

MAINE STATE LEGISLATURE

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



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2002

disqualifying conviction under subsection 1, paragraph A- ~~A-1~~ but is not an adjudication under subsection 1, paragraph C may not own or have in that person's possession or control a firearm for a period of 3 years following completion of any disposition imposed or until that person reaches 18 years of age, whichever is later.

Sec. 4. 15 MRSA §393, sub-§7, as enacted by PL 1977, c. 225, §2, is repealed and the following enacted in its place:

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

A. "Firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

B. "Not criminally responsible by reason of mental disease or defect" has the same meaning as used in Title 17-A, section 39 and includes the former finding in this State under former provisions of section 103 of "not guilty by reason of mental disease or defect excluding responsibility" as well as any comparable finding under the laws of the United States or any other state.

C. "State" means the State of Maine and "state" means any other state of the United States and includes the District of Columbia, the Commonwealth of Puerto Rico and the possessions of the United States.

D. "Use of a dangerous weapon" has the same meaning as in Title 17-A, section 2, subsection 9, paragraph A.

Sec. 5. 15 MRSA §393, sub-§8, as repealed and replaced by PL 1997, c. 683, Pt. B, §8, is amended to read:

8. Penalty. A violation of subsection 1, paragraph ~~A~~, ~~B~~ A-1 or C is a Class C crime. A violation of subsection 1, paragraph D is a Class D crime. A violation of subsection 1-A by a person at least 18 years of age is a Class C crime.

For the purposes of this subsection, a person is deemed to have been convicted upon the acceptance of a plea of guilty or nolo contendere or a verdict or finding of guilty, or the equivalent in a juvenile case, by a court of competent jurisdiction.

Sec. 6. 25 MRSA §2003, sub-§2, ¶A-1, as enacted by PL 1993, c. 368, §6, is amended to read:

A-1. That the applicant understands that an affirmative answer to the question in subsection 1, paragraph D, subparagraph (5), division (c) or (c-1) is cause for refusal unless the applicant is

nonetheless authorized to possess a firearm under Title 15, section 393, ~~subsection 1-A~~;

Sec. 7. 25 MRSA §2003, sub-§2, ¶B, as repealed and replaced by PL 1989, c. 917, §10, is amended to read:

B. That the applicant understands that an affirmative answer to one or more of the questions in subsection 1, paragraph D, subparagraph (5), divisions ~~(e)~~ (d) to (k) is cause for refusal;

See title page for effective date.

CHAPTER 550

H.P. 1307 - L.D. 1770

An Act Regarding Public Charities, Nonprofit Corporations and Conversions of Nonprofit Entities to For-profit Entities

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

PART A

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

§194. Public charities

1. Definition. As used in this section, "public charity" means an entity formed primarily for charitable purposes, including but not limited to:

A. A corporation formed under Title 13 or Title 13-B primarily for charitable purposes; and

B. A charitable trust.

2. Application; funds. The Attorney General shall enforce due application of funds given or appropriated to public charities within the State and prevent breaches of trust in the administration of public charities.

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

4. Party to proceedings. The Attorney General must be made a party to all judicial proceedings in which the Attorney General is interested in the performance of the Attorney General's duties under subsection 2.

5. Investigation. The Attorney General may conduct an investigation using the methods set forth in subsections 6 and 7 if:

A. The Attorney General reasonably believes that a public charity has engaged or is about to engage in one of the following acts or practices:

(1) Consummation of a conversion transaction as defined in section 194-B without compliance with the applicable provisions of sections 194-C through 194-H; or

(2) The application of funds or assets of a public charity:

(i) In violation of statute;

(ii) For noncharitable purposes unrelated to the operations of the public charity; or

(iii) For private inurement or excess benefits provided to directors, officers, disqualified persons or others deemed insiders under applicable federal law for tax-exempt organizations; and

B. The Attorney General has applied to a Justice of the Superior Court for approval to conduct the investigation and the justice has granted that approval. The application for approval may be filed ex parte, and the justice shall approve the application if the justice finds that the conditions set forth in paragraph A have been met.

6. Scope and powers related to investigation.

The authority of the Attorney General to conduct an investigation under this section is limited to investigation of the acts or practices described in subsection 5, paragraph A. In conducting the investigation, the Attorney General has authority to:

A. Take testimony under oath;

B. Examine or cause to be examined any documentary material of whatever nature relevant to such acts or practices; and

C. Require attendance during examination of documentary material under paragraph B of any person having knowledge of the documentary material and take testimony under oath or acknowledgement in respect to that documentary material.

7. Taking testimony; examining documents.

The taking of testimony and examination under subsection 6 must take place in the county where the testifying person resides or has a place of business or, if the parties consent or the testifying person is a

nonresident or has no place of business within the State, in Kennebec County.

A. Notice of the time, place and cause of the taking of testimony, examination or attendance under this subsection must be given by the Attorney General at least 30 days prior to the date of the taking of testimony or examination, except that, upon application and good cause shown, a Justice of the Superior Court may order a shorter period of notice, but not less than 10 days.

B. Service of a notice under paragraph A may be made by:

(1) Delivering a duly executed copy of the notice to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) Delivering a duly executed copy of the notice to the principal place of business in this State of the person to be served; or

(3) Mailing by registered or certified mail a duly executed copy of the notice, addressed to the person to be served, to the person's principal place of business.

C. Each notice under this subsection must:

(1) State the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person;

(2) State the general subject matter of the investigation, the alleged violation that is under investigation and the title and section of statute, if any, governing the alleged violation;

(3) Describe the class or classes of documentary material to be produced with reasonable specificity to fairly indicate the material demanded;

(4) Prescribe a return date by which the documentary material must be produced; and

(5) Identify the members of the Attorney General's staff to whom the documentary material must be made available for inspection and copying.

D. A notice to produce documentary information or to give testimony under this subsection may not contain a requirement that would be unrea-

sonable if contained in a subpoena duces tecum issued by a court of the State and may not require the disclosure of any documentary material that would be privileged or that for any other reason would not be required by a subpoena duces tecum issued by a court of the State.

E. Any documentary material or other information produced by a person pursuant to this subsection and subsection 6 may not, unless otherwise ordered by a court of the State for good cause shown, be disclosed to a person other than an authorized agent or representative of the Attorney General unless with the consent of the person producing the documentary material.

F. The Superior Court for Kennebec County or a Superior Court in any other county in which a person who is served notice pursuant to this section resides or has that person's usual place of business may issue orders concerning compliance with the notice, modification or quashing of the notice and contempt in the same manner as if the notice were a subpoena governed by Rule 45 of the Maine Rules of Civil Procedure. The recipient of a notice under this section has the protections accorded by Rule 45 to a person who is subject to a subpoena.

8. Authority regarding conversion proceedings. If a public charity files notice of a conversion transaction under section 194-D or applies for approval of such a transaction under section 194-E or 194-F, the authority of the Attorney General with regard to the notice or approval and the proceedings for approval are governed by sections 194-B to 194-K and the provisions of this section do not apply.

9. Notice to the Superintendent of Insurance. If the Attorney General intends to conduct an investigation of a public charity that is subject to regulation by the Superintendent of Insurance, the Attorney General shall notify the superintendent that an investigation is being initiated. The Attorney General shall also notify the superintendent of the resolution of any such investigation.

Sec. A-2. 5 MRSA §§194-B to 194-K are enacted to read:

§194-B. Definitions

As used in this section and sections 194-C to 194-K, unless the context otherwise indicates, the following terms have the following meanings.

1. Control. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an individual, whether through the ownership of voting securities, by contract other than a commercial

contract for goods or nonmanagement services or otherwise, including but not limited to situations in which the power is the result of an official position with the person or a corporate office held by an individual.

2. Conversion transaction. "Conversion transaction" means the sale, transfer, lease, exchange, transfer by exercise of an option, conveyance, conversion, merger or other disposition or the transfer of control or governance of the assets or operations of a public charity to a person other than a public charity incorporated or domiciled in this State. A disposition or transfer constitutes a conversion transaction regardless of whether it occurs directly or indirectly and whether it occurs in a single transaction or a related series of transactions. If exercise of an option constitutes a conversion transaction, any consideration received for the granting of the option must be considered part of the transaction for purposes of applying the review criteria in section 194-G. "Conversion transaction" does not include a transaction that supports or continues the charitable activities of the public charity, including but not limited to:

A. Granting of encumbrances in the ordinary course of business, such as security interests or mortgage deeds with respect to assets owned by the public charity or any wholly owned subsidiary to secure indebtedness for borrowed money, the net proceeds of which are paid solely to the public charity or its wholly owned subsidiaries or are applied to the public charity's charitable mission, and the foreclosing or other exercise of remedies permitted with respect to such encumbrances;

B. Sales or transfers for fair market value of:

(1) Any interest in property owned by the public charity or any wholly owned subsidiary, the net proceeds of which are paid solely to the public charity or any wholly owned subsidiary; or

(2) Money or monetary equivalents owned by a public charity or any wholly owned subsidiary in exchange for an interest in property, including securities as defined in Title 32, section 10501, subsection 18, to be held by the public charity or any wholly owned subsidiary;

C. Awards, grants or payments to or on behalf of intended beneficiaries, consistent with the public charity's charitable purpose; and

D. A change in the membership of the board of directors or officers of a public charity.

3. Fair market value. "Fair market value" means the most likely value or range of values that assets, tangible or intangible, being sold would have in a competitive and open market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and in their own best interest and a reasonable time being allowed for exposure in the open market. If the value of the assets being converted is \$500,000 or more, the appraisal must include a value representing volunteer efforts and tax exemptions, if any, received during the operation of the public charity.

4. Independent appraisal of the fair market value. "Independent appraisal of the fair market value" means an appraisal conducted by persons independent of all parties to a proposed conversion transaction and experienced and expert in the area of appraisal of the type and form of property being valued. The appraisal must be conducted using professionally accepted standards for the type and form of property being valued. The appraisal must contain a complete and detailed description of the elements that make up the appraisal values produced and detailed support for the conclusions reached in the appraisal.

5. Person. "Person" means an individual, partnership, trust, estate, corporation, association, joint venture, joint stock company or other organization.

6. Public charity. "Public charity" has the same meaning as in section 194.

§194-C. Notice and approval for conversion transaction

1. Notice or approval required. Prior to completing a conversion transaction, a public charity must:

A. If the fair market value of assets to be converted in the transaction is \$500,000 or more, obtain approval of the court in accordance with section 194-F;

B. If the fair market value of assets to be converted in the transaction is less than \$500,000 but at least \$50,000, obtain approval from the Attorney General in accordance with section 194-E or, if the Attorney General does not approve the transaction, obtain approval from the court in accordance with section 194-F; or

C. If the value of the transaction is less than \$50,000, provide notice to the Attorney General in accordance with section 194-D.

2. Appraisal required. Fair market value must be determined by an independent appraisal for conversion transactions with a fair market value of \$50,000 or more. If the appraisal provides a range of

values, the highest point of the range determines which section of law applies to the transaction pursuant to subsection 1.

3. Failure to comply with this section or sections 194-D to 194-H. A transaction consummated in violation of any provision of this section or sections 194-D to 194-H is voidable. Officers and directors who receive private inurement or excess benefits from such a transaction are subject to the civil penalties provided in section 194-K.

4. Applicability to nonprofit hospital or medical service organizations. This section, section 194-B and sections 194-D to 194-K do not apply to a corporation or other entity licensed under Title 24, chapter 19. A conversion of a corporation or other entity licensed under Title 24, chapter 19 is governed by section 194-A and Title 24, section 2301, subsection 9-D.

§194-D. Conversion transactions less than \$50,000

A public charity shall provide written notice to the Attorney General of its intent to enter into a conversion transaction if the value of the transaction is less than \$50,000. The notice must include the name of the public charity, the value of the assets to be converted and the entity to which the assets will be transferred. Twenty days after providing notice to the Attorney General in accordance with this section, the public charity is deemed to be in compliance with section 194-C and this section unless the Attorney General notifies the public charity within those 20 days that the value of the transaction is \$50,000 or more or that the filing otherwise fails to comply with this section.

The Attorney General is not required to take any action on notices received under this section, except that, upon request of a public charity that has properly provided notice under this section, the Attorney General shall issue a letter indicating that the public charity has complied with its obligation under this section, section 194-C and sections 194-E to 194-H.

§194-E. Attorney General approval without court review

1. Filing with Attorney General. To obtain approval of a conversion transaction when the independent appraisal of the fair market value of the assets to be converted is \$50,000 or more but is less than \$500,000, a public charity must file a written request for approval with the Attorney General at least 90 days prior to consummating the transaction. The written request must include a conversion plan, a plan for distributing proceeds of the conversion consistent with section 194-H and any other information reasonably necessary for the Attorney General to complete a review of the transaction. Failure to

provide the information described in this subsection in a timely manner is sufficient grounds for the Attorney General to refuse to approve the transaction.

2. Attorney General approval. The Attorney General shall approve a conversion transaction under subsection 1 if the Attorney General determines that the criteria set forth in section 194-G have been met. The Attorney General shall refuse to approve a transaction if the Attorney General reasonably believes that the fair market value of the transaction is \$500,000 or more.

3. Public notice. Within 5 days of filing the request for approval under subsection 1, a public charity shall publish notice to the public of its intent to enter into a conversion transaction. Notice must be published once per week for 3 weeks in a newspaper of general circulation in the public charity's service area and must meet the following criteria.

A. A notice under this subsection must describe the proposed transaction, including the parties, the value of the transaction, the timing of the transaction, the potential impact on services to the public and the proposed plan for utilizing the proceeds. The public notice must also provide information on opportunities for the public to provide comment on the proposal to the Attorney General.

B. A notice under this subsection must be published in languages other than English whenever a significant number or percentage of the population eligible to be served or likely to be directly affected by the service or purpose of the public charity needs information in a language other than English to communicate effectively. For the purposes of this paragraph, "significant number" is defined as 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected.

4. Public comment. The Attorney General shall accept public comments regarding a proposed conversion transaction under this section for a 60-day period commencing the day that proper notice has been provided to the public of the proposed conversion.

5. Public hearings. The Attorney General may hold public hearings if the Attorney General determines that a conversion transaction under this section is likely to cause a significant impact on access to services in the community served by the public charity.

6. Public records. All documents submitted to the Attorney General by a person filing a request under subsection 1 in connection with the Attorney General's review of a proposed conversion transaction

are public records subject to Title 1, chapter 13, subchapter I except records made confidential by statute or privileged under the Maine Rules of Evidence.

7. Attorney General rejection of or failure to act on request for approval. If the Attorney General refuses to approve a conversion transaction under this section or fails to act on the request for approval within 90 days of receipt of the request, a public charity may request court approval of the transaction under section 194-F.

8. Contracts with consultants; reimbursement for costs. To assist in the review of a proposed conversion transaction pursuant to this section, the Attorney General, at the Attorney General's sole discretion, may contract with experts or consultants the Attorney General considers appropriate.

A. Contract costs incurred by the Attorney General pursuant to this subsection may not exceed an amount that is reasonable and necessary to conduct the review of a proposed conversion transaction. A public charity filing a request under subsection 1 shall pay the Attorney General promptly upon request for all costs of contracts entered into by the Attorney General pursuant to this subsection but is not required to pay any amount that exceeds 5% of the fair market value of the assets to be converted.

B. The Attorney General is exempt from the provisions of applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this subsection.

§194-F. Court approval

1. Filing of court action. To obtain approval of a conversion transaction when the independent appraisal of the fair market value of the assets to be converted is \$500,000 or more, a public charity must file an action in Superior Court in the county in which the public charity's service area is located or in Kennebec County. Concurrent with filing an action in Superior Court, a public charity must file with the court and the Attorney General a conversion plan and a plan for distributing proceeds of the conversion consistent with section 194-H. The Attorney General must be made a party to the action.

2. Court action. The court shall approve a proposed conversion transaction under subsection 1 if the court finds by a preponderance of the evidence that the criteria set forth in section 194-G have been satisfied. The court may deny approval of a conversion transaction or may approve the transaction with or without modifications or conditions. The court may require any entity that receives the assets of the public charity as a result of the conversion to report annually

to the Attorney General and the public and may require the entity to submit to monitoring and oversight by the Attorney General.

3. Public notice. Within 5 days of filing an action under subsection 1, a public charity shall publish notice to the public of its intent to enter into a conversion transaction. Notice must be published once per week for 3 weeks in a newspaper of general circulation in the charity's service area and must meet the following criteria.

A. A notice under this subsection must describe the proposed transaction, including the parties, the value of the transaction, the timing of the transaction, the potential impact on services to the public and the proposed plan for utilizing the proceeds. The public notice must also include the court docket number and provide information on opportunities for the public to provide comment on the proposal to the Attorney General.

B. The notice must be published in languages other than English whenever a significant number or percentage of the population eligible to be served or likely to be directly affected by the service or purpose of the public charity needs information in a language other than English to communicate effectively. For purposes of this paragraph, "significant number" is defined as 5% or 1,000, whichever is less, of the population of persons eligible to be served or likely to be directly affected.

4. Public access to conversion plan. The Attorney General shall make a conversion plan, the plan for distribution of proceeds, the valuation and any other documents filed under subsection 1 that are public records under Title 1, chapter 13, subchapter I and that are available electronically available for viewing on the Attorney General's publicly accessible site on the Internet as soon as feasible after the documents are filed with the Attorney General.

5. Contracts with consultants; reimbursement for costs. To assist in the review of a proposed conversion transaction pursuant to this section, the Attorney General, at the Attorney General's sole discretion, may contract with experts or consultants the Attorney General considers appropriate.

A. Contract costs incurred by the Attorney General pursuant to this subsection may not exceed an amount that is reasonable and necessary to conduct the review of the proposed conversion transaction. Costs must be approved in advance by the court. The public charity filing an action under subsection 1 shall pay the Attorney General promptly upon request for all costs of contracts entered into by the Attorney General and

approved by the court pursuant to this subsection.

B. The Attorney General is exempt from the provisions of applicable state laws regarding public bidding procedures for purposes of entering into contracts pursuant to this subsection.

6. Filing with Secretary of State. A public charity shall file a copy of the court's approval under this section with the Secretary of State.

§194-G. Review criteria

1. Required determinations. The Attorney General may not approve or recommend that a court approve and the court may not approve a proposed conversion transaction unless the Attorney General or the court, as appropriate, finds that:

A. The public charity will receive fair market value for its charitable assets. The fair market value must be based upon an appraisal conducted in accordance with subsection 3 and must use the projected closing date of the conversion transaction as the valuation date;

B. The proposed distribution of proceeds of the transaction complies with section 194-H; and

C. The public charity considered the proposed conversion as the best alternative in carrying out its mission and purposes.

2. Considerations. In determining whether the criteria in subsection 1 are met, the Attorney General or the court, as appropriate, shall consider, as applicable, whether:

A. The public charity will receive fair market value for its charitable assets;

B. The terms and conditions of the agreement or transaction are fair and reasonable to the public charity;

C. The fair market value of the public charity's assets to be transferred has been manipulated by the actions of the parties in a manner that causes the fair market value of the assets to decrease;

D. The agreement or transaction will result in inurement to any private person or entity;

E. The proposed conversion transaction will result in a breach of fiduciary duty or violate any statutory or common-law duty or obligation on the part of the directors, trustees or other parties involved in the transaction, including but not limited to conflicts of interest related to payments or benefits to officers, directors, board

members, executives and experts employed or retained by the parties;

F. The governing body of the public charity exercised due diligence in deciding to dispose of the public charity's assets, selecting the acquiring entity and negotiating the terms and conditions of the disposition;

G. The Attorney General has been provided with sufficient information and data by the public charity to evaluate adequately the agreement or transaction and the effects of the agreement or transaction on the public;

H. The proceeds of the conversion of the public charity are distributed to either an existing or new public benefit corporation or foundation pursuant to section 194-H;

I. The proceeds of the proposed conversion transaction will be used in accordance with the rules of any trust under which the assets were held by the public charity and the proceeds will be controlled as funds independent of the acquiring entity or entities related to the acquiring entity;

J. The entity surviving after the conversion transaction will be financially viable and competently managed;

K. The transaction will diminish the availability and accessibility of services to the affected community; and

L. The conversion plan and transaction complies with all applicable laws including the Maine Nonprofit Corporation Act and state tax code provisions.

3. Valuation. A public charity shall submit to the Attorney General and the court an independent appraisal of the fair market value of assets to be converted under subsection 1. To the extent that the appraisal is based on a capitalization of the pro forma income of the converted assets, the appraisal must indicate the basis for determination of the income to be derived from any proceeds of the sale of stock and demonstrate the appropriateness of the earnings-multiple used, including assumptions made regarding future earnings growth.

A. To the extent that an appraisal under this subsection is based on the comparison of the capital stock of the converted entity with outstanding capital stock of existing stock entities offering comparable products, the existing stock entities must be reasonably comparable to the converting entity in terms of such factors as size, market

area, competitive conditions, profit history and expected future earnings.

B. If the value of assets being converted is \$500,000 or more, the appraisal must include any element of value arising from the accomplishment or expectation of the conversion transaction, including any value attributable to projected operating efficiencies to result from the conversion, net of the cost of changes to produce such efficiencies.

C. If the Attorney General or the court determines that an appraisal under this subsection is materially deficient or substantially incomplete, the Attorney General or the court may deem the entire conversion plan materially deficient or substantially incomplete and reject or decline to further process the application for conversion.

D. A converting entity shall submit to the Attorney General and the court information demonstrating to the satisfaction of the Attorney General or the court the independence and expertise of any person preparing the appraisal or related materials under this subsection.

E. An appraiser under this subsection may not serve as an underwriter or selling agent under the same conversion plan and an affiliate of an appraiser may not act as an underwriter or selling agent unless procedures are followed and representations and warranties made to ensure that an appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or in any way have an impact on the appraisal.

F. An appraiser may not receive any other fee except the fee for services rendered in connection with the appraisal.

§194-H. Distribution of proceeds

1. Requirements. The proceeds of a conversion transaction must be distributed to an existing or new foundation or public benefit corporation that meets the following requirements.

A. The foundation or public benefit corporation must operate pursuant to 26 United States Code, Section 501(c)(3) or 501(c)(4), and, regardless of whether the foundation is classified as a private foundation under 26 United States Code, Section 509, the foundation or public benefit corporation must operate in accordance with the restrictions and limitations that apply to private foundations found in 26 United States Code, Sections 4941 to 4945.

B. The foundation or public benefit corporation and its directors, officers and staff must be and remain independent of the for-profit company and its affiliates. A person who is an officer, director or staff member with influence over a conversion decision of a public charity submitting a conversion plan, at the time the plan is submitted or at the time of the conversion transaction or within 5 years thereafter, is not qualified to be an officer, director or staff member of the foundation. A director, officer, agent or employee of the public charity submitting the plan or the foundation receiving the charitable assets may not benefit directly or indirectly from the transaction.

C. A foundation or public benefit corporation must have or establish formal mechanisms to avoid conflicts of interest and to prohibit grants benefiting the for-profit corporation or members of the board of directors and management of the for-profit corporation.

§194-I. Intervention in court proceeding

This section relates to intervention in proceedings under section 194-F.

1. Right to intervene. Except as provided in subsection 2, the court, on timely application made pursuant to Rule 24(a) of the Maine Rules of Civil Procedure, shall allow any person who is interested in the outcome of a conversion proceeding to intervene as a party to that proceeding, notwithstanding the presence of the Attorney General in the action.

2. Court power to manage process. This section does not limit the power of the court to manage its cases by limiting the number of intervenors or by consolidating parties with similar interests.

§194-J. Attorney General authority

1. Rules. The Attorney General may adopt rules the Attorney General considers appropriate to implement this section, sections 194-B to 194-I and section 194-K. Rules adopted pursuant to this subsection are routine technical rules as defined in chapter 375, subchapter II-A.

2. Attorney General authority not limited. This section, sections 194-B to 194-I and section 194-K do not limit the common-law authority of the Attorney General to protect charitable trusts and charitable assets in this State. The penalties and remedies provided in section 194-K are in addition to and are not a replacement for any other civil or criminal action the Attorney General may take under common law or statute, including an action to rescind the conversion transaction or to obtain injunctive relief

or a combination of injunctive relief and other remedies available under common law or statute.

§194-K. Penalties

1. Attorney General to bring action. The Attorney General may initiate an action in Superior Court to:

A. Void a conversion transaction pursuant to subsection 2. Such an action may be brought in Superior Court in Kennebec County or in the county in which the assets of the public charity to be transferred are located;

B. Seek a civil penalty against an individual pursuant to subsection 3. Such an action must be brought in the Superior Court of Kennebec County or in the county in which the individual resides; and

C. Obtain on behalf of the public charity the return or repayment of any property or consideration received as private inurement or an excess benefit in violation of Title 13-B standards.

2. Transaction voidable. The Superior Court may void a conversion transaction entered into in violation of applicable provisions of sections 194-C to 194-H. If the court voids the transaction, it may also grant any orders necessary to restore the public charity to its former position, including removing the board of the public charity or voiding contracts.

3. Penalties against individuals. An individual officer, director, trustee or manager in a position to exercise substantial influence over the affairs of a public charity is subject to a civil penalty if that person, in violation of the standards established under Title 13-B for conduct by directors or officers or for avoiding conflicts of interest:

A. Receives property or consideration from the public charity that constitutes private inurement; or

B. Receives excess benefits that exceed the fair market value of anything provided in return.

The civil penalty under this subsection may be an amount up to 100% of the excess benefit or private inurement received and may be recovered in addition to costs and fees incurred by the Attorney General in bringing the action.

PART B

Sec. B-1. 5 MRSA §194-A, sub-§1, ¶K, as enacted by PL 1997, c. 344, §1, is amended to read:

K. "Nonprofit hospital and medical service organization" or "organization" means a corpora-

tion or other entity authorized by the superintendent or organized pursuant to Title 24 for the purpose of providing nonprofit hospital service plans within the meaning of Title 24, section 2301, subsection 1 ~~and~~, nonprofit medical service plans within the meaning of Title 24, section 2301, subsection 2. ~~It does not include and any organization that provides only nonprofit health care plans within the meaning of Title 24, section 2301, subsection 3 or a health insurance affiliate as defined in Title 24, section 2308-A. Nothing in this section may be construed to change, limit or affect the charitable status or obligations of nonprofit health care service plans organized under Title 24, section 2301, subsection 3.~~

Sec. B-2. 24 MRSA §2301, sub-§9-D, ¶¶A and B, as enacted by PL 1997, c. 344, §4, are amended to read:

A. A nonprofit hospital and medical service organization or other entity authorized by the superintendent or organized pursuant to this chapter ~~for the purpose of providing nonprofit hospital service plans within the meaning of subsection 1 and nonprofit medical service plans within the meaning of subsection 2~~ may convert to a domestic stock insurer subject to the provisions of this subsection.

B. As used in this subsection, unless the context otherwise indicates, the following terms have the following meanings.

- (1) "Charitable trust" has the meaning set forth in Title 5, section 194-A, subsection 1, paragraph C.
- (2) "Charitable trust plan" means the plan submitted to the Attorney General pursuant to Title 5, section 194-A, subsection 5.
- (3) "Conversion" means the process by which an organization, with the approval of the superintendent, converts to a domestic stock insurer pursuant to this subsection.
- (4) "Conversion plan" means a written plan that sets forth the provisions required by the superintendent, that is filed with the superintendent pursuant to this subsection, that sets forth a complete description of the proposed conversion and that contains sufficient detail to permit the superintendent to make the findings required under this subsection.
- (5) "Converted stock insurer" means the domestic stock insurer resulting from a conversion pursuant to this subsection.

(6) "Fair market value" means the value of an organization or an affiliate or the value of the assets of such an entity determined as if the entity had voting stock outstanding and 100% of its stock were freely transferable and available for purchase without restrictions. In determining fair market value, consideration must be given to value as a going concern, market value, investment or earnings value, net asset value and a control premium, if any.

(7) "Member" means a member of the organization entitled to vote under the articles or bylaws of the organization.

(8) "Nonprofit hospital and medical service organization" or "organization" means a corporation or other entity authorized by the superintendent or organized pursuant to this chapter for the purpose of providing nonprofit hospital service plans within the meaning of subsection 1 ~~and~~, nonprofit medical service plans within the meaning of subsection 2. ~~It does not include and any organization that provides only nonprofit health care plans within the meaning of subsection 3 or a health insurance affiliate defined in section 2308-A. Nothing in this section may be construed to change, limit or affect the charitable status or obligations of nonprofit health care plans organized under subsection 3.~~

(9) "Statement of ownership interests and charitable purposes" means the statement filed with the Superior Court pursuant to Title 5, section 194-A, subsection 3.

(10) "Subscriber" means an individual who has subscribed to one or more of the hospital, medical or health care service plans or contracts offered or issued by the organization or health insurance affiliate as defined in section 2308-A through an individual or family policy or group policy.

Sec. B-3. Review of health care conversion law. The Superintendent of Insurance shall conduct the following review and submit legislation as follows.

1. The superintendent shall review statutory provisions relating to conversion of nonprofit hospital and medical services organizations to determine whether amendments are needed to ensure that the law has the appropriate impact on conversions conducted after the effective date of this Act. The superintendent shall deliver a brief report of findings to the joint standing committee of the Legislature having jurisdic-

tion over insurance matters not later than January 1, 2003.

2. The superintendent shall submit legislation to the First Regular Session of the 121st Legislature not later than January 1, 2003 to clarify that 100% of the net proceeds of a charitable organization covered by the nonprofit health and medical services organization conversion law are deemed public assets and to make any other changes the superintendent considers appropriate.

PART C

Sec. C-1. 13 MRSA §987 is enacted to read:

§987. Applicability of Title 13-B

A corporation or other entity created pursuant to this Title or regulated by this Title is subject to Title 5, section 194 and sections 194-B to 194-K if it is a public benefit corporation under Title 13-B, section 1406.

Sec. C-2. 13 MRSA §3062 is repealed.

Sec. C-3. 13 MRSA §4101, sub-§3, as enacted by PL 1993, c. 371, §2, is amended to read:

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

Sec. C-4. 13 MRSA §4101, sub-§6, as enacted by PL 1993, c. 371, §2, is repealed and the following enacted in its place:

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

Sec. C-5. 13 MRSA §4106, as amended by PL 1997, c. 302, §1, is further amended by adding at the end a new paragraph to read:

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

Sec. C-6. 13-B MRSA §102, sub-§8-A is enacted to read:

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

Sec. C-7. 13-B MRSA §102, sub-§10-A is enacted to read:

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

Sec. C-8. 13-B MRSA §103, sub-§3, as enacted by PL 1977, c. 525, §13, is amended to read:

3. Class of corporations. Subject to the provisions of section 201, this Act ~~shall~~ does not apply to any class of corporations, including, but not limited to, corporations subject to Title 24, chapter 19 or Title 24-A, to the extent that any provision of any other public law is specifically applicable to such class of corporations and is inconsistent with any provision of this Act, in which case such other provision ~~shall prevail; prevails,~~ and ~~shall~~ does not apply to any corporation created by special Act of the Legislature, to the extent that this Act is inconsistent with such special Act; nor ~~shall~~ does the Act apply to any mutual insurer, as defined in Title 24-A, section 401, nor to any financial institution incorporated by special Act of the Legislature or pursuant to general law.

Sec. C-9. 13-B MRSA §403, sub-§1, ¶A-1 is enacted to read:

A-1. Whether the corporation is a public benefit corporation or a mutual benefit corporation, as described in section 1406;

Sec. C-10. 13-B MRSA §403, sub-§1, ¶B, as enacted by PL 1977, c. 525, §13, is amended to read:

B. ~~The~~ If the corporation is a public benefit corporation, the purpose or purposes for which the corporation is organized and, if the corporation is a mutual benefit corporation, the purpose or purposes for which the corporation is organized or a statement that it is organized for all purposes permitted under the Act;

Sec. C-11. 13-B MRSA §704, sub-§3, as enacted by PL 1977, c. 525, §13, is amended to read:

3. Articles of incorporation may provide removal by lesser vote. Subject to the limitation in subsection 4, if the directors are so classified that different classes of members elect different directors, a director may be removed only by the affirmative vote of 2/3 of the members of that class ~~which~~ that elected

~~him~~ the director. The articles of incorporation may provide that such removal may be accomplished by a lesser vote of the members of that class, but in no case by a vote of less than a majority of the members of that class voting on the proposed removal.

Sec. C-12. 13-B MRSA §704, sub-§5, as amended by PL 1979, c. 127, §101, is repealed.

Sec. C-13. 13-B MRSA §704-A is enacted to read:

§704-A. Removal of directors by judicial proceeding

1. Removal. The Superior Court may remove any director of a corporation from office if the court finds that removal is in the best interest of the corporation and that:

A. The director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation;

B. Section 713-A has been violated; or

C. A final judgment has been entered finding that the director has violated a duty set forth in section 712 or sections 717 to 720.

2. Who may bring action. A petition for removal under subsection 1 may be filed by:

A. The corporation, if 2/3 of the directors then in office resolve that an individual director should be removed;

B. Two-thirds of the members entitled to vote for that director or a lesser number as provided in the articles of incorporation of the corporation for removal of a director pursuant to section 704; or

C. In the case of a public benefit corporation, the Attorney General.

3. Place of filing. The petition for removal under subsection 2 must be filed:

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

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

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

4. Court action. The court that removes a director under this section may bar the director from

servicing on the board of directors for a period prescribed by the court.

5. Notice to Attorney General; Attorney General actions. If the members of a corporation or the Attorney General commences a proceeding under this section, the corporation is made a party defendant. If a public benefit corporation or its members commence a proceeding under subsection 1, the public benefit corporation shall give the Attorney General written notice of the proceeding.

Sec. C-14. 13-B MRSA §713, as amended by PL 1977, c. 592, §16, is repealed.

Sec. C-15. 13-B MRSA §713-A is enacted to read:

§713-A. Public benefit corporation; board

1. Financially interested person. For the purposes of this section, "financially interested person" means:

A. An individual who has received or is entitled to receive compensation from a public benefit corporation for personal services rendered to the corporation by that individual within the previous 12 months, whether as a full-time or part-time employee, independent contractor, consultant or otherwise, excluding any reasonable payments made to directors for serving as directors. An individual is considered to receive compensation for services rendered to a public benefit corporation by that individual if the individual is entitled to receive, other than as a shareholder of a publicly held corporation, a portion of the net income of a corporate or other business entity that provides, for compensation, personal services to that public benefit corporation; or

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

2. Board. No more than 49% of the individuals on the board of directors of a public benefit corporation may be financially interested persons.

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

Sec. C-16. 13-B MRSA §715, as enacted by PL 1977, c. 525, §13, is repealed and the following enacted in its place:

§715. Books and records

1. Books; records of accounts. Each corporation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings

of its members, board of directors and committees having any of the authority of the board of directors and shall keep at its registered office or principal office in this State a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any officer, director or voting member or the officer's, director's or voting member's agent or attorney, for any proper purpose at any reasonable time, as long as the officer, director or voting member or the officer's, director's or voting member's agent or attorney gives the corporation written notice at least 5 business days before the date on which the officer, director or voting member or the officer's, director's or voting member's agent or attorney wishes to inspect and copy any books or records. The only proper purpose for which a voting member may inspect and copy books or records under this section is the purpose of enabling the member to fulfill duties and responsibilities conferred upon members by the articles of incorporation or the bylaws of the corporation or by law. The corporation may require the officer, director or member or the officer's, director's or member's agent or attorney to pay the reasonable cost of the copies made and may impose reasonable restrictions on the use or distribution of the records by such a person.

2. Refusal to allow inspection. If a corporation does not make available for inspection or copying the books and records required by subsection 1 or if the corporation seeks to impose unreasonable restrictions on the use or distribution of such books and records, the Superior Court in the county where the corporation's principal office is located or, if the corporation has no principal office in this State, in the county where its registered office is located may order inspection and copying of the records demanded at the corporation's expense upon application of the officer, director or member or the officer's, director's or member's agent or attorney.

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

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

Sec. C-17. 13-B MRSA §716, as enacted by PL 1981, c. 7, is repealed.

Sec. C-18. 13-B MRSA §§717 to 721 are enacted to read:

§717. General standards for directors

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

A. In good faith;

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

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

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

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

B. Legal counsel or a public accountant or other person as to matters the director reasonably believes are within the person's professional or expert competence; or

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

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

3. Performance; compliance. A director is not liable for the performance of the duties of the director's office if the director acted in compliance with this section and, if a conflict-of-interest transaction is involved, the transaction was fair to the corporation or was approved pursuant to section 718.

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

§718. Director or officer conflict of interest

1. Conflict-of-interest transaction. A conflict-of-interest transaction is a transaction in which a director or officer of a corporation has a direct or indirect financial interest. For the purposes of this section, a director or officer has an indirect interest in a transaction if:

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

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

2. Transaction not voidable or grounds for liability. A conflict-of-interest transaction is not voidable or grounds for imposing liability on a director or officer of a corporation if the transaction was fair at the time it was entered into or is approved as provided in subsection 3 or 4.

3. Public benefit corporation; approval. A transaction in which a director or officer of a public benefit corporation has a conflict of interest may be approved before or after consummation of the transaction as follows.

A. The board of directors of a public benefit corporation or a committee of the board may authorize, approve or ratify a transaction under this section if the material facts of the transaction and the director's or officer's interest are disclosed or known to the board or committee of the board. The transaction may be approved only if it is fair and equitable to the corporation as of the date the transaction is authorized, approved or ratified. The party asserting fairness of any such transaction has the burden of establishing fairness.

B. If the board of a public benefit corporation so requests, a transaction under this section may be approved by the Attorney General or by the Superior Court in an action in which the Attorney General is joined as a party. If the board is unable to make a decision regarding a transaction, one or more directors or officers may request approval of the Attorney General or the court in accordance with this subsection. The transaction may be approved only if it is fair and equitable to the corporation as of the date the transaction is authorized, approved or ratified. The party asserting fairness of any such transaction has the burden of establishing fairness.

4. Mutual benefit corporation; approval. A transaction in which a director or officer of a mutual benefit corporation has a conflict of interest may be approved by the directors or the members of the

corporation before or after consummation of the transaction as follows.

A. The board of directors of a mutual benefit corporation or a committee of the board may authorize, approve or ratify a transaction under this section if the material facts of the transaction and the director's or officer's interest are disclosed or known to the board or committee of the board.

B. The members of a mutual benefit corporation may authorize, approve or ratify a transaction under this section if in accordance with subsection 6 the material facts of the transaction and the director's or officer's interest are disclosed or known to the members.

5. Approval by directors of public benefit or mutual benefit corporation. For purposes of subsections 3 and 4, a conflict-of-interest transaction is approved if it receives the affirmative vote of a majority of the directors on the board of directors of the corporation or on a committee of the board who have no direct or indirect interest in the transaction, but a transaction may not be approved under this subsection by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to approve the transaction, a quorum is present for the purpose of taking action under this section.

6. Approval by members of mutual benefit corporation. For purposes of subsection 4, paragraph B, a conflict-of-interest transaction is approved by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director or officer who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subsection 1, paragraph A may not be counted in a vote of members to determine whether to approve a conflict-of-interest transaction under subsection 4, paragraph B. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

7. Additional requirements. The articles of incorporation, the bylaws or a resolution of the board of directors of a corporation may impose additional requirements on conflict-of-interest transactions under this section.

8. Attorney General action to void transaction. If the Attorney General has reasonable grounds

to believe that a public benefit corporation has engaged in a conflict-of-interest transaction and that the transaction was neither fair nor properly approved pursuant to the procedures and standards set forth in subsection 3 or 4, the Attorney General may bring an action in Superior Court in Kennebec County to void the transaction. At least 10 days before bringing such an action, the Attorney General shall send written notice to the board of directors of the corporation of the intent to bring the action. The Attorney General may proceed without such notice if necessary to prevent immediate irreparable harm to the public.

9. Authority to fix compensation. Except to the extent that the articles of incorporation or bylaws otherwise provide, the board of directors of a corporation or the executive committee of the board of directors, without regard to this section, has authority to fix the compensation of directors for their services as directors or officers or in any other capacity.

§719. Duties and authority of officers

Each officer is authorized to and shall perform the duties set forth in the bylaws. In addition, each officer, to the extent consistent with the bylaws, has the authority and shall perform the duties prescribed in a resolution of the board of directors of the corporation. The board may authorize an officer, pursuant to a resolution of the board and to the extent consistent with the bylaws, to prescribe the duties and authority of other officers.

§720. General standards for officers

1. Discretionary authority. An officer of a corporation with discretionary authority shall discharge that officer's duties under that authority:

- A. In good faith;
- B. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- C. In a manner the officer reasonably believes to be in the best interests of the corporation and its members.

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

- A. One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

B. Legal counsel or a public accountant or other person as to matters the officer reasonably believes are within the person's professional or expert competence.

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

3. Compliance. An officer of a corporation is not liable to a corporation, any member or other person for any action taken or not taken as an officer if the officer acted in compliance with this section and, if a conflict-of-interest transaction is involved, the transaction was fair to the corporation or was approved pursuant to section 718.

§721. Misapplication of funds or assets of public benefit corporation

1. Prohibited transaction. The funds or assets of a public benefit corporation may not be transferred or applied and a director or officer of a public benefit corporation may not authorize the transfer or application of funds or assets of the public benefit corporation if:

A. The transfer constitutes a conflict-of-interest transaction that is neither fair nor properly approved as determined under section 718;

B. The transfer misapplies the funds or assets in violation of statute, including conversion transactions in violation of Title 5, sections 194-C to 194-H;

C. The transfer is to a director or officer of the public benefit corporation or to another person in a position to exercise substantial influence over the affairs of the corporation and constitutes private inurement or excess benefits that exceed the fair market value of the property or services received in return; or

D. The transfer of funds or assets is to a subsidiary or joint venture organized as a for-profit entity, unless the board of the public benefit corporation determines in good faith under the facts and circumstances at the time of transfer or commitment to transfer that:

(1) The organization and operations of the for-profit entity will serve, further or support a charitable purpose of the public benefit corporation;

(2) The transfer or the commitment to transfer is fair to the public benefit corporation;

(3) Distributions of net income by the for-profit entity to owners and investors will be proportionate to their investment interests; and

(4) The articles of incorporation, bylaws or similar organizational documents require that compensation transactions between the for-profit entity and investors in the entity or directors or officers of the entity or others in a position to exercise substantial influence over the affairs of the entity be established in amounts that do not exceed the fair market value of services or property to be provided to the entity.

2. Conversion transactions. If a transfer under this section constitutes a conversion transaction as defined in Title 5, section 194-B, subsection 2, the provisions of Title 5, sections 194-B to 194-K may apply and nothing in this section is intended to supersede those provisions applicable to such transactions.

Sec. C-19. 13-B MRSA §802, sub-§5 is enacted to read:

5. Amendment of articles of incorporation of public benefit corporation. If an amendment of the articles of incorporation of a public benefit corporation results in a material change in the nature of the activities conducted by the corporation, the corporation shall give notice to the Attorney General of the amendment simultaneously with the filing of the amended articles with the Secretary of State.

Sec. C-20. 13-B MRSA §906, sub-§1, ¶A, as enacted by PL 1977, c. 525, §13, is amended to read:

A. Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized. If the domestic corporation is a public benefit corporation, the merger or consolidation must comply with any applicable provisions of Title 5, sections 194-B to 194-K;

Sec. C-21. 13-B MRSA §907 is enacted to read:

§907. Limitations on merger or consolidation by public benefit corporation

1. Compliance with nonprofit conversion law required. In addition to complying with provisions of this Title, a public benefit corporation shall comply

with all applicable provisions of Title 5, sections 194-B to 194-K.

2. Bequests, devises and gifts. Any bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to a public benefit corporation and that takes effect or remains payable after a merger or consolidation inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

3. Notice; merger or consolidation. Written notice of a merger or consolidation of a public benefit corporation into another public benefit corporation must be provided to the Attorney General simultaneously with the filing of the articles of merger or consolidation with the Secretary of State.

Sec. C-22. 13-B MRSA §1001, as enacted by PL 1977, c. 525, §13, is amended to read:

§1001. Sale of assets other than in regular course of activities

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

A. If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation ~~shall~~ must be given to each member entitled to vote at such meeting, within the time and in the manner provided by this Act for the giving of notice of meetings of members. At such meeting, the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation thereto. Such authorization ~~shall require~~ requires at least a majority of the votes ~~which that~~ members present at such meeting or represented by proxy are entitled to cast. After such authoriza-

tion by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the rights of 3rd parties under any contracts relating thereto, without further action or approval by members.

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

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

2. Provision prescribing for approval of sale.

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

3. Compliance with conversion law. If the proposed transaction constitutes a conversion transaction, as defined in Title 5, section 194-B, subsection 2, a public benefit corporation must comply with the provision of Title 5, sections 194-C to 194-H.

Sec. C-23. 13-B MRSA §1104, sub-§1, ¶D, as enacted by PL 1977, c. 525, §13, is amended to read:

D. That all remaining property and assets of the corporation have been distributed among its members in accordance with their respective rights and interests, or have been otherwise distributed pursuant to the articles or bylaws of the corporation, ~~provided that as long as the remaining property and assets of a public benefit corporation whose purposes and activities have been primarily charitable, religious, eleemosynary, benevolent or educational shall be~~ are transferred or conveyed only to one or more domestic or foreign corporations, societies or organizations to a public benefit corporation engaged in activities substantially similar to those of the dissolving or liquidating corporation or to another entity pursuant to a conversion plan approved pursuant to Title 5, sections 194-B to 194-K; and

Sec. C-24. 13-B MRSA §1105, as enacted by PL 1977, c. 525, §13, is amended to read:

§1105. Dissolution pursuant to court order

Courts of equity ~~shall~~ have full power to decree the dissolution of, and to liquidate the assets and affairs of, a corporation:

1. Action by member or director. In an action by a member or director when it is made to appear:

A. That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason ~~thereof of the deadlock~~, and either that the members are unable to break the deadlock or there are no members having voting rights;

B. That the acts of the directors or those in control of the corporation are illegal or fraudulent;

C. That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least 2 years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

D. That the corporate assets are being misapplied or wasted; or

E. That the corporation is unable to carry out its purposes;

2. Action by creditor of corporation. In an action by a creditor of the corporation:

A. When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

B. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

2-A. Action by Attorney General regarding public benefit corporation. In an action brought to court by the Attorney General relating to a public benefit corporation, if it is established that:

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

B. The corporation has exceeded or abused the authority conferred upon it by law;

C. The assets of the corporation are being misapplied or wasted; or

D. The corporation is no longer able to carry out its purposes;

3. Complaint. Upon complaint by a corporation to have its dissolution continued under the supervision of the court; and

4. Liquidation of affairs precedes entry of decree. When an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution; and,

5. Proceedings brought in county where registered. ~~Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated. It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.~~

A proceeding under this section must be brought in the county in which the registered office or the principal office of the corporation is situated. It is not necessary to make directors or members parties to such an action or proceeding unless relief is sought against them personally.

Sec. C-25. 13-B MRSA §1109, as enacted by PL 1977, c. 525, §13, is amended to read:

§1109. Decree of dissolution

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

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

Sec. C-26. 13-B MRSA §1110, sub-§2, as enacted by PL 1977, c. 525, §13, is amended to read:

2. Deposit with Treasurer of State. ~~Such~~ A deposit with the Treasurer of State ~~shall must,~~ to the extent ~~thereof~~ of the deposit, absolutely discharge the persons having control and supervision over the distribution of the corporation's assets from liability to ~~such the~~ unknown, unlocated, legally disabled or

nonaccepting persons. If the dissolution is under the supervision of the Superior Court pursuant to section 1105, ~~no such the~~ deposit ~~shall may not~~ be made with the Treasurer of State, except pursuant to order of the court, on ~~such~~ terms as the court may order.

Sec. C-27. 13-B MRSA §1302, sub-§4 is enacted to read:

4. Notice to Attorney General in case of public benefit corporation. In the case of a public benefit corporation, the Secretary of State shall notify the Attorney General of the suspension of the corporation's authority to carry on activities under subsection I.

Sec. C-28. 13-B MRSA §1406 is enacted to read:

§1406. Public and mutual benefit corporation

1. Public benefit corporation. A domestic corporation subject to this Act is a public benefit corporation if:

A. It is designated a public benefit corporation by statute;

B. It is recognized as exempt under the Internal Revenue Code, Section 501(c)(3) or any successor provision;

C. Pursuant to its articles of incorporation or its bylaws or by statute, it:

(1) Is organized for a public or charitable purpose; and

(2) Upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person that is recognized as exempt under the Internal Revenue Code, Section 501(c)(3) or any successor provision; or

D. It elects to be a public benefit corporation in accordance with subsection 3 or section 403, subsection 1, paragraph A-1.

2. Mutual benefit corporation. A domestic corporation other than one described in subsection 1 is a mutual benefit corporation.

3. Filings by corporation existing on effective date. Not later than January 1, 2004, a domestic corporation in existence on January 1, 2003 shall specify on a filing with the Secretary of State whether it is a public benefit corporation or a mutual benefit corporation.

A. The specification may be made on an annual report, on an amendment or restatement of arti-

cles of incorporation or on articles of merger, conversion or domestication.

B. A corporation that fails to comply with this subsection is a public benefit corporation until proper filing is made.

Sec. C-29. Effective date. This Part takes effect January 1, 2003.

See title page for effective date, unless otherwise indicated.

CHAPTER 551

H.P. 1433 - L.D. 1930

An Act to Ensure the Fair Collection of Overpayments

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

Sec. 1. 22 MRSA §3811, sub-§1-A is enacted to read:

1-A. Caretaker relative. "Caretaker relative" as defined by rules adopted by the department means any person, regardless of age, who applies for and receives assistance on behalf of a dependent child.

Sec. 2. 22 MRSA §3825 is enacted to read:

§3825. Exceptions to collections from minors

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "AFDC" means the Aid to Families with Dependent Children program administered pursuant to former chapter 1053.

B. "TANF" means the Temporary Assistance for Needy Families program, under the United States Social Security Act, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105.

2. TANF and food stamps. To the extent allowable by federal law, a TANF or food stamp overpayment may not be collected from a person who was a minor dependent in the household at the time the overpayment accrued.

3. AFDC. If the caretaker relative and all adult members of an overpaid assistance unit can not be located, are deceased or have had the overpayment discharged in bankruptcy and a minor dependent member of the overpaid assistance unit is receiving

benefits from AFDC or TANF, or its successor programs, the department may reduce benefits to the extent required by federal law. To the extent allowable by federal law, the department may not otherwise seek to recover overpaid benefits from anyone who was a minor dependent member of the AFDC assistance unit at the time that the AFDC overpayment accrued.

4. Rulemaking. The department may adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 552

H.P. 1486 - L.D. 1989

An Act Regarding Criminal History Record Checks

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

Sec. 1. 25 MRSA §1541, sub-§6, as amended by PL 1999, c. 401, Pt. W, §1, is further amended to read:

6. Establishment of fees. The State Bureau of Identification may charge a fee to nongovernmental organizations ~~and~~ governmental organizations that are engaged in licensing and governmental organizations that are not a governmental entity of the State, a county of the State or a municipality of the State for services provided each criminal history record check requested for noncriminal justice purposes pursuant to ~~this chapter~~ Title 16, chapter 3, subchapter VIII. The requestor shall provide a name and date of birth for each record being requested. A request made pursuant to 5 United States Code, Section 9101 must be accompanied by fingerprints. A governmental organization that is engaged in licensing may charge an applicant for the cost of the ~~State Bureau of Identification services~~ criminal history record check. The commissioner shall establish a schedule of fees that covers the cost of providing these services. Revenues generated from ~~this fee~~ these fees must be credited to the General Fund and the Highway Fund in an amount consistent with currently budgeted allotments and allocations.

Sec. 2. 25 MRSA §1549, as amended by PL 1993, c. 235, §1, is further amended to read:

§1549. Request for fingerprints; fee

The State Police, the sheriffs and the chiefs of police in each of the cities and towns may take or