

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1128, L.D. 1539, Bill, "An Act To Amend the Laws Relating to Corporations, Limited Partnerships, Limited Liability Companies, Limited Liability Partnerships and Marks"

Amend the bill in Part B in section 7 by striking out all of the first 3 lines (page 3, lines 44 to 47 in L.D.) and inserting in their place the following:

'Sec. B-7. 13-B MRSA §102, sub-§§5-B, 6-A and 9-A are enacted to read:

5-B. Entity. "Entity" has the same meaning as set out in'

Further amend the bill in Part B in section 33 in that part designated "§121." in subsection 10 by striking out all of paragraph A (page 14, lines 33 to 36 in L.D.) and inserting in its place the following:

'A. The manner in which the facts will operate upon the terms of the plan or filed document must be set forth in the plan or filed document.'

Further amend the bill in Part B in section 33 in that part designated "§121." in subsection 10 in paragraph B in the first line (page 14, line 38 in L.D.) by striking out the following: "extrinsic"

Further amend the bill in Part B in section 56 in that part designated "§601." in subsection 1 in the 4th line (page 24, line 12 in L.D.) by striking out the following: "or series" and inserting in its place the following: 'and series'

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT "A" to H.P. 1128, L.D. 1539

2 Further amend the bill in Part B by inserting after section
68 the following:

4 'Sec. B-69. 13-C MRSA §872, sub-§2, ¶¶A and B, as enacted by
6 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to
read:

8 A. ~~The---directors'~~ Directors' action respecting the
10 transaction was at any time taken in compliance with section
873;

12 B. ~~The---shareholders'~~ Shareholders' action respecting the
14 transaction was at any time taken in compliance with section
874; or

16 **Sec. B-70. 13-C MRSA §873, sub-§1**, as enacted by PL 2001, c.
18 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

20 1. **Action respecting transaction.** ~~A-directors'~~ Directors'
22 action respecting a transaction is effective for purposes of
section 872, subsection 2, paragraph A if the transaction
24 received the affirmative vote of a majority, but no fewer than 2,
of those qualified directors on the corporation's board of
26 directors or on a duly empowered committee of the board of
directors who voted on the transaction after either required
28 disclosure to them, to the extent the information was not known
by them, or compliance with subsection 2, except that action by a
committee is effective under this section only if:

30 A. All of the committee's members are qualified directors;
32 and

34 B. The committee's members are either all the qualified
36 directors on the board or are appointed by the affirmative
vote of a majority of the qualified directors on the board.

38 **Sec. B-71. 13-C MRSA §873, sub-§3**, as enacted by PL 2001, c.
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

40 3. **Quorum.** A majority, but no fewer than 2, of all the
42 qualified directors on the corporation's board of directors or on
a committee of the corporation's board of directors, constitutes
44 a quorum for purposes of action that complies with this section.
~~The---directors'~~ Directors' action that otherwise complies with
46 this section is not affected by the presence or vote of a
director who is not a qualified director.'

48 Further amend the bill in Part B by inserting after section
50 69 the following:

2 'Sec. B-70. 13-C MRSA §874, sub-§4, as enacted by PL 2001, c.
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

4 **4. Identification of holdings.** For purposes of compliance
with subsection 1, a director who has a conflicting interest
6 respecting the transaction shall, before the shareholders' vote,
inform the secretary or other officer or agent of the corporation
8 authorized to tabulate votes of the number of all shares and the
identity of persons holding or controlling the vote of all shares
10 that the director knows are beneficially owned or the voting of
which is controlled by the director or by a related person of the
12 director, or both.'

14 Further amend the bill in Part B in section 70 by striking
out all of subsection 5 (page 37, lines 9 to 15 in L.D.) and
16 inserting in its place the following:

18 '**5. Transitional rule.** If any debt security, note or
similar evidence of indebtedness for money borrowed, whether
20 secured or unsecured, or a contract of any kind issued, incurred
or executed by a domestic business corporation before July 1,
22 2003 contains a provision applying to a merger of the corporation
and the document does not refer to a domestication of the
24 corporation, the provision is deemed to apply to a domestication
of the corporation until ~~such--time--after--that--date--as~~ the
26 provision is amended.'

28 Further amend the bill in Part B by striking out all of
section 86 and inserting in its place the following:

30 '**Sec. B-86. 13-C MRSA §955, sub-§2,** as enacted by PL 2001, c.
32 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

34 **2. Conversion to domestic business corporation.** After the
conversion of a domestic unincorporated entity to a domestic
36 business corporation has been adopted and approved as required by
the organic law of the unincorporated entity, articles of entity
38 conversion must be executed on behalf of the unincorporated
entity by an officer or other duly authorized representative of
40 the ~~corporation~~ unincorporated entity. The articles must:

42 A. Set forth the name of the unincorporated entity
immediately before the filing of the articles of entity
44 conversion and the name to which the name of the
unincorporated entity is to be changed, which must be a name
46 that satisfies the requirements of section 401;

48 B. Set forth a statement that the plan of entity conversion
was duly approved in accordance with the organic law of the
50 unincorporated entity; and

2 C. Either contain all the provisions that section 202,
3 subsection 1 requires to be set forth in articles of
4 incorporation with any other desired provisions that section
5 202, subsection 2 permits to be included in articles of
6 incorporation or have attached articles of incorporation;
7 except that, in either case, provisions that would not be
8 required under chapter 10 to be included in restated
9 articles of incorporation of a domestic business corporation
10 may be omitted.

12 **Sec. B-87. 13-C MRSA §955, sub-§3**, as enacted by PL 2001, c.
13 640, Pt. A, §2 and affected by Pt. B, §7 and affected by RR 2001,
14 c. 2, Pt. A, §23, is amended to read:

16 **3. Conversion by law of foreign jurisdiction.** After the
17 conversion of a foreign unincorporated entity to a domestic
18 business corporation is authorized as required by the laws of the
19 foreign jurisdiction, articles of entity conversion must be
20 executed on behalf of the foreign unincorporated entity by an
21 officer or other duly authorized representative of the
22 ~~corporation~~ unincorporated entity. The articles must:

24 A. Set forth the name of the unincorporated entity
25 immediately before the filing of the articles of entity
26 conversion and the name to which the name of the
27 unincorporated entity is to be changed, which must be a name
28 that satisfies the requirements of section 401;

30 B. Set forth the jurisdiction under the laws of which the
31 unincorporated entity was organized immediately before the
32 filing of the articles of entity conversion and the date on
33 which the unincorporated entity was organized in that
34 jurisdiction;

36 C. Set forth a statement that the conversion of the
37 unincorporated entity was duly approved in the manner
38 required by its organic law; and

40 D. Either contain all the provisions that section 202,
41 subsection 1 requires to be set forth in articles of
42 incorporation with any other desired provisions that section
43 202, subsection 2 permits to be included in articles of
44 incorporation or have attached articles of incorporation;
45 except that, in either case, provisions that would not be
46 required by chapter 10 to be included in restated articles
47 of incorporation of a domestic business corporation may be
48 omitted.'

2 Further amend the bill in Part B in section 89 in the first
line (page 44, line 44 in L.D.) by striking out the following:
"sub-8" and inserting in its place the following: 'sub-§8'

4
6 Further amend the bill in Part B by inserting after section
104 the following:

8 'Sec. B-105. 13-C MRSA §1402, sub-§5, as enacted by PL 2001,
10 c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the
following enacted in its place:

12 5. Adoption of dissolution by majority. Unless the
14 corporation's articles of incorporation or the corporation's
board of directors acting pursuant to subsection 3 requires a
16 greater vote, approval of the proposal to dissolve requires the
approval of the shareholders by a majority of all the votes
18 entitled to be cast on the proposal by that voting group and, if
any class or series is entitled to vote as a separate voting
20 group on the proposal, the approval of each separate voting group
by a majority of all the votes entitled to be cast on the
22 proposal by that voting group. The corporation's articles of
incorporation may provide that a proposal to dissolve may be
24 approved by a lesser vote of each voting group entitled to vote
on the proposal, but in no case by less than a majority of the
26 votes cast by that voting group at a meeting at which there
exists for each such voting group a quorum consisting of at least
28 a majority of the votes entitled to be cast on the proposal by
each voting group entitled to vote on the proposal.'

30 Further amend the bill in Part B by inserting after section
113 the following:

32 'Sec. B-114. 13-C MRSA §1503, sub-§1, ¶E, as enacted by PL
34 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to
read:

36
38 E. The address of its registered office in this State and
the name of its registered agent at that office, including
40 the street address and a mailing address, if different. For
the address, a post office box alone is not sufficient to
42 meet the requirements of this paragraph; and'

44 Further amend the bill in Part B by inserting after section
128 the following:

46 'Sec. B-129. 13-C MRSA §1701, sub-§1, as enacted by PL 2001,
48 c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

1. **Application.** Except as provided in subsection 2, this Act applies to all domestic corporations in existence on the effective date of this Act that were incorporated under any general statute of this State providing for incorporation of corporations for profit or with shares or under any act providing for the creation of special classes of corporations and any corporation created by special act of the Legislature, if power to amend or repeal the law under which the corporation was incorporated was reserved. Nothing contained in this Act is intended to alter or codify the business judgment rule as developed by the courts of this State or to limit its further development.

Further amend the bill in Part C in section 11 in the 2nd line (page 74, line 18 in L.D.) by striking out the following: "further"

Further amend the bill in Part C by striking out all of section 48 (page 92, lines 11 and 12 in L.D.) and inserting in its place the following:

'Sec. C-48. 31 MRSA §871, sub-§21, as enacted by PL 1997, c. 376, §72, is repealed.'

Further amend the bill by inserting after Part C and before the emergency clause the following:

PART D

Sec. D-1. 7 MRSA §1015, first ¶, as amended by PL 1971, c. 622, §21, is further amended to read:

The applicant shall file an application on forms as prescribed and furnished by the commissioner, which ~~forms shall~~ must contain the full name of the person applying for such the license, and, if the applicant ~~be~~ is a corporation, partnership, association, exchange, or legal representative ~~of~~ of a corporation, partnership, association or exchange, all such names and positions ~~are to be stated on the application.~~ If the applicant is a foreign corporation, it shall certify that it is ~~registered with the Secretary of~~ authorized to transact business in the State under ~~former~~ former Title 13-A, chapter 12 or Title 13-C, chapter 15, and further state the principal business address of the applicant in the State ~~of Maine~~ or elsewhere, the address of all places of business in the State ~~of Maine,~~ and the name or names of the person or persons authorized to receive and accept service of lawful process upon the applicant within the State ~~of Maine.~~

All questions required to be answered in the application for licenses shall must be sworn to, and intentionally untruthful answers shall constitute the crime of perjury.

Sec. D-2. 9-B MRSA §314-A, sub-§1, ¶A, as enacted by PL 1997, c. 398, Pt. C, §12, is repealed and the following enacted in its place:

A. The articles of incorporation must contain the following statement:

"The purpose of this corporation is to conduct the business of a financial institution as limited by the Maine Revised Statutes, Title 9-B or any rules, orders or certificates under Title 9-B."

Articles of incorporation or amendments to articles of incorporation must have the prior written approval of the superintendent.

Sec. D-3. 9-B MRSA §323, sub-§3, as enacted by PL 1975, c. 500, §1, is amended to read:

3. Submission to Secretary of State. Following the meeting required under subsection 2, the directors so elected shall submit an attested copy of the institution's articles of incorporation to the Secretary of State, who shall determine whether such articles satisfy the filing requirements of Title ~~13-A~~ 13-C. If such filing requirements are met and the superintendent has approved said articles, the Secretary of State shall file the articles of incorporation pursuant to Title ~~13-A, chapter--4~~ 13-C, chapter 1, subchapter 2. The filing of the articles of incorporation by the Secretary of State shall does not authorize the transaction of business by the financial institution until all conditions of this section are satisfied.

Sec. D-4. 9-B MRSA §327, first ¶, as enacted by PL 1975, c. 500, §1, is amended to read:

Except as provided in this section, the powers and duties of officers and directors of a financial institution organized under this chapter shall must be pursuant to Title ~~13-A~~ 13-C.

Sec. D-5. 9-B MRSA §327, sub-§3, ¶C, as amended by PL 1979, c. 663, §38, is further amended to read:

C. The clerk or secretary shall exercise the following powers.

(1) The clerk or secretary shall record or cause to be recorded the proceedings and actions of all meetings of the incorporators, members or directors, and give or cause to be given all notices required by law or action of the directors for which no other provision is made. If no person is elected to this office, the treasurer, or in his the treasurer's absence another officer of the institution designated by the directors, shall must be ex officio clerk of the institution and of the directors.

(2) Within 30 days after the annual meeting of the board for election of officers, the clerk shall cause to be published in a local newspaper of general circulation in the county where the institution's principal office is located, or in such other newspapers as the superintendent may designate, a list of the officers and directors thereof of the institution. He The clerk shall return a copy of such the list of officers and directors to the superintendent within said that 30 days, which shall must be kept on file in the superintendent's office for public inspection.

(3) The clerk or secretary, in the absence of a provision in the bylaws to the contrary, shall perform the functions of clerk in accordance with Title ~~13-A,~~ section-304 13-C.

Sec. D-6. 13 MRSA §337, as amended by PL 1971, c. 565, §1, is further amended to read:

§337. Books produced for trial; refusal

When a suit or prosecution is pending for a violation, either of sections 334 to 336 or to enforce the liabilities created by Title ~~13-A 13-C,~~ section 624-or-section-720 833, the clerk or person having custody of the books of the corporation shall, upon reasonable written notice, produce them on trial; and for neglect or refusal to do so, he the person is liable to the same fine or imprisonment as the party on trial would be.

Sec. D-7. 13 MRSA §741, sub-§1, ¶A-1 is enacted to read:

A-1. Nonlicensed individuals authorized to organize with licensed individuals pursuant to section 732, subsection 3;

Sec. D-8. 13 MRSA §1978, sub-§§2 and 4, as enacted by PL 1983, c. 136, are amended to read:

2 **2. Payment.** Each member of an employee cooperative
3 corporation shall must be issued a membership share upon payment
4 of a membership fee, the amount of which shall must be determined
5 from time to time by the directors. Title ~~13-A,--section-505,~~
6 ~~13-C, section 621~~ does not apply to membership shares.

8 **4. Voting stock limited.** Unless otherwise provided in this
9 subchapter or in the articles of incorporation of an employee
10 cooperative, no other capital stock other than membership shares
11 may have voting power. In the event that proposed amendments to
12 the articles of incorporation would adversely affect any
13 nonvoting class of shareholders, such action may not be taken
14 without the vote of those shareholders, as provided in Title 13-A
15 ~~13-C,~~ sections ~~805~~ 1003 and ~~806~~ 1004.

16 **Sec. D-9. 13 MRSA §1979,** as enacted by PL 1983, c. 136, is
17 amended to read:

18 **§1979. Amendment of bylaws**

20 The bylaws of an employee cooperative may only be amended by
21 members, except as provided in Title 13-A ~~13-C,~~ section ~~602~~ 207.

24 **Sec. D-10. 13 MRSA §1982, sub-§4,** as enacted by PL 1983, c.
25 136, is amended to read:

26 **4. Exceptions.** Title 13-A ~~13-C,~~ section 909, 1302 does not
27 apply to an internal capital account cooperative.

30 **Sec. D-11. 13-B MRSA §202, sub-§1, ¶¶K and L,** as enacted by PL
31 1977, c. 525, §13, are amended to read:

32 K. To enter into contracts of guaranty or suretyship,
33 unless in doing so the corporation would be engaging in an
34 activity prohibited to business corporations organized under
35 Title ~~13-A,--section-401~~ 13-C;

38 L. To lend money, invest its funds from time to time, and
39 take and hold any property, including, but not limited to,
40 real property, as security for payment of funds so loaned or
41 invested, unless in doing so the corporation would be
42 engaging in a business prohibited to business corporations
43 organized under Title ~~13-A,--section-401~~ 13-C;

44 **Sec. D-12. 13-C MRSA §603, sub-§2,** as enacted by PL 2001, c.
45 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

48 **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
651.

Sec. D-13. 24-A MRSA §3486, sub-§6, as enacted by PL 1977, c.
377, is amended to read:

6. A dissenting shareholder shall file, within 20 days after the delivery to ~~him~~ that shareholder of either a copy of the plan or a summary thereof of the plan pursuant to subsection 4, a written notice of ~~his~~ the shareholder's election to dissent from the plan and a demand for payment of the fair value of ~~his~~ the shareholder's shares. ~~Such~~ The notice and demand shall ~~must~~ be filed with the company ~~which~~ that adopted the plan by personally delivering it, or by mailing it via certified or registered mail, to ~~such~~ the company at its registered office within this State or to its principal place of business ~~or to the address given to the Secretary of State pursuant to Title 13-A, section 906, subsection 4, paragraph B~~ as shown on 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 Title 13-C, section 130.

Sec. D-14. 24-A MRSA §3486, sub-§10, as enacted by PL 1977, c.
377, is amended to read:

10. If, within the additional 20-day period prescribed by subsection 9, one or more dissenting shareholders and the company have failed to agree as to the fair value of the shares, then ~~Title 13-A, section 909, subsections 9, 11, 12 and 13, shall be applicable~~ 13-C, chapter 13, subchapter 3 applies, except that:

A. The term "the corporation" as used ~~therein shall be in that subchapter is~~ is deemed to refer to the company ~~which that~~ adopted a plan pursuant to subsection 2;

~~B. The reference in Title 13-A, section 909, subsection 9, paragraph G to the date on which a vote was taken on the proposed corporate action shall be deemed to refer to the date on which a plan was adopted pursuant to subsection 2;~~

C. The references in Title 13-A, ~~section 909, subsection 11 to a shareholder's "objection" and "demand" and the reference in Title 13-A, section 909, subsection 13~~ 13-C, chapter 13, subchapter 3 to a shareholder's "demand for payment under section 1327" shall ~~be is~~ deemed to refer to a shareholder's notice and demand filed pursuant to subsection 6;

~~D. The references in Title 13-A, section 909, subsection 9 to "the date on which such corporate action was effected" shall be deemed to refer to the date of delivery of the plan or a summary thereof as provided in subsection 4;~~

E. The reference in Title 13-A 13-C, section 909 1331, subsection 9, ~~paragraph A 2~~ to the county in the State where the principal office or the registered office of the domestic corporation merged with the foreign corporation is located ~~shall be~~ is deemed, where the parent corporation ~~which that~~ has adopted the plan is neither a domestic corporation nor an authorized insurer, to include the county where the registered office of the subsidiary domestic stock insurance company whose stock is being acquired is located;

~~F. The reference in Title 13-A, section 909, subsection 9, paragraph E to "this section" shall be deemed to include this section; and~~

~~G. The references in Title 13-A, section 909, subsection 9 to "subsection 8" shall be deemed to refer to subsection 9.~~

H. Title 13-C, section 1331, subsection 5, paragraph B does not apply; and

I. The reference in Title 13-C, section 1332, subsection 2, paragraph A to the corporation's failure to substantially comply with the requirements of section 1321, 1323, 1325 or 1326 is deemed to refer to the corporation's failure to comply with this section, and the reference in Title 13-C, section 1332, subsection 4 to the failure of the corporation to make required payments pursuant to sections 1325, 1326 or 1327 is deemed to refer to the failure of the corporation to make required payments under this section.

Sec. D-15. 24-A MRSA §3486, sub-§11, as enacted by PL 1977, c. 377, is repealed.

Sec. D-16. 24-A MRSA §3486, sub-§§12 and 14, as enacted by PL 1977, c. 377, are amended to read:

12. If the court determines pursuant to Title 13-A, ~~section 909, subsection 9, paragraph E~~ 13-C, chapter 113, subchapter 3 that a shareholder is not entitled to receive payment of the fair value of his the shareholder's shares because of his the shareholder's failure to satisfy the requirements of Title 13-A, ~~section 909 13-C, chapter 113, subchapter 3~~ and of this section, then the shareholder shall receive the consideration ~~which that~~ was specified as payment in exchange for his the shareholder's shares pursuant to the plan. Such payment ~~shall~~ may not include

2 the allowance for interest specified in Title ~~13-A~~ 13-C, section
909 1331, subsection ~~9~~-paragraph-G 5.

4 14. The provisions of Title ~~13-A~~-~~section-525~~, regarding
unclaimed dividends and other distributions to shareholders shall
6 33, chapter 41 apply to any unclaimed payment to which a
shareholder may be entitled under this section.

8
10 **Sec. D-17. 31 MRSA §282, sub-§5-A**, as enacted by PL 1995, c.
633, Pt. A, §1, is amended to read:

12 **5-A. Professional limited liability partnership.**
"Professional limited liability partnership" means a registered
14 limited liability partnership that, by virtue of the business
conducted by it, would be ~~subject to the~~ required to incorporate
16 under the Maine Professional Service Corporation Act if that
partnership were a corporation.

18
20 **Sec. D-18. 31 MRSA §418**, as enacted by PL 1999, c. 638, §13,
is amended to read:

22 **§418. Conversion of limited partnership**

24 **1. Definitions.** For purposes of this section, "business
entity" means any association or legal entity organized to
26 conduct business, including a domestic or foreign corporation,
limited liability company, limited partnership, general
28 partnership, limited liability partnership, joint venture, joint
stock company and business trust.

30
32 **2. Authority.** A ~~business entity~~ limited partnership may
convert to another type of business entity by complying with the
34 requirements of section 419 and Title 13-A-~~section-912~~ 13-C,
chapter 9, subchapter 4.

36 **Sec. D-19. 31 MRSA §611, first ¶**, as repealed and replaced by
PL 1995, c. 633, Pt. C, §16, is amended to read:

38
40 A limited liability company may be organized under this
chapter for any lawful purpose. If the purpose for which a
42 limited liability company is organized or its form makes it
subject to a special provision of law, the limited liability
company shall also comply with that provision. This section is
44 specifically intended to permit the formation of a professional
limited liability company by a person or persons who may form a
46 professional corporation under the Maine Professional Service
Corporation Act. The provisions of that Act are incorporated in
48 this chapter by reference, except as follows.

2 **Sec. D-20. 31 MRSA §746**, as enacted by PL 1999, c. 638, §34,
is amended to read:

4 **§746. Conversion of limited liability company**

6 **1. Definitions.** For purposes of this section, "business
entity" means any association or legal entity organized to
8 conduct business, including a domestic or foreign corporation,
limited liability company, limited partnership, general
10 partnership, limited liability partnership, joint venture, joint
stock company and business trust.

12 **2. Authority.** A business-entity limited liability company
14 may convert to another type of business entity by complying with
the requirements of section 747 and Title 13-A, section 912 13-C,
16 chapter 9, subchapter 4.

18 **Sec. D-21. 32 MRSA §1081, sub-§4**, as amended by PL 1993, c.
20 600, Pt. A, §63, is further amended to read:

22 **4. Corporations; names.** A corporation may not practice,
offer or undertake to practice or hold itself out as practicing
24 dentistry. Every person practicing dentistry as an employee of
another shall cause that person's name to be conspicuously
26 displayed and kept in a conspicuous place at the entrance of the
place where the practice is conducted. This subsection does not
28 prohibit a licensed dentist from practicing dentistry as an
employee of another licensed dentist in this State, as an
30 employee of a nonprofit corporation, as an employee of a state
hospital or state institution where the only remuneration is from
32 the State or from a corporation that provides dental service for
its employees at no profit to the corporation. This subsection
34 does not prohibit the practice of dentists who have incorporated
their practices as-permitted-by pursuant to Title 13, chapter 22
22-A.

36 **Sec. D-22. 32 MRSA §12252, sub-§3**, as amended by PL 2001, c.
38 260, Pt. F, §2, is further amended to read:

40 **3. Firm permits.** ~~Notwithstanding Title 13, section 710 and~~
~~Title 31, section 611, the~~ The following provisions apply to the
42 issuance of firm permits.

44 A. An applicant for initial issuance or renewal of a permit
to practice under this section shall show that a simple
46 majority of the ownership of the firm, in terms of financial
interests and voting rights of all partners, officers,
48 shareholders, members or managers, belongs to holders of
certificates who are licensed in a state and that all
50 partners, officers, shareholders, members or managers whose

principal place of business is in this State or who perform professional services in this State hold valid individual permits issued by the board. Firms may include nonlicensee owners in accordance with paragraph B.

B. A certified public accountancy firm or public accountancy firm may include nonlicensee owners as long as:

(1) All nonlicensee owners are individuals who actively participate in the certified public accountancy firm or public accountancy firm; and

(2) The firm complies with such other requirements as the board may impose by rule.

Sec. D-23. 35-A MRSA §2110, sub-§2, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

2. The commission's powers and limitations. The commission's powers and limitations, made applicable under this section, are those applicable by law in like cases concerning public utilities organized under Title 13-A 13-C or any prior general corporation law.

Sec. D-24. 35-A MRSA §3204, sub-§7, as enacted by PL 1997, c. 316, §3, is amended to read:

7. Corporate law; exemptions. An order of the commission directing or approving divestiture renders an electric utility and its directors, officers and shareholders exempt from Title 13-A 13-C, ~~sections 514, 517, 624 and 720~~ section 651 and from the Uniform Fraudulent Transfer Act, Title 14, chapter 504 for the matters addressed by the order. A divestiture pursuant to a commission order directing or approving the divestiture ~~does not constitute a sale of all or substantially all of the assets of a corporation within the meaning of Title 13-A, chapter 10~~ is not subject to limitations contained in the corporation's articles of incorporation and, notwithstanding Title 13-C, chapter 12, does not require shareholder approval.

Sec. D-25. 35-A MRSA §4502, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

1. Organization of corporations to construct pipelines. Corporations for the purpose of constructing and operating natural gas pipelines may be organized under Title 13-A 13-C. Following organization under former Title 13-A or Title 13-C, the corporation has all the other rights, privileges and immunities of a legal corporation organized under Title 13-A 13-C, except as they are inconsistent with this chapter.

2 **Sec. D-26. 36 MRSA §4641-C, sub-§7**, as amended by PL 1999, c.
638, §44, is further amended to read:

4
6 **7. Deeds pursuant to mergers or consolidations.** Deeds made
pursuant to mergers or consolidations ~~of business entities, as~~
8 ~~defined in Title 13-A, section 912~~ carried out pursuant to Title
13-C, chapter 11, from which no gain or loss is recognized under
the Internal Revenue Code;

10 **Sec. D-27. 39-A MRSA §102, sub-§11, ¶A**, as amended by PL 2001,
12 c. 710, §18 and affected by §19, is amended by amending
subparagraph (4) to read:

14 (4) Except for persons engaged in harvesting of forest
16 products, any person who, in a written statement to the
board, waives all the benefits and privileges provided
18 by the workers' compensation laws, provided that the
board has found that person to be a bona fide owner of
20 at least 20% of the outstanding voting stock of the
corporation by which that person is employed or a
22 shareholder of the professional corporation by which
that person is employed and that this waiver was not a
24 prerequisite condition to employment. For the purposes
of this subparagraph, the term "professional
26 corporation" ~~has the same meaning as found~~ means a
domestic or foreign professional corporation as defined
28 in Title 13, section 703 723, subsection 1.

30 Any person may revoke or rescind that person's waiver
upon 30 days' written notice to the board and that
32 person's employer. The parent, spouse or child of a
person who has made a waiver under the previous
34 sentence may state, in writing, that the parent, spouse
or child waives all the benefits and privileges
36 provided by the workers' compensation laws if the board
finds that the waiver is not a prerequisite condition
38 to employment and if the parent, spouse or child is
employed by the same corporation that employs the
40 person who has made the first waiver;

42 **Sec. D-28. 39-A MRSA §324, sub-§3, ¶C**, as enacted by PL 1991,
c. 885, Pt. A, §8 and affected by §§9 to 11 and amended by PL
44 1999, c. 547, Pt. B, §78 and affected by §80, is further amended
to read:

46 C. The employer, if organized as a corporation, is subject
48 to administrative dissolution as provided in Title 13-C,
section 1421 or revocation ~~or suspension~~ of its authority to
50 do business in this State as provided in Title 13-A 13-C,

2 section ~~1302~~ 1532. The employer, if licensed, certified,
3 registered or regulated by any board authorized by Title 5,
4 section 12004-A or whose license may be revoked or suspended
5 by proceedings in the District Court or by the Secretary of
6 State, is subject to revocation or suspension of the
license, certification or registration.'

8 Further amend the bill by relettering or renumbering any
9 nonconsecutive Part letter or section number to read
10 consecutively.

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SUMMARY

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This amendment makes technical corrections to the bill. It
17 also clarifies the application of the new Maine Revised Statutes,
18 Title 13-C, the revised Maine Business Corporation Act, and
clarifies that neither Title 13-C or its predecessor, Title 13-A,
19 is intended to restate, codify or supplant the business judgment
20 rule. The elements of the business judgment rule and the
21 circumstances for its application are developed by the courts.

22

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It also adds a new Part D to the bill and corrects
25 cross-references and makes conforming changes necessitated by
26 enactment of Public Law 2001, chapter 640, which repealed the
Maine Revised Statutes, Title 13-A and replaced it with Title
27 13-C, the "Maine Business Corporation Act" and repealed Title 13,
chapter 22 and replaced it with Title 13, chapter 22-A, the
28 "Maine Professional Service Corporation Act."
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