section 401;

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2 B. Set forth the jurisdiction under the laws of which the
4 unincorporated entity was organized immediately before the
6 filing of the articles of entity conversion and the date on
 which the unincorporated entity was organized in that
 jurisdiction;

8 C. Set forth a statement that the conversion of the
10 unincorporated entity was duly approved in the manner
 required by its organic law; and

12 D. Either contain all the provisions that section 202,
14 subsection 1 requires to be set forth in articles of
16 incorporation with any other desired provisions that section
18 202, subsection 2 permits to be included in articles of
20 incorporation or have attached articles of incorporation;
 except that, in either case, provisions that would not be
 required by chapter 10 to be included in restated articles
 of incorporation of a domestic business corporation may be
 omitted.

22 3. File with Secretary of State. The articles of entity
24 conversion must be delivered to the Secretary of State for filing
 and take effect at the effective time provided in section 125.

26 4. Certificate of authority; cancelled. If the converting
28 entity is a foreign unincorporated entity that is authorized to
30 transact business in this State under a provision of law similar
32 to chapter 15, its certificate of authority or other type of
34 foreign qualification is cancelled automatically on the effective
36 date of its conversion.

38 §956. Surrender of charter upon conversion

40 1. Articles of charter surrender; domestic business
42 corporation. Whenever a domestic business corporation has
44 adopted and approved, in the manner required by this subchapter,
46 a plan of entity conversion providing for the domestic business
48 corporation, referred to in this section as the "corporation," to
50 be converted to a foreign unincorporated entity, articles of
 charter surrender must be executed on behalf of the corporation
 by an officer or other duly authorized representative of the
 corporation. The articles of charter surrender must set forth:

A. The name of the corporation;

B. A statement that the articles of charter surrender are
 being filed in connection with the conversion of the
 corporation to a foreign unincorporated entity;

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2 C. A statement that the conversion was duly approved by the
3 shareholders in the manner required by this Act and the
4 corporation's articles of incorporation;

5 D. The jurisdiction under the laws of which the surviving
6 entity is organized; and

7 E. If the surviving entity is a nonfiling entity, the
8 address of its executive office immediately after the
9 conversion.

10
11
12 2. File with Secretary of State. The articles of charter
13 surrender must be delivered by the corporation to the Secretary
14 of State for filing. The articles of charter surrender take
15 effect on the effective time provided in section 125.

16
17 **§957. Effect of entity conversion**

18
19 1. Conversion to domestic business corporation or domestic
20 other entity. When a conversion under this subchapter in which
21 the surviving entity is a domestic business corporation or
22 domestic unincorporated entity becomes effective:

23
24 A. The title to all real and personal property, both
25 tangible and intangible, of the converting entity remains in
26 the surviving entity without reversion or impairment;

27
28 B. The liabilities of the converting entity remain the
29 liabilities of the surviving entity;

30
31 C. An action or proceeding pending against the converting
32 entity continues against the surviving entity as if the
33 conversion had not occurred;

34
35 D. In the case of a surviving entity that is a filing
36 entity, the articles of conversion or the articles of
37 incorporation or public organic document attached to the
38 articles of conversion constitute the articles of
39 incorporation or public organic document of the surviving
40 entity;

41
42 E. In the case of a surviving entity that is a nonfiling
43 entity, the private organic document provided for in the
44 plan of entity conversion constitutes the private organic
45 document of the surviving entity;

46
47 F. The shares or interests of the converting entity are
48 reclassified into shares, interests, other securities,
49 obligations, rights to acquire shares, interests or other
50 securities or into cash or other property in accordance with

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2 the plan of entity conversion; and the shareholders or
4 interest holders of the converting entity are entitled only
to the rights provided in the plan of entity conversion and
to any rights they may have under chapter 13; and

6 G. The surviving entity is deemed to:

8 (1) Be a domestic business corporation or domestic
10 unincorporated entity for all purposes;

12 (2) Be the same corporation or unincorporated entity
without interruption as the converting entity; and

14 (3) Have been incorporated or otherwise organized on
16 the date that the converting entity was originally
incorporated or organized.

18 2. Conversion to a foreign other entity. When a conversion
20 of a domestic business corporation to a foreign unincorporated
entity becomes effective, the surviving entity is deemed to:

22 A. Appoint the Secretary of State as its agent for service
24 of process in a proceeding to enforce the rights of
shareholders who exercise appraisal rights in connection
26 with the conversion and shall provide a mailing address to
which the Secretary of State may mail a copy of any process
28 served on the Secretary of State; and

30 B. Agree to promptly pay the amount, if any, to which the
shareholders are entitled under chapter 13.

32 3. Owner liability; shareholder. A shareholder who becomes
34 subject to owner liability for some or all of the debts,
obligations or liabilities of the surviving entity is personally
36 liable only for those debts, obligations or liabilities of the
surviving entity that arise after the effective time of the
38 articles of entity conversion.

40 4. Interest holder; owner liability. The owner liability
of an interest holder in an unincorporated entity that converts
42 to a domestic business corporation is as provided in this
subsection.

44 A. The conversion does not discharge any owner liability
46 under the organic law of the unincorporated entity to the
extent any owner liability arose before the effective time
48 of the articles of entity conversion.

50 B. The interest holder does not have owner liability under
the organic law of the unincorporated entity for any debt.

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obligation or liability of the domestic business corporation that arises after the effective time of the articles of entity conversion.

C. The provisions of the organic law of the unincorporated entity continue to apply to the collection or discharge of any owner liability preserved by paragraph A as if the conversion had not occurred and the surviving entity were still the converting entity.

D. The interest holder has whatever rights of contribution from other interest holders are provided by the organic law of the unincorporated entity with respect to any owner liability preserved by paragraph A as if the conversion had not occurred and the surviving entity were still the converting entity.

§958. Abandonment of entity conversion

1. Conversion abandoned by board of directors. Unless otherwise provided in a plan of entity conversion of a domestic business corporation, after the plan has been adopted and approved as required by this subchapter and at any time before the entity conversion has become effective, it may be abandoned by the corporation's board of directors without action by the shareholders.

2. Statement of abandonment. If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the Secretary of State but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative of the corporation, must be delivered to the Secretary of State for filing prior to the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is considered abandoned and does not become effective.

CHAPTER 10

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

SUBCHAPTER I

AMENDMENT OF ARTICLES OF INCORPORATION

§1001. Authority to amend

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1. Generally. A corporation may amend its articles of incorporation at any time to add or change a provision that, as of the effective date of the amendment, is required or permitted in the articles of incorporation or to delete a provision that is not required to be contained in the articles of incorporation.

2. No vested property right. A shareholder of a corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement or purpose or duration of the corporation.

3. Organized under special Act. If a corporation was organized under a special Act of the Legislature, the corporation may amend its articles of incorporation only if:

A. The corporation could now be organized under this Act; or

B. The proposed amendment would not be materially inconsistent with the special Act creating the corporation.

§1002. Amendment before issuance of shares

If a corporation has not yet issued shares, its board of directors or if it has no board of directors, its incorporators, may adopt one or more amendments to the corporation's articles of incorporation.

§1003. Amendment by board of directors and shareholders

If a corporation has issued shares, an amendment to the articles of incorporation must be adopted in accordance with the following.

1. Amendment adopted by board of directors. The proposed amendment must be adopted by the board of directors.

2. Approval by shareholders. Except as provided in sections 1005, 1007, and 1008, after adopting the proposed amendment the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation. In that case, the board of directors shall transmit to the shareholders the basis for that determination.

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2 3. Condition of submission. The board of directors may
condition its submission of the amendment to the shareholders on
any basis.

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6 4. Notice of meeting. If the amendment is required to be
approved by the shareholders and the approval is to be given at a
meeting, the corporation must notify each shareholder, whether or
8 not entitled to vote, of the meeting of shareholders at which the
amendment is to be submitted for approval. The notice must state
10 that the purpose, or one of the purposes, of the meeting is to
consider the amendment and must contain or be accompanied by a
12 copy of the amendment.

14 5. Approval by majority. Unless the articles of
incorporation or the board of directors, acting pursuant to
16 subsection 3, requires a greater vote, approval of the amendment
requires the approval of the shareholders by a majority of all
18 the votes entitled to be cast on the amendment by the
shareholders. If any class or series is entitled to vote as a
20 separate voting group on the amendment, except as provided in
section 1004, subsection 3, the amendment requires the approval
22 of each separate voting group by a majority of all the votes
entitled to be cast on the amendment by that voting group. The
24 articles of incorporation may provide that an amendment may be
approved by a lesser vote of each voting group entitled to vote
26 on the amendment, but in no case less than a majority of the
votes cast by that voting group at a meeting at which there
28 exists, for each such voting group, a quorum consisting of at
least a majority of the votes entitled to be cast on the
30 amendment by each voting group entitled to vote on the amendment.

32 6. Written consent. The articles of incorporation may be
amended by written consent of all shareholders entitled to vote
34 on the amendment, as provided by section 704, subsection 1; if a
unanimous written consent is given, a resolution of the board of
36 directors proposing the amendment is not necessary.

38 §1004. Voting on amendments by voting groups

40 1. Separate voting groups. If a corporation has more than
one class of shares outstanding, the holders of the outstanding
42 shares of a class are entitled to vote as a separate voting
group, if shareholder voting is otherwise required by this Act,
44 on a proposed amendment to the articles of incorporation if the
amendment would:

46 A. Effect an exchange or reclassification of all or part of
48 the shares of the class into shares of another class;

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2 B. Effect an exchange or reclassification, or create the
3 right of exchange, of all or part of the shares of another
4 class into shares of the class;

6 C. Change the rights, preferences or limitations of all or
7 part of the shares of the class;

8 D. Change the shares of all or part of the class into a
9 different number of shares of the same class;

10 E. Create a new class of shares having rights or
11 preferences with respect to distributions or to dissolution
12 that are prior or superior to the shares of the class;

14 F. Increase the rights, preferences or number of authorized
15 shares of any class that, after giving effect to the
16 amendment, have rights or preferences with respect to
17 distributions or to dissolution that are prior or superior
18 to the shares of the class;

20 G. Limit or deny an existing preemptive right of all or
21 part of the shares of the class; or

24 H. Cancel or otherwise affect rights to distributions that
25 have accumulated but have not yet been authorized on all or
26 part of the shares of the class.

28 2. Voting rights of series. If a proposed amendment would
29 affect a series of a class of shares in one or more of the ways
30 described in subsection 1, the holders of shares of that series
31 are entitled to vote as a separate voting group on the proposed
32 amendment.

34 3. Two or more classes or series affected; vote as one
35 group. If a proposed amendment that entitles the holders of 2 or
36 more classes or series of shares to vote as separate voting
37 groups under this section would affect those 2 or more classes or
38 series in the same or a substantially similar way, the holders of
39 shares of all the classes or series so affected must vote
40 together as a single voting group on the proposed amendment,
41 unless otherwise provided in the articles of incorporation or
42 required by the board of directors.

44 4. Nonvoting shares. A class or series of shares is
45 entitled to the voting rights granted by this section even if the
46 articles of incorporation provide that the shares are nonvoting
47 shares.

48 §1005. Amendment by board of directors
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COMMITTEE AMENDMENT "A" to H.P. 283, L.D. 361

2 Unless the articles of incorporation provide otherwise, a
3 corporation's board of directors may adopt amendments to the
4 corporation's articles of incorporation without shareholder
5 approval:

6 1. Extend duration of corporation. To extend the duration
7 of the corporation if it was incorporated at a time when limited
8 duration was required by law;

10 2. Initial directors. To delete the names and addresses of
11 the initial directors;

12 3. Initial registered agent or registered office. To
13 delete the name and address of the initial registered agent or
14 registered office, if a statement of change is on file with the
15 Secretary of State;

18 4. One class of shares outstanding. If the corporation has
19 only one class of shares outstanding:

20 A. To change each issued and unissued authorized share of
21 the class into a greater number of whole shares of that
22 class; or

23 B. To increase the number of authorized shares of the class
24 to the extent necessary to permit the issuance of shares as
25 a share dividend;

28 5. Change corporate name. To change the corporate name by
29 substituting the word "corporation," "incorporated," "company,"
30 or "limited" or the abbreviation "corp.," "inc.," "co." or "ltd."
31 for a similar word or abbreviation in the name or by adding,
32 deleting or changing a geographical attribution for the name;

34 6. Reduction in authorized shares. To reflect a reduction
35 in authorized shares, as a result of the operation of section
36 642, subsection 2, when the corporation has acquired its own
37 shares and the articles of incorporation prohibit the reissue of
38 the acquired shares;

40 7. Delete class of shares. To delete a class of shares
41 from the articles of incorporation, as a result of the operation
42 of section 642, subsection 2, when there are no remaining shares
43 of the class because the corporation has acquired all shares of
44 the class and the articles of incorporation prohibit the reissue
45 of the acquired shares; or

48 8. Make approved changes. To make any change expressly
49 permitted by section 602, subsection 4 to be made without
50 shareholder approval.

COMMITTEE AMENDMENT

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2 §1006. Articles of amendment

4 1. Content. After an amendment to the articles of
6 incorporation has been adopted and approved in the manner
8 required by this Act and by the articles of incorporation, the
corporation shall deliver to the Secretary of State for filing
articles of amendment that must set forth:

10 A. The name of the corporation;

12 B. The text of each amendment adopted;

14 C. If an amendment provides for an exchange,
16 reclassification or cancellation of issued shares,
provisions for implementing the amendment if not contained
18 in the amendment itself;

20 D. The date of each amendment's adoption;

22 E. If an amendment was adopted by the incorporators or
board of directors without shareholder approval, a statement
24 that the amendment was duly approved by the incorporators or
by the board of directors, as the case may be, and that
26 shareholder approval was not required; and

28 F. If an amendment required approval by the shareholders, a
statement that the amendment was duly approved by the
30 shareholders in the manner required by this Act and by the
articles of incorporation.

32 §1007. Restated articles of incorporation

34 1. Consolidation into single document. A corporation's
board of directors may restate its articles of incorporation at
36 any time, with or without shareholder approval, to consolidate
all amendments into a single document.

38 2. Inclusion of amendments requiring shareholder approval.
40 If the restated articles of incorporation include one or more new
amendments that require shareholder approval, the amendments must
42 be adopted and approved as provided in section 1003.

44 3. Filing restated articles. A corporation that restates
its articles of incorporation shall deliver to the Secretary of
46 State for filing articles of restatement setting forth the name
of the corporation and the text of the restated articles of
48 incorporation together with a certificate that states that the
restated articles of incorporation consolidate all amendments
50 into a single document. If a new amendment is included in the

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2 restated articles of incorporation, the certificate must also
include the statements required under section 1006.

4 4. Original articles superseded. Duly adopted restated
articles of incorporation supersede the original articles of
6 incorporation and all earlier amendments to the articles of
incorporation.

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10 5. Certification of restated articles. The Secretary of
State may certify restated articles of incorporation as the
12 articles of incorporation currently in effect without including
the certificate information required by subsection 3.

14 §1008. Amendment pursuant to reorganization

16 1. Court ordered reorganization. A corporation's articles
18 of incorporation may be amended without action by the board of
directors or shareholders to carry out a plan of reorganization
20 ordered or decreed by a court of competent jurisdiction under the
authority of a law of the United States.

22 2. Individual appointed by court. The individual or
24 individuals designated by the court pursuant to subsection 1
shall deliver to the Secretary of State for filing articles of
26 amendment setting forth:

28 A. The name of the corporation;

30 B. The text of each amendment approved by the court;

32 C. The date of the court's order or decree approving the
articles of amendment;

34 D. The title of the reorganization proceeding in which the
order or decree was entered; and

36 E. A statement that the court had jurisdiction of the
38 proceeding under federal statute.

40 3. Final decree. This section does not apply after entry
42 of a final decree in the reorganization proceeding even though
the court retains jurisdiction of the proceeding for limited
44 purposes unrelated to consummation of the reorganization plan.

46 §1009. Effect of amendment

48 An amendment to a corporation's articles of incorporation
does not affect a cause of action existing against or in favor of
50 the corporation, a proceeding to which the corporation is a party
or the existing rights of persons other than shareholders of the

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corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

SUBCHAPTER II

AMENDMENT OF BYLAWS

§1020. Amendment by board of directors or shareholders

1. Shareholders amend; repeal bylaws. A corporation's shareholders may amend or repeal the corporation's bylaws.

2. Board of directors amend bylaws. A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

A. The articles of incorporation or section 1021 reserve that power exclusively to the shareholders in whole or part; or

B. The shareholders in amending, repealing or adopting a bylaw expressly provide that the board of directors may not amend, repeal or reinstate that bylaw.

§1021. Bylaw increasing quorum or voting requirement for directors

1. Increase quorum or voting requirement. A bylaw that increases a quorum or voting requirement for the corporation's board of directors may be amended or repealed:

A. If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

B. If adopted by the board of directors, either by the shareholders or by the board of directors.

2. Bylaw increasing quorum or voting requirement. A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the corporation's board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

3. Amendment quorum requirement. Action by the corporation's board of directors under subsection 1 to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the

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2 quorum and voting requirement then in effect or proposed to be
3 adopted, whichever is greater.

4 CHAPTER 11

6 MERGERS AND SHARE EXCHANGES

8 §1101. Definitions

10 As used in this chapter, unless the context otherwise
11 indicates, the following terms have the following meanings.

12 1. Eligible entity. "Eligible entity" means a domestic or
13 foreign unincorporated entity or a domestic or foreign nonprofit
14 corporation.

15 2. Eligible interests. "Eligible interests" means
16 interests and memberships.

17 3. Merger. "Merger" means a business combination pursuant
18 to section 1102.

19 4. Party to a merger or party to a share exchange. "Party
20 to a merger" or "party to a share exchange" means any domestic or
21 foreign corporation or eligible entity that will:

22 A. Merge under a plan of merger;

23 B. Acquire shares or eligible interests of another
24 corporation or an eligible entity in a share exchange; or

25 C. Have all of its shares or eligible interests or all of
26 one or more classes or series of its shares or eligible
27 interests acquired in a share exchange.

28 5. Share exchange. "Share exchange" means a business
29 combination pursuant to section 1103.

30 6. Survivor. "Survivor" in a merger means the corporation
31 or eligible entity into which one or more other corporations or
32 eligible entities are merged. A survivor of a merger may
33 preexist the merger or be created by the merger.

34 §1102. Merger

35 1. General authority of domestic corporations. One or more
36 domestic business corporations may merge with one or more
37 domestic or foreign business or nonprofit corporations or
38 unincorporated entities pursuant to a plan of merger under this
39 section.

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2 2. Merger with foreign entities. A foreign business or
4 nonprofit corporation or a foreign unincorporated entity may be a
6 party to a merger with a domestic business corporation or may be
8 created by the terms of a plan of merger under this section only
 if the merger is permitted by the laws under which the foreign
 business or nonprofit corporation or unincorporated entity is
 organized or by which it is governed; and

10 3. Merger not contemplated in organic law. If the organic
12 law of a domestic unincorporated entity does not provide
14 procedures for the approval of a merger, a plan of merger may be
16 adopted and approved, the merger effectuated, and appraisal
 rights exercised in accordance with the procedures in this
 chapter and chapter 13. For the purposes of applying this
 chapter and chapter 13:

18 A. The unincorporated entity, its interest holders,
20 interests and organic documents taken together are deemed to
22 be a domestic business corporation, shareholders, shares and
 articles of incorporation, respectively and vice versa as
 the context may require; and

24 B. If the business and affairs of the unincorporated entity
26 are managed by a group of persons that is not identical to
 the interest holders, that group is deemed to be the board
 of directors.

28 4. Plan of merger. A plan of merger must include:

30 A. The name of each domestic or foreign business or
32 nonprofit corporation or unincorporated entity that will
34 merge and the name of the corporation or unincorporated
 entity that will be the survivor of the merger;

36 B. The terms and conditions of the merger;

38 C. The manner and basis of converting the shares of each
40 merging domestic or foreign business corporation,
42 memberships of each domestic or foreign nonprofit
44 corporation and interests of each merging domestic or
46 foreign unincorporated entity into shares or other
 securities, memberships, interests, obligations, rights to
 acquire shares, other securities or interest, cash or other
 property or any combination thereof;

48 D. The articles of incorporation of any domestic or foreign
50 business or nonprofit corporation or the organic documents
 of any domestic or foreign unincorporated entity to be
 created by the merger or, if a new domestic or foreign

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2 business or nonprofit corporation or unincorporated entity
3 is not to be created by the merger, any amendments to the
4 survivor's articles of incorporation or organic documents;
5 and

6 E. Any other provisions required by the laws under which
7 any party to the merger is organized or by which it is
8 governed, or by the articles of incorporation or organic
9 documents of any such person.

10 5. Plan dependent on facts. The terms of the plan of
11 merger referred to in subsection 4, paragraphs B and C may be
12 made dependent on facts ascertainable outside the plan of merger,
13 as long as those facts are objectively ascertainable. For the
14 purposes of this subsection, "facts" includes, but is not limited
15 to, the occurrence of any event, including a determination or
16 action by any person or body, including the corporation.

17 6. Amend plan prior to filing articles of merger. The plan
18 of merger may also include a provision that the plan may be
19 amended prior to filing the articles of merger with the Secretary
20 of State under section 1106, subsection 2. If the shareholders
21 of a domestic corporation that is a party to the merger are
22 required or permitted to vote on the plan, the plan must provide
23 that subsequent to approval of the plan by the shareholders the
24 plan may not be amended to;

25 A. Change the amount or kind of shares or other securities,
26 interests, obligations, rights to acquire shares or other
27 securities, cash or other property to be received under the
28 plan by the shareholders or owners of interests in any party
29 to the merger;

30 B. Change the articles of incorporation or the organic
31 documents of any other entity that will survive or be
32 created as a result of the merger, except for changes
33 permitted by section 1005 or by comparable provisions of the
34 organic laws of any such foreign corporation or domestic or
35 foreign other entity; or

36 C. Change any of the other terms or conditions of the plan
37 if the change would adversely affect the shareholders in any
38 material respect.

39 **§1103. Share exchange**

40 1. Share exchange. Through a share exchange:

41 A. A domestic corporation may acquire all of the shares of
42 one or more classes or series of shares of another domestic
43 corporation.

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2 or foreign corporation, or all of the interests of one or
3 more classes or series of interests of a domestic or foreign
4 other entity, in exchange for shares or other securities,
5 interests, obligations, rights to acquire shares or other
6 securities, cash or other property or any combination
7 thereof pursuant to a plan of share exchange; or

8 B. All of the shares of one or more classes or series of
9 shares of a domestic corporation may be acquired by another
10 domestic or foreign corporation or other entity in exchange
11 for shares or other securities, interests, obligations,
12 rights to acquire shares or other securities, cash or other
13 property or any combination thereof pursuant to a plan of
14 share exchange.

15 2. Party to share exchange. A foreign corporation or a
16 foreign unincorporated entity may be a party to a share exchange
17 under this section only if the share exchange is permitted by the
18 laws under which the corporation or other entity is organized or
19 governed.

20 3. Share exchange not contemplated in organic law. If the
21 organic law of a domestic unincorporated entity does not provide
22 procedures for the approval of a share exchange, a plan of share
23 exchange may be adopted and approved and the share exchange
24 effectuated in accordance with the procedures, if any, for a
25 merger. If the organic law of a domestic unincorporated entity
26 does not provide procedures for the approval of either a share
27 exchange or a merger, a plan of share exchange may be adopted and
28 approved, the share exchange effectuated and appraisal rights
29 exercised in accordance with the procedures in this chapter and
30 chapter 13. For the purposes of applying this chapter and
31 chapter 13:

32 A. The unincorporated entity, its interest holders,
33 interests and organic documents taken together are deemed to
34 be a domestic business corporation, shareholders, shares and
35 articles of incorporation, respectively and vice versa as
36 the context may require; and

37 B. If the business and affairs of the unincorporated entity
38 are managed by a group of persons that is not identical to
39 the interest holders, that group is deemed to be the board
40 of directors.

41 4. Plan of share exchange. A plan of share exchange must
42 include:

43 A. The name of each corporation or other entity whose
44 shares or interests will be acquired and the name of the
45 entity whose shares or interests will be acquired.

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2 corporation or other entity that will acquire those shares
or interests;

4 B. The terms and conditions of the share exchange;

6 C. The manner and basis of exchanging shares of a
8 corporation or interests in an other entity whose shares or
10 interests will be acquired under the share exchange into
12 shares or other securities, interests, obligations, rights
to acquire shares or other securities, cash or other
property or any combination thereof; and

14 D. Any other provisions required by the laws under which
16 any party to the share exchange is organized, or by the
articles of incorporation or organic documents of any such
party.

18 5. Provisions dependent on facts. The provisions of the
20 plan of share exchange referred to in subsection 4, paragraphs B
22 and C may be made dependent on facts ascertainable outside the
24 plan of share exchange, as long as those facts are objectively
ascertainable. For purposes of this subsection, "facts"
includes, but is not limited to, the occurrence of any event,
including a determination or action by any person or body,
including the corporation.

26 6. Amend plan prior to filing articles of share exchange.
28 The plan of share exchange also may include a provision that the
30 plan may be amended prior to filing the articles of share
32 exchange with the Secretary of State under section 1106,
34 subsection 2. If the shareholders of a domestic corporation that
is a party to the share exchange are required or permitted to
vote on the plan, the plan must provide that subsequent to
approval of the plan by the shareholders the plan may not be
amended to:

36 A. Change the amount or kind of shares or other securities,
38 interests, obligations, rights to acquire shares or other
40 securities, interests, cash or other property to be issued
42 by the corporation or to be received under the plan by the
shareholders or owners of interests in any party to the
share exchange; or

44 B. Change any of the terms or conditions of the plan if the
46 change would adversely affect the shareholders in any
material respect.

48 This section does not limit the power of a domestic
50 corporation to acquire shares of another corporation or interests
in an other entity in a transaction other than a share exchange.

COMMITTEE AMENDMENT

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§1104. Action on plan of merger or share exchange

In the case of a domestic corporation that is a party to a merger or share exchange under this chapter:

1. Plan adopted by board of directors. The plan of merger or share exchange must be adopted by the corporation's board of directors:

2. Shareholders approve plan. Except as provided in subsection 7 and in section 1105, after adopting the plan of merger or share exchange, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors also shall transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that, because of conflicts of interest or other special circumstances, the board of directors should not make that recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination;

3. Conditional submission of plan. The corporation's board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis;

4. Notice of meeting. If the plan of merger or share exchange under this chapter is required by the corporation's articles of incorporation to be approved by the shareholders and if the approval is to be given at a meeting of shareholders, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice also must include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice also must include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity;

5. Majority vote. Unless the corporation's articles of incorporation, or the corporation's board of directors acting pursuant to subsection 3, require a greater vote, approval of the plan of merger or share exchange requires the approval of the shareholders by a majority of all the votes entitled to be cast

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2 on the plan by that voting group and, if any class or series is
3 entitled to vote as a separate voting group on the plan, the
4 approval of each separate voting group by a majority of all the
5 votes entitled to be cast on the plan by that voting group. The
6 corporation's articles of incorporation may provide that a plan
7 of merger or share exchange may be approved by a lesser vote of
8 each voting group entitled to vote on the plan, but in no case
9 less than a majority of the votes cast by that voting group at a
10 meeting at which there exists for each such voting group a quorum
11 consisting of at least a majority of the votes entitled to be
12 cast on the plan by each voting group entitled to vote on the
13 plan;

14 6. Voting groups. Separate voting by voting group is
15 required:

16 A. On a plan of merger by each class or series of shares
17 that:

18 (1) Are to be converted under the plan of merger into
19 shares or other securities; interests, obligations,
20 rights to acquire shares or other securities or
21 interests, cash or other property or any combination
22 thereof; or

23 (2) Would be entitled to vote as a separate group on a
24 provision in the plan that, if contained in a proposed
25 amendment to articles of incorporation, would require
26 action by separate voting groups under section 1004;

27 B. On a plan of share exchange by each class or series of
28 shares included in the exchange, with each class or series
29 constituting a separate voting group; and

30 C. On a plan of merger or share exchange if a voting group
31 is entitled under the articles of incorporation to vote as a
32 voting group to approve a plan of merger or share exchange;

33 7. Approval not required. Unless the corporation's
34 articles of incorporation otherwise provide, approval by the
35 corporation's shareholders of a plan of merger or share exchange
36 is not required if:

37 A. The corporation will survive the merger or is the
38 acquiring corporation in a share exchange;

39 B. The corporation's articles of incorporation will not be
40 changed, except for amendments permitted by section 1005;

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2 C. Each shareholder of the corporation whose shares are
4 outstanding immediately before the effective date of the
6 merger or share exchange will hold the same number of
8 shares, with identical preferences, limitations and relative
10 rights, immediately after the effective date of the change;

12 D. The number of voting shares outstanding immediately
14 after the merger plus the number of voting shares issuable
16 as a result of the merger, either by the conversion of
18 securities issued pursuant to the merger or the exercise of
20 rights and warrants issued pursuant to the merger, will not
22 exceed by more than 20% the total number of voting shares of
24 the surviving corporation outstanding immediately before the
merger; and

26 E. The number of participating shares outstanding
28 immediately after the merger plus the number of
30 participating shares issuable as a result of the merger,
32 either by the conversion of securities issued pursuant to
34 the merger or the exercise of rights and warrants issued
36 pursuant to the merger, will not exceed by more than 20% the
38 total number of participating shares outstanding immediately
40 before the merger.

42 For the purposes of this subsection, "participating shares" means
44 shares that entitle their holders to participate without
46 limitation in distributions, and "voting shares" means shares
48 that entitle their holders to vote unconditionally in elections
50 of directors;

8. Personal liability; written consent. If as a result of
a merger or share exchange one or more shareholders of a domestic
corporation would become subject to owner liability for the
debts, obligations or liabilities of any other person or entity,
approval of the plan of merger or share exchange must require the
execution by each such shareholder of a separate written consent
to become subject to that owner liability;

9. Participating corporation. A corporation organized
under any special act of the Legislature of this State may be a
participating corporation in a merger or share exchange unless
the act authorizing the creation of the corporation provides to
the contrary; and

10. Unanimous written consent. A plan of merger or share
exchange may be approved by written consent of all shareholders
of a participating corporation, whether or not entitled to vote
by the corporation's articles of incorporation, as provided in
section 704, subsection 1. If the unanimous written consent is
given, a resolution of the board of directors of the

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participating corporation approving, proposing, submitting, recommending or otherwise respecting the plan of merger or share exchange is not necessary and shareholders of the participating corporation are not entitled to receive notice of or to dissent from the plan of merger or share exchange.

§1105. Merger between parent corporation and subsidiary corporation or between subsidiary corporations

1. Merger of subsidiary corporations. A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into the parent corporation or another such subsidiary or may merge the parent corporation into the subsidiary without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

2. Notice to shareholders. If approval of a merger by a subsidiary corporation's shareholders is not required under subsection 1, the parent corporation shall, within 10 days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

3. Provisions of merger. Except as provided in subsections 1 and 2, a merger between a parent corporation and a subsidiary corporation is governed by the provisions of this chapter applicable to mergers generally.

§1106. Articles of merger or share exchange

1. Execution of plan of merger or share exchange. After a plan of merger or share exchange has been adopted and approved as required by this Act, articles of merger or share exchange must be executed on behalf of each party to the merger or share exchange by an officer or other duly authorized representative. The articles must set forth:

A. The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;

B. If the articles of incorporation of the survivor of a merger are amended or if a new corporation is created as a result of a merger, the amendments to the survivor's

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2 articles of incorporation or the articles of incorporation
3 of the new corporation;

4 C. If the plan of merger or share exchange required
5 approval by the shareholders of a domestic corporation that
6 was a party to the merger or share exchange, a statement
7 that the plan was duly approved by the shareholders and, if
8 voting by any separate voting group was required, by each
9 separate voting group in the manner required by this Act and
10 the corporation's articles of incorporation;

12 D. If the plan of merger or share exchange did not require
13 approval by the shareholders of a domestic corporation that
14 was a party to the merger or share exchange, a statement to
15 that effect; and

16 E. For each foreign corporation and each other entity that
17 was a party to the merger or share exchange, a statement
18 that the participation of the foreign corporation or other
19 entity was duly authorized as required by the organic law of
20 the corporation or other entity.

22 2. File articles with Secretary of State. Articles of
23 merger or share exchange must be delivered to the Secretary of
24 State for filing by the survivor of the merger or the acquiring
25 corporation in a share exchange and take effect at the effective
26 time provided in section 125.

28 **§1107. Effect of merger or share exchange**

30 1. Merger. When a merger becomes effective:

32 A. The corporation or other entity that is designated in
33 the plan of merger as the survivor continues or comes into
34 existence, as the case may be;

36 B. The separate existence of every corporation or other
37 entity that is merged into the survivor ceases;

38 C. All property owned by and every contract right possessed
39 by each corporation or other entity that merges into the
40 survivor is vested in the survivor without reversion or
41 impairment;

42 D. All liabilities of each corporation or other entity that
43 is merged into the survivor are vested in the survivor;

44 E. The name of the survivor may but need not be substituted
45 in any pending proceeding for the name of any party to the
46 merger whose separate existence ceased in the merger;

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2 F. The articles of incorporation or organizational
4 documents of the survivor are amended to the extent provided
 in the plan of merger;

6 G. The articles of incorporation or organizational
8 documents of a survivor that is created by the merger become
 effective;

10 H. The shares of each corporation that is a party to the
12 merger and the interests in an other entity that is a party
14 to a merger that are to be converted under the plan of
16 merger into shares, interests, obligations, rights to
18 acquire securities, other securities, cash or other property
 or any combination thereof are converted, and the former
 holders of the shares or interests are entitled only to the
 rights provided to them in the plan of merger or to any
 rights they may have under chapter 13.

20 2. Share exchange. When a share exchange becomes
22 effective, the shares of each domestic corporation that are to be
24 exchanged for shares or other securities, interests, obligations,
26 rights to acquire shares or other securities, cash or other
 property or any combination thereof are entitled only to the
 rights provided to them in the plan of share exchange or to any
 rights they may have under chapter 13.

28 3. Shareholder's liabilities and obligations. A person who
30 becomes subject to owner liability for some or all of the debts,
32 liabilities or obligations of any entity as a result of a merger
34 or share exchange has owner liability only to the extent provided
 in the organic law of the entity and only for those debts,
 liabilities and obligations that arise after the effective time
 of the articles of merger or share exchange.

36 4. Foreign corporation. When a merger becomes effective, a
38 foreign corporation or a foreign other entity that is the
 survivor of the merger is deemed to:

40 A. Appoint the Secretary of State as its agent for service
42 of process in a proceeding to enforce the rights of
44 shareholders of each domestic corporation that is a party to
 the merger who exercise appraisal rights; and

46 B. Agree to promptly pay the amount, if any, to which the
 shareholders under paragraph A are entitled under chapter 13.

48 5. Effect of merger or share exchange on liability. The
50 effect of a merger or share exchange on the owner liability of a
 person who had owner liability for some or all of the debts,

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2 obligations or liabilities of a party to the merger or share
exchange is as follows.

4 A. The merger or share exchange does not discharge any
6 liability under the organic law of the entity in which the
8 person was a shareholder or interest holder to the extent
any such owner liability arose before the effective time of
the articles of merger or share exchange.

10 B. The person does not have owner liability under the
12 organic law of the entity in which the person was a
14 shareholder or interest holder prior to the merger or share
exchange for any debt, obligation or liability that arises
after the effective time of the articles of merger or share
exchange.

16 C. The provisions of the organic law of any entity for
18 which the person had owner liability before the merger or
20 share exchange continue to apply to the collection or
discharge of any owner liability preserved by paragraph A,
as if the merger or share exchange had not occurred.

22 D. The person has whatever rights of contribution from
24 other persons are provided by the organic law of the entity
26 for which the person had owner liability with respect to any
owner liability preserved by paragraph A, as if the merger
or share exchange had not occurred.

28 **§1108. Abandonment of merger or share exchange**

30 1. Abandoned merger or share exchange prior to becoming
32 effective. Unless otherwise provided in a plan of merger or
34 share exchange or in the laws under which a foreign corporation
36 or a domestic or foreign other entity that is a party to a merger
38 or a share exchange is organized or by which it is governed,
40 after the plan has been adopted and approved as required by this
42 chapter, and at any time before the merger or share exchange has
44 become effective, the merger or share exchange may be abandoned
by any party to the merger or share exchange without action by
the party's shareholders or owners of interests, in accordance
with any procedures set forth in the plan of merger or share
exchange or, if procedures are not set forth in the plan, in the
manner determined by the corporation's board of directors or the
managers of an other entity, subject to any contractual rights of
other parties to the merger or share exchange.

46 2. Abandoned merger or share exchange after articles of
48 merger or share exchange are filed. If a merger or share
50 exchange is abandoned under subsection 1 after articles of merger
or share exchange have been filed with the Secretary of State

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2 under section 1106, subsection 2 but before the merger or share
4 exchange has become effective, a statement that the merger or
6 share exchange has been abandoned in accordance with this
8 section, executed on behalf of a party to the merger or share
10 exchange by an officer or other duly authorized representative,
12 must be delivered to the Secretary of State for filing prior to
14 the effective date of the merger or share exchange. Upon filing,
16 the statement takes effect and the merger or share exchange is
18 considered abandoned and does not become effective.

12 **§1109. Required vote of shareholders in certain business**
14 **combinations**

14 1. Definitions. As used in this section, unless the
16 context otherwise indicates, the following terms have the
18 following meanings.

18 A. "Affiliate" means a person that directly, or indirectly
20 through one or more intermediaries, controls, is controlled
22 by or is under common control with a specified person.

22 B. "Announcement date," when used in reference to any
24 business combination, means the date of the first public
26 announcement of the final, definitive proposal for that
28 business combination.

28 C. "Associate," when used to indicate a relationship with a
30 person, means:

30 (1) Any corporation or organization of which that
32 person is a director, officer or partner or is,
34 directly or indirectly, the beneficial owner of 10% or
36 more of any class of voting shares;

36 (2) Any trust or other estate in which that person has
38 a substantial beneficial interest or to which that
40 person serves as trustee or in a similar fiduciary
42 capacity; and

40 (3) Any relative or spouse of that person, or any
42 relative of that spouse, who has the same home as that
44 person.

44 D. "Beneficial owner," when used with respect to shares,
46 means a person that:

46 (1) Individually or with or through any affiliate or
48 associate, beneficially owns shares, directly or
50 indirectly;

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2 (2) Individually or with or through any affiliate or
associate, has the right to:

4 (a) Acquire shares, whether that right is
exercisable immediately or only after the passage
6 of time, pursuant to any agreement, arrangement or
understanding, whether or not in writing, or upon
8 the exercise of conversion rights, exchange
rights, warrants or options, or otherwise, except
10 that a person is not considered the beneficial
owner of shares tendered pursuant to a tender or
12 exchange offer made by that person or any of that
person's affiliates or associates until the
14 tendered shares are accepted for purchase or
exchange; or

16 (b) Vote shares pursuant to any agreement,
18 arrangement or understanding, whether or not in
writing, except that a person is not considered
20 the beneficial owner of any shares under this
division if the agreement, arrangement or
22 understanding to vote shares arises solely from a
revocable proxy given in response to a proxy
24 solicitation made in accordance with the
applicable rules and regulations under the
26 Exchange Act, and is not then reportable on a
Schedule 13D under the Exchange Act, or any
28 comparable or successor report; or

30 (3) Has any agreement, arrangement or understanding,
32 whether or not in writing, for the purpose of
acquiring, holding, voting, except voting pursuant to a
34 revocable proxy as described in subparagraph (2), or
disposing of shares with another person who
36 beneficially owns, or whose affiliates or associates
beneficially own, directly or indirectly, the shares.

38 E. "Business combination," when used in reference to any
40 domestic corporation and any interested shareholder of that
domestic corporation, means:

42 (1) Any merger or consolidation of that domestic
44 corporation or any subsidiary of that domestic
corporation with that interested shareholder, any other
46 corporation, whether or not it is an interested
shareholder of that domestic corporation, that is, or
48 after a merger or consolidation would be, an affiliate
or associate of that interested shareholder, or any
50 other corporation if the merger or consolidation is
caused by that interested shareholder and as a result

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2 of that merger or consolidation this section is not
applicable to the surviving corporation;

4 (2) Any sale, lease, exchange, mortgage, pledge,
transfer or other disposition, in one transaction or a
6 series of transactions, of assets of that domestic
corporation or any subsidiary of that domestic
8 corporation having an aggregate market value equal to
10% or more of the aggregate market value, or book
10 value determined in accordance with good accounting
practices, of all the assets, determined on a
12 consolidated basis, of that domestic corporation,
having an aggregate market value equal to 10% or more
14 of the aggregate market value of all the outstanding
shares of that domestic corporation, or representing
16 10% or more of the earning power or income, determined
on a consolidated basis, of that domestic corporation
18 proposed by, on behalf of or pursuant to any agreement,
arrangement or understanding, whether or not in
20 writing, with that interested shareholder or any
affiliate or associate of that interested shareholder;

22 (3) The issuance or transfer by that domestic
24 corporation or any subsidiary of that domestic
corporation, in one transaction or a series of
26 transactions, of any shares of that domestic
corporation or any subsidiary of that domestic
28 corporation that has an aggregate market value equal to
5% or more of the aggregate market value of all the
30 outstanding shares of that domestic corporation to that
interested shareholder or any affiliate or associate of
32 that interested shareholder, except pursuant to the
exercise of warrants or rights to purchase shares
34 offered, or a dividend or distribution paid or made,
pro rata to all shareholders of that domestic
36 corporation;

38 (4) The adoption of any plan or proposal for the
liquidation or dissolution of that domestic corporation
40 proposed by, on behalf of or pursuant to any agreement,
arrangement or understanding, whether or not in
42 writing, with that interested shareholder or any
affiliate or associate of that interested shareholder;

44 (5) Any reclassification of securities, including,
46 without limitation, any share split, share dividend or
other distribution of shares, or any reverse share
48 split, or recapitalization of that domestic
corporation, or any merger or consolidation of that
50 domestic corporation, with any subsidiary of that

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domestic corporation, or any other transaction, whether or not with, or into, or otherwise involving that interested shareholder, proposed by, on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with that interested shareholder or any affiliate or associate of that interested shareholder, any of which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting shares or securities convertible into voting shares of that domestic corporation or any subsidiary of that domestic corporation that is directly or indirectly owned by that interested shareholder or any affiliate or associate of that interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(6) Any receipt by that interested shareholder or any affiliate or associate of that interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the domestic corporation, of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through that domestic corporation.

F. "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise. A person's beneficial ownership of 10% or more of the outstanding voting shares of a corporation creates a presumption that that person has control of that corporation. Notwithstanding this paragraph, a person is not considered to have control of a corporation if that person holds voting power, in good faith and not for the purpose of circumventing this paragraph, as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of that corporation.

G. "Exchange Act" means the United States Securities Exchange Act of 1934 as that Act has been or may be amended from time to time.

H. "Interested shareholder," when used in reference to any domestic corporation, means any person, other than that

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2 domestic corporation or any subsidiary of that domestic
3 corporation, that:

4 (1) Is the beneficial owner, directly or indirectly, of
5 25% or more of the outstanding voting shares of that
6 domestic corporation; or

8 (2) Is an affiliate or associate of that domestic
9 corporation and at any time within the 5-year period
10 immediately prior to the date in question was the
11 beneficial owner, directly or indirectly, of 25% or
12 more of the outstanding voting shares of that domestic
13 corporation. For the purpose of determining whether a
14 person is an interested shareholder pursuant to this
15 paragraph, the number of shares of voting shares of
16 that domestic corporation considered to be outstanding
17 must include shares considered to be beneficially owned
18 by the person through application of paragraph D, but
19 does not include any other unissued voting shares of
20 that domestic corporation that may be issuable pursuant
21 to any agreement, arrangement or understanding, or upon
22 exercise of conversion rights, warrants or options, or
23 otherwise. The term "interested shareholder" does not
24 include any person whose ownership of voting shares in
25 excess of the 25% limitation set forth in this
26 paragraph is the result of action taken solely by the
27 corporation and not caused directly or indirectly by
28 that person; however, that person is an interested
29 shareholder if thereafter that person acquires
30 additional voting shares of the corporation, except as
31 a result of further corporate action not caused,
32 directly or indirectly, by that person.

34 I. "Market value," when used in reference to property of
35 any domestic corporation, means:

36 (1) In the case of shares, the highest closing sale
37 price during the 30-day period immediately preceding
38 the date in question of a share on the composite tape
39 for New York Stock Exchange listed stocks; or, if that
40 share is not quoted on that composite tape or, if that
41 share is not listed on that exchange, then on the
42 principal United States Securities Exchange registered
43 under the Exchange Act on which that share is listed,
44 or, if that share is not listed on any such exchange,
45 the highest closing bid quotation with respect to the
46 share during the 30-day period preceding the date in
47 question on the National Association of Securities
48 Dealers Automated Quotations System, or any system then
49 in use, or, if no such quotations are available, the
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fair market value on the date in question of the share as determined in good faith by the board of directors of that corporation; and

(2) In the case of property other than cash or shares, the fair market value of that property on the date in question as determined in good faith by the board of directors of that domestic corporation.

J. "Share" means:

(1) Any share or similar security, any certificate of interest, any participation in any profit-sharing agreement, any voting trust certificate or any certificate of deposit for shares; and

(2) Any security convertible, with or without consideration, into shares or any warrant, call or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to or purchase shares.

K. "Share acquisition date," with respect to any person and any domestic corporation, means the date that the person first becomes an interested shareholder of that domestic corporation.

L. "Subsidiary" of any domestic corporation means any other corporation of which voting shares having 50% or more of the votes entitled to be cast is owned, directly or indirectly, by that domestic corporation.

M. "Voting shares" means shares of a corporation entitled to vote generally in the election of directors.

2. Business combination. Notwithstanding anything to the contrary in this Act, except subsection 3, a domestic corporation may not engage in any business combination for a period of 5 years following an interested shareholder's share acquisition date unless that business combination is:

A. Approved by the board of directors of that domestic corporation prior to that interested shareholder's share acquisition date; or

B. Approved, subsequent to that interested shareholder's share acquisition date, by the board of directors of that domestic corporation and authorized by the affirmative vote, at a meeting called for that purpose, of at least a majority of the outstanding voting shares not beneficially owned by

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that interested shareholder or any affiliate or associate of that interested shareholder or by persons who are either directors or officers and also employees of that domestic corporation.

3. Exemptions. This section does not apply to business combinations as provided in this subsection.

A. Unless the articles of incorporation of a domestic corporation provide otherwise, this section does not apply to any business combination of that domestic corporation if that domestic corporation did not have a class of voting shares registered or traded on a national securities exchange or registered with the United States Securities and Exchange Commission pursuant to 15 United States Code, Section 78 l(g) on that interested shareholder's share acquisition date.

B. Unless the articles of incorporation of that domestic corporation provide otherwise, this section does not apply to any business combination involving a domestic corporation that does not have any interested shareholders other than an interested shareholder who was an interested shareholder immediately prior to the effective date of this section unless, subsequent to the effective date of this section, that interested shareholder increased its proportion of that domestic corporation's outstanding voting shares to a proportion in excess of the proportion of voting shares that interested shareholder held immediately prior to the effective date of this section.

C. This section does not apply to any business combination involving a domestic corporation that does not have an interested shareholder other than an interested shareholder of that domestic corporation that became an interested shareholder inadvertently if that interested shareholder:

(1) As soon as practicable divests itself of a sufficient amount of the voting shares of that domestic corporation so that the interested shareholder no longer is the beneficial owner, directly or indirectly, of 25% or more of the outstanding voting shares of that domestic corporation; and

(2) Has not been at any time within the 5-year period preceding the announcement date with respect to that business combination, an interested shareholder of that domestic corporation but for that inadvertent acquisition.

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2 D. This section does not apply to any business combination
4 involving a domestic corporation that, in its original
articles of incorporation, has expressly elected not to be
governed by this section.

6 E. This section does not apply to any business combination
8 involving a domestic corporation that, by action of its
shareholders, adopts an amendment to its articles of
10 incorporation or bylaws expressly electing not to be
governed by this section; however, in addition to any other
12 vote required by law, the amendment to the articles of
incorporation or bylaws must be approved by the affirmative
14 vote of at least 66 2/3% of the shares entitled to vote. An
amendment adopted pursuant to this paragraph is effective
16 immediately. A bylaw amendment adopted pursuant to this
paragraph may not be further amended or repealed by the
18 board of directors.

20 The requirements of this section are in addition to the
requirements of applicable law, including this Act, and any
22 additional requirements contained in the articles of
incorporation or bylaws of a domestic corporation with respect to
24 business combinations as defined in this section.

26 **§1110. Right of shareholders to receive payment for shares**
following control transaction

28 **1. Shareholders entitled to rights; exceptions.** A holder of
30 the voting shares of a corporation that becomes the subject of a
control transaction described in subsection 2 is entitled to the
32 rights and remedies provided in this section, unless the articles
of incorporation provide that this section is not applicable to
the corporation.

34 **2. Definitions.** As used in this section, unless the
36 context otherwise indicates, the following terms have the
following meanings.

38 **A. "Controlling person" means:**

40 (1) A person who has, or a group of persons acting in
42 concert that has, voting power over voting shares of
the corporation that entitle the holders of those
44 shares to cast at least 25% of the votes that all
shareholders are entitled to cast in an election of the
46 directors of the corporation; or

48 (2) A person who has, or a group of persons acting in
concert that has, voting power over at least 25% of the

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2 shares in any class of shares entitled to elect all the
directors, or any specified number of them.

4 Notwithstanding this paragraph, a person or group of persons
6 that would otherwise be a controlling person within the
8 meaning of this subsection is not considered a controlling
10 person unless, subsequent to the effective date of this
12 section, that person or group increases the percentage of
14 outstanding voting shares of the corporation over which that
person or group has voting power to a percentage in excess
of the percentage of outstanding voting shares of the
corporation over which that person or group had voting power
on the effective date of this section, and to at least the
amount specified in this paragraph.

16 For the purposes of this section, a person is not a
18 controlling person if that person holds voting power, in
20 good faith and not for the purpose of circumventing this
22 section, as an agent, bank, broker, nominee or trustee for
24 one or more beneficial owners who do not individually or, if
26 they are a group acting in concert, as a group have the
28 voting power specified in this paragraph or who are not
considered a controlling person under this paragraph. A
person has voting power over a voting share if that person
has or shares, directly or indirectly, through any option,
contract, arrangement, understanding, voting trust,
conversion right or relationship, or by acting jointly or in
concert or otherwise, the power to vote, or to direct the
voting of, that voting share.

30 A person engaged in business as an underwriter or group
32 consisting of persons engaged in business as underwriters is
34 not a controlling person under this paragraph if that person
36 or group holds voting power specified in this paragraph, in
38 good faith and not for the purpose of circumventing this
section, over shares of the corporation acquired through
participation in good faith in a firm commitment
underwriting of an offering of shares registered under the
United States Securities Act of 1933.

40 B. "Control transaction" means the acquisition by a person
42 or group of the status of a controlling person.

44 C. "Control transaction date" means the date on which a
46 controlling person becomes a controlling person.

48 D. "Demanding shareholder" means a shareholder who has made
a demand for payment pursuant to subsection 4.

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2 3. Notice of control transaction to be given to
3 shareholders. Within 15 days of the control transaction date,
4 notice that a control transaction has occurred must be given by
5 the controlling person to each shareholder of the corporation
6 holding voting shares. If the controlling person so requests,
7 the corporation shall, at the option of the corporation and at
8 the expense of the controlling person, either furnish a list of
9 all shareholders holding voting shares to the person or group or
10 mail the notice to those shareholders. A copy of this section of
11 law must be included in, or enclosed with, the notice. Any list
12 provided by the corporation to a controlling person pursuant to
13 this subsection may be used only for the purpose of giving the
14 notice required by this subsection.

15 4. Shareholder demand for payment. After the control
16 transaction date, any holder of voting shares of the corporation,
17 prior to or within 30 days after the notice required by
18 subsection 3 is given, which time period must be specified in the
19 notice, may make written demand on the controlling person for
20 payment of the amount provided in subsection 5 with respect to
21 the voting shares of the corporation held by the shareholder, and
22 the controlling person shall pay that amount to the shareholder.
23 The demand of the shareholder must state the number and class or
24 series, if any, of the shares owned by the shareholder with
25 respect to which the demand is made.

26 5. Shareholder entitled to receive payment for shares. A
27 shareholder making written demand under subsection 4 is entitled
28 to receive cash for each of the shareholder's shares in an amount
29 equal to the fair value of each voting share as of the day prior
30 to the control transaction date, taking into account all relevant
31 factors, including an increment representing a proportion of any
32 value payable for acquisition of control of the corporation.

33 6. Submission of certificates; notation. At the time the
34 shareholder files demand for payment for shares pursuant to
35 subsection 4, or within 20 days after filing the demand, each
36 shareholder demanding payment with respect to certificated shares
37 shall submit the certificate or certificates representing the
38 shareholder's shares to the corporation or the corporation's
39 transfer agent for notation on the certificate that the demand
40 has been made; the certificates must be returned promptly after
41 entry of the notation. A shareholder's failure to submit the
42 certificates terminates, at the option of the controlling person,
43 the shareholder's rights under this section, unless a court of
44 competent jurisdiction, for good and sufficient cause shown,
45 otherwise directs. If shares represented by a certificate on
46 which notation has been so made are transferred, each new
47 certificate issued for those shares must bear a similar notation,
48 together with the name of the original holder of the shares who
49 owned the shares immediately prior to the transfer.
50 together with the name of the original holder of the shares who

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2 made the written demand, and a transferee of the shares does not
3 acquire by the transfer any rights in the corporation other than
4 those that the original demanding shareholder had after making
5 demand for payment of the fair value of the shares.

6 Following a demand for payment with respect to shares without
7 certificates, a notation that a demand for payment pursuant to
8 subsection 4, together with the name of the original holder of
9 the shares who made the written demand, must be included in the
10 information statement required by section 627, subsection 2. A
11 transferee of shares without certificates as to which a notation
12 is included in the information statement required by section 627,
13 subsection 2 does not acquire by the transfer any rights in the
14 corporation other than those that the original demanding
15 shareholder had after making demand for payment of the fair value
16 of the shares.

17 7. Written offer; balance sheet. Within 10 days after the
18 expiration of the period provided in subsection 4 for making
19 demand, the controlling person shall make a written offer to each
20 demanding shareholder to pay for those shares at a specified
21 price determined by the controlling person to be the fair value
22 of those shares. The offer must be made at the same price per
23 share to all demanding shareholders of the same class. The
24 notice and offer must be accompanied by a balance sheet of the
25 corporation as of the latest available date and not more than 12
26 months prior to the making of the offer and a profit and loss
27 statement of the corporation for the 12-month period ending on
28 the date of the balance sheet.

29 8. Agreement on fair value; payment. If, within 30 days
30 after the expiration of the period provided in subsection 4 for
31 making demand, the fair value of the shares is agreed upon
32 between any demanding shareholder and the controlling person,
33 payment for those shares must be made within 90 days after the
34 date on which the written offer required by subsection 7 is made,
35 upon surrender of the certificate or certificates representing
36 those shares, if certificated. Upon payment of the agreed value,
37 the demanding shareholder ceases to have any interest in the
38 shares.

39 9. Failure to reach agreement on fair value of shares. If,
40 within the additional 30-day period prescribed by subsection 8,
41 one or more demanding shareholders and the controlling person
42 have failed to agree as to the fair value of shares:

43 A. The controlling person may, or shall, if the controlling
44 person receives a demand as provided in subparagraph (1),
45 bring an action in the Superior Court in the county in this
46 State where the registered office of the corporation is

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2 located asking that the fair value of those shares be found
and determined. This action:

4 (1) Must be brought by the controlling person, if the
controlling person receives a written demand for suit
from any demanding shareholder, which demand is made
within 60 days after the date on which the written
offer required by subsection 7 was made. The
controlling person shall bring the action within 30
days after receipt of the written demand; or

12 (2) In the absence of a demand for suit, may be
brought by the controlling person at that controlling
person's election at any time from the expiration of
the additional 30-day period prescribed by subsection 8
until the expiration of 60 days after the date on which
the written offer required by subsection 7 was made;

18 B. If the controlling person fails to institute the action
within the period specified in paragraph A, a demanding
shareholder may bring the action in the name of the
controlling person;

24 C. An action may not be brought, either by the controlling
person or by a demanding shareholder, more than 6 months
after the date on which the written offer required by
subsection 7 was made;

28 D. In any action, whether initiated by the controlling
person or by a demanding shareholder, all demanding
shareholders, wherever residing, except those who have
agreed with the controlling person upon the price to pay for
their shares, must be made parties to the proceeding as an
action against their shares quasi in rem. A copy of the
complaint must be served on each demanding shareholder who
is a resident of this State as in other civil actions and
must be served by registered or certified mail or by
personal service outside the State on each demanding
shareholder who is a nonresident. The jurisdiction of the
court is plenary and exclusive;

42 E. For each demanding shareholder for whom the controlling
person has brought an action for the determination of the
value of the shares, the court shall determine whether that
demanding shareholder has satisfied the requirements of this
section and is entitled to receive payment for the demanding
shareholder's shares; the burden is on that shareholder to
prove that the shareholder is entitled to receive payment.
The court shall then proceed to fix the fair value of the
shares. The court may appoint one or more persons as

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2 appraisers to receive evidence and recommend a decision on
3 the question of fair value. The appraisers have the power
4 and authority specified in the order of their appointment or
5 an amendment to the order of appointment;

6 F. All shareholders who are parties to the proceedings are
7 entitled to judgment against the controlling person for the
8 amount of the fair value of their shares, except for any
9 shareholder whom the court has determined is not entitled to
10 receive payment for the shareholder's shares. The judgment
11 may be payable only upon and concurrently with the surrender
12 to the controlling person of the certificate or certificates
13 representing those shares, if certificated. Upon payment of
14 the judgment, the demanding shareholder ceases to have any
15 interest in those shares;

16 G. The judgment must include an allowance for interest at a
17 rate the court finds fair and equitable in all the
18 circumstances, from the control transaction date to the date
19 of payment. If the court finds that the refusal of any
20 shareholder to accept the controlling person's offer of
21 payment for that shareholder's shares was arbitrary,
22 vexatious or not in good faith, the court may in its
23 discretion refuse to allow interest to that shareholder;

24 H. The costs and expenses of a proceeding must be
25 determined by the court and assessed against the controlling
26 person, but all or part of those costs and expenses may be
27 apportioned and assessed as the court determines equitable
28 against any or all of the demanding shareholders who are
29 parties to the proceeding to whom the controlling person has
30 made an offer to pay for the shares if the court finds that
31 the action of those shareholders in failing to accept that
32 offer was arbitrary, vexatious or not in good faith. Those
33 expenses must include reasonable compensation for and
34 reasonable expenses of the appraisers, but exclude the fees
35 and expenses of counsel for any party and must exclude the
36 fees and expenses of experts employed by any party, unless
37 the court otherwise orders for good cause. The court shall
38 award each shareholder who is a party to the proceeding
39 reasonable compensation for any expert employed by the
40 shareholder in the proceeding and the shareholder's
41 reasonable attorney's fees and expenses, if:

42 (1) No offer was made; or

43 (2) The fair value of the shares as determined
44 materially exceeds the amount that the controlling
45 person offered to pay for the shares; and

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I. At all times during the pendency of any proceeding, the court may make any order that is necessary to protect the corporation, the controlling person or the demanding shareholders, or that is otherwise just and equitable. Those orders may include, without limitation, orders:

(1) Requiring the controlling person to pay the court, or post security for, the amount of the judgment or its estimated amount, either before final judgment or pending appeal;

(2) Requiring the deposit with the court of certificates representing certificated shares held by the demanding shareholders;

(3) Imposing a lien on the property of the controlling person to secure the payment of the judgment, which lien may be given priority over liens and incumbrances contracted by the controlling person after the control transaction date; and

(4) Staying the action pending the determination of any similar action pending in another court having jurisdiction.

10. Holding and disposal of shares acquired by payment. Shares acquired by a controlling person pursuant to payment of the agreed value for the shares or to payment of the judgment entered, as provided in this section, may be held and disposed of as authorized and issued shares.

11. Minors. In the case of a shareholder who is a minor or otherwise legally incapacitated, the demand required by subsection 4 may be made either by the shareholder, notwithstanding the shareholder's legal incapacity, by the shareholder's guardian or by any person acting for the shareholder as next friend. The shareholder is bound by the time limitations set forth in this section, notwithstanding the shareholder's legal incapacity.

12. Appeals. Appeals from judgments in actions brought under this section are permitted as in other civil actions in which equitable relief is sought.

13. Compliance; shareholder rights. If a person or group of persons proposing to engage in a control transaction complies with the requirements of this section in connection with the control transaction, the effectiveness of the rights afforded in this section to shareholders may be conditioned upon the consummation of the control transaction.

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2 The person or group of persons shall give prompt written notice
3 of the satisfaction of any condition under this subsection to
4 each shareholder who has made demand as provided in this section.

6 14. Application. This section does not apply to:

8 A. Any corporation that is the subject of a control
9 transaction and that does not have a class of voting shares:

10 (1) Registered or traded on a national securities
11 exchange; or

12 (2) Registered with the Securities and Exchange
13 Commission pursuant to the Act of Congress known as the
14 Securities Exchange Act of 1934, as that Act has been
15 or may be amended;

16 B. A person or group that inadvertently becomes a
17 controlling person if that controlling person divests itself
18 of a sufficient amount of its voting shares so that it is no
19 longer a controlling person, as soon as practicable, but in
20 no event more than 30 days after that person or group
21 receives notice from the corporation that it has become a
22 controlling person, or to any corporation that is the
23 subject of a control transaction and that on the effective
24 date of this section was a subsidiary of any other
25 corporation. For purposes of this paragraph, "subsidiary"
26 means any corporation as to which any other corporation has
27 acquired or has the right to acquire, directly or
28 indirectly, through the exercise of warrants, options and
29 rights and the conversion of all convertible securities,
30 whether issued or granted by the subsidiary or otherwise,
31 voting power over voting shares of the subsidiary that would
32 entitle the holders of those shares to cast in excess of 50%
33 of the votes that all shareholders are entitled to cast in
34 the election of directors of that subsidiary; except that a
35 subsidiary does not cease to be a subsidiary as long as the
36 corporation remains a controlling person within the meaning
37 of subsection 2;

38 C. Any person or group that becomes a controlling person
39 solely as a result of the corporation's purchase or
40 redemption of its own voting shares; or

41 D. Any corporation incorporated prior to the effective date
42 of this section that was not subject to former Title 13-A,
43 section 910 as it existed immediately prior to the effective
44 date of this section because that corporation had adopted
45 the provision in its bylaws described in former section 910,
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subsection 1, paragraph A or had adopted the provision in its articles of incorporation described in former section 910, subsection 1, paragraph B, if in either case that provision is not subsequently rescinded by an amendment to the articles of incorporation.

CHAPTER 12

DISPOSITION OF ASSETS

§1201. Disposition of assets not requiring shareholder approval

Approval of the shareholders of a corporation is not required, unless the articles of incorporation otherwise provide, to:

1. Usual and regular course of business. Sell, lease, exchange or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

2. Grants of security, etc. Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;

3. Transfers to subsidiaries. Transfer any or all of the corporation's assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation; or

4. Distribute assets to shareholders. Distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

§1202. Shareholder approval of certain dispositions

1. No significant continuing business activity. A sale, lease, exchange or other disposition of assets, other than a disposition described in section 1201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least 25% of total assets at the end of the most recently completed fiscal year, and 25% of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation has retained a significant continuing business activity.

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2 2. Resolution authorizing disposition. A disposition that
3 requires approval of the shareholders under subsection 1 must be
4 initiated by a resolution by the corporation's board of directors
5 authorizing the disposition. After adoption of such a
6 resolution, the board of directors shall submit the proposed
7 disposition to the shareholders for their approval. The board of
8 directors shall also transmit to the shareholders a
9 recommendation that the shareholders approve the proposed
10 disposition, unless the board of directors makes a determination
11 that because of conflicts of interest or other special
12 circumstances the board of directors should not make such a
13 recommendation, in which case the board of directors shall
14 transmit to the shareholders the basis for that determination.

15 3. Conditioning submission of disposition. The
16 corporation's board of directors may condition its submission of
17 a disposition to the shareholders under subsection 2 on any basis.

18 4. Meeting notice. If a disposition is required to be
19 approved by the shareholders under subsection 1 and if the
20 approval is to be given at a meeting, the corporation shall
21 notify each shareholder, whether or not entitled to vote, of the
22 meeting of shareholders at which the disposition is to be
23 submitted for approval. The notice must state that the purpose
24 or one of the purposes of the meeting is to consider the
25 disposition. The notice must contain a description of the
26 disposition, including the terms and conditions of the
27 disposition, and the consideration to be received by the
28 corporation.

29 5. Majority approval of disposition. Unless the articles
30 of incorporation or the corporation's board of directors acting
31 pursuant to subsection 3 requires a greater vote, approval of a
32 disposition requires the approval of the shareholders and, if any
33 class or series is entitled to vote as a separate voting group on
34 the disposition, the approval of each separate voting group by a
35 majority of all the votes entitled to be cast on the disposition
36 by that voting group. The articles of incorporation may provide
37 that a disposition may be approved by a lesser vote of each
38 voting group entitled to vote on the disposition, but in no case
39 may a disposition be approved by less than a majority of the
40 votes cast by that voting group at a meeting at which there
41 exists, for each such voting group, a quorum consisting of at
42 least a majority of the votes entitled to be cast on the
43 disposition by each voting group entitled to vote on the
44 disposition.

45 6. Disposition abandoned. After a disposition has been
46 approved by the shareholders under subsection 2 and at any time
47 before the disposition has been consummated, it may be abandoned
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2 by the corporation without action by the shareholders, subject to
3 any contractual rights of other parties to the disposition.

4 7. Disposition by dissolution. A disposition of assets in
5 the course of dissolution under chapter 14 is not governed by
6 this section.

8 8. Consolidated subsidiary; assets. The assets of a direct
9 or indirect consolidated subsidiary are deemed the assets of the
10 parent corporation for the purposes of this section.

12 9. Disposition; written consent. A disposition that
13 requires approval of the corporation's shareholders under
14 subsection 1 may be authorized by written consent of all
15 shareholders of the corporation, whether or not the shareholders
16 are entitled to vote by the articles of incorporation, as
17 provided by section 704, subsection 1. If a unanimous written
18 consent is given, a resolution of the corporation's board of
19 directors approving, proposing, submitting, recommending or
20 otherwise respecting the disposition is not necessary, and the
21 shareholders of the corporation are not entitled to notice of or
22 to dissent from the disposition.

24 CHAPTER 13

26 APPRAISAL RIGHTS

28 SUBCHAPTER I

30 APPRAISAL RIGHTS AND PAYMENT FOR SHARES

32 §1301. Definitions

34 As used in this chapter, unless the context otherwise
35 indicates, the following terms have the following meanings.

36 1. Affiliate. "Affiliate" means:

37 A. A person that directly, or indirectly through one or
38 more intermediaries, controls, is controlled by, or is under
39 common control with another person; or

40 B. A senior executive of a person described in paragraph A.

41 For purposes of section 1303, subsection 3, paragraphs B and C, a
42 person is deemed to be an affiliate of its senior executives.

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2 2. Beneficial shareholder. "Beneficial shareholder" means
a person who is the beneficial owner of shares held in a voting
trust or by a nominee on the beneficial owner's behalf.

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6 3. Corporation. "Corporation" means the issuer of the
shares held by a shareholder demanding appraisal and, for matters
covered in sections 1323 to 1332, includes the surviving entity
8 in a merger.

10 4. Fair value. "Fair value" means the value of a
corporation's shares determined:

12 A. Immediately before the effectuation of the corporate
14 action to which a shareholder objects;

16 B. Using customary and current valuation concepts and
18 techniques generally employed for similar businesses in the
context of the transaction requiring appraisal; and

20 C. Without discounting for lack of marketability or
22 minority status except, if appropriate, for amendments to
24 the corporation's articles of incorporation pursuant to
section 1302, subsection 5.

26 5. Interest. "Interest" means interest from the effective
date of a corporate action until the date of payment, at the rate
of interest on judgments in this State on the effective date of
28 the corporate action.

30 6. Preferred shares. "Preferred shares" means a class or
series of shares whose holders have preference over any other
32 class or series of shares with respect to distributions.

34 7. Record shareholder. "Record shareholder" means a person
in whose name shares are registered in the records of a
36 corporation or the beneficial owner of shares to the extent of
the rights granted by a nominee certificate on file with the
38 corporation.

40 8. Senior executive. "Senior executive" means a chief
executive officer, chief operating officer, chief financial
42 officer and anyone in charge of a principal business unit or
function.

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46 9. Shareholder. "Shareholder" means both a record
shareholder and a beneficial shareholder.

48 §1302. Appraisal rights

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2 A shareholder is entitled to appraisal rights and to obtain
3 payment of the fair value of that shareholder's shares in the
4 event of any of the following corporate actions:

5 1. Merger to which corporation is party. Consummation of a
6 merger to which a corporation is a party if:

7 A. Shareholder approval is required for the merger by
8 section 1104 and the shareholder is entitled to vote on the
9 merger, except that appraisal rights are not available to
10 any shareholder of the corporation with respect to shares of
11 any class or series that remain outstanding after
12 consummation of the merger; or

13 B. The corporation is a subsidiary and the merger is
14 governed by section 1105;

15 2. Share exchange to which corporation is party.
16 Consummation of a share exchange to which the corporation is a
17 party as the corporation whose shares will be acquired if the
18 shareholder is entitled to vote on the exchange, except that
19 appraisal rights are not available to any shareholder of the
20 corporation with respect to any class or series of shares of the
21 corporation that are not exchanged;

22 3. Disposition of assets. Consummation of a disposition of
23 assets pursuant to section 1202 if a shareholder is entitled to
24 vote on the disposition;

25 4. Fractional shares. An amendment of the corporation's
26 articles of incorporation with respect to a class or series of
27 shares that reduces the number of shares of a class or series
28 owned by the shareholder to a fraction of a share if the
29 corporation has the obligation or right to repurchase the
30 fractional share so created;

31 5. Other amendment. Any other amendment to the
32 corporation's articles of incorporation, merger, share exchange
33 or disposition of assets to the extent provided by the articles
34 of incorporation, bylaws or a resolution of the corporation's
35 board of directors;

36 6. Domestication. Consummation of a domestication if the
37 shareholder does not receive shares in the foreign corporation
38 resulting from the domestication that have terms as favorable to
39 the shareholder in all material respects and represent at least
40 the same percentage interest of the total voting rights of the
41 outstanding shares of the corporation as the shares held by the
42 shareholder before the domestication;

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7. Conversion to nonprofit status. Consummation of a conversion of the corporation to nonprofit status pursuant to chapter 9, subchapter III; or

8. Conversion to other entity. Consummation of a conversion of the corporation to a form of other entity pursuant to chapter 9, subchapter IV.

§1303. Limitations on appraisal rights

Notwithstanding section 1302, the availability of appraisal rights under section 1302, subsections 1 to 4, 6 and 8 is limited in accordance with this section.

1. National listing; specific market value. Appraisal rights are not available for the holders of shares of any class or series of shares that:

A. Is listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers; or

B. Has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least \$20,000,000 exclusive of the value of such shares held by a corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than 10% of such shares.

2. Date of determination. The applicability of subsection 1 is determined as of:

A. The record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders to act upon a corporate action requiring appraisal rights pursuant to section 1302 to 1305; or

B. The day before the effective date of a corporate action that requires appraisal rights if there is no meeting of shareholders.

3. Exception. Notwithstanding subsection 1, appraisal rights are available pursuant to section 1302 to 1305 for the holders of any class or series of shares:

A. Who are required by the terms of a corporate action requiring appraisal rights pursuant to sections 1302 to 1305 to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or

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any other proprietary interest of any other entity, that satisfies the standards set forth in subsection 1 at the time the corporate action becomes effective;

B. When any of the shares or assets of a corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to a corporate action pursuant to sections 1302 to 1305 by a person, or by an affiliate of a person, who:

(1) Is, or at any time in the one-year period immediately preceding approval by the corporation's board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20% or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

(2) Directly or indirectly has, or at any time in the one-year period immediately preceding approval by the corporation's board of directors of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25% or more of the directors to the corporation's board of directors; or

C. When any of the shares or assets of a corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to a corporate action by a person, or by an affiliate of a person, who is, or at any time in the one-year period immediately preceding approval by the corporation's board of directors of the corporate action requiring appraisal rights pursuant to section 1302 was, a senior executive or director of the corporation or a senior executive of any affiliate of the corporation, and that senior executive or director, as a result of the corporate action, receives a financial benefit not generally available to other shareholders as such, other than:

(1) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action;

(2) Employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable

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2 than those existing before the corporate action or, if
4 more favorable, that have been approved on behalf of
the corporation in the same manner as is provided in
section 873; or

6 (3) In the case of a director of the corporation who
8 will, in the corporate action, become a director of the
acquiring entity in the corporate action or one of its
10 affiliates, rights and benefits as a director that are
provided on the same basis as those afforded by the
12 acquiring entity generally to other directors of such
entity or such affiliate.

14 For the purposes of this subsection, the term "beneficial owner"
16 means any person who, directly or indirectly, through any
contract, arrangement or understanding, other than a revocable
18 proxy, has or shares the power to vote or to direct the voting of
shares, except that a member of a national securities exchange
20 may not be considered to be a beneficial owner of securities held
directly or indirectly by the member on behalf of another person
22 solely because that member is the record holder of such
securities if the member is precluded by the rules of such
24 exchange from voting without instruction on contested matters or
matters that may affect substantially the rights or privileges of
26 the holders of the securities to be voted. When 2 or more
persons agree to act together for the purpose of voting their
28 shares of the corporation, each member of the group formed by
that agreement is considered to have acquired beneficial
30 ownership, as of the date of such agreement, of all voting shares
of the corporation beneficially owned by any member of the group.

32 **§1304. Limitation or elimination of appraisal rights in articles**
34 **of incorporation**

36 Notwithstanding section 1302 or 1303, the articles of
incorporation of a corporation as originally filed or any
38 amendment thereto may limit or eliminate appraisal rights for any
class or series of preferred shares, but any limitation or
40 elimination contained in an amendment to the articles of
incorporation that limits or eliminates appraisal rights for any
42 of those shares that are outstanding immediately prior to the
effective date of that amendment or that the corporation is or
44 may be required to issue or sell after the effective date of the
amendment pursuant to any conversion, exchange or other right
46 existing immediately before the effective date of that amendment
does not apply to any corporate action that becomes effective
48 within one year of that date if that action would otherwise
afford appraisal rights.

50 **§1305. Challenge by shareholder**

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2 A shareholder entitled to appraisal rights under this
3 subchapter may not challenge a completed corporate action
4 requiring appraisal rights unless the corporate action:

6 1. Not authorized. Was not effectuated in accordance with
7 the applicable provisions of chapter 9, 10, 11 or 12 or the
8 corporation's articles of incorporation, bylaws or board of
9 directors' resolution authorizing the corporate action; or

10 2. Fraud; misrepresentation. Was procured as a result of
11 fraud or material misrepresentation.

12 **§1306. Assertion of appraisal rights**

13 1. Record shareholder assert appraisal rights. A record
14 shareholder may assert appraisal rights as to fewer than all the
15 shares registered in the record shareholder's name but owned by a
16 beneficial shareholder only if the record shareholder objects
17 with respect to all shares of the class or series owned by the
18 beneficial shareholder and notifies the corporation in writing of
19 the name and address of each beneficial shareholder on whose
20 behalf appraisal rights are being asserted. The rights of a
21 record shareholder who asserts appraisal rights for only part of
22 the shares held of record in the record shareholder's name under
23 this subsection must be determined as if the shares as to which
24 the record shareholder objects and the record shareholder's other
25 shares were registered in the names of different record
26 shareholders.

27 2. Beneficial shareholder; appraisal rights. A beneficial
28 shareholder may assert appraisal rights as to shares of any class
29 or series held on behalf of the shareholder only if the
30 shareholder:

31 A. Submits to the corporation the record shareholder's
32 written consent to the assertion of the rights no later than
33 the date referred to in section 1322, subsection 2,
34 paragraph B, subparagraph (2); and

35 B. Does so with respect to all shares of the class or
36 series that are beneficially owned by the beneficial
37 shareholder.

38 **SUBCHAPTER II**

39 **PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS**

40 **§1321. Notice of appraisal rights**

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1. Meeting notice. If a proposed corporate action described in section 1302 is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not or may be entitled to assert appraisal rights under this chapter. If the corporation concludes that appraisal rights are or may be available, a copy of this chapter must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

2. Notice of corporate action. In a merger pursuant to section 1105, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that a corporate action became effective. The notice must be sent within 10 days after the corporate action became effective and include the materials described in section 1323.

§1322. Notice of intent to demand payment

If a proposed corporate action requiring appraisal rights under sections 1302 to 1305 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

1. Written notice. Shall deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

2. Not vote shares. May not vote, or cause or permit to be voted, any shares of the class or series in favor of the proposed action.

A shareholder who does not satisfy the requirements of subsection 1 is not entitled to payment under this chapter.

§1323. Appraisal notice and form

1. Written appraisal notice; form. If a proposed corporate action requiring appraisal rights under section 1302 becomes effective, a corporation must deliver a written appraisal notice and form required by subsection 2, paragraph A to all shareholders who satisfied the requirements of section 1322. In the case of a merger under section 1105, the parent shall deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

2. Appraisal notice. The appraisal notice required by subsection 1 must be sent no earlier than the date a corporate

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action became effective and no later than 10 days after that date and must:

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A. Supply a form that specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action and requires the shareholder asserting appraisal rights to certify:

(1) Whether or not beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(2) That the shareholder did not vote for the transaction;

B. Include the following information:

(1) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph (2);

(2) A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the appraisal notice and form are sent, and a statement that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(3) A corporation's estimate of the fair value of the shares;

(4) That, if requested in writing, a corporation will provide, to the shareholder so requesting, within 10 days after the date specified in subparagraph (2) the number of shareholders who return the forms by the specified date and the total number of shares owned by those shareholders; and

(5) The date by which the notice to withdraw under section 1324 must be received, which date must be within 20 days after the date specified in subparagraph (2); and

C. Be accompanied by a copy of this chapter.

§1324. Perfection of rights; right to withdraw

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1. Perfection of rights. A shareholder who receives notice pursuant to section 1323 and who wishes to exercise appraisal rights shall certify on the form sent by the corporation whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to section 1323, subsection 2, paragraph A. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 1326. A shareholder who wishes to exercise appraisal rights shall execute and return the form and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 1323, subsection 2, paragraph B, subparagraph (2). Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection 2.

2. Withdraw from appraisal process. A shareholder who has complied with subsection 1 may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the appraisal notice pursuant to section 1323, subsection 2, paragraph B, subparagraph (5). A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

3. Failure to execute and return form; nonpayment. A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in section 1323, subsection 2, is not entitled to payment under this chapter.

§1325. Payment

1. Fair value. Except as provided in section 1326, within 30 days after the form required by section 1323, subsection 2, paragraph B, subparagraph (2) is due, a corporation shall pay in cash to those shareholders who complied with section 1324, subsection 1 the amount the corporation estimates to be the fair value of their shares, plus interest.

2. Additional information. The payment to each shareholder pursuant to subsection 1 must be accompanied by:

A. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months

2 before the date of payment, an income statement for that
4 year, a statement of changes in shareholders' equity for
4 that year, and the latest available interim financial
4 statements, if any;

6 B. A statement of the corporation's estimate of the fair
8 value of the shares, which estimate must equal or exceed the
8 corporation's estimate given pursuant to section 1323,
10 subsection 2, paragraph B, subparagraph (3); and

12 C. A statement that shareholders described in subsection 1
14 have the right to demand further payment under section 1327
14 and that if any such shareholder does not do so within the
16 time period specified in section 1327, that shareholder is
16 deemed to have accepted the payment in full satisfaction of
16 the corporation's obligations under this chapter.

18 **§1326. After-acquired shares**

20 1. Withhold payment. A corporation may elect to withhold
22 payment required by section 1325 from any shareholder who did not
22 certify that beneficial ownership of all of the shareholder's
24 shares for which appraisal rights are asserted was acquired
24 before the date set forth in the appraisal notice sent pursuant
26 to section 1323, subsection 2, paragraph A.

28 2. Notify shareholders. If a corporation elected to
28 withhold payment under subsection 1, the corporation shall,
30 within 30 days after the date by which the corporation must
30 receive the form is given as required by section 1323, subsection
32 2, paragraph B, subparagraph (2) is due, notify all shareholders
32 who are described in subsection 1:

34 A. Of the information required by section 1325, subsection
36 2, paragraph A;

38 B. Of the corporation's estimate of fair value pursuant to
38 section 1325, subsection 2, paragraph B;

40 C. That the shareholders may accept the corporation's
42 estimate of fair value, plus interest, in full satisfaction
42 of their demands or demand appraisal under section 1327;

44 D. That those shareholders who wish to accept the offer
46 pursuant to paragraph B must notify the corporation of their
46 acceptance of the corporation's offer within 30 days after
48 receiving the offer pursuant to paragraph B; and

50 E. That those shareholders who do not satisfy the
50 requirements for demanding appraisal under section 1327 are

2 deemed to have accepted the corporation's offer pursuant to
3 paragraph B.

4 3. Shareholders who accept offer. Within 10 days after
5 receiving the shareholder's acceptance pursuant to subsection 2,
6 a corporation must pay in cash the amount it offered under
7 subsection 2, paragraph B to each shareholder who agreed to
8 accept the corporation's offer in full satisfaction of the
9 shareholder's demand.

10 4. Shareholders deemed to accept offer; payment. Within 40
11 days after sending the notice described in subsection 2, a
12 corporation shall pay in cash the amount the corporation offered
13 to pay under subsection 2, paragraph B to each shareholder
14 described in subsection 2, paragraph E.

15 **§1327. Procedure if shareholder dissatisfied with payment or**
16 **offer**

17 1. Notification; demand. A shareholder paid pursuant to
18 section 1325 who is dissatisfied with the amount of the payment
19 shall notify the corporation in writing of that shareholder's
20 estimate of the fair value of the shares and demand payment of
21 that estimate plus interest less any payment under section 1325.
22 A shareholder offered payment under section 1326 who is
23 dissatisfied with that offer must reject the offer and demand
24 payment of the shareholder's stated estimate of the fair value of
25 the shares plus interest.

26 2. Failure to notify corporation in writing. A shareholder
27 who fails to notify a corporation in writing of that
28 shareholder's demand to be paid the shareholder's stated estimate
29 of the fair value plus interest under subsection 1 within 30 days
30 after receiving the corporation's payment or offer of payment
31 under section 1325 or 1326 waives the right to demand payment
32 under this section and is entitled only to the payment made or
33 offered pursuant to those sections.

34 **SUBCHAPTER III**

35 **JUDICIAL APPRAISAL OF SHARES**

36 **§1331. Court action**

37 1. Commence proceeding. If a shareholder makes demand for
38 payment under section 1327 that remains unsettled, a corporation
39 shall commence a proceeding within 60 days after receiving the
40 payment demand and petition the court to determine the fair value
41 of the shares and accrued interest. If the corporation does not
42

2 commence the proceeding within the 60-day period, the corporation
3 shall pay in cash to each shareholder the amount the shareholder
4 demandd pursuant to section 1327 plus interest.

6 2. **Appropriate court.** A corporation shall commence the
7 proceeding under subsection 1 in the appropriate court of the
8 county where the corporation's principal office or, if there is
9 no principal office, its registered office in this State is
10 located. If the corporation is a foreign corporation without a
11 registered office in this State, the corporation shall commence
12 the proceeding in the county in this State where the principal
13 office or registered office of the domestic corporation merged
14 with the foreign corporation was located at the time of the
15 transaction.

16 3. **Shareholders party to proceeding.** A corporation shall
17 make all shareholders whether or not residents of this State
18 whose demands remain unsettled parties to the proceeding as in an
19 action against their shares, and all parties must be served with
20 a copy of the petition. Nonresidents may be served by registered
21 or certified mail or by publication as provided by law.

22 4. **Jurisdiction; appraisers.** The jurisdiction of the court
23 in which the proceeding is commenced under subsection 2 is
24 plenary and exclusive. The court may appoint one or more persons
25 as appraisers to receive evidence and recommend a decision on the
26 question of fair value. The appraisers have the powers described
27 in the order appointing them or in any amendment to the order.
28 The shareholders demanding appraisal rights under this chapter
29 are entitled to the same discovery rights as parties in other
30 civil proceedings. Shareholders demanding appraisal rights under
31 this chapter do not have a right to a jury trial.

32 5. **Shareholder entitled to judgment.** Each shareholder made
33 a party to the proceeding under subsection 1 is entitled to
34 judgment for the:

35 A. Amount, if any, by which the court finds the fair value
36 of the shareholder's shares, plus interest, exceeds the
37 amount paid by a corporation to the shareholder for the
38 shares; or

39 B. Fair value, plus interest, of the shareholder's shares
40 for which a corporation elected to withhold payment under
41 section 1326.

42 **§1332. Court costs and counsel fees**

43 1. **Court costs.** The court in an appraisal proceeding
44 commenced under section 1331 shall determine all costs of the
45 proceeding.

2 proceeding, including the reasonable compensation and expenses of
3 appraisers appointed by the court. The court shall assess the
4 costs against a corporation, except that the court may assess
5 costs against all or some of the shareholders demanding
6 appraisal, in amounts the court finds equitable, to the extent
7 the court finds the shareholders acted arbitrarily, vexatiously
8 or not in good faith with respect to the rights provided by this
9 chapter.

10 2. Counsel; expert fees. The court in an appraisal
11 proceeding under section 1331 may also assess the fees and
12 expenses of counsel and experts for the respective parties, in
13 amounts the court finds equitable:

14 A. Against a corporation and in favor of any or all
15 shareholders demanding appraisal if the court finds the
16 corporation did not substantially comply with the
17 requirements of section 1321, 1323, 1325 or 1326; or

18 B. Against either a corporation or a shareholder demanding
19 appraisal, in favor of any other party, if the court finds
20 that the party against whom the fees and expenses are
21 assessed acted arbitrarily, vexatiously or not in good faith
22 with respect to the rights provided by this chapter.

23 3. Fees awarded from settlement. If the court in an
24 appraisal proceeding under section 1331 finds that the services
25 of counsel for any shareholder were of substantial benefit to
26 other shareholders similarly situated and that the fees for those
27 services should not be assessed against a corporation, the court
28 may award to the counsel reasonable fees to be paid out of the
29 amounts awarded the shareholders who were benefitted.

30 4. Corporation fails to make payment. To the extent a
31 corporation fails to make a required payment pursuant to section
32 1325, 1326 or 1327, a shareholder may sue directly for the amount
33 owed and, to the extent successful, is entitled to recover from
34 the corporation all costs and expenses of the suit, including
35 counsel fees.

36 CHAPTER 14

37 DISSOLUTION

38 SUBCHAPTER I

39 VOLUNTARY DISSOLUTION

40 §1401. Dissolution by incorporators or initial directors

41

2 A majority of the incorporators or initial directors of a
3 corporation that has not issued shares or has not commenced
4 business may dissolve the corporation by delivering to the
5 Secretary of State for filing articles of dissolution that set
6 forth:

7 1. Name. The name of the corporation;

8 2. Date. The date of incorporation;

9 3. Shares. That none of the corporation's shares have been
10 issued or that the corporation has not commenced business;

11 4. Debt. That no debt of the corporation remains unpaid;

12 5. Net assets. That, if shares were issued, the net assets
13 of the corporation remaining after winding up have been
14 distributed to the shareholders; and

15 6. Authorization of dissolution. That a majority of the
16 incorporators or initial directors authorized the dissolution.

17 **§1402. Dissolution by board of directors and shareholders**

18 1. Dissolution proposal. A corporation's board of
19 directors may propose dissolution for submission to the
20 shareholders.

21 2. Adoption of proposal of dissolution. For a proposal to
22 dissolve to be adopted:

23 A. A corporation's board of directors must recommend
24 dissolution to the shareholders unless the board of
25 directors determines that because of conflict of interest or
26 other special circumstances the board of directors should
27 make no recommendation and communicates the basis for its
28 determination to the shareholders; and

29 B. The shareholders entitled to vote must approve the
30 proposal to dissolve as provided in subsection 5.

31 3. Condition submission of proposal. A corporation's board
32 of directors may condition the board of directors' submission of
33 the proposal for dissolution on any basis.

34 4. Notice of meeting to dissolve. A corporation shall
35 notify each shareholder, whether or not entitled to vote, of the
36 proposed shareholders' meeting. The notice must also state that
37 the purpose or one of the purposes of the meeting is to consider
38 dissolving the corporation.

2 5. Adoption of dissolution by majority. Unless the
3 corporation's articles of incorporation or the board of directors
4 acting pursuant to subsection 3 requires a greater vote, a
5 greater number of shares to be present or a vote by voting group,
6 adoption of the proposal to dissolve requires the approval of
7 shareholders holding a majority of the votes entitled to be cast
8 at a meeting at which a quorum consisting of at least a majority
9 of the votes entitled to be cast exists.

10 **§1403. Dissolution by written consent of all shareholders**

11 A corporation may be voluntarily dissolved by unanimous
12 written consent of its shareholders, whether or not entitled to
13 vote by the corporation's articles of incorporation. If a
14 unanimous written consent is given, a resolution of the
15 corporation's board of directors proposing the dissolution is not
16 necessary.
17

18 **§1404. Articles of dissolution**

19 **1. File articles of dissolution with Secretary of State.**
20 At any time after dissolution is authorized, a corporation may
21 dissolve by delivering to the Secretary of State for filing
22 articles of dissolution setting forth:
23

24 A. The name of the corporation;

25 B. The date dissolution was authorized; and

26 C. If dissolution was approved by the shareholders, a
27 statement that the proposal to dissolve was duly approved by
28 the shareholders in the manner required by this Act and by
29 the corporation's articles of incorporation.

30 **2. Effective date of dissolution.** A corporation is
31 dissolved upon the effective date of its articles of dissolution.
32

33 **3. Dissolved corporation.** For purposes of this subchapter,
34 "dissolved corporation" means a corporation whose articles of
35 dissolution have become effective. "Dissolved corporation"
36 includes a successor entity to which the remaining assets of the
37 corporation are transferred subject to its liabilities for
38 purposes of liquidation.

39 **§1405. Revocation of dissolution**

40 **1. Revoke dissolution.** A corporation may revoke its
41 dissolution within 120 days of its effective date.
42

2 2. Authorization of revocation. Revocation of dissolution
must be authorized in the same manner as the dissolution was
4 authorized under this subchapter unless that authorization
permitted revocation by action of the corporation's board of
6 directors alone, in which event the board of directors may revoke
the dissolution without shareholder action.

8 3. Articles of revocation of dissolution. After the
revocation of dissolution is authorized, a corporation may revoke
10 the dissolution by delivering to the Secretary of State for
filing articles of revocation of dissolution, together with a
12 copy of its articles of dissolution, that set forth:

14 A. The name of the corporation;

16 B. The effective date of the dissolution that was revoked;

18 C. The date that the revocation of dissolution was
authorized;

20 D. If the corporation's board of directors or incorporators
22 revoked the dissolution, a statement to that effect;

24 E. If the corporation's board of directors revoked a
dissolution authorized by the shareholders, a statement that
26 revocation was permitted by action of the board of directors
alone pursuant to that authorization; and

28 F. If shareholder action was required to revoke the
30 dissolution, the information required by section 1404,
subsection 1, paragraph C.

32 4. Effective date of revocation. Revocation of dissolution
34 is effective upon the effective date of the articles of
revocation of dissolution.

36 5. Resume business. When the revocation of dissolution is
38 effective, it relates back to and takes effect as of the
effective date of the dissolution, and the corporation resumes
40 business as if dissolution had not occurred.

42 **§1406. Effect of dissolution**

44 1. Extension of corporate existence. A dissolved
corporation continues corporate existence for a period not
46 exceeding 3 years from the effective date of the articles of
dissolution, except that the 3-year period may be extended if the
48 extension is approved by 2/3 vote of the shareholders of the
dissolved corporation and notice of the extension is filed with
50 the Secretary of State prior to the expiration of the 3-year

2 period. A dissolved corporation may not carry on any business
3 except that which is appropriate to wind up and liquidate its
4 business and affairs, including:

6 A. Collecting the corporation's assets;

8 B. Disposing of properties that will not be distributed in
9 kind to shareholders;

10 C. Discharging or making provision for discharging its
11 liabilities;

12 D. Distributing remaining property among shareholders
13 according to their interests; and

16 E. Doing every other act necessary to wind up and liquidate
17 its business and affairs.

18 2. Dissolution; exclusions. Dissolution of a corporation
19 does not:

22 A. Transfer title to the corporation's property;

24 B. Prevent transfer of its shares or securities, although
25 the authorization to dissolve may provide for closing the
26 corporation's share transfer records;

28 C. Subject the corporation's directors or officers to
29 standards of conduct different from those prescribed in
30 chapter 8;

32 D. Change quorum or voting requirements for the board of
33 directors or shareholders; change provisions for selection,
34 resignation or removal of the directors or officers or both;
35 or change provisions for amending its bylaws;

36 E. Prevent commencement of a proceeding by or against the
37 corporation in its corporate name;

40 F. Abate or suspend a proceeding pending by or against the
41 corporation on the effective date of dissolution; or

42 G. Terminate the authority of the clerk of the corporation.

44 3. Abatement of action. With respect to any action, suit
45 or proceeding begun by or against the corporation prior to the
46 commencement of or during the 3-year period after the date of its
47 dissolution, the action does not abate by reason of the
48 dissolution of the corporation; the corporate existence of the
49 dissolved corporation, solely for purposes of the action, suit or
50 proceeding.

proceeding, continues beyond that period and until any judgments, orders or decrees are fully executed.

§1407. Known claims against dissolved corporation

1. Disposition of known claims. A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after the effective date of the dissolution.

2. Written notice. The written notice required by subsection 1 must:

A. Describe information that must be included in a claim against the corporation;

B. Provide a mailing address where a claim may be sent;

C. State the deadline, which may not be later than 120 days after the effective date of the written notice, by which the dissolved corporation must receive the claim; and

D. State that the claim may be barred if not received by the deadline.

3. Claim barred. A claim against the dissolved corporation, other than a liquidated claim that is known to the corporation, has fully matured and is not disputed in good faith by the corporation, is barred:

A. If a claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline; or

B. If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

4. Claim. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

§1408. Other claims against dissolved corporation

1. Publish notice of dissolution. In addition to the written notice under section 1407, a dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

2 2. Content of notice. The notice under section 1 must:

4 A. Be published one time in a newspaper of general
6 circulation in the county where the dissolved corporation's
8 principal office or, if there is no principal office in this
10 State, its registered office is or was last located;

12 B. Describe the information that must be included in a
14 claim and provide a mailing address where the claim may be
16 sent; and

18 C. State that a claim against the dissolved corporation
20 will be barred unless a proceeding to enforce the claim is
22 commenced within 3 years after the publication of the notice.

24 3. Claim barred. If the dissolved corporation publishes a
26 newspaper notice in accordance with subsection 2, the claim of
28 each of the following claimants is barred unless the claimant
30 commences a proceeding to enforce the claim against the dissolved
32 corporation within 3 years after the publication date of the
34 newspaper notice:

36 A. A claimant who was not given written notice under
38 section 1407;

40 B. A claimant whose claim was timely sent to the dissolved
42 corporation but not acted on; or

44 C. A claimant whose claim is contingent on or is based on
46 an event occurring after the effective date of dissolution.

48 4. Enforcement of claim. A claim that is not barred by
 subsection 3 or section 1407, subsection 2 may be enforced:

A. Against the dissolved corporation to the extent of its
 undistributed assets; or

B. Except as provided in section 1409, subsection 4, if the
 assets have been distributed in liquidation, against a
 shareholder of the dissolved corporation to the extent of
 the shareholder's pro rata share of the claim or the
 corporate assets distributed to the shareholder in
 liquidation, whichever is less, but a shareholder's total
 liability for all claims under this section may not exceed
 the total amount of assets distributed to the shareholder.

§1409. Court proceedings

1 1. Security provided for payment of claim. A dissolved
2 corporation that has published a notice under section 1408 may
3 file an application with the Superior Court of the county where
4 the dissolved corporation's principal office or, if there is no
5 principal office in this State, its registered office is located
6 for a determination of the amount and form of security to be
7 provided for payment of claims that are contingent or have not
8 been made known to the dissolved corporation or that are based on
9 an event occurring after the effective date of dissolution but
10 that, based on the facts known to the dissolved corporation, are
11 reasonably estimated to arise after the effective date of
12 dissolution. Provision need not be made for any claim that is or
13 is reasonably anticipated to be barred under section 1408,
14 subsection 3.

16 2. Notice to claimant. Within 10 days after the filing of
17 the application under subsection 1, notice of the proceeding must
18 be given by the dissolved corporation to each claimant holding a
19 contingent claim whose contingent claim is shown on the records
20 of the dissolved corporation.

22 3. Guardian ad litem. The court may appoint a guardian ad
23 litem to represent all claimants whose identities are unknown in
24 any proceeding brought under this section. The reasonable fees
25 and expenses of the guardian ad litem, including all reasonable
26 expert witness fees, must be paid by the dissolved corporation.

28 4. Satisfaction of obligations. Provision by the dissolved
29 corporation for security in the amount and the form ordered by
30 the court under subsection 1 satisfies the dissolved
31 corporation's obligations with respect to claims that are
32 contingent, have not been made known to the dissolved corporation
33 or are based on an event occurring after the effective date of
34 dissolution, and such claims may not be enforced against a
35 shareholder who received assets in liquidation.

36 **§1410. Duties of directors**

38 1. Duties. Directors of a dissolved corporation shall
39 cause the corporation to discharge or make reasonable provision
40 for the payment of claims and make distributions of assets to
41 shareholders after payment of or provision for claims.

44 2. Liability of directors. Directors of a dissolved
45 corporation that has disposed of claims under section 1407, 1408
46 or 1409 are not liable for breach of section 1410, subsection 1
47 with respect to claims against the dissolved corporation that are
48 barred or satisfied under sections 1407, 1408 or 1409.

50 **SUBCHAPTER II**

2

ADMINISTRATIVE DISSOLUTION

4

§1420. Grounds for administrative dissolution

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Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under section 1421 to administratively dissolve a corporation if:

8

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1. Nonpayment of fees, penalties. The corporation does not pay within 60 days after they are due any fees or penalties imposed by this Act or other law;

12

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2. Failure to file annual report. The corporation does not deliver its annual report to the Secretary of State within 60 days after it is due;

16

18

3. Failure to pay late filing penalty. The corporation does not pay the annual report late filing penalty, if required, within 60 days after it is due;

20

22

4. Failure to maintain clerk or registered office. The corporation is without a clerk or registered office in this State for 60 days or more;

24

26

5. Failure to notify of change of clerk or registered office. The corporation does not notify the Secretary of State within 60 days that its clerk or registered office has been changed, that its clerk has resigned or that its registered office has been discontinued; or

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32

6. Filing of false information. An incorporator, director, officer or agent of the corporation signed a document with the knowledge that the document was false in a material respect and with the intent that the document be delivered to the Secretary of State for filing.

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§1421. Procedure for and effect of administrative dissolution

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1. Notice of determination to administratively dissolve corporation. If the Secretary of State determines that one or more grounds exist under section 1420 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination under section 502.

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44

46

2. Administrative dissolution. If a corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after service of the notice is perfected under section

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50

2 502, the Secretary of State shall administratively dissolve the
4 corporation by issuing a notice of dissolution that recites the
6 ground or grounds for dissolution and the effective date of
8 dissolution. The Secretary of State shall use the procedures set
10 forth in section 502 to send notice to the corporation.

12 3. Effect of administrative dissolution. A corporation
14 administratively dissolved continues its corporate existence but
16 may not transact any business except that necessary to wind up
18 and liquidate its business and affairs under section 1406 and
20 notify claimants under sections 1407 and 1408.

22 4. Authority of clerk. The administrative dissolution of a
24 corporation does not terminate the authority of its clerk.

26 5. Protecting corporate name after administrative
28 dissolution. The name of a corporation remains in the Secretary
30 of State's records of corporate names and protected for a period
32 of 3 years following administrative dissolution.

34 6. Prohibition. A corporation while administratively
36 dissolved may not engage in business in this State.

38 §1422. Reinstatement following administrative dissolution

40 1. Reinstatement. A corporation administratively dissolved
42 under section 1421 may apply to the Secretary of State for
44 reinstatement within 6 years after the effective date of
46 dissolution. The application must:

48 A. State the name of the corporation and the effective date
50 of its administrative dissolution;

B. State that the ground or grounds for dissolution either
did not exist or have been eliminated; and

C. State that the corporation's name satisfies the
requirements of section 401.

2. Reinstatement after administrative dissolution. If the
Secretary of State determines that the application contains the
information required under subsection 1 and is accompanied by the
reinstatement fee set forth in section 123, subsection 1,
paragraph V and that the information is correct, the Secretary of
State shall cancel the administrative dissolution and prepare a
notice of reinstatement that recites that determination and the
effective date of reinstatement. The Secretary of State shall
use the procedures set forth in section 502 to deliver the notice
to the corporation.

2 3. Effect of reinstatement. When the reinstatement is
effective under subsection 2, it relates back to and takes effect
4 as of the effective date of the administrative dissolution, and
the corporation resumes business as if the administrative
6 dissolution had not occurred.

8 **§1423. Appeal from denial of reinstatement**

10 1. Denial of reinstatement. If the Secretary of State
denies a corporation's application for reinstatement following
12 administrative dissolution, the Secretary of State shall serve
the corporation under section 502 with a written notice that
14 explains the reason or reasons for denial.

16 2. Appeal. A corporation may appeal a denial of
reinstatement under subsection 1 to the Superior Court of the
18 county where the corporation's principal office is located or, if
there is no principal office in this State, in Kennebec County
20 within 30 days after service of the notice of denial is
perfected. The corporation appeals by petitioning the court to
22 set aside the dissolution and attaching to the petition copies of
the Secretary of State's certificate of dissolution, the
24 corporation's application for reinstatement and the Secretary of
State's notice of denial.

26 3. Court action. The court may summarily order the
Secretary of State to reinstate an administratively dissolved
28 corporation or may take other action the court considers
appropriate.

30 4. Final decision. The court's final decision in an appeal
32 under this section may be appealed as in other civil proceedings.

34 **SUBCHAPTER III**

36 **JUDICIAL DISSOLUTION**

38 **§1430. Grounds for judicial dissolution**

40 A corporation may be dissolved by a judicial dissolution in
a proceeding by:

42 1. Attorney General. The Attorney General if it is
44 established that:

46 A. The corporation obtained its articles of incorporation
through fraud; or

48 B. The corporation has continued to exceed or abuse the
50 authority conferred upon it by law;

2 2. Shareholder. A shareholder if it is established that:

4 A. The directors are deadlocked in the management of the
6 corporate affairs, the shareholders are unable to break the
8 deadlock and, because of the deadlock, irreparable injury to
 the corporation is threatened or being suffered or the
 business and affairs of the corporation can no longer be
 conducted to the advantage of the shareholders generally;

10 B. The directors or those in control of the corporation
12 have acted, are acting or will act in a manner that is
 illegal, oppressive or fraudulent;

14 C. The shareholders are so divided respecting the
16 management of the business and affairs of the corporation
18 that the corporation is suffering or will suffer irreparable
 injury or the business and affairs of the corporation can no
20 longer be conducted to the advantage of the shareholders
 generally;

22 D. The shareholders are deadlocked in voting power and have
24 failed, for a period that includes at least 2 consecutive
 annual meeting dates, to elect successors to directors whose
 terms have expired; or

26 E. The corporate assets are being misapplied or wasted;

28 3. Creditor. A creditor if it is established that:

30 A. The creditor's claim has been reduced to judgment, the
32 execution on the judgment has been returned unsatisfied and
 the corporation is insolvent; or

34 B. The corporation has admitted in writing that the
36 creditor's claim is due and owing and the corporation is
 insolvent; or

38 4. Corporation. The corporation to have its voluntary
40 dissolution continued under court supervision.

42 §1431. Procedure for judicial dissolution

44 1. Venue. Venue for a proceeding by the Attorney General
46 to dissolve a corporation lies in Kennebec County. Venue for a
 proceeding brought by any other party named in section 1430 lies
48 in the county where a corporation's principal office or, if there
 is no principal office in this State, its registered office is or
 was last located.

50

2 2. Shareholders parties to proceeding. It is not necessary
4 to make shareholders parties to a proceeding to dissolve a
 corporation unless relief is sought against the shareholders
 individually.

6 3. Preserve corporate assets. A court in a proceeding
8 brought to dissolve a corporation may issue injunctions, appoint
10 a receiver pendente lite with all powers and duties the court
12 directs, take other action required to preserve the corporate
 assets wherever located and carry on the business of the
 corporation until a full hearing can be held.

14 **§1432. Receivership**

16 1. Appoint receivers. A court in a judicial proceeding
18 brought to dissolve a corporation may appoint one or more
20 receivers to manage and to wind up and liquidate the business and
22 affairs of the corporation. The court shall hold a hearing, after
 notifying all parties to the proceeding and any interested
 persons designated by the court, before appointing a receiver.
 The court appointing a receiver has exclusive jurisdiction over
 the corporation and all of its property wherever located.

24 2. Post bond. A court under subsection 1 may appoint an
26 individual or a domestic or foreign corporation authorized to
28 transact business in this State as a receiver. The court may
 require the receiver to post bond, with or without sureties, in
 an amount the court directs.

30 3. Powers; duties. A court shall describe the powers and
32 duties of the receiver in the court's appointing order under
34 subsection 1, which may be amended from time to time. The
 receiver may, in addition to other specified powers:

36 A. Dispose of all or any part of the assets of the
38 corporation wherever located, at a public or private sale,
40 if authorized by the court;

42 B. Sue and defend in the receiver's own name as receiver of
44 the corporation in all courts of this State; and

46 C. Exercise all of the powers of the corporation, through
48 or in place of its board of directors, to the extent
 necessary to manage the affairs of the corporation in the
 best interests of its shareholders and creditors.

48 4. Compensation; expenses. A court from time to time
 during a receivership under this section may order compensation
 paid and expense disbursements or reimbursements made to the

receiver and the receiver's counsel from the assets of the corporation or proceeds from the sale of the assets.

§1433. Decree of dissolution

1. Decree dissolving corporation. If after a hearing a court determines that one or more grounds for judicial dissolution described in section 1430 exist, it may enter a decree dissolving a corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

2. Liquidation of corporation. After entering a decree of dissolution under subsection 1, the court shall direct the winding-up and liquidation of the corporation's business and affairs in accordance with section 1406 and the notification of claimants in accordance with sections 1407 and 1408.

§1434. Discretion of court to grant relief other than dissolution

1. Intervention by shareholder. Any shareholder of a corporation may intervene in an action brought by another shareholder under section 1430, subsection 2 to dissolve the corporation in order to seek relief other than dissolution.

2. Motion of court. On the application of a plaintiff or any other shareholder or on the court's own motion in any action filed by a shareholder to dissolve a corporation on any of the grounds enumerated in section 1430, subsection 2, or on the court's own motion in any other action to dissolve a corporation, the court may make an order or grant relief, other than dissolution, that in its discretion it considers appropriate, including, without limitation, an order:

A. Providing for the purchase at their fair value of shares of any shareholder either by the corporation or by other shareholders;

B. Providing for the sale of all the property and franchises of the corporation to a single purchaser, who succeeds to all the rights and privileges of the corporation and may reorganize the same under the direction of the court;

C. Directing or prohibiting any act of the corporation or of shareholders, directors, officers or other persons party to the action;

2 D. Canceling or altering any provision contained in the
articles of incorporation, in any amendment to the articles
of incorporation or in the bylaws of the corporation;

4
6 E. Appointing a person who is qualified under the laws of
this State to act as a receiver and who has no close
personal, business or financial relationship to the members
of any contending faction within the corporation to act as
an additional director, either in all matters or in those
matters the court directs, and to hold office as a director
for any period the court orders, but not longer than 2
years. The person must be paid by the corporation
compensation as ordered by the court and may be required to
post security for the faithful performance of the director's
duties in an amount and with any sureties the court orders;
16 or

18 F. Canceling, altering or enjoining any resolution or other
act of the corporation.

20
22 3. Protection of interests. Pursuant to this section, the
court may grant relief other than dissolution as an alternative
to a decree of dissolution or whenever the circumstances of the
case are such that relief, but not dissolution, would be
appropriate when such relief would furnish greater protection of
the interests of creditors and shareholders than would
dissolution.

28
30 **SUBCHAPTER IV**

32 **MISCELLANEOUS**

34 **§1440. Deposit with Treasurer of State**

36 Assets of a dissolved corporation that should be transferred
to a creditor, claimant or shareholder of the corporation who can
not be found or who is not competent to receive the assets must
be reduced to cash and deposited with the Treasurer of State or
other appropriate state official for safekeeping in accordance
with Title 33, chapter 41. When the creditor, claimant or
shareholder furnishes satisfactory proof of entitlement to the
amount deposited, the Treasurer of State or other appropriate
state official shall pay the creditor, claimant or shareholder or
that person's representative that amount.

46 **CHAPTER 15**

48 **FOREIGN CORPORATIONS**

50 **SUBCHAPTER I**

**AUTHORIZATION OF FOREIGN CORPORATION
TO TRANSACT BUSINESS IN THIS STATE**

§1501. Authority to transact business required

1. Certificate of authority. A foreign corporation may not transact business in this State until it files an application for authority to transact business with the Secretary of State.

2. Transacting business. Activities that do not constitute transacting business within the meaning of subsection 1 include but are not limited to:

A. Maintaining, defending or settling any proceeding;

B. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

C. Maintaining bank accounts;

D. Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

E. Selling through independent contractors;

F. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

G. Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

H. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

I. Owning, without more, real or personal property other than agricultural real estate;

J. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

K. Transacting business in interstate commerce;

2 L. Engaging as a trustee in those actions defined by Title
4 18-A, section 7-105 as not in themselves requiring local
6 qualification of a foreign corporate trustee; or

8 M. Owning and controlling a subsidiary corporation
10 incorporated in or transacting business within this State.

12 **§1502. Consequences of transacting business without authority**

14 1. No court proceeding. A foreign corporation transacting
16 business in this State without authority may not maintain a
18 proceeding in any court in this State until it files an
20 application for authority and pays the applicable filing fee.

22 2. Successor; assignee of cause of action. The successor
24 to a foreign corporation that transacted business in this State
26 without authority and the assignee of a cause of action arising
28 out of that business may not maintain a proceeding based on that
30 cause of action in any court in this State until the foreign
32 corporation or its successor files an application for authority.

34 3. Stay proceeding. A court may stay a proceeding
36 commenced by a foreign corporation, its successor or assignee
38 until the court determines whether the foreign corporation or its
40 successor requires authorization. If the court so determines, the
42 court may further stay the proceeding until the foreign
44 corporation or its successor files an application for authority.

46 4. Civil penalty. A foreign corporation is liable for a
48 civil penalty of \$500 for each year, or portion thereof, it
transacts business in this State without authority. The Attorney
General may collect all penalties due under this subsection.

5. Validity of corporate acts. Notwithstanding subsections
1 and 2, the failure of a foreign corporation to file an
application for authority does not impair the validity of its
corporate acts or prevent it from defending any proceeding in
this State.

§1503. Application for authority

1. Application for authority. A foreign corporation may
apply for authority to transact business in this State by
delivering an application to the Secretary of State for filing.
The application must set forth:

2 A. The name of the foreign corporation or, if its name is
4 unavailable for use in this State, a corporate name that
6 satisfies the requirements of section 1506;

8 B. The name of the state or country under whose law it is
10 incorporated;

12 C. Its date of incorporation;

14 D. The street address and mailing address, if different, of
16 its principal office wherever located;

18 E. The address of its registered office in this State and
20 the name of its registered agent at that office; and

22 F. The names and usual business addresses of its current
24 directors and officers.

26 2. Certificate of existence. A foreign corporation shall
28 deliver with the application completed pursuant to subsection 1,
30 a certificate of existence or a document of similar import duly
32 authenticated by the secretary of state or other official having
34 custody of corporate records in the state or country under whose
36 law it is incorporated. The certificate of existence must have
38 been made not more than 90 days prior to the delivery of the
40 application for filing.

42 3. Signed acceptance. The signed acceptance of the
44 registered agent must be filed with or as part of the Application
46 for Authority.

48 **§1504. Amended application for authority**

50 1. Amended application for authority. A foreign
corporation authorized to transact business in this State must
file an amended application for authority with the Secretary of
State if the foreign corporation changes:

A. Its corporate name;

B. Its registered or principal office; or

C. The state or country of its incorporation.

2. Application for authority; requirements. The
requirements of section 1503 for filing an application for
authority apply to filing an amended application under this
section.

2 **§1505. Effect of authorization to transact business in this State**

4 **1. Authorization to transact business.** Upon filing by the
6 Secretary of State of an application for authority, a foreign
8 corporation is authorized to transact business in this State
subject to the right of this State to revoke the foreign
corporation's authority to transact business in this State as
provided in this Act.

10 **2. Same rights as domestic corporation.** A foreign
12 corporation with valid authority has the same but no greater
rights and has the same but no greater privileges as a domestic
14 corporation of like character. Except as otherwise provided by
this Act, a foreign corporation with a valid certificate of
16 authority is subject to the same duties, restrictions, penalties
and liabilities now or later imposed on a domestic corporation of
18 like character.

20 **3. State may not regulate affairs of foreign corporation.**
This Act does not authorize this State to regulate the
22 organization or internal affairs of a foreign corporation
authorized to transact business in this State.

24

26 **§1506. Corporate name of foreign corporation**

28 **1. Corporate name.** If the corporate name of a foreign
corporation does not satisfy the requirements of section 401, the
30 foreign corporation may use a fictitious name to transact
business in this State if its real name is unavailable and it
32 delivers to the Secretary of State for filing a copy of the
resolution of its board of directors, certified by its secretary,
34 adopting the fictitious name.

36 **2. Name distinguishable.** Except as authorized by
subsections 3 and 4, the corporate name, including a fictitious
38 name, of a foreign corporation must be distinguishable on the
records of the Secretary of State from:

40

42 **A. The name of a corporation, limited liability company,**
limited liability partnership or limited partnership that is
incorporated, organized or authorized to transact business
44 **or carry on activities in this State;**

46 **B. Assumed, fictitious, reserved and registered name**
filings for all entities; and

48

50 **C. Marks registered under Title 10, chapter 301-A.**

2 3. Apply for authorization to use another corporation's
3 name. A foreign corporation may apply to the Secretary of State
4 for authorization to use in this State the name of another
5 corporation incorporated or authorized to transact business in
6 this State that is not distinguishable on the Secretary of
7 State's records from the name applied for. The Secretary of State
8 shall authorize use of the name applied for if:

9
10 A. The other corporation consents to the use in writing and
11 submits an undertaking in a form satisfactory to the
12 Secretary of State to change its name to a name that is
13 distinguishable on the records of the Secretary of State
14 from the name of the applying corporation; or

15
16 B. The applicant delivers to the Secretary of State a
17 certified copy of a final judgment of a court of competent
18 jurisdiction establishing the applicant's right to use the
19 name applied for in this State.

20 4. Use of another corporation's name. A foreign
21 corporation may use in this State the name, including the
22 fictitious name, of another domestic or foreign corporation that
23 is used in this State if the other corporation is incorporated or
24 authorized to transact business in this State and the foreign
25 corporation:

26 A. Has merged with the other corporation;

27
28 B. Has been formed by reorganization of the other
29 corporation; or

30
31 C. Has acquired all or substantially all of the assets,
32 including the corporate name, of the other corporation.

33
34 5. Change of corporate name. If a foreign corporation
35 authorized to transact business in this State changes its
36 corporate name to one that does not satisfy the requirements of
37 section 401, it may not transact business in this State under the
38 changed name until it adopts a name satisfying the requirements
39 of section 401 and files an amended application for authority
40 under section 1504.

41
42
43
44 **§1507. Registered office and registered agent of**
45 **foreign corporation**

46
47 A foreign corporation authorized to transact business in
48 this State must continuously maintain in this State:

2 1. Registered office. A registered office that may be the
same as any of its places of business; and

4 2. Registered agent. A registered agent who may be:

6 A. An individual who resides in this State and whose
business office is identical with the registered office;

8 B. A domestic corporation or not-for-profit domestic
corporation whose business office is identical with the
registered office; or

10 C. A foreign corporation or foreign not-for-profit
corporation authorized to transact business in the State
whose business office is identical with the registered
office.

18 §1508. Change of registered office or registered agent
of foreign corporation

20 1. Statement of change. A foreign corporation authorized
22 to transact business in this State may change its registered
24 office or registered agent by delivering to the Secretary of
State for filing a statement of change that sets forth:

26 A. Its name;

28 B. The street address of its current registered office;

30 C. If the current registered office is to be changed, the
32 street address of its new registered office;

34 D. The name of its current registered agent;

36 E. If the current registered agent is to be changed, the
38 name of its new registered agent and the new registered
agent's written consent to the appointment either on the
statement or attached to it;

40 F. The acceptance of the new registered agent; and

42 G. That after the change or changes are made, the street
44 addresses of its registered office and the business office
of its registered agent will be identical.

46 2. Change of street address. If a registered agent changes
48 the street address of that registered agent's business office,
the registered agent may change the street address of the
50 registered office of any foreign corporation for which the

2 registered agent is the registered agent by notifying the foreign
3 corporation in writing of the change and signing, either manually
4 or in facsimile, and delivering to the Secretary of State for
5 filing a statement of change that complies with the requirements
6 of subsection 1 and states that the foreign corporation has been
7 notified of the change.

8
9
10 **§1509. Resignation of registered agent of foreign corporation**

11
12 1. Resignation of agent. The registered agent of a foreign
13 corporation may resign upon filing a written notice thereof with
14 the Secretary of State and by mailing a copy of the written
15 notice to the president or treasurer of the corporation or, if
16 both of those offices are vacant, to any of its directors. The
17 notice filed with the Secretary of State must state that a copy
18 of the notice has been mailed to a corporate officer in
19 accordance with this subsection and must specify the corporate
20 officer's name and corporate office.

21
22 2. Agency appointment terminated. The agency appointment
23 is terminated, and the registered office discontinued if so
24 provided, upon the filing of the notice of resignation by the
25 Secretary of State.

26
27 **§1510. Service on foreign corporation**

28
29
30 1. Agent for service of process. The registered agent of a
31 foreign corporation authorized to transact business in the State
32 is the foreign corporation's agent for service of process, notice
33 or demand required or permitted by law to be served on the
34 foreign corporation.

35
36 2. Method of service. A foreign corporation may be served
37 by registered or certified mail, return receipt requested,
38 addressed to the secretary of the foreign corporation at its
39 principal office shown in its application for authority or in its
40 most recent annual report if the foreign corporation:

41
42 A. Has no registered agent or its registered agent can not
43 with reasonable diligence be served;

44
45 B. Has withdrawn from transacting business in this State
46 under section 1521; or

47
48 C. Has had its authority revoked under section 1532.

49
50 3. Perfection of service. Service is perfected under
subsection 2 at the earliest of:

- 2 A. The date the foreign corporation receives the mail;
- 4 B. The date shown on the return receipt for the mail, if
6 signed on behalf of the foreign corporation; or
- 8 C. Five days after the deposit of the mail in the United
10 States mail, as evidenced by the postmark, if mailed
12 postpaid and correctly addressed.
- 14 4. Other means of service. This section does not prescribe
16 the only means, or necessarily the required means, of serving a
18 foreign corporation.

16 SUBCHAPTER II

18 WITHDRAWAL OR TRANSFER OF AUTHORITY

20 §1521. Withdrawal of foreign corporation

- 22 1. Application of withdrawal. A foreign corporation
24 authorized to transact business in this State may not withdraw
26 from this State until it files an application of withdrawal with
 the Secretary of State.
- 28 2. Application for certificate of withdrawal. A foreign
30 corporation authorized to transact business in this State may
32 file an application of withdrawal by delivering an application to
 the Secretary of State for filing. The application must set
 forth:
- 34 A. The name of the foreign corporation and the name of the
36 state or country under whose law it is incorporated;
- 38 B. That the foreign corporation is not transacting business
40 in this State and that it surrenders its authority to
42 transact business in this State;
- 44 C. That the foreign corporation revokes the authority of
46 its registered agent to accept service on its behalf and
 appoints the Secretary of State as its agent for service of
 process in any proceeding based on a cause of action arising
 during the time it was authorized to transact business in
 this State;
- 48 D. A mailing address to which the Secretary of State may
50 mail a copy of any process served on the Secretary of State
 under paragraph C; and

2 E. A commitment to notify the Secretary of State in the
3 future of any change in the foreign corporation's mailing
4 address.

5
6 3. Service of process on Secretary of State. After the
7 withdrawal of a foreign corporation under subsection 2 is
8 effective, service of process on the Secretary of State under
9 this section is service on the foreign corporation. Upon receipt
10 of process, the Secretary of State shall mail a copy of the
11 process to the foreign corporation at the mailing address set
12 forth under subsection 2.

13
14 **§1522. Automatic withdrawal upon certain conversions**

15 A foreign business corporation authorized to transact
16 business in this State that converts to a domestic nonprofit
17 corporation or any form of domestic filing entity is deemed to
18 have withdrawn on the effective date of the conversion.
19

20
21
22 **§1523. Withdrawal upon conversion to a nonfiling entity**

23
24 1. Withdrawal upon conversion. A foreign business
25 corporation authorized to transact business in this State that
26 converts to a domestic or foreign nonfiling entity shall file an
27 application of withdrawal by delivering an application to the
28 Secretary of State for filing. The application must set forth:

29
30 A. The name of the foreign business corporation and the
31 name of the state or country under whose law it was
32 incorporated before the conversion;

33
34 B. That the foreign business corporation surrenders its
35 authority to transact business in this State as a foreign
36 business corporation;

37
38 C. The type of other entity to which the foreign business
39 corporation has been converted and the jurisdiction whose
40 laws govern its internal affairs; and

41
42 D. If the foreign business corporation has been converted
43 to a foreign other entity, the following information:

44
45 (1) That it revokes the authority of its registered
46 agent to accept service on its behalf and appoints the
47 Secretary of State as its agent for service of process
48 in any proceeding based on a cause of action arising
49 during the time it was authorized to transact business
50 in this State;

2 (2) A mailing address to which the Secretary of State
4 may mail a copy of any process served on the Secretary
 of State under subparagraph (1); and

6 (3) A commitment to notify the Secretary of State in
8 the future of any change in its mailing address.

10 2. Conversion to foreign other entity; service of process.
12 After the withdrawal under this section of a corporation that has
14 converted to a foreign other entity is effective, service of
16 process on the Secretary of State is service on the foreign other
 entity. Upon receipt of process, the Secretary of State shall
 mail a copy of the process to the foreign other entity at the
 mailing address set forth under subsection 1, paragraph D.

18 3. Conversion to domestic other entity, service of
20 process. After the withdrawal under this section of a
22 corporation that has converted to a domestic other entity is
 effective, service of process must be made on the other entity in
 accordance with the regular procedures for service of process on
 the form of other entity to which the corporation was converted.

24 §1524. Transfer of authority

26 1. Application for transfer of authority; contents. A
28 foreign business corporation authorized to transact business in
30 this State that converts to a foreign nonprofit corporation or to
32 any form of foreign other entity that is required to file an
34 application for authority or make a similar type of filing with
36 the Secretary of State if it transacts business in this State
 shall file with the Secretary of State an application for
 transfer of authority executed by any officer or other duly
 authorized representative. The application must set forth:

38 A. The name of the corporation;

40 B. The type of entity to which it has been converted and
 the jurisdiction whose laws govern its internal affairs; and

42 C. Any other information that would be required in a filing
44 under the laws of this State by an entity of the type the
46 corporation has become seeking authority to transact
 business in this State.

48 2. Delivery. The application for transfer of authority
50 must be delivered to the Secretary of State for filing and takes
 effect at the effective time provided in section 125.

2 3. Authority to transact business uninterrupted. When the
3 application for transfer of authority takes effect, the authority
4 of the corporation under this chapter to transact business in
5 this State is transferred without interruption to the converted
6 entity, which thereafter holds that authority subject to the
7 provisions of the laws of this State applicable to that type of
8 entity.

10 SUBCHAPTER III

12 REVOCATION OF AUTHORITY

14 §1531. Grounds for revocation

16 The Secretary of State may commence a proceeding under
17 section 1532 to revoke the authority of a foreign corporation
18 authorized to transact business in this State if:

20 1. Annual report. The foreign corporation does not deliver
21 its annual report to the Secretary of State within 60 days after
22 the annual report is due:

24 2. Fees; penalties. The foreign corporation does not pay
25 within 60 days after they are due any fees or penalties imposed
26 by this Act or other law:

28 3. No registered agent or office. The foreign corporation
29 is without a registered agent or registered office in this State
30 for 60 days or more:

32 4. Notice of change of registered agent or office. The
33 foreign corporation does not inform the Secretary of State under
34 section 1508 or 1509 that its registered agent or registered
35 office has changed, that its registered agent has resigned or
36 that its registered office has been discontinued within 60 days
37 of the change, resignation or discontinuance:

38 5. False documentation. An incorporator, director, officer
39 or agent of the foreign corporation signed a document the
40 incorporator, director, officer or agent knew was false in any
41 material respect with intent that the document be delivered to
42 the Secretary of State for filing:

44 6. Authenticated certificate of dissolution or merger. The
45 Secretary of State receives a duly authenticated certificate from
46 the secretary of state or other official having custody of
47 corporate records in the state or country under whose law the
48 foreign corporation is incorporated stating that the foreign
49 corporation has been dissolved or disappeared as the result of a
50 merger.

2
4 **§1532. Procedure for and effect of revocation**

6 **1. Notice of determination.** If the Secretary of State
8 determines that one or more grounds exist under section 1531 for
the revocation of authority, the Secretary of State shall serve
the foreign corporation with written notice of the Secretary of
State's determination under section 1510.

10
12 **2. Correct grounds for revocation.** If the foreign
corporation does not correct each ground for revocation or
14 demonstrate to the reasonable satisfaction of the Secretary of
State that each ground determined by the Secretary of State does
16 not exist within 60 days after service of the notice is perfected
under section 1510, the Secretary of State may revoke the foreign
18 corporation's authority to transact business in this State by
issuing a notice of revocation that recites the ground or grounds
20 for revocation and its effective date. The Secretary of State
shall follow the procedures set forth in section 1510 when
issuing the notice of revocation.

22
24 **3. Authority to transact business ceased.** The authority of
a foreign corporation to transact business in this State ceases
26 on the date of revocation of its authority.

28 **4. Secretary of State appointed as agent for service of**
process. The Secretary of State's revocation of a foreign
corporation's authority appoints the Secretary of State as the
30 foreign corporation's agent for service of process in any
proceeding based on a cause of action that arose during the time
32 the foreign corporation was authorized to transact business in
this State. Service of process on the Secretary of State under
34 this subsection is service on the foreign corporation. Upon
receipt of process, the Secretary of State shall mail a copy of
36 the process to the secretary of the foreign corporation at its
principal office shown in its most recent annual report or in any
38 subsequent communication received from the corporation stating
the current mailing address of its principal office or, if no
40 other address is on file, in its application for authority.

42 **5. Registered agent; not terminated.** Revocation of a
foreign corporation's authority to transact business in this
44 State does not terminate the authority of the registered agent of
the corporation.

46
48 **6. Authorization after revocation.** A foreign corporation
whose authority to transact business in this State has been
revoked under section 1531 that wishes to transact business again
50 in this State must be authorized as provided in this chapter.

2

§1533. Appeal from revocation

4

6 1. Petition to appeal revocation. A foreign corporation
may appeal the Secretary of State's revocation of its authority
to the Kennebec County Superior Court within 30 days after
8 service of the notice of revocation is perfected under section
1510. The foreign corporation may appeal by petitioning the
10 court to set aside the revocation and attaching to the petition
copies of its application for authority and the Secretary of
12 State's notice of revocation.

14

2. Court order. The court may summarily order the
Secretary of State to reinstate the authority or may take any
16 other action the court considers appropriate.

18

3. Appeal of court's decision. The court's final decision
may be appealed as in other civil proceedings.

20

CHAPTER 16

22

RECORDS AND REPORTS

24

SUBCHAPTER I

26

RECORDS

28

§1601. Corporate records

30

1. Minutes of meetings. A corporation shall keep as
32 permanent records minutes of all meetings of its shareholders and
board of directors, a record of all actions taken by the
34 shareholders or board of directors without a meeting and a record
of all actions taken by a committee of the board of directors in
36 place of the board of directors on behalf of the corporation.

38

2. Accounting records. A corporation shall maintain
appropriate accounting records.

40

3. Record of shareholders. A corporation or its agent
42 shall maintain a record of its shareholders in a form that
permits preparation of a list of the names and addresses of all
44 shareholders in alphabetical order by class of shares showing the
number and class of shares held by each.

46

4. Records; written. A corporation shall maintain its
48 records in written form or in another form capable of conversion
into written form within a reasonable time.

50

2 5. Copy of records. A corporation shall keep a copy of the
following records at its principal office or its registered
office:

4
6 A. Its articles or restated articles of incorporation and
all amendments to them currently in effect;

8 B. Its bylaws or restated bylaws and all amendments to them
currently in effect;

10
12 C. Resolutions adopted by its board of directors creating
one or more classes or series of shares and fixing their
relative rights, preferences and limitations, if shares
14 issued pursuant to those resolutions are outstanding;

16 D. The minutes of all shareholders' meetings, and records
of all action taken by shareholders without a meeting, for
18 the past 3 years;

20 E. All written communications to shareholders generally
within the past 3 years, including any financial statements
22 furnished for the past 3 years under section 1620;

24 F. A list of the names and business addresses of its
current directors and officers; and

26
28 G. Its most recent annual report delivered to the Secretary
of State under section 1621.

30 **§1602. Inspection of records by shareholders**

32 1. Shareholder defined. For purposes of this section,
"shareholder" includes a beneficial owner whose shares are held
34 in a voting trust or by a nominee on the shareholder's behalf.

36 2. Inspect; copy records. A shareholder of a corporation
is entitled to inspect and copy during regular business hours at
38 the corporation's principal office or its registered office, if
the corporation keeps such records at its registered office, any
40 of the records of the corporation described in section 1601,
subsection 5 if the shareholder gives the corporation written
42 notice of the shareholder's demand at least 5 business days
before the date on which the shareholder wishes to inspect and
44 copy, except that a shareholder's rights under this subsection
are subject to any reasonable restrictions on the disclosure of
46 financial information about the corporation that are set forth in
the corporation's articles of incorporation or bylaws.

48
50 3. Certain documents inspected; copied. A shareholder of a
corporation is entitled to inspect and copy during regular

2 business hours at a reasonable location specified by the
3 corporation any of the following records of the corporation if
4 the shareholder meets the requirements of subsection 4 and gives
5 the corporation written notice of the shareholder's demand at
6 least 5 business days before the date on which the shareholder
7 wishes to inspect and copy:

8 A. Excerpts from minutes of any meeting of the board of
9 directors, records of any action of a committee of the board
10 of directors while acting in place of the board of directors
11 on behalf of the corporation, minutes of any meeting of the
12 shareholders, and records of action taken by the
13 shareholders or board of directors without a meeting, to the
14 extent not subject to inspection under subsection 2;

15 B. Accounting records of the corporation; and

16 C. The record of shareholders.

17 4. Requirements. A shareholder may inspect and copy the
18 records described in subsection 3 only if:

19 A. The shareholder's demand is made in good faith and for a
20 proper purpose;

21 B. The shareholder describes with reasonable particularity
22 the shareholder's purpose and the records the shareholder
23 desires to inspect;

24 C. The records are directly connected with the
25 shareholder's purpose; and

26 D. The shareholder complies with such reasonable
27 restrictions regarding the disclosure of such records as may
28 be set forth in the corporation's articles of incorporation
29 or bylaws.

30 5. Right of inspection. The right of inspection granted by
31 this section may not be abolished or limited by a corporation's
32 articles of incorporation or bylaws.

33 6. Shareholder's rights. Nothing in this section affects:

34 A. The right of a shareholder to inspect records under
35 section 721 or, if the shareholder is in litigation with the
36 corporation, to the same extent as any other litigant; or

37 B. The power of a court, independently of this Act, to
38 compel the production of corporate records for examination.

39

§1603. Scope of inspection right

2
4 1. Agent; attorney. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder that the agent or attorney represents.

6
8 2. Right to copy. The right to copy records under section 1602 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

10
12 3. Charge for copies. The corporation may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

14
16
18 4. Comply with demand. The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 1602, subsection 3, paragraph C by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

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22 **§1604. Court-ordered inspection**

24
26 1. Order inspection. If a corporation does not allow a shareholder who complies with section 1602, subsection 2 to inspect and copy any records required by that subsection to be available for inspection, the Superior Court of the county where the corporation's principal office or registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

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34 2. Court order. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record pursuant to this Act, the shareholder who complies with section 1602, subsections 3 and 4 may apply to the Superior Court in the county where the corporation's principal office or registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

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44 3. Refuse inspection; good faith. If the court orders inspection and copying of the records demanded under subsection 1 or 2, the court shall also order the corporation to pay the shareholder's costs including reasonable counsel fees incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

2 4. Restrictions. If the court orders inspection and
4 copying of the records demanded under subsection 1 or 2, the
 court may impose reasonable restrictions on the use or
6 distribution of the records by the demanding shareholder.

8 **§1605. Inspection of records by directors**

10 1. Inspect; copy records. A director of a corporation is
12 entitled to inspect and copy the books, records and documents of
 the corporation at any reasonable time to the extent that the
14 inspection or copying is reasonably related to the performance of
 the director's duties as a director, including duties as a member
 of a committee, but not for any other purpose or in any manner
16 that would violate any duty to the corporation.

18 2. Court order. The Superior Court of the county where the
20 corporation's principal office or, if there is no principal
 office in this State, registered office is located may order
22 inspection and copying of the books, records and documents at the
 corporation's expense, upon application of a director who has
24 been refused inspection rights under subsection 1, unless the
 corporation establishes that the director is not entitled to such
 inspection rights. The court shall dispose of an application
26 under this subsection on an expedited basis.

28 3. Provisions to protect corporation. If an order is
30 issued under subsection 2, the court may include provisions
 protecting the corporation from undue burden or expense and
32 prohibiting the director from using information obtained upon
 exercise of the inspection rights in a manner that would violate
34 a duty to the corporation, and may also order the corporation to
 reimburse the director for the director's costs, including
 reasonable counsel fees, incurred in connection with the
36 application.

38 **§1606. Exception to notice requirement**

40 1. Notice. Whenever notice is required to be given under
 any provision of this Act to any shareholder, that notice is not
42 required to be given if:

44 A. Notice of 2 consecutive annual meetings and all notices
 of meetings during the period between such 2 consecutive
46 annual meetings have been sent to the shareholder at the
 shareholder's address as shown on the records of the
 corporation and have been returned undeliverable; or

48 B. All, but not less than 2, payments of dividends on
50 securities during a 12-month period, or 2 consecutive

2 payments of dividends on securities during a period of more
4 than 12 months, have been sent to the shareholder at the
shareholder's address as shown on the records of the
corporation and have been returned undeliverable.

6 2. Shareholder's address. If a shareholder to whom notice
8 is not required pursuant to subsection 1 delivers to the
corporation a written notice setting forth that shareholder's
10 current address, the requirement that notice be given to that
shareholder is reinstated.

12 SUBCHAPTER II

14 REPORTS

16 §1620. Financial statements for shareholders

18 1. Financial statements. No later than 5 months after the
20 close of each fiscal year, each corporation that is not a close
corporation shall prepare annual financial statements, which may
22 be consolidated or combined statements of the corporation and one
24 or more of its subsidiaries, as appropriate, that include a
balance sheet as of the end of the fiscal year, an income
26 statement for that year, and a statement of changes in
shareholders' equity for the year unless that information appears
28 elsewhere in the financial statements. If financial statements
are prepared for the corporation on the basis of generally
accepted accounting principles, the annual financial statements
must also be prepared on that basis.

30 2. Written demand for copy of financial statement. Upon
32 written demand of any shareholder of a corporation, the
corporation shall mail to that shareholder a copy of the most
34 recent annual financial statement prepared in accordance with
subsection 1. If the annual financial statement is reported upon
36 by a public accountant, the accountant's report must accompany
it. If the annual financial statement is not reported upon by a
38 public accountant, the statement must be accompanied by a
statement of the president or the person responsible for the
40 corporation's accounting records:

42 A. Stating the reporter's reasonable belief whether the
44 statement was prepared on the basis of generally accepted
accounting principles and, if not, describing the basis of
preparation; and

46 B. Describing any respects in which the statement was not
48 prepared on a basis of accounting consistent with the
statement prepared for the preceding year.

50

2 3. Restrictions on disclosure of financial statement. The
articles of incorporation or bylaws of a corporation may impose
4 reasonable restrictions regarding the disclosure of financial
information as a condition to delivery of an annual financial
6 statement to a shareholder in accordance with this section.

8 §1621. Annual report of domestic and foreign corporations; excuse

10 1. Filing of annual report. Each domestic corporation,
unless excused as provided in subsection 4 or excluded by
12 subsection 6, and each foreign corporation authorized to do
business in this State, shall deliver to the Secretary of State
14 for filing, within the time prescribed by this section, an annual
report setting forth:

16 A. The name of the domestic or foreign corporation and the
jurisdiction of its incorporation;

18 B. The address of the registered office of the domestic or
20 foreign corporation in this State; the name of its clerk, if
a domestic corporation, or its registered agent in this
22 State, if a foreign corporation; and, if a foreign
corporation, the address of its registered or principal
24 office, wherever located. The address of a registered
office must include the street or rural route number, town
26 or city and state;

28 C. A brief statement of the character of the business in
which the domestic or foreign corporation is actually
30 engaged in this State, if any; and

32 D. The name and business or residence address of the
president, the treasurer, the clerk or registered agent and
34 directors or, if no directors, shareholders of the domestic
or foreign corporation, including the street or rural route
36 number, town or city and state.

38 2. Information current. The information contained in the
annual report required in subsection 1 must be current as of the
40 date the report is executed. The annual report must be executed
as provided by section 121.

42 3. First annual report. The first annual report required
44 in subsection 1 must be delivered to the Secretary of State
between January 1st and June 1st of the year following the
46 calendar year in which a domestic corporation was incorporated or
a foreign corporation was authorized to transact business.
48 Subsequent annual reports must be delivered to the Secretary of
State between January 1st and June 1st of the following calendar
50 years. Proof to the satisfaction of the Secretary of State that,

2 prior to the date when penalties become effective for late
3 delivery of annual reports as provided in section 1622, the
4 report was deposited in the United States mail in a sealed
5 envelope, properly addressed, with postage prepaid, in compliance
6 with this requirement. One copy of the report, together with the
7 filing fee required by this Act, must be delivered for filing to
8 the Secretary of State who shall file the report, if the
9 Secretary of State finds that the report conforms to the
10 requirements of this Act. If the Secretary of State finds that
11 the report does not conform to the requirements of this Act, the
12 Secretary of State shall promptly mail or otherwise return the
13 report to the domestic or foreign corporation for any necessary
14 corrections, in which case the penalties prescribed by this Act
15 for failure to file the report within the time herein provided do
16 not apply, as long as the report is corrected to conform to the
17 requirements of this Act and returned to the Secretary of State
18 within 30 days from the date on which it was mailed or otherwise
19 returned to the domestic or foreign corporation by the Secretary
20 of State.

21 4. Certificate of excuse. The Secretary of State, upon
22 application by any domestic corporation and satisfactory proof
23 that it has ceased to transact business and that it is not
24 indebted to this State for failure to file an annual report and
25 to pay any fees or penalties accrued, shall file a certificate of
26 the fact and shall give a duplicate certificate to the domestic
27 corporation, after which the corporation is excused from filing
28 annual reports with the Secretary of State, so long as the
29 domestic corporation in fact transacts no business.

30 5. Resume transaction of business. The shareholders of a
31 domestic corporation that has been excused from filing annual
32 reports pursuant to subsection 4 may vote to resume transacting
33 business at a meeting duly called and held for that purpose. A
34 certificate executed and filed as provided in section 121 setting
35 forth that a shareholders' meeting was held, the date and
36 location of same, and that a majority of the shareholders voted
37 to resume transacting business authorizes that domestic
38 corporation to transact business; and after that certificate is
39 filed, the domestic corporation is required to file annual
40 reports beginning with the next reporting deadline following
41 resumption.

42 6. Exempt from filing annual report. The requirement under
43 subsection 1 does not apply to religious, charitable, educational
44 or benevolent corporations nor to corporations organized under
45 Title 13, chapters 81, 83, 91 and 93.

46 §1622. Failure to file annual report; incorrect report; penalties
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49
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1 1. Penalty. A domestic or foreign corporation required to
2 deliver an annual report for filing as provided by section 1621
3 that fails to deliver its properly completed annual report to the
4 Secretary of State shall pay, in addition to the regular annual
5 report fee, the late filing penalty described in section 123,
6 subsection 1, paragraph EE, as long as the report is received by
7 the Secretary of State prior to administrative dissolution or
8 revocation. Upon a corporation's failure to file the annual
9 report and to pay the annual report fee or the penalty, the
10 Secretary of State, notwithstanding Title 4, chapter 5 and Title
11 5, chapter 375, shall revoke a foreign corporation's authority to
12 do business in this State and administratively dissolve a
13 domestic corporation. The Secretary of State shall use the
14 procedures set forth in section 1421 to administratively dissolve
15 a corporation and the procedures set forth in section 1532 to
16 revoke a foreign corporation's authority to do business in this
17 State. A domestic corporation that has been administratively
18 dissolved under this subsection may be reinstated by filing the
19 current annual report, together with the current annual filing
20 fee, and by paying the reinstatement fee described in section
21 123, subsection 1, paragraph V.

22
23 2. Excusable neglect. If the annual report of a domestic
24 or foreign corporation is not delivered for filing within the
25 time specified in section 1621, the corporation is excused from
26 the liability provided in this section and from any other penalty
27 for failure to timely file the report if it establishes, to the
28 satisfaction of the Secretary of State, that its failure to file
29 was the result of excusable neglect and it furnishes the
30 Secretary of State with a copy of the report within 30 days after
31 it learns that the Secretary of State failed to receive the
32 original report.

34 CHAPTER 17

36 TRANSITION PROVISIONS

38 §1701. Application

40
41 1. Application. Except as provided in subsection 2, this
42 Act applies to all domestic corporations in existence on the
43 effective date of this Act that were incorporated under any
44 general statute of this State providing for incorporation of
45 corporations for profit or with shares or under any act providing
46 for the creation of special classes of corporations and any
47 corporation created by special act of the Legislature, if power
48 to amend or repeal the law under which the corporation was
49 incorporated was reserved.

2 2. Exceptions. This Act does not apply to:

4 A. Any class of corporations to the extent that any
6 provision of any other law is specifically applicable to
8 that class of corporations and is inconsistent with any
10 provision of this Act, in which case the other provision of
12 law prevails; and

14 B. Any corporation created by special act of the
16 Legislature, to the extent that this Act is inconsistent
18 with that special act.

20 3. Validity of articles or bylaws. The validity of any
22 provision of the articles of incorporation or the bylaws of a
24 corporation existing on July 1, 2003 must be determined with
26 reference to the law that was in effect at the time when the
28 provision was adopted or with reference to this Act, whichever
30 supports the validity of such provision. A provision of a
32 corporation's articles of incorporation or bylaws that was valid
34 under the law in existence at the time the same was adopted
36 remains in effect, notwithstanding a contrary provision of this
38 Act, until repealed or amended by voluntary act of the
40 corporation, but any amendment to such a provision must be
42 adopted by the procedures set out in this Act and must, as
44 amended, conform to the requirements of this Act.

46 §1702. Application to qualified foreign corporations

48 A foreign corporation authorized to transact business in
50 this State on the effective date of this Act is subject to this
 Act but is not required to obtain a new certificate of authority
 to transact business under this Act.

Sec. A-3. Savings.

1. Effect of repeal of Maine Revised Statutes, Title 13-A.
 Except as provided in subsection 2, the repeal of the Maine
 Revised Statutes, Title 13-A in section 1 of this Act does not
 affect:

 A. The operation of Title 13-A or any action taken under
 Title 13-A prior to the effective date of this Act;

 B. Any ratification, right, remedy, privilege, obligation
 or liability acquired, accrued or incurred under Title 13-A
 prior to the effective date of this Act;

 C. Any violation of Title 13-A, or any penalty, forfeiture
 or punishment incurred because of the violation, prior to
 the effective date of this Act; or

2 D. Any proceeding, reorganization or dissolution commenced
4 under Title 13-A prior to the effective date of this Act.
6 The proceeding, reorganization or dissolution may be
completed in accordance with Title 13-A as if it had not
been repealed.

8 **2. Reduction in penalty or punishment.** Notwithstanding the
10 Maine Revised Statutes, Title 1, section 302, if the penalty or
punishment for a violation of Title 13-C is less severe than the
12 penalty or punishment for a violation of the equivalent provision
under former Title 13-A and the penalty or punishment has not yet
14 been imposed, the penalty or punishment must be imposed in
accordance with the provisions of Title 13-C.

16 **PART B**

18 **Sec. B-1. 13 MRSA c. 22, as amended, is repealed.**

20 **Sec. B-2. 13 MRSA c. 22-A is enacted to read:**

22 **CHAPTER 22-A**

24 **MAINE PROFESSIONAL SERVICE CORPORATION ACT**

26 **SUBCHAPTER I**

28 **GENERAL PROVISIONS**

30 **§721. Short title**

32 This chapter may be known and cited as the "Maine
34 Professional Service Corporation Act."

36 **§722. Application of Maine Business Corporation Act**

38 The Maine Business Corporation Act applies to professional
40 corporations, both domestic and foreign, to the extent not
inconsistent with this chapter.

42 **§723. Definitions**

44 As used in this chapter, unless the context otherwise
46 indicates, the following terms have the following meanings.

48 1. Disqualified person. "Disqualified person" means an
individual or entity that for any reason is or becomes ineligible
50 under this chapter to be issued shares by a professional
corporation.

2 2. Domestic professional corporation. "Domestic
professional corporation" means a professional corporation.

4
6 3. Foreign professional corporation. "Foreign professional
corporation" means a corporation or association for profit
incorporated for the purpose of rendering professional services
8 under law other than the law of this State.

10 4. Professional corporation. "Professional corporation"
means a corporation for profit, other than a foreign professional
12 corporation, subject to the provisions of this chapter.

14 5. Professional limited liability company. "Professional
limited liability company" means a limited liability company
16 formed to perform a professional service.

18 6. Professional limited liability partnership.
"Professional limited liability partnership" means a limited
20 liability partnership formed to perform a professional service.

22 7. Professional service. "Professional service" means the
professional services provided by the following persons to the
24 extent they are required to be licensed under state law:

26 A. Accountants, advanced practice registered nurses,
attorneys, chiropractors, dentists, optometrists,
28 osteopathic physicians, physicians and surgeons, physician
assistants, podiatrists, registered nurses and
30 veterinarians; and

32 B. Any person not listed in subsection A who is required by
state law to have a license as a precondition to engaging
34 in that person's profession.

36 8. Qualified person. "Qualified person" means an
individual, general partnership, professional limited liability
38 company, professional limited liability partnership, other
professional corporation that is eligible under this chapter to
40 be issued shares by a professional corporation or any other
entity that is authorized by statute to provide the same
42 professional service provided by the professional corporation.

44
46 SUBCHAPTER II

48 CREATION

50 §731. Election of professional corporation status

1 1. Mandatory coverage. A qualified person performing any
2 professional service described in section 723, subsection 7,
3 paragraph A desiring to form a corporation shall incorporate as a
4 professional corporation.

6 2. Optional coverage. A qualified person or persons
7 performing any professional service described in section 723,
8 subsection 7, paragraph B desiring to form a corporation may
9 incorporate as a professional corporation.

10 3. Filing requirement. One or more persons may incorporate
11 a professional corporation by delivering to the Secretary of
12 State for filing articles of incorporation that state that the
13 corporation is a professional corporation and the corporation's
14 purpose is to render the specified professional service.

15 4. Election to be covered. A corporation incorporated
16 under a general law of this State may elect professional
17 corporation status by amending its articles of incorporation to
18 comply with subsection 3 and section 736.

20 **§732. Purposes**

21 1. Single profession. Except to the extent authorized by
22 subsections 2 and 3, a corporation may elect professional
23 corporation status under section 731 solely for the purpose of
24 rendering professional services, including services ancillary to
25 them, and solely within a single profession.

26 2. Multiple professions. A corporation may elect
27 professional corporation status under section 731 for the purpose
28 of rendering professional services within 2 or more professions
29 and for the purpose of engaging in any lawful business authorized
30 by Title 13-C, section 301, to the extent the combination of
31 professional purposes or of professional and business purposes is
32 not prohibited by the licensing law of this State applicable to
33 each profession in the combination.

34 3. Accountants. Nonlicensed individuals may organize with
35 individuals who are licensed under Title 32, chapter 113 and may
36 become shareholders of a firm licensed to practice public
37 accountancy under Title 32, section 12252, as long as all of the
38 requirements for licensure under Title 32, section 12252,
39 subsection 3 are met by the firm.

40 4. Dentists and denturists. For the purposes of this
41 chapter, a denturist licensed under Title 32, chapter 16 may
42 organize with a dentist who is licensed under Title 32, chapter
43 16 and may become a shareholder of a dental practice incorporated
44 under the corporation laws. At no time may a denturist or
45 dentist be a shareholder of a dental practice incorporated
46 under the corporation laws.

denturists in sum have an equal or greater ownership interest in a dental practice than the dentist or dentists have in that practice.

§733. General powers

A professional corporation has the powers enumerated in Title 13-C, section 302.

§734. Rendering professional services

1. License required. A domestic professional corporation or foreign professional corporation may render professional services in this State only through individuals licensed or otherwise authorized in this State to render the services.

2. Scope. Nothing in subsection 1 may be construed to:

A. Require an individual employed by a professional corporation to be licensed to perform services for the corporation if a license is not otherwise required;

B. Prohibit a licensed individual from rendering professional services in that individual's individual capacity even though that individual is a shareholder, director, officer, employee or agent of a domestic professional corporation or foreign professional corporation; or

C. Prohibit an individual licensed in another state from rendering professional services for a domestic professional corporation or foreign professional corporation in this State if not prohibited by the licensing authority having jurisdiction over such professional service.

§735. Prohibited activities

1. Limited activities. A professional corporation may not render any professional service or engage in any business or service other than the professional service and business authorized by its articles of incorporation and services or businesses reasonably related thereto.

2. Investments. Nothing in subsection 1 prohibits a professional corporation from investing its funds in real estate, mortgages, securities or any other type of investment.

§736. Corporate name

2 1. Words required. The name of a domestic professional
3 corporation or of a foreign professional corporation authorized
4 to transact business in this State, in addition to satisfying the
5 requirements of Title 13-C, sections 401 and 1506;

6 A. Must contain the words "chartered," "professional
7 corporation," "professional association" or "service
8 corporation" or the abbreviation "P.C.," "P.A." or "S.C.";

10 B. May not contain language stating or implying that it is
11 incorporated for a purpose other than that authorized by
12 section 732 and its articles of incorporation; and

14 C. Must conform with any rule adopted by the licensing
15 authority having jurisdiction over a professional service
16 described in the corporation's articles of incorporation.

18 2. Assumed name. A domestic professional corporation or
19 foreign professional corporation may render professional services
20 and exercise its authorized powers under an assumed name, as long
21 as the corporation has first registered the name to be so used in
22 the manner required by Title 13-C.

24 **SUBCHAPTER III**

26 **SHARES**

28 **§741. Issuance of shares**

30 1. Qualified shareholders. A professional corporation may
31 issue shares, fractional shares and rights or options to purchase
32 shares only to:

34 A. Individuals who are authorized by law in this State or
35 another state to render a professional service described in
36 the corporation's articles of incorporation;

38 B. General partnerships in which all the partners are
39 qualified persons with respect to the professional
40 corporation and in which at least one partner is authorized
41 by law in this State to render a professional service
42 described in the corporation's articles of incorporation;

44 C. Professional corporations, professional limited
45 liability companies or professional limited liability
46 partnerships, domestic or foreign, authorized by law in this
47 State to render a professional service described in the
48 corporation's articles of incorporation; or

2 D. Any other entity that is authorized by law to provide
3 the same professional service provided by the professional
4 corporation.

5 2. Licensing authority jurisdiction. If a licensing
6 authority with jurisdiction over a profession considers it
7 necessary to prevent violation of the ethical standards of the
8 profession, the authority may adopt rules under its general
9 rule-making authority or other regulatory authority to restrict
10 or condition, or revoke in part, the authority of professional
11 corporations subject to its jurisdiction to issue shares. A rule
12 described in this subsection does not, of itself, make a
13 shareholder of a professional corporation at the time the rule
14 becomes effective a disqualified person.

15 3. Unlawful shares void. Shares issued in violation of
16 this section or a rule described in subsection 2 are void.

17 **§742. Share transfer restriction**

18
19
20 1. Limit to transfers. A shareholder of a professional
21 corporation may transfer or pledge shares, fractional shares and
22 rights or options to purchase shares of the corporation only to
23 qualified persons.

24
25 2. Other transfers void. A transfer of shares made in
26 violation of subsection 1, except one made by operation of law or
27 court judgment, is void.

28
29 **§743. Compulsory acquisition of shares after death or**
30 **disqualification of shareholder**

31
32 1. Triggering events. A professional corporation must
33 acquire or cause to be acquired by a qualified person the shares
34 of its shareholder if:

35 A. The shareholder dies;

36
37 B. The shareholder becomes a disqualified person, except as
38 provided in subsection 4; or

39
40
41 C. The shares are transferred by operation of law or court
42 judgment to a disqualified person, except as provided in
43 subsection 4.

44
45 2. Agreements binding. If a professional corporation's
46 articles of incorporation or bylaws or a private agreement
47 provides the terms, price and other conditions for the
48 acquisition of the shares of a shareholder upon the occurrence of
49 an event described in subsection 1, then that article, bylaw or
50

2 private agreement is binding on the parties and is specifically
3 enforceable.

4 3. Corporate acquisition of shares. In the absence of an
5 article provision, bylaw provision or private agreement described
6 in subsection 2, a professional corporation shall acquire the
7 shares in accordance with section 744; except that, if the
8 disqualified person rejects the corporation's purchase offer,
9 either the person or the corporation may commence a proceeding
10 under section 745 to determine the fair value of the shares.

12 4. Limited disqualification. In the absence of an article
13 provision, bylaw provision or private agreement described in
14 subsection 2, this section does not require the acquisition of
15 shares in the event of a shareholder's becoming a disqualified
16 person if the disqualification lasts no more than 5 months from
17 the date the disqualification or the transfer of shares pursuant
18 to subsection 1 occurs.

20 5. Other benefits unaffected. Nothing in this section or
21 section 744 prevents or relieves a professional corporation from
22 paying pension benefits or other deferred compensation for
23 services rendered to a former shareholder if otherwise permitted
24 by law.

26 **§744. Acquisition procedure**

28 1. Written notice. In the absence of an article provision,
29 bylaw provision or private agreement described in section 743,
30 subsection 2, if shares must be acquired under section 743, a
31 professional corporation shall deliver a written notice to the
32 executor or administrator of the estate of its deceased
33 shareholder, or to the disqualified person or transferee,
34 offering to purchase the shares at a price the corporation
35 believes represents their fair value as of the date of death,
36 disqualification or transfer. The offer notice must be
37 accompanied by the corporation's balance sheet for a fiscal year
38 ending not more than 16 months before the effective date of the
39 offer notice, an income statement for that year, a statement of
40 changes in shareholders' equity for that year and the latest
41 available interim financial statements, if any.

42 2. Option period. A disqualified person has 30 days from
43 the effective date of the notice provided pursuant to subsection
44 1 to accept the professional corporation's offer or demand that
45 the corporation commence a proceeding under section 745 to
46 determine the fair value of that disqualified person's shares.
47 If the disqualified person accepts the offer, the corporation
48 shall make payment for the shares within 60 days from the
49 effective date of the offer notice, unless a later date is agreed
50

2 on, upon the disqualified person's surrender of the shares to the
corporation.

4 3. Termination of interest. After a professional
corporation makes payment for shares in accordance with this
6 section, a disqualified person has no further interest in those
shares.

8
10 **§745. Court action to appraise shares**

12 1. Demand for proceeding. If a disqualified person does
not accept a professional corporation's offer under section 744,
14 subsection 2 within the 30-day period, the disqualified person at
any time during the 60-day period following the effective date of
16 the notice may deliver a written notice to the corporation
demanding that it commence a proceeding to determine the fair
18 value of the shares. The corporation may commence a proceeding
at any time during the 60 days following the effective date of
20 its offer notice. If the corporation does not commence such a
proceeding, the disqualified person may commence a proceeding
22 against the corporation to determine the fair value of those
shares.

24 2. Court procedure. A professional corporation or
disqualified person shall commence a proceeding under this
26 section in the Superior Court of the county where the
corporation's principal office or, if there is no principal
28 office in this State, its registered office is located. The
corporation shall make the disqualified person a party to the
30 proceeding as in an action against the disqualified person's
shares. The jurisdiction of the court in which the proceeding is
32 commenced is plenary and exclusive.

34 3. Appraisers. The court may appoint one or more persons
as appraisers to receive evidence and recommend decision on the
36 question of fair value. The appraisers have the power described
in the order appointing them or in any amendment to it.

38
40 4. Valuation date. A disqualified person is entitled to
judgment for the fair value of the person's shares determined by
42 the court as of the date of death, disqualification or transfer
together with interest from that date at a rate found by the
44 court to be fair and equitable.

46 5. Payment installments. The court may order a judgment
ordered under this section paid in installments determined by the
48 court.

50 **§746. Court costs and fees of experts**

1 1. Assessment of costs. The court in an appraisal
2 proceeding commenced under section 745 shall determine all costs
3 of the proceeding, including the reasonable compensation and
4 expenses of appraisers appointed by the court, and shall assess
5 the costs against the professional corporation; except that the
6 court may assess costs against the disqualified person in an
7 amount the court finds equitable if the court finds the person
8 acted arbitrarily, vexatiously or not in good faith in refusing
9 to accept the corporation's offer.

10
11 2. Assessment against corporation. In addition to costs
12 assessed under subsection 1, the court may assess the fees and
13 expenses of counsel and experts for a disqualified person against
14 the professional corporation and in favor of the person if the
15 court finds that the fair value of the person's shares
16 substantially exceeded the amount offered by the corporation or
17 that the corporation did not make an offer.

18 **§747. Cancellation of disqualified shares**

19
20 If the shares of a disqualified person are not acquired
21 pursuant to section 743 within 10 months after the death of the
22 shareholder or within 5 months after the disqualification or
23 transfer, the professional corporation shall immediately cancel
24 the shares on its books and the disqualified person has no
25 further interest as a shareholder in the corporation other than
26 the right to payment for the shares under section 743.

27
28
29
30 **SUBCHAPTER IV**

31 **GOVERNANCE**

32
33 **§751. Directors and officers**

34
35 Not less than a majority of the directors of a professional
36 corporation and all of its officers, except the clerk, secretary
37 and treasurer, if any, must be qualified persons with respect to
38 the corporation.

39 **§752. Voting of shares**

40
41 1. Right to vote. Except as otherwise provided in this
42 section, only a qualified person may vote the shares of a
43 professional corporation.

44
45 2. Proxies. Only a qualified person may be appointed a
46 proxy to vote shares of a professional corporation.
47
48

2 3. Voting trusts. A voting trust with respect to shares of
a professional corporation is not valid unless all of its
4 trustees and beneficiaries are qualified persons; except that, if
a beneficiary who is a qualified person dies or becomes a
6 disqualified person, a voting trust valid under this subsection
continues to be valid for 10 months after the date of death or
for 5 months after the disqualification occurred.

8
10 4. Limited voting right. Any shares transferred to a
disqualified person by reason of the death of a qualified person
or by operation of law may be voted by such disqualified person
12 only for the purposes of amending the articles of incorporation
to convert to a regular business corporation or dissolving the
14 professional corporation.

16 §753. Responsibility for professional services

18 1. Relationship between professional and recipient of
services. This chapter does not modify the liability of a person
20 rendering a professional service with respect to that service.

22 2. Shareholder liability for debts and claims. Except as
provided in subsection 3, the liability of shareholders for the
24 debts of and claims against a corporation is the same as that of
shareholders of a business corporation.

26
28 3. Shareholder liability arising from rendering
professional service. A shareholder is jointly and severally
liable for claims arising from the rendering of a professional
30 service by a domestic professional corporation or foreign
professional corporation if that shareholder:

32
34 A. Personally and directly participated in rendering that
portion of a professional service that was performed
negligently or in breach of any other legal duty; or

36
38 B. Directly supervised and controlled that portion of a
professional service rendered by another person that was
performed negligently or in breach of any other legal duty.

42 SUBCHAPTER V

44 REORGANIZATION AND TERMINATION

46 §761. Merger

48 1. Merger allowed. A professional corporation may merge
with another domestic professional corporation or foreign
50 professional corporation or with a domestic or foreign business

2 entity as defined in Title 13-C if all the interest holders of
3 the constituent entities are qualified to be interest holders of
4 the surviving entity.

6 2. Compliance. After a merger in accordance with
7 subsection 1, if the surviving corporation is to render in this
8 State any of the professional services described in section 723,
9 subsection 7, paragraph A, the surviving corporation must comply
10 with this Act.

12 **§762. Termination of professional activities**

14 If a professional corporation ceases to render professional
15 services, it must amend its articles of incorporation to delete
16 references to rendering professional services and to conform its
17 corporate name to the requirements of Title 13-C, section 401.
18 After the amendment becomes effective, the corporation may
19 continue in existence as a business corporation under Title 13-C
20 and the corporation is no longer subject to this Act.

22 **§763. Judicial dissolution**

24 The Attorney General may commence a proceeding under Title
25 13-C, sections 1430 to 1433 to dissolve a professional
26 corporation if:

28 1. Service of notice of violation. The Secretary of State
29 serves written notice on the professional corporation under Title
30 13-C, section 502 that it has violated or is violating a
31 provision or provisions of this Act;

32 2. Failure to correct. The professional corporation does
33 not correct each alleged violation or demonstrate to the
34 reasonable satisfaction of the Secretary of State that the
35 violation or violations did not occur, within 60 days after
36 service of the notice is perfected under Title 13-C, section 502;
37 and

38 3. Certify. The Secretary of State certifies to the
39 Attorney General a description of the violation or violations,
40 that it notified the professional corporation of the violation or
41 violations and that the corporation did not correct the violation
42 or violations or demonstrate that the violation or violations did
43 not occur, within 60 days after perfection of service of the
44 notice.

48 **SUBCHAPTER VI**

50 **FOREIGN PROFESSIONAL CORPORATIONS**

2 **§771. Authority to transact business**

4 1. Prohibition. Except as provided in subsection 3, a
6 foreign professional corporation may not transact business in
 this State until it obtains authority from the Secretary of State.

8 2. Preconditions. A foreign professional corporation may
10 not obtain authority to transact business in this State unless:

12 A. Its corporate name satisfies the requirements of section
 736;

14 B. It is incorporated for one or more of the purposes
16 described in section 732; and

18 C. All of its shareholders, not less than a majority of its
20 directors and all of its officers other than its clerk,
22 secretary and treasurer, if any, are licensed in one or more
 states to render a professional service described in its
 articles of incorporation.

24 3. Office required. A foreign professional corporation is
26 not required to obtain authority to transact business in this
 State unless it maintains or intends to maintain an office in
 this State for conduct of business or professional practice.

28 **§772. Application for authority to transact business**

30 The application of a foreign professional corporation for
32 authority to render professional services in this State must
34 contain the information set forth in Title 13-C, section 1503 and
36 in addition include a statement that all of its shareholders, not
 less than a majority of its directors and all of its officers
 other than its clerk, secretary and treasurer, if any, are
 licensed in one or more states to render a professional service
 described in its articles of incorporation.

38 **Sec. B-3. Application to existing corporations.**

40 1. Existing professional corporations. This Act applies to
42 every corporation incorporated under the Maine Revised Statutes,
44 Title 13, former chapter 22. An existing professional
46 corporation to which this Act applies need not amend its articles
48 of incorporation to specify the professional service that it
 renders as of the effective date of this Act. A professional
 corporation that is in existence on the effective date of this
 Act shall amend its articles of incorporation if, after the
50 effective date of this Act, that professional corporation engages
 in any additional professional service, which amendment must

2 specify all professional services to be engaged in by the
professional corporation.

4 **2. Other corporations.** This Act does not apply to a
corporation that is or will be incorporated under a law of this
6 State that is not repealed by this Act unless the corporation
elects professional corporation status under the Maine Revised
8 Statutes, Title 13, section 731.

10 **3. Other rights unaffected.** This Act does not affect any
right or privilege to render professional services through the
12 use of any other form of business entity.

14 **Sec. B-4. Saving provisions.**

16 **1. Effect of repeal.** Except as provided in subsection 2,
the repeal of the Maine Revised Statutes, Title 13, chapter 22 by
18 this Act does not affect:

20 A. The operation of the statute or any action taken under
it before its repeal;

22 B. Any ratification, right, remedy, privilege, obligation
24 or liability acquired, accrued or incurred under the statute
before its repeal;

26 C. Any violation of the statute, or any penalty, forfeiture
28 or punishment incurred because of the violation, before its
repeal;

30 D. Any proceeding, reorganization or dissolution commenced
32 under the statute before its repeal, and the proceeding,
reorganization or dissolution may be completed in accordance
34 with the statute as if it had not been repealed; and

36 E. Any provision in an existing professional corporation's
articles of incorporation or bylaws that is legal and
38 enforceable as of the date of the adoption of this Act.

40 **2. Reduction in penalty or punishment.** If a penalty or
punishment imposed for violation of a statute repealed by this
42 Act is reduced by this Act, the penalty or punishment if not
already imposed must be imposed in accordance with this Act.

44 **Sec. B-5. Revisor's review; cross-references.** The Revisor of
46 Statutes shall review the Maine Revised Statutes and include in
the errors and inconsistencies bill submitted to the First
48 Regular Session of the 121st Legislature pursuant to Title 1,
section 94 any sections necessary to correct and update any

2 cross-references in the statutes to provisions of law repealed in
this Act.

4 **Sec. B-6. Authorization to report out legislation.** The joint
standing committee of the Legislature having jurisdiction over
6 judiciary matters may report out to the First Regular Session of
the 121st Legislature legislation to make any conforming changes
8 necessitated by this Act.

10 **Sec. B-7. Effective date.** This Act takes effect July 1, 2003.'

12 Further amend the bill by inserting at the end before the
summary the following:

14

FISCAL NOTE

16

The net impact of changes in the fees charged under the
18 Model Business Corporation Act will be a minor increase in the
General Fund revenues collected by the Secretary of State.

20

The Secretary of State will incur some minor additional
22 costs to administer certain changes in business corporation
laws. These costs can be absorbed within the department's
24 existing budgeted resources.'

26

SUMMARY

28

This amendment replaces the bill, which was a concept draft.

30

1. It repeals the Maine Revised Statutes, Title 13-A and
32 replaces it with a new Title 13-C, entitled the "Maine Business
Corporation Act." The language of Title 13-C was developed by
34 the Corporate Law Revision Committee of the Business Law Section
of the Maine State Bar Association, in association with the
36 Office of the Secretary of State, collectively referred to in
this summary as "the revision committee."

38

The revision committee also submitted a comprehensive report to
40 the Joint Standing Committee on Judiciary, dated November 14,
2001, that reviewed the reasons for the revision, why the Model
42 Business Corporation Act was chosen, the drafting principles that
guided the revision committee and the highlights of principal
44 differences between the proposed legislation and current Maine
law. The report was placed on the web site of the Office of the
46 Secretary of State and was widely disseminated by the Maine State
Bar Association.

48

2 Title 13-A, enacted in 1971, was based on the 1969 Model Business
3 Corporation Act developed by the American Bar Association. The
4 American Bar Association adopted a revised version of that Act in
5 1984, and that version has been regularly updated. The revision
6 committee reviewed the current version of the Act, compared it to
7 current Maine law and developed a proposal that follows the Model
8 Business Corporation Act in most respects, with some changes
9 necessary to preserve important unique aspects of Maine law.

10 Adopting most of the Model Business Corporation Act allows Maine
11 businesses and the lawyers and other professionals who assist
12 them to take advantage of the experience and interpretive
13 guidance of the states that have adopted the Act, as well as the
14 guidance provided by the Official Comments to the Model Business
15 Corporation Act, which elucidates the meaning and intent of the
16 drafters. To supplement the Model Business Corporation Act
17 comments, the revision committee developed Maine comments, which
18 explain the intent of the drafters of the Maine Business
19 Corporation Act.

20
21 2. Among the significant provisions of the proposed
22 legislation are the following. The proposed Maine Business
23 Corporation Act:

24
25 A. Simplifies the requirements for filing documents with
26 the Secretary of State; establishes rules for electronic
27 filing; and simplifies the Secretary of State's process for
28 reviewing proposed corporate names;

29
30 B. Spells out limits on a corporation's ability to limit or
31 eliminate the personal liability of a director;

32
33 C. Increases flexibility for corporations to manage
34 financial matters by eliminating requirements relating to
35 "legal capital," "common" or "preferred" shares, "par value"
36 and "treasury shares";

37
38 D. Establishes an "opt-in" provision for preemptive rights;

39
40 E. Provides greater flexibility for privately held
41 corporations to use shareholder agreements;

42
43 F. Removes the current requirement for a minimum number of
44 directors;

45
46 G. Provides greater specificity and clarity regarding the
47 standards of conduct required of directors and officers,
48 focusing on the manner in which duties are performed;

- 2 H. Provides greater specificity and clarity regarding
indemnification of directors and officers;
- 4 I. Enacts specific provisions regarding domestication and
conversion of business entities;
- 6
8 J. Grants general authority to corporations to amend their
articles of incorporation, rather than listing specific
10 permissible amendments; requires all amendments to be
approved by the board of directors before being submitted to
12 the shareholders; and authorizes the board of directors to
make nonsubstantive amendments without a shareholder vote;
and
- 14
16 K. Sets standards regarding the quantity of shareholder
approval required for certain transactions and the ability
of the corporation to elect a different standard.
- 18
20 3. Among the differences between the Model Business
Corporation Act and this Act are the following. The proposed
Maine Business Corporation Act:
- 22
24 A. Continues the office of clerk and allows corporate
records to be kept at the office of the clerk;
- 26
28 B. Preserves the streamlined process for forming
"directorless" corporations, managed directly by
shareholders;
- 30
32 C. Carries forward the concept of "close corporations" and
several provisions specific to such corporations;
- 34
36 D. Continues to allow directors to consider the interests
of certain "other constituencies," including employees and
the community, in carrying out their duties and preserves
the presumption that a 2/3 vote is necessary to remove a
director in mid-term;
- 38
40 E. Continues the Maine law stating that a director vote is
not required for certain corporate actions if the
shareholders by unanimous consent approve the matter;
- 42
44 F. Preserves the application of existing Maine law, Title
13-A, sections 611-A and 910 to the acquisition of a
46 significant interest in publicly held Maine corporations; and
- 48 G. Continues Maine practices and rules regarding the filing
and content of annual reports.

R. of S.

COMMITTEE AMENDMENT "A" to H.P. 283, L.D. 361

2 4. The amendment also repeals the current Professional
3 Service Corporation Act and replaces it with a revised
4 Professional Services Corporation Act. The revised act is based
5 on language developed by the American Bar Association as a
6 supplement to the Model Business Corporation Act. The revised
7 Professional Services Corporation Act clarifies which professions
8 are subject to the Act and which professions may elect to be
9 subject to the Act. It also allows the formation of corporations
10 by members of more than one profession, if the licensing
11 authorities of those professions allow such practices. The Act
12 retains the same provisions regarding shareholder liability as in
13 current law and allows a minority of director positions to be
14 held by nonprofessionals. The Act also provides rules for
15 foreign professional corporations that perform professional
16 services in the State and allows mergers with domestic or foreign
professional service corporations and business entities under
certain circumstances.