

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1539

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H.P. 1128

House of Representatives, April 10, 2003

**An Act To Amend the Laws Relating to Corporations, Limited Partnerships, Limited Liability Companies, Limited Liability Partnerships and Marks**

(EMERGENCY)

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Submitted by the Secretary of State pursuant to Joint Rule 204.  
Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative NORBERT of Portland.





2 requirements for licensure under Title 32, section 12252,  
3 subsection 3 are met by the firm.

4 **Sec. B-3. 13 MRSA §736, sub-§2**, as enacted by PL 2001, c. 640,  
5 Pt. B, §2 and affected by §7, is amended to read:

6  
7 **2. Assumed or fictitious name.** A domestic professional  
8 corporation or foreign professional corporation may render  
9 professional services and exercise its authorized powers under an  
10 assumed or fictitious name, as long as the corporation has ~~first~~  
11 ~~registered the name to be so used in the manner required by~~ met  
12 the requirements for filing an assumed or fictitious name under  
13 Title 13-C, section 404.

14  
15 **Sec. B-4. 13 MRSA §741, sub-§1, ¶¶C and D**, as enacted by PL  
16 2001, c. 640, Pt. B, §2 and affected by §7, are amended to read:

17 C. Professional corporations, professional limited  
18 liability companies or professional limited liability  
19 partnerships, domestic or foreign, authorized by law in this  
20 State to render a professional service described in the  
21 corporation's articles of incorporation; ~~or~~

22  
23 D. Any other entity that is authorized by law to provide  
24 the same professional service provided by the professional  
25 corporation; or

26  
27 **Sec. B-5. 13 MRSA §741, sub-§1, ¶E** is enacted to read:

28  
29 E. Any other person or entity, including employee stock  
30 ownership plans or programs and other employee ownership  
31 programs, that the licensing authority with jurisdiction  
32 over the professional corporation determines is qualified to  
33 hold shares of such a professional corporation.

34  
35 **Sec. B-6. 13-B MRSA §101**, as enacted by PL 1977, c. 525, §13,  
36 is amended to read:

37 **§101. Short title**

38  
39 This Act ~~shall~~ Title may be known and ~~may be~~ cited as the  
40 "Maine Nonprofit Corporation Act."

41  
42 **Sec. B-7. 13-B MRSA §102, sub-§§5-A, 6-A and 9-A** are enacted to  
43 read:

44  
45 **5-A. Entity.** "Entity" has the same meaning as set out in  
46 Title 13-C, section 102, subsection 11.

47  
48 **6-A. Individual.** "Individual" means a natural person.

2           **9-A. Person.** "Person" includes an individual and an entity.

4           **Sec. B-8. 13-B MRSA §301**, as amended by PL 1997, c. 633, §4,  
is repealed.

6           **Sec. B-9. 13-B MRSA §301-A** is enacted to read:

8  
10       **§301-A. Corporate name**

12           **1. Prohibition.** A corporate name may not contain language  
14       stating or implying that the corporation is organized for a  
purpose other than that permitted by section 201 and the  
corporation's articles of incorporation.

16           **2. Distinguishable name.** Except as authorized by  
18       subsections 3 and 4, a corporate name must be distinguishable on  
the records of the Secretary of State from:

20           A. The name of a corporation, limited liability company,  
22       limited liability partnership or limited partnership that is  
incorporated, organized or authorized to transact business  
24       or carry on activities in this State;

26           B. Assumed, fictitious, reserved and registered name  
filings for all entities; and

28           C. Marks registered under Title 10, chapter 301-A unless  
30       the registered owner or holder of the mark is the same  
person or entity as the corporation seeking to use a name  
32       that is not distinguishable on the records of the Secretary  
of State and files proof of ownership with the Secretary of  
34       State.

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

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

40           B. Inappropriately promotes abusive or unlawful activity;

42           C. Falsely suggests an association with public  
44       institutions; or

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

48           **4. Authorization to use name.** A corporation may apply to  
50       the Secretary of State for authorization to use a name that is  
not distinguishable on the records of the Secretary of State from

2 one or more of the names described in subsection 2. The  
3 Secretary of State shall authorize use of the name applied for if:

4 A. The entity in possession of the name consents to the use  
5 in writing and submits an undertaking in a form satisfactory  
6 to the Secretary of State as provided in sections 104 and  
7 106 or as provided in the applicable law for that entity to  
8 change its name to a name that is distinguishable on the  
9 records of the Secretary of State from the name of the  
10 applicant; or

11 B. The applicant delivers to the Secretary of State a  
12 certified copy of the final judgment of a court of competent  
13 jurisdiction establishing the applicant's right to use the  
14 name applied for in this State.

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

21 A. Has merged with the other corporation;

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

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

26 6. Determining distinguishability. In determining whether  
27 names are distinguishable on the records, the Secretary of State  
28 shall disregard the following:

29 A. The words or abbreviations of words that describe the  
30 nature of the entity, including "professional association,"  
31 "corporation," "company," "incorporated," "chartered,"  
32 "limited," "limited partnership," "limited liability  
33 company," "professional limited liability company," "limited  
34 liability partnership," "registered limited liability  
35 partnership," "service corporation" and "professional  
36 corporation";

37 B. The presence or absence of the words or symbols of the  
38 words "and" and "the"; and

39 C. The differences in the use of punctuation,  
40 capitalization or special characters.

2        7. Change of corporate name by foreign corporation. If a  
3        foreign corporation authorized to carry on activities in this  
4        State changes its corporate name to one that does not satisfy the  
5        requirements of this section, the foreign corporation may not  
6        carry on activities in this State under the proposed new name  
7        until it adopts a name satisfying the requirements of this  
8        section and files an amended application for authority under  
9        section 1207 that is accompanied by a statement of use of a  
10       fictitious name under section 308-A.

11       8. Violations of this section. If a corporation has in  
12       other respects complied with this Title and its articles of  
13       incorporation have been filed, or if a foreign corporation has in  
14       other respects satisfied this Title and has been authorized to  
15       carry on activities in this State, subsequent discovery of a  
16       violation of the foregoing provisions of this section does not  
17       invalidate its corporate existence or authority, but the courts  
18       of this State may, upon application of the State or of any  
19       interested or affected person, enjoin such violation and grant  
20       any other appropriate relief.

21       **Sec. B-10. 13-B MRSA §302**, as amended by PL 1979, c. 127,  
22       §96, is repealed.

23       **Sec. B-11. 13-B MRSA §302-A** is enacted to read:

24       §302-A. Reserved name

25       1. Reserve use of name. A person may reserve the exclusive  
26       use of a corporate name, including an assumed or fictitious name,  
27       by executing and delivering for filing as provided in section 106  
28       an application to the Secretary of State. The application must  
29       be executed by a duly authorized person and must set forth the  
30       name and address of the applicant and the name proposed to be  
31       reserved. If the Secretary of State finds that the corporate  
32       name applied for is available, the Secretary of State shall  
33       reserve the name for the applicant's exclusive use for a  
34       nonrenewable period of 120 days.

35       2. Transfer of reservation. The owner of a reserved  
36       corporate name under subsection 1 may transfer the reservation to  
37       another person by executing and delivering for filing to the  
38       Secretary of State as provided in section 106 a notice of the  
39       transfer, signed by the transferor, that states the name and  
40       address of the transferee.

41       **Sec. B-12. 13-B MRSA §303**, as corrected by RR 2001, c. 2, Pt.  
42       B, §35 and affected by §58, is repealed.

43       **Sec. B-13. 13-B MRSA §303-A** is enacted to read:



2       **§303-A. Registered name of foreign corporation**

4           **1. Register corporate name.** A foreign corporation may  
6       register its corporate name if the name is distinguishable on the  
      records of the Secretary of State pursuant to section 301-A.

8           **2. Application.** To register its corporate name, a foreign  
10       corporation must execute and deliver to the Secretary of State  
      for filing as provided in sections 104 and 106 an application  
12       that:

14           **A. Sets forth its corporate name, the state or country and**  
16       date of its incorporation, the address of its principal  
      office wherever located and a brief description of the  
      nature of the activities in which it is engaged; and

18           **B. Is accompanied by a certificate of existence or a**  
20       document of similar import duly authenticated by the  
22       secretary of state or other official having custody of  
24       corporate records in the state or country under whose law  
      the foreign corporation is incorporated. The certificate of  
      existence must have been made not more than 90 days prior to  
      the delivery of the application for filing.

26           **3. Applicant's exclusive use.** A corporate name is  
28       registered for a foreign corporation's exclusive use upon the  
      effective date of the application under subsection 2 until the  
30       end of the calendar year in which the application was filed.

32           **4. Renewal of registered name.** A foreign corporation whose  
34       registration is effective may renew the registration for a  
      successive year by delivering for filing to the Secretary of  
36       State a renewal 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.

38           **5. Qualify as foreign corporation.** A foreign corporation  
40       whose registration is effective may, after the registration is  
42       effective, qualify as a foreign corporation under the registered  
      name or may consent in writing to the use of that name by a  
44       corporation incorporated under this Title or by another foreign  
      corporation authorized to transact business in this State. The  
46       registration terminates when the domestic corporation is  
      incorporated or the foreign corporation qualifies or consents to  
48       the qualification of another foreign corporation under the  
      registered name.

2           **Sec. B-14. 13-B MRSA §308**, as amended by PL 1995, c. 458, §7,  
is repealed.

4           **Sec. B-15. 13-B MRSA §308-A** is enacted to read:

6           **§308-A. Assumed or fictitious name of corporation**

8           **1. Assumed name defined.** As used in this section, "assumed  
10 name" means a trade name, the name of a division not separately  
12 incorporated and not used in conjunction with the real corporate  
name or any name other than the real name of a corporation except  
a fictitious name.

14           **2. Fictitious name defined.** As used in this section,  
16 "fictitious name" means a name adopted by a foreign corporation  
18 authorized to carry on activities in this State because its real  
name is unavailable pursuant to section 301-A.

20           **3. Authorized to transact business.** Upon complying with  
22 this section, a domestic or foreign corporation authorized to  
carry on activities in this State may carry on its activities in  
this State under one or more assumed or fictitious names.

24           **4. File statement indicating use of assumed or fictitious**  
26 **name.** Prior to carrying on any activities in this State under an  
28 assumed or fictitious name, a corporation shall execute and  
dcliver for filing, in accordance with sections 104 and 106, a  
statement setting forth:

30           **A.** The corporate name and the address of the corporation's  
32 registered office;

34           **B.** That the corporation intends to carry on activities  
under an assumed or fictitious name;

36           **C.** The assumed or fictitious name that the corporation  
38 proposes to use;

40           **D.** If the assumed name is not to be used at all of the  
corporation's places of activity in this State, the  
42 locations where it will be used; and

44           **E.** If the corporation is a foreign corporation:

46                   (1) The jurisdiction of incorporation; and

48                   (2) The date on which it was authorized to carry on  
activities in this State.

2 A separate statement must be executed and delivered to the  
3 Secretary of State for filing with respect to each assumed or  
4 fictitious name that the corporation proposes to use.

5 5. Compliance required. An assumed or fictitious name must  
6 comply with the requirements of section 301-A.

7 6. Enjoin use of assumed or fictitious name. If a  
8 corporation uses an assumed or fictitious name without complying  
9 with the requirements of this section, the continued use of the  
10 assumed or fictitious name may be enjoined upon suit by the  
11 Attorney General or by any person adversely affected by the use  
12 of the assumed or fictitious name.

13 7. Enjoin use despite compliance. Notwithstanding its  
14 compliance with the requirements of this section, the use of an  
15 assumed or fictitious name may be enjoined upon suit of the  
16 Attorney General or of any person adversely affected by such use  
17 if:

18 A. The assumed or fictitious name did not, at the time the  
19 statement required by subsection 4 was filed, comply with  
20 the requirements of section 301-A; or

21 B. The assumed or fictitious name is not distinguishable on  
22 the records of the Secretary of State from a name in which  
23 the plaintiff has prior rights by virtue of the common law  
24 or statutory law of unfair competition, unfair trade  
25 practices, common law copyright or similar law.

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

29 8. Terminate use of assumed or fictitious name. A  
30 corporation may terminate an assumed or fictitious name by  
31 executing and delivering, in accordance with sections 104 and  
32 106, a statement setting forth:

33 A. The name of the corporation and the address of its  
34 registered office;

35 B. That the corporation no longer intends to carry on  
36 activities under the assumed or fictitious name; and

37 C. The assumed or fictitious name the corporation intends  
38 to terminate.

39 Sec. B-16. 13-B MRSA §404, sub-§1, ¶C, as amended by PL 1989,  
40 c. 501, Pt. L, §40, is further amended to read:

2 C. Do not adopt as the name of the corporation a name which  
that is in violation of section 301 301-A.

4

6 **Sec. B-17. 13-B MRSA §1202, sub-§2**, as enacted by PL 1977, c.  
525, §13, is amended to read:

8 **2. Certificate of existence.** The application of the  
corporation for authority shall ~~must~~ be accompanied by a  
10 certificate of ~~good-standing existence~~ or ~~its-equivalent-from-the~~  
~~proper-officer-of-its-jurisdiction-of-incorporation~~ a document of  
12 similar import duly authenticated by the secretary of state or  
other official having custody of corporate records in the state  
14 or country under whose law the foreign corporation is  
incorporated. Such ~~The~~ certificate of ~~good--standing--shall~~  
16 ~~existence must~~ have been made not more than 90 days prior to the  
delivery of the application for filing.

18

20 **Sec. B-18. 13-B MRSA §1205, sub-§1**, as enacted by PL 1977, c.  
525, §13, is amended to read:

22 **1. Name.** No A foreign corporation shall--be is not  
authorized to carry on activities in this State unless the name  
24 of the corporation complies with the requirements of section 301  
301-A.

26

28 **Sec. B-19. 13-B MRSA §1208, sub-§3** is enacted to read:

30

**3. Cancellation of authority.** If a foreign nonprofit  
corporation files articles of domestication and conversion as set  
30 forth in Title 13-C, chapter 9, its authority is cancelled  
32 automatically on the effective date of its domestication and  
conversion.

34

36 **Sec. B-20. 13-B MRSA §1210, sub-§§2 and 3**, as amended by PL  
1989, c. 501, Pt. L, §41, are further amended to read:

38 **2. Secretary of State to mail revocation of authority.** The  
authority of a foreign corporation shall-be is revoked only after  
40 the Secretary of State shall-have has mailed to the corporation's  
last registered office in this State and to its last registered  
42 or principal office in its jurisdiction of incorporation at least  
30-days' 60-days' notice of impending revocation of its authority  
44 to carry on activities in this State, including a specification  
of the default, and the corporation shall-fail fails, prior to  
46 revocation, to cure the default specified in such the notice.

48 **3. Certificate revoked.** After the expiration of the 30-day  
60-day period, if the foreign corporation has not cured the  
50 default or, as to the ground for revocation specified in

2 subsection 1, paragraph E, convinced the Secretary of State, by  
3 affidavit or otherwise, that there was no such misrepresentation,  
4 the Secretary of State shall issue and file a certificate  
5 revoking the foreign corporation's authority to carry on  
6 activities in this State, and shall mail copies thereof of the  
7 certificate to the corporation's last registered office in this  
8 State and to its last registered or principal office in its  
jurisdiction of incorporation.

10 **Sec. B-21. 13-B MRSA §1401, sub-§1**, as enacted by PL 1977, c.  
11 525, §13, is repealed.

12 **Sec. B-22. 13-B MRSA §1401, sub-§1-A** is enacted to read:

13 **1-A. Application for indistinguishable name.** Application  
14 for the use of an indistinguishable name as provided by section  
15 301-A, subsection 4, §5;

16 **Sec. B-23. 13-B MRSA §1401, sub-§§2 to 5**, as enacted by PL  
17 1977, c. 525, §13, are amended to read:

18 **2. Application to reserve name.** Application to reserve  
19 corporate name, as provided by section ~~302~~ 302-A, §5;

20 **3. Notice of transfer of reserved corporate name.** Notice of  
21 transfer of a reserved corporate name, as provided by section ~~302~~  
22 302-A, §5;

23 **4. Application to register corporate name.** Application to  
24 register corporate name, as provided by section ~~303~~ 303-A, \$5 per  
25 month for the number of months or fraction thereof of a month  
26 remaining in the calendar year when the application is first  
27 filed;

28 **5. Application to renew registered name.** Application to  
29 renew the registration of a registered name, as provided by  
30 section ~~303~~ 303-A, \$50;

31 **Sec. B-24. 13-B MRSA §1401, sub-§5-A**, as enacted by PL 1993,  
32 c. 316, §45, is repealed.

33 **Sec. B-25. 13-B MRSA §1401, sub-§10-A**, as enacted by PL 1983,  
34 c. 86, §5, is amended to read:

35 **10-A. Assumed or fictitious name statement.** Assumed or  
36 fictitious name statement, as provided by section ~~308~~ 308-A, \$5;

37 **Sec. B-26. 13-B MRSA §1401, sub-§10-B**, as enacted by PL 1993,  
38 c. 316, §45, is amended to read:

2           **10-B. Termination of assumed or fictitious name.**  
Termination of assumed or fictitious name, as provided by section  
308 308-A, subsection 7 8, §5;

4  
6           **Sec. B-27. 13-B MRSA §1401, sub-§30**, as amended by PL 1991, c.  
780, Pt. U, §21, is repealed.

8           **Sec. B-28. 13-C MRSA §101**, as enacted by PL 2001, c. 640, Pt.  
A, §2 and affected by Pt. B, §7, is amended to read:

10           **§101. Short title**

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

16           **Sec. B-29. 13-C MRSA §102, sub-§2-A** is enacted to read:

18           **2-A. Close corporation.** "Close corporation" means a  
20 corporation that, at any given time, has not more than 20  
shareholders of all classes of shares, whether or not the  
22 shareholders are entitled to vote. For purposes of determining  
whether a corporation is a close corporation, 2 or more persons  
24 owning shares of record in their names as joint tenants are  
counted as a single shareholder.

26           **Sec. B-30. 13-C MRSA §102, sub-§§18 and 19**, as enacted by PL  
2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
28 read:

30           **18. Individual.** "Individual" means a natural person.  
32 "~~Individual--includes the estate of an incompetent or deceased~~  
individual.

34           **19. Interest.** "~~Interests--in--an--unincorporated--entity~~  
36 Interest" means either or both of the following rights under the  
organic law of an unincorporated entity:

38           A. A right to receive distributions from ~~an unincorporated~~  
40 the entity either in the ordinary course or upon  
liquidation, including as an assignee; ~~or~~ and

42           B. A right to receive notice or vote on issues involving  
44 the internal affairs of an unincorporated entity, other than  
as an agent, assignee, proxy or person responsible for  
46 managing the business and affairs of the ~~unincorporated~~  
entity.

48           **Sec. B-31. 13-C MRSA §102, sub-§19-A** is enacted to read:

2           **19-A. Interest holder.** "Interest holder" means a person  
who holds of record an interest.

4           **Sec. B-32. 13-C MRSA §102, sub-§23,** as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

6           **23. Nonprofit corporation; domestic nonprofit corporation.**  
8 "Nonprofit corporation" or "domestic nonprofit corporation" means  
a corporation incorporated under the laws of this State and  
10 subject to the provisions of Title 13, chapter 81 or 93 or the  
Maine Nonprofit Corporation Act.

12           **Sec. B-33. 13-C MRSA §121,** as enacted by PL 2001, c. 640, Pt.  
14 A, §2 and affected by Pt. B, §7, is amended to read:

16           **§121. Requirements for documents; extrinsic facts**

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

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

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

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

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

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

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

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

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

50

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

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

6 D. By the clerk of the corporation.

8  
10 **6. Signature; corporate seal.** The person executing the  
document shall sign it and state beneath or opposite that  
12 signature the person's name and the capacity in which the person  
signs. The document may but need not contain a corporate seal,  
attestation, acknowledgment or verification.

14  
16 **7. Prescribed form.** If the Secretary of State has  
prescribed a mandatory form for the document under section 122,  
the document must be in or on the prescribed form.

18  
20 **8. Delivery.** The document must be delivered to the office  
of the Secretary of State for filing. Delivery may be made by  
22 electronic transmission if and to the extent permitted by the  
Secretary of State.

24  
26 **9. Fee.** At the time of delivery, the correct filing fee  
and any reinstatement fee or penalty must be paid or provision  
for payment made in a manner permitted by the Secretary of State.

28 **10. Extrinsic facts.** This subsection applies whenever a  
provision of this Title permits any of the terms of a plan or a  
30 filed document to be dependent on facts objectively ascertainable  
outside the plan or filed document.

32  
34 A. The manner in which the extrinsic facts upon which the  
terms of a plan or filed document depend operate upon the  
36 terms of the plan or filed document must be set forth in the  
plan or filed document.

38 B. The extrinsic facts upon which the terms of a plan or  
40 filed document depend may include, but are not limited to:

42 (1) Any of the following that is available in a  
nationally recognized news or information medium either  
44 in print or electronically:

46 (a) Statistical or market indices;

48 (b) Market prices of any security or group of  
securities;

50 (c) Interest rates;



2                   (d) Currency exchange rates; or

4                   (e) Similar economic or financial data;

6                   (2) A determination or action by any person or body,  
8                   including the corporation or any other party to a plan  
                    or filed document; or

10                  (3) The terms of, or actions taken under, an agreement  
12                  to which the corporation is a party or any other  
                    agreement or document.

14                  C. As used in this subsection:

16                   (1) "Filed document" means a document filed with the  
18                   Secretary of State under any provision of this Title  
                    except chapter 15 or section 1621; and

20                   (2) "Plan" means a plan of domestication, nonprofit  
22                   conversion, entity conversion, merger or share exchange.

24                  D. The following provisions of a plan or filed document may  
                    not be made dependent on facts outside the plan or filed  
26                  document:

28                   (1) The name and address of any person required in a  
                    filed document;

30                   (2) The registered office of any entity required in a  
32                   filed document;

34                   (3) The clerk or registered agent of any entity  
                    required in a filed document;

36                   (4) The number of authorized shares and designation of  
                    each class or series of shares;

38                   (5) The effective date of a filed document; and

40                   (6) Any required statement in a filed document of the  
42                   date on which the underlying transaction was approved  
                    or the manner in which that approval was given.

44                  E. If a provision of a filed document is made dependent on  
46                  a fact ascertainable outside of the filed document, and that  
48                  fact is not ascertainable by reference to a source described  
                    in paragraph B, subparagraph (1) or a document that is a  
50                  matter of public record, or the affected shareholders have  
                    not received notice of the fact from the corporation, then

2 the corporation shall file with the Secretary of State  
3 articles of amendment setting forth the fact promptly after  
4 the time when the fact referred to is first ascertainable or  
5 changes. Articles of amendment under this paragraph are  
6 deemed to be authorized by the authorization of the original  
7 filed document or plan to which they relate and may be filed  
8 by the corporation without further action by the board of  
9 directors or the shareholders.

10 **Sec. B-34. 13-C MRSA §123, sub-§1, ¶¶H and I,** as enacted by PL  
11 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
12 read:

14 H. For a notice of change in the name of the current clerk  
15 or registered agent or a change of a registered office for  
16 each affected corporation not to exceed a total of 100, the  
17 fee is \$20.

18 I. For a notice of change in the name of the current clerk  
19 or registered agent or a change of a registered office for  
20 each affected corporation in excess of 100, the fee is \$10.

21 **Sec. B-35. 13-C MRSA §123, sub-§1, ¶¶DD, GG and LL,** as enacted  
22 by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are  
23 amended to read:

24 DD. For an annual report or amended annual report, the fee  
25 is \$60.

26 GG. For a certificate of existence ~~or~~ authorization or  
27 fact, the fee is \$30.

28 LL. For an application for termination of an assumed or  
29 fictitious name, the fee is \$20.

30 **Sec. B-36. 13-C MRSA §123, sub-§2,** as enacted by PL 2001, c.  
31 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

32 **2. Service of process fee.** The Secretary of State shall  
33 collect a fee of \$20 each time process is served on the Secretary  
34 of State under this Act ~~and~~ Title. The party to a proceeding causing  
35 service of process is entitled to recover this fee as costs if  
36 that party prevails in the proceeding.

37 **Sec. B-37. 13-C MRSA §126, sub-§2,** as enacted by PL 2001, c.  
38 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

39 **2. Method of correcting documents.** A domestic or foreign  
40 corporation may correct a document by preparing articles of  
41 correction that:  
42  
43  
44  
45  
46  
47  
48  
49  
50

- 2           A. Describe the document, including its filing date,~~---or~~  
3           ~~attach-a-copy-of-it-to-the-articles;~~  
4  
5           B. Specify the inaccuracy or defect to be corrected; and  
6  
7           C. Correct the inaccuracy or defect.; and  
8  
9           D. Provide the jurisdiction of incorporation and the date  
10           on which the foreign corporation was authorized to transact  
11           business in this State.

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

14           **Sec. B-38. 13-C MRSA §130**, as enacted by PL 2001, c. 640, Pt.  
15           A, §2 and affected by Pt. B, §7, is amended to read:

16           **§130. Certificate of existence; certificate of**  
17           **authority; certificate of fact**

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

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

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

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

29           C. That, if a foreign corporation, the foreign corporation  
30           is authorized to transact business in this State, the date  
31           on which the corporation was authorized to transact business  
32           in this State and its jurisdiction of incorporation;

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

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

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

39

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

4 F. That, if the corporation is a domestic corporation,  
6 articles of dissolution relating to that corporation have  
not been filed; and

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

12 **3. Evidence of existence or authority.** Subject to any  
14 qualification stated in the certificate, a certificate of  
existence or certificate of authority issued by the Secretary of  
16 State may be relied upon as conclusive evidence that the domestic  
or foreign corporation is in existence or is authorized to  
18 transact business in this State.

20 **Sec. B-39. 13-C MRSA §130, sub-§4** is enacted to read:

22 **4. Certificate of fact.** In addition to a certificate  
authorized under subsection 2, the Secretary of State may issue a  
24 certificate attesting to any fact of record in the office of the  
Secretary of State that may be requested by the applicant under  
26 subsection 1.

28 **Sec. B-40. 13-C MRSA §§142 and 143** are enacted to read:

30 **§142. Access to Secretary of State's database**

32 The Secretary of State may provide public access to the  
34 database of the Department of the Secretary of State through a  
dial-in modem, public terminals and electronic duplicates of the  
36 database. If access to the database is provided to the public,  
the Secretary of State may adopt rules to establish a fee  
38 schedule and governing procedures. Rules adopted pursuant to  
this section are routine technical rules as defined in Title 5,  
40 chapter 375, subchapter 2-A.

42 **§143. Publications**

44 **1. Informational publications.** The Secretary of State may  
establish by rule a fee schedule to cover the cost of printing  
46 and distribution of publications and to set forth the procedures  
for the sale of these publications. Rules adopted pursuant to  
48 this subsection are routine technical rules as defined in Title  
5, chapter 375, subchapter 2-A.



2 C. Marks registered under Title 10, chapter 301-A unless  
4 the registered owner or holder of the mark is the same  
6 person or entity as the corporation seeking to use a name  
that is not distinguishable on the records of the Secretary  
of State and files proof of ownership with the Secretary of  
State.

8  
10 **Sec. B-46. 13-C MRSA §401, sub-§6**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

16 A. The words or abbreviations of words that describe the  
18 nature of the entity, including "professional association,"  
"corporation," "company," "incorporated," "chartered,"  
20 "limited," "limited partnership," "limited liability  
company," "professional limited liability company," "limited  
22 liability partnership," "registered limited liability  
partnership," "service corporation" or "professional  
corporation";

24 B. The presence or absence of the words or symbols of the  
26 words "and," and "the" and "-a"; and

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

32 ~~D. The differences in the uses of singular and plural forms  
of words.~~

34 **Sec. B-47. 13-C MRSA §401, sub-§7** is enacted to read:

36 **7. Change of corporate name by foreign corporation.** If a  
38 foreign corporation authorized to transact business in this State  
changes its corporate name to one that does not satisfy the  
40 requirements of this section, the foreign corporation may not  
transact business in this State under the proposed new name until  
42 it adopts a name satisfying the requirements of this section and  
files an amended application for authority under section 1504  
44 that is accompanied by a statement of use of a fictitious name  
under section 404.

46 **Sec. B-48. 13-C MRSA §403, sub-§2, ¶B**, as enacted by PL 2001,  
48 c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

10 **Sec. B-49. 13-C MRSA §403, sub-§5**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

12 **5. Qualify as foreign corporation.** A foreign corporation  
14 whose registration is effective may, after the registration is  
effective, qualify as a foreign corporation under the registered  
16 name or may consent in writing to the use of that name by a  
corporation ~~incorporated under~~ subject to this Act or by another  
18 foreign corporation authorized to transact business in this  
State. The registration terminates when the domestic corporation  
20 is incorporated or the foreign corporation qualifies or consents  
to the qualification of another foreign corporation under the  
22 registered name.

24 **Sec. B-50. 13-C MRSA §404, sub-§1**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

26 **1. Assumed name; defined.** As used in this section,  
28 "assumed name" includes a trade name, the name of a division not  
separately incorporated and not used in conjunction with the ~~true~~  
30 real corporate name and any name other than the ~~true~~ real name of  
a corporation, except a fictitious name.

32 **Sec. B-51. 13-C MRSA §404, sub-§4, ¶¶A, C and D**, as enacted by  
34 PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended  
to read:

36 A. The corporate name ~~and the address of its registered~~  
38 ~~office;~~

40 C. The assumed or fictitious name that it proposes to use;  
42 and

44 D. If the assumed ~~or fictitious~~ name is not to be used at  
all of the corporation's places of business in this State,  
46 the locations where it will be used; and

48 **Sec. B-52. 13-C MRSA §404, sub-§4, ¶E** is enacted to read:

50 E. If the corporation is a foreign corporation:

2                   (1) The jurisdiction of incorporation; and

4                   (2) The date on which it was authorized to transact  
business in this State.

6           **Sec. B-53. 13-C MRSA §404, sub-§8, ¶A**, as enacted by PL 2001,  
c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

12           **Sec. B-54. 13-C MRSA §501, sub-§§1 and 2**, as enacted by PL  
14           2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
read:

16           1. **Clerk.** Each domestic corporation to which this Act  
18           applies shall maintain in this State a clerk, who is a natural  
person resident in this State. The clerk may be, but is not  
20           required to be, one of the directors or officers of the  
corporation, or the clerk may be a person holding no other  
22           position with the corporation. The clerk must be appointed by  
the corporation's board of directors unless the articles of  
incorporation reserve appointment of the clerk to the  
shareholders. The clerk of a corporation is not an officer but  
24           performs the functions provided in this Act. The duties of the  
clerk are ministerial only, and the clerk is not liable in that  
capacity for any liabilities of the corporation, including, but  
not limited to, debts, claims, taxes, fines or penalties. Unless  
otherwise provided by the bylaws, the clerk shall keep on file a  
list of all shareholders of the corporation and keep, in a book  
kept for that purpose, the records of all shareholders' meetings,  
including all records of all votes and minutes of the meetings.  
These records may be kept by the clerk at the registered office  
or another office of the corporation to which the clerk has ready  
access. The clerk may certify all votes, resolutions and actions  
of the shareholders and may certify all votes, resolutions and  
actions of the corporation's board of directors and its  
38           committees.

40           2. **Registered office.** The clerk shall maintain a  
42           registered office at some fixed place within this State, which  
may be, but need not be, the corporation's place of business.  
~~The clerk shall perform those duties required of the clerk~~  
44           ~~elsewhere in this Act.~~

46           **Sec. B-55. 13-C MRSA §501, sub-§§5, 7 and 10**, as enacted by PL  
48           2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
read:



2           **5. Resignation of clerk.** The clerk of a corporation may  
3 resign upon filing a written notice of the resignation with the  
4 Secretary of State and by mailing a copy of the notice to the  
5 ~~president-or-treasurer~~ any officer of the corporation or, if both  
6 ~~of-these-offices-are-vacant~~ there are no officers, to any of the  
7 corporation's directors or, if there are no directors, to any of  
8 the corporation's shareholders. The notice filed with the  
9 Secretary of State must recite that a copy of the notice has been  
10 mailed to the ~~corporate-officer~~ individual designated in this  
11 subsection and must specify the ~~corporate-officer's~~ name and, the  
12 corporate office held and the address to which the notice was  
13 mailed. The resignation takes effect upon the filing of the  
14 resignation by the Secretary of State.

15           **7. Name or address change.** If the name of the current  
16 clerk or address of the registered office ~~of-the-clerk~~ of one or  
17 more corporations changes from the name of the current clerk or  
18 address of the registered office appearing on the record in the  
19 office of the Secretary of State, the clerk shall execute and  
20 deliver for filing, in accordance with section 121, a statement  
21 setting forth:

22           A. The name of the clerk appearing on the record in the  
23 office of the Secretary of State;

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

26           C. The address of the registered office appearing on the  
27 record in the office of the Secretary of State;

28           D. If the address of the registered office has changed, the  
29 address of the new registered office, including the street  
30 address and a mailing address, if different. For the  
31 address, a post office box alone is not sufficient to meet  
32 the requirements of this paragraph;

33           E. The names name of each ~~of-the-corporations-of-which-the~~  
34 ~~clerk-is-clerk~~ corporation affected by the change as  
35 provided in this subsection; and

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

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

40           **10. Document filed to change clerk.** Any document to be  
41 filed by the Secretary of State, the effect of which is to change  
42 the clerk, must be signed by the person designated in the  
43

document as the new clerk or in accordance with subsection 3 and  
section 121, subsection 5, paragraph A, B or C.

**Sec. B-56. 13-C MRSA §§601 and 602**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, are amended to read:

**§601. Authorized shares**

**1. Classes and number of shares authorized.** A corporation's articles of incorporation must ~~prescribe the set forth any~~ classes of shares and series of shares within a class, and the number of shares of each class or series that the corporation is authorized to issue. If more than one class or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series and must describe, prior to the issuance of shares of a class or series, the terms, including the preferences, rights and limitations and relative rights of that class ~~must be described in the articles of incorporation or series~~. All Except to the extent varied as permitted by this section, all shares of a class or series must have terms, including preferences, rights and limitations and relative rights that are identical with those of other shares of the same class, ~~except to the extent otherwise permitted by section 602~~ or series.

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

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

A. Have special, conditional or limited voting rights or no right to vote, except to the extent ~~prohibited~~ otherwise provided by this Act;

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 specified event;

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

2           (3) ~~In a designated amount or in an amount~~ At prices  
4           and in amounts specified, or determined in accordance  
6           with a designated formula ~~or by reference to extrinsic~~  
            ~~data or events;~~

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

14          D. Have preference over any other class or series of shares  
16          with respect to distributions, including dividends--and  
18          distributions upon the dissolution of the corporation.

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

26          **4. Rules of construction for preferred shares.** Unless  
28          otherwise provided by this Act or by a corporation's articles of  
30          incorporation or by resolution of the board of directors in the  
32          case of shares whose terms may be fixed as provided by section  
34          602:

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

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

46          C. Shares that are preferred as to dividends are preferred,  
48          on liquidation of the corporation, to the extent of the par  
50          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  
            payment must also include the amount of dividends accrued  
            but unpaid as of the date of liquidation;

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

            G. "Liquidation," "rights upon liquidation" and terms of  
            like import shall refer to the formal dissolution of the

2 corporation. Sale of all the corporate assets or  
participation of the corporation in a merger or  
consolidation is not deemed a liquidation.

4

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

8 5. Extrinsic facts. Terms of shares may be made dependent  
upon facts objectively ascertainable outside the articles of  
10 incorporation in accordance with section 121, subsection 10.

12 6. Variations among holders. Any of the terms of shares  
may vary among holders of the same class or series of shares as  
14 long as the variations are expressly set forth in the articles of  
incorporation.

16

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

20 **1. Determination by board of directors.** If a corporation's  
articles of incorporation provide, the board of directors may  
22 determine, ~~in whole or part, the preferences, limitations and~~  
~~relative rights within the limits set forth in section 601 of any~~  
24 ~~class of shares before the issuance of any shares of that class~~  
~~or one or more series within a class before the issuance of any~~  
26 ~~shares of that series, is authorized without shareholder approval~~  
to:

28

30 A. Classify any unissued shares into one or more classes or  
into one or more series within a class;

32 B. Reclassify any unissued shares of any class into one or  
more classes or into one or more series within one or more  
34 classes; or

36 C. Reclassify any unissued shares of any series of any  
class into one or more classes or into one or more series  
38 within a class.

40 ~~2. Series must have distinguishing designation. Each~~  
series of a class must be given a distinguishing designation.

42

2-A. Terms fixed before issuance. If the board of  
44 directors acts pursuant to subsection 1, the board shall  
determine the terms including the preferences, rights and  
46 limitations to the same extent permitted under section 601, of:

48 A. Any class of shares before the issuance of any shares of  
that class; or

50

2           B. Any series within a class before the issuance of any  
3           shares of that series.

4           ~~3.---Identical---terms.---A---share---of---a---series---must---have~~  
5           ~~preferences,---limitations---and---relative---rights---identical---with---those~~  
6           ~~of---all---other---shares---of---the---same---series---and,---except---to---the---extent~~  
7           ~~otherwise---provided---in---the---description---of---the---series,---with---those~~  
8           ~~of---other---series---of---the---same---class.~~

10           3-A. Filing articles of amendment. Before issuing any  
11           shares of a class or series created under this section, the  
12           corporation shall deliver to the Secretary of State for filing  
13           articles of amendment setting forth the terms authorized under  
14           subsection 1.

16           ~~4.---Filing---articles---of---amendment.---Before---issuing---any---shares~~  
17           ~~of---a---class---or---series---created---under---this---section,---the---corporation~~  
18           ~~shall---deliver---to---the---Secretary---of---State---for---filing---articles---of~~  
19           ~~amendment,---which---are---effective---without---shareholder---action,---that~~  
20           ~~set---forth:~~

22           ~~A.---The---name---of---the---corporation;~~

24           ~~B.---The---text---of---the---amendment---determining---the---terms---of---the~~  
25           ~~class---or---series---of---shares;~~

26           ~~C.---The---date---the---amendment---was---adopted;---and~~

28           ~~D.---A---statement---that---the---amendment---was---duly---adopted---by---the~~  
29           ~~board---of---directors.~~

32           **Sec. B-57. 13-C MRSA §625**, as enacted by PL 2001, c. 640, Pt.  
33           A, §2 and affected by Pt. B, §7, is repealed and the following  
34           enacted in its place:

36           §625. Share options

38           1. Board authority to issue options. A corporation may  
39           issue rights, options or warrants for the purchase of shares or  
40           other securities of the corporation. The corporation's board of  
41           directors shall determine:

42           A. The terms upon which the rights, options or warrants are  
43           issued; and

44           B. The terms including the consideration for which the  
45           shares or other securities are issued.

46           The authorization by the board of directors for the corporation  
47           to issue these rights, options or warrants constitutes  
48           the authorization.

2 authorization of the issuance of the shares or other securities  
3 for which the rights, options or warrants are exercisable.

4 2. Limitations based on holdings. The terms and conditions  
5 of these rights, options or warrants, including those outstanding  
6 on the effective date of this section, may include, without  
7 limitation, restrictions or conditions that:

8  
9 A. Preclude or limit the exercise, transfer or receipt of  
10 these rights, options or warrants by any person or persons  
11 owning or offering to acquire a specified number or  
12 percentage of the outstanding shares or other securities of  
13 the corporation or by any transferee of the person; or

14  
15 B. Invalidate or void these rights, options or warrants  
16 held by the person or the transferee.

17  
18 **Sec. B-58. 13-C MRSA §641, sub-§4** is enacted to read:

19  
20 4. Preemptive rights. Nothing in this section detracts  
21 from or takes away the preemptive rights that pertained to any  
22 shares of a corporation that were issued and outstanding on June  
23 30, 2003. The rights may be altered by an amendment adopted  
24 pursuant to chapter 10.

25  
26 **Sec. B-59. 13-C MRSA §703, sub-§1, ¶B,** as enacted by PL 2001,  
27 c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

28  
29 B. On application of a shareholder who signed a demand for  
30 a special meeting valid under section 702 if:

31  
32 (1) Notice of the special meeting was not given within  
33 30 days after the date the demand was delivered to the  
34 ~~corporation's secretary~~ corporation clerk; or

35  
36 (2) The special meeting was not held in accordance  
37 with the notice required by section 705, subsection 3.

38  
39 **Sec. B-60. 13-C MRSA §723, sub-§5,** as enacted by PL 2001, c.  
40 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

41  
42 **5. Death or incapacity of shareholder.** The death or  
43 incapacity of a shareholder who appointed a proxy does not affect  
44 the right of a corporation to accept the proxy's authority unless  
45 notice of the death or incapacity is received by the ~~secretary~~  
46 clerk or ~~either~~ an officer or agent authorized to tabulate votes  
47 before the proxy exercises the proxy's authority under the  
48 appointment.

2           **Sec. B-61. 13-C MRSA §727, sub-§1**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

4           **1. Quorum.** Shares entitled to vote as a separate voting  
6 group may take action on a matter at a meeting only if a quorum  
of those shares exists with respect to that matter. Unless the  
8 corporation's articles of incorporation or this Act provides  
otherwise for a greater or lesser quorum, a majority of the votes  
10 entitled to be cast on the matter by the voting group constitutes  
a quorum of that voting group for action on that matter. A  
12 quorum may not consist of less than 1/3 of the shares of a voting  
group entitled to vote on a matter.

14           **Sec. B-62. 13-C MRSA §731, sub-§3**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

16           **3. Clerk; officer; employee.** An inspector may be the clerk  
18 or an officer or employee of the corporation.

20           **Sec. B-63. 13-C MRSA §743, sub-§2**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

22           **2. Requirements for shareholder agreement.** An agreement  
24 authorized by this section must comply with each of the following  
paragraphs.

26           A. The agreement must be set forth:

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

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

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

42           C. ~~The agreement must be valid for an unlimited term,~~  
44 ~~unless the agreement provides otherwise.~~

46           An agreement authorized by this section is valid for an unlimited  
term unless the agreement provides otherwise.

48           **Sec. B-64. 13-C MRSA §808, sub-§2**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

50

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

13           **Sec. B-65. 13-C MRSA §824, sub-§3,** as enacted by PL 2001, c.  
14 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

15           **3. Waiver by absent director.** If a meeting otherwise valid  
16 of the corporation's board of directors is held without call or  
17 notice when a notice is required, ~~any action taken at the meeting~~  
18 ~~is deemed ratified~~ any defects of notice are deemed waived by a  
19 director who did not attend unless, ~~after learning of the action~~  
20 ~~taken and of the impropriety of the meeting, the director makes~~  
21 ~~prompt objection to the action taken~~ within 10 days after  
22 learning of the meeting and actions taken at the meeting the  
23 director delivers to the corporation written objection to the  
24 transacting of business at the meeting.

25           **Sec. B-66. 13-C MRSA §825, sub-§2,** as enacted by PL 2001, c.  
26 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

27           **2. Lower quorum permitted.** The corporation's articles of  
28 incorporation or bylaws may authorize a quorum of a corporation's  
29 board of directors to consist of ~~no fewer~~ not less than 1/3 of  
30 the fixed or prescribed number of directors determined under  
31 subsection 1.

32           **Sec. B-67. 13-C MRSA §846,** as enacted by PL 2001, c. 640, Pt.  
33 A, §2 and affected by Pt. B, §7, is repealed.

34           **Sec. B-68. 13-C MRSA §§852, 854 to 857 and 859,** as enacted by PL  
35 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
36 read:

37           **§852. Permissible indemnification**

38           **1. Standards of conduct.** Except as otherwise provided in  
39 this section, a corporation may indemnify an individual who is a  
40 party to a proceeding because that individual is a director of  
41 the corporation against liability incurred in the proceeding if:  
42  
43  
44  
45  
46  
47  
48



2 A. ~~The individual's conduct was in good faith and the~~  
3 ~~individual reasonably believed~~ following criteria are met:

4 (1) ~~In the case of conduct in the individual's~~  
5 ~~capacity as director, that the~~ The individual's conduct  
6 ~~was in the best interests of the corporation~~ good faith;

8 (2) ~~In all other cases, that the individual's conduct~~  
9 ~~was at least not opposed to the best interests of the~~  
10 ~~corporation, and~~ The individual reasonably believed:

12 (a) In the case of conduct in the individual's  
13 official capacity, that the individual's conduct  
14 was in the best interests of the corporation; and

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

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

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

30 **2. Employee benefit plan.** The conduct of a director with  
31 respect to an employee benefit plan for a purpose the director  
32 reasonably believed to be in the interests of the participants  
33 in, and the beneficiaries of, the plan is conduct that satisfies  
34 the requirement of subsection 1, paragraph A, subparagraph (2),  
35 division (b).

36 **3. Termination of proceeding.** The termination of a  
37 proceeding by judgment, order, settlement or conviction or upon a  
38 plea of nolo contendere or its equivalent is not of itself  
39 determinative that the director did not meet the relevant  
40 standard of conduct described in this section.

42 **4. Limits.** Unless ordered by a court under section 855,  
43 subsection 1, paragraph C, a corporation may not indemnify one of  
44 ~~its~~ the corporation's directors:

46 A. In connection with a proceeding by or in the right of  
47 the corporation, except for reasonable expenses incurred in  
48 connection with the proceeding if it is determined that the

2 director has met the relevant standard of conduct under  
subsection 1; or

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

10 **§854. Advance for expenses**

12 **1. Conditions.** A corporation may, before final disposition  
of a proceeding, advance funds to pay for or reimburse the  
14 reasonable expenses incurred by a director who is a party to a  
proceeding because the director is a director of that corporation  
16 if the director delivers to the corporation:

18 A. A written affirmation of the director's good faith  
belief that the director has met the relevant standard of  
20 conduct described in section 852, subsection 1 or that the  
proceeding involves conduct for which liability has been  
22 eliminated under a provision of the corporation's articles  
of incorporation as authorized by section 202, subsection 2,  
24 paragraph D; and

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

32 **2. Repayment obligation.** The undertaking required by  
34 subsection 1, paragraph B must be an unlimited general obligation  
of the director but need not be secured and may be accepted  
36 without reference to the financial ability of the director to  
make repayment.

38 **3. Authorization process.** Authorizations under this  
40 section must may be made:

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

44 (1) If there are 2 or more disinterested directors, by  
a majority vote of all the disinterested directors, a  
46 majority of whom for this purpose constitutes a quorum,  
or by a majority of the members of a committee of 2 or  
48 more disinterested directors appointed by a majority  
vote of all the disinterested directors; or

50

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

8 B. By the shareholders, but shares owned by or voted under  
9 the control of a director who at the time does not qualify  
10 as a disinterested director may not be voted on the  
11 authorization.

12 **§855. Court-ordered indemnification; advance for**  
13 **expenses**

14 **1. Application and order.** A director who is a party to a  
15 proceeding because ~~that~~ the director is a director of the  
16 corporation may apply for indemnification or an advance for  
17 expenses to the court conducting the proceeding or to another  
18 court of competent jurisdiction. After receipt of an application  
19 and after giving any notice the court considers necessary, the  
20 court shall:  
21

22 A. Order indemnification if the court determines that the  
23 director is entitled to mandatory indemnification under  
24 section 853;  
25

26 B. Order indemnification or an advance for expenses if the  
27 court determines that the director is entitled to  
28 indemnification or an advance for expenses pursuant to a  
29 provision authorized by section 859, subsection 1; or  
30

31 C. Order indemnification or an advance for expenses if the  
32 court determines, in view of all the relevant circumstances,  
33 that it is fair and reasonable:  
34

35 (1) To indemnify the director; or  
36

37 (2) To advance expenses to the director even if the  
38 director has not met the relevant standard of conduct  
39 set forth in section 852, subsection 1, failed to  
40 comply with section 854 or was adjudged liable in a  
41 proceeding referred to in section 852, subsection 4,  
42 paragraph A or B, but, if the director was adjudged so  
43 liable, the director's indemnification must be limited  
44 to reasonable expenses incurred in connection with the  
45 proceeding.  
46

47 **2. Entitlement to expenses.** If the court determines that  
48 the director is entitled to indemnification under subsection 1,  
49

2 paragraph A or to indemnification or an advance for expenses  
4 under subsection 1, paragraph B, the court shall also order the  
6 corporation to pay the director's reasonable expenses incurred in  
8 connection with obtaining the court-ordered indemnification or  
10 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~~  
incurred in connection with obtaining the court-ordered  
indemnification or advance for expenses.

12 **§856. Determination and authorization of indemnification**

14 **1. Prerequisites to indemnity.** A corporation may not  
16 indemnify a director under section 852, subsection 1 unless  
18 authorized for a specific proceeding 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.

20 **2. Determination process.** A determination under subsection  
22 1 that indemnification is permissible must be made:

24 A. If there are 2 or more disinterested directors, by the  
26 corporation's board of directors by a majority vote of all  
the disinterested directors, a majority of whom for this  
28 purpose constitutes a quorum, or by a majority of the  
members of a committee of 2 or more disinterested directors  
30 appointed by a majority vote of all the disinterested  
directors;

32 B. By special legal counsel:

34 (1) Selected in the manner prescribed in paragraph A;  
36 or

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

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

48 **3. Authorization process.** Authorization of indemnification  
must be made in the same manner as the determination that  
indemnification is permissible, except that if there are fewer  
50 than 2 disinterested directors or if the determination is made by

2 special legal counsel, authorization of indemnification must be  
made by those entitled under subsection 2, paragraph B,  
4 subparagraph (2) to select special legal counsel.

6 **§857. Indemnification of officers**

8 **1. Permissible scope.** A corporation may indemnify and  
advance expenses under this subchapter to an officer of the  
corporation who is a party to a proceeding because ~~that~~ the  
10 officer is an officer of the corporation:

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

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

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

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

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

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

30 (c) An intentional violation of criminal law.  
32

34 **2. Dual capacity.** Subsection 1, paragraph B applies to an  
officer who is also a director if the basis on which the officer  
is made a party to the proceeding is an act or omission solely as  
36 an officer.

38 **3. Mandatory indemnification.** An officer who is not a  
director is entitled to mandatory indemnification under section  
40 853 and may apply to a court under section 855 for  
indemnification or an advance for expenses, in each case to the  
42 same extent to which a director may be entitled to  
indemnification or an advance for expenses under those provisions.  
44

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

48 **1. Undertakings to indemnify.** A corporation may, by a  
provision in its articles of incorporation or bylaws or in a  
50 resolution adopted or a contract approved by its board of

2 directors or shareholders, obligate itself in advance of the act  
or omission giving rise to a proceeding to provide  
4 indemnification in accordance with section 852 or advance funds  
to pay for or reimburse expenses in accordance with section 854.  
6 ~~Any-such~~ Such an obligatory provision is deemed to satisfy the  
requirements for authorization referred to in sections 854,  
8 subsection 3 and 856, subsection 3. Any such provision that  
obligates the corporation to provide indemnification to the  
10 fullest extent permitted by law is deemed to obligate the  
corporation to advance funds to pay for or reimburse expenses in  
12 accordance with section 854 to the fullest extent permitted by  
law, unless the provision specifically provides otherwise.

14 **2. Predecessors.** Any A provision pursuant to subsection 1  
may not obligate the corporation to indemnify or advance expenses  
16 to a director of a predecessor of the corporation pertaining to  
conduct with respect to the predecessor unless otherwise  
18 specifically provided. Any A provision for indemnification or an  
advance for expenses in the corporation's articles of  
20 incorporation or bylaws or a resolution of the corporation's  
board of directors or shareholders of a predecessor of the  
22 corporation in a merger or in a contract to which the predecessor  
is a party, existing at the time the merger takes effect, is  
24 governed by section 1107, subsection 1, paragraph D.

26 **3. Limits.** A corporation may, by a provision in its  
articles of incorporation, limit ~~any--of~~ the rights to  
28 indemnification or an advance for expenses created by or pursuant  
to this subchapter.

30 **4. Witness expenses.** This subchapter does not limit a  
32 corporation's power to pay or reimburse expenses incurred by a  
director or an officer in connection with the director's or  
34 officer's appearance as a witness in a proceeding at a time when  
the director or officer is not a party to the proceeding.

36 **5. Insurance.** This subchapter does not limit a  
38 corporation's power to indemnify, advance expenses to or provide  
or maintain insurance on behalf of an employee or agent.

40 **Sec. B-69. 13-C MRSA §874, sub-§2,** as enacted by PL 2001, c.  
42 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

44 **2. Qualified shares.** For purposes of this section,  
"qualified shares" means any shares entitled to vote with respect  
46 to the director's conflicting-interest transaction except shares  
that, to the knowledge, before the vote, of the clerk, the  
48 secretary or other officer or agent of the corporation authorized  
to tabulate votes, are beneficially owned or the voting of which  
50 is controlled by a director who has a conflicting interest

2           respecting the transaction or by a related person of the  
3           director, or both.

4           **Sec. B-70. 13-C MRSA §921, sub-§5**, as enacted by PL 2001, c.  
5           640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

6  
7           **5. Transitional rule.** If any debt security, note or  
8           similar evidence of indebtedness for money borrowed, whether  
9           secured or unsecured, or a contract of any kind issued, incurred  
10          or executed by a domestic business corporation before July 1,  
11          2003 contains a provision applying to a merger of the corporation  
12          and the document does not refer to a domestication of the  
13          corporation, the provision is deemed to apply to a domestication  
14          of the corporation until such time after that date as the  
15          provision is amended.

16           **Sec. B-71. 13-C MRSA §921, sub-§6** is enacted to read:

17           **6. Extrinsic facts.** Terms of a plan of domestication may  
18           be made dependent upon facts objectively ascertainable outside  
19           the plan in accordance with section 121, subsection 10.

20  
21           **Sec. B-72. 13-C MRSA §922, sub-§7**, as enacted by PL 2001, c.  
22           640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

23           **7. Transitional rule.** If any provision of the  
24           corporation's articles of incorporation or bylaws or of an  
25           agreement to which any of the directors or shareholders are  
26           parties, adopted or entered into before July 1, 2003, applies to  
27           a merger of the corporation and that document does not refer to a  
28           domestication of the corporation, the provision is deemed to  
29           apply to a domestication of the corporation until such-time-after  
30           that-date-as the provision is amended.

31           **Sec. B-73. 13-C MRSA §922, sub-§8** is enacted to read:

32           **8. Consent of shareholders.** A plan of domestication may be  
33           approved for a participating corporation by written consent of  
34           shareholders entitled to vote, as provided in section 704. If  
35           the plan of domestication is approved by written consent of all  
36           shareholders, whether or not entitled to vote, a resolution of  
37           the board of directors of the participating corporation  
38           approving, proposing, submitting, recommending or otherwise  
39           respecting the plan of domestication is not necessary and  
40           shareholders of the participating corporation are not entitled to  
41           receive notice of or to dissent from the plan of domestication.

42  
43           **Sec. B-74. 13-C MRSA §926, sub-§1**, as enacted by PL 2001, c.  
44           640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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~~ 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.

**Sec. B-75. 13-C MRSA §931, sub-§5,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**5. Transitional rule.** If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind issued, incurred or executed by a domestic business corporation before July 1, 2003 contains a provision applying 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.

**Sec. B-76. 13-C MRSA §931, sub-§6** is enacted to read:

**6. Extrinsic facts.** Terms of a plan of nonprofit conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 121, subsection 10.

**Sec. B-77. 13-C MRSA §932, sub-§§5 and 7,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to read:

**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 nonprofit conversion requires the approval of the shareholders by a majority of all the votes entitled to be cast on the plan by the shareholders and, if any class or series is entitled to vote



2 as a separate voting group on the plan, the approval of each such  
3 separate voting group by a majority of all the votes entitled to  
4 be cast on the plan by that voting group. The articles of  
5 incorporation may provide that the plan may be approved by a  
6 lesser vote of each voting group entitled to vote on the plan but  
7 in no case less than a majority of the votes cast by that voting  
8 group at a meeting at which there exists, for each such voting  
9 group, a quorum consisting of at least a majority of the votes  
10 entitled to be cast on the plan by each voting group entitled to  
11 vote on the plan;

12 **7. Transitional rule.** If any provision of the  
13 corporation's articles of incorporation or bylaws or of an  
14 agreement to which any of the directors or shareholders are  
15 parties, adopted or entered into before July 1, 2003, applies to  
16 a merger of the domestic business corporation and the document  
17 does not refer to a nonprofit conversion of the domestic business  
18 corporation, the provision is deemed to apply to a nonprofit  
19 conversion of the domestic business corporation until such time  
20 after that date as the provision is amended.

21 **Sec. B-78. 13-C MRSA §932, sub-§8** is enacted to read:

22 **8. Consent of shareholders.** A plan of nonprofit conversion  
23 may be approved for a participating corporation by written  
24 consent of shareholders entitled to vote, as provided in section  
25 704. If the plan of nonprofit conversion is approved by written  
26 consent of all shareholders, whether or not entitled to vote, a  
27 resolution of the board of directors of the participating  
28 corporation approving, proposing, submitting, recommending or  
29 otherwise respecting the plan of nonprofit conversion is not  
30 necessary and shareholders of the participating corporation are  
31 not entitled to receive notice of or to dissent from the plan of  
32 nonprofit conversion.

33 **Sec. B-79. 13-C MRSA §933, sub-§2,** as enacted by PL 2001, c.  
34 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

35 **2. Provisions of articles of nonprofit conversion.** The  
36 articles of nonprofit conversion must either contain all the  
37 provisions that the Maine Nonprofit Corporation Act requires to  
38 be set forth in articles of incorporation of a domestic nonprofit  
39 corporation with any other desired provisions permitted by the  
40 Maine Nonprofit Corporation Act or have attached articles of  
41 incorporation that satisfy the requirements of the Maine  
42 Nonprofit Corporation Act. In either case, provisions that would  
43 not be required by ~~chapter 10~~ the Maine Nonprofit Corporation Act  
44 to be included in restated articles of incorporation of a  
45 domestic nonprofit corporation may be omitted.  
46  
47  
48  
49  
50

2           **Sec. B-80. 13-C MRSA §935, sub-§2, ¶A**, as enacted by PL 2001,  
c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

4           A. Appoint the Secretary of State as its agent for service  
6           of process in a proceeding to enforce the rights of  
shareholders who exercise appraisal rights in connection  
8           with the conversion and that domestic business corporation  
shall provide a mailing address to which the Secretary of  
10           State may mail a copy of any process served on the Secretary  
of State; and

12           **Sec. B-81. 13-C MRSA §942, sub-§4**, as enacted by PL 2001, c.  
14           640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

16           **4. Certificate of authority.** If the foreign nonprofit  
corporation is authorized to ~~transact--business~~ carry on  
18           activities in this State under the provisions of the Maine  
Nonprofit Corporation Act, its certificate of authority is  
20           cancelled automatically on the effective date of its  
domestication and conversion.

22           **Sec. B-82. 13-C MRSA §952, sub-§§3 and 5**, as enacted by PL  
24           2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
read:

26           **3. Entity conversion.** A domestic unincorporated entity may  
become a domestic business corporation. Section 957 governs the  
28           effect of converting to a domestic business corporation. If the  
organic law of a domestic unincorporated entity does not provide  
30           procedures for the approval of an entity conversion, the  
conversion must be adopted and approved, and the entity  
32           conversion effectuated, in the same manner as a merger of the  
unincorporated entity, and its interest holders are entitled to  
34           appraisal rights if appraisal rights are available upon any type  
of merger under the organic law of the unincorporated entity. If  
36           the organic law of a domestic unincorporated entity does not  
provide procedures for the approval of either an entity  
38           conversion or a merger, a plan of entity conversion must be  
adopted and approved, the entity conversion effectuated and  
40           appraisal rights exercised in accordance with the procedures in  
this subchapter and chapter 13. Without limiting the provisions  
42           of this subsection, a domestic unincorporated entity whose  
organic law does not provide procedures for the approval of an  
44           entity conversion is subject to subsection 5 and section 954,  
subsection 7 §. For purposes of applying this subchapter and  
46           chapter 13:

48           A. The unincorporated entity and its interest holders,  
interests and organic documents taken together are deemed to

2 be a domestic business corporation and its shareholders,  
shares and articles of incorporation, respectively and vice  
4 versa, as the context may require; and

6 B. If the business and affairs of the unincorporated entity  
are managed by a group of persons that is not identical to  
8 the interest holders, that group is deemed to be the board  
of directors.

10 **5. Transitional rule.** If any debt security, note or  
similar evidence of indebtedness for money borrowed, whether  
12 secured or unsecured, or a contract of any kind issued, incurred  
or executed by a domestic business corporation before July 1,  
14 2003, applies to a merger of the corporation and the document  
does not refer to an entity conversion of the corporation, the  
16 provision is deemed to apply to an entity conversion of the  
corporation until ~~such time after that date as~~ the provision is  
18 amended.

20 **Sec. B-83. 13-C MRSA §953, sub-§3** is enacted to read:

22 3. Extrinsic facts. Terms of a plan of entity conversion  
may be made dependent upon facts objectively ascertainable  
24 outside the plan in accordance with section 121, subsection 10.

26 **Sec. B-84. 13-C MRSA §954, sub-§§5 to 8,** as enacted by PL 2001,  
c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to read:

28 **5. Majority approval.** Unless the corporation's articles of  
30 incorporation or its board of directors acting pursuant to  
subsection 3 requires a greater vote, approval of the plan of  
32 entity conversion requires the approval of the shareholders at a  
meeting by a majority of all the votes entitled to be cast on the  
34 plan by ~~that~~ the shareholders, voting as a single voting group.  
The articles of incorporation may provide that the plan may be  
36 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  
38 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  
40 the votes entitled to be cast on the plan by each voting group  
entitled to vote on the plan;

42 **6. Voting groups.** In addition to the vote required under  
44 subsection 5, separate voting by voting groups is also required  
by each class or series of shares. Unless the corporation's  
46 articles of incorporation or the board of directors acting  
pursuant to subsection 3 requires a greater vote or a greater  
48 number of votes to be present, if the corporation has more than  
one class or series of shares outstanding, approval of the plan

2 of entity conversion requires the approval of each such separate  
3 voting group by a majority of the votes entitled to be cast on  
4 the conversion by that voting group. The articles of  
5 incorporation may provide that the plan may be approved by a  
6 lesser vote of each class or series of shares as provided in  
7 subsection 5;

8 **7. Transitional rule.** If any provision of the  
9 corporation's articles of incorporation or bylaws or of an  
10 agreement to which any of the directors or shareholders are  
11 parties, adopted or entered into before July 1, 2003, applies to  
12 a merger of the corporation and the document does not refer to an  
13 entity conversion of the corporation, the provision is deemed to  
14 apply to an entity conversion of the corporation until such time  
15 after that date as the provision is amended; and

16 **8. Written consent.** If as a result of an entity conversion  
17 one or more shareholders of the corporation would become subject  
18 to owner liability for the debts, obligations or liabilities of  
19 any other person or entity, approval of the plan of conversion  
20 requires the execution by each such shareholder of a separate  
21 written consent to become subject to such owner liability; and

22 **Sec. B-85. 13-C MRSA §954, sub-§9** is enacted to read:

23 **9. Consent of shareholders.** A plan of entity conversion  
24 may be approved for a participating corporation by written  
25 consent of shareholders entitled to vote, as provided in section  
26 704. If the plan of entity conversion is approved by written  
27 consent of all shareholders, whether or not entitled to vote, a  
28 resolution of the board of directors of the participating  
29 corporation approving, proposing, submitting, recommending or  
30 otherwise respecting the plan of entity conversion is not  
31 necessary and shareholders of the participating corporation are  
32 not entitled to receive notice of or to dissent from the plan of  
33 nonprofit conversion.

34 **Sec. B-86. 13-C MRSA §955, sub-§§2 and 3,** as enacted by PL  
35 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to  
36 read:

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

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

8 B. Set forth a statement that the plan of entity conversion  
was duly approved in accordance with the organic law of the  
unincorporated entity; and  
10

12 C. Either contain all the provisions that section 202,  
subsection 1 requires to be set forth in articles of  
incorporation with any other desired provisions that section  
14 202, subsection 2 permits to be included in articles of  
incorporation or have attached articles of incorporation;  
16 except that, in either case, provisions that would not be  
required under chapter 10 to be included in restated  
18 articles of incorporation of a domestic business corporation  
may be omitted.  
20

**3. Conversion by law of foreign jurisdiction.** After the  
22 conversion of a foreign unincorporated entity to a domestic  
business corporation is authorized as required by the laws of the  
24 foreign jurisdiction, articles of entity conversion must be  
executed on behalf of the foreign unincorporated entity by an  
26 officer or other duly authorized representative of the  
~~corporation~~ unincorporated entity. The articles must:  
28

30 A. Set forth the name of the unincorporated entity  
immediately before the filing of the articles of entity  
32 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;  
34

36 B. Set forth the jurisdiction under the laws of which the  
unincorporated entity was organized immediately before the  
38 filing of the articles of entity conversion and the date on  
which the unincorporated entity was organized in that  
jurisdiction;  
40

42 C. Set forth a statement that the conversion of the  
unincorporated entity was duly approved in the manner  
required by its organic law; and  
44

46 D. Either contain all the provisions that section 202,  
subsection 1 requires to be set forth in articles of  
incorporation with any other desired provisions that section  
48 202, subsection 2 permits to be included in articles of  
incorporation or have attached articles of incorporation;  
50 except that, in either case, provisions that would not be

2 required by chapter 10 to be included in restated articles  
of incorporation of a domestic business corporation may be  
omitted.

4  
6 **Sec. B-87. 13-C MRSA §1003, sub-§§5 and 6**, as enacted by PL  
2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
read:

8  
10 **5. Approval by majority.** Unless the articles of  
incorporation or the board of directors, acting pursuant to  
12 subsection 3, requires a greater vote, approval of the amendment  
requires the approval of the shareholders by a majority of all  
14 the votes entitled to be cast on the amendment by the  
shareholders. ~~---If and, if~~ and, if any class or series is entitled to vote  
as a separate voting group on the amendment, except as provided  
16 in section 1004, subsection 3, the amendment requires the  
approval of each separate voting group by a majority of all the  
18 votes entitled to be cast on the amendment by that voting group.  
The articles of incorporation may provide that an amendment may  
20 be approved by a lesser vote of each voting group entitled to  
vote on the amendment, but in no case less than a majority of the  
22 votes cast by that voting group at a meeting at which there  
exists, for each such voting group, a quorum consisting of at  
24 least a majority of the votes entitled to be cast on the  
amendment by each voting group entitled to vote on the amendment.

26  
28 **6. Consent of shareholders.** ~~The articles of incorporation~~  
~~may be amended~~ An amendment to the articles of incorporation may  
be approved by written consent of all shareholders entitled to  
30 vote ~~on the amendment~~, as provided by in section 704, ~~subsection~~  
~~1; if a unanimous written consent is given.~~ If the amendment is  
32 approved by written consent of all shareholders, whether or not  
entitled to vote, a resolution of the board of directors  
34 proposing the amendment is not necessary.

36 **Sec. B-88. 13-C MRSA §1005, sub-§3**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

38  
40 **3. Initial registered clerk or registered office.** To  
delete the name and address of the initial ~~registered-agent~~ clerk  
or registered office, if a statement of change is on file with  
42 the Secretary of State;

44 **Sec. B-89. 13-C MRSA §1005, sub-8**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

46  
48 **8. Make approved changes.** To make any change expressly  
permitted by section 602, ~~subsection-4-~~ subsections 1 and 2-A to  
be made without shareholder approval.

50

2           **Sec. B-90. 13-C MRSA §1006, sub-§1, ¶¶B, C and F**, as enacted by  
PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended  
to read:

4  
6           B. The text of each amendment adopted or the information  
required by section 121, subsection 10, paragraph E;

8           C. If an amendment provides for an exchange,  
reclassification or cancellation of issued shares,  
10           provisions for implementing the amendment if not contained  
in the amendment itself, which may be dependent upon facts  
12           objectively ascertainable outside the articles of amendment  
in accordance with section 121, subsection 10;

14  
16           F. If an amendment required approval by the shareholders, a  
statement that the amendment was duly approved by the  
shareholders in the manner required by this Act and by the  
18           articles of incorporation or, if an amendment is being filed  
pursuant to section 121, subsection 10, a statement to that  
20           effect.

22           **Sec. B-91. 13-C MRSA §1007, sub-§1**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

24  
26           **1. Consolidation into single document.** A corporation's  
board of directors may restate its articles of incorporation at  
any time, with or without shareholder approval, to consolidate  
28           all amendments into a single document. The restatement may omit  
statements as to the incorporator or incorporators and the  
30           initial directors.

32           **Sec. B-92. 13-C MRSA §§1102 and 1103**, as enacted by PL 2001,  
c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to read:

34           **§1102. Merger**

36  
38           **1. General authority of domestic corporations.** One or more  
domestic business corporations may merge with one or more  
domestic or foreign business ~~or non-profit~~ corporations or  
40           ~~unincorporated~~ eligible entities pursuant to a plan of merger  
under this section.

42  
44           **2. Merger with foreign entities.** A foreign business ~~or~~  
~~non-profit~~ corporation or a foreign ~~unincorporated~~ eligible entity  
46           may be a party to a merger with a domestic business corporation  
or may be created by the terms of a plan of merger under this  
section only if the merger is permitted by the laws under which  
48           the foreign business ~~or non-profit~~ corporation or ~~unincorporated~~  
eligible entity is organized or by which it is governed; and

2           **3. Merger not contemplated in organic law.** If the organic  
law of a domestic ~~unincorporated~~ eligible entity does not provide  
4 procedures for the approval of a merger, a plan of merger may be  
adopted and approved, the merger effectuated, and appraisal  
6 rights exercised in accordance with the procedures in this  
chapter and chapter 13. For the purposes of applying this  
8 chapter and chapter 13:

10           A. The ~~unincorporated~~ eligible entity, its members or  
interest holders, eligible interests and organic documents  
12 taken together are deemed to be a domestic business  
corporation, shareholders, shares and articles of  
14 incorporation, respectively and vice versa as the context  
may require; and

16           B. If the business and affairs of the ~~unincorporated~~  
eligible entity are managed by a group of persons that is  
18 not identical to the members or interest holders, that group  
is deemed to be the board of directors.  
20

22           **4. Plan of merger.** A plan of merger must include:

24           A. The name of each domestic or foreign business or  
~~nonprofit~~ corporation or ~~unincorporated~~ eligible entity that  
26 will merge and the name of the corporation or ~~unincorporated~~  
eligible entity that will be the survivor of the merger;

28           B. The terms and conditions of the merger;  
30

32           C. The manner and basis of converting the shares of each  
merging domestic or foreign business corporation,  
~~memberships---of---each---domestic---or---foreign---nonprofit~~  
34 ~~corporation~~ and eligible interests of each merging domestic  
or foreign ~~unincorporated~~ eligible entity into shares or  
36 other securities, ~~memberships,~~ eligible interests,  
obligations, rights to acquire shares, or other securities  
38 or ~~interest~~ eligible interests, cash or other property or  
any combination thereof;

40           D. The articles of incorporation of any domestic or foreign  
42 business or nonprofit corporation or the organic documents  
of any domestic or foreign unincorporated entity to be  
44 created by the merger or, if a new domestic or foreign  
business or nonprofit corporation or unincorporated entity  
46 is not to be created by the merger, any amendments to the  
survivor's articles of incorporation or organic documents;  
48 and



2 E. Any other provisions required by the laws under which  
any party to the merger is organized or by which it is  
4 governed, or by the articles of incorporation or organic  
documents of any such person.

6 **5. Extrinsic facts.** ~~The terms~~ Terms of the a plan of  
merger ~~referred to in subsection 4, paragraphs B and C~~ may be  
8 made dependent on upon facts ~~ascertainable outside the plan of~~  
~~merger, as long as those facts are~~ objectively ascertainable.  
10 ~~For the purposes of this subsection, "facts" includes, but is not~~  
~~limited to, the occurrence of any event, including a~~  
12 ~~determination or action by any person or body, including the~~  
~~corporation,~~ outside the plan in accordance with section 121,  
14 subsection 10.

16 **6. Amend plan prior to filing articles of merger.** The plan  
of merger may also include a provision that the plan may be  
18 amended prior to filing the articles of merger with the Secretary  
of State under section 1106, subsection 2. If the shareholders  
20 of a domestic corporation that is a party to the merger are  
required or permitted to vote on the plan, the plan must provide  
22 that subsequent to approval of the plan by the shareholders the  
plan may not be amended to:

24 A. Change the amount or kind of shares or other securities,  
26 eligible interests, obligations, rights to acquire shares or  
other securities, cash or other property to be received  
28 under the plan by the shareholders or owners of eligible  
interests in any party to the merger;

30 B. Change the articles of incorporation or the organic  
32 documents of any ~~other~~ eligible entity that will survive or  
be created as a result of the merger, except for changes  
34 permitted by section 1005 or by comparable provisions of the  
organic laws of any such foreign corporation or domestic or  
36 foreign ~~other~~ eligible entity; or

38 C. Change any of the other terms or conditions of the plan  
if the change would adversely affect the shareholders in any  
40 material respect.

42 **§1103. Share exchange**

44 **1. Share exchange.** Through a share exchange:

46 A. A domestic corporation may acquire all of the shares of  
one or more classes or series of shares of another domestic  
48 or foreign business corporation, or all of the eligible  
interests of one or more classes or series of eligible  
50 interests of a domestic or foreign ~~other~~ eligible entity, in

2 exchange for shares or other securities, eligible interests,  
obligations, rights to acquire shares or other securities or  
4 eligible interests, cash or other property or any  
combination thereof pursuant to a plan of share exchange; or

6 B. All of the shares of one or more classes or series of  
shares of a domestic corporation may be acquired by another  
8 domestic or foreign business corporation or ~~either~~ eligible  
entity in exchange for shares or other securities, eligible  
10 interests, obligations, rights to acquire shares or other  
securities or eligible interests, cash or other property or  
12 any combination thereof pursuant to a plan of share exchange.

14 **2. Party to share exchange.** A foreign corporation or a  
~~foreign-unincorporated~~ an eligible entity may be a party to a  
16 share exchange under this section only if the share exchange is  
permitted by the laws under which the corporation or ~~either~~  
18 eligible entity is organized or governed.

20 **3. Share exchange not contemplated in organic law.** If the  
organic law of a domestic ~~unincorporated~~ eligible entity does not  
22 provide procedures for the approval of a share exchange, a plan  
of share exchange may be adopted and approved and the share  
24 exchange effectuated in accordance with the procedures, if any,  
for a merger. If the organic law of a domestic ~~unincorporated~~  
26 eligible entity does not provide procedures for the approval of  
either a share exchange or a merger, a plan of share exchange may  
28 be adopted and approved, the share exchange effectuated and  
appraisal rights exercised in accordance with the procedures in  
30 this chapter and chapter 13. For the purposes of applying this  
chapter and chapter 13:

32 A. The ~~unincorporated~~ eligible entity, its members or  
34 interest holders, eligible interests and organic documents  
taken together are deemed to be a domestic business  
36 corporation, shareholders, shares and articles of  
incorporation, respectively and vice versa as the context  
38 may require; and

40 B. If the business and affairs of the ~~unincorporated~~  
eligible entity are managed by a group of persons that is  
42 not identical to the members or interest holders, that group  
is deemed to be the board of directors.

44 **4. Plan of share exchange.** A plan of share exchange must  
46 include:

48 A. The name of each corporation or ~~either~~ eligible entity  
whose shares or eligible interests will be acquired and the

2 name of the corporation or other eligible entity that will  
acquire those shares or eligible interests;

4 B. The terms and conditions of the share exchange;

6 C. The manner and basis of exchanging shares of a  
corporation or eligible interests in an other eligible  
8 entity whose shares or eligible interests will be acquired  
under the share exchange into shares ~~or~~, other securities,  
10 eligible interests, obligations, rights to acquire shares  
~~or~~, other securities or eligible interest, cash or other  
12 property or any combination thereof; and

14 D. Any other provisions required by the laws under which  
any party to the share exchange is organized, or by the  
16 articles of incorporation or organic documents of any such  
party.

18 **5. Extrinsic facts.** ~~The provisions~~ Terms of the a plan of  
20 share exchange ~~referred to in subsection 4, paragraphs B and C~~  
may be made dependent on facts objectively ascertainable outside  
22 the plan ~~of share exchange, as long as those facts are~~  
~~objectively ascertainable. For purposes of this subsection,~~  
24 ~~"facts" includes, but is not limited to, the occurrence of any~~  
~~event, including a determination or action by any person or body,~~  
26 ~~including the corporation, in accordance with section 121,~~  
subsection 10.

28 **6. Amend plan prior to filing articles of share exchange.**  
30 The plan of share exchange also may include a provision that the  
plan may be amended prior to filing the articles of share  
32 exchange with the Secretary of State under section 1106,  
subsection 2. If the shareholders of a domestic corporation that  
34 is a party to the share exchange are required or permitted to  
vote on the plan, the plan must provide that subsequent to  
36 approval of the plan by the shareholders the plan may not be  
amended to:

38 A. Change the amount or kind of shares or other securities,  
40 eligible interests, obligations, rights to acquire shares  
~~or~~, other securities, or eligible interests, cash or other  
42 property to be issued by the corporation or to be received  
under the plan by the shareholders of or ~~owners~~ holders of  
44 eligible interests in any party to the share exchange; or

46 B. Change any of the terms or conditions of the plan if the  
change would adversely affect the shareholders in any  
48 material respect.

2 This section does not limit the power of a domestic  
corporation to acquire shares of another corporation or eligible  
4 interests in an ~~ether~~ eligible entity in a transaction other than  
a share exchange.

6 **Sec. B-93. 13-C MRSA §1104, sub-§4**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

8  
10 **4. Notice of meeting.** If the plan of merger or share  
exchange under this chapter is required by the corporation's  
12 articles of incorporation to be approved by the shareholders and  
if the approval is to be given at a meeting of shareholders, the  
14 corporation shall notify each shareholder, whether or not  
entitled to vote, of the meeting of shareholders at which the  
16 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  
18 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  
20 corporation or ~~ether~~ eligible entity, the notice also must  
include or be accompanied by a copy or summary of the articles of  
22 incorporation or organizational documents of that corporation or  
~~ether~~ eligible entity. If the corporation is to be merged into a  
24 corporation or ~~ether~~ eligible entity that is to be created  
pursuant to the merger, the notice also must include or be  
26 accompanied by a copy or a summary of the articles of  
incorporation or organizational documents of the new corporation  
or ~~ether~~ eligible entity;

28  
30 **Sec. B-94. 13-C MRSA §1104, sub-§6, ¶A**, as enacted by PL 2001,  
c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

32 A. On a plan of merger by each class or series of shares  
that:

34  
36 (1) Are to be converted under the plan of merger into  
shares or other securities, eligible interests,  
38 obligations, rights to acquire shares or, other  
securities or eligible interests, cash or other  
40 property or any combination thereof; or

42 (2) Would be entitled to vote as a separate group on a  
provision in the plan that, if contained in a proposed  
44 amendment to articles of incorporation, would require  
action by separate voting groups under section 1004;

46 **Sec. B-95. 13-C MRSA §1104, sub-§10**, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

48

2           **10. Consent of shareholders.** A plan of merger or share  
exchange may be approved for a participating corporation by  
4 written consent of all shareholders ~~of a participating~~  
~~corporation, whether or not~~ entitled to vote ~~by the corporation's~~  
6 ~~articles of incorporation,~~ as provided in section 704, ~~subsection~~  
1. If the unanimous written consent is given plan of merger or  
8 share exchange is approved by written consent of all  
shareholders, whether or not entitled to vote, a resolution of  
10 the board of directors of the participating corporation  
approving, proposing, submitting, recommending or otherwise  
12 respecting the plan of merger or share exchange is not necessary  
and shareholders of the participating corporation are not  
14 entitled to receive notice of or to dissent from the plan of  
merger or share exchange.

16           **Sec. B-96. 13-C MRSA §1106, sub-§1, ¶¶A and E,** as enacted by PL  
2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
18 read:

20           A. The names, types of entity and jurisdictions of the  
parties to the merger or share exchange and the date on  
22 which the merger or share exchange occurred or is to be  
effective;

24           E. For each foreign corporation and ~~each other~~ eligible  
26 entity that was a party to the merger or share exchange, a  
statement that the participation of the foreign corporation  
28 or ~~other~~ eligible entity was duly authorized as required by  
the organic law of the corporation or ~~other~~ eligible entity.

30           **Sec. B-97. 13-C MRSA §1106, 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. File articles with Secretary of State.** Articles of  
merger or share exchange must be delivered to the Secretary of  
36 State for filing by the survivor of the merger or the acquiring  
corporation in a share exchange and take effect at the effective  
38 time provided in section 125. Articles of merger or share  
40 exchange filed under this section may be combined with any filing  
42 required under the organic law of any domestic eligible entity  
involved in the transaction if the combined filing satisfies the  
requirements of both this section and the organic law.

44           **Sec. B-98. 13-C MRSA §§1107 and 1108,** as enacted by PL 2001,  
c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to read:

46           **§1107. Effect of merger or share exchange**

48           **1. Merger.** When a merger becomes effective:

2 A. The corporation or other eligible entity that is  
4 designated in the plan of merger as the survivor continues  
or comes into existence, as the case may be;

6 B. The separate existence of every corporation or other  
8 eligible entity that is merged into the survivor ceases;

10 C. All property owned by and every contract right possessed  
12 by each corporation or other eligible entity that merges  
into the survivor is vested in the survivor without  
reversion or impairment;

14 D. All liabilities of each corporation or other eligible  
16 entity that is merged into the survivor are vested in the  
survivor;

18 E. The name of the survivor may but need not be substituted  
20 in any pending proceeding for the name of any party to the  
merger whose separate existence ceased in the merger;

22 F. The articles of incorporation or organizational  
24 documents of the survivor are amended to the extent provided  
in the plan of merger;

26 G. The articles of incorporation or organizational  
28 documents of a survivor that is created by the merger become  
effective; and

30 H. The shares of each corporation that is a party to the  
32 merger and the eligible interests in an other eligible  
entity that is a party to a merger that are to be converted  
34 under the plan of merger into shares, eligible interests,  
obligations, rights to acquire securities shares, other  
36 securities or eligible interests, cash or other property or  
any combination thereof are converted, and the former  
38 holders of the shares or eligible interests are entitled  
only to the rights provided to them in the plan of merger or  
40 to any rights they may have under chapter 13 or the organic  
law of the eligible entity.

42 **2. Share exchange.** When a share exchange becomes  
effective, the shares of each domestic corporation that are to be  
44 exchanged for shares ~~or~~ other securities, eligible interests,  
obligations, rights to acquire shares or other securities or  
46 eligible interests, cash or other property or any combination  
thereof are entitled only to the rights provided to them in the  
48 plan of share exchange or to any rights they may have under  
chapter 13.

50

2           **3. Shareholder's liabilities and obligations.** A person who  
3 becomes subject to owner liability for some or all of the debts,  
4 liabilities or obligations of any entity as a result of a merger  
5 or share exchange has owner liability only to the extent provided  
6 in the organic law of the entity and only for those debts,  
7 liabilities and obligations that arise after the effective time  
8 of the articles of merger or share exchange.

9           **4. Foreign corporation.** When a merger becomes effective, a  
10 foreign corporation or a foreign ~~ether~~ eligible entity that is  
11 the survivor of the merger is deemed to:

12           A. Appoint the Secretary of State as its agent for service  
13 of process in a proceeding to enforce the rights of  
14 shareholders of each domestic corporation that is a party to  
15 the merger who exercise appraisal rights and shall provide a  
16 mailing address to which the Secretary of State may mail a  
17 copy of any process served on the Secretary of State; and

18           B. Agree to promptly pay the amount, if any, to which the  
19 shareholders under paragraph A are entitled under chapter 13.  
20

21           **5. Effect of merger or share exchange on liability.** The  
22 effect of a merger or share exchange on the owner liability of a  
23 person who had owner liability for some or all of the debts,  
24 obligations or liabilities of a party to the merger or share  
25 exchange is as follows.  
26

27           A. The merger or share exchange does not discharge any  
28 liability under the organic law of the entity in which the  
29 person was a shareholder, member or interest holder to the  
30 extent any such owner liability arose before the effective  
31 time of the articles of merger or share exchange.  
32

33           B. The person does not have owner liability under the  
34 organic law of the entity in which the person was a  
35 shareholder, member or interest holder prior to the merger  
36 or share exchange for any debt, obligation or liability that  
37 arises after the effective time of the articles of merger or  
38 share exchange.  
39

40           C. The provisions of the organic law of any entity for  
41 which the person had owner liability before the merger or  
42 share exchange continue to apply to the collection or  
43 discharge of any owner liability preserved by paragraph A,  
44 as if the merger or share exchange had not occurred.  
45

46           D. The person has whatever rights of contribution from  
47 other persons are provided by the organic law of the entity  
48 for which the person had owner liability with respect to any  
49  
50

owner liability preserved by paragraph A, as if the merger  
or share exchange had not occurred.

**§1108. Abandonment of merger or share exchange**

**1. Abandoned merger or share exchange prior to becoming effective.** Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign business corporation or a domestic or foreign ~~other~~ eligible entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this chapter, and at any time before the merger or share exchange has become effective, the merger or share exchange may be abandoned by any a domestic business corporation that is a 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.

**2. Abandoned merger or share exchange after articles of merger or share exchange are filed.** If a merger or share exchange is abandoned under subsection 1 after articles of merger or share exchange have been filed with the Secretary of State under section 1106, subsection 2 but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, must be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. The statement must also include the names, types of entity and the jurisdictions of the parties to the merger or share exchange. Upon filing, the statement takes effect and the merger or share exchange is considered abandoned and does not become effective.

**Sec. B-99. 13-C MRSA §1109, sub-§1, ¶E,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

E. "Business combination," when used in reference to any domestic corporation and any interested shareholder of that domestic corporation, means:

(1) Any merger or ~~consolidation~~ share exchange of that domestic corporation or any subsidiary of that domestic corporation with that interested shareholder, any other



2 corporation, whether or not it is an interested  
shareholder of that domestic corporation, that is, or  
4 after a merger or ~~eensolidation~~ share exchange would  
be, an affiliate or associate of that interested  
6 shareholder, or any other corporation if the merger or  
~~eensolidation~~ share exchange is caused by that  
8 interested shareholder and as a result of that merger  
or ~~eensolidation~~ share exchange this section is not  
applicable to the surviving corporation;

10  
12 (1-A) Any conversion or domestication proposed by an  
interested shareholder or for which an interested  
14 shareholder votes, as a result of which this section is  
not applicable to the resulting entity;

16 (2) Any sale, lease, exchange, mortgage, pledge,  
18 transfer or other disposition, in one transaction or a  
series of transactions, of assets of that domestic  
20 corporation or any subsidiary of that domestic  
corporation having an aggregate market value equal to  
22 10% or more of the aggregate market value, or book  
value determined in accordance with good accounting  
24 practices, of all the assets, determined on a  
consolidated basis, of that domestic corporation,  
26 having an aggregate market value equal to 10% or more  
of the aggregate market value of all the outstanding  
28 shares of that domestic corporation, or representing  
10% or more of the earning power or income, determined  
30 on a consolidated basis, of that domestic corporation  
proposed by, on behalf of or pursuant to any agreement,  
32 arrangement or understanding, whether or not in  
writing, with that interested shareholder or any  
affiliate or associate of that interested shareholder;

34 (3) The issuance or transfer by that domestic  
36 corporation or any subsidiary of that domestic  
corporation, in one transaction or a series of  
38 transactions, of any shares of that domestic  
corporation or any subsidiary of that domestic  
40 corporation that has an aggregate market value equal to  
5% or more of the aggregate market value of all the  
42 outstanding shares of that domestic corporation to that  
interested shareholder or any affiliate or associate of  
44 that interested shareholder, except pursuant to the  
exercise of warrants or rights to purchase shares  
46 offered, or a dividend or distribution paid or made,  
pro rata to all shareholders of that domestic  
48 corporation;

2 (4) The adoption of any plan or proposal for the  
liquidation or dissolution of that domestic corporation  
4 proposed by, on behalf of or pursuant to any agreement,  
arrangement or understanding, whether or not in  
6 writing, with that interested shareholder or any  
affiliate or associate of that interested shareholder;

8 (5) Any reclassification of securities, including,  
without limitation, any share split, share dividend or  
10 other distribution of shares, or any reverse share  
split, or recapitalization of that domestic  
12 corporation, or any merger or consolidation of that  
domestic corporation, with any subsidiary of that  
14 domestic corporation, or any other transaction, whether  
or not with, or into, or otherwise involving that  
16 interested shareholder, proposed by, on behalf of or  
pursuant to any agreement, arrangement or  
18 understanding, whether or not in writing, with that  
interested shareholder or any affiliate or associate of  
20 that interested shareholder, any of which has the  
effect, directly or indirectly, of increasing the  
22 proportionate share of the outstanding shares of any  
class or series of voting shares or securities  
24 convertible into voting shares of that domestic  
corporation or any subsidiary of that domestic  
26 corporation that is directly or indirectly owned by  
that interested shareholder or any affiliate or  
28 associate of that interested shareholder, except as a  
result of immaterial changes due to fractional share  
30 adjustments; or

32 (6) Any receipt by that interested shareholder or any  
affiliate or associate of that interested shareholder  
34 of the benefit, directly or indirectly, except  
proportionately as a shareholder of the domestic  
36 corporation, of any loans, advances, guarantees,  
pledges or other financial assistance or any tax  
38 credits or other tax advantages provided by or through  
that domestic corporation.

40  
42 **Sec. B-100. 13-C MRSA §1202, sub-§§5 and 9,** as enacted by PL  
2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
read:

44  
46 **5. Majority approval of disposition.** Unless the articles  
of incorporation or the corporation's board of directors, acting  
48 pursuant to subsection 3, requires a greater vote, approval of a  
disposition requires the approval of the shareholders by a  
50 majority of all the votes entitled to be cast on the plan by the  
shareholders and, if any class or series is entitled to vote as a

2 separate voting group on the disposition, the approval of each  
3 separate voting group by a majority of all the votes entitled to  
4 be cast on the disposition by that voting group. The articles of  
5 incorporation may provide that a disposition may be approved by a  
6 lesser vote of each voting group entitled to vote on the  
7 disposition, but in no case may a disposition be approved by less  
8 than a majority of the votes cast by that voting group at a  
9 meeting at which there exists, for each such voting group, a  
10 quorum consisting of at least a majority of the votes entitled to  
11 be cast on the disposition by each voting group entitled to vote  
12 on the disposition.

13  
14 **9. Consent of shareholders.** A disposition that requires  
15 approval of the corporation's shareholders under subsection 1 may  
16 be authorized by written consent of all the shareholders ~~of the~~  
17 ~~corporation, whether or not the shareholders are~~ entitled to vote  
18 ~~by the articles of incorporation,~~ as provided by in section 704,  
19 ~~subsection 1. If a unanimous written consent is given~~ the  
20 disposition is approved by written consent of all shareholders,  
21 whether or not entitled to vote, a resolution of the  
22 corporation's board of directors approving, proposing,  
23 submitting, recommending or otherwise respecting the disposition  
24 is not necessary, and the shareholders of the corporation are not  
entitled to notice of or to dissent from the disposition.

25  
26 **Sec. B-101. 13-C MRSA §1302, sub-§§7 and 8,** as enacted by PL  
27 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
28 read:

29  
30 **7. Conversion to nonprofit status.** Consummation of a  
31 conversion of the corporation to nonprofit status pursuant to  
32 chapter 9, subchapter ~~III~~ 2; or

33  
34 **8. Conversion to unincorporated entity.** Consummation of a  
35 conversion of the corporation to a ~~form of~~ other an  
36 unincorporated entity pursuant to chapter 9, subchapter IV 4.

37  
38 **Sec. B-102. 13-C MRSA §1305, first ¶,** as enacted by PL 2001, c.  
39 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

40  
41 A shareholder entitled to appraisal rights under this  
42 subchapter may not challenge a completed corporate action  
43 ~~requiring appraisal rights described in section 1302, other than~~  
44 those described in section 1303, subsection 3, unless the  
45 corporate action:

46  
47 **Sec. B-103. 13-C MRSA §1401, sub-§§4, 5 and 6,** as enacted by PL  
48 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended to  
read:

2           **4. Debt.** That no debt of the corporation remains unpaid,  
4           including the filing of the annual report as required by section  
          1621;

6           **5. Net assets.** That, if shares were issued, the net assets  
of the corporation remaining after winding up have been  
8 distributed to the shareholders; and

10           **6. Authorization of dissolution.** That a majority of the  
incorporators or initial directors authorized the dissolution;

12           **Sec. B-104. 13-C MRSA §1401, sub-§§7 and 8** are enacted to read:

14           **7. Date authorized.** The date dissolution was authorized;  
16           and

18           **8. Effective date.** The effective date of the dissolution.  
A corporation is dissolved upon the effective date of its  
20 articles of dissolution.

22           **Sec. B-105. 13-C MRSA §1403,** as enacted by PL 2001, c. 640,  
Pt. A, §2 and affected by Pt. B, §7, is amended to read:

24           **§1403. Dissolution by written consent of all**  
26           **shareholders**

28           A corporation ~~may be voluntarily dissolved by unanimous~~  
~~written consent of its shareholders, whether or not entitled to~~  
30 ~~vote by the corporation's articles of incorporation~~ proposal to  
dissolve may be approved by written consent of shareholders  
32 entitled to vote as provided in section 704. If a ~~unanimous~~  
~~written consent is given~~ the dissolution is approved by written  
34 consent of all shareholders, whether or not entitled to vote, a  
resolution of the corporation's board of directors proposing the  
36 dissolution is not necessary.

38           **Sec. B-106. 13-C MRSA §1404, sub-§1, ¶B,** as enacted by PL  
2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to  
40 read:

42           B. The date dissolution was authorized and the effective  
date of the dissolution; and

44           **Sec. B-107. 13-C MRSA §1405, sub-§3,** as enacted by PL 2001, c.  
46 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

48           **3. Articles of revocation of dissolution.** After the  
revocation of dissolution is authorized, a corporation may revoke

2 the dissolution by delivering to the Secretary of State for  
filing articles of revocation of dissolution, ~~together with a~~  
4 ~~copy of its articles of dissolution,~~ that set forth:

6 A. The name of the corporation;

8 B. The effective date of the dissolution that was revoked;

10 C. The date that the revocation of dissolution was  
authorized;

12 D. If the corporation's board of directors or incorporators  
revoked the dissolution, a statement to that effect;

14 E. If the corporation's board of directors revoked a  
16 dissolution authorized by the shareholders, a statement that  
revocation was permitted by action of the board of directors  
18 alone pursuant to that authorization; and

20 F. If shareholder action was required to revoke the  
dissolution, the information required by section 1404,  
22 subsection 1, paragraph C.

24 **Sec. B-108. 13-C MRSA §1407, sub-§2, ¶C,** as enacted by PL  
2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to  
26 read:

28 C. State the deadline, which may not be later fewer than  
120 days after from the effective date of the written  
30 notice, by which the dissolved corporation must receive the  
claim; and

32 **Sec. B-109. 13-C MRSA §1422, sub-§2,** as enacted by PL 2001, c.  
34 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

36 **2. Reinstatement after administrative dissolution.** If the  
Secretary of State determines that the application contains the  
38 information required under subsection 1 and is accompanied by the  
reinstatement fee set forth in section 123, subsection 1,  
40 ~~paragraph V~~ and that the information is correct, the Secretary of  
State shall cancel the administrative dissolution and prepare a  
42 notice of reinstatement that recites that determination and the  
effective date of reinstatement. The Secretary of State shall  
44 use the procedures set forth in section 502 to deliver the notice  
to the corporation.

46 **Sec. B-110. 13-C MRSA §1424** is enacted to read:

48 **§1424. Reinstatement of suspended corporate charter**

50

2 1. Reinstatement after charter suspension. A corporation  
whose charter was suspended before July 1, 2003 may apply for  
reinstatement with the Secretary of State if:

4  
6 A. The Secretary of State determines that the application  
contains the information required under section 1422,  
subsection 1;

8  
10 B. The application is accompanied by the reinstatement fee  
set forth in section 123, subsection 1; and

12 C. The application is received by the Secretary of State by  
June 30, 2009.

14  
16 2. Effect on corporation failing to reinstate by June 30,  
2009. A corporation that fails to meet the requirements of  
subsection 1 is administratively dissolved and may not reinstate.

18  
20 3. Protecting corporate name after suspension. The name of  
a corporation whose charter is suspended remains in the Secretary  
of State's records of corporate names and is protected for a  
22 period of 3 years following its suspension.

24 **Sec. B-111. 13-C MRSA §1501, sub-§1,** as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

26  
28 **1. Application for authority.** A foreign corporation may  
not transact business in this State until ~~it~~ the foreign  
corporation files an application for authority to transact  
30 business with the Secretary of State.

32 **Sec. B-112. 13-C MRSA §1502, sub-§5,** as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

34  
36 **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  
38 corporate acts, including contracts, or prevent it from defending  
any proceeding in this State.

40  
42 **Sec. B-113. 13-C MRSA §1503, sub-§1, ¶A,** as enacted by PL  
2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to  
read:

44  
46 **A.** The name of the foreign corporation or, if its real name  
is unavailable for use in this State, a corporate name that  
satisfies the requirements of section ~~1506~~ 401;

2           **Sec. B-114. 13-C MRSA §1504, sub-§1, ¶B,** as enacted by PL  
3 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to  
4 read:

5           B. Its ~~registered or~~ principal office wherever located; or

6           **Sec. B-115. 13-C MRSA §1504, sub-§2,** as enacted by PL 2001, c.  
7 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the  
8 following enacted in its place:

9           2. Requirements. A foreign corporation must deliver an  
10 amended application that sets forth:

11           A. The name of the corporation;

12           B. The jurisdiction of incorporation;

13           C. The date on which the foreign corporation was authorized  
14 to transact business in this State;

15           D. If the corporate name has changed, the new corporate  
16 name that meets the requirements of section 401;

17           E. If the address of the principal office has changed, the  
18 new address of the principal office wherever located,  
19 including the street and mailing address if different; and

20           F. If the state or country under whose law the foreign  
21 corporation was incorporated has changed, the new state or  
22 country under whose law it is now incorporated together with  
23 a certificate of existence or a document of similar import  
24 duly authenticated by the secretary of state or other  
25 official having custody of corporate records in the state or  
26 country under whose law it is now incorporated. The  
27 certificate of existence must have been made not more than  
28 90 days prior to the delivery of the application for filing.

29           **Sec. B-116. 13-C MRSA §1506, sub-§1,** as enacted by PL 2001, c.  
30 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

31           **1. Corporate name.** If the corporate name of a foreign  
32 corporation does not satisfy the requirements of section 401, the  
33 foreign corporation may use a fictitious name as set forth in  
34 section 404, subsection 2 to transact business in this State if  
35 its real name is unavailable and ~~it delivers to the Secretary of~~  
36 ~~State for filing a copy of the resolution of its board of~~  
37 ~~directors, certified by its secretary, adopting the fictitious~~  
38 name.

2           **Sec. B-117. 13-C MRSA §1506, sub-§§2 to 5,** as enacted by PL  
2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are repealed.

4           **Sec. B-118. 13-C MRSA §1507,** as enacted by PL 2001, c. 640,  
Pt. A, §2 and affected by Pt. B, §7, is repealed and the  
6 following enacted in its place:

8           **§1507. Registered office and registered agent of foreign**  
            **corporation**

10           **1. Registered office and agent.** A foreign corporation  
12 authorized to transact business in this State must continuously  
maintain in this State:

14           **A.** A registered office that may be the same as any of its  
16 places of business; and

18           **B.** A registered agent who may be:

20                   (1) An individual who resides in this State and whose  
22 business office is identical with the registered office;

24                   (2) A domestic corporation or not-for-profit domestic  
corporation whose business office is identical with the  
26 registered office; or

28                   (3) A foreign corporation or foreign not-for-profit  
corporation authorized to transact business in the  
30 State whose business office is identical with the  
registered office.

32           **2. Acceptance of appointment.** Unless the registered agent  
34 signed the document making the appointment, the appointment of a  
registered agent or a successor registered agent on whom process  
36 may be served is not effective until the registered agent  
delivers a written statement to the Secretary of State accepting  
38 the appointment.

40           **3. Change of registered agent.** A foreign corporation may  
42 change its registered agent by executing and delivering for  
filing as provided by section 121 a statement setting forth:

44           **A.** The name of the foreign corporation;

46           **B.** The jurisdiction of incorporation and the date on which  
48 the foreign corporation was authorized to transact business  
in this State;

50           **C.** The name and address of its current registered agent; and



2           D. The name and address of its successor registered agent.

4           4. Resignation of registered agent. The registered agent  
6 of a foreign corporation may resign upon filing a written notice  
8 of the resignation with the Secretary of State and by mailing a  
10 copy of the notice to the foreign corporation at its last  
12 principal office, wherever located, as filed with the Secretary  
14 of State. The notice filed with the Secretary of State must  
16 recite that a copy of the notice has been mailed to the last  
18 principal office as designated in this subsection, specify the  
20 address to which the notice was mailed and provide the  
22 jurisdiction of incorporation and the date on which the foreign  
24 corporation was authorized to transact business in this State.  
The appointment of such registered agent terminates upon the date  
of the filing of the notice by the Secretary of State.

18           5. Appointment of new registered agent. If a registered  
20 agent dies, becomes incapacitated, resigns or otherwise is unable  
22 to perform the registered agent's duties, the foreign corporation  
24 shall promptly appoint another registered agent and shall execute  
and file with the Secretary of State a written statement of the  
appointment of the new registered agent as provided in subsection  
4.

26           6. Name or address change. If the name of the current  
28 registered agent or address of the registered office of one or  
30 more foreign corporations changes from the name of the current  
registered agent or address of the registered office appearing on  
the record in the office of the Secretary of State, the  
registered agent shall execute and deliver for filing a statement  
setting forth:

32           A. The name of the foreign corporation, jurisdiction of  
34 incorporation and date on which the foreign corporation was  
36 authorized to transact business in this State for each  
foreign corporation affected by the change designated in  
this subsection;

38           B. The name of the registered agent appearing on the record  
40 in the office of the Secretary of State;

42           C. If the current registered agent has had a name change,  
44 the new name of the registered agent;

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

48           E. If the address of the registered office has changed, the  
50 address of the new registered office, including the street  
address and a mailing address, if different. For the

2           address, a post office box alone is not sufficient to meet  
3           the requirements of this paragraph;

4           F. The name of each foreign corporation affected by the  
5           change as provided in this subsection; and

6           G. That a notice of the change has been sent to each of the  
7           foreign corporations.

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

14          7. Statement of change. Filing by a foreign corporation of  
15          a statement of a change of its registered agent, as provided in  
16          subsection 4, constitutes both an appointment of the new  
17          registered agent named in the statement of change and a  
18          termination of the appointment of its former registered agent.

20          8. Registered agent named in application for authority.  
21          The initial registered agent of a foreign corporation must be  
22          named in the application for authority for that foreign  
23          corporation. A registered agent continues in office until a  
24          successor is chosen and qualifies and the statement required by  
25          subsection 4 is filed or until the resignation notice required by  
26          subsection 5 is filed.

28          9. Document filed to change registered agent. The document  
29          to be filed by the Secretary of State, the effect of which is to  
30          change the registered agent, must be signed by the person  
31          designated in the document as the new registered agent or in  
32          accordance with subsection 3 and section 121, subsection 5,  
33          paragraph A, B or C.

34                 **Sec. B-119. 13-C MRSA §§1508 and 1509,** as enacted by PL 2001,  
35                 c. 640, Pt. A, §2 and affected by Pt. B, §7, are repealed.

38                 **Sec. B-120. 13-C MRSA §1521, sub-§2,** as enacted by PL 2001, c.  
39                 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

40                         **2. Application of withdrawal; contents.** A foreign  
41                         corporation authorized to transact business in this State may  
42                         file an application of withdrawal by delivering an application to  
43                         the Secretary of State for filing. The application must set  
44                         forth:

46                                 A. The name of the foreign corporation and, the name of the  
47                                 state or country under whose law it is incorporated and the  
48                                 date on which the foreign corporation was authorized to  
49                                 transact business in this State;  
50

2 B. That the foreign corporation is not transacting business  
in this State and that it surrenders its authority to  
4 transact business in this State;

6 C. That the foreign corporation revokes the authority of  
its registered agent to accept service on its behalf and  
8 appoints the Secretary of State as its agent for service of  
process in any proceeding based on a cause of action arising  
10 during the time it was authorized to transact business in  
this State;

12 D. A mailing address to which the Secretary of State may  
14 mail a copy of any process served on the Secretary of State  
under paragraph C; and

16 E. A commitment to notify the Secretary of State in the  
18 future of any change in the foreign corporation's mailing  
address.

20 **Sec. B-121. 13-C MRSA §1523, sub-§1, ¶A,** as enacted by PL  
22 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to  
read:

24 A. The name of the foreign business corporation and, the  
26 name of the state or country under whose law it was  
incorporated before the conversion and the date on which the  
28 foreign corporation was authorized to transact business in  
this State;

30 **Sec. B-122. 13-C MRSA §1524, sub-§1, ¶A,** as enacted by PL  
32 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to  
read:

34 A. The name of the foreign corporation, the current state  
36 or country under whose laws it is incorporated as it appears  
on the records of the Secretary of State and the date on  
38 which the corporation was authorized to transact business in  
this State;

40 **Sec. B-123. 13-C MRSA §1531, sub-§4,** as enacted by PL 2001, c.  
42 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

44 **4. Notice of change of registered agent or office.** The  
foreign corporation does not inform the Secretary of State under  
46 section ~~1508-~~or~~ 1509~~ 1507 that its registered agent or registered  
office has changed, that its registered agent has resigned or  
48 that its registered office has been discontinued within 60 days  
of the change, resignation or discontinuance;

50

2           **Sec. B-124. 13-C MRSA §1601, sub-§5, ¶A**, as enacted by PL  
2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to  
read:

4  
6           A. Its articles or restated articles of incorporation and,  
all amendments to them currently in effect and any notices  
8           to shareholders referred to in section 121, subsection 10,  
paragraph E regarding facts on which a filed document is  
dependent;

10           **Sec. B-125. 13-C MRSA §1602, sub-§5**, as enacted by PL 2001, c.  
12           640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

14           **5. Right of inspection.** The right of inspection granted by  
this section may not be abolished or limited, except as provided  
16           in subsections 2 and 4, by a corporation's articles of  
incorporation or bylaws.

18           **Sec. B-126. 13-C MRSA §1621, sub-§1, ¶¶B and D**, as enacted by  
20           PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, are amended  
to read:

22           B. The address of the registered office of the domestic or  
24           foreign corporation in this State; the name of its clerk, if  
a domestic corporation, or its registered agent in this  
26           State, if a foreign corporation; and, if a foreign  
corporation, the address of its ~~registered--or~~ principal  
28           office, wherever located. The address of a registered  
office must include the street or rural route number, town  
30           or city and state;

32           D. The name and business or residence address of the  
president or chief executive officer, the treasurer, ~~--the~~  
34           ~~clerk--or--registered--agent~~ or chief financial officer and  
directors or, if no directors, shareholders of the domestic  
36           or foreign corporation, including the street or rural route  
number, town or city and state.

38           **Sec. B-127. 13-C MRSA §1621, sub-§4**, as enacted by PL 2001, c.  
40           640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

42           **4. Certificate of excuse.** The Secretary of State, upon  
application by any domestic corporation and satisfactory proof  
44           that it has ceased to transact business and that it is not  
indebted to this State for failure to file an annual report and  
46           to pay any fees or penalties accrued, shall file a certificate of  
the fact and shall give a duplicate certificate to the domestic  
48           corporation, after which the corporation is excused from filing  
annual reports with the Secretary of State, se as long as the  
50           domestic corporation in fact transacts no business. The name of

2 a corporation remains in the Secretary of State's records of  
3 corporate names and is protected for a period of 5 years  
4 following excuse.

6 **Sec. B-128. 13-C MRSA §1623** is enacted to read:

8 **§1623. Amended annual report of domestic or foreign corporations**

10 1. Amended annual report. If the information contained in  
11 an annual report filed under section 1621 has changed, a domestic  
12 or foreign corporation may, if it determines necessary, deliver  
13 to the Secretary of State for filing an amended annual report to  
14 change the information on file. The amended annual report must  
15 be executed as provided by section 121, subsection 5.

16 2. Contents. The amended annual report under subsection 1  
17 must set forth:

18 A. The name of the domestic corporation or foreign  
19 corporation and the jurisdiction of its incorporation;

22 B. The date on which the original annual report was filed;  
23 and

24 C. The information that has changed and the date on which  
25 it changed.

28 3. Period for filing. An amended annual report under  
29 subsection 1 may be filed by the domestic corporation or foreign  
30 corporation from the date of the original filing until December  
31 31st of that filing year.

34 **PART C**

36 **Sec. C-1. 31 MRSA §403**, as corrected by RR 2001, c. 2, Pt. B,  
37 §49 and affected by §58, is repealed.

38 **Sec. C-2. 31 MRSA §403-A** is enacted to read:

40 **§403-A. Limited partnership name**

42 1. Requirements. A limited partnership name must contain  
43 the words "Limited Partnership," the abbreviation "L.P." or the  
44 designation "LP," unless the limited partnership is filing an  
45 assumed name under section 405-A or a registration of name under  
46 section 406-A. If the words "Limited Partnership" are used, a

2 limited partnership may also use the abbreviation "L.P." or the  
4 designation "LP" without filing an assumed name under section  
6 405-A.

8 **2. Prohibition.** A limited partnership name may not contain  
10 the name of a limited partner unless:

12 A. The name of the limited partner is also the name of a  
14 general partner; or

16 B. The business of the limited partnership had been carried  
18 on under that name before the admission of that limited  
20 partner.

22 **3. Distinguishable name.** Except as authorized by  
24 subsections 4 and 5, a limited partnership name must be  
26 distinguishable on the records of the Secretary of State from:

28 A. The name of a corporation, limited liability company,  
30 limited liability partnership or limited partnership that is  
32 incorporated, organized or authorized to transact business  
34 or carry on activities in this State;

36 B. Assumed, fictitious, reserved and registered name  
38 filings for all entities; and

40 C. Marks registered under Title 10, chapter 301-A, unless  
42 the registered owner or holder of the mark is the same  
44 person or entity as the limited partnership seeking to use a  
46 name that is not distinguishable on the records of the  
48 Secretary of State and files proof of ownership with the  
50 Secretary of State.

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

A. Consists of or comprises language that is obscene;

B. Inappropriately promotes abusive or unlawful activity;

C. Falsely suggests an association with public  
institutions; or

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

**5. Authorization to use name.** A limited partnership may  
apply to the Secretary of State for authorization to use a name  
that is not distinguishable on the records of the Secretary of  
State from one or more of the names described in subsection 3.

2 The Secretary of State shall authorize use of the name applied  
3 for if:

4 A. The entity in possession of the name applied for  
5 consents to the use in writing and submits an undertaking in  
6 a form satisfactory to the Secretary of State to change its  
7 name to a name that is distinguishable on the records of the  
8 Secretary of State from the name of the applicant; or

10 B. The applicant delivers to the Secretary of State a  
11 certified copy of the final judgment of a court of competent  
12 jurisdiction establishing the applicant's right to use the  
13 name applied for in this State.

14 6. Use of another limited partnership's name. A limited  
15 partnership may use the name, including the assumed or fictitious  
16 name, of another domestic or foreign limited partnership that is  
17 used in this State if the other limited partnership is organized  
18 or authorized to transact business in this State and the limited  
19 partnership proposing to use the name:

22 A. Has merged with the other limited partnership;

24 B. Has been formed by reorganization of the other limited  
25 partnership; or

26 C. Has acquired all or substantially all of the assets,  
27 including the limited partnership name, of the other limited  
28 partnership.

30 7. Determining distinguishability. In determining whether  
31 names are distinguishable on the records, the Secretary of State  
32 shall disregard the following:

34 A. The words or abbreviations of words that describe the  
35 nature of the entity, including "professional association,"  
36 "corporation," "company," "incorporated," "chartered,"  
37 "limited," "limited partnership," "limited liability  
38 company," "professional limited liability company," "limited  
39 liability partnership," "registered limited liability  
40 partnership," "service corporation" and "professional  
41 corporation";

44 B. The presence or absence of the words or symbols of the  
45 words "and" and "the"; and

46 C. The differences in the use of punctuation,  
47 capitalization or special characters.

2 8. Change of limited partnership name by foreign limited  
3 partnership. If a foreign limited partnership authorized to  
4 transact business in this State changes its name to one that does  
5 not satisfy the requirements of this section, it may not transact  
6 business in this State under the proposed new name until it  
7 adopts a name satisfying the requirements of this section and  
8 files an amended application for authority under section 495 that  
9 is accompanied by a statement of use of a fictitious name under  
10 section 405-A.

11 9. Exception. Notwithstanding subsection 3, the name of a  
12 limited partnership may be not distinguishable on the records of  
13 the Secretary of State if the limited partnership was organized  
14 under the laws of this State prior to January 1, 1992 or the  
15 foreign limited partnership was authorized to do business in this  
16 State prior to January 1, 1992 and had the right to use the name  
17 as its legal name prior to January 1, 1992.

18 10. Name of limited partnership suspended. Subsection 3  
19 does not apply to the name of any limited partnership, the  
20 certificate of which is suspended, on and after the 3rd  
21 anniversary of the suspension.

22 **Sec. C-3. 31 MRSA §404,** as enacted by PL 1991, c. 552, §2 and  
23 affected by §4, is repealed.

24 **Sec. C-4. 31 MRSA §404-A** is enacted to read:

25 **§404-A. Reserved name**

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

35 2. Transfer of reservation. The owner of a reserved  
36 limited partnership name under subsection 1 may transfer the  
37 reservation to another person by executing and delivering for  
38 filing to the Secretary of State a notice of the transfer, signed  
39 by the transferor, that states the name and address of the  
40 transferee.

41 **Sec. C-5. 31 MRSA §405,** as enacted by PL 1991, c. 552, §2 and  
42 affected by §4, is repealed.



2                   Sec. C-6. 31 MRSA §405-A is enacted to read:

4                   §405-A. Assumed or fictitious name of limited partnership

6                   1. Assumed name defined. As used in this section, "assumed  
8                   name" means a trade name or any name other than the real name of  
a limited partnership except a fictitious name.

10                   2. Fictitious name defined. As used in this section,  
"fictitious name" means a name adopted by a foreign limited  
12                   partnership authorized to transact business in this State because  
its real name is unavailable pursuant to section 403-A.

14                   3. Authorized to transact business. Upon complying with  
this section, a domestic limited partnership or foreign limited  
16                   partnership authorized to transact business in this State may  
transact its business in this State under one or more assumed or  
18                   fictitious names.

20                   4. File statement indicating use of assumed or fictitious  
name. Prior to transacting business in this State under an  
22                   assumed or fictitious name, a limited partnership shall execute  
and deliver to the Secretary of State for filing a statement  
24                   setting forth:

26                   A. The limited partnership name;

28                   B. That the limited partnership intends to transact  
business under an assumed or fictitious name;

30                   C. The assumed or fictitious name that the limited  
32                   partnership proposes to use;

34                   D. If the assumed name is not to be used at all of the  
limited partnership's places of business in this State, the  
36                   locations where it will be used; and

38                   E. If the partnership is a foreign limited partnership:

40                   (1) The jurisdiction of organization; and

42                   (2) The date on which it was authorized to transact  
44                   business in this State.

46                   A separate statement must be executed and delivered for filing  
with respect to each assumed or fictitious name that the limited  
48                   partnership proposes to use.

50                   5. Compliance required. Each assumed or fictitious name  
must comply with the requirements of section 403-A.

2           6. Enjoin use of assumed or fictitious name. If a limited  
3 partnership uses an assumed or fictitious name without complying  
4 with the requirements of this section, the continued use of the  
5 assumed or fictitious name may be enjoined upon suit by the  
6 Attorney General or by any person adversely affected by the use  
7 of the assumed or fictitious name.

8  
9           7. Enjoin use despite compliance. Notwithstanding its  
10 compliance with the requirements of this section, the use of an  
11 assumed or fictitious name may be enjoined upon suit of the  
12 Attorney General or of any person adversely affected by such use  
13 if:

14           A. The assumed or fictitious name did not, at the time the  
15 statement required by subsection 4 was filed, comply with  
16 the requirements of section 403-A; or

17           B. The assumed or fictitious name is not distinguishable on  
18 the records of the Secretary of State from a name in which  
19 the plaintiff has prior rights by virtue of the common law  
20 or statutory law of unfair competition, unfair trade  
21 practices, common law copyright or similar law.

22  
23           The mere filing of a statement pursuant to subsection 4 does not  
24 constitute actual use of the assumed or fictitious name set out  
25 in that statement for purposes of determining priority of rights.

26  
27           8. Terminate use of assumed or fictitious name. A limited  
28 partnership may terminate an assumed or fictitious name by  
29 executing and delivering a statement setting forth:

30           A. The name of the limited partnership;

31           B. That the limited partnership no longer intends to  
32 transact business under the assumed or fictitious name; and

33           C. The assumed or fictitious name the limited partnership  
34 intends to terminate.

35  
36           Sec. C-7. 31 MRSA §406, as amended by PL 1995, c. 514, §3, is  
37 repealed.

38           Sec. C-8. 31 MRSA §406-A is enacted to read:

39           §406-A. Registered name of foreign limited partnership

40           1. Register limited partnership name. A foreign limited  
41 partnership may register its limited partnership name if the name

2 is distinguishable on the records of the Secretary of State  
3 pursuant to section 403-A.

4 2. Application. To register its limited partnership name,  
5 a foreign limited partnership must execute and deliver to the  
6 Secretary of State for filing an application that:

8 A. Sets forth its limited partnership name, the state or  
9 country and date of its organization, the address of its  
10 principal office wherever located and a brief description of  
11 the nature of the business in which it is engaged; and

12 B. Is accompanied by a certificate of existence or a  
13 document of similar import duly authenticated by the  
14 secretary of state or other official having custody of  
15 limited partnership records in the state or country under  
16 whose law the foreign limited partnership is organized. The  
17 certificate of existence must have been made not more than  
18 90 days prior to the delivery of the application for filing.

19 3. Applicant's exclusive use. The limited partnership name  
20 is registered for the foreign limited partnership's exclusive use  
21 upon the effective date of the application until the end of the  
22 calendar year in which the application was filed.

23 4. Renewal of registered name. A foreign limited  
24 partnership whose registration is effective may renew it for a  
25 successive year by delivering for filing to the Secretary of  
26 State a renewal application that complies with the requirements  
27 of subsection 2 between October 1st and December 31st. The  
28 renewal application, when filed, renews the registration for the  
29 following calendar year.

30 5. Qualify as foreign limited partnership. A foreign  
31 limited partnership whose registration is effective may, after  
32 the registration is effective, qualify as a foreign limited  
33 partnership under the registered name or may consent in writing  
34 to the use of that name by a limited partnership organized under  
35 this Act or by another foreign limited partnership authorized to  
36 transact business in this State. The registration terminates  
37 when the domestic limited partnership is organized or the foreign  
38 limited partnership qualifies or consents to the qualification of  
39 another foreign limited partnership under the registered name.

40 **Sec. C-9. 31 MRSA §492, sub-§3, ¶H,** as amended by PL 1993, c.  
41 316, §56, is further amended to read:

42 H. A certificate of good-standing or its equivalent from the  
43 proper officer of its jurisdiction of organization existence  
44 or a document of similar import duly authenticated by the  
45 Secretary of State for filing an application that:

2 secretary of state or other official having custody of  
3 limited partnership records in the state or country under  
4 whose law the foreign limited partnership is organized. The  
5 certificate of ~~good standing or its equivalent~~ existence  
6 must have been made not more than 90 days prior to the  
7 delivery of the application for filing; and

8 **Sec. C-10. 31 MRSA §494, sub-§1**, as enacted by PL 1991, c.  
9 552, §2 and affected by §4, is amended to read:  
10

11 **1. Name.** A foreign limited partnership may apply to the  
12 Secretary of State to do business in this State under any name  
13 that conforms with the requirements of section 403 403-A. The  
14 name does not need to be the same as the name under which it is  
15 authorized to do business in the jurisdiction of its organization.  
16

17 **Sec. C-11. 31 MRSA §498, sub-§2, ¶B**, as corrected by RR 1993,  
18 c. 1, §80, is further amended to read:

19 **B.** The authority of a foreign limited partnership may be  
20 revoked only after:

21  
22 (1) The Secretary of State has mailed to the  
23 partnership's last registered office in this State and  
24 to its last registered or principal office in its  
25 jurisdiction of organization as filed with the  
26 Secretary of State at least ~~30-days'~~ 60 days' notice of  
27 pending revocation of its authority to do business in  
28 this State. The notice must specify the default; and

29  
30 (2) The partnership has not, prior to revocation,  
31 removed the ground of default specified in the notice.  
32

33 **Sec. C-12. 31 MRSA §498, sub-§2, ¶C**, as amended by PL 1993, c.  
34 316, §63, is further amended to read:  
35

36  
37 **C.** After the expiration of the ~~30-day~~ 60-day notice period,  
38 if a foreign limited partnership has not corrected the  
39 specified default or convinced the Secretary of State, by  
40 affidavit or otherwise, that there was no misrepresentation  
41 relative to paragraph A, subparagraph (5), the Secretary of  
42 State shall issue and file a certificate revoking the  
43 foreign limited partnership's authority to do business in  
44 this State and shall mail copies of the certificate of  
45 revocation to the foreign limited partnership's last  
46 registered office in this State and to its last registered  
47 or principal office in its jurisdiction of organization as  
48 filed with the Secretary of State.

2           **Sec. C-13. 31 MRSA §524, sub-§1, ¶B**, as amended by PL 1997, c.  
376, §41, is further amended to read:

4           B. The provisions of section 403 ~~403-A~~, subsection 1,  
5 paragraph A requiring that the ~~name~~ names of all limited  
6 partnerships contain the words "Limited Partnership," the  
7 abbreviation "L.P." or the designation "LP" do not apply to  
8 a limited partnership formed before January 1, 1992 or a  
9 foreign limited partnership having obtained the authority to  
10 do business in this State before January 1, 1992 until such  
11 time as the limited partnership has filed an amendment to  
12 its certificate of limited partnership or application for  
13 authority to do business as a foreign limited partnership  
14 pursuant to subsection 2;

16           **Sec. C-14. 31 MRSA §526, sub-§§1 and 2**, as amended by PL 1997,  
17 c. 376, §42, are further amended to read:

18           **1. Reservation.** For filing of an application for  
19 reservation of name or a notice of transfer or cancellation of  
20 reservation pursuant to section 404 ~~404-A~~, a fee in the amount of  
21 \$20 for each limited partnership affected;

22           **2. Assumed or fictitious name.** For filing of an  
23 application for an assumed name under section 405 ~~405-A~~, a fee in  
24 the amount of \$105, and for filing of an application for a  
25 fictitious name under section 405-A, a fee in the amount of \$20.  
26 The addition of the words "Limited Partnership," the abbreviation  
27 "L.P." or the designation "LP" to a foreign limited partnership's  
28 name for use in this State is not, for the purpose of this  
29 section, deemed an assumed name;

30           **Sec. C-15. 31 MRSA §526, sub-§3**, as enacted by PL 1991, c.  
31 552, §2 and affected by §4, is amended to read:

32           **3. Termination of assumed or fictitious name.** For a  
33 termination of an assumed or fictitious name under section 405  
34 ~~405-A~~, a fee of \$20;

35           **Sec. C-16. 31 MRSA §526, sub-§4**, as amended by PL 1993, c.  
36 316, §65, is further amended to read:

37           **4. Registered name.** For filing of an application for a  
38 registered name of a foreign limited partnership under section  
39 406 ~~406-A~~, a fee of \$20 per month for the number of months or  
40 fraction of a month remaining in the calendar year when first  
41 filing. For filing an application to renew the registration of a  
42 registered name, a fee of \$155;

2           **Sec. C-17. 31 MRSA §526, sub-§4-A**, as enacted by PL 1993, c.  
316, §66, is repealed.

4           **Sec. C-18. 31 MRSA §526, sub-§18**, as amended by PL 1999, c.  
638, §19, is repealed.

6           **Sec. C-19. 31 MRSA §603**, as corrected by RR 2001, c. 2, Pt.  
8 B, §50 and affected by §58, is repealed.

10           **Sec. C-20. 31 MRSA §603-A** is enacted to read:

12           **§603-A. Limited liability company name**

14           **1. Requirements.** A limited liability company name must  
16 contain the words "Limited Liability Company," the abbreviation  
18 "L.L.C." or the designation "LLC" unless the limited liability  
20 company is filing an assumed name under section 605-A or a  
22 registration of name under section 606-A. If the words "Limited  
24 Liability Company," "Limited Liability Company, Chartered,"  
"Limited Liability Company, Professional Association," "Limited  
Liability Company, P.A." or any of the designations without  
commas are used, a limited liability company may also use the  
abbreviation "L.L.C." or the designation "LLC" without filing an  
assumed name under section 605-A.

26           **2. Distinguishable name.** Except as authorized by  
28 subsections 3 and 4, a limited liability company name must be  
distinguishable on the records of the Secretary of State from:

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

34           B. Assumed, fictitious, reserved and registered name  
36 filings for all entities; and

38           C. Marks registered under Title 10, chapter 301-A unless  
40 the registered owner or holder of the mark is the same  
42 person or entity as the limited liability company seeking to  
use a name that is not distinguishable on the records of the  
Secretary of State and files proof of ownership with the  
Secretary of State.

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

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

50           B. Inappropriately promotes abusive or unlawful activity;

2 C. Falsely suggests an association with public  
3 institutions; or

4  
5 D. Violates any other provision of the law of this State  
6 with respect to names.

8 **4. Authorization to use name.** A limited liability company  
9 may apply to the Secretary of State for authorization to use a  
10 name that is not distinguishable on the records of the Secretary  
11 of State from one or more of the names described in subsection 2.  
12 The Secretary of State shall authorize use of the name applied  
13 for if:

14  
15 A. The entity in possession of the name consents to the use  
16 in writing and submits an undertaking in a form satisfactory  
17 to the Secretary of State to change its name to a name that  
18 is distinguishable on the records of the Secretary of State  
19 from the name of the applicant; or

20  
21 B. The applicant delivers to the Secretary of State a  
22 certified copy of the final judgment of a court of competent  
23 jurisdiction establishing the applicant's right to use the  
24 name applied for in this State.

25 **5. Use of another limited liability company's name.** A  
26 limited liability company may use the name, including the assumed  
27 or fictitious name, of another domestic or foreign limited  
28 liability company that is used in this State if the other limited  
29 liability company is organized or authorized to transact business  
30 in this State and the limited liability company proposing to use  
31 the name:

32  
33 A. Has merged with the other limited liability company;

34  
35 B. Has been formed by reorganization of the other limited  
36 liability company; or

37  
38 C. Has acquired all or substantially all of the assets,  
39 including the limited liability company name, of the other  
40 limited liability company.

41  
42 **6. Determining distinguishability.** In determining whether  
43 names are distinguishable on the records, the Secretary of State  
44 shall disregard the following:

45  
46 A. Words or abbreviations of words that describe the nature  
47 of the entity, including "professional association,"  
48 "corporation," "company," "incorporated," "chartered,"  
49 "limited," "limited partnership," "limited liability  
50 company," "partnership," "association," "corporation," "limited liability

2           company," "professional limited liability company," "limited  
3           liability partnership," "registered limited liability  
4           partnership," "service corporation" and "professional  
5           corporation";

6           B. The presence or absence of the words or symbols of the  
7           words "and" and "the"; and

8  
9           C. Differences in the use of punctuation, capitalization or  
10           special characters.

11           7. Change of limited liability company name by foreign  
12           limited liability company. If a foreign limited liability  
13           company authorized to transact business in this State changes its  
14           name to one that does not satisfy the requirements of this  
15           section, it may not transact business in this State under the  
16           proposed new name until it adopts a name satisfying the  
17           requirements of this section and files an amended application for  
18           authority under section 715 that is accompanied by a statement of  
19           use of a fictitious name under section 605-A.

20  
21           8. Exception. Notwithstanding subsection 2, the name of a  
22           foreign limited liability company may be not distinguishable on  
23           the records of the Secretary of State if the foreign limited  
24           liability company was authorized to do business in this State  
25           before January 1, 1995 and had the right to use the name as its  
26           legal name before that date.

27  
28           9. Name of limited liability company suspended. Subsection  
29           2 does not apply to the name of any limited liability company  
30           whose certificate is suspended on and after the 3rd anniversary  
31           of the suspension.

32  
33           Sec. C-21. 31 MRSA §604, as enacted by PL 1993, c. 718, Pt.  
34           A, §1, is repealed.

35           Sec. C-22. 31 MRSA §604-A is enacted to read:

36  
37           §604-A. Reserved name

38  
39           1. Reserve use of name. A person may reserve the exclusive  
40           use of a limited liability company name, including an assumed or  
41           fictitious name, by executing and delivering for filing an  
42           application to the Secretary of State. The application must set  
43           forth the name and address of the applicant and the name proposed  
44           to be reserved. If the Secretary of State finds that the limited  
45           liability company name applied for is available, the Secretary of  
46           State shall reserve the name for the applicant's exclusive use  
47           for a nonrenewable period of 120 days.

48  
49  
50



2           2. Transfer of reservation. The owner of a reserved  
3           limited liability company name under subsection 1 may transfer  
4           the reservation to another person by executing and delivering for  
5           filing to the Secretary of State a notice of the transfer, signed  
6           by the transferor, that states the name and address of the  
7           transferee.

8           **Sec. C-23. 31 MRSA §605**, as enacted by PL 1993, c. 718, Pt.  
9           A, §1, is repealed.

10           **Sec. C-24. 31 MRSA §605-A** is enacted to read:

11           §605-A. Assumed or fictitious name of limited liability company

12           1. Assumed name defined. As used in this section, "assumed  
13           name" means a trade name or any name other than the real name of  
14           a limited liability company except a fictitious name.

15           2. Fictitious name defined. As used in this section,  
16           "fictitious name" means a name adopted by a foreign limited  
17           liability company authorized to transact business in this State  
18           because its real name is unavailable pursuant to section 603-A.

19           3. Authorized to transact business. Upon complying with  
20           this section, a domestic or foreign limited liability company  
21           authorized to transact business in this State may transact its  
22           business in this State under one or more assumed or fictitious  
23           names.

24           4. File statement indicating use of assumed or fictitious  
25           name. Prior to transacting business in this State under an  
26           assumed or fictitious name, a limited liability company shall  
27           execute and deliver to the Secretary of State for filing a  
28           statement setting forth:

29           A. The limited liability company name;

30           B. That the limited liability company intends to transact  
31           business under an assumed or fictitious name;

32           C. The assumed or fictitious name that the limited  
33           liability company proposes to use;

34           D. If the assumed name is not to be used at all of the  
35           limited liability company's places of business in this  
36           State, the locations where that name will be used; and

37           E. If the company is a foreign limited liability company:

38           (1) The jurisdiction of organization; and

2                   (2) The date on which it was authorized to transact  
3                   business in this State.

4  
5                   A separate statement must be executed and delivered to the  
6                   Secretary of State for filing with respect to each assumed or  
7                   fictitious name that the limited liability company proposes to  
8                   use.

10                  5. Compliance required. An assumed or fictitious name must  
11                  comply with the requirements of section 603-A.

12                  6. Enjoin use of assumed or fictitious name. If a limited  
13                  liability company uses an assumed or fictitious name without  
14                  complying with the requirements of this section, the continued  
15                  use of the assumed or fictitious name may be enjoined upon suit  
16                  by the Attorney General or by any person adversely affected by  
17                  the use of the assumed or fictitious name.

18                  7. Enjoin use despite compliance. Notwithstanding its  
19                  compliance with the requirements of this section, the use of an  
20                  assumed or fictitious name may be enjoined upon suit by the  
21                  Attorney General or by any person adversely affected by such use  
22                  if:

23                  A. The assumed or fictitious name did not, at the time the  
24                  statement required by subsection 4 was filed, comply with  
25                  the requirements of section 603-A; or

26                  B. The assumed or fictitious name is not distinguishable on  
27                  the records of the Secretary of State from a name in which  
28                  the plaintiff has prior rights by virtue of the common law  
29                  or statutory law of unfair competition, unfair trade  
30                  practices, common law copyright or similar law.

31                  The mere filing of a statement pursuant to subsection 4 does not  
32                  constitute actual use of the assumed or fictitious name set out  
33                  in that statement for the purpose of determining priority of  
34                  rights.

35                  8. Terminate use of assumed or fictitious name. A limited  
36                  liability company may terminate an assumed or fictitious name by  
37                  executing and delivering to the Secretary of State a statement  
38                  setting forth:

39                  A. The name of the limited liability company;

40                  B. That the limited liability company no longer intends to  
41                  transact business under the assumed or fictitious name; and

42

2           C. The assumed or fictitious name the limited liability  
3           company intends to terminate.

4           **Sec. C-25. 31 MRSA §606**, as amended by PL 1995, c. 514, §§4  
5           and 5, is repealed.

6           **Sec. C-26. 31 MRSA §606-A** is enacted to read:

7           **§606-A. Registered name of foreign limited liability company**

8           **1. Register limited liability company name.** A foreign  
9           limited liability company may register its limited liability  
10           company name if the name is distinguishable on the records of the  
11           Secretary of State pursuant to section 603-A.

12           **2. Application.** To register its limited liability company  
13           name, a foreign limited liability company must execute and  
14           deliver to the Secretary of State for filing an application that:

15           **A.** Sets forth its limited liability company name, the state  
16           or country and date of its organization, the address of its  
17           principal office wherever located and a brief description of  
18           the nature of the business in which it is engaged; and

19           **B.** Is accompanied by a certificate of existence or a  
20           document of similar import duly authenticated by the  
21           secretary of state or other official having custody of  
22           limited liability company records in the state or country  
23           under whose law the foreign limited liability company is  
24           organized. The certificate of existence must have been made  
25           not more than 90 days prior to the delivery of the  
26           application for filing.

27           **3. Applicant's exclusive use.** A limited liability company  
28           name is registered for a foreign limited liability company's  
29           exclusive use upon the effective date of the application under  
30           subsection 2 until the end of the calendar year in which the  
31           application was filed.

32           **4. Renewal of registered name.** A foreign limited liability  
33           company whose registration under this section is effective may  
34           renew it for a successive year by delivering for filing to the  
35           Secretary of State between October 1st and December 31st a  
36           renewal application that complies with the requirements of  
37           subsection 2. The renewal application, when filed, renews the  
38           registration for the following calendar year.

39           **5. Qualify as foreign limited liability company.** A foreign  
40           limited liability company whose registration under this section  
41           is effective may, after the registration is effective, qualify as  
42           effective may, after the registration is effective, qualify as

2 a foreign limited liability company under the registered name or  
4 may consent in writing to the use of that name by a limited  
6 liability company organized under this Act or by another foreign  
8 limited liability company authorized to transact business in this  
State. The registration terminates when the domestic limited  
liability company is organized or the foreign limited liability  
company qualifies or consents to the qualification of another  
foreign limited liability company under the registered name.

10 **Sec. C-27. 31 MRSA §712, sub-§3, ¶H,** as enacted by PL 1993, c.  
12 718, Pt. A, §1, is amended to read:

14 H. A certificate of ~~good standing or its equivalent from~~  
16 ~~the proper officer of its jurisdiction of organization~~  
18 existence or a document of similar import duly authenticated  
20 by the secretary of state or other official having custody  
22 of limited liability company records in the state or country  
under whose law the foreign limited liability company is  
organized. The certificate of ~~good standing or its~~  
~~equivalent~~ existence must have been made not more than 90  
days prior to the delivery of the application for filing; and

24 **Sec. C-28. 31 MRSA §714, sub-§1,** as enacted by PL 1993, c.  
26 718, Pt. A, §1, is amended to read:

28 **1. Name.** A foreign limited liability company may apply to  
30 the Secretary of State to do business in this State under a name  
32 that conforms with the requirements of section 603 603-A,  
subsection 1. The name does not need to be the same as the name  
of its organization.

34 **Sec. C-29. 31 MRSA §719, sub-§2, ¶¶B and C,** as enacted by PL  
1993, c. 718, Pt. A, §1, are amended to read:

36 B. The authority of a foreign limited liability company may  
38 be revoked only after:

40 (1) The Secretary of State has mailed to the foreign  
42 limited liability company's last registered office in  
44 this State and to its last registered or principal  
46 office in its jurisdiction of organization as filed  
with the Secretary of State, a ~~30-day~~ 60-day notice of  
pending revocation of its authority to do business in  
this State. The notice must specify the default; and

48 (2) The foreign limited liability company has not,  
50 prior to revocation, removed the ground of default  
specified in the notice.

2 C. After the expiration of the ~~30-day~~ 60-day notice period,  
4 if a foreign limited liability company has not corrected the  
6 specified default or convinced the Secretary of State, by  
8 affidavit or otherwise, that there was no misrepresentation  
10 relative to paragraph A, subparagraph (5), the Secretary of  
12 State shall issue and file a certificate revoking the  
foreign limited liability company's authority to do business  
in this State and mail copies of the certificate of  
revocation to the foreign limited liability company's last  
registered office in this State and to its last registered  
or principal office in its jurisdiction of organization as  
filed with the Secretary of State.

14 **Sec. C-30. 31 MRSA §751, sub-§1**, as amended by PL 1997, c.  
16 376, §57, is further amended to read:

18 **1. Reservation.** For filing of an application for  
reservation of name or a notice of transfer ~~or cancellation~~ of  
20 reservation pursuant to section 604 604-A, a fee of \$20 for each  
limited liability company affected;

22 **Sec. C-31. 31 MRSA §751, sub-§§2 to 4**, as enacted by PL 1993,  
24 c. 718, Pt. A, §1, are amended to read:

26 **2. Assumed or fictitious name.** For filing of an  
application for an assumed name under section 605 605-A, a fee of  
28 \$105 and for filing an application for a fictitious name under  
section 605-A, a fee of \$20;

30 **3. Termination of assumed or fictitious name.** For filing  
of a termination of an assumed or fictitious name under section  
32 605 605-A, a fee of \$20;

34 **4. Registered name.** For filing of an application for a  
registered name of a foreign limited liability company under  
36 section 606 606-A, a fee of \$20 per month for the number of  
months or fraction of a month remaining in the calendar year when  
38 first filing. For filing an application to renew the  
registration of a registered name, a fee of \$155;

40 **Sec. C-32. 31 MRSA §751, sub-§5**, as enacted by PL 1993, c.  
42 718, Pt. A, §1, is repealed.

44 **Sec. C-33. 31 MRSA §751, sub-§23**, as amended by PL 1999, c.  
46 638, §38, is repealed.

48 **Sec. C-34. 31 MRSA §803**, as corrected by RR 2001, c. 2, Pt.  
B, §52 and affected by §58, is repealed.

50 **Sec. C-35. 31 MRSA §803-A** is enacted to read:

2 **§803-A. Registered limited liability partnership name**

4 **1. Requirements.** A limited liability partnership name must  
6 contain the words "Limited Liability Partnership," the  
8 abbreviation "L.L.P." or the designation "LLP" unless the  
10 partnership is filing an assumed name under section 805-A or a  
12 registration of name under section 806-A. If the words "Limited  
14 Liability Partnership," "Limited Liability Partnership,  
Chartered," "Limited Liability Partnership, Professional  
Association," "Limited Liability Partnership, P.A." or any of the  
designations without commas are used, a limited liability  
partnership may also use the abbreviation "L.L.P." or the  
designation "LLP" without filing an assumed name under section  
805-A.

16 **2. Distinguishable name.** Except as authorized by  
18 subsections 3 and 4, a limited liability partnership name must be  
distinguishable on the records of the Secretary of State from:

20 **A.** The name of a corporation, limited liability company,  
22 limited liability partnership or limited partnership that is  
incorporated, organized or authorized to transact business  
24 or carry on activities in this State;

26 **B.** Assumed, fictitious, reserved and registered name  
filings for all entities; and

28 **C.** Marks registered under Title 10, chapter 301-A unless  
30 the registered owner or holder of the mark is the same  
person or entity as the limited liability partnership  
32 seeking to use a name that is not distinguishable on the  
records of the Secretary of State and files proof of  
34 ownership with the Secretary of State.

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

38 **A.** Consists of or comprises language that is obscene;

40 **B.** Inappropriately promotes abusive or unlawful activity;

42 **C.** Falsely suggests an association with public  
44 institutions; or

46 **D.** Violates any other provision of the law of this State  
with respect to names.

48 **4. Authorization to use name.** A limited liability  
50 partnership may apply to the Secretary of State for authorization

2 to use a name that is not distinguishable on the records of the  
3 Secretary of State from one or more of the names described in  
4 subsection 2. The Secretary of State shall authorize use of the  
5 name applied for if:

6 A. The entity in possession of the name consents to the use  
7 in writing and submits an undertaking in a form satisfactory  
8 to the Secretary of State to change its name to a name that  
9 is distinguishable on the records of the Secretary of State  
10 from the name of the applicant; or

12 B. The applicant delivers to the Secretary of State a  
13 certified copy of the final judgment of a court of competent  
14 jurisdiction establishing the applicant's right to use the  
15 name applied for in this State.

16  
17 5. Use of another limited liability partnership's name. A  
18 limited liability partnership may use the name, including the  
19 assumed or fictitious name, of another registered or foreign  
20 limited liability partnership that is used in this State if the  
21 other limited liability partnership is organized or authorized to  
22 transact business in this State and the limited liability  
23 partnership proposing to use the name:

24 A. Has merged with the other limited liability partnership;

26 B. Has been formed by reorganization of the other limited  
27 liability partnership; or

28 C. Has acquired all or substantially all of the assets,  
29 including the limited liability partnership name, of the  
30 other limited liability partnership.

31  
32 6. Determining distinguishability. In determining whether  
33 names are distinguishable on the records, the Secretary of State  
34 shall disregard the following:

35  
36 A. Words or abbreviations of words that describe the nature  
37 of the entity, including "professional association,"  
38 "corporation," "company," "incorporated," "chartered,"  
39 "limited," "limited partnership," "limited liability  
40 company," "professional limited liability company," "limited  
41 liability partnership," "registered limited liability  
42 partnership," "service corporation" and "professional  
43 corporation";

44  
45 B. The presence or absence of the words or symbols of the  
46 words "and" and "the"; and  
47  
48

2           C. Differences in the use of punctuation, capitalization or  
3           special characters.

4           7. Change of limited liability partnership name by foreign  
5           limited liability partnership. If a foreign limited liability  
6           partnership authorized to transact business in this State changes  
7           its name to one that does not satisfy the requirements of this  
8           section, it may not transact business in this State under the  
9           proposed new name until it adopts a name satisfying the  
10           requirements of this section and files an amended application for  
11           authority under section 855 that is accompanied by a statement of  
12           use of a fictitious name under section 805-A.

13           8. Exception. Notwithstanding subsection 2, the name of a  
14           limited liability partnership may be not distinguishable on the  
15           records of the Secretary of State if the foreign limited  
16           liability partnership was authorized to do business in this State  
17           prior to January 1, 1996 and had the right to use the name as its  
18           legal name before that date.

19           9. Name of limited liability partnership revoked.  
20           Subsection 2 does not apply to the name of any partnership whose  
21           status as a limited liability partnership has been revoked on and  
22           after the 3rd anniversary of the revocation.

23           Sec. C-36. 31 MRSA §804, as enacted by PL 1995, c. 633, Pt.  
24           B, §1, is repealed.

25           Sec. C-37. 31 MRSA §804-A is enacted to read:

26           §804-A. Reserved name

27           1. Reserve use of name. A person may reserve the exclusive  
28           use of a limited liability partnership name, including an assumed  
29           or fictitious name, by executing and delivering for filing an  
30           application to the Secretary of State. The application must set  
31           forth the name and address of the applicant and the name proposed  
32           to be reserved. If the Secretary of State finds that the limited  
33           liability partnership name applied for is available, the  
34           Secretary of State shall reserve the name for the applicant's  
35           exclusive use for a nonrenewable period of 120 days.

36           2. Transfer of reservation. The owner of a reserved  
37           limited liability partnership name under subsection 1 may  
38           transfer the reservation to another person by executing and  
39           delivering for filing to the Secretary of State a notice of the  
40           transfer, signed by the transferor, that states the name and  
41           address of the transferee.



2           **Sec. C-38. 31 MRSA §805**, as enacted by PL 1995, c. 633, Pt.  
B, §1, is repealed.

4           **Sec. C-39. 31 MRSA §805-A** is enacted to read:

6           **§805-A. Assumed or fictitious name of limited liability**  
              **partnership**

8  
10           **1. Assumed name defined.** As used in this section, "assumed  
name" means a trade name or any name other than the real name of  
a limited liability partnership except a fictitious name.

12  
14           **2. Fictitious name defined.** As used in this section,  
"fictitious name" means a name adopted by a foreign limited  
liability partnership authorized to transact business in this  
16 State because its real name is unavailable pursuant to section  
803-A.

18  
20           **3. Authorized to transact business.** Upon complying with  
this section, a registered or foreign limited liability  
partnership authorized to transact business in this State may  
22 transact its business in this State under one or more assumed or  
fictitious names.

24  
26           **4. File statement indicating use of assumed or fictitious**  
**name.** Prior to transacting business in this State under an  
assumed or fictitious name, a limited liability partnership shall  
28 execute and deliver to the Secretary of State for filing a  
statement setting forth:

30           **A. The limited liability partnership name;**

32  
34           **B. That the limited liability partnership intends to**  
**transact business under an assumed or fictitious name;**

36           **C. The assumed or fictitious name that the limited**  
**liability partnership proposes to use;**

38  
40           **D. If the assumed name is not to be used at all of the**  
**limited liability partnership's places of business in this**  
42 **State, the locations where that name will be used; and**

44           **E. If the company is a foreign limited liability**  
**partnership:**

46                   **(1) The jurisdiction of organization; and**

48                   **(2) The date on which it was authorized to transact**  
50 **business in this State.**

2 A separate statement must be executed and delivered to the  
3 Secretary of State for filing with respect to each assumed or  
4 fictitious name that the limited liability partnership proposes  
5 to use.

6 5. Compliance required. Each assumed or fictitious name  
7 must comply with the requirements of section 803-A.

8  
9 6. Enjoin use of assumed or fictitious name. If a limited  
10 liability partnership uses an assumed or fictitious name without  
11 complying with the requirements of this section, the continued  
12 use of the assumed or fictitious name may be enjoined upon suit  
13 by the Attorney General or by any person adversely affected by  
14 the use of the assumed or fictitious name.

15 7. Enjoin use despite compliance. Notwithstanding its  
16 compliance with the requirements of this section, the use of an  
17 assumed name or fictitious name may be enjoined upon suit by the  
18 Attorney General or by any person adversely affected by such use  
19 if:

20  
21 A. The assumed or fictitious name did not, at the time the  
22 statement required by subsection 4 was filed, comply with  
23 the requirements of section 803-A; or

24  
25 B. The assumed or fictitious name is not distinguishable on  
26 the records of the Secretary of State from a name in which  
27 the plaintiff has prior rights by virtue of the common law  
28 or statutory law of unfair competition, unfair trade  
29 practices, common law copyright or similar law.

30  
31 The mere filing of a statement pursuant to subsection 4 does not  
32 constitute actual use of the assumed or fictitious name set out  
33 in that statement for the purpose of determining priority of  
34 rights.

35  
36 8. Terminate use of assumed or fictitious name. A limited  
37 liability partnership may terminate an assumed or fictitious name  
38 by executing and delivering to the Secretary of State a statement  
39 setting forth:

40  
41 A. The name of the limited liability partnership;

42  
43 B. That the limited liability partnership no longer intends  
44 to transact business under the assumed or fictitious name;  
45 and

46  
47 C. The assumed or fictitious name the limited liability  
48 partnership intends to terminate.

49  
50

2           **Sec. C-40. 31 MRSA §806**, as amended by PL 1997, c. 376, §63,  
is repealed.

4           **Sec. C-41. 31 MRSA §806-A** is enacted to read:

6           **§806-A. Registered name of foreign limited liability partnership**

8           **1. Register limited liability partnership name.** A foreign  
10           limited liability partnership may register its limited liability  
12           partnership name if the name is distinguishable on the records of  
14           the Secretary of State pursuant to section 803-A.

16           **2. Application.** To register its limited liability  
18           partnership name, a foreign limited liability partnership must  
20           execute and deliver to the Secretary of State for filing an  
22           application that:

24           A. Sets forth its limited liability partnership name, the  
26           state or country and date of its organization, the address  
28           of its principal office wherever located and a brief  
30           description of the nature of the business in which it is  
32           engaged; and

34           B. Is accompanied by a certificate of existence or a  
36           document of similar import duly authenticated by the  
38           secretary of state or other official having custody of  
40           limited liability partnership records in the state or  
42           country under whose law the foreign limited liability  
44           partnership is organized. In lieu of a certificate of  
46           existence, a copy of the foreign limited liability  
48           partnership's registration certified or stamped by the  
              secretary of state or other proper officer in its domestic  
              jurisdiction is a sufficient equivalent if such an officer  
              does not produce any other type of certificate of  
              existence. The certificate of existence must have been made  
              not more than 90 days prior to the delivery of the  
              application for filing.

40           **3. Applicant's exclusive use.** A limited liability  
42           partnership name is registered for a foreign limited liability  
44           partnership's exclusive use upon the effective date of the  
46           application under subsection 2 until the end of the calendar year  
48           in which the application was filed.

40           **4. Renewal of registered name.** A foreign limited liability  
42           partnership whose registration under this section is effective  
44           may renew it for a successive year by delivering for filing to  
46           the Secretary of State between October 1st and December 31st a  
48           renewal application that complies with the requirements of

2 subsection 2. The renewal application, when filed, renews the  
3 registration for the following calendar year.

4 5. Qualify as foreign limited liability partnership. A  
5 foreign limited liability partnership whose registration under  
6 this section is effective may, after the registration is  
7 effective, qualify as a foreign limited liability partnership  
8 under the registered name or may consent in writing to the use of  
9 that name by a registered limited liability partnership organized  
10 under this Act or by another foreign limited liability  
11 partnership authorized to transact business in this State. The  
12 registration terminates when the partnership becomes a registered  
13 limited liability partnership or the foreign limited liability  
14 partnership qualifies or consents to the qualification of another  
15 foreign limited liability partnership under the registered name.

16 **Sec. C-42. 31 MRSA §852, sub-§3, ¶H,** as enacted by PL 1995, c.  
17 633, Pt. B, §1, is amended to read:

18  
19 H. ~~A certificate of good-standing-or-its-equivalent-from~~  
20 ~~the-proper-officer-of-its-jurisdiction-of-organization~~  
21 existence or a document of similar import duly authenticated  
22 by the secretary of state or other official having custody  
23 of limited liability partnership records in the state or  
24 country under whose law the foreign limited liability  
25 partnership is organized. For-the-purpose-of-this-paragraph  
26 In lieu of a certificate of existence, a copy of the foreign  
27 limited liability partnership's registration certified or  
28 stamped by the Secretary-of-State secretary of state or  
29 other proper officer in its domestic jurisdiction is a  
30 sufficient equivalent if such an officer does not produce  
31 any other type of certificate of existence. The certificate  
32 of ~~good-standing-or-its-equivalent~~ existence must have been  
33 made not more than 90 days prior to the delivery of the  
34 application for filing; and

35 **Sec. C-43. 31 MRSA §854, sub-§1,** as enacted by PL 1995, c.  
36 633, Pt. B, §1, is amended to read:

37  
38 **1. Name.** A foreign limited liability partnership may apply  
39 to the Secretary of State to do business in this State under a  
40 name that conforms with the requirements of section 803 803-A,  
41 subsection 1. The name need not be the same as the name under  
42 which it is authorized to do business in the jurisdiction of its  
43 organization.

44  
45 **Sec. C-44. 31 MRSA §859, sub-§1, ¶¶B and C,** as enacted by PL  
46 1995, c. 633, Pt. B, §1, are amended to read:

2 B. A foreign partnership's status as a limited liability  
partnership in this State may be revoked only after:

4 (1) The Secretary of State has mailed to the foreign  
limited liability partnership's last registered office  
6 in this State and to its last registered or principal  
office in its jurisdiction of organization as filed  
8 with the Secretary of State a ~~30-day~~ 60-day notice of  
pending revocation of its status as a foreign limited  
10 liability partnership in this State. The notice must  
specify the default; and

12 (2) The foreign limited liability partnership has not,  
14 prior to revocation, removed the ground of default  
specified in the notice.

16 C. After the expiration of the ~~30-day~~ 60-day notice period,  
18 if a foreign limited liability partnership has not corrected  
the specified default or convinced the Secretary of State,  
20 by affidavit or otherwise, that there was no  
misrepresentation relative to paragraph A, subparagraph (5),  
22 the Secretary of State shall issue and file a certificate  
revoking the status of the partnership as a foreign limited  
24 liability partnership in this State and mail copies of the  
certificate of revocation to the foreign limited liability  
26 partnership's last registered office in this State and to  
its last registered or principal office in its jurisdiction  
28 of organization as filed with the Secretary of State.

30 **Sec. C-45. 31 MRSA §871, sub-§1**, as amended by PL 1997, c.  
32 376, §71, is further amended to read:

34 **1. Reservation.** For filing an application for reservation  
of name or a notice of transfer or cancellation of reservation  
pursuant to section 804 804-A, a fee of \$20 for each limited  
36 liability partnership affected;

38 **Sec. C-46. 31 MRSA §871, sub-§§2 to 4**, as enacted by PL 1995,  
c. 633, Pt. B, §1, are amended to read:

40 **2. Assumed or fictitious name.** For filing an application  
42 for an assumed name under section 805 805-A, a fee of \$105 and  
for filing an application for a fictitious name under section  
44 805-A, a fee of \$20;

46 **3. Termination of assumed or fictitious name.** For filing a  
termination of an assumed or fictitious name under section 805  
48 805-A, subsection 5 g, a fee of \$20;



2 names of foreign nonprofit corporations to conform to the new  
name availability standard under Title 13-C;

4 7. It makes the necessary changes to the Maine Nonprofit  
6 Corporation Act for the name availability standard for assumed  
and fictitious names to conform to the new name availability  
standard under Title 13-C;

8  
10 8. It makes the necessary changes to the Maine Nonprofit  
12 Corporation Act for certificates of existence for foreign  
corporations qualifying to carry on activities in this State to  
conform to the similar changes under Title 13-C;

14 9. It provides for the automatic cancellation of authority  
16 of foreign nonprofit corporations when they domesticate and  
convert under Title 13-C, chapter 9;

18 10. It changes the time frame to correct a default before  
20 revocation of authority from 30 to 60 days;

22 11. It repeals the fee for termination of a registered name  
under Title 13-B;

24 12. It adds the terminology for a fictitious name used by a  
26 foreign corporation when its real name is not available in this  
State to the fee section of Title 13-B to conform to similar  
provisions under Title 13-C;

28  
30 13. It adds definitions for "close corporation," "facts  
objectively ascertainable," "interest" and "interest holder";

32 14. It adds other statutory references to the definition of  
34 "nonprofit corporation";

36 15. It adds "extrinsic facts" to clarify that all documents  
submitted for filing must be legible and printed in ink and  
establishes outer boundaries of extrinsic facts that can be  
38 referred to in a filed document or a plan;

40 16. It clarifies the amount of the fee for a change in the  
42 name of the current clerk or registered agent. The bill adds  
language for an amended annual report and for a certificate of  
fact;

44  
46 17. It adds language to provide for a termination of a  
fictitious name;

48 18. It clarifies that a copy of the document being  
corrected does not have to be attached to the articles of

incorporation because the document is already filed with the  
Secretary of State;

19. It adds language to require a foreign corporation to  
provide its jurisdiction of incorporation as well as the date it  
was authorized to transact business in this State on articles of  
correction;

20. It adds language to clarify the required contents of a  
certificate of existence or authority;

21. It adds language to provide for a certificate of fact  
of any fact on the records of the Secretary of State;

22. It adds language that allows the Secretary of State to  
provide public access to the Secretary of State's database;

23. It adds language that allows the Secretary of State to  
establish by rule a fee schedule to cover the cost of  
publications. Additionally, the money collected under this  
section must be deposited in a fund to update or replace  
publications;

24. It adds a reference to Title 13-C, section 601 to  
clarify the description of the stock required on the articles of  
incorporation and repeals language that is superfluous;

25. It adds language to provide that articles of  
incorporation may be dependent upon extrinsic facts;

26. It clarifies that broad corporate purposes apply to all  
corporations subject to the Maine Business Corporation Act, not  
just those incorporated under the Maine Business Corporation Act;

27. It clarifies that nonprofit corporations are subject to  
the provisions of the Maine Business Corporation Act;

28. It adds language to clarify the name availability  
process to allow for corporations that own a mark with a name  
that is not distinguishable from that corporation's corporate  
name;

29. It clarifies which words and symbols are disregarded  
when determining distinguishability of a name;

30. It adds language to clarify the name availability  
process when a foreign corporation changes its name;



2 31. It corrects grammar to be consistent with other  
provisions relating to certificates of existence provided by  
foreign corporations;

4  
6 32. It changes language to clarify that a foreign  
corporation may consent to the use of a registered name by any  
corporation that is subject to the Maine Business Corporation  
8 Act, not just a corporation that is incorporated under the Maine  
Business Corporation Act;

10  
12 33. It replaces language in the Maine Revised Statutes,  
Title 13-C, section 404, subsection 1 to conform to the model  
language of real name versus true name from current Title 13-A;

14  
16 34. It deletes language requiring the address of the  
registered office on assumed or fictitious name filings and  
deletes a reference to fictitious name relative to using an  
18 assumed name in less than all locations of business;

20 35. It adds language to require additional information for  
a foreign corporation filing a fictitious name;

22  
24 36. It deletes language requiring the address of the  
registered office on termination of assumed or fictitious name  
filings;

26  
28 37. It adds language about the duties of a clerk taken from  
another section of the law. This change places all information  
about the clerk into one section;

30  
32 38. It requires a resigning clerk to include as part of the  
filing, in addition to the corporate officer's name and title,  
the address of the officer to whom the notice of resignation was  
34 mailed. Additionally, it clarifies to whom the notice may be  
sent. The bill clarifies the language for changing the name of  
36 the current clerk and adds language about address requirements  
for the registered office and clarifies the signature  
38 requirements on any document that changes the clerk of the  
corporation;

40  
42 39. It clarifies that series, as well as classes, can be  
specified in the articles of incorporation;

44 40. It provides that terms of shares may be dependent upon  
extrinsic facts and terms of shares may vary among holders of the  
46 same class or series;

48 41. It establishes that a board of directors may fix  
provisions of series, as well as classes;

50

2           42. It provides that board approval of rights or options to  
acquire securities also constitutes authorization to issue the  
4           underlying securities and confirms that rights and options to  
securities may be limited based on share holdings;

6           43. It preserves preemptive rights that existed for shares  
that were issued and outstanding on June 30, 2003;

8           44. It clarifies that a notice of a special meeting and  
10          notice of death or incapacity of a shareholder must be delivered  
to the clerk, not the secretary;

12          45. It clarifies that an inspector may be the clerk or an  
14          officer or employee of a corporation;

16          46. It clarifies that the articles of incorporation may  
provide for a quorum greater or less than a majority and sets a  
18          minimum quorum of not less than 1/3 of the shares of a voting  
group entitled to vote on a matter;

20          47. It clarifies that shareholder agreements are valid for  
22          an unlimited term unless otherwise stated in the agreement;

24          48. It clarifies the effect of a director's failure to  
object to defective notice;

26          49. It clarifies that authorization process is  
28          discretionary with the board of directors or the shareholders, as  
the case may be;

30          50. It clarifies which persons whose knowledge of a  
32          conflict of interest is taken into account for determination of  
certain voting matters;

34          51. It provides that a plan of domestication may be made  
36          dependent upon extrinsic facts;

38          52. It adds language relative to the consent of  
shareholders for the plan of domestication, for the plan of  
40          nonprofit conversion and for the plan of entity conversion;

42          53. It provides that a plan of nonprofit conversion may be  
made dependent upon extrinsic facts;

44          54. It clarifies the voting requirements for a class or  
46          series of shares on a plan of nonprofit conversion;

48          55. It adds language to require that when a domestic  
business corporation converts to a foreign nonprofit corporation,  
50          it must provide an address to which the Secretary of State may

2 mail a copy of any process served on the Secretary of State.  
3 This is a similar provision to other parts of Title 13-C that  
4 describe a corporation's withdrawal from this State;

5 56. It provides that terms of a plan of entity conversion  
6 may be made dependent upon extrinsic facts;

7 57. It clarifies the voting requirements for an entity  
8 conversion;

9 58. It corrects language that references a corporation but  
10 should reference an unincorporated entity relative to the  
11 conversion to a domestic business corporation;

12 59. It clarifies the voting requirements for amendments of  
13 articles of incorporation;

14 60. It clarifies that an amendment to articles of  
15 incorporation and a plan of merger or share exchange may be  
16 approved by unanimous shareholder consent, in which case no  
17 action of the board of directors is required;

18 61. It adopts conforming changes to address filings that  
19 depend upon extrinsic facts;

20 62. It clarifies that restated articles of incorporation  
21 may omit certain information;

22 63. It clarifies that articles of merger or share exchange  
23 filed under Title 13-C, section 1106 may be combined with any  
24 filing required under the organic law of any domestic eligible  
25 entity involved in the transaction if the combined filing  
26 satisfies the requirements of both Title 13-C, section 1106 and  
27 the other organic law;

28 64. It adds language to require the type of entity and  
29 jurisdictions of the parties to a merger or share exchange;

30 65. It adds language to require that when a merger is  
31 effective, the foreign corporation or foreign other entity that  
32 is the survivor of the merger must provide an address to which  
33 the Secretary of State may mail a copy of any process served on  
34 the Secretary of State. This is a provision similar to other  
35 parts of Title 13-C that describe a corporation's withdrawal from  
36 this State;

37 66. It adds language to require the names, types of entity  
38 and jurisdictions of the parties to a merger or share exchange  
39 when articles of abandonment are filed;

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- 2           67. It adds and corrects references to other types of  
corporate reorganization permitted under the Maine Business  
Corporation Act;
- 4
- 6           68. It clarifies the voting requirements for asset  
dispositions;
- 8
- 10          69. It clarifies that asset dispositions may be approved by  
unanimous written consent, in which case action by the board of  
directors is not required;
- 12
- 14          70. It corrects an incorrect reference to a specific  
subchapter and clarifies a form of other entity as an  
unincorporated entity;
- 16
- 18          71. It clarifies a reference to define a corporate action;
- 20
- 22          72. It adds language to clarify that the statement that  
there are no unpaid debts includes the annual report required by  
Title 13-C, section 1621;
- 24
- 26          73. It adds language regarding dissolution by incorporators  
or initial directors to require the date dissolution was  
authorized and the effective date of the articles of dissolution;
- 28
- 30          74. It clarifies that dissolution of a corporation must be  
approved by written consent of shareholders entitled to vote;
- 32
- 34          75. It adds language to require that articles of  
dissolution provide the effective date of the dissolution;
- 36
- 38          76. It deletes language that requires a corporation to  
provide a copy of its filed articles of dissolution when revoking  
its dissolution and clarifies language concerning when a  
dissolved corporation must receive a claim;
- 40
- 42          77. It adds language to establish a process to reinstate  
suspended corporations before July 30, 2009 that were suspended  
prior to July 1, 2003;
- 44
- 46          78. It adds language to include contracts in the list of  
items that are not invalid if a foreign corporation has not filed  
an application for authority;
- 48
- 50          79. It corrects a reference to conform to other changes to  
the name availability process for foreign corporations;
80. It adds language to clarify the requirements on an  
amended application for authority for foreign corporations;

2 81. It deletes the requirement that foreign corporations  
file a copy of a resolution by its directors that adopted the  
fictitious name;

4  
6 82. It adds language to make the registered agent sections  
in Title 13-C, chapter 15 agree with clerk sections in Title  
13-C, chapter 5;

8  
10 83. It adds language that requires a foreign corporation,  
on its application of withdrawal, to provide the date on which it  
was authorized to transact business in this State in addition to  
12 the jurisdiction under whose laws it was incorporated;

14 84. It adds language that requires a foreign corporation,  
on its application of withdrawal after conversion, to provide the  
16 date on which it was authorized to transact business in this  
State in addition to the jurisdiction under whose laws it was  
18 incorporated;

20 85. It adds language that requires a foreign corporation,  
on its application for transfer of authority, to provide the date  
22 on which it was authorized to transact business in this State and  
the jurisdiction under whose laws it was incorporated in addition  
24 to the name of the corporation;

26 86. It provides rules for corporate record keeping  
regarding notices of extrinsic facts;

28  
30 87. It deletes language relative to the registered office  
of a foreign corporation in its jurisdiction of incorporation,  
which language should only reference its principal office, and  
32 clarifies that the corporation must list its chief executive  
officer or chief financial officer in lieu of president and  
34 treasurer, respectively;

36 88. It clarifies that an excused corporation's name is  
protected from use for 5 years from the date of excuse; and

38  
40 89. It adds language to provide for an amended annual  
report filing in the event the officers, directors or  
shareholders; the name of the domestic or foreign corporation and  
42 jurisdiction; address of registered office; or the name, business  
or residence address of the president, chief executive officer,  
44 treasurer or chief financial officer of a corporation change and  
the corporation determines that it is necessary to update the  
46 information on file prior to the filing of the next required  
annual report.

48 Part C does the following:

50

- 2 1. It makes necessary changes to the Maine Revised Uniform  
4 Limited Partnership Act to conform the name availability standard  
6 for limited partnership names, reserved names, assumed and  
8 fictitious names and registered names of foreign limited  
10 partnerships to the new name availability standard under Title  
12 13-C;
- 14 2. It makes necessary changes to the Maine Revised Uniform  
16 Limited Partnership Act to conform provisions regarding  
18 certificates of existence for foreign limited partnerships  
20 qualifying to transact business in this State to similar  
22 provisions under Title 13-C;
- 24 3. It changes the time frame to correct a default before  
26 revocation of authority from 30 to 60 days;
- 28 4. It adds language to include a fictitious name used by a  
30 foreign limited partnership when the real name is not available  
32 in this State to the fee section for assumed names and  
34 termination of assumed names to conform to similar provisions  
36 under Title 13-C;
- 38 5. It repeals the fee section in the Limited Partnership  
40 Act relative to termination of registered names to conform to  
42 similar provisions under Title 13-C;
- 44 6. It makes necessary changes to the Limited Liability  
46 Company Act to conform the name availability standard for limited  
48 liability company names, reserved names, assumed and fictitious  
50 names and registered names for foreign limited liability  
companies to the new name availability standard under Title 13-C;
1. It makes necessary changes to the Limited Liability  
Company Act to conform provisions regarding certificates of  
existence for foreign limited liability companies qualifying to  
transact business in this State to the similar provisions under  
Title 13-C;
2. It adds language to include a fictitious name used by a  
foreign limited liability company when its real name is not  
available in this State in the fee section for assumed names to  
conform to similar provisions under Title 13-C;
3. It makes necessary changes to the Limited Liability  
Partnership Act to conform the name availability standard for  
limited liability company names, reserved names, assumed and  
fictitious names and registered names of foreign limited  
liability partnerships to the new name availability standard  
under Title 13-C; and

10. It makes necessary changes to the Limited Liability  
2 Partnership Act provisions regarding certificates of existence  
for foreign limited liability partnerships qualifying to transact  
4 business in this State to conform to similar provisions under  
Title 13-C.