

# 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 SEVENTH LEGISLATURE

---

---

Legislative Document

No. 1388

---

---

S. P. 421

In Senate, April 2, 1975

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Collins of Knox.

---

---

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

---

---

AN ACT to Clarify Laws Relating to Corporations.

---

---

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

Sec. 1. 13 MRSA § 713, 1st sentence, as enacted by PL 1969, c. 411, is amended to read:

The corporate name of a corporation organized under this chapter shall contain the last names of some or all of the shareholders and shall contain the words "chartered" or "professional association" or the abbreviation "P.A.", and may contain any other words not specifically prohibited by this section.

Sec. 2. 13 MRSA § 940 is enacted to read:

§ 940. Indemnification

Any domestic corporation organized without capital stock and any corporation located in Maine and chartered by the Commonwealth of Massachusetts prior to the Articles of Separation may, by vote of its directors, trustees or managing board, however designated, or pursuant to bylaw, indemnify its trustees, directors, managing board, officers, employees and agents and may purchase and maintain insurance to indemnify any such person to the extent provided by Title 13-A, section 719, except where inconsistent with any specific provision of any public law or private and special act applicable thereto.

Sec. 2. 13-A MRSA § 301, sub-§§ 5 and 6 are enacted to read:

5. Any corporation which shall execute and file with the Secretary of State proof of a resolution pursuant to subsection 1, paragraph B, may by such resolution reserve to itself the sole right to authorize the use of a similar

name by any other corporation thereafter seeking to use such similar name, and in such case no proof of a resolution by the board of directors of the corporation which has received authority to use a similar name in and by such resolution so reserving such right shall be required under subsection 1, paragraph B, with respect to any subsequent use of a similar name.

5. Any corporation may grant to any domestic corporation or any foreign corporation authorized to transact business in this State, by executing and filing with the Secretary of State as provided in sections 104 and 106 proof of a resolution of its board of directors making such grant, the exclusive right thereafter to authorize the use of a name similar to that of the granting corporation by any other corporation or corporations, and in such case no proof of a subsequent resolution by the board of directors of the granting corporation shall be required under subsection 1, paragraph B, until and unless the granting corporation shall revoke the grant by executing and filing in the manner provided under this section proof of a further resolution of its board of directors revoking the grant.

Sec. 4. 13-A MRSA § 308 is enacted to read:

§ 308. Suspension by Secretary of State for failure to maintain clerk or file change in registered office

The authority of a domestic corporation shall be suspended by the Secretary of State, when:

1. The corporation fails to appoint or maintain a clerk in this State; or
2. The corporation, after change of its registered office or clerk, fails to file in the office of the Secretary of State a notification of such change.

The Secretary of State shall use the procedures set forth in section 1210 relative to revoking the right of foreign corporations to do business in this State for suspending domestic corporations. A corporation which has been suspended under this section may be reinstated by filing the proper notification of change of clerk or registered office or both with the Secretary of State and paying a penalty of \$25.

Sec. 5. 13-A MRSA § 612, sub-§ 2, as enacted by PL 1971, c. 439, § 1, is amended by adding at the end the following new sentences:

If any share is entitled to more or less than one vote on any matter, every reference in this Act to a majority or other proportion of the shares shall refer to such a majority or other proportion of votes entitled to be cast, the reference in section 622 to a multiplication of "shares owned by such holder" shall be read as a reference to multiplication of "votes pertaining to shares owned by such holder."

Sec. 6. 13-A § 703, sub-§ 2, as enacted by PL 1971, c. 439, § 1, is repealed and the following enacted in place thereof:

2. The number of directors may be increased or decreased only by:

A. Amendment of the articles of incorporation, or

B. If the articles of incorporation set a maximum and a minimum number of directors, within the limits set in the articles by:

- (1) A resolution of the shareholders, or
- (2) A resolution of the directors, if the articles authorize such a resolution.

Sec. 7. 13-A MRSA § 719, as enacted by PL 1971, c. 439, § 1, is repealed and the following enacted in place thereof:

§ 719. Indemnification of officers, directors, employees and agents; insurance

1. A corporation shall have power to indemnify, or if so provided in the bylaws shall in all cases indemnify, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorney's fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding; provided that no indemnification shall be provided for any person with respect to any matter as to which he shall have been finally adjudicated in any action, suit or proceeding not to have acted in good faith in the reasonable belief that his action was in the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order or conviction adverse to such person, or by settlement or plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith in the reasonable belief that his action was in the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

2. Any provision of subsections 1 or 3 to the contrary notwithstanding, to the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith. The right to indemnification granted by this subsection may be enforced by a separate action against the corporation, if an order for indemnification is not entered by a court in the action, suit or proceeding wherein he was successful on the merits or otherwise.

3. Any indemnification under subsection 1, unless ordered by a court or required by the bylaws, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection 1. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding,

or if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or by the shareholders. Such a determination, once made by the board of directors may not be revoked by the board of directors, and upon the making of such determination by the board of directors, the director, officer, employee or agent may enforce the indemnification against the corporation by a separate action notwithstanding any attempted or actual subsequent action by the board of directors.

4. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the manner provided in subsection 3 upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

5. The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. A right to indemnification required by the bylaws may be enforced by a separate action against the corporation, if an order for indemnification has not been entered by a court in any action, suit or proceeding in respect to which indemnification is sought.

6. A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under this section.

Sec. 8. 13-A MRSA § IIII, as last amended by PL 1973, c. 693, sub-§§ I, 2 and 5, is repealed and the following enacted in place thereof:

§ IIII. 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. 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 organization of corporations; or
2. Has exceeded or abused the authority conferred upon it by law; or

3. Has willfully made false statements as to material matters on its annual report; or

4. Has continued to engage in business in this or any other state after being suspended by the Secretary of State.

Sec. 9. 13-A MRSA § 1112, as enacted by PL 1971, c. 439, § 1, is repealed and the following enacted in place thereof:

§ 1112. Procedure for dissolution upon suit by Attorney General

1. The Secretary of State shall notify the Attorney General of the names of all corporations which appear to have given cause for dissolution as provided in section 1111, together with the facts pertaining thereto. At the same time, he shall notify the corporation of the fact by mailing to its registered office a copy of the notification of cause for dissolution given to the Attorney General.

2. The Attorney General may file an action in the name of the State against each such corporation, if he is satisfied from the facts given by the Secretary of State, and from his own investigation, that the corporation should be dissolved for any of the reasons stated in section 1111.

3. If, before the action is filed, the corporation shall remedy its noncompliance with this Act, to the satisfaction of the Secretary of State and the Attorney General, no action shall be filed.

4. If, after such action is filed but before final judgment is entered, the corporation shall remedy its noncompliance with this Act, to the satisfaction of the Secretary of State and the Attorney General, the action shall be dismissed upon payment of a penalty of \$100 and the court costs.

Sec. 10. 13-A MRSA § 1301, sub-§ 4, last sentence, as enacted by PL 1971, c. 439, § 1, is amended to read:

Thereupon such corporation shall be excused from filing annual reports with the Secretary of State ~~and from the payment of the annual franchise tax~~ so long as the corporation in fact transacts no business.

Sec. 11. 13-A MRSA § 1301, sub-§ 5, last sentence, as enacted by PL 1971, c. 439, § 1, is amended to read:

A certificate executed and filed as provided in sections 104 and 106 setting forth that a shareholders' meeting was held, the date and location of same, and that a majority of the shareholders voted to resume transacting business shall authorize such corporation to transact business; and after such certificate is filed, it shall be required to file annual reports ~~and pay annual franchise taxes.~~

Sec. 12. 13-A MRSA § 1302, sub-2-A is enacted to read:

2-A. A corporation while suspended shall not engage in business.

Sec. 13. Transitional provision. The foregoing provisions of section 5 of this Act are declaratory of existing law and enacted for clarification only and the enactment thereof shall not be deemed or used to invalidate any corporate action taken prior to the effective date of this Act.

## STATEMENT OF FACT

The purpose of this bill is to clarify certain parts of the laws relating to corporations and to make easier the record keeping in the Secretary of State's office. In particular, this bill:

1. Clarifies the status and procedures relating to suspended corporations and deletes reference to franchise tax.
2. Establishes a simpler procedure for consents to the use of similar names where there are many corporations involved, such as in franchise situations.
3. Clarifies cumulative voting where voting rights are not identical with number of shares held.
4. Amends indemnification provisions.
5. Clarifies procedures relating to involuntary dissolution of corporations by the Attorney General.
6. Amends the name restrictions for professional corporations to allow descriptive words in addition to the names of the shareholders.
7. Clarifies the ability of corporations without capital stock to indemnify officers, directors, agents and employees.