

MAINE STATE LEGISLATURE

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CHAPTER 5

POWERS AND AMENDMENTS

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SUBCHAPTER I

POWERS

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§ 141. General powers

Corporations may sue and be sued, plead and be impleaded in their corporate name; have a common seal alterable at pleasure; elect all necessary officers; prescribe their duties and fix their compensation; make bylaws consistent with the laws of the State and their charters; hold and convey lands and other property; and make donations for the public welfare or for charitable, scientific or educational purposes.

R.S.1954, c. 53, § 16.

§ 142. Out-of-state business

Any corporation of this State may conduct business in other states, territories or possessions of the United States or in foreign countries, and have one or more officers out of the State, and may hold, purchase, mortgage and convey real estate and personal property out of this State.

R.S.1954, c. 53, § 17.

§ 143. Ownership of corporate stock

Any corporation organized under chapters 1 to 21 and any corporation organized for manufacturing, mechanical, mining or quarrying business under special act of the Legislature may purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of indebtedness created by, any other corporation or corporations of this or any other state, territory or country, and while owners of such stock may exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

R.S.1954, c. 53, § 22.

§ 144. Sale of installment bonds

Any corporation organized under the laws of this State, having occasion to issue bonds, may make them payable in installments of uniform or increasing amounts extending over a period not exceeding 50 years. Provisions shall be made for the payment of not less than 1% of the whole issue each year and, in case the time of payment extends over a period of 50 years, the installments shall cover the whole issue. In case the time of payment extends over a period of less than 50 years, a portion of the issue greater than the regular installment may be made payable at the end of the period. Limitations upon the time for which bonds may be issued are modified in accordance herewith. This section shall not be construed to prevent any corporation organized under the laws of this State from issuing bonds and making them payable in the same manner as it might do, if this section were not enacted. No bonds issued prior to the 3rd day of July, 1909, if valid in other respects, shall be deemed invalid on account of any failure to comply with this section.

R.S.1954, c. 53, § 137; 1957, c. 405, § 8.

§ 145. Making and altering bylaws

The power to make and alter bylaws shall be in the stockholders but any corporation may, in the certificate of organization or in any amendment thereto or by a provision of the bylaws, confer that power upon the directors. Bylaws made by the directors under power so conferred may be altered or repealed by the directors or stockholders. Corporations may, among other provisions, determine by their bylaws the manner of calling and conducting meetings; the number of members that constitute a

quorum; the number of votes to be given by shareholders; the date as of which stockholders shall be entitled to vote at any meeting or to receive dividends or rights and whether or not stock transfer books shall be closed; by whom any and all officers, except president and directors, shall be elected; by whom vacancies in the board of directors or other offices may be filled; the tenure of the several offices; the mode of voting by proxy and of selling shares for neglect to pay assessments; and may enforce such bylaws by penalties not exceeding \$20. Public utility corporations organized under the laws of this State but doing business wholly outside the limits of this State may provide by their bylaws for the holding of meetings of their stockholders outside the State.

R.S.1954, c. 53, § 23; 1959, c. 142.

§ 146. Right of indemnification

The certificate of incorporation of a corporation or other certificate filed pursuant to law or the bylaws of a corporation or a resolution in a specific case or an amendment to any of the foregoing, adopted by the vote of the holders of record of a majority of the outstanding shares at the time entitled to vote for the election of directors, or in case of a nonstock corporation, by a vote of a majority of the members, may provide that each officer and each director of the corporation shall be indemnified by the corporation against expenses actually and necessarily incurred by him in connection with the defense of any action or proceeding in which he is made a party by reason of his being or having been an officer or a director of the corporation, except in relation to matters as to which he shall be adjudged in such action or proceeding to be liable for negligence or misconduct in the performance of his duties as such officer or director. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled under any bylaw, agreement, vote of stockholders or otherwise.

R.S.1954, c. 53, § 24; 1963, c. 414, § 29.

§ 147. Assessments; sale of shares for neglect to pay

Assessments, not exceeding the amount originally limited for a share, may be made on all shares, subscribed and not paid for, to be paid to the treasurer, in such installments and at such times as are ordered. If a stockholder neglects to pay such assessments on his share for 30 days, the treasurer may sell at public auction

a sufficient number of them to pay the same with incidental charges.

R.S.1954, c. 53, § 46.

§ 148. Sale of stock

The treasurer, before the sale, shall give notice of the time and place thereof, of the number of shares on which the assessment is due and of the amount due on each share, in a newspaper printed in the town, if any, if not, in the county where the office of the clerk of such corporation is established, otherwise in the state paper, 3 weeks successively. Such notice shall likewise be given in one other leading newspaper printed in the State. The notice in said papers shall, in all cases, be printed on the financial pages of said papers. Written or printed notice shall be given to each stockholder of record in the corporation, at his last known address at least 10 days before the sale. At said sale the treasurer of the corporation shall announce the market price of the stock to be sold, or if the stock has no market price, the treasurer shall make a statement of the financial condition of the company, showing what the stock is worth. If no bids are received at said sale for said stock, the treasurer of the corporation shall bid in said stock in behalf of the corporation, to be again sold by the corporation as the directors may vote. No rights of creditors of the corporation shall be thereby affected and such stock, so long as held by the corporation, shall have no voting power. The treasurer's certificate of the sale of such shares, recorded as other transfers, passes the title to the purchaser.

R.S.1954, c. 53, § 47.

SUBCHAPTER II

LIMITATIONS

Sec.

171. Formation of trusts forbidden.

172. Evidence of interest in trust has no legal recognition.

173. Penalties.

§ 171. Formation of trusts forbidden

It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining

or mining any article or product which enters into general use and consumption by the people, to form or organize any trust or to enter into any combination of firms, incorporated or unincorporated companies or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the power to conduct and direct the business of the whole number of firms, corporations, companies or associations which may have formed or which may propose to form a trust, combination or association inconsistent with this section and contrary to public policy. No association or corporation organized for the sole purpose of marketing fish, shellfish or any of the fish products or agricultural products of this State, the members of or stockholders in which are actually engaged in the production of such products, or in the selling, canning or otherwise preserving of the same, shall be deemed to be a conspiracy or a combination or in restraint of trade or an attempt to lessen competition or to fix prices arbitrarily; nor shall the marketing contracts and agreements between such association or corporation and its members or stockholders be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose.

R.S.1954, c. 53, § 81.

§ 172. Evidence of interest in trust has no legal recognition

No certificate of stock or other evidence of interest in any trust, combination or association, as named in section 171, shall have legal recognition in any court in this State, and any deed of real estate given by any person, firm or corporation for the purpose of becoming interested in such trust, combination or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void.

R.S.1954, c. 53, § 82.

§ 173. Penalties

Any firm, incorporated or unincorporated company, or association of persons or stockholders, who shall enter into or become interested in such trust, combination or association, shall be punished by a fine of not less than \$5,000 nor more than \$10,000.

R.S.1954, c. 53, § 83.

SUBCHAPTER III

CHANGES AND AMENDMENTS

Sec.

- 201. Increase in capital stock; change of purpose; number of directors or certificate; fees.
- 202. Reduction of capital stock.
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§ 201. Increase in capital stock; change of purpose; number of directors or certificate; fees

The stockholders of any corporation may, at any meeting, the call for which shall give notice of the proposed action, by a vote representing a majority of the voting power, except as otherwise provided, increase or decrease its authorized capital stock, change the number or par value of its shares or their classifications, change shares with par value into an equal or different number of shares without par value or shares without par value into an equal or different number either with or without par value, change the number of its directors and, if not specially chartered, change its purposes by altering, abridging or enlarging the same or make any other change or alteration in its certificate of organization as originally filed or subsequently amended that may be desired, provided such change or alteration is not otherwise specifically provided for and would be proper to insert in an original certificate of organization. The corporation shall file, within 20 days thereafter, a certificate setting forth such changes with the Secretary of State, who shall duly record the same and thereupon said changes shall take effect. Every certificate of change of purposes shall be submitted to the Attorney General for examination and shall not be filed until it has been certified by him to be properly drawn and signed and to be conformable to the Constitution and laws and that he is satisfied that such change of purposes is made in good faith and not for the purpose of avoiding payment of fees or taxes to the State.

Whenever issued shares having par value are changed into the same or a greater or less number of shares without par value, whether of the same or of a different class or classes of stock and whenever issued shares without par value are changed into other shares without par value to a greater or lesser number,

whether of the same or of a different class or classes, the amount of capital represented by the new shares in the aggregate shall be the same as the aggregate amount of capital represented by the shares so changed and the certificate setting forth any such changes, the filing fee for which shall be \$5, shall set forth that the capital will not be reduced under or by reason of such amendment.

If any proposed change from one kind or class of stock to another kind or class would alter the preferences given to any one or more classes of stock by taking away any right or preference previously belonging thereto, then the holders of the stock of each class of stock so affected by the change shall be entitled to vote as a class upon such change, whether such class be otherwise entitled to vote or not. The affirmative vote of 80% in interest of each such class of stock so affected by the change shall be necessary to the adoption thereof, in addition to the affirmative vote of a majority of every other class of stock entitled to vote thereon.

The corporation, except as otherwise provided, shall pay to the Secretary of State for the use of the State for any increase in the amount of its authorized capital stock an amount, in no case less than \$10, equal to the amount that a like corporation organized with such increased authorized capitalization would have to pay in excess of one organized with the old authorized capitalization. For every change of purposes, the corporation shall pay to the Secretary of State for the use of the State the sum of \$20 before he shall be authorized to receive any certificate of change of purposes.

Whenever the outstanding capital stock of any corporation is increased by an issue of additional shares having a right to vote, all stockholders having a right to vote at the time of the issue of any such shares shall enjoy a preemptive right at such time to subscribe thereto, unless such right shall be negated by some statute applicable thereto, by the charter or bylaws of the corporation or by the provisions of a plan of reorganization of any corporation at any time reorganized under the Act of Congress of July 1, 1898 entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States" or under an Act of Congress of August 26, 1935 entitled "Public Utility Holding Company Act of 1935" as now or hereafter amended or supplemented.

Provisions of the charter or bylaws relating to preemptive rights may be adopted or amended at any time by the stockholders having a right to vote at any meeting, the call for which shall give

notice of the proposed action, by 90% of the shares which are present or represented at the meeting.

R.S.1954, c. 53, § 75; 1963, c. 3.

§ 202. Reduction of capital stock

Any corporation may reduce its capital at any time by the written consent of stockholders of record representing a majority of the voting power on such a proposal or by resolution adopted by stockholders of record representing a majority of the voting power on such a proposal, at a meeting of the stockholders duly called, when notice shall have been given of such proposed action in the call therefor. A certificate stating the fact of such consent or the adoption of such resolution shall be made by the clerk of the corporation and filed with the Secretary of State within 20 days after the date of such consent or the adoption of such resolution. Upon such filing the capital of the corporation shall thereby be so reduced. No such reduction shall be made in the capital of the corporation unless the assets of the corporation remaining after such reduction are sufficient to pay any debts, the payment of which shall not have been otherwise provided for, and said certificate shall so state.

Such reduction of the capital of the corporation may be effected:

1. Reducing par value or amount of capital. By reducing the par value of shares of any class of stock having par value or the amount of capital represented by shares of stock having no par value, or

2. Retiring shares owned by corporation. By retiring shares already owned by the corporation, or

3. Retiring or reducing outstanding stock. By retiring or reducing pro rata the outstanding stock of any class, or

4. Exchange of par value stock. By the exchange of stock having par value for stock having no par value, or

5. Exchange of class of stock. By the exchange by the holders of outstanding stock of any class of the stock of such class held by them for a decreased number of shares of stock of the same class or for the same or a different number of shares of stock of a different class of stock, or

6. Purchase of shares for retirement. By the purchase of shares for retirement either pro rata from all holders of shares

of that class of stock or by purchasing such shares from time to time in the open market or at private sale, in both cases at not exceeding such price or prices as may be fixed or approved by the stockholders entitled to vote upon the reduction of capital to be effected in that manner. Nothing herein contained shall be construed as preventing a corporation from purchasing its own shares of stock when it may legally do so, upon authority of its board of directors.

If shares having a par value are retired, an amount not exceeding the aggregate par value of such shares may be charged against or paid out of the capital of the corporation in respect of such shares having par value and if shares having no par value are retired, an amount not exceeding that part of the capital of the corporation represented by such shares pursuant to section 424 may be charged against or paid out of the capital of the corporation in respect of such shares having no par value.

Stock retired pursuant to this section shall have the status of authorized but unissued stock and such authorized unissued stock may be reduced pursuant to section 201 either simultaneously with or subsequently to the reduction of capital authorized hereunder.

This section shall not be taken as implying that the capital of any corporation could not have been so reduced under the law as it existed prior to July 3, 1931. All reductions of capital which could be accomplished under this section, with respect to which a certificate or notice has been filed with the Secretary of State prior to said date, are declared to have been valid. This section shall not be taken as implying that any written consent, vote or resolution of stockholders is required, or that any certificate pursuant to this section need be filed, in connection with any reduction of capital effected by the exercise by holders of convertible stock of any corporation of their right to convert such stock into another class of stock of said corporation, and nothing in this section contained shall be applicable to any reduction of capital so effected.

R.S.1954, c. 53, § 76.

§ 203. Reorganizations and changes under federal law

1. Court plan, decrees and orders. Any corporation now or hereafter organized under chapters 1 to 21 or existing under the laws of this State, a plan of reorganization of which, pursuant to the Act of Congress of July 1, 1898, entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States"

as now or hereafter amended and supplemented, herein referred to as the National Bankruptcy Act, or a plan of reorganization or other plan for which, pursuant to the Act of Congress of August 26, 1935, entitled "Public Utility Holding Company Act of 1935" as now or hereafter amended and supplemented, herein referred to as the Holding Company Act, has been or shall be confirmed, approved or enforced by the decree or order of a court of competent jurisdiction, shall have full power and authority to put into effect and carry out the plan and the decrees and orders of the court or judge relative thereto and may take any proceeding and do any act provided in the plan or directed by said decrees and orders without further action by its directors or stockholders. Such power and authority may be exercised and such proceedings and acts may be taken as may be directed by such decrees or orders by the trustee or trustees of such corporation appointed in the proceedings, or a majority thereof, or if none be appointed and acting, by officers of the corporation or by a master or other representative appointed by the court or judge, with like effect as if exercised and taken by unanimous action of the directors and stockholders of the corporation.

2. Powers and duties. Such corporation may, in the manner provided, but without limiting the generality or effect of the foregoing, and always in accordance with the plan of reorganization or other plan so confirmed, approved or enforced, alter, amend or repeal its bylaws; change its name; constitute or reconstitute and classify or reclassify its board of directors and name, constitute and appoint directors and officers in place of or in addition to all or some of the directors or officers then in office; amend its certificate of organization and make any change in its capital or capital stock, including the cancellation, alteration or conversion in whole or in part of any or all classes of existing stock or of other securities, obligations or claims, with or without the substitution of a new class or classes of stock or the substitution of stock, bonds or other securities, obligations or claims, for any or all of such stock, securities, obligations or claims, whether or not such change would alter the preferences, priorities or rights given to any one or more classes of stock, securities, obligations or claims by modifying or eliminating any right, preference, priority, limitation, restriction or other term or provision previously pertaining thereto, or may make any amendment, change, alteration or provision authorized by chapters 1 to 21; be dissolved, merge or consolidate, sell, lease or in any manner part with its franchises or property, or transfer all or part of its assets as permitted by chapters 1 to 21; change the location of its prin-

cipal office; authorize and fix the terms, manner, consideration and conditions of the issuance of bonds, debentures or other obligations, and the security if any therefor, whether or not the same be issued to retire stock or other securities or be convertible into stock of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for stock of any class.

3. Stockholder's right of appraisal and payment of shares.

No stockholder of any such corporation shall have the right of appraisal and payment for his shares provided in chapters 1 to 21 in a proceeding to which this section is applicable, except as otherwise provided in such plan.

4. Certificate filed and recorded. A certificate, executed as provided, of any amendment, change or alteration, or of dissolution, or of any merger or consolidation, or of any other step made or taken by such corporation pursuant to the foregoing provisions, may be filed in the office of the Secretary of State and a certified copy thereof recorded in the office of the register of deeds of the county in which the principal place of business is located; and shall thereupon become effective in accordance with its terms and the provisions hereof. Such certificate shall be made, executed and acknowledged, as may be directed by such decrees or orders, by the trustee or trustees appointed in the proceedings, or a majority thereof, or if none be appointed and acting, by officers of the corporation or by a master or other representative appointed by the court or judge, and shall certify that:

A. Provision for the making of such certificate is contained in the plan of reorganization or other plan or in a decree or order of the court or judge relative thereto; and that

B. The plan has been confirmed, approved or enforced as provided in the National Bankruptcy Act or in the Holding Company Act, as the case may be.

5. Final decree. As respects any corporation proceeding under a plan of reorganization pursuant to the National Bankruptcy Act, this section shall cease to apply to such corporation upon the entry of a final decree in the reorganization proceedings closing the case and discharging the trustee or trustees, if any. As respects any corporation proceeding under a plan of reorganization or other plan pursuant to the Holding Company Act, a certificate of any amendment, change, alteration, dissolution, merger, consolidation or other step may be filed, as provided, at any time after the entry of a decree or order of a court of competent jurisdiction confirming, approving or enforcing such plan;

and after such plan has been carried out and consummated hereunder in accordance with such decree or order and such decree or order has ceased to be subject to further appeal or review, this section shall cease to apply to such corporation unless there shall subsequently be a further plan for such corporation.

6. Fees. On filing any certificate made or executed pursuant to this section, there shall be paid to the Secretary of State for the use of the State the same fees as are payable by corporations not in reorganization upon the filing of like certificates.

R.S.1954, c. 53, § 77.

§ 204. Change of name; certificate filed in registry of deeds

A corporation, at a legal meeting of its stockholders, may vote to change its name and adopt a new one. When the proceedings of such meeting relating to such change of name, certified by the clerk thereof, are returned to the office of the Secretary of State to be recorded by him, the name shall be deemed changed. The corporation, under its new name, has the same rights, powers and privileges and is subject to the same duties, obligations and liabilities as before, and may sue and be sued by its new name; but no action brought against it by its former name shall be defeated on that account, but on motion of either party, the new name may be substituted therefor in the action. Whenever any corporation, required by law to make returns to any official or department of the State, shall change its name under the general laws of the State or under any special act of the Legislature, such change shall not take effect and such new name shall not be used until said corporation shall have filed with said official or said department a certified copy of the vote of the corporation relative thereto. A certificate of the change of name of a corporation shall be filed by the clerk of the corporation in the registry of deeds of the county in which the corporation has its location, within 20 days after the proceedings of the meeting are returned to the office of the Secretary of State.

R.S.1954, c. 53, § 78.

§ 205. Change of location; certificate filed in registry of deeds

Any corporation organized under chapters 1 to 21 at a legal meeting of its stockholders, by a vote representing a majority of the stock issued and outstanding having voting power as provided by its bylaws, may change its location from one county to

another in the State, and the corporation shall file, by its clerk or other officer, in the registry of deeds in each of said counties, within 20 days after such change of location, the certificate required by section 375.

R.S.1954, c. 53, § 79.

§ 206. Certificate of every change filed with Secretary of State

Whenever a corporation shall make a change in its charter or certificate of organization, in any manner, for the more convenient transaction of its business, it shall forward a notice of such change to the Secretary of State, who shall record the same in a book kept for that purpose.

R.S.1954, c. 53, § 80.