

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1770

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H.P. 1307

House of Representatives, April 12, 2001

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**An Act Regarding Conversions of Nonprofit Entities to For-profit Entities.**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Speaker SAXL of Portland.  
Cosponsored by Senator RAND of Cumberland and  
Representatives: BULL of Freeport, LaVERDIERE of Wilton, MADORE of Augusta,  
MITCHELL of Vassalboro, RICHARDSON of Brunswick.

2  
3 **Be it enacted by the People of the State of Maine as follows:**

4       **Sec. 1. 5 MRSA §194** is repealed and the following enacted in  
5 its place:

6 **§194. Public charities**

7       **1. Application; funds.** The Attorney General shall enforce  
8 due application of funds given or appropriated to public  
9 charities within the State and prevent breaches of trust in the  
10 administration of the funds.

11       **2. Party to proceedings.** The Attorney General must be made  
12 a party to all judicial proceedings in which the Attorney General  
13 is interested in the performance of the Attorney General's duties  
14 under of subsection 1.

15       **3. Investigation.** The Attorney General may conduct an  
16 investigation whenever the Attorney General believes that  
17 charitable funds have not been or are not being applied to  
18 charitable purposes or that breaches of trust have been or are  
19 being committed in the administration of a public charity,  
20 including, but not limited to, a charitable trust, a public  
21 benefit corporation or a mutual corporation holding assets in a  
22 charitable trust. In conducting an investigation, the Attorney  
23 General may:

24           **A. Take testimony under oath;**

25           **B. Examine or cause to be examined any documentary material**  
26 relevant to the alleged misapplication of charitable funds  
27 or breach of trust; and

28           **C. Require attendance during the examination of documentary**  
29 material of a person having knowledge of the documentary  
30 material and take testimony under oath.

31       **4. Taking testimony.** The taking of testimony and  
32 examination must take place in the county where the testifying  
33 person resides or has a place of business or, if the parties  
34 consent or the testifying person is a nonresident or has no place  
35 of business within the State, in Kennebec County.

36           **A. Notice of the time, place and cause of the taking of**  
37 testimony, examination or attendance must be given by the  
38 Attorney General at least 10 days prior to the date of the  
39 taking of testimony or examination.

40           **B. Service of a notice may be made by:**

- 2                   (1) Delivering a duly executed copy of the notice to  
4                   the person to be served or to a partner or to any  
                    officer or agent authorized by appointment or by law to  
                    receive service of process on behalf of that person;
- 6                   (2) Delivering a duly executed copy of the notice to  
8                   the principal place of business in the State of the  
                    person to be served; or
- 10                   (3) Mailing by registered or certified mail a duly  
12                   executed copy of the notice addressed to the person to  
                    be served to the person's principal place of business.

14                   C. Each notice must:

- 16                   (1) State the time and place for the taking of  
18                   testimony or the examination and the name and address  
20                   of each person to be examined, if known and, if the  
                    name is not known, a general description sufficient to  
                    identify the person;
- 22                   (2) State the alleged violation that is under  
24                   investigation, state the general subject matter of the  
                    investigation and state the title and section governing  
                    the alleged violation;
- 26                   (3) Describe the class or classes of documentary  
28                   material to be produced with reasonable specificity, so  
30                   as to fairly indicate the material demanded;
- 32                   (4) Prescribe a return date by which the documentary  
                    material must be produced; and
- 34                   (5) Identify the members of the Attorney General's  
36                   staff to whom the documentary material must be made  
                    available for inspection and copying.

38                   D. A notice may not contain a requirement that would be  
40                   unreasonable if contained in a subpoena duces tecum issued  
42                   by a court of the State; or require the disclosure of any  
44                   documentary material that would be privileged or that for  
                    any other reason would not be required by a subpoena duces  
                    tecum issued by a court of the State.

46                   E. Any documentary material or other information produced  
48                   by a person pursuant to this section may not, unless  
                    otherwise ordered by a court of the State for good cause  
                    shown, be disclosed to a person other than the authorized  
50                   agent or representative of the Attorney General unless with  
                    the consent of the person producing the documentary material.

2           F. The Superior Court for Kennebec County or a Superior  
4           Court in any other county in which a person who is served  
6           notice pursuant to this section resides or has that person's  
8           usual place of business may, at any time prior to the date  
10          specified in the notice, or within 21 days after the notice  
12          has been served, whichever period is shorter, upon motion  
14          for good cause shown, extend the reporting date, modify or  
16          set aside the notice provided for in paragraph A or grant a  
18          protective order in accordance with the standards set forth  
20          in Rule 26(c) of the Maine Rules of Civil Procedure.

22           5. Final order. A person upon whom a notice is served  
24          pursuant to subsection 4 shall comply with the terms of the  
26          notice unless otherwise provided by the order of a court of the  
28          State. A person who fails to appear or with intent to avoid  
30          civil investigation under this chapter, removes from any place,  
32          conceals, withholds or destroys, mutilates, alters or by any  
34          other means falsifies any documentary material in the possession  
36          of that person subject to the notice, or knowingly conceals any  
38          relevant information, may be assessed a civil penalty of not more  
40          than \$5,000.

42           The Attorney General may file in the Superior Court of the county  
44          in which the person resides or that person's principal place of  
46          business, or in the Superior Court of Kennebec County if the  
48          person is a nonresident or has no principal place of business in  
50          the State, and serve upon the person, in the same manner as  
              provided in subsection 4; a petition for an order of the court  
              for the enforcement of this subsection. Disobedience of a final  
              order entered under this subsection by court is punished as a  
              contempt.

6. Gift. A gift made for a public charitable purpose is  
              deemed to have been made with a general intention to devote the  
              property to public charitable purposes, unless otherwise provided  
              in writing in the gift instrument.

Sec. 2. 5 MRSA §194-B is enacted to read:

§194-B. Nonprofit conversions

1. Definitions. As used in sections 194-C to 194-F, unless  
              the context otherwise indicates, the following terms have the  
              following meanings.

A. "Nonprofit conversion transaction" means:

(1) The sale, transfer, lease, exchange, optioning,  
                  conveyance or other disposition of all or substantially

2 all of the assets or operations of a nonprofit entity  
3 to an entity or person other than a nonprofit entity;  
4 and

5 (2) The transfer of control or governance of all or  
6 substantially all of the assets or operations of a  
7 nonprofit entity to an entity or person other than a  
8 nonprofit entity.

10 B. "Nonprofit entity" means a public charity, including a  
11 public benefit corporation, charitable trust or mutual  
12 corporation holding assets in charitable trust.

14 C. "Nonprofit health care conversion transaction" means:

16 (1) The sale, transfer, lease, exchange, optioning,  
17 conveyance or other disposition of all or substantially  
18 all of the assets or operations of a licensed nonprofit  
19 hospital, nonprofit health maintenance organization or  
20 nonprofit health care insurer, including a mutual  
21 corporation holding assets in charitable trust, to an  
22 entity or person other than a nonprofit entity; and

24 (2) The transfer of control or governance of all or  
25 substantially all of the assets or operations of a  
26 licensed hospital, nonprofit health maintenance  
27 organization or nonprofit health care insurer,  
28 including a mutual corporation holding assets in  
29 charitable trust, to an entity or person other than a  
30 nonprofit entity.

32 D. "Nonprofit health care entity" means a nonprofit  
33 hospital, including a corporation or a hospital created  
34 under a trust or will, nonprofit health maintenance  
35 organization or nonprofit health care insurer, including an  
36 entity affiliated with any of these through ownership,  
37 governance or membership, such as a holding company or  
38 subsidiary. "Nonprofit health care entity" includes, but is  
39 not limited to, nonprofit entities that are licensed as  
40 hospitals, health maintenance organizations or health care  
41 insurers, including mutual corporations holding assets in  
42 charitable trust, under the laws of the State.

44 E. "Nonprofit health care insurer" means a nonprofit  
45 provider of health care insurance, including a hospital  
46 service association, health service corporation and  
47 physician service organization.

48 F. "Person" means an individual, partnership, trust,  
49 estate, corporation, association, joint venture, joint stock  
50 company, insurance company or other organization.

2 **§194-C. Approval or waiver required**

4 **1. Requirement.** Prior to completing a nonprofit conversion  
6 transaction, a nonprofit entity shall obtain:

8 A. Court approval pursuant to section 194-E; or

10 B. A waiver in lieu of approval from the Attorney General  
pursuant to section 194-D.

12 **2. Filing with Secretary of State.** A nonprofit entity  
14 shall file a copy of the approval or waiver obtained to comply  
with this section with the Secretary of State.

16 **3. Failure to obtain approval or waiver.** A nonprofit  
18 conversion transaction entered into without approval or waiver as  
required in this section is void and subject to the penalties and  
20 remedies provided for in section 194-F.

22 **§194-D. Notice; review by Attorney General**

24 **1. Notice to Attorney General.** A nonprofit entity shall  
provide written notice of its intent to enter into a nonprofit  
26 conversion transaction at least 90 days prior to entering into  
that transaction. Notice to the Attorney General is not complete  
28 until the Attorney General acknowledges receipt of a complete  
notice. The Attorney General may demand that the nonprofit  
30 entity provide information reasonably necessary to complete the  
Attorney General's review of the transaction. Failure to provide  
32 the information requested in a timely manner is sufficient  
grounds for the Attorney General's refusal to grant a waiver.  
34 The nonprofit entity shall provide written certification to the  
Attorney General, as part of the notice, that a copy of sections  
36 194-B to 194-F has been given to each member of the board of  
trustees or other governing body of the nonprofit entity.

38 **2. Public notice.** At the same time as it provides the  
initial notice under this section to the Attorney General, the  
40 nonprofit entity shall publish notice of its intent to enter into  
a nonprofit conversion transaction in a newspaper of general  
42 circulation in the county in which a majority of the assets of  
the nonprofit entity are located.

44 **3. Waiver.** At any time during the review under this  
46 section the Attorney General determines that the nonprofit  
conversion transaction does not merit further review by the  
48 Attorney General or by the court, the Attorney General may issue  
a waiver in lieu of approval.

50 **4. Public meetings; notice of time and place.** During the

2 review of the nonprofit conversion transaction, the Attorney  
3 General may conduct one or more public meetings, one of which  
4 must be held in the county where the nonprofit entity's assets to  
5 be transferred are located. At the public meeting, the Attorney  
6 General shall hear comments from interested persons regarding the  
7 proposed nonprofit conversion transaction. At least 21 days  
8 before the meeting, the nonprofit entity shall publish notice of  
9 the time and place of the meeting in one or more newspapers of  
10 general circulation in the affected community and shall provide  
11 written notice to the county commissioners and, if applicable, to  
12 the city council of the city where the nonprofit entity's assets  
13 to be transferred are located. The notices must include the name  
14 of the nonprofit entity, the name of the acquirer or other  
15 parties to the proposed nonprofit conversion transaction, the  
16 nature of the proposed nonprofit conversion transaction and the  
anticipated consideration that will be paid by the acquirer.

18 5. Required public hearing. The Attorney General shall  
19 conduct a public hearing pursuant to subsection 4 if a petition  
20 signed by at least 150 registered voters of the State and  
21 requesting a hearing is submitted within 45 days after public  
22 notice is given. Prior to its presentation to the Attorney  
23 General, the petition must be verified and certified in the same  
24 manner as provided in Title 21-A, section 354, subsection 7,  
25 paragraphs A and C.

26 6. Contracts with agencies and consultants; reimbursement  
27 for costs. To assist in the review of the proposed nonprofit  
28 conversion transaction, the Attorney General may:

30 A. Contract with, consult and receive advice from an agency  
31 of the State or the United States on terms and conditions  
32 the Attorney General considers appropriate; and

33 B. At the Attorney General's sole discretion, contract with  
34 experts or consultants the Attorney General considers  
35 appropriate to assist the Attorney General in reviewing the  
36 proposed nonprofit conversion transaction.

37 Contract costs incurred by the Attorney General pursuant to this  
38 subsection may not exceed an amount that is reasonable and  
39 necessary to conduct the review of the proposed nonprofit  
40 conversion transaction. The Attorney General is exempt from the  
41 provisions of applicable state laws regarding public bidding  
42 procedures for purposes of entering into contracts pursuant to  
43 this subsection. The nonprofit entity giving notice under  
44 subsection 1 shall pay the Attorney General promptly upon request  
45 for all costs of contracts entered into by the Attorney General  
46 pursuant to this subsection.



2 The Attorney General is entitled to reimbursement from the  
4 nonprofit entity giving notice under subsection 1 for all  
6 reasonable and actual costs incurred by the Attorney General in  
8 reviewing a proposed nonprofit conversion transaction, including  
10 attorney's fees at the billing rate used by the Attorney General  
12 to bill state agencies for legal services. The nonprofit entity  
14 giving notice under subsection 1 shall pay the Attorney General  
16 promptly upon request for all costs.

18 **7. Public records.** All documents submitted to the Attorney  
20 General by a person, including nonprofit health care entities  
22 giving notice under subsection 1, in connection with the Attorney  
24 General's review of the proposed nonprofit conversion transaction  
26 are public records subject to Title 1, chapter 13, subchapter I  
28 except records made confidential by statute or privileged under  
30 the Maine Rules of Evidence.

32 **8. Rules.** The Attorney General may adopt such rules as the  
34 Attorney General considers appropriate to implement sections  
36 194-B to 194-F. Rules adopted pursuant to this subsection are  
38 routine technical rules as defined in chapter 375, subchapter  
40 II-A.

42 **9. Attorney General authority not limited.** Sections 194-B  
44 to 194-F do not limit the common law authority of the Attorney  
46 General to protect charitable trusts and charitable assets in  
48 this State. The penalties and remedies provided in section 194-F  
50 are in addition to, and are not a replacement for, any other  
52 civil or criminal action the Attorney General may take under  
54 common law or statute, including an action to rescind the  
56 nonprofit conversion transaction to obtain injunctive relief or a  
58 combination of this action and other remedies available under  
60 common law or statute.

#### 36 **§194-E. Court approval**

38 **1. Filing of court action; factors to consider.** A  
40 nonprofit entity shall file an action in Superior Court in the  
42 county in which the nonprofit entity's assets to be transferred  
44 are located or in Kennebec County. The Attorney General must be  
46 made a party to the action. The court shall determine whether  
48 the proposed transaction is consistent with the charitable or  
50 other public purpose of the nonprofit entity, whether the  
52 nonprofit entity will receive full and fair market value for the  
54 assets transferred and whether the transaction violates any  
56 statutory or common law duty on the part of the directors or  
58 other parties involved in the transaction. In making the  
60 determination, the court shall consider:

- 2        A. Whether the nonprofit entity will receive full and fair  
3        market value for its charitable or social welfare assets;  
4
- 5        B. Whether the fair market value of the nonprofit entity's  
6        assets to be transferred has been manipulated by the actions  
7        of the parties in a manner that causes the fair market value  
8        of the assets to decrease;
- 9
- 10       C. Whether the proceeds of the proposed nonprofit  
11       conversion transaction will be used in accordance with the  
12       rules of the trust under which the assets are held by the  
13       nonprofit entity and whether the proceeds will be controlled  
14       as funds independent of the acquiring entity or entities  
15       related to the acquiring entity;  
16
- 17       D. Whether the proposed nonprofit conversion transaction  
18       will result in a breach of fiduciary duty, including  
19       conflicts of interest related to payments or benefits to  
20       officers, directors, board members, executives and experts  
21       employed or retained by the parties;  
22
- 23       E. Whether the governing body of the nonprofit entity  
24       exercised due diligence in deciding to dispose of the  
25       nonprofit entity's assets, selecting the acquiring entity  
26       and negotiating the terms and conditions of the disposition;
- 27
- 28       F. Whether the nonprofit conversion transaction will result  
29       in private inurement to any person;  
30
- 31       G. Whether the terms of a management or services contract  
32       negotiated in conjunction with the proposed nonprofit  
33       conversion transaction are reasonable;  
34
- 35       H. If a foundation is to be established to hold the  
36       proceeds of the sale, whether the foundation will be broadly  
37       based in the community and be representative of the affected  
38       community, taking into consideration the structure and  
39       governance of such foundation;  
40
- 41       I. Whether the Attorney General has been provided with  
42       sufficient information and data by the nonprofit entity to  
43       evaluate adequately the proposed nonprofit conversion  
44       transaction or the effects of the proposed nonprofit  
45       conversion transaction on the public, as long as the  
46       Attorney General has notified the nonprofit entity or the  
47       acquiring entity of an inadequacy of the information or data  
48       and has provided a reasonable opportunity to remedy the  
49       inadequacy; and

2           J. Any other criteria the court considers necessary to  
4           determine whether the standards for approval have been met.

6           **2. Nonprofit health care conversions; additional factors.**

8           In determining whether to approve a nonprofit health care  
10          conversion, in addition to the factors described in subsection 1,  
12          the court shall consider the following factors in determining  
14          whether the proposed transaction is consistent with the  
16          charitable or other public purpose of the nonprofit health care  
18          entity:

20          A. The effect of the transaction on the availability and  
22          accessibility of health care service to the affected  
24          community;

26          B. Whether sufficient safeguards are included to ensure the  
28          affected community has continued access to affordable care;

30          C. Whether the proposed nonprofit health care conversion  
32          transaction creates or has the likelihood of creating an  
34          adverse effect on the access to or availability or cost of  
36          health care services to the community;

38          D. Whether the acquiring entities have made a commitment,  
40          at least comparable to the nonprofit health care entity, to  
42          provide health care to the disadvantaged, the uninsured and  
44          the under insured and to provide benefits to the affected  
46          community to promote improved health care. Activities and  
48          funding provided by the nonprofit health care entity or its  
50          successor nonprofit health care entity or foundation to  
            provide such health care or to provide support or medical  
            education and teaching programs or medical research programs  
            must be considered in evaluating compliance with this  
            commitment;

E. Whether the nonprofit health care conversion transaction  
            will result in the revocation of hospital privileges;

F. Whether sufficient safeguards are included to maintain  
            appropriate capacity for health science research and health  
            care provider education;

G. Whether the proposed nonprofit health care conversion  
            transaction demonstrates that the public interest will be  
            served by considering the essential medical services needed  
            to provide safe and adequate treatment, appropriate access  
            and balanced health care delivery to the residents; and

H. Whether health care providers will be offered the

2           opportunity to invest or own an interest in the acquiring  
3           entity or related party and whether procedures or safeguards  
4           are in place to avoid conflict of interest in patient  
5           referrals.

6           **§194-F. Penalties**

7           A nonprofit conversion transaction entered into in violation  
8           of section 194-C is void, and each member of the governing boards  
9           and the chief financial officers of the parties to that nonprofit  
10           conversion transaction may be subject to a civil penalty of up to  
11           \$100,000, the amount to be determined by the Superior Court of  
12           Kennebec County or in the county in which the nonprofit entity's  
13           assets to be transferred are located. The Attorney General may  
14           institute proceedings to impose such a penalty. In addition, in  
15           the case of a nonprofit health care conversion transaction, a  
16           permit to operate a hospital may not be issued or renewed if the  
17           nonprofit health care conversion transaction was entered into in  
18           violation of the review and approval requirements of sections  
19           194-C to 194-E.

20  
21           **Sec. 3. 13 MRSA §3062** is repealed.

22  
23           **Sec. 4. 13 MRSA §4101, sub-§3**, as enacted by PL 1993, c. 371,  
24           §2, is amended to read:

25  
26           **3. Governing board.** "Governing board" means the body  
27           responsible for the management of an institution or an  
28           institutional fund or a trustee or trustees of a charitable trust.

29  
30           **Sec. 5. 13 MRSA §4101, sub-§6**, as enacted by PL 1993, c. 371,  
31           §2, is repealed and the following enacted in its place:

32  
33           **6. Institutional fund.** "Institutional fund" means a fund  
34           held for or by an institution for its exclusive use, benefit or  
35           purposes and includes a fund held by a trustee for one or more  
36           institutions or other charitable purposes in which no beneficiary  
37           that is not an institution or charitable beneficiary has an  
38           interest, other than possible rights that could arise upon  
39           violation of failure of the purposes of the fund. "Institutional  
40           fund" does not include a fund held or created by a town or other  
41           municipality.

42  
43           **Sec. 6. 13 MRSA §4106**, as amended by PL 1997, c. 302, §1, is  
44           further amended by adding at the end a new paragraph to read:

45  
46           In the administration of the powers to appropriate  
47           appreciation, to make and retain investments and to delegate  
48           investment management of institutional funds, trustees of  
49           charitable trusts are governed by the standards set forth in  
50           Title 18-A, section 7-302.

2           **Sec. 7. 13-B MRSA §102, sub-§8-A** is enacted to read:

4           **8-A. Mutual benefit corporation.** "Mutual benefit  
6 corporation" means a mutual benefit corporation as described in  
8 section 1406 or a corporation formed as a mutual benefit  
corporation pursuant to chapter 4.

10           **Sec. 8. 13-B MRSA §102, sub-§10-A** is enacted to read:

12           **10-A. Public benefit corporation.** "Public benefit  
14 corporation" means a public benefit corporation described in  
section 1406 or a domestic corporation formed as a public benefit  
corporation pursuant to chapter 4.

16           **Sec. 9. 13-B MRSA §403, sub-§1, ¶B,** as enacted by PL 1977, c.  
18 525, §13, is amended to read:

20           B. The purpose or purposes for which the corporation is  
22 organized and a statement that it is organized for all  
purposes permitted under the Act; or one of the following  
statements:

24                   (1) This corporation is a public benefit corporation;  
26                   or

28                   (2) This corporation is a mutual benefit corporation.

30           **Sec. 10. 13-B MRSA §704,** as amended by PL 1979, c. 127, §101,  
is further amended to read:

32           **§704. Removal of directors by members**

34           1. **Removal for cause.** At a special meeting of members  
36 called expressly for that purpose, the entire board of directors  
or any individual director may be removed, with or without cause,  
by a vote of the members as provided in this section.

38           2. **Vote of 2/3 of membership required for removal.** Subject  
40 to the limitation in subsection 4, if the corporation does not  
have a board of directors so classified that different classes of  
42 members elect different directors, such removal may be  
accomplished by the affirmative vote of 2/3 of the members  
44 entitled to vote for directors. The articles of incorporation may  
provide that such removal be accomplished by a lesser vote, but  
46 in no case by a vote of less than a majority of members voting on  
the proposed removal.

48           3. **Articles of incorporation may provide removal by lesser**  
50 **vote.** Subject to the limitation in subsection 4, if the

2 directors are so classified that different classes of members  
elect different directors, a director may be removed only by the  
4 affirmative vote of 2/3 of the members of that class which  
elected him the director. The articles of incorporation may  
6 provide that such removal may be accomplished by a lesser vote of  
the members of that class, but in no case by a vote of less than  
8 a majority of the members of that class voting on the proposed  
removal.

10 **4. All directors removed at meeting.** If any or all  
directors are removed at such meeting of the members, new  
12 directors may be elected at the same meeting without express  
notice being given of such election.

14 ~~**5. Action in court for removal from office.** Notwithstanding  
16 the foregoing provisions, if 2/3 of the directors then in office  
resolve that individual directors should be removed from office  
18 for cause, the corporation may bring an action in any court  
having equity jurisdiction to remove such directors from office.  
20 If the court finds, by a preponderance of the evidence, that any  
such director has been guilty of fraudulent or dishonest acts, to  
22 the detriment of the corporation or any substantial group of its  
members, or has been guilty of gross abuse of authority or  
24 discretion in discharge of his duties to the corporation, the  
court shall order him removed from office and may bar him from  
26 reelection for a period of time prescribed by the court, and may  
make such other orders as are just and equitable.~~

28 **Sec. 11. 13-B MRSA §704-A** is enacted to read:

30 **§704-A. Removal of directors by judicial proceeding**

32 **1. Removal.** The Superior Court may remove any director of  
34 the corporation from office in a proceeding commenced either by  
the corporation, its members holding at least 10% of the voting  
36 power or the Attorney General in the case of a public benefit  
corporation if the court finds that:

38 A. The director engaged in fraudulent or dishonest conduct  
40 or gross abuse of authority or discretion with respect to  
the corporation, that section 713-A has been violated or a  
42 final judgment has been entered finding that the director  
has violated a duty set forth in section 712 or sections 717  
44 to 20; and

46 B. Removal is in the best interest of the corporation.

48 **2. Petition.** The petition for removal must be filed:

50 A. In the county where the corporation's principal office  
is located;

2           B. In the county where the corporation's registered office  
4           is located if the corporation has no principal office in  
              this State; or

6           C. In the Superior Court of Kennebec County if the  
8           corporation has no principal office or registered office in  
              this State.

10           The court that removes a director may bar the director from  
12           servng on the board of director's for a period prescribed by the  
14           court. If members or the Attorney General commence a proceeding  
16           under subsection 1, the corporation is made a party defendant.  
              If a public benefit corporation or its members commence a  
              proceeding under subsection 1, the public benefit corporation  
              must give the Attorney General written notice of the proceeding.

18           **Sec. 12. 13-B MRSA §713-A is enacted to read:**

20           **§713-A. Public benefit corporation; board**

22           **1. Board.** No more than 49% of the individuals on the board  
24           of a public benefit corporation may be financially interested  
              persons.

26           **2. Financially interested person.** For the purposes of this  
28           section, "Financially interested person" means:

30           A. An individual who has received or is entitled to receive  
32           compensation, directly or indirectly, from a public benefit  
34           corporation for services rendered to the corporation within  
36           the previous 12 months, whether as a full-time or part-time  
              employee, independent contractor, consultant or otherwise,  
              excluding any reasonable payments made to directors for  
              servng as directors; or

38           B. A spouse, brother, sister, parent or child of the  
              individual described in paragraph A.

40           **3. Validity: enforceability.** The failure to comply with  
42           this section does not affect the validity or enforceability of  
              any transaction entered into by a corporation.

44           **Sec. 13. 13-B MRSA §714, sub-§3, as amended by PL 1981, c.**  
46           **470, Pt. A, §31, is further amended to read:**

48           **3. Indemnity made by corporation.** Any--indemnification  
50           Indemnification under subsection 1, unless ordered by a court or  
              required by the bylaws, shall may be made by the corporation only  
              as authorized in the specific case upon a determination that

2 indemnification of the director, officer, employee or agent is  
3 proper in the circumstances because he the director, officer,  
4 employee or agent has met the applicable standard of conduct set  
5 forth in subsection 1. Sueh The determination shall must be made  
6 by the board of directors by a majority vote of a quorum  
7 consisting of directors who were not parties to sueh the action,  
8 suit or proceeding, or if sueh a quorum is not obtainable, or,  
9 even if obtainable, if a quorum of disinterested directors so  
10 directs, by independent legal counsel in a written opinion. Sueh  
11 a The determination, once made by the board of directors may not  
12 be revoked by the board of directors, and upon the making of sueh  
13 the determination by the board of directors, the director,  
14 officer, employee or agent may enforce the indemnification  
15 against the corporation by a separate action notwithstanding any  
16 attempted or actual subsequent action by the board of  
17 directors. A director of a public benefit corporation may not  
18 be indemnified until 20 days after the effective date of written  
notice to the Attorney General of the proposed indemnification.

20 **Sec. 14. 13-B MRSA §715**, as enacted by PL 1977, c. 525, §13,  
21 is repealed and the following enacted in its place:

22 **§715. Books and records**

24  
25 **1. Book; records of accounts.** Each corporation shall keep  
26 correct and complete books and records of accounts and shall keep  
27 minutes of the proceedings of its members, board of directors and  
28 committees having any of the authority of the board of directors  
29 and shall keep at its registered office or principal office in  
30 this State a record of the names and addresses of its members  
31 entitled to vote. All books and records of a corporation may be  
32 inspected by any officer, director or member or the officer's,  
33 director's or member's agent or attorney, for any proper purpose  
34 at any reasonable time, as long as the officer, director or  
35 member or the officer's, director's or member's agent or attorney  
36 gives the corporation written notice at least 5 business days  
37 before the date on which the officer, director or member or the  
38 officer's, director's or member's agent or attorney wishes to  
39 inspect and copy any books or records. The corporation may  
40 require the officer, director or member or the officer's  
41 director's or member's agent or attorney to pay the reasonable  
42 cost of the copies made.

44 **2. Refusal to allow inspection.** If a corporation does not  
45 make available for inspection or copying the books and records  
46 required by subsection 1, the Superior Court in the county where  
47 the corporation's principal office is located, or if the  
48 corporation has no principal office in the State, then at the  
49 location of its registered office, may summarily order inspection  
50 and copying of the records demanded at the corporation's expense



2 upon application of the officer, director or member or the  
3 officer's, director's or member's agent or attorney.

4 A. If the court orders inspection and copying of the  
5 records demanded, the court shall also order the corporation  
6 to pay the costs of the officer, director or member or the  
7 officer's, director's or member's agent or attorney,  
8 including reasonable attorney's fees, incurred to obtain the  
9 order unless the corporation provides that it refused  
10 inspection in good faith because it had a reasonable basis  
11 for doubt about the right of the member to inspect the  
12 records demanded.

14 B. If the court orders inspection and copying of the  
15 records demanded, it may impose reasonable restrictions on  
16 the use or distribution of the records by the demanding  
17 officer, director or member or the officer's, director's or  
18 member's agent or attorney.

20 **Sec. 15. 13-B MRSA §716**, as enacted by PL 1981, c. 7, is  
21 repealed.

22 **Sec. 16. 13-B MRSA §§717 to 720** are enacted to read:

24 **§717. General standards for directors**

26 **1. Discharge duties.** A director shall discharge the  
27 director's duties:

30 A. In good faith;

32 B. With the care an ordinarily prudent person in a like  
33 position would exercise under similar circumstances; and

34 C. In a manner the director reasonably believes to be in  
35 the best interests of the corporation.

38 **2. Rely on information.** In discharging the director's  
39 duties, a director is entitled to rely on information, opinions,  
40 reports or statements, including financial statements and other  
41 financial data, if prepared or presented by:

42 A. One or more officers or employees of the corporation  
43 whom the director reasonably believes to be reliable and  
44 competent in the matters presented;

45 B. Legal counsel, public accountants or other persons as to  
46 matters the director reasonably believes are within the  
47 person's professional or expert competence; or  
48

2           C. A committee of the board of directors of which the  
4           director is not a member, as to the matters within its  
6           jurisdiction, if the director reasonably believes the  
            committee merits confidence.

8           A director is not acting in good faith if the director relies on  
10          information, opinions, reports or statements that the director  
12          knows or has reason to believe are unwarranted.

14           3. Performance; compliance. A director is not liable for  
16          the performance of the duties of the director's office if the  
18          director acted in compliance with this section.

20           4. Trustee. A director is not considered a trustee with  
22          respect to the corporation or with respect to any property held  
24          or administered by the corporation, including, without  
26          limitation, property that may be subject to restrictions imposed  
28          by the donor or transferor of the property.

30          **§718. Director conflict of interest**

32           1. Conflict of interest transaction. A conflict of  
34          interest transaction is a transaction with a public benefit  
36          corporation or a mutual benefit corporation in which a director  
38          of the corporation has a direct or indirect interest. A conflict  
40          of interest transaction is not voidable on the basis of imposing  
42          liability on the director if the transaction was fair at the time  
44          it was entered into.

46           2. Public benefit corporation; approval. A transaction in  
48          which a director of a public benefit corporation has a conflict  
50          of interest may be approved:

A. In advance by the vote of the board of directors or a  
            committee of the board if:

(1) The material facts of the transaction and the  
                director's interest are disclosed or known to the board  
                of directors or a committee of the board; and

(2) The directors on the board or committee of the  
                board, approving the transaction in good faith,  
                reasonably believe that the transaction is fair to the  
                corporation; or

B. Before or after the transaction is consummated, by  
            obtaining approval of the:

(1) Attorney General; or

2                   (2) Superior Court in an action in which the Attorney  
3                   General is joined as party.

4  
5                   3. Mutual benefit corporation; approval. A transaction in  
6                   which a director of a mutual benefit corporation has a conflict  
7                   of interest may be approved if:

8  
9                   A. The material facts of the transaction and the director's  
10                   interest were disclosed or known to the board of directors  
11                   or a committee of the board and the board or committee of  
12                   the board authorized, approved or ratified the transaction;  
13                   or

14  
15                   B. The material facts of the transaction and the director's  
16                   interest were disclosed or known to the members and they  
17                   approved the transaction.

18  
19                   4. Indirect interest. For the purposes of this section, a  
20                   director of a public benefit corporation or a mutual benefit  
21                   corporation has an indirect interest in a transaction if:

22  
23                   A. Another entity in which the director has a material  
24                   interest or in which the director is a general partner is a  
25                   party to the transaction; or

26  
27                   B. Another entity of which the director is a director,  
28                   officer or trustee is a party to the transaction.

29                   5. Affirmative vote. For purposes of subsections 2 and 3,  
30                   a conflict of interest transaction is approved if it receives the  
31                   affirmative vote of a majority of the directors on the board or  
32                   on a committee of a board, who have no direct or indirect  
33                   interest in the transaction, but a transaction may not be  
34                   approved under this subsection by a single director. If a  
35                   majority of the directors on the board who have no direct or  
36                   indirect interest in the transaction vote to approve the  
37                   transaction, a quorum is present for the purpose of taking action  
38                   under this section.

39  
40                   6. Conflict of interest transaction; authorized. For  
41                   purposes of subsection 3, paragraph B, a conflict of interest  
42                   transaction is approved by the members if it receives a majority  
43                   of the votes entitled to be counted under this subsection. Votes  
44                   cast by or voted under the control of a director who has a direct  
45                   or indirect interest in the transaction and votes cast by or  
46                   voted under the control of an entity described in subsection 4,  
47                   paragraph A, may not be counted in a vote of members to determine  
48                   whether to approve a conflict of interest transaction under  
49                   subsection 3, paragraph B. The vote of these members, however,  
50

2 is counted in determining whether the transaction is approved  
3 under other sections of this chapter. A majority of the voting  
4 power, whether or not present, that is entitled to be counted in  
5 a vote on the transaction under this subsection constitutes a  
6 quorum for the purpose of taking action under this section.

7 7. Additional requirements. The articles of incorporation,  
8 bylaws or a resolution of the board may impose additional  
9 requirements on conflict of interest transactions.

10 **§719. Duties and authority of officers**

11  
12 Each officer has the authority and shall perform the duties  
13 set forth in the bylaws. In addition, each officer, to the  
14 extent consistent with the bylaws, has the authority and shall  
15 perform the duties prescribed in a resolution of the board. The  
16 board may authorize an officer, pursuant to a resolution of the  
17 board and to the extent consistent with the bylaws, to prescribe  
18 the duties and authority of other officers.

19  
20 **§720. Standards of conduct for officers**

21  
22 1. Discretionary authority. An officer with discretionary  
23 authority shall discharge that officer's duties under that  
24 authority:

25 A. In good faith;

26  
27 B. With the care an ordinarily prudent person in a like  
28 position would exercise under similar circumstances; and

29 C. In a manner the officer reasonably believes to be in the  
30 best interests of the corporation and its members.

31  
32 2. Rely on information. In discharging the officer's  
33 duties, an officer is entitled to rely on information, opinions,  
34 reports or statements, including financial statements and other  
35 financial data, if prepared or presented by:

36 A. One or more officers or employees of the corporation who  
37 the officer reasonably believes to be reliable and competent  
38 in the matters presented; or

39 B. Legal counsel, public accountants or other persons as to  
40 matters the officer reasonably believes are within the  
41 person's professional or expert competence.

42  
43 An officer is not acting in good faith if the officer relies on  
44 information, opinions, reports or statements that the officer  
45 knows or has reason to believe are unwarranted.

2           3. Compliance. An officer is not liable to the  
3           corporation, any member or other person for any action taken or  
4           not taken as an officer, if the officer acted in compliance with  
5           this section.

6           **Sec. 17. 13-B MRSA §802, sub-§5** is enacted to read:

7           5. Amendment of articles of public benefit corporation. If  
8           an amendment of the articles of incorporation of a public benefit  
9           corporation results in a material change in the nature of the  
10           activities conducted by the corporation, the Attorney General  
11           must be given notice of the proposed amendment at least 20 days  
12           prior to the filing of the amended articles with the Secretary of  
13           State.

14           **Sec. 18. 13-B MRSA §§907 and 908** are enacted to read:

15           **§907. Limitations on mergers by public benefit corporations**

16           1. Prior approval. Without the prior approval of the  
17           Superior Court of Kennebec County in a proceeding for which the  
18           Attorney General has been given written notice in accordance with  
19           Title 5, section 194, subsection 6, a public benefit corporation  
20           may merge only with:

21           A. Another public benefit corporation; or

22           B. A foreign nonprofit corporation that would qualify under  
23           this Title as a public benefit corporation.

24           2. Notice. Before consummation of any merger of a public  
25           benefit corporation, notice, including a copy of the proposed  
26           plan of merger, must be delivered to the Attorney General.

27           **§908. Bequests, devises and gifts**

28           Any bequest, devise, gift, grant or promise contained in a  
29           will or other instrument of donation, subscription or conveyance  
30           that is made to a constituent corporation and that takes effect  
31           or remains payable after the merger inures to the surviving  
32           corporation unless the will or other instrument otherwise  
33           specifically provides.

34           **Sec. 19. 13-B MRSA §1001**, as enacted by PL 1977, c. 525, §13,  
35           is amended to read:

36           **§1001. Sale of assets other than in the regular course of**  
37           **activities**

2           **1. Terms and conditions.** Sale, lease, exchange, mortgage,  
pledge or other disposition of all, or substantially all, the  
4 property and assets of a corporation may be made upon such terms  
and conditions and for such consideration, which may consist in  
6 whole or in part of money or property, real or personal,  
including shares of any corporation for profit, domestic or  
8 foreign, as may be authorized in the following manner.

10           A. If there are members entitled to vote thereon, the board  
of directors shall adopt a resolution recommending such  
12 sale, lease, exchange, mortgage, pledge or other disposition  
and directing that it be submitted to a vote at a meeting of  
14 members entitled to vote thereon, which may be either an  
annual or a special meeting. Written notice stating that the  
16 purpose, or one of the purposes, of such meeting is to  
consider the sale, lease, exchange, mortgage, pledge or  
18 other disposition of all, or substantially all, the property  
and assets of the corporation shall must be given to each  
20 member entitled to vote at such meeting, within the time and  
in the manner provided by this Act for the giving of notice  
22 of meetings of members. At such meeting, the members may  
authorize such sale, lease, exchange, mortgage, pledge or  
24 other disposition and may fix, or may authorize the board of  
directors to fix, any or all of the terms and conditions  
26 thereof and the consideration to be received by the  
corporation thereto. Such authorization shall ~~require~~  
28 requires at least a majority of the votes which members  
present at such meeting or represented by proxy are entitled  
30 to cast. After such authorization by a vote of members, the  
board of directors, nevertheless, in its discretion, may  
32 abandon such sale, lease, exchange, mortgage, pledge or  
other disposition of assets, subject to the rights of 3rd  
34 parties under any contracts relating thereto, without  
further action or approval by members.

36           B. If there are no members, or no members entitled to vote  
thereon, a sale, lease, exchange, mortgage, pledge or other  
38 disposition of all, or substantially all, the property and  
assets of a corporation shall ~~be~~ are authorized upon  
40 receiving the vote of a majority of the directors in office.

42           C. If all members entitled to vote by the articles of  
incorporation authorize by written consent a sale, lease,  
44 exchange, mortgage, pledge or other disposition of all, or  
substantially all, the property and assets of a corporation,  
46 no resolution of the board of directors, approving,  
proposing, submitting, recommending or otherwise respecting  
48 such sale is necessary.

2           **2. Provision prescribing for approval of sale.** The articles  
of incorporation of any corporation may contain a provision  
4           prescribing for approval of any sale of assets a vote greater  
than, but in no event less than, that prescribed by subsection 1.  
6

8           **3. Sale of assets of a public benefit corporation.** A  
public benefit corporation may not sell, lease, exchange or  
10           otherwise dispose of all or substantially all of its property if  
the transaction is not in the usual and regular course of its  
12           activities unless it has complied with Title 5, section 194-C.

14           **Sec. 20. 13-B MRSA §1104, sub-§1, ¶D,** as enacted by PL 1977,  
c. 525, §13, is amended to read:

16           D. That all remaining property and assets of the  
corporation have been distributed among its members in  
18           accordance with their respective rights and interests, or  
have been otherwise distributed pursuant to the articles or  
20           bylaws of the corporation, ~~provided that as long as the~~  
assets of a public benefit corporation ~~whose purposes and~~  
22           ~~activities have been primarily charitable, religious,~~  
~~elemesynary, benevolent or educational shall be~~ are  
24           transferred ~~or conveyed only to one or more domestic or~~  
~~foreign corporations, societies or organizations to a public~~  
26           benefit corporation engaged in activities substantially  
similar to those of the dissolving or liquidating  
28           corporation; and

30           **Sec. 21. 13-B MRSA §1105,** as enacted by PL 1977, c. 525, §13,  
is repealed.

32           **Sec. 22. 13-B MRSA §1105-A** is enacted to read:

34           **§1105-A. Grounds for judicial dissolution**

36           **1. Dissolution.** The Superior Court may dissolve a  
38           corporation:

40           A. If, in a proceeding by the Attorney General, it is  
42           established that:

44           (1) The corporation obtained its articles of  
incorporation through fraud;

46           (2) The corporation has exceeded or abused the  
authority conferred upon it by law;

48           (3) The corporation is a public benefit corporation  
50           and the corporate assets are being misapplied or  
wasted; or

2           (4) The corporation is a public benefit corporation  
4           and is no longer able to carry out its purposes;

6           B. If, in a proceeding by 50 members or members holding 5%  
8           of the voting power, whichever is less, or by a director or  
          any person specified in the articles of incorporation, it is  
          established that:

10           (1) The directors are deadlocked in the management of  
12           the corporate affairs, and the members, if any, are  
          unable to breach the deadlock;

14           (2) The directors or those in control of the  
16           corporation have acted or are acting in a manner that  
          is illegal, oppressive or fraudulent;

18           (3) The members are deadlocked in voting power and  
20           have failed, for a period that includes at least 2  
22           consecutive annual meeting dates, to elect successors  
          to directors whose terms have or would otherwise have  
          expired;

24           (4) The corporate assets are being misapplied or  
26           wasted; or

28           (5) The corporation is a public benefit corporation  
          and is no longer able to carry out its purposes;

30           C. If, in a proceeding by a creditor, it is established  
32           that:

34           (1) The creditor's claim has been reduced to judgment,  
36           the execution on the judgment returned unsatisfied and  
          the corporation is insolvent; or

38           (2) The corporation has admitted in writing that the  
40           creditor's claim is due and owing and the corporation  
          is insolvent; or

42           D. If, in a proceeding it is established that the  
44           corporation's voluntary dissolution is continued under  
          court supervision.

46           2. Consideration of court. Prior to dissolving a  
          corporation, the court shall consider whether:

48           A. There are reasonable alternatives to dissolution;

50           B. Dissolution is in the public interest, if the  
          corporation is a public benefit corporation; or



2            C. Dissolution is the best way of protecting the interests  
4            of members, if the corporation is a mutual benefit  
             corporation.

6            **Sec. 23. 13-B MRSA §1109**, as enacted by PL 1977, c. 525, §13,  
             is amended to read:

8  
10           **§1109. Decree of dissolution**

12           1. **Decree.** In proceedings to liquidate the assets and  
14           activities of a corporation, when the costs and expenses of ~~sueh~~  
16           the proceedings and all debts, obligations and liabilities of the  
18           corporation ~~shall~~ have been paid and discharged and all of its  
20           remaining property and assets distributed in accordance with the  
22           provisions of this Act, or ~~in case~~ when its property and assets  
             are not sufficient to satisfy and discharge ~~sueh~~ the costs,  
             expenses, debts and obligations, and all the property and assets  
             have been applied ~~so far as they will go~~ to their payment, the  
             court shall enter a decree dissolving the corporation, ~~whereupon~~  
             after which the existence of the corporation ~~shall cease~~ ceases.

24           2. **Certified copy of decree to Secretary of State.** ~~In case~~  
26           When the court ~~shall enter~~ enters a decree dissolving a  
28           corporation, it ~~shall be~~ is the duty of the clerk of ~~sueh~~ the  
             court to cause a certified copy of the decree to be filed with  
             the Secretary of State. ~~No~~ A fee ~~shall~~ may not be charged by the  
             Secretary of State for the filing ~~thereof~~ of the decree.

30           **Sec. 24. 13-B MRSA §1110, sub-§2**, as enacted by PL 1977, c.  
32           525, §13, is amended to read:

34           2. **Deposit with Treasurer of State.** ~~Sueh~~ A deposit with the  
36           Treasurer of State ~~shall~~ must, to the extent ~~thereof~~ of the  
38           deposit, absolutely discharge the persons having control and  
40           supervision over the distribution of the corporation's assets  
42           from liability to ~~sueh~~ the unknown, unlocated, legally disabled  
             or nonaccepting persons. If the dissolution is under the  
             supervision of the Superior Court pursuant to section ~~1105~~  
             1105-A, ~~no~~ sueh the deposit ~~shall~~ may not be made with the  
             Treasurer of State, except pursuant to order of the court, on  
             ~~sueh~~ terms as the court may order.

44           **Sec. 25. 13-B MRSA §1202, sub-§1, ¶E**, as amended by PL 1997,  
46           c. 376, §26, is further amended to read:

48           E. The address of the registered or principal office of the  
             corporation in the jurisdiction of its incorporation or the  
             principal office wherever located; and

2           **Sec. 26. 13-B MRSA §1202, sub-§1, ¶F**, as enacted by PL 1977, c.  
3 525, §13, is amended to read:

4  
5           F. The address of its proposed registered office in this  
6 State and the name of its proposed registered agent in this  
7 State at such address; and

8  
9           **Sec. 27. 13-B MRSA §1202, sub-§1, ¶G** is enacted to read:

10           G. Whether the corporation, if it had been incorporated in  
11 this State, would be a public benefit or mutual benefit  
12 corporation.

13  
14           **Sec. 28. 13-B MRSA §1302, sub-§4** is enacted to read:

15           **4. Notice to Attorney General in case of public benefit**  
16 **corporation.** In the case of a public benefit corporation, the  
17 Secretary of State shall notify the Attorney General of the  
18 revocation or suspension of the corporation's authority to carry  
19 on activities under subsection 1.

20  
21           **Sec. 29. 13-B MRSA §1406** is enacted to read:

22  
23           **§1406. Public benefit and mutual benefit corporations**

24  
25           **1. Designation.** On the effective date of this section, a  
26 domestic corporation that is or becomes subject to this Act is  
27 designated as a public benefit corporation or mutual benefit  
28 corporation as follows.

29  
30           A. A corporation designated by law as a public benefit  
31 corporation or mutual benefit corporation is the type of  
32 corporation designated by statute.

33  
34           B. A corporation that is recognized as exempt under the  
35 Internal Revenue Code, Section 501(c)(3) or any successor  
36 provision is a public benefit corporation.

37  
38           C. A corporation that does not meet the requirements of  
39 paragraph A or B but that is organized for a public or  
40 charitable purpose and upon dissolution must distribute its  
41 assets to a public benefit corporation, the United States, a  
42 state, or a person that is recognized as exempt under the  
43 Internal Revenue Code, Section 501(c)(3) or any successor  
44 provision is a public benefit corporation.

45  
46           D. A corporation that does not meet the requirements of  
47 paragraph B or C is a mutual benefit corporation.

2           **2. Elect designation.** In any filing with the Secretary of  
4 State, an existing corporation may elect designation as a public  
6 benefit corporation or mutual benefit corporation. An existing  
8 corporation shall elect a designation as a public or mutual  
10 benefit corporation by amending its articles of incorporation or  
12 application for authority within 12 months of the effective date  
14 of this section. The Secretary of State may act administratively  
16 to implement this section. If a corporation has not elected a  
18 designation as a public benefit or mutual benefit corporation  
20 within 12 months of the effective date of this section, the  
22 Secretary of State may revoke or suspend the corporation's  
24 articles of incorporation or authority to do business in the  
26 State.

## SUMMARY

18           This bill amends the statutes to give the Attorney General  
20 authority to investigate public charities, including trusts and  
22 nonprofit corporations. The bill also amends the Maine Nonprofit  
24 Corporation Act to provide the Attorney General with some  
oversight over nonprofit corporations that are charities.

26           The bill allows those who manage charitable trusts to adopt  
investment policies similar to those of foundation managers  
consistent with the appropriate standards of prudence.

28           This bill also adds guidelines to assist the Attorney  
30 General in dealing with nonprofit conversion transactions.