

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1741

S.P. 608

March 27, 2007

An Act To Update the Maine Business Corporation Act

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.
Cosponsored by Representative SIMPSON of Auburn and Representatives: BRYANT of
Windham, CASAVANT of Biddeford, DILL of Cape Elizabeth.

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

2 **Sec. 1. 13-C MRSA §102, sub-§11-A** is enacted to read:

3 **11-A. Expenses.** "Expenses" means reasonable expenses of any kind that are
4 incurred in connection with a matter.

5 **Sec. 2. 13-C MRSA §102, sub-§30-A** is enacted to read:

6 **30-A. Public corporation.** "Public corporation" means a corporation that has shares
7 listed on a national securities exchange or has a class of equity securities registered under
8 Section 12 of the federal Securities Exchange Act of 1934, as amended.

9 **Sec. 3. 13-C MRSA §102, sub-§32-A** is enacted to read:

10 **32-A. Qualified director.** "Qualified director" is defined in this subsection.

11 A. As used in this subsection, unless the context otherwise indicates, the following
12 terms have the following meanings:

13 (1) "Director's conflicting-interest transaction" has the same meaning as in
14 section 871;

15 (2) "Material interest" means an actual or potential benefit or detriment, other
16 than one that would devolve on the corporation or the shareholders generally, that
17 would reasonably be expected to impair the objectivity of the director's judgment
18 when participating in the action to be taken; and

19 (3) "Material relationship" means a familial, financial, professional, employment
20 or other relationship that would reasonably be expected to impair the objectivity
21 of the director's judgment when participating in the action to be taken.

22 B. "Qualified director" means a person who, at the time action is to be taken under:

23 (1) Section 755, does not have:

24 (a) A material interest in the outcome of the proceeding; or

25 (b) A material relationship with a person who has such an interest;

26 (2) Section 854 or 856:

27 (a) Is not a party to the proceeding;

28 (b) Is not a director as to whom a transaction is a director's conflicting-
29 interest transaction or who sought a disclaimer of the corporation's interest in
30 a business opportunity under section 881, which transaction or disclaimer is
31 challenged in the proceeding; and

32 (c) Does not have a material relationship with a director described in
33 division (a) or (b);

34 (3) Section 873, is not a director;

- 1 (a) As to whom the transaction is a director's conflicting-interest transaction;
2 or
3 (b) Who has a material relationship with another director as to whom the
4 transaction is a director's conflicting-interest transaction; or
5 (4) Section 881, would be a qualified director under subparagraph (3) if the
6 business opportunity was a director's conflicting-interest transaction.
7 C. The presence of one or more of the following circumstances does not
8 automatically prevent a director from being a qualified director:
9 (1) Nomination or election of the director to the board by a director who is not a
10 qualified director with respect to the matter, or by any person who has a material
11 relationship with that director, acting alone or participating with others;
12 (2) Service as a director of another corporation of which a director who is not a
13 qualified director with respect to the matter or any individual who has a material
14 relationship with that director is or was also a director; or
15 (3) With respect to action to be taken under section 755, status as a named
16 defendant, as a director against whom action is demanded or as a director who
17 approved the conduct being challenged.

18 **Sec. 4. 13-C MRSA §104**, as enacted by PL 2001, c. 640, Pt. A, §2 and as
19 affected by Pt. B, §7, is amended to read:

20 **§104. Number of shareholders; householding**

21 **1. Identified as one shareholder.** For purposes of this Act, the following identified
22 as a shareholder in a corporation's current record of shareholders constitutes one
23 shareholder:

- 24 A. Three or fewer co-owners;
25 B. A corporation, partnership, trust, estate or other entity; and
26 C. The trustees, guardians, custodians or other fiduciaries of a single trust, estate, or
27 account.

28 **2. Registered in substantially similar names.** For purposes of this Act,
29 shareholdings registered in substantially similar names constitute one shareholder if it is
30 reasonable to believe that the names represent the same person.

31 **3. Householding.** A corporation is considered to have delivered written notice or
32 any other report or statement under this Act, the articles of incorporation or the bylaws to
33 all shareholders who share a common address if:

- 34 A. The corporation delivers one copy of the notice, report or statement to the
35 common address;
36 B. The corporation addresses the notice, report or statement to those shareholders
37 either as a group or to each of those shareholders individually or to the shareholders
38 in a form to which each of those shareholders has consented; and

1 C. Each of those shareholders consents to delivery of a single copy of such notice,
2 report or statement to the shareholders' common address.

3 Consent given under paragraph C is revocable by any shareholder who delivers written
4 notice of revocation to the corporation. If written notice of revocation is delivered, the
5 corporation shall begin providing individual notices, reports or other statements to the
6 revoking shareholder no later than 30 days after delivery of the written notice of
7 revocation.

8 A shareholder who fails to object by written notice to the corporation within 60 days of
9 written notice by the corporation of its intention to send single copies of notices, reports
10 or statements to shareholders who share a common address as permitted by paragraph A
11 is deemed to have consented to receiving a single copy at the common address.

12 **Sec. 5. 13-C MRSA §701, sub-§1,** as enacted by PL 2001, c. 640, Pt. A, §2 and
13 as affected by Pt. B, §7, is amended to read:

14 **1. Annual meeting required; exceptions.** A Unless directors are elected by
15 written consent in lieu of an annual meeting as permitted by section 704, a corporation
16 shall hold a meeting of shareholders annually at a time stated in or fixed in accordance
17 with its bylaws the bylaws, except that, if a corporation's articles of incorporation
18 authorize shareholders to cumulate their votes when electing directors pursuant to section
19 730, subsection 3, directors may not be elected by less than unanimous written consent.

20 **Sec. 6. 13-C MRSA §703, sub-§1, ¶A,** as enacted by PL 2001, c. 640, Pt. A, §2
21 and as affected by Pt. B, §7, is amended to read:

22 A. On application of any shareholder of the corporation entitled to participate in an
23 annual meeting if an annual meeting was not held or action by written consent in lieu
24 of an annual meeting did not become effective within the earlier of 6 months after the
25 end of the corporation's fiscal year or 15 months after its last annual meeting; or

26 **Sec. 7. 13-C MRSA §704,** as enacted by PL 2001, c. 640, Pt. A, §2 and as
27 affected by Pt. B, §7, is amended to read:

28 **§704. Action without meeting**

29 **1. Permissible action by unanimous consent.** Action required or permitted by this
30 Act to be taken at a shareholders' meeting may be taken without a meeting if the action is
31 taken by all the shareholders entitled to vote on the action. The action must be evidenced
32 by one or more written consents bearing the date of signature and describing the action
33 taken, signed by all the shareholders entitled to vote on the action and delivered to the
34 corporation for inclusion in the minutes or filing with the corporate records.

35 **1-A. Permissible action by majority consent.** The articles of incorporation may
36 provide that any action required or permitted by this Act to be taken at a shareholders'
37 meeting may be taken without a meeting, and without prior notice, if consent in writing
38 setting forth the action so taken is signed by the holders of outstanding shares having not
39 less than the minimum number of votes that would be required to authorize or take the
40 action at a meeting at which all shares entitled to vote on the action were present and

1 voted. The written consent must bear the date of signature of the shareholder who signs
2 the consent and be delivered to the corporation for inclusion in the minutes or filing with
3 the corporate records.

4 **2. Record date.** If not otherwise fixed under section 703 or 707, and if prior board
5 action is not required regarding the action to be taken without a meeting, the record date
6 for determining the shareholders entitled to take action without a meeting is the date the
7 first shareholder signs the consent under subsection 1. Written consent is not first date on
8 which a signed written consent is delivered to the corporation. If not otherwise fixed
9 under section 707 and if prior board action is required regarding the action to be taken
10 without a meeting, the record date is the close of business on the day the resolution of the
11 board taking such prior action is adopted. Written consent is not effective to take the
12 corporate action referred to in the consent unless, within 60 days of the earliest date
13 appearing on which a consent delivered to the corporation in the manner as required by
14 this section was signed, written consents signed by all a sufficient number of shareholders
15 entitled to vote on to take the action are received by have been delivered to the
16 corporation. A written consent may be revoked by a writing to that effect received by the
17 corporation prior to receipt by delivered to the corporation of before unrevoked written
18 consents sufficient in number to take the corporate action are delivered to the corporation.

19 **3. Effect of signed consent.** A consent signed under pursuant to the provisions of
20 this section has the effect of a vote taken at a meeting vote and may be described as such
21 in any document. Unless the articles of incorporation, the bylaws or a resolution of the
22 board of directors provides for a reasonable delay to permit tabulation of written
23 consents, the action taken by written consent is effective when written consents signed by
24 a sufficient number of shareholders to take the action are delivered to the corporation.

25 **4. Notice to nonvoting shareholders.** If this Act requires that notice of a proposed
26 action be given to nonvoting shareholders and the action is to be taken by unanimous
27 written consent of the voting shareholders, the corporation must give its nonvoting
28 shareholders written notice of the proposed action at least 10 days before the action is
29 taken. The notice must contain or be accompanied by the same material that, under this
30 Act, would have been required to be sent to nonvoting shareholders in a notice of meeting
31 at which the proposed action would have been submitted to the shareholders for action.
32 not more than 10 days after:

33 A. Written consents sufficient to take the action have been delivered to the
34 corporation; or

35 B. The date that tabulation of consents is completed pursuant to an authorization
36 under subsection 3, as long as that date is later than that in paragraph A.

37 The notice must reasonably describe the action taken and contain or be accompanied by
38 the same material that, under any provision of this Act, would have been required to be
39 sent to nonvoting shareholders in a notice of a meeting at which the proposed action
40 would have been submitted to the shareholders for action.

41 **5. Notice of action to nonconsenting voting shareholders.** If action is taken by
42 less than unanimous written consent of the voting shareholders, the corporation must give

1 its nonconsenting voting shareholders written notice of the action not more than 10 days
2 after:

3 A. Written consents sufficient to take the action have been delivered to the
4 corporation; or

5 B. The date that tabulation of consents is completed pursuant to an authorization
6 under subsection 3, as long as that date is later than that in paragraph A.

7 The notice must reasonably describe the action taken and contain or be accompanied by
8 the same material that, under any provision of this Act, would have been required to be
9 sent to voting shareholders in a notice of a meeting at which the action would have been
10 submitted to the shareholders for action.

11 **6. Effect of failure to provide notice.** The notice requirements in subsections 4 and
12 5 may not delay the effectiveness of actions taken by written consent. A failure to
13 comply with such notice requirements does not invalidate actions taken by written
14 consent. This subsection may not be construed to limit judicial power to fashion any
15 appropriate remedy in favor of a shareholder adversely affected by a failure to give such
16 notice within the required time period.

17 **7. Consent by electronic transmission.** An electronic transmission may be used to
18 consent to an action if the electronic transmission contains or is accompanied by
19 information from which the corporation can determine the date on which the electronic
20 transmission was signed and that the electronic transmission was authorized by the
21 shareholder, the shareholder's agent or the shareholder's attorney-in-fact.

22 **8. Delivery of a written consent.** Delivery of a written consent to the corporation's
23 clerk or registered agent at its registered office or to the corporation at its principal office
24 is considered delivery to the corporation for purposes of this section.

25 **Sec. 8. 13-C MRSA §730, sub-§3,** as enacted by PL 2001, c. 640, Pt. A, §2 and
26 as affected by Pt. B, §7, is amended to read:

27 **3. Cumulate votes; method.** A statement included in a corporation's articles of
28 incorporation that "all or a designated voting group of shareholders "are entitled to
29 cumulate their votes for directors," or containing words of similar import, means that the
30 shareholders designated are entitled to multiply the number of votes they are entitled to
31 cast by the number of directors for whom they are entitled to vote and cast the product for
32 a single candidate or distribute the product among 2 or more candidates.

33 **Sec. 9. 13-C MRSA §731, sub-§1,** as enacted by PL 2001, c. 640, Pt. A, §2 and
34 as affected by Pt. B, §7, is amended to read:

35 **1. Appointment of inspector.** ~~A public corporation having any shares listed on a~~
36 ~~national securities exchange or regularly traded in a market maintained by one or more~~
37 ~~members of a national or affiliated securities association shall, and any other corporation~~
38 may, appoint one or more inspectors to act at a meeting of shareholders and make a
39 written report of the inspectors' determinations. Each inspector shall take and sign an

1 oath faithfully to execute the duties of inspector with strict impartiality and according to
2 the best of the inspector's ability.

3 **Sec. 10. 13-C MRSA §743, sub-§4**, as enacted by PL 2001, c. 640, Pt. A, §2 and
4 as affected by Pt. B, §7, is amended to read:

5 **4. Agreement ceases to be effective.** An agreement authorized by this section
6 ceases to be effective when ~~shares of the corporation are listed on a national securities~~
7 ~~exchange or regularly traded in a market maintained by one or more members of a~~
8 ~~national or affiliated securities association~~ the corporation becomes a public corporation.
9 If the agreement ceases to be effective for any reason, the board of directors may, if the
10 agreement is contained or referred to in the corporation's articles of incorporation or
11 bylaws, adopt an amendment to the articles of incorporation or bylaws, without
12 shareholder action, to delete the agreement and any references to it.

13 **Sec. 11. 13-C MRSA §755**, as enacted by PL 2001, c. 640, Pt. A, §2 and as
14 affected by Pt. B, §7, is amended to read:

15 **§755. Dismissal**

16 **1. Dismissal of proceeding.** The court, on motion by the corporation, shall dismiss
17 a derivative proceeding if one of the groups specified in paragraphs A to C determines, in
18 good faith, after conducting a reasonable inquiry upon which its conclusions are based,
19 that the maintenance of the derivative proceeding is not in the best interests of the
20 corporation:

21 A. A panel of one or more ~~independent persons~~ individuals appointed by the court
22 on motion of the corporation. The plaintiff has the burden of proving that the panel
23 or the determination did not meet the standards required in this subsection;

24 B. A majority of ~~independent~~ qualified directors present and voting at a meeting of
25 the board of directors if the ~~independent~~ qualified directors constitute a quorum; or

26 C. A majority of a committee consisting of 2 or more ~~independent~~ qualified
27 directors appointed by majority vote of ~~independent~~ qualified directors present and
28 voting at a meeting of the board of directors, whether or not such ~~independent~~
29 qualified directors constituted a quorum.

30 **2. ~~Independence of director.~~** ~~Grounds for a director to be considered not~~
31 ~~independent for purposes of this section do not include:~~

32 ~~A. The nomination or election of the director by persons who are defendants in the~~
33 ~~derivative proceeding or against whom action is demanded;~~

34 ~~B. The naming of the director as a defendant in the derivative proceeding or as a~~
35 ~~person against whom action is demanded; or~~

36 ~~C. The approval by the director of the act being challenged in the derivative~~
37 ~~proceeding or demand if the act resulted in no personal benefit to the director.~~

38 **3. Complaint must allege with particularity.** If a derivative proceeding is
39 commenced after a determination has been made rejecting a demand by a shareholder, the

1 complaint must allege with particularity facts establishing either that a majority of the
2 board of directors did not consist of independent qualified directors at the time the
3 determination was made or that the requirements of subsection 1 have not been met.

4 **4. Burden of proof.** If a majority of the board of directors ~~does not consist~~ consisted
5 of independent qualified directors at the time the determination is made, the corporation
6 ~~has the burden of proving that the requirements of subsection 1 have been met. If a~~
7 ~~majority of the board of directors consists of independent directors at the time the~~
8 ~~determination is was~~ made, the plaintiff has the burden of proving that the requirements
9 of subsection 1 have not been met; otherwise, the corporation has the burden of proving
10 that the requirements of subsection 1 have been met.

11 **Sec. 12. 13-C MRSA §757**, as enacted by PL 2001, c. 640, Pt. A, §2 and as
12 affected by Pt. B, §7, is amended to read:

13 **§757. Payment of expenses**

14 On termination of the derivative proceeding the court may:

15 **1. Corporation to pay plaintiff's expenses.** Order the corporation to pay the
16 plaintiff's ~~reasonable~~ expenses, ~~including attorney's fees~~, incurred in the proceeding if it
17 finds that the proceeding has resulted in a substantial benefit to the corporation;

18 **2. Plaintiff to pay defendant's expenses.** Order the plaintiff to pay any defendant's
19 ~~reasonable~~ expenses, ~~including attorney's fees~~, incurred in defending the proceeding if it
20 finds that the proceeding was commenced or maintained without reasonable cause or for
21 an improper purpose; or

22 **3. Improper purpose.** Order a party to pay an opposing party's ~~reasonable~~
23 expenses, ~~including attorney's fees~~, incurred because of the filing of a pleading, motion or
24 other paper, if it finds after reasonable inquiry that the pleading, motion or other paper
25 was not well grounded in fact or warranted by existing law or a good faith argument for
26 the extension, modification or reversal of existing law and was interposed for an improper
27 purpose, such as to harass or cause unnecessary delay or needless increase in the cost of
28 litigation.

29 **Sec. 13. 13-C MRSA §801**, as enacted by PL 2001, c. 640, Pt. A, §2 and as
30 affected by Pt. B, §7, is amended to read:

31 **§801. Requirement; functions of board of directors**

32 **1. Board of directors.** Except as provided in section 743, a corporation must have a
33 board of directors.

34 **2. Corporate powers.** All corporate powers and functions must be exercised by or
35 under the authority of, and the business and affairs of the corporation managed under the
36 direction of, the corporation's board of directors, subject to any limitation set forth in an
37 agreement authorized under section 743 or in the corporation's articles of incorporation.

1 **Sec. 14. 13-C MRSA §805, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and
2 as affected by Pt. B, §7, is amended to read:

3 **2. Terms of subsequent directors.** The terms of all other directors expire at the
4 next, or if their terms are staggered in accordance with section 806, at the applicable 2nd
5 or 3rd, annual shareholders' meeting following their election ~~unless their terms are~~
6 ~~staggered under section 806.~~

7 **Sec. 15. 13-C MRSA §807**, as enacted by PL 2001, c. 640, Pt. A, §2 and as
8 affected by Pt. B, §7, is amended to read:

9 **§807. Resignation of directors**

10 **1. Notice of resignation.** A director may resign at any time by delivering a written
11 ~~notice~~ resignation to the corporation's board of directors or its chair or to the clerk of the
12 corporation.

13 **2. Effective.** A resignation is effective when the ~~notice~~ resignation is delivered
14 unless the ~~notice~~ resignation specifies a later effective date, including, but not limited to,
15 the date on which some specified future event occurs.

16 A resignation that is conditioned upon failing to receive a specified vote for election as a
17 director may provide that the resignation is irrevocable.

18 **Sec. 16. 13-C MRSA §810, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and
19 as affected by Pt. B, §7, is amended to read:

20 **2. Voting group.** If the vacant office was held by a director elected by a voting
21 group of shareholders, only the holders of shares of that voting group are entitled to vote
22 to fill the vacancy if it is filled by the shareholders and only the directors elected by that
23 voting group are entitled to fill the vacancy if it is filled by the directors.

24 **Sec. 17. 13-C MRSA §831, sub-§7** is enacted to read:

25 **7. Disclosure.** In discharging board or committee duties, a director shall disclose, or
26 cause to be disclosed, to the other board or committee members information not already
27 known by them but known by the director to be material to the discharge of their
28 decision-making or oversight functions, except that disclosure is not required to the
29 extent that the director reasonably believes that doing so would violate a duty imposed
30 under law, a legally enforceable obligation of confidentiality or a professional ethics rule.

31 **Sec. 18. 13-C MRSA §832, sub-§1, ¶A**, as enacted by PL 2001, c. 640, Pt. A, §2
32 and as affected by Pt. B, §7, is repealed and the following enacted in its place:

33 A. A defense interposed by the director does not preclude liability if the defense is
34 based on:

35 (1) Any provision in the corporation's articles of incorporation authorized by
36 section 202, subsection 2, paragraph D;

1 (2) The protection afforded by section 872 for action taken in compliance with
2 section 873 or 874; or

3 (3) The protection afforded by section 881; and

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

6 **§842. Functions of officers**

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

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

18 **Sec. 20. 13-C MRSA §843, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2 and
19 as affected by Pt. B, §7, is amended to read:

20 **1. Basic standard of conduct.** An officer, when performing in the capacity of an
21 officer ~~shall~~, has the duty to act:

22 A. In good faith;

23 B. With the care that a person in a like position would reasonably exercise under
24 similar circumstances; and

25 C. In a manner the officer reasonably believes to be in the best interests of the
26 corporation.

27 **Sec. 21. 13-C MRSA §851, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2 and
28 as affected by Pt. B, §7, is repealed.

29 **Sec. 22. 13-C MRSA §851, sub-§4**, as enacted by PL 2001, c. 640, Pt. A, §2 and
30 as affected by Pt. B, §7, is repealed.

31 **Sec. 23. 13-C MRSA §851, sub-§5**, as enacted by PL 2001, c. 640, Pt. A, §2 and
32 as affected by Pt. B, §7, is amended to read:

33 **5. Liability.** "Liability" means the obligation to pay a judgment, settlement, penalty,
34 fine, including an excise tax assessed with respect to an employee benefit plan, or
35 ~~reasonable~~ expenses incurred with respect to a proceeding.

36 **Sec. 24. 13-C MRSA §854, sub-§1**, as amended by PL 2003, c. 344, Pt. B, §68,
37 is further amended to read:

1 **1. Conditions.** A corporation may, before final disposition of a proceeding, advance
2 funds to pay for or reimburse the ~~reasonable~~ expenses incurred ~~by a director in~~
3 connection with the proceeding by an individual who is a party to a ~~the~~ proceeding
4 because ~~the director is a director of that corporation~~ that individual is a member of the
5 board of directors, if the ~~director~~ individual delivers to the corporation:

6 A. A written affirmation of the ~~director's~~ individual's good faith belief that the
7 ~~director~~ individual has met the relevant standard of conduct described in section 852,
8 subsection 1 or that the proceeding involves conduct for which liability has been
9 eliminated under a provision of the corporation's articles of incorporation as
10 authorized by section 202, subsection 2, paragraph D; and

11 B. The ~~director's~~ individual's written undertaking to repay any funds advanced if the
12 ~~director~~ individual is not entitled to mandatory indemnification under section 853 and
13 it is ultimately determined under section 855 or 856 that the ~~director~~ individual has
14 not met the relevant standard of conduct described in section 852.

15 **Sec. 25. 13-C MRSA §854, sub-§3**, as amended by PL 2003, c. 344, Pt. B, §68,
16 is further amended to read:

17 **3. Authorization process.** Authorizations under this section may be made:

18 A. By the corporation's board of directors:

19 (1) If there are 2 or more ~~disinterested~~ qualified directors, by a majority vote of
20 all the ~~disinterested~~ qualified directors, a majority of whom for this purpose
21 constitutes a quorum, or by a majority of the members of a committee of 2 or
22 more ~~disinterested~~ qualified directors appointed by a majority vote of all the
23 ~~disinterested~~ qualified directors; or

24 (2) If there are fewer than 2 ~~disinterested~~ qualified directors, by the vote
25 necessary for action by the corporation's board of directors in accordance with
26 section 825, subsection 3, in which authorization directors who do not qualify as
27 ~~disinterested~~ qualified directors may participate; or

28 B. By the shareholders, but shares owned by or voted under the control of a director
29 who at the time ~~does is not qualify as a disinterested~~ a qualified director may not be
30 voted on the authorization.

31 **Sec. 26. 13-C MRSA §856, sub-§2**, as amended by PL 2003, c. 344, Pt. B, §68,
32 is further amended to read:

33 **2. Determination of permissibility.** A determination under subsection 1 that
34 indemnification is permissible must be made:

35 A. If there are 2 or more ~~disinterested~~ qualified directors, by the corporation's board
36 of directors by a majority vote of all the ~~disinterested~~ qualified directors, a majority
37 of whom for this purpose constitutes a quorum, or by a majority of the members of a
38 committee of 2 or more ~~disinterested~~ qualified directors appointed by a majority vote
39 of all the ~~disinterested~~ qualified directors;

40 B. By special legal counsel:

- 1 (1) Selected in the manner prescribed in paragraph A; or
2 (2) If there are fewer than 2 ~~disinterested~~ qualified directors, selected by the
3 corporation's board of directors in which selection directors who ~~do~~ are not
4 ~~qualify as disinterested~~ qualified directors may participate; or
5 C. By the shareholders, but shares owned by or voted under the control of a director
6 who at the time ~~does~~ is not ~~qualify as a disinterested~~ a qualified director may not be
7 voted on the determination.

8 **Sec. 27. 13-C MRSA §856, sub-§3**, as amended by PL 2003, c. 344, Pt. B, §68,
9 is further amended to read:

10 **3. Authorization process.** Authorization of indemnification must be made in the
11 same manner as the determination that indemnification is permissible, except that if there
12 are fewer than 2 ~~disinterested~~ qualified directors or if the determination is made by
13 special legal counsel, authorization of indemnification must be made by those entitled to
14 select special legal counsel under subsection 2, paragraph B, subparagraph (2) ~~to select~~
15 ~~special legal counsel~~.

16 **Sec. 28. 13-C MRSA §871**, as corrected by RR 2001, c. 2, Pt. A, §20 and as
17 affected by §21, is amended to read:

18 **§871. Definitions**

19 As used in this subchapter, unless the context otherwise indicates, the following
20 terms have the following meanings.

21 ~~**1. Conflicting interest.** "Conflicting interest" with respect to a corporation means~~
22 ~~the interest a director of the corporation has respecting a transaction effected or proposed~~
23 ~~to be effected by the corporation or by a subsidiary of the corporation or any other entity~~
24 ~~in which the corporation has a controlling interest if:~~

25 ~~**A.** Whether or not the transaction is brought before the corporation's board of~~
26 ~~directors for action, the director knows at the time of commitment that the director or~~
27 ~~a related person is a party to the transaction or has a beneficial financial interest in or~~
28 ~~so closely linked to the transaction and of such financial significance to the director~~
29 ~~or a related person that the interest would reasonably be expected to exert an~~
30 ~~influence on the director's judgment if the director were called upon to vote on the~~
31 ~~transaction; or~~

32 ~~**B.** The transaction is brought, or is of such character and significance to the~~
33 ~~corporation that it would in the normal course be brought, before the corporation's~~
34 ~~board of directors for action, and the director knows at the time of commitment that~~
35 ~~any of the following persons is either a party to the transaction or has a beneficial~~
36 ~~financial interest in or so closely linked to the transaction and of such financial~~
37 ~~significance to the person that the interest would reasonably be expected to exert an~~
38 ~~influence on the director's judgment if the director were called upon to vote on the~~
39 ~~transaction:~~

1 ~~(1) An entity, other than the corporation, of which the director is a director,~~
2 ~~general partner, agent or employee;~~

3 ~~(2) A person that controls one or more of the entities specified in subparagraph~~
4 ~~(1) or an entity that is controlled by, or is under common control with, one or~~
5 ~~more of the entities specified in subparagraph (1); or~~

6 ~~(3) An individual who is a general partner, principal or employer of the director.~~

7 **1-A. Control.** "Control" means:

8 A. Having the power, directly or indirectly, to elect or remove a majority of the
9 members of the board of directors or other governing body of an entity, whether
10 through the ownership of voting shares or interests, by contract or otherwise; or

11 B. Being subject to a majority of the risk of loss from the entity's activities or
12 entitled to receive a majority of the entity's residual returns.

13 **1-B. Controlled by.** "Controlled by" means a person subject to control by another
14 person.

15 **2. Director's conflicting-interest transaction.** "Director's conflicting-interest
16 transaction" with respect to a corporation means a transaction effected or proposed to be
17 effected by the corporation or by a subsidiary of the corporation or any other entity in
18 which the corporation has a controlling interest respecting which a director of the
19 corporation has a conflicting interest. means, as effected or proposed to be effected by a
20 corporation or by an entity controlled by a corporation, a transaction:

21 A. To which, at the relevant time, the director is a party;

22 B. That the director knew of, at the relevant time, and in which the director had a
23 material financial interest, known by the director; or

24 C. To which a related person was a party or had a material financial interest in,
25 known, at the relevant time, by the director.

26 **2-A. Material financial interest.** "Material financial interest" means a financial
27 interest in a transaction that would reasonably be expected to impair the objectivity of the
28 director's judgment when participating in action on the authorization of the transaction.

29 **3. Related person.** "Related person" means:

30 A. The director's spouse, or the parent or sibling of the spouse; the director's child,
31 grandchild, sibling or parent, or the spouse of that child, grandchild, sibling or parent;
32 an individual having the same home as the director; or a trust or estate of which an
33 individual specified in this paragraph is a substantial beneficiary; or

34 B. A trust, estate, incapacitated person, conservatee or minor of which the director
35 is a fiduciary.

36 C. A child, stepchild, grandchild, parent, stepparent, grandparent, sibling,
37 stepsibling, half sibling, aunt, uncle, niece or nephew, or spouse of any of those
38 persons, of the director or of the director's spouse;

- 1 D. An individual living in the same home as the director;
2 E. An entity, other than the corporation or an entity controlled by the corporation,
3 controlled by the director or any person specified in paragraph A, C or D;
4 F. A domestic or foreign:
5 (1) Business or nonprofit corporation, other than the corporation or an entity
6 controlled by the corporation, of which the director is a director;
7 (2) Unincorporated entity of which the director is a general partner or a member
8 of the governing body; or
9 (3) Individual, trust or estate for whom or of which the director is a trustee,
10 guardian, personal representative or like fiduciary; or
11 G. A person that is, or an entity that is controlled by, an employer of the director.

12 **3-A. Relevant time.** "Relevant time," with regards to a transaction, means:

- 13 A. The time at which the directors' action regarding the transaction is taken in
14 compliance with section 873; or
15 B. If the transaction is not brought before the board of directors of the corporation, or
16 its committee, for action under section 873, the time at which the corporation or an
17 entity controlled by the corporation becomes legally obligated to consummate the
18 transaction.

19 **4. Required disclosure.** "Required disclosure" means disclosure ~~by the director~~
20 ~~who has a conflicting interest~~ of:

- 21 A. The existence and nature of the director's conflicting interest; and
22 B. All facts known to the director ~~respecting~~ regarding the subject matter of the
23 transaction that ~~an ordinarily prudent person a director without such conflicting~~
24 ~~interest~~ would reasonably believe to be material ~~to a judgment about in deciding~~
25 ~~whether or not~~ to proceed with the transaction.

26 **5. Time of commitment.** "Time of commitment" ~~respecting a transaction means the~~
27 ~~time when the transaction is consummated or, if made pursuant to contract, the time when~~
28 ~~the corporation or its subsidiary or the entity in which it has a controlling interest~~
29 ~~becomes contractually obligated so that its unilateral withdrawal from the transaction~~
30 ~~would entail significant loss, liability or other damage.~~

31 **Sec. 29. 13-C MRSA §872**, as amended by PL 2003, c. 344, Pt. B, §69, is further
32 amended to read:

33 **§872. Judicial action**

- 34 **1. Nonconflicting-interest transaction not actionable.** A transaction effected or
35 proposed to be effected by a corporation ~~or by a subsidiary of the corporation or any other~~
36 ~~entity in which the corporation has a controlling interest that is not a director's~~
37 ~~conflicting-interest transaction may not be enjoined, set aside or give rise to an award of~~
38 ~~damages or other sanctions in a proceeding by a shareholder or by or in the right of the~~

1 corporation because a director of the corporation or any person with whom or which the
2 director has a personal, economic or other association has an interest in the transaction, or
3 by an entity controlled by a corporation, may not be the subject of equitable relief, or give
4 rise to an award of damages or other sanctions against a director of the corporation, in a
5 proceeding by a shareholder or by or in the right of the corporation on the ground that the
6 director has an interest regarding the transaction if it is not a director's conflicting-interest
7 transaction.

8 **2. Conflicting-interest transaction not actionable if standards met.** A director's
9 conflicting-interest transaction may not be ~~enjoined, set aside~~ the subject of equitable
10 relief or give rise to an award of damages or other sanctions in a proceeding by a
11 shareholder or by or in the right of the corporation because the director or any person
12 with whom or which the director has a personal, economic or other association has an
13 interest in against a director of the corporation, in a proceeding by a shareholder or by or
14 in the right of the corporation, on the ground that the director has an interest regarding the
15 transaction, if:

16 A. Directors' action ~~respecting~~ regarding the transaction was at any time taken in
17 compliance with section 873 at any time;

18 B. Shareholders' action ~~respecting~~ regarding the transaction was at any time taken
19 in compliance with section 874 at any time; or

20 C. The transaction, judged according to the circumstances at the relevant time of
21 ~~commitment~~, is established to have been fair to the corporation. For purposes of this
22 paragraph, a transaction is fair to a corporation if, taken as a whole, the transaction
23 was beneficial to the corporation, taking into appropriate account whether the
24 transaction was:

25 (1) Fair in terms of the director's dealings with the corporation; and

26 (2) Comparable to what might have been obtained in an arms-length transaction,
27 given the consideration paid or received by the corporation.

28 **Sec. 30. 13-C MRSA §873**, as amended by PL 2003, c. 344, Pt. B, §§70 and 71, is
29 further amended to read:

30 **§873. Directors' action**

31 **1. Action regarding transaction.** Directors' action ~~respecting~~ regarding a director's
32 conflicting-interest transaction is effective for purposes of section 872, subsection 2,
33 paragraph A if the transaction ~~received~~ has been authorized by the affirmative vote of a
34 majority, but no fewer than 2, of those qualified directors on the corporation's board of
35 directors or on a duly empowered committee of the board of the qualified directors who
36 voted on the transaction, after either required disclosure to them, to by the extent the
37 conflicted director of information was not already known by them, or those qualified
38 directors, or after modified disclosure in compliance with subsection 2 ~~2-A~~, except that
39 action by a committee is effective under this section only if:

40 A. ~~All of the committee's members are~~ The qualified directors have deliberated and
41 voted outside the presence of and without the participation by any other director; and

1 B. ~~The committee's members are either all the qualified directors on the board or~~
2 ~~are appointed by the affirmative vote of a majority of the qualified directors on the~~
3 ~~board. When the action has been taken by a committee, all members of the committee~~
4 ~~were qualified directors and either:~~

5 (1) The committee was composed of all the qualified directors on the board of
6 directors; or

7 (2) The members of the committee were appointed by the affirmative vote of a
8 majority of the qualified directors on the board.

9 **2. Disclosure; conflicting interest.** ~~If a director has a conflicting interest respecting~~
10 ~~a transaction, but neither the director nor a related person of the director as defined in~~
11 ~~section 871, subsection 3, paragraph A is a party to the transaction, and if the director has~~
12 ~~a duty under law or professional canon, or a duty of confidentiality to another person,~~
13 ~~respecting information relating to the transaction such that the director may not make the~~
14 ~~disclosure described in section 871, subsection 4, paragraph B, then disclosure is~~
15 ~~sufficient for purposes of subsection 1 if the director:~~

16 ~~A. Discloses to the directors voting on the transaction the existence and nature of~~
17 ~~the director's conflicting interest and informs them of the character and limitations~~
18 ~~imposed by that duty before their vote on the transaction; and~~

19 ~~B. Plays no part, directly or indirectly, in their deliberations or vote.~~

20 **2-A. Disclosure; conflicting interest.** Notwithstanding subsection 1, when a
21 transaction is a director's conflicting-interest transaction only because a related person
22 described in section 871, subsection 3, paragraph F or G is a party to or has a material
23 financial interest in the transaction, the conflicted director is not obligated to make
24 required disclosure to the extent that the director reasonably believes that doing so would
25 violate a duty imposed under law, a legally enforceable obligation of confidentiality or a
26 professional ethics rule, as long as the conflicted director discloses to the qualified
27 directors voting on the transaction:

28 A. All information required to be disclosed that the director does not believe would
29 violate a duty or obligation of the director;

30 B. The existence and nature of the director's conflicting interest; and

31 C. The nature of the conflicted director's duty not to disclose the confidential
32 information.

33 **3. Quorum.** ~~A majority, but no fewer than 2, of all the qualified directors on the~~
34 ~~corporation's board of directors or on a committee of the corporation's board of directors,~~
35 ~~constitutes a quorum for purposes of action that complies with this section. Directors'~~
36 ~~action that otherwise complies with this section is not affected by the presence or vote of~~
37 ~~a director who is not a qualified director.~~

38 **4. Qualified director.** ~~For purposes of this section, "qualified director" means, with~~
39 ~~respect to a director's conflicting interest transaction, any director who does not have~~
40 ~~either:~~

41 ~~A. A conflicting interest respecting the transaction; or~~

1 ~~B. A familial, financial, professional or employment relationship with a 2nd~~
2 ~~director who does have a conflicting interest respecting the transaction when that~~
3 ~~relationship would, in the circumstances, reasonably be expected to exert an influence~~
4 ~~on the first director's judgment when voting on the transaction.~~

5 **5. Authorization when qualified director's action not taken.** When directors'
6 action under this section does not satisfy a quorum or voting requirement applicable to
7 the authorization of the transaction by reason of the articles of incorporation, the bylaws
8 or a provision of law, independent action to satisfy those authorization requirements must
9 be taken by the board of directors or a committee, in which action directors who are not
10 qualified directors may participate.

11 **Sec. 31. 13-C MRSA §874**, as amended by PL 2003, c. 344, Pt. B, §§72 and 73, is
12 further amended to read:

13 **§874. Shareholders' action**

14 **1. Shareholders' action.** Shareholders' action ~~respecting~~ regarding a director's
15 conflicting-interest transaction is effective for purposes of section 872, subsection 2,
16 paragraph B if a majority of the votes ~~entitled to be~~ cast by the holders of all qualified
17 shares ~~was cast~~ are in favor of the transaction after:

18 A. ~~A notice was given~~ Notice to the shareholders describing the ~~director's~~
19 ~~conflicting interest~~ action to be taken regarding the transaction;

20 B. Provision to the ~~secretary or other officer or agent of the~~ corporation of the
21 information referred to in subsection 4; and

22 C. ~~Required disclosure, as defined in section 871, subsection 4,~~ Communication to
23 the shareholders ~~who voted~~ entitled to vote on the transaction of the information that
24 is the subject of required disclosure, to the extent the information ~~was~~ is not known
25 by them.

26 **~~2. Qualified shares.~~** ~~For purposes of this section, "qualified shares" means any~~
27 ~~shares entitled to vote with respect to the director's conflicting interest transaction except~~
28 ~~shares that, to the knowledge, before the vote, of the clerk, the secretary or other officer~~
29 ~~or agent of the corporation authorized to tabulate votes, are beneficially owned or the~~
30 ~~voting of which is controlled by a director who has a conflicting interest respecting the~~
31 ~~transaction or by a related person of the director, or both.~~

32 **3. Quorum.** A majority of the votes entitled to be cast by the holders of all qualified
33 shares constitutes a quorum for purposes of ~~action that complies~~ compliance with this
34 section. Subject to ~~subsections 4 and~~ subsection 5, shareholders' action that otherwise
35 complies with this section is not affected by the presence of holders of shares that are not
36 qualified shares, or the voting of shares that are not qualified shares.

37 **4. Identification of holdings.** ~~For purposes of compliance with subsection 1, a~~ A
38 director who has a conflicting interest ~~respecting~~ regarding the transaction shall, before
39 the shareholders' vote, inform the ~~secretary clerk~~ or other officer or agent of the
40 corporation authorized to tabulate votes, in writing, of the number of ~~all~~ shares that the
41 director knows are not qualified shares under subsection 3 and the identity of persons

1 ~~holding or controlling the vote of all shares that the director knows are beneficially~~
2 ~~owned or the voting of which is controlled by the director or by a related person of the~~
3 ~~director, or both the holders of those shares.~~

4 **5. Failure to comply.** If a shareholders' vote does not comply with subsection 1
5 solely because of a ~~failure of a director~~ director's failure to comply with subsection 4 and
6 if the director establishes that the ~~director's failure did not determine and~~ was not intended
7 ~~by the director~~ to influence and did not in fact determine the outcome of the vote, the
8 court may, ~~with or without further proceedings respecting section 872, subsection 2,~~
9 ~~paragraph C,~~ take such action respecting regarding the transaction and the director and
10 may give such effect, if any, to the shareholders' vote as ~~it~~ the court considers appropriate
11 in the circumstances.

12 **6. Authorization when qualified shareholder action not taken.** When
13 shareholders' action under this section does not satisfy a quorum or voting requirement
14 applicable to the authorization of the transaction by reason of the articles of
15 incorporation, the bylaws or a provision of law, independent action to satisfy those
16 authorization requirements must be taken by the shareholders, in which action
17 shareholders that are not qualified shareholders may participate.

18 **7. Definitions.** As used in this section, unless the context otherwise indicates, the
19 following terms have the following meanings.

20 A. "Holder" means and "held by" refers to shares held by both a record shareholder
21 and a beneficial shareholder.

22 B. "Qualified shares" means all shares entitled to be voted with respect to the
23 transaction except for shares that the secretary or other officer or agent of the
24 corporation authorized to tabulate votes either knows, or under section 873,
25 subsection 2-A is notified, are held by:

26 (1) A director who has a conflicting interest regarding the transaction; or

27 (2) A related person of the director, excluding a person described in section 871,
28 subsection 3, paragraph G.

29 **Sec. 32. 13-C MRSA c. 8, sub-c. 7** is enacted to read:

30 **SUBCHAPTER 7**

31 **BUSINESS OPPORTUNITIES**

32 **§881. Business opportunities**

33 **1. Business opportunity not actionable if standards met.** A director's taking
34 advantage, directly or indirectly, of a business opportunity may not be the subject of
35 equitable relief, or give rise to an award of damages or other sanctions against the
36 director, in a proceeding by or in the right of the corporation on the ground that such
37 opportunity should have first been offered to the corporation, if before becoming legally

1 obligated regarding the opportunity the director brings it to the attention of the
2 corporation and:

3 A. Action by qualified directors disclaiming the corporation's interest in the
4 opportunity is taken in compliance with the procedures set forth in section 873, as if
5 the decision being made concerned a director's conflicting-interest transaction as
6 defined in section 871, subsection 2; or

7 B. Action by shareholders disclaiming the corporation's interest in the opportunity is
8 taken in compliance with the procedures set forth in section 874, as if the decision
9 being made concerned a director's conflicting-interest transaction as defined in
10 section 871, subsection 2.

11 In each case, the director, rather than making a required disclosure as defined in section
12 871, subsection 4, must have made prior disclosure to those acting on behalf of the
13 corporation of all material facts concerning the business opportunity that are then known
14 to the director.

15 **2. No inference or change in burden of proof.** In any proceeding seeking equitable
16 relief or other remedies based upon an alleged improper taking advantage of a business
17 opportunity by a director, the fact that the director did not employ the procedure
18 described in subsection 1 before taking advantage of the opportunity does not create an
19 inference that the opportunity should have been first presented to the corporation or alter
20 the burden of proof otherwise applicable to establish that the director breached a duty to
21 the corporation in the circumstances.

22 **Sec. 33. 13-C MRSA §1303, sub-§1,** as enacted by PL 2001, c. 640, Pt. A, §2
23 and as affected by Pt. B, §7, is amended to read:

24 **1. National listing; specific market value.** Appraisal rights are not available for the
25 holders of shares of any class or series of shares that:

26 ~~A. Is listed on the New York Stock Exchange or the American Stock Exchange or~~
27 ~~designated as a national market system security on an interdealer quotation system by~~
28 ~~the National Association of Securities Dealers a covered security under Section~~
29 ~~18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended; or~~

30 B. ~~Has~~ Is traded in an organized market and has at least 2,000 shareholders and the
31 outstanding shares of such class or series have a market value of at least \$20,000,000
32 exclusive of the value of such shares held by a corporation's subsidiaries, senior
33 executives, directors and beneficial shareholders owning more than 10% of such
34 shares; or

35 C. Is issued by an open end management investment company registered with the
36 United States Securities and Exchange Commission under the federal Investment
37 Company Act of 1940 and may be redeemed at the option of the holder at net asset
38 value.

39 **Sec. 34. 13-C MRSA §1321, sub-§3** is enacted to read:

40 **3. Action by written consent.** If a corporate action specified in section 1302 is to be
41 approved by written consent of the shareholders pursuant to section 704:

1 A. Written notice that appraisal rights are, are not or may be available must be given
2 to each record shareholder from whom a consent is solicited at the time consent of
3 such shareholder is first solicited and, if the corporation has concluded that appraisal
4 rights are or may be available, must be accompanied by a copy of this chapter; and

5 B. Written notice that appraisal rights are, are not or may be available must be
6 delivered together with the notice to nonconsenting voting and nonvoting
7 shareholders as required by section 704, subsections 4 and 5, may include the
8 materials described in section 1323 and, if the corporation has concluded that
9 appraisal rights are or may be available, must be accompanied by a copy of this
10 chapter.

11 **Sec. 35. 13-C MRSA §1322**, as enacted by PL 2001, c. 640, Pt. A, §2 and as
12 affected by Pt. B, §7, is repealed.

13 **Sec. 36. 13-C MRSA §1322-A** is enacted to read:

14 **§1322-A. Notice of intent to demand payment**

15 **1. Preservation of appraisal rights if action taken at a meeting.** If a proposed
16 corporate action requiring appraisal rights under sections 1302 to 1304 is submitted to a
17 vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with
18 respect to any class or series of shares:

19 A. Shall deliver to the corporation before the vote is taken written notice of the
20 shareholder's intent to demand payment if the proposed action is effectuated; and

21 B. May not vote, or cause or permit to be voted, any shares of the class or series in
22 favor of the proposed action.

23 **2. Preservation of appraisal rights if action taken by consent.** If a corporate
24 action specified in section 1302 is to be approved by less than unanimous written consent,
25 a shareholder who wishes to assert appraisal rights with respect to any class or series of
26 shares may not execute a consent in favor of the proposed action with respect to that class
27 or series of shares.

28 **3. Effect of failure to preserve.** A shareholder who fails to satisfy the requirements
29 of subsection 1 or 2 is not entitled to payment under this chapter.

30 **Sec. 37. 13-C MRSA §1323, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2
31 and as affected by Pt. B, §7, is amended to read:

32 **1. Written appraisal notice; form.** If a proposed corporate action requiring
33 appraisal rights under section 1302 becomes effective, a corporation must deliver a
34 written appraisal notice and form required by subsection 2, paragraph A to all
35 shareholders who satisfied the requirements of section ~~1322~~ 1322-A. In the case of a
36 merger under section 1105, the parent shall deliver a written appraisal notice and form to
37 all record shareholders who may be entitled to assert appraisal rights.

38 **Sec. 38. 13-C MRSA §1323, sub-§2, ¶A**, as enacted by PL 2001, c. 640, Pt. A,
39 §2 and as affected by Pt. B, §7, is repealed and the following enacted in its place:

1 A. Supply a form that specifies the first date of any announcement to shareholders,
2 made prior to the date the corporate action became effective, of the principal terms of
3 the proposed corporate action, if any. If such announcement was made the form
4 must:

5 (1) Require the shareholder asserting appraisal rights to certify whether
6 beneficial ownership of those shares for which appraisal rights are asserted was
7 acquired before that date; and

8 (2) Require the shareholder asserting appraisal rights to certify that the
9 shareholder did not vote for or consent to the transaction;

10 **Sec. 39. 13-C MRSA §1323, sub-§3** is enacted to read:

11 **3. Notice accompanied by financial statements.** When corporate action described
12 in section 1302, subsection 1 is proposed, or a merger pursuant to section 1105 is
13 effected, the notice referred to in subsection 1, if the corporation concludes that appraisal
14 rights are or may be available, and in subsection 2 must be accompanied by:

15 A. The annual financial statements specified in section 1620, subsection 1 of the
16 corporation that issued the shares that may be subject to appraisal, whether or not a
17 close corporation, which must be as of a date ending not more than 16 months before
18 the date of the notice and must comply with section 1620, subsection 2. If such
19 annual financial statements are not reasonably available, the corporation shall provide
20 reasonably equivalent financial information; and

21 B. The latest available quarterly financial statements of such corporation, if any.

22 **Sec. 40. 13-C MRSA §1324, sub-§1,** as enacted by PL 2001, c. 640, Pt. A, §2
23 and as affected by Pt. B, §7, is amended to read:

24 **1. Perfection of rights.** A shareholder who receives notice pursuant to section 1323
25 and who wishes to exercise appraisal rights shall ~~certify on~~ sign and return the form sent
26 by the corporation and, in the case of certificated shares, deposit the shareholder's
27 certificates in accordance with the terms of the notice by the date referred to in the notice
28 pursuant to section 1323, subsection 2, paragraph B, subparagraph (2) and certify whether
29 the beneficial owner of the shares acquired beneficial ownership of the shares before the
30 date required to be set forth in the notice pursuant to section 1323, subsection 2,
31 paragraph A. If a shareholder fails to make this certification, the corporation may elect to
32 treat the shareholder's shares as after-acquired shares under section 1326. A shareholder
33 who wishes to exercise appraisal rights shall execute and return the form and, in the case
34 of certificated shares, deposit the shareholder's certificates in accordance with the terms
35 of the notice by the date referred to in the notice pursuant to section 1323, subsection 2,
36 paragraph B, subparagraph (2). Once a shareholder deposits that shareholder's
37 certificates or, in the case of uncertificated shares, returns the executed forms, that
38 shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to
39 subsection 2.

40 **Sec. 41. 13-C MRSA §1325, sub-§2,** as enacted by PL 2001, c. 640, Pt. A, §2
41 and as affected by Pt. B, §7, is amended to read:

1 **2. Additional information.** The payment to each shareholder pursuant to subsection
2 1 must be accompanied by:

3 A. ~~Financial~~ Annual financial statements specified in section 1620, subsection 1 of
4 the corporation that issued the shares to be appraised, ~~consisting of a balance sheet as~~
5 ~~of the end of a fiscal year~~ whether or not a close corporation, that must be as of a date
6 ending not more than 16 months before the date of payment, ~~an income statement for~~
7 ~~that year, a statement of changes in shareholders' equity for that year, and the latest~~
8 ~~available interim financial statements, if any~~ must comply with section 1620,
9 subsection 2. If such annual financial statements are not reasonably available, the
10 corporation shall provide reasonably equivalent financial information; ;

11 B. A statement of the corporation's estimate of the fair value of the shares, which
12 estimate must equal or exceed the corporation's estimate given pursuant to section
13 1323, subsection 2, paragraph B, subparagraph (3); ~~and~~

14 C. A statement that shareholders described in subsection 1 have the right to demand
15 further payment under section 1327 and that if any such shareholder does not do so
16 within the time period specified in section 1327, that shareholder is deemed to have
17 accepted the payment in full satisfaction of the corporation's obligations under this
18 chapter; and

19 D. The latest available quarterly financial statements of the corporation, if any.

20 **Sec. 42. 13-C MRSA §1332**, as enacted by PL 2001, c. 640, Pt. A, §2 and as
21 affected by Pt. B, §7, is amended to read:

22 **§1332. Court costs and counsel fees**

23 **1. Court costs.** The court in an appraisal proceeding commenced under section
24 1331 shall determine all court costs of the proceeding, including the reasonable
25 compensation and expenses of appraisers appointed by the court. The court shall assess
26 the court costs against a corporation, except that the court may assess court costs against
27 all or some of the shareholders demanding appraisal, in amounts the court finds equitable,
28 to the extent the court finds the shareholders acted arbitrarily, vexatiously or not in good
29 faith with respect to the rights provided by this chapter.

30 **2. Counsel; expert fees.** The court in an appraisal proceeding under section 1331
31 may also assess the ~~fees and expenses of counsel and experts~~ for the respective parties, in
32 amounts the court finds equitable:

33 A. Against a corporation and in favor of any or all shareholders demanding
34 appraisal if the court finds the corporation did not substantially comply with the
35 requirements of section 1321, 1323, 1325 or 1326; or

36 B. Against either a corporation or a shareholder demanding appraisal, in favor of
37 any other party, if the court finds that the party against whom the ~~fees and expenses~~
38 are assessed acted arbitrarily, vexatiously or not in good faith with respect to the
39 rights provided by this chapter.

40 **3. Fees awarded from settlement.** If the court in an appraisal proceeding under
41 section 1331 finds that the ~~services of counsel for expenses incurred by~~ any shareholder

1 were of substantial benefit to other shareholders similarly situated and that ~~the fees for~~
2 ~~those services expenses~~ should not be assessed against a the corporation, the court may
3 ~~award to the counsel reasonable fees to~~ direct that those expenses be paid out of the
4 amounts awarded the shareholders who were benefitted.

5 **4. Corporation fails to make payment.** To the extent a corporation fails to make a
6 required payment pursuant to section 1325, 1326 or 1327, a shareholder may sue directly
7 for the amount owed and, to the extent successful, is entitled to recover from the
8 corporation all ~~costs and~~ expenses of the suit, ~~including counsel fees.~~

9 **Sec. 43. 13-C MRSA §1406,** as enacted by PL 2001, c. 640, Pt. A, §2 and as
10 affected by Pt. B, §7, is amended to read:

11 **§1406. Effect of dissolution**

12 **1. Extension of corporate existence.** ~~A dissolved corporation continues corporate~~
13 ~~existence for a period not exceeding 3 years from the effective date of the articles of~~
14 ~~dissolution, except that the 3 year period may be extended if the extension is approved by~~
15 ~~2/3 vote of the shareholders of the dissolved corporation and notice of the extension is~~
16 ~~filed with the Secretary of State prior to the expiration of the 3 year period.~~ A dissolved
17 corporation may not carry on any business except that which is appropriate to wind up
18 and liquidate its business and affairs, including:

- 19 A. Collecting the corporation's assets;
20 B. Disposing of properties that will not be distributed in kind to shareholders;
21 C. Discharging or making provision for discharging its liabilities;
22 D. Distributing remaining property among shareholders according to their interests;
23 and
24 E. Doing every other act necessary to wind up and liquidate its business and affairs.

25 **2. Dissolution; exclusions.** Dissolution of a corporation does not:

- 26 A. Transfer title to the corporation's property;
27 B. Prevent transfer of its shares or securities, although the authorization to dissolve
28 may provide for closing the corporation's share transfer records;
29 C. Subject the corporation's directors or officers to standards of conduct different
30 from those prescribed in chapter 8;
31 D. Change quorum or voting requirements for the board of directors or
32 shareholders; change provisions for selection, resignation or removal of the directors
33 or officers or both; or change provisions for amending its bylaws;
34 E. Prevent commencement of a proceeding by or against the corporation in its
35 corporate name;
36 F. Abate or suspend a proceeding pending by or against the corporation on the
37 effective date of dissolution; or
38 G. Terminate the authority of the clerk of the corporation.

1 ~~3. Abatement of action.~~ With respect to any action, suit or proceeding begun by or
2 against the corporation prior to the commencement of or during the 3 year period after
3 the date of its dissolution, the action does not abate by reason of the dissolution of the
4 corporation; the corporate existence of the dissolved corporation, solely for purposes of
5 the action, suit or proceeding, continues beyond that period and until any judgments,
6 orders or decrees are fully executed.

7 4. Transfer of property. Those shareholders of the corporation and their successors
8 in interest who, collectively, represent a majority of the voting power of the corporation
9 are empowered to act as liquidating trustees to take all actions necessary or appropriate to
10 distribute or dispose of any undistributed property of the corporation if:

11 A. There are no officers authorized to act on a matter for a dissolved corporation;

12 B. There are no directors of the corporation; or

13 C. The directors are unable to act on the matter on behalf of the corporation.

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

16 **§1430. Grounds for judicial dissolution**

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

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

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

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

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

23 A. The directors are deadlocked in the management of the corporate affairs, the
24 shareholders are unable to break the deadlock and, because of the deadlock,
25 irreparable injury to the corporation is threatened or being suffered or the business
26 and affairs of the corporation can no longer be conducted to the advantage of the
27 shareholders generally;

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

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

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

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

1 This subsection does not apply in the case of a corporation that, on the date of the filing
2 of the proceeding, is a public corporation or that has a class or series of shares that is a
3 covered security under the federal Securities Act of 1933, Section 18(b)(A) or (B), as
4 amended;

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

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

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

10 **4. Corporation.** The corporation to have its voluntary dissolution continued under
11 court supervision; or

12 **5. Abandonment of business.** A shareholder of the corporation has abandoned its
13 business and has failed within a reasonable time to liquidate and distribute its assets and
14 dissolve.

15 **Sec. 45. 13-C MRSA §1432, sub-§1,** as enacted by PL 2001, c. 640, Pt. A, §2
16 and as affected by Pt. B, §7, is amended to read:

17 **1. Appoint receivers.** A court in a judicial proceeding brought to dissolve a
18 corporation may appoint one or more receivers to manage and to wind up and liquidate
19 the business and affairs of the corporation. The court shall hold a hearing, after notifying
20 all parties to the proceeding and any interested persons designated by the court, before
21 appointing a receiver. The court appointing a receiver has ~~exclusive~~ jurisdiction over the
22 corporation and all of its property wherever located.

23 **Sec. 46. 13-C MRSA §1432, sub-§4,** as enacted by PL 2001, c. 640, Pt. A, §2
24 and as affected by Pt. B, §7, is amended to read:

25 **4. Compensation; expenses.** A court from time to time during a receivership under
26 this section may order compensation paid and ~~expense disbursements or reimbursements~~
27 made expenses paid or reimbursed to the receiver and the receiver's counsel from the
28 assets of the corporation or proceeds from the sale of the assets.

29 **Sec. 47. 13-C MRSA §1434, sub-§2,** as enacted by PL 2001, c. 640, Pt. A, §2
30 and as affected by Pt. B, §7, is amended to read:

31 **2. Motion of court.** On the application of a plaintiff or any other shareholder or on
32 the court's own motion in any action filed by a shareholder to dissolve a corporation that
33 is not a public corporation on any of the grounds enumerated in section 1430, subsection
34 2, or on the court's own motion in any other action to dissolve a corporation, the court
35 may make an order or grant relief, other than dissolution, that in its discretion it considers
36 appropriate, including, without limitation, an order:

37 A. Providing for the purchase at their fair value of shares of any shareholder either
38 by the corporation or by other shareholders;

1 B. Providing for the sale of all the property and franchises of the corporation to a
2 single purchaser, who succeeds to all the rights and privileges of the corporation and
3 may reorganize the same under the direction of the court;

4 C. Directing or prohibiting any act of the corporation or of shareholders, directors,
5 officers or other persons party to the action;

6 D. Canceling or altering any provision contained in the articles of incorporation, in
7 any amendment to the articles of incorporation or in the bylaws of the corporation;

8 E. Appointing a person who is qualified under the laws of this State to act as a
9 receiver and who has no close personal, business or financial relationship to the
10 members of any contending faction within the corporation to act as an additional
11 director, either in all matters or in those matters the court directs, and to hold office as
12 a director for any period the court orders, but not longer than 2 years. The person
13 must be paid by the corporation compensation as ordered by the court and may be
14 required to post security for the faithful performance of the director's duties in an
15 amount and with any sureties the court orders; or

16 F. Canceling, altering or enjoining any resolution or other act of the corporation.

17 **Sec. 48. 13-C MRSA §1604, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2
18 and as affected by Pt. B, §7, is amended to read:

19 **3. Refuse inspection; good faith.** If the court orders inspection and copying of the
20 records demanded under subsection 1 or 2, the court shall also order the corporation to
21 pay the shareholder's ~~costs including reasonable counsel fees~~ expenses incurred to obtain
22 the order unless the corporation proves that it refused inspection in good faith because it
23 had a reasonable basis for doubt about the right of the shareholder to inspect the records
24 demanded.

25 **Sec. 49. 13-C MRSA §1605, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2
26 and as affected by Pt. B, §7, is amended to read:

27 **3. Provisions to protect corporation.** If an order is issued under subsection 2, the
28 court may include provisions protecting the corporation from undue burden or expense
29 and prohibiting the director from using information obtained upon exercise of the
30 inspection rights in a manner that would violate a duty to the corporation, and may also
31 order the corporation to reimburse the director for the director's ~~costs, including~~
32 ~~reasonable counsel fees,~~ expenses incurred in connection with the application.

33 SUMMARY

34 This bill amends the Maine Business Corporation Act to reflect changes made by the
35 American Bar Association to the Model Business Corporation Act, on which the Maine
36 Business Corporation Act is based.

37 This bill also makes other changes to the Maine Business Corporation Act, including:

38 1. Adding definitions of "expenses," "public corporation" and "qualified director";

- 1 2. Allowing the delivery by a corporation of one copy of a notice, the articles of
2 incorporation or bylaws to be delivered to a common address occupied by more than one
3 shareholder and still satisfy the requirements that all shareholders receive the notice,
4 articles or bylaws. A shareholder can opt out of this arrangement by providing written
5 notice to the corporation;
- 6 3. Allowing, with the prior consent of shareholders, the inclusion in the articles of
7 incorporation of a provision that allows action to be taken regarding the corporation
8 without a meeting or notice to the shareholders; and
- 9 4. Changing the class or series of shares held by a shareholder for the purpose of
10 limiting the appraisal rights of that shareholder.