

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

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Legislative Document

No. 707

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S. P. 229

In Senate, March 3, 1977

On motion of Senator Collins of Knox, referred to Committee on Judiciary.  
Sent down for concurrence and ordered printed.

MAY M. ROSS, Secretary

Presented by Senator Collins of Knox.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-SEVEN

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**AN ACT Revising the Maine Business Corporation Act.**

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

**Sec. 1.** **13-A MRSA § 304, sub-§ 6**, as last amended by PL 1973, c. 483, § 4, is further amended to read:

6. If the clerk of one or more corporations changes his name from the name appearing on the record in the office of the Secretary of State or changes his address from the registered office appearing on the such 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 clerk appearing on the record in the office of the Secretary of State;

A-1. If the name of the clerk has changed, the new name of the clerk;

B. The address of the ~~former~~ registered office appearing on the record in the office of the Secretary of State;

C. ~~The~~ If the address of the registered office has changed, the address of the such new registered office;

D. The names of each of the corporations of which he is clerk; and

E. A recitation that notice of such change has been sent to each of such corporations.

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

**Sec. 2.** 13-A MRSA § 513, sub-§ 2, 1st sentence, as enacted by PL 1971, c. 439, § 1, is amended to read:

Upon issue by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital, unless the board of directors, at any time before or within a period of 60 days after the issuance of such shares, allocates to capital surplus a portion, but not all of the consideration received for such shares.

**Sec. 3.** 13-A MRSA § 601, sub-§§ 3 and 4, as enacted by PL 1971, c. 439, § 1, is repealed and the following enacted in their place:

3. Thereafter, unless otherwise provided in the articles of incorporation, either the board of directors or the holders of shares entitled to vote to elect directors may amend or repeal the bylaws or adopt new bylaws. Notwithstanding the foregoing, the directors may not, for 2 years after such shareholders have amended or repealed any bylaw provision, amend or readopt the bylaw provision thus amended or repealed by such shareholders. Notwithstanding the foregoing, shareholders of any corporation which is an insurer may not amend, repeal or adopt bylaws unless its articles of incorporation or bylaws expressly so provide.

4. The articles of incorporation may exclusively vest in the directors, the shareholders, the holders of any particular class or series of shares or any combination of the foregoing, the power to adopt, amend and repeal the bylaws generally or a particular bylaw or class of bylaws.

**Sec. 4.** 13-A MRSA § 603, sub-§ 2, as enacted by PL 1971, c. 439, § 1, is amended by adding after the first sentence a new sentence to read:

The election of directors and the transaction of other business by unanimous written consents of the shareholders, pursuant to section 620, subsection 2, and in lieu of an annual meeting, shall be deemed equivalent to the holding of the foregoing annual meeting on the date specified in such consents.

**Sec. 5.** 13-A MRSA § 603, sub-§ 3, as enacted by PL 1971, c. 439, § 1, is amended by adding at the end a new sentence to read:

Action taken by unanimous written consents of the shareholders, pursuant to section 620, subsection 2, and in lieu of a substitute annual meeting, shall be deemed equivalent to the holding of the foregoing substitute annual meeting on the date specified in such consents.

**Sec. 6.** 13-A MRSA § 608, sub-§ 2, as enacted by PL 1971, c. 439, § 1, is amended to read:

2. In the absence of a quorum, any meeting of shareholders may be adjourned from time to time by vote of a majority of the shares present, or if no shares are present, by the clerk.

**Sec. 7.** 13-A MRSA § 616, sub-§ 2, as enacted by PL 1971, c. 439, § 1, is amended to read:

2. The articles of incorporation or bylaws of a corporation or a bylaw adopted by vote of its shareholders may provide reasonable restrictions on

the transferability of its shares including, without limitation, the duty to offer the same to the corporation or to its board of directors, or to both in succession, at a fixed or ascertainable price, before selling them to any other person. Such a provision of the articles or bylaws shall apply uniformly to all shares of a class or series.

**Sec. 8.** 13-A MRSA § 706, sub-§ 1, ¶ A, as enacted by PL 1971, c. 439, § 1, is amended to read:

**A.** Any vacancy created by an increase in the number of directors shall be filled only by election at an annual meeting or a special meeting of shareholders called for that purpose, unless the power to fill specific newly created directorships is expressly delegated to the directors by a resolution of a regular or special meeting of the shareholders entitled to vote for the election of directors, or unless the power to fill newly created directorships is delegated to the directors by ~~a bylaw~~ **the bylaws adopted by vote of the shareholders.**

**Sec. 9.** 13-A MRSA § 708, sub-§ 3, as enacted by PL 1973, c. 483, § 11, is amended to read:

**3.** Unless otherwise restricted by the ~~certificate~~ **articles** of incorporation or bylaws, 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 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.

**Sec. 10.** 13-A MRSA § 713, sub-§ 1, 1st sentence, as enacted by PL 1971, c. 439, § 1, is amended to read:

If the articles of incorporation or the bylaws so provide, the board of directors, by a resolution adopted by a majority of the ~~full board of~~ **directors then in office**, may designate from among its members an executive committee and other committees, each consisting of 2 or more directors, and may delegate to such committee or committees all the authority of the board of directors, except that no such committee or committees shall have or exercise the authority of the board of directors to:

**Sec. 11.** 13-A MRSA § 713, sub-§ 1, ¶ B, as enacted by PL 1971, c. 439, § 1, is amended to read:

**B.** Adopt a plan of merger ~~or~~ or consolidation;

**Sec. 12.** 13-A MRSA § 805, sub-§ 3, ¶¶ C and D, as enacted by PL 1971, c. 439, § 1, are amended to read:

**C.** May confer such greater vote upon all shares, or upon any class or series of shares, or upon both; and

**D.** Shall ~~not~~ be repealed, altered, or otherwise removed or modified ~~or removed, except~~ **only** by the same vote which such provision requires for

amending the articles.

**Sec. 13.** 13-A MRSA § 902, sub-§ 2, 1st sentence, as enacted by PL 1971, c. 439, § 1, is amended to read:

Written notice of the meeting shall be given to each shareholder of record ~~not less than 14 days before such meeting~~ in the manner provided in this Act for the giving of notice of meetings of shareholders.

**Sec. 14.** 13-A MRSA § 902, sub-§ 4, 1st sentence, as enacted by PL 1971, c. 439, § 1, is amended to read:

The articles of incorporation ~~of any corporation~~ may contain a provision prescribing for approval of a plan of merger or consolidation a vote greater than, but in no event less than, that prescribed by subsection 3.

**Sec. 15.** 13-A MRSA § 902, sub-§ 4, ¶ B, as enacted by PL 1971, c. 439, § 1, is amended to read:

**B.** May ~~designate whether~~ prescribe such greater vote for all or any specified class of mergers or consolidations ~~shall be subject to the prescribed vote;~~

**Sec. 16.** 13-A MRSA § 1003, sub-§ 2, ¶ B, 1st sentence, as enacted by PL 1971, c. 439, § 1, is amended to read:

Written notice of the meeting shall be given to each shareholder of record ~~not less than 14 days before such meeting~~ in the manner provided in this Act for the giving of notice of meetings of shareholders.

**Sec. 17.** 13-A MRSA § 1003, sub-§ 3, 1st sentence, as enacted by PL 1971, c. 439, § 1, is amended to read:

The articles of incorporation ~~of any corporation~~ may contain a provision prescribing for approval of any sale of assets a vote greater than, but in no event less than, that prescribed by subsection 2.

**Sec. 18.** 13-A MRSA § 1003, sub-§ 3, ¶ B, as enacted by PL 1971, c. 439, § 1, is amended to read:

**B.** May ~~designate whether~~ prescribe such greater vote for all or any specified class of sales or other disposition ~~shall be subject to the vote required by the articles;~~

**Sec. 19.** 13-A MRSA § 1003, sub-§ 3, ¶ B-1, is enacted to read:

**B-1.** May confer such vote upon all shares, or upon any class or series of shares, or upon both; and

**Sec. 20.** 13-A MRSA § 1301, sub-§ 1, ¶ D, as enacted by PL 1971, c. 439, § 1, is amended to read:

**D.** The ~~names name and respective~~ business ~~and~~ or residence addresses of ~~the directors each director and officers officer~~ of the corporation, including

**Sec. 21.** 13-A MRSA § 1301, sub-§ 1, ¶ F, as enacted by PL 1971, c. 439, § 1, is amended to read:

F. The date ~~and place~~ of the last annual meeting of shareholders to elect directors of the corporation.

Sec. 22. 13-A MRSA § 1301, sub-§ 3, 2nd sentence, as amended by PL 1973, c. 483, § 21, is further amended to read:

Such report shall be delivered to the **Secretary of State** 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.

Sec. 23. 13-A MRSA § 1301, sub-§ 3, as last amended by PL 1973, c. 483, § 21, is amended by adding after the 2nd sentence a new sentence to read:

**Proof to the satisfaction of the Secretary of State that on or prior to the first day of June such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement.**

Sec. 24. 13-A MRSA § 1301, sub-§ 3, as last amended by PL 1973, c. 483, § 21, is amended by adding at the end a new sentence to read:

**If he finds that it does not so conform, he shall promptly mail or otherwise return the same to the corporation for any necessary corrections, in which event the penalties prescribed by this Act for failure to file such report within the time herein provided shall not apply, if such report is corrected to conform to the requirements of this Act and returned to the Secretary of State within 30 days from the date on which it was so mailed or otherwise returned to the corporation by the Secretary of State.**

Sec. 25. 13-A MRSA § 1302, sub-§ 1, 1st sentence, as last repealed and replaced by PL 1973, c. 693, § 3, is amended to read:

Any corporation required to file an annual report as provided by section 1301 which fails to ~~file~~ deliver its annual report for filing on or before June 1st of each year shall pay to the Secretary of State, in addition to the regular annual report fee, the sum of \$25 for each failure to so file on time.

Sec. 26. 13-A MRSA § 1302, sub-§ 4, as enacted by PL 1971, c. 439, § 1, is amended to read:

4. If the annual report of a corporation is not ~~received by the Secretary of State delivered for filing~~ 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 within 30 days after it learns ~~of the nondelivery of that the Secretary of State failed to receive~~ the original report.

#### STATEMENT OF FACT

The intent of this legislation is to amend the Maine Business Corporation Act in order to clarify ambiguities and improve certain sections.