

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 121st MAINE LEGISLATURE

## SECOND REGULAR SESSION-2004

---

Legislative Document

No. 1761

H.P. 1283

House of Representatives, December 22, 2003

### An Act To Amend the Laws Relating to Nonprofit Corporations

---

Submitted by the Secretary of State pursuant to Joint Rule 204.

Received by the Clerk of the House on December 17, 2003. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative BULL of Freeport.  
Cosponsored by Representative: CARR of Lincoln.

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

4 **Sec. 1. 13 MRSA §903**, as corrected by RR 1993, c. 1, §39, is  
repealed and the following enacted in its place:

6 **§903. Certificate of organization**

8 The incorporators shall prepare, sign, date and deliver for  
10 filing with the Secretary of State a certificate of organization  
setting forth the name, location, officers and directors,  
12 trustees or managing board and purposes of the corporation. The  
certificate must clearly state that the corporation is not  
14 organized for profit and that no property or profit of the  
corporation inures to the benefit of any person, partnership or  
16 corporation except in furtherance of the benevolent or nonprofit  
purposes of the corporation. Once the Secretary of State has  
18 filed the certificate of organization, the corporation may carry  
on activities pursuant to this chapter.

20 **Sec. 2. 13 MRSA §§907 and 908** are enacted to read:

22 **§907. Filing duty of the Secretary of State**

24 If a certificate delivered for filing with the Secretary of  
26 State satisfies the requirements of this chapter, the Secretary  
of State shall file the certificate. The date of filing is the  
28 date of receipt by the Secretary of State. After filing any  
certificate under this chapter, the Secretary of State shall  
30 deliver to the corporation or its representative a copy of the  
document with an acknowledgement of the date of filing.

32 **§908. Fees for filing certificates**

34 A fee of \$5 must be submitted with any certificate required  
36 or permitted to be filed with the Secretary of State under this  
chapter.

38 **Sec. 3. 13 MRSA §931**, as corrected by RR 1991, c. 2, §40, is  
40 amended to read:

42 **§931. Powers; change of name; proceedings; fee**

44 The incorporators shall adopt a corporate name, and they,  
their associates and successors may have continual succession;  
46 have a common seal; elect all necessary officers; adopt bylaws  
not inconsistent with law and enforce the same by suitable  
48 penalties; have the same rights and be under the same liabilities  
as other corporations in prosecuting and defending civil actions;  
50 and enjoy all other rights, privileges and immunities of a legal  
corporation. Any corporation organized under this subchapter may

2 by a majority vote, at a legal meeting of its members at which at  
3 least 25% are present, or at a legal meeting of its directors,  
4 trustees or managing board, however designated, change its name  
5 and adopt a new one, and a notice of the intention to change the  
6 name to must be given in the call for the meeting. When the  
7 proceedings of such the meeting relating to such the change of  
8 name, are certified by the clerk or secretary of the corporation,  
9 ~~are returned to the office of~~ the corporation shall deliver for  
10 filing with the Secretary of State ~~to be recorded, the~~ a  
11 certificate of name is changed change signed and dated by the  
12 clerk or secretary of the corporation. A fee of \$5 must accompany  
13 ~~the certificate.~~ The corporation, under its new name, has the  
14 same rights, powers and privileges, and is subject to the same  
15 duties, obligations and liabilities as before, and holds and is  
16 entitled to the same property and property rights as it held  
17 under its former name, and may sue or be sued by its new name,  
18 but no action brought against it by its former name may be  
19 defeated on that account. ~~A certificate of the change of the name~~  
20 ~~of such corporation must be filed by the clerk or secretary of~~  
21 ~~the corporation in the registry of deeds in the county in which~~  
22 ~~the corporation has its location within 20 days after the~~  
23 ~~proceedings of the meeting are returned to the office of the~~  
24 ~~Secretary of State. No fee is required by the Secretary of State~~  
25 ~~for the filing, but the registry of deeds must receive for~~  
26 ~~recording such certificate the fee of 50¢. This section does not~~  
27 ~~apply to corporations organized under or governed by Title 13-B.~~

28 **Sec. 4. 13 MRSA §934**, as amended by PL 1977, c. 592, §4, is  
29 further amended to read:

30 **§934. Amendments**

31  
32 In addition to any other method provided by law, a  
33 corporation organized ~~without capital stock~~ under this chapter,  
34 including specially chartered churches, but not other specially  
35 chartered corporations, may change the number of its officers,  
36 directors, trustees or members of its managing board, however  
37 designated, and change its purposes by altering, abridging or  
38 enlarging the same, and make any other changes in its certificate  
39 of organization as originally filed or subsequently amended that  
40 may be desired, provided if such changes would be proper to  
41 insert in an original certificate of organization. ~~Such~~ The  
42 change ~~shall~~ must be made by vote of a majority of those members  
43 with voting rights present at, or if the corporation ~~shall have~~  
44 ~~no~~ does not have members with voting rights, then by a majority  
45 vote of its whole board of directors, or trustees or managing  
46 board, however designated, taken at any legal meeting, ~~the~~ The  
47 notice of ~~which~~ the meeting shall ~~shall~~ must give notice of the  
48 proposed action. ~~The procedures established in the law relating~~  
49 ~~to corporations organized with capital stock as to the filing of~~

2 recording of certificates, articles or other documents with the  
Secretary of State or in any other place in order to make  
4 effective changes in their certificates of organization or  
articles of incorporation shall apply to corporations organized  
6 without capital stock, except that such certificates, articles or  
other documents may be appropriately altered to reflect the fact  
8 that the corporate action reflected therein is not taken by  
stockholders, and may be certified by the Secretary of State and  
10 filed with the Secretary of State even though a change of  
purposes contained therein will result in such corporation  
12 becoming charitable in nature and thus exempt from taxation. This  
section shall not apply to corporations organized under or  
14 governed by Title 13-B. If the corporation amends any provision  
of any certificate filed with the Secretary of State, the  
corporation must promptly deliver for filing with the Secretary  
of State a certificate of amendment signed and dated by the clerk  
or secretary of the corporation.

18  
20 **Sec. 5. 13 MRSA §937**, as amended by PL 1977, c. 592, §5, is  
further amended to read:

22 **§937. Dissolution**

24 Except as provided in section 938, any corporation organized  
without capital stock under this chapter may be dissolved in the  
26 same manner and with the same effect as a corporation organized  
with capital stock, and by using the procedures governing the  
28 dissolution of corporations organized with capital stock shall  
apply to the dissolution of corporations organized without  
30 capital stock set forth in Title 13-B, chapter 11 and deliver for  
filing with the Secretary of State the required certificates,  
32 signed and dated by the clerk or secretary of the corporation.  
Solely for the purposes of this section and the dissolution of a  
34 corporation organized without capital stock under this chapter,  
each member with voting rights of such the corporation, or if  
36 such the corporation has no does not have members with voting  
rights, each director, trustee or member of the managing board,  
38 however designated, shall be considered and deemed to be a  
stockholder holding has one share of voting stock vote for the  
40 purposes of calling, noticing, conducting and holding meetings  
and voting thereat at those meetings, and for the purpose of  
42 commencing or otherwise participating as a party in civil actions  
in respect of dissolution, but for no other purposes. In addition  
44 to other parties who may commence or participate in such civil  
actions as provided in the law relating to corporations organized  
46 with capital stock under this chapter, the Attorney General may  
commence, or otherwise participate in, any civil action relating  
48 to the dissolution of any corporation organized without capital  
stock under this chapter. Any certificate, articles or other  
50 documents required or permitted to be filed or recorded with the

2 Secretary of State or in any other place by the laws relating to  
the dissolution of corporations organized with capital stock may  
4 be filed or recorded with the Secretary of State or in such other  
places by a corporation organized without capital stock or by any  
6 appropriate officer thereof, with such changes therein as may be  
appropriate or needful on account of such corporation not having  
8 capital stock or stockholders. A fee of \$5 shall be payable to  
the Secretary of State on account of the filing of each such  
10 certificate, article or other document. This section shall not  
apply to corporations organized under or governed by Title 13-B.

12 **Sec. 6. 13 MRSA §938**, as amended by PL 1977, c. 592, §6, is  
further amended to read:

14 **§938. Distribution of assets**

16 In case of the dissolution of a corporation organized  
18 without--capital--stock pursuant to section 937 or any other  
provision of law, the assets of the corporation remaining after  
20 the payment of all of its debts shall must be distributed in the  
manner and to the persons, firms, associations, corporations,  
22 trusts or other legal entities provided in its certificate of  
organization or any amendment thereto,--~~provided that; however,~~  
24 the assets of a charitable corporation which that is dissolved  
shall may not be devoted to other than charitable purposes. In  
26 the case of the dissolution of a corporation organized without  
capital--stock under this chapter other than a charitable  
28 corporation, unless contrary provision is made in its certificate  
of organization or any amendment thereto, the assets of the  
30 corporation remaining after the payment of its debts shall must  
be distributed equally to its members. ~~No--provision--of--law~~  
32 ~~relating to the distribution of assets of corporations organized~~  
~~with capital stock shall have any application to the distribution~~  
34 ~~of assets of corporations organized without capital stock. This~~  
~~section shall not apply to corporations organized under or~~  
36 ~~governed by Title 13-B.~~

38 **Sec. 7. 13 MRSA §961**, as amended by PL 1977, c. 592, §8, is  
repealed and the following enacted in its place:

40 **§961. Procedure**

42 Any 2 or more corporations organized under this chapter may  
44 consolidate into a single corporation, which may be either one of  
the corporations or a new corporation under the laws of this  
46 State to be formed by means of the consolidation. The  
consolidation may be effected by vote of the directors, trustees  
48 or managing board, however designated, of each of those  
corporations at a legal meeting thereof ratifying a proposed  
50 agreement of consolidation. The resulting corporation shall

2 deliver for filing with the Secretary of State a certificate of  
3 consolidation signed and dated by the clerk or secretary of the  
4 corporation. When the certificate of consolidation is filed, the  
5 separate existence of all of the constituent corporations, or of  
6 all of the constituent corporations except the one into which the  
7 constituent corporations have been consolidated, ceases and the  
8 constituent corporations, whether consolidated into a new  
9 corporation or merged into one of the constituent corporations,  
10 as the case may be, become the consolidated corporation by the  
11 name provided in the agreement, possessing all the rights,  
12 privileges, powers, franchises and immunities of a public and  
13 private nature and being subject to all the liabilities,  
14 restrictions and duties of each of those corporations so  
15 consolidated, and all the rights, privileges, powers, franchises  
16 and immunities of each of those constituent corporations, and all  
17 real, personal and mixed property of those constituent  
18 corporations on whatever account and all other things in action  
19 of or belonging to each of those constituent corporations are  
20 vested in the consolidated corporation. All property, rights,  
21 privileges, powers, franchises, immunities and all other  
22 interests are thereafter the property of the consolidated  
23 corporation in the same manner as they were of the several and  
24 respective constituent corporations, and the title to any real  
25 estate, whether by deed or otherwise vested under the laws of  
26 this State in any of those constituent corporations, may not  
27 revert or in any way be impaired by reason of the consolidation.  
28 All rights of creditors and all liens upon the property of any of  
29 those constituent corporations are preserved unimpaired, limited  
30 to the property affected by such liens at the time of the  
31 consolidation, and all debts, liabilities and duties of the  
32 respective constituent corporations henceforth attach to the  
33 consolidated corporation and may be enforced against it to the  
34 same extent as if those debts, liabilities and duties had been  
35 incurred or contracted by it.

36  
37 **Sec. 8. 13 MRSA §981-A, as amended by PL 1993, c. 316, §9, is**  
38 **repealed and the following enacted in its place:**

39  
40 **§981-A. Acknowledgement of previously unrecognized**  
41 **corporations**

42  
43 An existing nonprofit corporation that is not currently  
44 recognized by the Secretary of State may prepare, sign, date and  
45 deliver for filing with the Secretary of State a certificate of  
46 organization setting forth the original name, the date, place and  
47 purpose of the incorporation, any subsequent changes to the  
48 corporate name and the current name, location and officers of the  
49 corporation. If the Secretary of State by examination of the  
50 corporate records or other substantial evidence finds that the

2 corporation was formed, the Secretary of State shall file the  
3 certificate of organization.

4 **Sec. 9. 13 MRSA §3025**, as amended by PL 1977, c. 696, §158,  
5 is repealed and the following enacted in its place:

6 **§3025. Filing of certificate; change of name; filing duty**  
7 **of the Secretary of State**

10 **1. Certificate.** The clerk, treasurer and a majority of the  
11 board of trustees of every independent local church incorporated  
12 under sections 3021 to 3024 shall prepare, sign, date and deliver  
13 for filing with the Secretary of State a certificate of  
14 incorporation, in the format approved by the Secretary of State,  
15 setting forth the name of the church, the town or city where the  
16 church is located and the number and names of the members of its  
17 board of trustees. A filing fee of \$5 must accompany the  
18 certificate.

20 **2. Change of certificate.** The name of any incorporated  
21 church or any other provision in the certificate of incorporation  
22 filed under subsection 1 may be changed by vote in a legal  
23 meeting duly called for this purpose. The clerk or other duly  
24 authorized officer of the corporation shall prepare, sign, date  
25 and deliver for filing with the Secretary of State a certificate,  
26 in the format approved by the Secretary of State, setting forth  
27 the name of the church, the town or city where the church is  
28 located, the date and the nature of the change and a statement  
29 that a majority of the members or trustees authorized the  
30 change. A filing fee of \$5 must accompany the certificate.

32 **3. Filing certificate.** If a certificate delivered for  
33 filing with the Secretary of State pursuant to this section  
34 satisfies the requirements of this chapter, the Secretary of  
35 State shall file the certificate. The date of filing is the date  
36 of receipt by the Secretary of State. After filing any  
37 certificate under this chapter, the Secretary of State shall  
38 deliver to the corporation or its representative a copy of the  
39 document with an acknowledgement of the date of filing.

42 **SUMMARY**

44 This bill eliminates duplicate filings with the Registry of  
45 Deeds for documents filed by nonprofit corporations formed under  
46 the Maine Revised Statutes, Title 13, chapters 81 and 93. This  
47 bill also streamlines the filing requirements with the Secretary  
48 of State to be consistent with the filing requirements for other  
49 nonprofit corporations formed under Title 13-B.