

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1137

S.P. 381

In Senate, April 1, 1993

An Act to Amend the Maine Business Corporation Act.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CONLEY of Cumberland.

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

2
4 **Sec. 1. 13-A MRSA §102, sub-§7**, as amended by PL 1973, c. 483, §1-B, is further amended to read:

6 **7.** "Conspicuous"~~---A~~ means a term, clause or notation is
8 ~~eonspicuous-when-it~~ that is so written in such a manner that a
10 ~~reasonable person against whom it is to operate ought to have~~
12 ~~noticed notice~~ it. A printed heading in capitals, as:
14 IRREVOCABLE PROXY is conspicuous. Language in the body of a form
is conspicuous,--if when it is in larger or other contrasting type
or color. In a telegram, any stated term is conspicuous. Words
printed, stamped or typewritten on a share certificate shall or
share statement also be deemed-"eonspieueus,--" are conspicuous.

16 **Sec. 2. 13-A MRSA §102, sub-§§14-A and 18-A** are enacted to
18 read:

20 **14-A.** "Initial share statement" means the initial
22 transaction statement provided to a transferee pursuant to Title
11, section 8-408 or any successor provision.

24 **18-A.** "Share statement" means a written statement provided
26 by a corporation with respect to the uncertificated shares issued
by that corporation pursuant to Title 11, section 8-408 or any
successor provision.

28 **Sec. 3. 13-A MRSA §407, sub-§5**, as enacted by PL 1973, c. 483,
30 §7, is amended to read:

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

42 **Sec. 4. 13-A MRSA §508, sub-§3**, as enacted by PL 1971, c. 439,
§1, is amended to read:

44 **3.** ~~Such--rights~~ Rights or options may be issued to
46 directors, officers or employees of the corporation or a
48 subsidiary or affiliate thereof of the corporation as an
incentive to, or reward for, service or continued service with
the corporation,--a or its subsidiary or affiliate thereof, or to
a trustee on behalf of sueh the directors, officers, employees,
50 if the issuance of sueh rights or options has been approved by a

majority of all holders of outstanding shares entitled to vote
thereon on that issuance, or if the issuance of such rights or
options was has been authorized by, and is consistent with, a
plan previously approved by, ~~such a~~ vote of the shareholders.
Such The plan may specify, without limitation, the terms and
conditions upon which rights or options are to be issued, the
consideration and the payment for shares, the issue of
certificates ~~for~~ shares, any limitations or restrictions upon
transferability of rights or options or shares received
thereunder under the plan, eligibility for participation in the
plan, effect of termination of employment upon participation, the
maximum number of shares to be reserved under the plan, and
whether such the shares shall will be authorized but unissued
shares, treasury shares, or shares to be purchased or acquired by
the corporation.

Sec. 5. 13-A MRSA §509, sub-§4, as enacted by PL 1971, c. 439,
§1, is amended to read:

4. As used in this section, a "bona fide purchaser" means a
purchaser for value in good faith and without notice that less
than the full consideration for which shares were to be issued
has been paid to the corporation, who takes delivery of a
certificate for shares in bearer form or of one in registered
form issued to ~~him~~ the purchaser or indorsed to ~~him~~ the purchaser
or in blank or to whom uncertified shares are transferred.

A. A bona fide purchaser of shares shall is not be
personally liable to the corporation or its creditors for
any unpaid portion of the consideration for which such the
shares were to be issued, ~~nor shall his~~ and the bona fide
purchaser's shares be are not subject to any claim on
account thereof for any unpaid portion of the consideration.

B. An immediate or remote transferee of a bona fide
purchaser of ~~a certificate for~~ shares in a corporation has
the same rights therein in the shares as are stated in this
section with reference to a bona fide purchaser, unless the
transferee was himself a party to any fraud or illegality in
the issuance of the ~~certificate for~~ shares.

C. A person becoming an assignee or transferee of shares or
of a subscription for shares in good faith and without
notice that the full consideration ~~therefor~~ for the shares
has not been paid, but not qualifying as a bona fide
purchaser thereof nor as a transferee of a bona fide
purchaser, shall is not be personally liable to the
corporation or its creditors for any unpaid portion of the
consideration for which such the shares were to be issued;
but the corporation shall ~~have~~ has a lien on such the shares
in the amount of the unpaid balance of the consideration.

2 Sec. 6. 13-A MRSA §511, as amended by PL 1979, c. 127, §91,
4 is further amended to read:

6 **§511. Certificates representing shares; uncertificated shares**

8 1. ~~Each shareholder, upon payment in full for his shares,~~
10 ~~shall be entitled to a certificate certifying the number of~~
12 ~~shares owned by him in such corporation. No certificate shall be~~
14 ~~issued for any share~~ The shares of a corporation must be
16 represented by certificates meeting the requirements of this
18 section, except that the board of directors of any corporation
20 that is not a close corporation may provide by resolution that
22 some or all of any or all classes or series of its shares are
24 uncertificated shares. That resolution does not apply to
26 outstanding shares represented by a certificate until the
28 certificate is surrendered to the corporation. Notwithstanding
30 the adoption of a resolution by the board of directors providing
32 for uncertificated shares, every holder of shares represented by
34 certificates and every holder of uncertificated shares is
 entitled, upon request, to a certificate meeting the requirements
 of this section, representing the number of shares registered in
 that holder's name. When a corporation that has properly adopted
 a resolution under this section meets the definition of a close
 corporation by reason of a reduction in the number of
 shareholders, the resolution must be rescinded and the
 corporation shall promptly issue certificates representing
 uncertificated shares to the registered holders of the shares. A
 holder of uncertificated shares must be treated as a shareholder
 holding the number of shares registered in the holder's name for
 all purposes of this Act. A share may not be issued, either in
 certificated or uncertificated form, until such the share is
 fully paid.

36 2. ~~Such certificate~~ Certificates representing a share or
38 shares in a corporation shall must be signed by any 2 of: ~~The~~ the
40 president, a vice-president, the clerk, the secretary or an
42 assistant secretary of the corporation, or by such other 2
44 officers as are designated in the bylaws; and may be sealed with
46 the seal of the corporation or a facsimile ~~thereof~~ of the seal.
48 ~~If~~ When the certificate is countersigned by the clerk, a transfer
50 agent or any an assistant transfer agent, or registered by a
 registrar, other than the corporation itself or an employee of
 the corporation, any other signature on the certificate may be a
 facsimile. ~~In case any~~ When an officer who has signed or whose
 facsimile signature has been placed upon such a certificate shall
 have has ceased to be such an officer before such the certificate
 is issued, ~~it~~ the certificate may be issued by the corporation
 with the same effect as if he that person were such an officer at
 the date of its issue.

2 3. ~~Every~~ Certificates representing shares
4 issued by a corporation which that is authorized to issue shares
5 of more than one class shall must have set forth upon the face or
6 back of the certificate, or shall--state have stated on the
7 certificate that the corporation will furnish to any shareholder
8 upon request and without charge a full statement of the
9 designations, preferences, limitations and relative rights of the
10 shares of each class authorized to be issued and, if the
11 corporation is authorized to issue any preferred or special class
12 in series, the variations in the relative rights and preferences
13 between the shares of each such series, so far as ~~the same~~ they
14 have been fixed and determined, and the authority of the board of
15 directors to fix and determine the relative rights and
16 preferences of other series.

17 4. Each A certificate representing shares shall--state must
18 have stated upon the face thereof of the certificate:

19 A. That the corporation is organized under the laws of this
20 State;

21 B. The name of the person or persons to whom issued;

22 C. The number and class of shares, and the designation of
23 the series, if any, which--such that the certificate
24 represents; and

25 D. The par value of each share represented by such the
26 certificate or a statement that the shares are without par
27 value.

28 5. This section shall does not affect the validity of any
29 share certificate of any corporation issued prior to January 1,
30 1972.

31 6. Each share statement must contain the information
32 required by subsections 3 and 4.

33 **Sec. 7. 13-A MRSA §512, sub-§1**, as enacted by PL 1971, c. 439,
34 §1, is amended to read:

35 1. A corporation may, but shall is not be obliged to, issue
36 a-~~certificate for~~ fractional shares which shall that entitle the
37 holder, in proportion to ~~his~~ the holder's fractional holdings, to
38 exercise voting rights and receive dividends and other
39 distributions.

40 **Sec. 8. 13-A MRSA §613, sub-§11**, as enacted by PL 1971, c.
41 439, §1, is amended to read:

2 11. ~~Redeemable-shares-which-have~~ The holder of a redeemable
3 share that has been called for redemption shall ~~may~~ not be
4 ~~entitled-to vote on any matter nor-be~~ and the redeemable share is
5 ~~not deemed an outstanding shares share~~ on and after the date on
6 ~~which written notice of redemption has been sent to holders~~
7 ~~thereof of the share~~ and a sum sufficient to redeem such the
8 ~~shares has been paid or, with respect to shares represented by a~~
9 ~~certificate,~~ certificate, deposited with a bank or trust company with
10 ~~irrevocable instructions and authority to pay the redemption~~
11 ~~price to the holders of the shares upon surrender of certificates~~
12 ~~therefor the share or certificate.~~

14 **Sec. 9. 13-A MRSA §615, sub-§5,** as enacted by PL 1971, c. 439,
15 §1, is amended to read:

16 5. As between a proxyholder and a purchaser of shares, a
17 proxy may be revoked, notwithstanding a provision making it
18 irrevocable, by a purchaser of shares without knowledge of the
19 existence of such the provision, unless notice of the proxy and
20 of its irrevocability is conspicuously noted on the face or back
21 of the certificate representing such the shares or in the initial
22 share statement provided to the purchaser. The corporation and
23 its officers and agents may in good faith give effect to an
24 irrevocable proxy appearing on its face to conform to this
25 section, notwithstanding a claim by the shareholder that it has
26 validly been revoked.

28 **Sec. 10. 13-A MRSA §616, sub-§3,** as enacted by PL 1971, c.
29 439, §1, is amended to read:

32 3. ~~Unless--noted--on--the--face--or--back--of--the--share~~
33 ~~certificates--representing--such--shares,--a~~ A restriction on
34 transfer imposed either by agreement under subsection 1 or by the
35 articles or bylaws under subsection 2 ~~shall--be--ineffective,~~
36 ~~except~~ is not effective against a ~~person-who-had~~ person without
37 ~~actual knowledge of it at-the-time-he-acquired-the-shares,~~ unless
38 the restriction is noted on the face or back of the certificate
39 representing the share or in the initial share statement provided
40 to that person. ~~This-subsection-shall-be-construed-in-the-light~~
41 ~~of--Title--11,--section--8-204--and--the--statutory--definitions~~
42 ~~applicable-thereto.~~

44 **Sec. 11. 13-A MRSA §617, sub-§4,** as enacted by PL 1971, c.
45 439, §1, is amended to read:

46 4. No A purchaser for value of shares subject to such an
47 agreement ~~shall-be~~ is not bound thereby by the agreement if he
48 the purchaser purchased the same shares in good faith and without
49 actual knowledge of the agreement, unless the agreement was
50

2 conspicuously noted on the face or the back of the certificates
representing such the shares or a notation of the restriction is
4 contained in the initial share statement provided the purchaser.

6 **Sec. 12. 13-A MRSA §618, sub-§§4 and 5,** as enacted by PL 1971,
c. 439, §1, are amended to read:

8 ~~4. The text of any An~~ agreement authorized by subsection 1
10 shall ~~must~~ be set forth in full, ~~or a conspicuous reference shall~~
be made to the agreement, conspicuously noted upon the face or
12 back of each certificate for shares issued by the corporation and
a notation of the agreement must be contained in share statements
for shares issued by the corporation.

14 5. A transferee of shares in a corporation whose
16 shareholders have entered into an agreement authorized by
subsection 1 shall ~~be~~ are deemed to have ~~notice thereof~~ actual
18 knowledge of the agreement if ~~the text of~~ the agreement was set
20 forth, ~~or if the agreement~~ was conspicuously noted, on the face
or back of the certificate for such the shares ~~when he took them~~
or in the initial share statement provided to the transferee.

22 **Sec. 13. 13-A MRSA §619, sub-§1,** as enacted by PL 1971, c.
24 439, §1, is amended to read:

26 1. Any shareholder or shareholders may create a voting
trust, revocable or irrevocable, for ~~the purpose of~~ conferring
28 upon a trustee or trustees the right to vote or otherwise
represent their shares, for a period not exceeding 21 years, by
30 executing a written agreement specifying the terms and conditions
of the voting trust, and by transferring the shares to such the
32 trustee or trustees for the purposes stated in the agreement. In
the case of uncertificated shares, the shares must be transferred
34 to the trustee or trustees on the records of the corporation.
~~The certificates or shares so transferred may~~ In the case of
36 shares represented by certificates, the certificates must be:

38 A. ~~Surrendered by the trustee~~ to the corporation, which
shall thereupon cancel the shares and issue one or more new
40 certificates ~~therefor~~ to the trustee or trustees stating
that they are issued under the voting trust agreement; or

42 B. ~~In lieu thereof, retained~~ Retained by the trustee.

44 In either case, the corporation shall specifically enter into its
46 records the fact that such the shares are subject to the voting
trust agreement. The existence of the voting trust agreement
48 must be noted in any share certificate or share statement for the
shares issued to the trustee or trustees. In

2 any either case, trust certificates shall must be issued by the
trustees to the shareholders who transfer their shares in trust.

4 **Sec. 14. 13-A MRSA §619, sub-§4**, as enacted by PL 1971, c.
439, §1, is amended to read:

6
8 4. At any time within one year before the expiration of a
10 voting trust agreement as originally created or as extended under
12 this subsection, one or more holders of voting trust certificates
14 may, by agreement in writing, extend the duration of sueh the
16 agreement, nominating the same or substitute trustee or trustees,
18 for an additional period not to exceed 21 years from the date of
sueh the extension. Sueh An extension agreement shall does not
affect the rights or obligations of persons not parties to the
agreement, and sueh those persons shall be are entitled to remove
their shares from the trust and promptly te have their share
certificates reissued to them. The extension agreement shall
must comply with all provisions of this section applicable to the
original voting trust agreement.

20 **Sec. 15. 13-A MRSA §909, sub-§§6 and 8**, as enacted by PL 1971,
22 c. 439, §1, are amended to read:

24 6. At the time of filing his a demand for payment for his
26 shares, or within 20 days thereafter, each shareholder demanding
28 payment who holds shares of the corporation represented by
certificates shall submit the certificate or certificates
representing his the shares to the corporation or its transfer
agent for notation thereon on them that sueh the demand has been
30 made; sueh these certificates shall must promptly be returned
after entry thereon of sueh the notation on them. A
32 shareholder's failure to do so shall, at the option of the
corporation, terminate-his terminates the shareholder's rights
34 under this section, unless a court of competent jurisdiction, for
good and sufficient cause shown, shall otherwise direct directs.
36 Within 2 business days of the filing of a demand for payment by
the holder of uncertificated shares, the corporation shall
38 provide a share statement to the holder containing a notation
that the demand has been made. If shares represented by a
40 certificate on which notation has been so made shall be or as to
which a share statement containing a notation of demand is
42 required to be provided under this section is transferred, each
new certificate issued-therefor-shall and each share statement
44 issued to the new registered holder must bear a similar notation,
together with the name of the original dissenting holder of sueh
46 the shares, and a transferee of sueh the shares shall does not
acquire by sueh the transfer ne any rights in the corporation
48 other than those which that the original dissenting shareholder
had after making demand for payment of the fair value thereof of
50 the shares or certificates.

2 8. If, within 20 days after the date by which the
4 corporation is required, by the terms of subsection 7, to make a
written offer to each dissenting shareholder to pay for his that
6 shareholder's shares, the fair value of sueh the shares is agreed
upon between any a dissenting shareholder and the corporation,
8 payment ~~therefor~~ shall for the shares must be made within 90 days
after the date on which sueh the corporate action was effected,
10 to the holders of uncertificated shares and shares represented by
certificates upon surrender of the certificate or certificates
12 representing sueh those shares. Upon payment of the agreed
value, the dissenting shareholder ~~shall cease~~ ceases to have any
14 interest in sueh those shares.

16 **Sec. 16. 13-A MRSA §909, sub-§9, ¶¶F and I, as enacted by PL**
1971, c. 439, §1, are amended to read:

18 F. All shareholders who are parties to the proceeding shall
be are entitled to judgment against the corporation for the
20 amount of the fair value of their shares, except for any a
shareholder whom the court ~~shall have determined~~ determines
22 not to be entitled to receive payment for his that
shareholder's shares. The judgment ~~shall be~~ is payable to
24 holders of shares represented by certificates only upon and
concurrently with the surrender to the corporation of the
26 certificate or certificates representing sueh those shares.
Upon payment of the judgment, the dissenting shareholder
28 ~~shall cease~~ ceases to have any interest in sueh those shares;

30 I. At all times during the pendency of any--sueh a
proceeding, the court may make any and all orders which that
32 may be necessary to protect the corporation or the
dissenting shareholders, or which that are otherwise just
34 and equitable. Sueh Those orders may include, without
limitation, orders:

36 (1) Requiring the corporation to pay into court, or
38 post security for, the amount of the judgment or its
estimated amount, either before final judgment or
40 pending appeal;

42 (2) Requiring the deposit with the court of
certificates representing shares held by the dissenting
44 shareholders who hold shares represented by
certificates;

46 (3) Imposing a lien on the property of the corporation
48 to secure the payment of the judgment, which lien may
be given priority over liens and incumbrances

2 contracted after the vote authorizing the corporate
action from which the shareholders dissent; and

4 (4) Staying the action, pending the determination of
6 any a similar action pending in another court having
jurisdiction.

8 **Sec. 17. 13-A MRSA §910, sub-§2, ¶C**, as enacted by PL 1985, c.
10 394, §3, is amended to read:

12 C. For the purposes of this section:

14 (1) A person shall is not be a controlling person
16 under paragraph A if that person holds voting power, in
18 good faith and not for the purpose of circumventing
20 this section, as an agent, bank, broker, nominee or
trustee for one or more beneficial owners who do not
individually or, if they are a group acting in concert,
as a group have the voting power specified in paragraph
A or who are not deemed considered a controlling person
under paragraph B; and

22 (2) A person has voting power over a voting share if
24 that person has or shares, directly or indirectly,
26 through any option, contract, arrangement,
understanding, voting trust, conversion right or
28 relationship, or by acting jointly or in concert or
otherwise, the power to vote, or to direct the voting
of, that voting share; and

30 (3) A person engaged in business as an underwriter or
32 group consisting of persons engaged in business as
34 underwriters is not a controlling person under
36 paragraph A if that person or group holds voting power
38 specified in paragraph A, in good faith and not for the
40 purpose of circumventing this section, over shares of
the corporation acquired through participation in good
faith in a firm commitment underwriting of an offering
of shares registered under the United States Securities
Act of 1933.

42 **Sec. 18. 13-A MRSA §910, sub-§§6 and 8**, as enacted by PL 1985,
44 c. 394, §3, are amended to read:

46 **6. Submission of certificates; notation.** At the time of
48 filing his a demand for payment for his shares pursuant to
subsection 4, or within 20 days thereafter, each shareholder
50 demanding payment who holds shares represented by certificates
shall submit the certificate or certificates representing his the
shares to the corporation or its transfer agent for notation

thereon on them that such the demand has been made; such these
certificates shall must promptly be returned after entry thereon
of such the notation. A shareholder's failure to do so shall, at
the option of the controlling person, ~~terminate-his~~ terminates
the shareholder's rights under this section, unless a court of
competent jurisdiction, for good and sufficient cause shown,
shall otherwise ~~direct~~ directs. Within 2 business days of the
filing of a demand for payment by the holder of uncertificated
shares, the corporation shall provide a share statement to the
holder containing a notation that the demand has been made. If
shares represented by a certificate on which notation has been so
made shall ~~be~~ or as to which a share statement containing a
notation of demand is required to be provided under this section
is transferred, each new certificate issued-for-those-shares
shall and each share statement issued to the new registered
holder of the shares must bear a similar notation, together with
the name of the original holder of the shares who made the
written demand, and a transferee of the shares shall does not
acquire by the transfer ~~no~~ any rights in the corporation other
than those which that the original demanding shareholder had
after making demand for payment of the fair value of the shares.

8. Agreement on fair value; payment. If, within 30 days
after the expiration of the period provided in subsection 4 for
making demand, the fair value of the shares is agreed upon
between any a demanding shareholder and the controlling person,
payment for those shares shall must be made within 90 days after
the date on which the written offer required by subsection 7 was
made, to the holders of uncertificated shares and to the holders
of shares represented by certificates upon surrender of the
certificate or certificates representing those shares. Upon
payment of the agreed value, the demanding shareholder shall
cease ceases to have any interest in the shares.

Sec. 19. 13-A MRSA §910, sub-§9, ¶F, as enacted by PL 1985, c.
394, §3, is amended to read:

F. All shareholders who are parties to the proceedings
shall ~~be~~ are entitled to judgment against the controlling
person for the amount of the fair value of their shares,
except for any a shareholder whom the court shall ~~have~~
determined determines not to be entitled to receive payment
for his that shareholder's shares. The judgment shall ~~be~~ is
payable to holders of shares represented by certificates
only upon and concurrently with the surrender to the
controlling person of the certificate or certificates
representing those shares. Upon payment of the judgment,
the demanding shareholder shall ~~cease~~ ceases to have any
interest in those shares;

2 **Sec. 20. 13-A MRSA §910, sub-§9, ¶I**, as amended by PL 1985, c.
3 728, is further amended to read:

4
5 I. At all times during the pendency of any--such a
6 proceeding, the court may make any and all orders which that
7 may be necessary to protect the corporation, the controlling
8 person or the demanding shareholders, or which that are
9 otherwise just and equitable. Those orders may include,
10 without limitation, orders:

11 (1) Requiring the controlling person to pay into
12 court, or post security for, the amount of the judgment
13 or its estimated amount, either before final judgment
14 or pending appeal;

15 (2) Requiring the deposit with the court of
16 certificates representing shares held by the demanding
17 shareholders who hold shares represented by
18 certificates;

19 (3) Imposing a lien on the property of the controlling
20 person to secure the payment of the judgment, which
21 lien may be given priority over liens and incumbrances
22 contracted by the controlling person after the control
23 transaction date; and

24 (4) Staying the action, pending the determination of
25 any a similar action pending in another court having
26 jurisdiction.

27
28 **Sec. 21. 13-A MRSA §1114, sub-§§3 and 5**, as enacted by PL 1971,
29 c. 439, §1, are amended to read:

30
31 3. A transferee of shares in a corporation whose articles
32 of incorporation contain a provision authorized by subsection 1
33 shall--be is bound by such that provision only if he the
34 transferee takes the shares with actual notice thereof of the
35 provision. A transferee shall--be is deemed to have actual notice
36 of any--such a provision, if the text of the provision, with any
37 amendments, is set forth or conspicuously noted on the face or
38 back of the certificates representing such the shares or a
39 notation of the provision is contained in the initial share
40 statement provided to the transferee.

41
42 5. Each certificate of shares in any a corporation whose
43 articles of incorporation authorize dissolution as permitted by
44 this section shall must set forth on the face or back of the
45 certificate, and each share statement provided with respect to
46 shares in a corporation whose articles of incorporation authorize

2 dissolution as permitted by this section must contain, the text
3 of ~~any--such~~ a provision authorized by subsection 1 or, if by
4 reason of its length it is impracticable to reproduce the text
5 thereof of the provision, then a clear and conspicuous reference
6 to the existence and substance of such the provision.

6

8

STATEMENT OF FACT

10 This bill authorizes corporations in the State with more
11 than 20 shareholders to issue uncertificated shares while
12 preserving the right of shareholders to obtain certificates upon
13 request. The bill also makes clear that underwriters
14 participating in good faith in a firm commitment underwriting are
15 not within the definition of a controlling person under the Maine
16 Revised Statutes, Title 13-A, section 910.