

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
123RD LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 608, L.D. 1741, Bill, "An Act To Update the Maine Business Corporation Act"

Amend the bill in section 1 in subsection 11-A in the last line (page 1, line 4 in L.D.) by inserting after the following: "matter" the following: ', including, but not limited to, attorney's fees'

Amend the bill by striking out all of section 2 (page 1, lines 5 to 8 in L.D.) and inserting the following:

'Sec. 2. 13-C MRSa §102, sub-§30-A is enacted to read:

30-A. Public corporation. "Public corporation" means a corporation that has a class or series of shares listed on a national securities exchange, a class or series of shares that is a covered security under the federal Securities Act of 1933, Section 18(b)(1)(A) or (B), as amended, or a class or series of equity securities registered under Section 12 of the federal Securities Exchange Act of 1934, as amended.'

Amend the bill in section 7 in §704 in subsection 1-A in the 3rd line (page 3, line 37 in L.D.) by striking out the following: "consent" and inserting the following: 'consents' and in the 4th line (page 3, line 38 in L.D.) by striking out the following: "is" and inserting the following: 'are'

Amend the bill in section 7 in §704 in subsection 6 in the 2nd line (page 5, line 12 in L.D.) by striking out the following: "may" and inserting the following: 'do' and in the 4th line (page 5, line 14 in L.D.) by striking out the following: "may not be construed to" and inserting the following: 'does not'

Amend the bill by striking out all of section 13.

Amend the bill by striking out all of section 19 (page 9, lines 4 to 17 in L.D.) and inserting the following:

COMMITTEE AMENDMENT

1 'Sec. 19. 13-C MRSA §842, as enacted by PL 2001, c. 640, Pt. A, §2 and affected
2 by Pt. B, §7, is amended to read:

3 **§842. Functions of officers**

4 **1. Sources.** An officer has the authority and shall perform the ~~duties~~ functions set
5 forth in the bylaws or, to the extent consistent with the bylaws, the ~~duties~~ functions
6 prescribed by the corporation's board of directors or by direction of an officer authorized
7 by the corporation's board of directors to prescribe the ~~duties~~ functions of other officers.

8 **2. President.** Unless otherwise provided by the bylaws, the officer designated as
9 president has authority to institute or defend legal proceedings whenever the directors or
10 shareholders are deadlocked. Unless they have reason to believe otherwise, persons
11 dealing with a corporation are entitled to assume that the officer designated as president
12 has authority to make, on the corporation's behalf, all contracts that are within the
13 ordinary course of those businesses in which the corporation is already engaged.'

14 Amend the bill in section 28 in §871 in subsection 3-A in the first line (page 13, line
15 12 in L.D.) by striking out the following: "regards" and inserting the following: 'regard'

16 Amend the bill in section 30 in §873 in subsection 2-A in paragraph A in the first line
17 (page (15, line 28 in L.D.) by striking out the following: "the director does not believe
18 would" and inserting the following: 'would not'

19 Amend the bill in section 31 in §874 in subsection 7 by striking out all of paragraph
20 A (page 17, lines 20 and 21 in L.D.) and inserting the following:

21 'A. "Holder" means and "held by" refers to shares held by both a record shareholder,
22 as defined in section 1301, subsection 7, and a beneficial shareholder, as defined in
23 section 1301, subsection 2.'

24 Amend the bill in section 41 in subsection 2 in paragraph A in the last line (page 21,
25 line 10 in L.D.) by striking out the following: "information;" and inserting the following:
26 'information'

27 Amend the bill in section 43 in §1406 in subsection 1 in the 6th line (page 22, line 17
28 in L.D.) by inserting after the following: "corporation" the following: 'continues its
29 corporate existence but'

30 Amend the bill by striking out all of section 44 (page 23, lines 14 to 37 and page 24,
31 lines 1 to 14 in L.D.) and inserting the following:

32 'Sec. 44. 13-C MRSA §1430, as enacted by PL 2001, c. 640, Pt. A, §2 and
33 affected by Pt. B, §7, is amended to read:

34 **§1430. Grounds for judicial dissolution**

35 A corporation may be dissolved by a judicial dissolution in a proceeding by:

36 **1. Attorney General.** The Attorney General if it is established that:

37 A. The corporation obtained its articles of incorporation through fraud; or

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1 B. The corporation has continued to exceed or abuse the authority conferred upon it
2 by law;

3 **2. Shareholder.** A shareholder if it is established that:

4 A. The directors are deadlocked in the management of the corporate affairs, the
5 shareholders are unable to break the deadlock and, because of the deadlock,
6 irreparable injury to the corporation is threatened or being suffered or the business
7 and affairs of the corporation can no longer be conducted to the advantage of the
8 shareholders generally;

9 B. The directors or those in control of the corporation have acted, are acting or will
10 act in a manner that is illegal, oppressive or fraudulent;

11 C. The shareholders are so divided ~~respecting~~ regarding the management of the
12 business and affairs of the corporation that the corporation is suffering or will suffer
13 irreparable injury or the business and affairs of the corporation can no longer be
14 conducted to the advantage of the shareholders generally;

15 D. The shareholders are deadlocked in voting power and have failed, for a period
16 that includes at least 2 consecutive annual meeting dates, to elect successors to
17 directors whose terms have expired; ~~or~~

18 E. The corporate assets are being misapplied or wasted; or

19 F. A shareholder of the corporation has abandoned its business and has failed within
20 a reasonable time to liquidate and distribute its assets and dissolve;

21 **3. Creditor.** A creditor if it is established that:

22 A. The creditor's claim has been reduced to judgment, the execution on the
23 judgment has been returned unsatisfied and the corporation is insolvent; or

24 B. The corporation has admitted in writing that the creditor's claim is due and
25 owing and the corporation is insolvent; or

26 **4. Corporation.** The corporation to have its voluntary dissolution continued under
27 court supervision.'

28 Amend the bill by striking out all of section 47 (page 24, lines 29 to 38 and page 25,
29 lines 1 to 16 in L.D.)

30 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
31 section number to read consecutively.

32 **SUMMARY**

33 This amendment makes a number of technical corrections to the bill as printed. It
34 also puts into one section the various alternatives defining elements of the term "public
35 corporation."

COMMITTEE AMENDMENT