

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1212

S. P. 398

In Senate, March 6, 1973

Referred to Committee on Business Legislation. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

**AN ACT Providing for Suspensions of Domestic Corporations by the
Secretary of State.**

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

Sec. 1. R. S., T. 13-A, § 304-A, additional. 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 a new section 304-A to read as follows:

§ 304-A. Suspension of domestic corporation

1. A domestic corporation shall be suspended by the Secretary of State as provided by subsections 2 and 3 where:

A. The corporation has failed to appoint and maintain a clerk as required by section 304; or

B. The corporation has failed, after change of its registered office or clerk to file in the office of the Secretary of State a statement of such change as required by section 304.

2. The domestic corporation shall be suspended only after the Secretary of State shall have mailed to the corporation's last registered office at least 60 days' notice of impending suspension, including a specification of the default.

3. After the expiration of the 60-day period, if the default has not been cured, the Secretary of State shall suspend the corporation and shall mail a notice to its last registered office.

4. Such action of the Secretary of State in suspending a corporation is appealable to the Superior Court in Kennebec County. Such appeals shall

be governed by Rule 80B of the Rules of Civil Procedure, or by such amendment or replacement therefor as may from time to time be adopted.

5. The corporation shall cease to do business as of the date of suspension, unless on appeal such suspension is stayed by the court pending the appeal.

6. After a corporation has been suspended under subsection 3, it may be revived by filing the proper statement, filing fee and payment of the proper fee for each 6 months or fraction thereof it has failed to file the proper statement.

Sec. 2. R. S., T. 13-A, § 1111, amended. Section 1111 of Title 13-A of the Revised Statuts, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended to read as follows:

§ 1111. Dissolution upon suit by Attorney General

A corporation may be dissolved involuntarily by a decree of the Superior Court in an action filed by the Attorney General, when it is established that the corporation:

1. ~~Has failed to file its annual report within the time required by this Act, or has failed to pay its franchise tax on or before the date on which such franchise tax becomes due and payable; or~~

2. Procured its articles of incorporation through fraud or concealment of a material fact or in any material matter failed to comply with the requirements of this Act or any prior general corporation law concerning the organization of corporations; or

3. Has exceeded or abused the authority conferred upon it by law; or

4. ~~Has failed, for 30 days after notice from the Attorney General, to appoint or maintain a clerk in this State; or~~

5. ~~Has failed, for 30 days after change of its registered office or clerk, to file in the office of the Secretary of State a statement of such change; or~~

6. Has willfully made false statements as to material matters on its annual report or any papers filed in the office of the Secretary of State; or

7. Has continued to engage in business after suspension for any cause by the Secretary of State.

Sec. 3. R. S., T. 13-A, § 1112, amended. Section 1112 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:

§ 1112. Procedure for dissolution upon suit by Attorney General

1. ~~The Secretary of State shall annually notify the Attorney General of the names of all corporations which have failed to file their annual reports in accordance with this Act, together with the facts pertinent thereto. He~~ The Secretary of State shall also notify the Attorney General, from time to time, of the names of all corporations which appear to have given other cause for dissolution as provided in section 1111, together with the facts pertinent thereto. ~~The State Tax Assessor shall annually notify the Attor-~~

~~ney General of the names of all corporations which have failed to pay their franchise taxes~~

2. ~~Not less than 30 days after~~ After receipt of such notification, the Attorney General may file an action in the name of the State against each such corporation for its dissolution. Such notification by the Secretary of State to the Attorney General shall be received in all courts as prima facie evidence of the facts therein stated.

3. Whenever the Secretary of State ~~or the State Tax Assessor~~ shall notify the Attorney General that a corporation has given any cause for dissolution, the Secretary of State ~~or the State Tax Assessor~~ shall concurrently mail to the corporation at its registered office a copy of such notification.

4. ~~Every notification from the Secretary of State or the State Tax Assessor to the Attorney General pertaining to the failure of a corporation~~

A. ~~To file its annual report, or~~

B. ~~To pay its franchise tax, or~~

C. ~~To appoint or maintain a clerk~~

~~shall be taken and received in all courts as prima facie evidence of the facts therein stated~~

5. If, before an action is filed, the corporation shall remedy its noncompliance with this Act, the Attorney General shall not file an action against such corporation for such cause.

6. If, after such an action is filed but before final judgment is entered therein, the corporation shall remedy its noncompliance with this Act, and shall pay all the costs of such action, the action shall abate.

Sec. 4. R. S., T. 13-A, § 1301, sub-§ 4, amended. The first sentence of subsection 4 of section 1301 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 ~~Attorney General~~ Secretary of State, upon application by any domestic corporation and satisfactory proof that it has ceased to transact business and that it is not indebted to the State on account of franchise taxes, shall prepare and file a certificate of the fact ~~with the Secretary of State~~ and shall give a duplicate certificate to the corporation.

Sec. 5. R. S., T. 13-A, § 1302, amended. Section 1302 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:

§ 1302. Failure to file annual report; incorrect report; penalties

1. ~~Any corporation required to file an annual report as provided by section 1301 which fails to file its annual report on or before the due date shall be liable to the State in the sum of \$25 for each failure, to be recovered by the Attorney General in a civil action~~

2. If the Secretary of State finds that any annual report delivered for filing does not conform with the requirements of section 1301, he shall return the report for correction.

3. When any domestic corporation required to file an annual report as provided by section 1301 fails to file its annual report, on or before August 15, the Secretary of State and the Attorney General shall also proceed as provided by sections ~~1111~~ and ~~1211~~, whichever is applicable shall suspend the charter of the corporation using the procedure in, and with the same effect, as section 304-A, subsections 2, 3, 4 and 5.

4. If the annual report of a corporation is not received by the Secretary of State within the time specified in section 1301, the corporation shall be excused from the liability provided in this section and from any other penalty for failure to timely file the report, if it establishes, to the satisfaction of the Secretary of State, that its failure to file was the result of excusable neglect, and it furnishes the Secretary of State with a copy of such report and pays the filing fee within 30 days after it learns of the nondelivery of the original report.

5. After a corporation has been suspended under subsection 3, it may be revived by filing a current annual report, filing fee and payment of the proper fee for each year it has failed to file such report.

Sec. 6. R. S., T. 13-A, § 1401, sub-§ 30-A, additional. Section 1401 of Title 13-A, as enacted by section 1 of chapter 439 of the public laws of 1971, is amended by adding a new subsection 30-A, to read as follows:

30-A. For certificate that any corporation has ceased to transact business and is excused from filing annual reports, as provided in section 1301, subsection 4, \$5.

Sec. 7. R. S., T. 5, § 191, amended. Section 191 of Title 5 of the Revised Statutes, as amended, is further amended by repeal of the 4th paragraph as follows:

~~For certificate that any corporation has ceased to transact business and is excused from filing annual returns, as authorized in Title 13-A, section 1301, subsection 4, \$5;~~

Sec. 8. Appropriation. There is appropriated from the General Fund the sum of \$19,025 to carry out the purposes of this Act. The breakdown shall be as follows:

	1973-74	1974-75
SECRETARY OF STATE		
Personal Services	(2) \$5,455	(2) \$10,620
All Other	600	400
Capital Expenditures	1,750	200
	\$7,805	\$11,220

STATEMENT OF FACT

The purpose of this bill is to take the granting of excuses from the Attorney General and place it in the Secretary of State. It also allows the Secretary of State to suspend corporations who do not file annual reports or change of clerk or registered office or both with the Secretary of State rather than requiring the Attorney General to take court action in such cases.