

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
106TH LEGISLATURE

COMMITTEE AMENDMENT "A" to S. P. 403, L. D. 1231, Bill,
"AN ACT to Correct Errors and Inconsistencies in the Maine
Business Corporation Act."

Amend said Bill by inserting after the enacting clause
the following:

'Sec. 1. R. S., T. 13-A, §102, sub-§4, amended. Subsection
4 of section 102 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 at the end the following new sentence:
Capital surplus of a corporation means its consolidated capital
surplus where the circumstances permit application of the term
"consolidated."

Sec. 1-A. R. S., T. 13-A, §102, sub-§6-A, additional.
Section 102 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 a new subsection 6-A to read as follows:

6-A. "Consolidated" in reference to any type of capital
or surplus account of a corporation, applies only when the
corporation has one or more subsidiary corporations and means
the result obtained, using good accounting practices, by
combining or otherwise reflecting all or an appropriate part of
the particular type of capital or surplus account of the corporation
with the same type of capital or surplus account of all of its
subsidiary corporations not less than 75% of the voting shares
of which are owned by it.'

(Filing No. S-174)

Further amend said Bill by striking out at the beginning of the first line after the enacting clause the underlined abbreviation and figure "Sec. 1." and inserting in place thereof the abbreviation and figure 'Sec. 1-B.'

Further amend said Bill by inserting after section 1 the following:

'Sec. 1-C. R. S., T. 13-A, §102, sub-§10, amended. Subsection 10 of section 102 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 striking out all of the 2nd sentence and inserting in place thereof the following:

Where a corporation is the surviving corporation in a merger or is a new corporation in a consolidation or it has purchased substantially all the assets of another corporation, its earned surplus shall include that of the participating corporations to the extent actually recorded on its books as of the effective date of such transaction and permitted by good accounting practices.

Earned surplus of a corporation means its consolidated earned surplus where the circumstances permit application of the term "consolidated."

Sec. 1-D. R. S., T. 13-A, §102, sub-§13, amended. Subsection 13 of section 102 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:

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13. "Good accounting practices" means the generally accepted principles and practices followed by reputable certified public accountants; the applicable Accounting Research and Terminology Bulletins, and the Opinions of the Accounting Principles Board, of the American Institute of Certified Public Accountants, the opinions, rulings and standards of the Financial Accounting Standards Board sponsored by the Financial Accounting Foundation, and other like expressions of generally accepted accounting principles and practices by bodies recognized by the accounting profession may be evidence of such practices.

Sec. 1-E. R. S., T. 13-A, §102, sub-§19, amended. Subsection 19 of section 102 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 at the end the following new sentence:
Stated capital of a corporation means its consolidated stated capital where the circumstances permit application of the term "consolidated."

Sec. 1-F. R. S., T. 13-A, §102, sub-§21, amended. Subsection 21 of section 102 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 at the end the following new sentence:
Surplus of a corporation means its consolidated surplus where the circumstances permit application of the term "consolidated."

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Further amend said Bill by inserting after section 9 the following:

'Sec. 9-A. R. S., T. 13-A, §516, repealed and replaced.

Section 516 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:

§516. Cumulative preferred dividends from capital surplus

Dividends may be declared and paid out of capital surplus to the holders of the corporation's outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, if the corporation has no earned surplus or if its earned surplus would be insufficient to permit payment of such cumulative preferred dividends therefrom. Each such dividend, when made, shall be identified as a payment of cumulative dividends out of capital surplus.'

Further amend said Bill by striking out all of section 11 and inserting in place thereof the following:

'Sec. 11. R. S., T. 13-A, §708, sub-§3, additional. Section 708 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 a new subsection 3 to read as follows:

3. Unless otherwise restricted by the certificate of incorporation or by laws, members of the board of directors of any corporation, or any committee designated by such board, may participate in a meeting of such board or committee by means

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of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.'

Statement of Fact

Corporations which are holding companies in many cases will wish to rely on the surplus, earned or otherwise, of its subsidiary companies in considering the payment of dividends, particularly stock dividends, and in the purchase of stock for the treasury.

The present definitions of earned surplus and of surplus (§102-10 and §102-21, respectively) are not adequate to permit the payment from consolidated earned surplus or consolidated surplus of dividends in cash or property (§514-A) or in its own shares (§515-1A); nor will the definition of earned surplus permit the acquisition of treasury stock from consolidated earned surplus (§518-2).

The purpose of this amendment is also to provide a definition of the term "consolidated" and enable the use of the consolidated concept under appropriate conditions when calculating the various capital accounts of a parent corporation.

Because of the new definition of earned surplus, section 516 is no longer needed except the portion relating to payment of cumulative preferred dividends.

The definition of "good accounting practices" is being modified to give recognition to the replacement of the

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Accounting Principles Board by the Financial Accounting Standards Board, and for clarification.

This amendment would also permit members of a board of directors or a committee of directors to act as such by conference telephone call.

Reported by the Committee on Judiciary.

Reproduced and Distributed pursuant to Senate Rule 11-A.

May 29, 1973 (Filing No. S-174).