

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1874

S. P. 693

In Senate, January 24, 1972

The Committee on Business Legislation suggested.

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-TWO

**AN ACT to Correct Errors and Inconsistencies in the Maine Business
Corporation Act.**

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 105th Legislature in regular session by chapter 439 of the public laws of 1971 enacted the Maine Business Corporation Act; and

Whereas, several errors and inconsistencies in the Maine Business Corporation Act have appeared; and

Whereas, such errors and inconsistencies have created uncertainties and confusions in interpreting legislative intent; and

Whereas, it is vitally necessary that such inconsistencies be immediately resolved so that injustices and hardships to the many people who operate under the Maine Business Corporation Act may be avoided; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine, and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 13, § 337, amended. Section 337 of Title 13 of the Revised Statutes is amended to read as follows:

§ 337. **Books produced for trial; refusal**

When a suit or prosecution is pending for a violation, ~~of section 378 or~~ either of sections 334 to 336 **or to enforce the liabilities created by Title 13-A, section 624 or section 720,** the clerk or person having custody of the books of the corporation shall, upon reasonable written notice, produce them on trial; and for neglect or refusal to do so, he is liable to the same fine or imprisonment as the party on trial would be.

Sec. 1-A. R. S., T. 13, § 713, amended. The last sentence of section 713 of Title 13 of the Revised Statutes, as enacted by chapter 411 of the public laws of 1969, is amended to read as follows:

It shall be permissible for the corporation to render professional services and to exercise its authorized powers under a name which is identical to its corporate name except that the words "chartered" or "professional association" or the abbreviation "P.A." is omitted, provided that the corporation has first registered the name to be so used in the manner required by ~~Title 31, section 307~~ **≡ Title 13-A, section 307.**

Sec. 2. R. S., T. 13, § 714, amended. The last sentence of section 714 of Title 13 of the Revised Statutes, as enacted by chapter 411 of the public laws of 1969, is amended to read as follows:

Mergers shall be in accordance with ~~sections 241 to 291~~ **Title 13-A.**

Sec. 3. R. S., T. 13, § 903, amended. The last sentence of section 903 of Title 13 of the Revised Statutes, as amended, is further amended to read as follows:

No fee shall be required by the Attorney General but the Secretary of State shall receive for filing such certificate, **or amendment thereto,** a fee of \$5, in advance, and registers of deeds shall receive for recording such certificate, **or amendment thereto,** the fee of \$2.

Sec. 4. R. S., T. 13, § 931, amended. The 2nd sentence of section 931 of Title 13 of the Revised Statutes is amended to read as follows:

Any corporation organized under this ~~section~~ **subchapter** may ~~vote~~ by a majority vote, at a **legal** meeting of its members at which at least 25% are present, ~~to~~ **or at a legal meeting of its directors, trustees or managing board, however designated,** change its name and adopt a new one, ~~such a~~ notice of the intention to change the name to be given in the call for the meeting.

Sec. 5. R. S., T. 13, § 933, repealed. Section 933 of Title 13 of the Revised Statutes, as amended by section 12 of chapter 225 of the public laws of 1969, is repealed.

Sec. 6. R. S., T. 13, § 934, amended. The 3rd sentence of section 934 of Title 13 of the Revised Statutes, as enacted by section 1 of chapter 373 of the public laws of 1971, is amended to read as follows:

The procedures ~~including provisions as to fees~~ established in the law relating to corporations organized with capital stock as to the filing or recording of

certificates, articles or other documents with the Secretary of State or in any other place in order to make effective changes in their certificates of organization or articles of incorporation shall apply to corporations organized without capital stock, except that such certificates, articles or other documents may be appropriately altered to reflect the fact that the corporate action reflected therein is not taken by stockholders, and may be certified by the Attorney General and filed with the Secretary of State even though a change of purposes contained therein will result in such corporation becoming charitable in nature and thus exempt from taxation.

Sec. 7. R. S., T. 13, § 934, amended. The last sentence of section 934 of Title 13 of the Revised Statutes, as last repealed and replaced by section 1 of chapter 373 and as amended by section 40 of chapter 544, both of the public laws of 1971, is repealed.

Sec. 8. R. S., T. 13-A, § 103, sub-§§ 4-7, amended. Subsections 4 to 7 of section 103 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, are amended to read as follows:

4. The enactment of this Act shall not affect the existence of any corporation existing on ~~the effective date of this Act~~ **December 31, 1971**.

5. The enactment of this Act shall not affect any cause of action, liability, penalty or action which on ~~the effective date of this Act~~ **December 31, 1971** is accrued, existing, incurred or pending, but the same may be asserted, enforced, prosecuted or defended as if this Act had not been enacted.

6. The validity of any corporate act, and of any incorporation, prior to ~~the effective date of this Act~~ **January 1, 1972** shall be determined with reference to the law then in effect.

7. The validity of any provision of the articles or the bylaws of a corporation existing on ~~the effective date of this Act~~ **December 31, 1971** shall be determined with reference to the law which was in effect at the time when the same was adopted, or with reference to this Act, whichever supports the validity of such provision. A provision of the articles or the bylaws which was valid under the law in existence at the time the same was adopted shall remain in effect, notwithstanding a contrary provision of this Act, until repealed or amended by voluntary act of the corporation; but any amendment thereof shall be adopted by the procedures set out in this Act, and shall, as amended, conform to the requirements of this Act.

Sec. 9. R. S., T. 13-A, § 104, sub-§ 1, ¶ B, sub-¶ (3), amended. Subparagraph (3) of paragraph B of subsection 1 of section 104 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

(3) If there are no such officers, then by a majority of the directors or by such directors as may be designated by a majority of directors then ~~then~~ in office; or

Sec. 10. R. S., T. 13-A, § 304, sub-§ 2, amended. The last sentence of subsection 2 of section 304 of Title 13-A of the Revised Statutes, as enacted

by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

The "clerk's office" of corporations existing on ~~the effective date of this Act~~ **December 31, 1971** shall be deemed the "registered office" of those corporations, for purposes of this Act, until such office is changed pursuant to this section.

Sec. 11. R. S., T. 13-A, § 304, sub-§ 4, amended. The first sentence of subsection 4 of section 304 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

Any clerk of a corporation may resign upon filing a written notice thereof with the Secretary of State and by mailing a copy thereof to the president or treasurer of the corporation or, if both of those offices are vacant, ~~with~~ to any of its directors.

Sec. 12. R. S., T. 13-A, § 304, sub-§ 8, ¶ A, amended. Paragraph A of subsection 8 of section 304 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

8. A. The initial clerks of corporations formed under this Act shall be named in the articles of incorporation; such clerks, and the clerks of corporations existing on ~~the effective date of this Act~~ **December 31, 1971**, shall continue in office until their successors are chosen and qualify and the statement required by subsection 3 is filed, or until the resignation notice required by subsection 4 is filed.

Sec. 12-A. R. S., T. 13-A, § 401, sub-§§ 4 & 5, additional. Section 401 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended by adding 2 new subsections to read as follows:

4. Nothing in this section shall be construed to prevent the organization of agricultural credit corporations under the Federal Farm Loan Act. Such agricultural credit corporations shall not be deemed banking corporations or institutions.

5. Nothing in this section shall be construed to prevent the organization of small business investment companies under the Small Business Investment Act of 1958 and any amendments thereto. Such small business investment companies shall not be deemed banking corporations or institutions.

Sec. 13. R. S., T. 13-A, § 404, sub-§ 3, ¶ A, sub-¶ (2), amended. Subparagraph (2) of paragraph A of subsection 3 of section 404 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

(2) The term "articles of incorporation," includes all those sorts of documents enumerated in section 102, subsection ~~+~~ 1, whether or not the corporation is one which could now be organized under this Act or under any public laws.

Sec. 14. R. S., T. 13-A, § 504, sub-§ 2, amended. Subsection 2 of section 504 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

2. This section does not apply to shares already issued or authorized on ~~the effective date of this Act~~ **December 31, 1971.**

Sec. 15. R. S., T. 13-A, § 511, sub-§ 5, amended. Subsection 5 of section 511 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

5. This section shall not affect the validity of any share certificate of any corporation issued prior to ~~the effective date of this Act~~ **January 1, 1972.**

Sec. 16. R. S., T. 13-A, § 623, sub-§ 11, amended. Subsection 11 of section 623 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

11. Nothing in this section shall detract from or take away the preemptive rights heretofore pertaining to any shares of a corporation which were issued and outstanding on ~~the effective date of this Act~~ **December 31, 1971.**

Sec. 17. R. S., T. 13-A, § 1208, sub-§ 1, ¶ A, amended. Paragraph A of subsection 1 of section 1208 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

A. The name of the foreign corporation as ~~its~~ it appears on the index of names of authorized foreign corporations in the office of Secretary of State;

Sec. 18. R. S., T. 13-A, § 1210, sub-§ 1, ¶ D, repealed and replaced. Paragraph D of subsection 1 of section 1210 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is repealed and the following enacted in place thereof:

D. The corporation has failed to file in the office of the Secretary of State within the required time any articles of merger as required by section 1206 or amended application for authority as required by section 1207; or

Sec. 19. R. S., T. 13-A, § 1212, sub-§ 5, amended. Subsection 5 of section 1212 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

5. The agents and attorneys-in-fact appointed pursuant to former Title 13, section 591 by foreign corporations which were authorized to do business in this State prior to ~~the effective date of this Act~~ **January 1, 1972** shall be deemed the registered agents of such corporations, and the addresses given for such agents and attorneys-in-fact shall be deemed the registered offices of such corporations, until such corporation files a statement of change pursuant to subsection 2.

Sec. 20. R. S., T. 13-A, § 1215, sub-§§ 1 & 2, amended. Subsections 1 and 2 of section 1215 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, are amended to read as follows:

1. Every foreign corporation which, on ~~the effective date of this Act~~ **December 31, 1971**, is authorized to do business in this State shall continue to have such authority for any purpose or purposes for which a corporation might secure authority under this chapter. Such foreign corporation shall have the same rights and privileges, and shall be subject to the same duties, limitations, restrictions, liabilities and penalties as a foreign corporation authorized under this chapter.

2. Every foreign corporation which, on ~~the business day next preceding the effective date of this Act~~ **December 31, 1971**, was lawfully doing business in this State even though not theretofore qualified as a foreign corporation or otherwise expressly authorized to do so, may continue to do such business; and in every other respect such foreign corporation shall be treated as though it were a foreign corporation authorized to do business in this State.

Sec. 21. R. S., T. 13-A, § 1401, sub-§ 25, repealed. Subsection 25 of section 1401 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is repealed.

Sec. 22. R. S., T. 13-A, § 1401, sub-§ 32, amended. Subsection 32 of section 1401 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

32. For issuing a short form certificate of change of name or of consolidation or merger, as provided by section ~~130~~ **1307**, \$2 per certificate.

Sec. 23. R. S., T. 36, § 2402, amended. The first sentence of section 2402 of Title 36 of the Revised Statutes is amended to read as follows:

The Secretary of State shall certify to the State Tax Assessor the corporate name, the name ~~of the treasurer and address of the clerk~~ and the amount of authorized capital stock of each of such corporations and shall thus certify to the State Tax Assessor whenever a new corporation has been organized and whenever a change has occurred in the corporate name or the name ~~or address of the treasurer clerk~~ or the amount of authorized capital stock of a corporation already organized.

Sec. 24. R. S., T. 36, § 2406, amended. The first sentence of section 2406 of Title 36 of the Revised Statutes is amended to read as follows:

The State Tax Assessor shall annually prepare a list of all corporations that have failed to pay their annual franchise tax for the preceding year, giving the corporate name, the name of the ~~treasurer clerk~~ last filed in the office of the Secretary of State and the amount of the tax due from each corporation, except those from which by reason of having been duly excused as provided by statute, or dissolved by decree of court, **or by filing articles of dissolution with the Secretary of State**, no franchise tax is due for such year, which list shall be published once in the month of August in 4 places within the State, namely, Lewiston, Bangor, Portland and Augusta, in such newspapers in each place as the State Tax Assessor may select.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is reflected in the emergency preamble.