

MAINE STATE LEGISLATURE

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SEVENTY-EIGHTH LEGISLATURE

HOUSE

NO. 470

House of Representatives, March 2, 1917.

Referred to Committee on Judiciary and one thousand copies ordered printed. Sent up for concurrence.

W. R. ROIX, Clerk.

Presented by Mr. Gurney of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND SEVENTEEN

AN ACT Additional to Revised Statutes, Chapter Fifty-one
relating to Corporations.

Be it enacted by the people of the State of Maine, as follows:

Chapter Fifty-one of the Revised Statutes is hereby amend-
2 ed by adding at the end of said chapter five new sections
3 to be sections one hundred and fifteen, one hundred and
4 sixteen, one hundred and seventeen, one hundred and eight-
5 teen and one hundred and nineteen, and to read respect-
6 ively as follows:

Section 115. ISSUANCE OF SHARES OF STOCK
WITHOUT NOMINAL OR PAR VALUE.

Upon the formation of any corporation other than a corporation for banking, insurance, or intended to derive profit from the loan or use of money, or a corporation under the jurisdiction of the Public Utilities Commission, the certificate of incorporation may provide for the issuance of the shares of stock of such corporation, other than preferred stock having a preference as to principal, without any nominal or par value by stating in such certificate:

(a) The number of shares that may be issued by the corporation, and if any of such shares be preferred stock, the preferences thereof. If such preferred stock or any part thereof shall have a preference as to principal, the certificate shall state the amount of such preferred stock having such preference, the particular character of such preferences, and the amount of each share thereof, which shall be five dollars or some multiple of five dollars, but not more than one hundred dollars.

(b) The amount of capital with which the corporation will carry on business, which amount shall be not less than the amount of preferred stock, if any, authorized to be issued with a preference as to principal, and in addition thereto a sum equivalent to five dollars or to some multiple of five dollars for every share authorized to be issued other than such preferred stock; but in no event shall the amount of such capital be less than one thousand dollars.

Such statements in the certificate shall be in lieu of any
2 statements now or heretofore prescribed by law as to the
3 amount of its capital stock or the number of shares into
4 which the same shall be divided, or of the par value of such
5 shares.

Each share of such stock without nominal or par value
2 shall be equal to every other share of such stock, subject to
3 the preference given to the preferred stock, if any, authorized
4 to be issued. Every certificate for such shares without
5 nominal or par value shall have plainly written or printed
6 upon its face the number of such shares which it represents
7 and the number of such shares which the corporation is
8 authorized to issue, and no such certificate shall express any
9 nominal or par value of such shares. The certificates for
10 preferred shares having a preference as to principal shall
11 state briefly the amount which the holders of each such pre-
12 ferred shares shall be entitled to receive on account of prin-
13 cipal from the surplus assets of the corporation in prefer-
14 ence to the holders of other shares, and shall state briefly any
15 other rights or preferences given to the holders of such
16 shares.

Such corporation may issue and may sell its authorized
2 shares, from time to time, for such consideration as may be
3 prescribed in the certificate of incorporation, or as from
4 time to time may be fixed by the board of directors pursuant
5 to authority conferred in such certificate, or if such certificate
6 shall not so provide, then by the consent of the holders of

7 two-thirds of each class of shares then outstanding given at
8 a meeting called for that purpose in such manner as shall be
9 prescribed by the by-laws. Any and all shares issued as per-
10 mitted by this section shall be deemed fully paid and non-
11 assessable and the holder of such shares shall not be liable
12 to the corporation or to its creditors in respect thereof.

Section 116. COMMENCEMENT OF BUSINESS; AU-
THORIZED DEBTS.

No corporation formed pursuant to Section One Hundred
2 and Fifteen hereof shall begin to carry on business or shall
3 incur any debts until the amount of capital stated in its cer-
4 tificate of incorporation shall have been fully paid in
5 money or in property taken at its actual value.
6 In case the amount of capital stated in its certificate of
7 corporation shall be increased as hereinafter provided, such
8 corporation shall not increase the amount of its indebted-
9 ness then existing until it shall have received in money or
10 property the amount of such increase of its stated capital.
11 The directors of the corporation assenting to the creation of
12 any debt in violation of this section shall be liable jointly
13 and severally for such debt; but no action shall be brought
14 under the foregoing provision of this section unless within
15 one year after the debt shall have been incurred the creditor
16 shall have served upon the director written notice of inten-
17 tion to hold him personally liable for such debt. Any di-
18 rector who, because of any such liability under this section,
19 shall pay any debt of the corporation, shall be subrogated to

20 all rights of the creditor in respect thereof against the cor-
21 poration and its property and also shall be entitled to contri-
22 bution from all other directors of the corporation similarly
23 liable for the same debt and the personal representative of
24 any such director who shall have died before making such
25 contribution.

No such corporation shall declare any dividend which shall
2 reduce the amount of its capital below the amount stated in
3 the certificate as the amount of capital with which the cor-
4 poration will carry on business. In case any such dividend
5 shall be declared, the directors in whose administration the
6 same shall have been declared, except those who may have
7 caused their dissent therefrom to be entered upon the min-
8 utes of such directors at the time or who were not present
9 when such action was taken, shall be liable jointly and sever-
10 ally to such corporation and to the creditors thereof to the
11 full amount of any loss sustained by such corporation or by
12 its creditors respectively by reason of such dividend.

Section 117. INCREASE OR REDUCTION OF SHARES OR CAPITAL.

Any corporation formed pursuant to Section One Hundred
2 and Fifteen may amend its certificate of incorporation so as
3 to increase or to reduce the number of shares which it may
4 issue, or so as to increase or to reduce the amount of its
5 stated capital, by filing, in the Secretary of State's office, a
6 certificate of amendment under seal executed by its president
7 or a vice-president and by its clerk or its treasurer, stating

8 the amendment proposed and that the same has been duly
9 authorized by a vote of a majority of the directors and also
10 by the vote of the holders of at least three-fifths of the out-
11 standing shares of each class issued by the corporation, at a
12 meeting of the stockholders called for the purpose, and by
13 filing with such certificate of amendment a copy of the pro-
14 ceedings of such meeting, made, signed, verified and ac-
15 knowledged by the president or a vice-president and by the
16 clerk or the treasurer of the corporation; but an amendment
17 cannot be made under this section unless as so amended the
18 certificate of incorporation could lawfully have been filed
19 under Section One Hundred and Fifteen of this Chapter. In
20 case of a reduction of the amount of capital of a corporation,
21 a certificate setting forth the whole amount of the ascer-
22 tained debts and liabilities of the corporation shall be made,
23 signed, verified and acknowledged by the president or a vice-
24 president and by the clerk or the treasurer of the corporation
25 and shall be filed with the certificate of amendment; and such
26 certificate of amendment shall have endorsed thereon the
27 certificate of the attorney general that he has received satis-
28 factory proof that as so stated the reduced amount of capital
29 is sufficient for the proper purposes of the corporation and is
30 in excess of its ascertained debts and liabilities.

Section 118. TAXATION.

For the purpose of any rule of law or of any statutory pro-
2 vision (other than the foregoing Sections One Hundred and
3 Fifteen, One Hundred and Sixteen and One Hundred and

4 Seventeen,) or of determining the amount to be paid to the
5 Treasurer of the State for the use of the state as provided
6 in Section Nine of this Chapter, or of determining the amount
7 of the annual franchise tax as provided in Section Eighteen
8 of Chapter Nine of the Revised Statutes, but for no other
9 purpose, shares without nominal or par value shall be as-
10 sumed to be of the par value of one hundred dollars each.

Section 119. RETIRING PREFERRED STOCK.

In case the certificate of organization of a corporation
2 formed pursuant to Section One Hundred and Fifteen here-
3 of shall provide for an issue of preferred stock and shall
4 also provide that such stock may be called in and retired at
5 any price stated in the provisions describing the preferences
6 of such shares, such preferred stock shall not be thus called
7 in or retired if thereby the property and assets of the cor-
8 poration shall be reduced below the amount stated in the
9 certificate of organization, or fixed in accordance with the
10 provisions of Section One Hundred and Seventeen, as the
11 capital with which the corporation will carry on business,
12 nor shall such preferred stock be thus called in or retired if
13 thereby the property and assets of the corporation shall be
14 reduced below the amount of its outstanding debts and lia-
15 bilities.

In case the certificate of organization of any corporation
2 organized under Section Seven of this Chapter shall provide
3 for an issue of preferred stock and shall also provide that
4 such stock may be called in and retired at any price stated

5 in the provisions describing the preferences of such shares,
6 such stock shall not be thus called in or retired if thereby
7 the property and assets of the corporation shall be reduced
8 below the amount of its outstanding debts and liabilities.

Any officer or member of the corporation who votes for or
2 aids in the calling and retiring of preferred stock in violation
3 hereof shall be fined not exceeding two thousand dollars and
4 imprisoned less than one year ; and all sums received for such
5 stock so called in and retired in violation hereof may be re-
6 covered by any creditor of the corporation in an action on
7 the case.