

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 1231

S. P. 403

In Senate, March 6, 1973

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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

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

**Sec. 1. R. S., T. 13-A, § 102, sub-§ 7, amended.** Subsection 7 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:

7. **“Conspicuous”:** A term, clause or notation is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals, as: IRREVOCABLE PROXY is conspicuous. Language in the body of a form ~~such as a share certificate~~ is conspicuous, if it is in larger or other contrasting type or color. In a telegram, any stated term is conspicuous. **Words printed, stamped or type-written on a share certificate shall also be deemed “conspicuous.”**

**Sec. 2. R. S., T. 13-A, § 104, sub-§ 4, amended.** Subsection 4 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:

4. The document shall set forth the current address of the registered office **in the State of Maine** of the corporation, including the street or rural route address, post-office box, if any, town or city, county and state.

**Sec. 3. R. S., T. 13-A, § 301, sub-§ 3, amended.** Subsection 3 of section 301 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. Subsection 1, paragraph B shall not apply to the name **or assumed name, as provided for in section 307** of any corporation which ~~subsequent to~~

~~December 31, 1967~~ has been excused from filing annual returns, on and after the 5th anniversary of such excuse, nor to the name of any corporation the charter of which is suspended ~~subsequent to December 31, 1967~~, on and after the 3rd anniversary of such suspension. When an excused or suspended corporation votes to resume business, it shall ~~change its corporate~~ ~~adopt a new~~ name is another corporation has adopted its old name or if the old name, if proposed for a new corporation, would otherwise violate subsection 1, paragraph B.

**Sec. 4. R. S., T. 13-A, § 304, sub-§ 6, amended.** Subsection 6 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 by adding at the end a new paragraph to read as follows:

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

**Sec. 5. R. S., T. 13-A, § 304, sub-§ 9, additional.** Section 304 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, and as amended, is further amended by adding a new subsection 9, to read as follows:

**9. Any document to be filed by the Secretary of State, the effect of which is to change the clerk, shall be signed by the person designated in such document as the new clerk, or in accordance with section 104, subsection 1, paragraph B, subparagraphs (2), (3), (4) or (5).**

**Sec. 6. R. S., T. 13-A, § 403, sub-§ 1, ¶ A, amended.** Paragraph A of subsection 1 of section 403 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, and as amended by section 12-B of chapter 565 of the public laws of 1971, is further amended to read as follows:

**A. The name of the corporation and the municipality or other place in Maine where it is located;**

**Sec. 7. R. S., T. 13-A, § 407, sub-§§ 5 and 6, additional.** Section 407 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 5 and 6, to read as follows:

**5. If the business of a close corporation is to be managed by its shareholders pursuant to its articles of incorporation and section 701, subsection 2, the incorporator or incorporators shall have the power, in addition to the other powers granted in this section, to fix the consideration for, authorize the issuance of, issue, and execute certificates evidencing, not more than 5 shares, but such power of the incorporator or incorporators may be exercised only once and shall thereafter not be exercised by the incorporator or incorporators.**

**6. Whenever any provision of this Title requires or permits a bylaw provision to be adopted by vote or consent of shareholders, such bylaw pro-**

vision, when adopted by the incorporator or incorporators pursuant to this section, shall be deemed duly adopted by the unanimous vote of all shareholders for all purposes of this Act and no subsequent adoption or ratification of such bylaw provision by the shareholders shall be requisite to its validity.

**Sec. 8. R. S., T. 13-A, § 506, sub-§§ 1, 2 and 3, amended.** Subsections 1, 2 and 3 of section 506 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. Shares having a par value may be issued for such consideration ~~expressed in dollars~~ as shall be fixed from time to time by the board of directors, unless the articles of incorporation reserve to the shareholders the right to fix the consideration; but except as otherwise permitted in this Act, such consideration shall not be less than the par value of the shares issued therefor.

2. Shares without par value may be issued for such consideration ~~expressed in dollars~~ as may be fixed from time to time by the board of directors, unless the articles of incorporation reserve to the shareholders the right to fix the consideration.

3. Treasury shares may be disposed of by the corporation for such consideration ~~expressed in dollars~~ as may be fixed from time to time by the board of directors, or by the shareholders if the articles of incorporation so provide.

**Sec. 9. R. S., T. 13-A, § 513, sub-§ 1, amended.** Subsection 1 of section 513 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:

1. Upon issue by a corporation of shares with a par value, the consideration received therefor ~~expressed in dollars~~ shall constitute stated capital to the extent of the par value of the shares, and the excess, if any, of such consideration shall constitute capital surplus.

**Sec. 10. R. S., T. 13-A, § 607, sub-§§ 1 and 2, amended.** Subsections 1 and 2 of section 607 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. The officer or agent having charge of stock transfer books for shares of a corporation shall, in advance of each meeting of shareholders, prepare a complete list of the shareholders entitled to vote at that meeting of shareholders and any adjournment thereof. Such list shall be arranged in alphabetical order, with the address of and the number of shares held by each shareholder and shall be in written or other form which may be translated to readable form. The requirement of a list may be satisfied by a card index showing the required information and alphabetically arranged; and the list may be classified by classes and series of stock held. **If a corporation maintains its stockholder records by means of electronic data processing equipment, such list may be printed or prepared on microfilm provided that the corporation shall provide the means of reducing or projecting such list to readable form so as to permit inspection by any shareholder in accordance**

with subsections 2 and 3. In the case of a close corporation, the requirement of a list may be satisfied by a stock transfer book, which need not be kept in alphabetical order and need not contain addresses, and such stock transfer book may be substituted for the list required by this section and section 625, subsection 2 and section 714, subsection 11, paragraph C.

2. For a period commencing not upon the record date or the date when the stock transfer books are closed and in no event less than

A. Ten days or,

B. In the case of a close corporation, 3 days, prior to the date of the meeting, such list of shareholders shall be kept on file at the office of the clerk of the corporation, and at the office of its transfer agent or registrar, if any, and shall be subject to inspection by any shareholder at any time during usual business hours.

Sec. 11. R. S., T. 13-A, § 710, sub-§ 5, additional. Section 710 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 5, to read as follows:

5. If the articles of incorporation so provide, members of the board of directors or of any committee designated by such board may, after consenting thereto, participate in a meeting of such board or committee by means of conference telephone or other 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.

Sec. 12. R. S., T. 13-A, § 809, amended. Section 809 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:

#### § 809. Restated articles of incorporation

1. A corporation may at any time ~~execute and file, in accordance with sections 104 and 106,~~ adopt a "Restated Articles of Incorporation" restatement of its articles of incorporation which shall integrate into a single document the text of its original articles of incorporation, merger or consolidation, together with all amendments theretofore adopted and, if authorized, further amendments.

2. A corporation may restate its articles of incorporation by submitting to the shareholders for their approval the proposed restatement thereof, with or without any new amendments which under section 805 or under the articles of incorporation require the vote of the shareholders. The procedure specified in, and the vote or votes required by, this chapter for amendment of the articles of incorporation shall be applicable. If the ~~restated articles~~ restatement ~~include~~ includes new amendments not theretofore voted upon by the shareholders, the notice of the meeting at which ~~they are~~ it is to be voted upon shall specifically refer to such new amendments and summarize the changes to be effected thereby, whether or not the full text of the ~~restated~~

~~articles restatement~~ accompanies such notice; if the directors in good faith believe that the ~~restated articles restatement include~~ **restatement** includes no such new amendments, the notice of the meeting shall so state and shall be accompanied by a copy of the proposed ~~restated restatement of~~ **restatement of** articles of incorporation.

3. ~~The restated articles shall be specifically designated as such.~~ Upon adoption of the **restatement**, a form entitled **"Restated Articles of Incorporation"** shall be executed in accordance with Section 104, which ~~and~~ shall set forth the same information as is required by section 807 in the case of articles of amendment substituting, wherever applicable, the word "restatement" for the word "amendment" and shall have the **restatement attached thereto as an exhibit**. Upon filing the ~~restated articles with the restatement~~ **restatement** by the Secretary of State, in accordance with Section 106 the original articles of incorporation as amended and supplemented shall be superseded, and the ~~restated articles restatement~~, including any further amendments and changes made thereby, shall be the articles of incorporation of the corporation.

4. Any amendment or change effected in connection with the restatement of the articles of incorporation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply, if separate articles of amendment were filed to effect such amendment or change.

5. The ~~restated articles restatement~~ **restatement** may omit statements as to the incorporator or incorporators and the initial directors. In all other respects, the ~~restated articles restatement~~ **restatement** shall contain the same information and provisions as are required by this Act for original articles.

6. When the ~~restated articles with the restatement~~ **restatement** are delivered for filing by the Secretary of State, he shall, before filing them, make the same determinations as provided in section 405 in the case of original articles.

Sec. 13. R. S., T. 13-A, § 902, sub-§ 6, additional. Section 902 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, to read as follows:

6. **A plan of merger or consolidation may be approved by written consent of all shareholders of a participating corporation, whether or not entitled to vote by the articles of incorporation, as provided by section 620, subsection 2; if such unanimous written consent is given, no resolution of the board of directors of such participating corporation approving, proposing, submitting, recommending or otherwise respecting such plan of merger or consolidation is necessary, and no shareholders of such participating corporation shall be entitled to notice of, or to dissent from, such plan of merger or consolidation.**

Sec. 14. R. S., T. 13-A, § 1003, sub-§ 5, additional. Section 1003 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 5 to read as follows:

5. **Any sale of all or substantially all of the assets of a corporation, whether or not in the ordinary course of business, and upon any terms or**

conditions, may be authorized by written consent of all shareholders, whether or not entitled to vote by the articles of incorporation, as provided by section 620, subsection 2; if such unanimous written consent is given, no resolution of the board of directors approving, proposing, submitting, recommending or otherwise respecting such sale is necessary, and no shareholder shall be entitled to notice of, or to dissent from, such sale.

**Sec. 15. R. S., T. 13-A, § 1115, sub-§ 2, amended.** Subsection 2 of section 1115 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. In an action filed by a creditor of the corporation when it is established that the corporation is insolvent or that its debts exceed its assets.

A. ~~When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied, and it is established that the corporation is insolvent or that its debts exceed its assets; or~~

B. ~~When the corporation has admitted in writing that the claim of the creditor is due and owing, and it is established that the corporation is insolvent or that its debts exceed its assets~~

**Sec. 16. R. S., T. 13-A, § 1208, sub-§ 1, ¶ B, amended.** Paragraph B 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:

B. ~~The jurisdiction of its incorporation under the laws of which it is incorporated;~~

**Sec. 17. R. S., T. 13-A, § 1209, sub-§ 1, amended.** Subsection 1 of section 1209 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:

1. When a foreign corporation authorized to do business in this State shall be dissolved, or its authority or existence otherwise cancelled or terminated in its jurisdiction of incorporation, or when the corporation is merged or consolidated into another foreign corporation ~~which is not authorized to do business in this State~~, the corporation or its successor or trustee shall deliver for filing with the Secretary of State a certificate of the appropriate official of its jurisdiction of incorporation attesting to, or a certified copy of an order or decree of a court of its jurisdiction of incorporation directing the dissolution of such foreign corporation, the termination of existence, the cancellation or revocation of its authority, or its merger into or consolidation with another foreign corporation.

**Sec. 18. R. S., T. 13-A, § 1209, sub-§ 2, amended.** The first sentence of subsection 2 of section 1209 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 authority of the foreign corporation to do business in this State shall terminate on the effective date of its dissolution, or of the cancellation of its

existence or authority in its jurisdiction of incorporation, or of its merger or consolidation into another foreign corporation ~~not authorized to do business in this State~~, as the case may be.

**Sec. 19. R. S., T. 13-A, § 1212, sub-§ 2, amended.** The last paragraph of subsection 2 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 repealed as follows:

~~In the alternative, if the registered agent for one or more foreign corporations changes the address of his or its business office from the registered office appearing on the record in the office of the Secretary of State, the registered agent may change the registered office of such corporations by filing, in accordance with section 106, a statement executed by the registered agent and setting forth, for each foreign corporation for which he or it is such registered agent, the information required by paragraphs A, B, D, E and H and reciting that notice of such change has been sent to each of such foreign corporations~~

**Sec. 20. R. S., T. 13-A, § 1212, sub-§ 2-A, additional.** Section 1212 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971 and as amended by section 19 of chapter 565 of the public laws of 1971, is further amended by adding a new subsection 2-A, to read as follows:

**2-A.** If the registered agent of one or more foreign corporations changes his address from the registered office appearing on the record in the office of the Secretary of State, he shall promptly execute and deliver for filing in accordance with sections 104 and 106 a statement setting forth:

- A.** The name of the registered agent;
- B.** The address of the former registered office;
- C.** The name and jurisdiction of incorporation of each foreign corporation for which he or it is the registered agent;
- D.** The address of the new registered office;
- E.** A recitation that notice of such change has been sent to each of such corporations.

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

**Sec. 21. R. S., T. 13-A, § 1301, sub-§§ 1, 3 and 6, amended.** The first paragraph of subsection 1 and subsections 3 and 6 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, are amended to read as follows:

1. Each domestic corporation, unless excused as provided in subsection 4 or excluded by subsection 6, and each foreign corporation authorized to do business in this State, **except those doing business without qualification by virtue of section 1215, subsection 2**, shall file, within the time prescribed by this Act, an annual report setting forth:



3. The annual report shall be executed as provided by section 104, **except that signing by any one of the president, a vice-president, the secretary, the treasurer or an assistant secretary, without a second signature, shall be deemed valid under section 104, subsection 1, paragraph B, subparagraph (2).** Such report shall be delivered for filing between the first day of January and the first day of June of the year next succeeding the calendar year for which the report is to be made. One copy of the report, together with the filing fee required by this Act, shall be delivered for filing to the Secretary of State who shall file the report, if he finds that it conforms to the requirements of this Act.

6. The requirement of subsection 1 shall not apply to religious, charitable, educational or benevolent corporations, nor to corporations organized under Title 13, chapters 81, 83, 91 and 93, nor to corporations organized under Title 27, chapter 7 ~~nor to corporations which are liable to a franchise tax other than the tax provided for in Title 36, section 2401.~~

Sec. 22. R. S., T. 13-A, § 1401, sub-§ 8, **repealed and replaced.** Subsection 8 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 and the following enacted in place thereof:

8. Statement of change of registered office, as provided by section 304, subsection 6, \$2 for each corporation listed; or when separate statements are filed at one time, \$2 for each separate statement up to but not exceeding 100 statements, \$1 for each separate statement over 100 but not exceeding 200 statements, and 50¢ for each separate statement over 200 statements.

Sec. 23. R. S., T. 13-A, § 1401, sub-§ 26, **amended.** Subsection 26 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:

26. Articles of merger of a foreign corporation, as provided by section 1206, ~~\$5 \$20, or if the surviving corporation has different authorized capital stock, \$10;~~

Sec. 24. 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 and as amended by section 22 of chapter 565 of the public laws of 1971, is further 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 1307, ~~\$5~~ \$5 per certificate. **For issuing a short form certificate of corporate condition \$5 per certificate. For issuing a long form certificate of corporate condition, listing amendments, \$10 per certificate;**

Sec. 25. R. S., T. 13-A, § 1401, sub-§ 33, **repealed and replaced.** Subsection 33 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 and the following enacted in place thereof:

~~33. Any other documents not herein specifically provided for, \$5.~~

33. Statement of change of registered office or registered agent or both, as provided by section 1212, subsection 2, \$5;

Sec. 26. R. S., T. 13-A, § 1401, sub-§ 4, additional. Section 1401 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, and as amended, is further amended by adding a new subsection 34, to read as follows:

34. Statement of change of address of registered agent, as provided by section 1212, subsection 2-A, \$2 for each foreign corporation listed; or when separate statements are filed at one time, \$2 for each separate statement up to but not exceeding 100 statements, \$1 for each separate statement over 100 but not exceeding 200 statements, 50¢ for each separate statement over 200 statements;

Sec. 27. R. S., T. 13-A, § 1401, sub-§ 35, additional. Section 1401 of Title 13-A of the Revised Statutes, as enacted by section 1 of chapter 439 of the public laws of 1971, and as amended, is further amended by adding a new subsection 35, to read as follows:

35. Any other documents not herein specifically provided for, \$5.

Sec. 28. R. S., T. 13-A, § 1403, sub-§§ 3 and 4, amended. Subsections 3 and 4 of section 1403 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:

3. Upon filing articles of amendment or restated articles of a domestic corporation which include any increase in the number or the aggregate par value of shares which the corporation is authorized to issue: A fee equal to the amount that a like corporation originally organized with such increased authorized shares would have to pay upon filing its original articles of incorporation pursuant to subsection 1 or 2, minus ~~the aggregate amount of amounts which the corporation paid under this or a similar provision of prior law at the time it was organized and at the time of any prior increases of its authorized capital stock~~ the amount that a like corporation originally organized with the previously authorized shares would have to pay upon filing its original articles of incorporation pursuant to subsection 1 or 2;

4. Upon filing articles of merger or consolidation, in which the surviving or new corporation is a domestic corporation, and which increase the number of aggregate par value of shares which the surviving or new corporation will have authority to issue, in excess of the total number or par value of shares which all participating domestic corporations had authority to issue: A fee equal to the amount that a like corporation originally organized with such increased authorized shares would have to pay upon filing its original articles of incorporation, pursuant to subsection 1 or 2, minus ~~the aggregate amount of amounts which the participating domestic corporations paid under this or a similar provision of prior law at the time they were organized and at the time of any prior increases of its authorized capital stock~~ the amount that a like corporation originally organized with the previously authorized shares

would have to pay upon filing its original articles of incorporation pursuant to subsection 1 or 2.

#### STATEMENT OF FACT

This bill is designed to correct certain errors and inconsistencies in the Maine Business Corporation Act which have become apparent in practice since the Act became effective on January 1, 1972.