LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
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J.S. McCarthy Company
Augusta, Maine
2002

CHAPTER 640

H.P. 283 - L.D. 361

An Act to Adopt the Model Business Corporation Act in Maine

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

PART A

Sec. A-1. 13-A MRSA, as amended, is repealed.

Sec. A-2. 13-C MRSA is enacted to read:

TITLE 13-C

MAINE BUSINESS CORPORATION ACT

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER 1

GENERAL PROVISIONS

§101. Short title

This Act may be known and cited as the "Maine Business Corporation Act."

§102. Definitions

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

1. Articles of incorporation. "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto. "Articles of incorporation" includes articles of merger, articles of consolidation, articles of domestication, articles of conversion, a certificate of incorporation and what has previously been designated as "articles of agreement" for a corporation and certificate of organization. "Articles of incorporation" also includes special acts of the Legislature chartering corporations that could not be organized under general acts. If any document filed under this Act restates the articles of incorporation in their entirety, the articles do not include any prior documents.

2. Authorized shares. "Authorized shares" means the shares of all classes that a domestic or foreign corporation is authorized to issue.

3. Conspicuous. "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. Words that are printed in italics or boldface or contrasting color or typed in capitals or underlined are conspicuous.

4. Corporation; domestic corporation; domestic business corporation. "Corporation," "domestic corporation" or "domestic business corporation" means a corporation for profit or with shares, that is not a foreign corporation, incorporated under or subject to the provisions of this Act.

5. Deliver; delivery. "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.

6. Distribution. "Distribution" means a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption or other acquisition of shares; a distribution of indebtedness; or otherwise.

7. Domestic unincorporated entity. "Domestic unincorporated entity" means an unincorporated entity whose internal affairs are governed by the laws of this State.

8. Effective date of notice. "Effective date of notice" has the meaning set forth in section 103.

9. Electronic transmission; electronically transmitted. "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval and reproduction of information by the recipient.

10. Employee. "Employee" includes an officer of a domestic or foreign corporation but does not include a director. A director may accept duties that make that director also an employee.

11. Entity. "Entity" includes a domestic or foreign business corporation; a domestic or foreign nonprofit corporation; an estate; a partnership; a trust; 2 or more persons having a joint or common economic interest; a domestic or foreign unincorporated entity; a state; the United States; and a foreign government.

12. Filing entity. "Filing entity" means an unincorporated entity that is created by filing a public organic document.

13. Foreign corporation; foreign business corporation. "Foreign corporation" or "foreign business corporation" means a corporation incorporated for profit under a law other than the law of this

State that would be a business corporation if incorporated under the laws of this State.

14. Foreign nonprofit corporation. "Foreign nonprofit corporation" means a corporation incorporated under a law other than the law of this State that would be a nonprofit corporation if incorporated under the laws of this State.

15. Foreign unincorporated entity. "Foreign unincorporated entity" means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this State.

16. Governmental subdivision. "Governmental subdivision" includes an authority, county, district and municipality.

17. Includes. "Includes" denotes a partial definition.

18. Individual. "Individual" means a natural person. "Individual" includes the estate of an incompetent or deceased individual.

19. Interests in an unincorporated entity. "Interests in an unincorporated entity" means:

A. A right to receive distributions from an unincorporated entity either in the ordinary course or upon liquidation, including as an assignee; or

B. A right to vote on issues involving the internal affairs of an unincorporated entity, other than as an agent, assignee, proxy or person responsible for managing the business and affairs of the unincorporated entity.

20. Means. "Means" denotes an exhaustive definition.

21. Membership. "Membership" means the rights of a member in a domestic or foreign nonprofit corporation.

22. Nonfiling entity. "Nonfiling entity" means an unincorporated entity that is not created by filing a public organic document.

23. Nonprofit corporation; domestic nonprofit corporation. "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation incorporated under the laws of this State and subject to the provisions of the Maine Nonprofit Corporation Act.

24. Notice. "Notice" has the meaning set forth in section 103.

25. Organic document. "Organic document" means a public organic document or a private organic document.

26. Organic law. "Organic law" means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

27. Owner liability. "Owner liability" means personal liability for a debt, obligation or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

A. Solely by reason of the person's status as a shareholder, member or interest holder; or

B. By the articles of incorporation, bylaws or an organic document pursuant to a provision of the organic law authorizing the articles of incorporation, bylaws or an organic document to make one or more specified shareholders, members or interest holders liable in their capacity as shareholders, members or interest holders for all or specified debts, obligations or liabilities of the entity.

28. Person. "Person" includes an individual and an entity.

29. Principal office. "Principal office" means the office so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

30. Private organic document. "Private organic document" means any document other than the public organic document, if any, that determines the internal governance of an unincorporated entity. When a private organic document has been amended or restated, "private organic document" means the private organic document as last amended or restated.

31. Public organic document. "Public organic document" means the document, if any, that is filed as a public record to create an unincorporated entity. When a public organic document has been amended or restated, "public organic document" means the public organic document as last amended or restated.

32. Proceeding. "Proceeding" includes a civil suit and criminal, administrative and investigatory action.

33. Record date. "Record date" means the date established under chapter 6 or 7 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this Act. The determinations must be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

34. Shareholder. "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to

the extent of the rights granted by a nominee certificate on file with a corporation.

35. Shares. "Shares" means the units into which the proprietary interests in a corporation are divided.

36. Sign; signature. "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

37. State. "State," when referring to a part of the United States, includes a state or commonwealth and its agencies and governmental subdivisions and a territory or insular possession of the United States and its agencies and governmental subdivisions.

38. Subscriber. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

39. Unincorporated entity. "Unincorporated entity" means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: a domestic or foreign business or nonprofit corporation; an estate; a trust; a state; the United States; or a foreign government. "Unincorporated entity" includes, but is not limited to, a general partnership, limited liability company, limited partnership, business trust, joint stock association and unincorporated nonprofit association.

40. United States. "United States" includes a district, authority, bureau, commission, department and any other agency of the United States.

41. Voting group. "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this Act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this Act to vote generally on a matter are for that purpose a single voting group.

42. Voting power. "Voting power" means the current power to vote in the election of directors.

§103. Notice

1. Written notice required unless oral notice reasonable. Notice under this Act must be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission constitutes written notice.

2. Methods of communicating notice. Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, or by radio, television or other form of public broadcast communication.

3. Written notice by corporation; when effective. Written notice by a domestic or foreign corporation to a shareholder, if in a comprehensible form, takes effect:

A. Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or

B. When electronically transmitted to the shareholder in a manner authorized by the shareholder.

4. Written notice to corporation; when effective. Written notice to a domestic or foreign corporation authorized to transact business in this State may be addressed to its clerk or registered agent at its registered office or to the corporation at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority pursuant to section 130. Except as provided in subsection 3, written notice, if in a comprehensible form, is effective at the earliest of the following:

A. When received by the addressee;

B. Five days after its deposit in the United States mail, if mailed postpaid and correctly addressed; or

C. The date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

5. Oral notice; when effective. Oral notice is effective when communicated, if communicated in a comprehensible manner.

6. Specific notice requirements govern. If this Act prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this Act, those requirements govern.

7. Computation of time for notice purposes. In computing the time for the giving of any notice required or permitted under this Act, or under the articles or bylaws of a corporation, or a resolution of its shareholders or directors, the day on which the notice is given is excluded in the computation of time and the day when the act for which notice is given is to be done is included in the computation of time,

unless the instrument calling for notice specifically provides otherwise.

§104. Number of shareholders

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

A. Three or fewer co-owners;

B. A corporation, partnership, trust, estate or other entity; and

C. The trustees, guardians, custodians or other fiduciaries of a single trust, estate, or account.

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

§105. Reservation of power

The Legislature of this State has the power to amend or repeal all or part of this Act at any time, and all domestic and foreign corporations subject to this Act are governed by the amendment or repeal.

SUBCHAPTER 2

FILING DOCUMENTS

§121. Filing requirements

To be entitled to filing with the office of the Secretary of State, a document must satisfy the following requirements and the requirements of any other section of this Act.

1. Filing in office of Secretary of State. Filing of the document in office of the Secretary of State must be permitted or required by this Act.

2. Information. The document must contain the information required by this Act.

3. Form; format. The document must be typewritten or printed or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

4. English language. The document must be in the English language, except that:

A. A corporate name need not be in English if written using the Roman alphabet or Arabic or Roman numerals; and

B. The certificate of existence required of foreign corporations under section 130 need not be in English if accompanied by a reasonably authenticated English translation.

5. Executed. The document must be executed and dated:

A. By the chair of the board of directors of a domestic or foreign corporation, by its president or by another of its officers;

B. By an incorporator, if directors have not been selected or the corporation has not been formed;

C. By a fiduciary, if the corporation is in the hands of a receiver, trustee or other court-appointed fiduciary; or

D. By the clerk of the corporation.

6. Signature; corporate seal. The person executing the document shall sign it and state beneath or opposite that signature the person's name and the capacity in which the person signs. The document may but need not contain a corporate seal, attestation, acknowledgment or verification.

7. Prescribed form. If the Secretary of State has prescribed a mandatory form for the document under section 122, the document must be in or on the prescribed form.

8. Delivery. The document must be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of State.

9. Fee. At the time of delivery, the correct filing fee and any reinstatement fee or penalty must be paid or provision for payment made in a manner permitted by the Secretary of State.

§122. Forms

The Secretary of State may prescribe and furnish on request forms for any documents required or permitted to be filed by this Act. If the Secretary of State so requires, use of these forms is mandatory.

§123. Filing, service and copying fees

1. Filing fees. The following fees must be paid to the Secretary of State.

A. For articles of incorporation, the fee is $125.

B. For an application for the use of an indistinguishable name, the fee is $20.

C. For an application for a reserved name, the fee is $20.

D. For a notice of transfer of a reserved name, the fee is $20.

E. For an application for a registered name, per month or portion of a month, the fee is $20.

F. For an application for renewal of a registered name, the fee is $200.

G. For a notice of change of clerk, registered agent or registered office, or a combination thereof, the fee is $20.

H. For a notice of change of a registered office for each affected corporation not to exceed a total of 100, the fee is $20.

I. For a notice of change of a registered office for each affected corporation in excess of 100, the fee is $10.

J. For a notice of resignation of a clerk or registered agent, the fee is $20.

K. For an amendment of articles of incorporation, the fee is $35.

L. For a restatement of articles of incorporation, the fee is $80.

M. For articles of merger or share exchange, the fee is $80.

N. For articles of domestication, the fee is $125.

O. For articles of charter surrender, the fee is $70.

P. For articles of nonprofit conversion, the fee is $125.

Q. For articles of domestication and conversion, the fee is $125.

R. For articles of entity conversion, the fee is $125.

S. For articles of dissolution, the fee is $55.

T. For articles of revocation of dissolution, the fee is $55.

U. For an application for reinstatement following administrative dissolution for failure to file an annual report, the fee is $125. The maximum reinstatement fee may not exceed $500, regardless of the number of delinquent reports or the period of delinquency.

V. For an application for reinstatement following administrative dissolution for failure to pay the annual report late filing penalty, the fee is $25.

W. For an application for reinstatement following administrative dissolution for failure to appoint or maintain a clerk or registered office, the fee is $25.

X. For an application for reinstatement following administrative dissolution for failure to notify the Secretary of State that its clerk or registered office has been changed, that its clerk has resigned or that its registered office has been discontinued, the fee is $25.

Y. For a certificate of judicial dissolution, there is no fee.

Z. For an application for authority, the fee is $250 .

AA. For an amended application for authority, the fee is $70.

BB. For an application for withdrawal of authority, the fee is $70.

CC. For an application for transfer of authority, the fee is $70.

DD. For an annual report, the fee is $60.

EE. For failing to deliver an annual report by its due date in addition to the annual report filing fee, the fee is $25.

FF. For articles of correction, the fee is $35.

GG. For a certificate of existence or authorization, the fee is $30.

HH. For an application for excuse, the fee is $20.

II. For an certificate of resumption, the fee is $80.

JJ. For an application for an assumed name, the fee is $105.

KK. For an application for a fictitious name adopted by a foreign corporation authorized to transact business in this State because its real name is unavailable, the fee is $20.

LL. For an application for termination of an assumed name, the fee is $20.

MM. For any other document required or permitted to be filed by this Act, the fee is $35.

2. Process fee. The Secretary of State shall collect a fee of $20 each time process is served on the Secretary of State under this Act. The party to a proceeding causing service of process is entitled to recover this fee as costs if that party prevails in the proceeding.

3. Copying and certifying fees. The Secretary of State shall charge the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation.

A. For copying, the fee is $2 per page.

B. For certifying the copy, the fee is $5.

§124. Expedited service

The Secretary of State may provide expedited service for the processing of documents in accordance with this Act. The Secretary of State shall establish a fee schedule and adopt rules to set forth the procedures governing this expedited service. All fees collected as provided by this section must be deposited into a fund for use by the Secretary of State in providing improved filing service.

§125. Effective time and date of document

Except as provided in section 126, subsection 3, a document accepted for filing takes effect on the date and at the time of filing, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing, except that:

1. Time specified in document. If the document specifies a time as to its effective time on the date filed, then the document takes effect on the date filed and at the time specified; and

2. Delayed effective date; time. If the document specifies a delayed effective time and date, the document takes effect on the time and date specified, as long as the delayed effective date for the document is not later than the 90th day after the date it is filed. If the document specifies a delayed effective date but does not specify a time, the document is effective at the close of business on the specified date.

§126. Correcting filed document

1. Correction authorized. A domestic or foreign corporation may correct a document filed by the Secretary of State if:

A. The document contains an inaccuracy;

B. The document was defectively executed, attested, sealed, verified or acknowledged; or

C. The electronic transmission of the document was defective.

2. Method of correcting documents. A domestic or foreign corporation may correct a document by preparing articles of correction that:

A. Describe the document, including its filing date, or attach a copy of it to the articles;

B. Specify the inaccuracy or defect to be corrected; and

C. Correct the inaccuracy or defect.

The domestic or foreign corporation shall deliver the articles of correction to the Secretary of State for filing.

3. Effective date of correction. Articles of correction take effect on the effective date of the document they correct except that, as to persons relying on the uncorrected document and adversely affected by the correction, articles of correction take effect when filed.

§127. Filing duty of Secretary of State

1. Duty to file. If a document delivered to the office of the Secretary of State for filing pursuant to this Act satisfies the requirements of section 121, the Secretary of State shall file the document.

2. Recording as filed; acknowledgment. The Secretary of State files a document pursuant to subsection 1 by recording it as filed on the date of receipt. After filing a document, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgement of the date of filing. If the person delivering the document for filing so requests, the acknowledgment must further include the hour and minute of filing.

3. Refusal to file; written explanation. If the Secretary of State refuses to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within 5 days after the document was delivered, together with a brief, written explanation of the reason for the refusal.

4. Ministerial. The Secretary of State's duty to file a document under this section is ministerial, and the filing or refusal to file a document does not:

A. Affect the validity or invalidity of the document in whole or part;

B. Relate to the correctness or incorrectness of information contained in the document; or

C. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§128. Appeal Secretary of State's refusal to file document

1. Commencing an appeal. If the Secretary of State refuses to file a document delivered to the Secretary of State's office for filing, the domestic or foreign corporation within 30 days after the return of

the document may appeal the refusal to the Superior Court of the county where the corporation's principal office is located or, if there is not a principal office in this State, of Kennebec County. The appeal is commenced by petitioning the court to compel filing of the document and by attaching to the petition the document and the Secretary of State's explanation of the refusal to file.

2. Court order. Upon the receipt of a petition filed under subsection 1, the court may summarily order the Secretary of State to file a document or take other action the court considers appropriate.

3. Appeal court's decision. The court's final decision may be appealed as in other civil proceedings.

§129. Evidentiary effect of copy of filed document

A certificate from the Secretary of State delivered with a copy of a document filed by the Secretary of State pursuant to section 127 is conclusive evidence that the original document is on file with the Secretary of State.

§130. Certificate of existence; certificate of authority

1. Application. Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authority for a foreign corporation.

2. Contents. A certificate of existence or certificate of authority sets forth:

A. The domestic corporation's corporate name or the foreign corporation's corporate name used in this State;

B. That, if a domestic corporation, the corporation is duly incorporated under the laws of this State and the date of its incorporation;

C. That, if a foreign corporation, the foreign corporation is authorized to transact business in this State;

D. That all fees and penalties owed to this State have been paid if:

(1) Payment is reflected in the records of the Secretary of State; and

(2) Nonpayment affects the existence or authorization of the domestic or foreign corporation;

E. That the corporation's most recent annual report required by section 1621 has been delivered to the Secretary of State;

F. That articles of dissolution relating to that corporation have not been filed; and

G. Other facts of record in the office of the Secretary of State that may be requested by the applicant under subsection 1.

3. Evidence of existence or authority. Subject to any qualification stated in the certificate, a certificate of existence or certificate of authority issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this State.

§131. Penalty for signing false document

A person commits a Class E crime if that person signs a document pursuant to this Act knowing it is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

SUBCHAPTER 3

Secretary of State

§141. Powers

The Secretary of State has the power reasonably necessary to perform the duties required of the Secretary of State by this Act, including the power to make rules not inconsistent with this Act. Rules adopted pursuant to this Act are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

CHAPTER 2

INCORPORATION

§201. Incorporators

One or more persons may serve as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

§202. Articles of incorporation

1. Required elements. The articles of incorporation of a corporation must set forth:

A. A corporate name for the corporation that satisfies the requirements of section 401;

B. The number of shares the corporation is authorized to issue and, if there are 2 or more classes of shares, the number of shares and a description of the rights in each class;

C. The street address and a mailing address, if different, of the corporation's initial registered

office and the name of its initial clerk at that office. For the address, a post office box alone is not sufficient to meet the requirements of this paragraph;

D. The name and address of each incorporator; and

E. The name and address of the clerk of the corporation.

2. Optional elements. The articles of incorporation of a corporation may set forth:

A. The names and addresses of the individuals who are to serve as the initial directors;

B. A provision not inconsistent with law regarding:

(1) The purpose or purposes for which the corporation is organized;

(2) Managing the business and regulating the affairs of the corporation;

(3) Defining, limiting and regulating the powers of the corporation, its board of directors and its shareholders;

(4) A par value for authorized shares or classes of shares; or

(5) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

C. Any provision that under this Act is required or permitted to be set forth in the bylaws of the corporation;

D. A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for an action taken or a failure to take an action as a director, except liability for:

(1) The amount of a financial benefit received by a director to which the director is not entitled;

(2) An intentional infliction of harm on the corporation or its shareholders;

(3) A violation of section 833; or

(4) An intentional violation of criminal law; and

E. A provision permitting or making obligatory indemnification of a director for liability, as defined in section 851, subsection 5, to any person for an action taken or a failure to take an action as a director, except liability for:

(1) Receipt of a financial benefit to which the director is not entitled;

(2) An intentional infliction of harm on the corporation or its shareholders;

(3) A violation of section 833; or

(4) An intentional violation of criminal law.

3. Enumeration of corporate powers unnecessary. The articles of incorporation of a corporation need not set forth any of the corporate powers enumerated in this Act.

4. Incorporation prior to effective date of Act. If a corporation was incorporated in this State before the effective date of this Act, the corporation's articles of incorporation as of the effective date of this Act are deemed to include a provision eliminating monetary liability of directors to the fullest extent permitted by subsection 2, paragraph D. The corporation may, by later amendment approved in accordance with section 1002 or 1003, repeal or restrict this limitation of liability with regard to conduct of a director that occurs subsequent to that amendment.

5. Filing of clerk's signed acceptance required. The signed acceptance of the clerk of a corporation must be filed either with or as part of the articles of incorporation.

§203. Incorporation

1. Beginning of corporate existence. Unless a later effective date is specified, the corporate existence of a corporation begins when its articles of incorporation are filed.

2. Filing constitutes proof of satisfaction of conditions. The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation.

§204. Liability for preincorporation transactions

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this Act, are jointly and severally liable for all liabilities created while so acting.

§205. Organization of corporation

1. Organizational meeting. An organizational meeting must be held before or after incorporation in accordance with this subsection.

A. If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws and carrying on any other business brought before the meeting.

B. If initial directors are not named in the articles of incorporation, the incorporator or incorporators shall hold an organizational meeting, at the call of a majority of the incorporators:

(1) To elect directors and complete the organization of the corporation; or

(2) To elect a board of directors who shall complete the organization of the corporation.

2. Action permitted without organizational meeting. Action required or permitted by this section to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

3. Location of organizational meeting. An organizational meeting may be held in or out of this State.

§206. Bylaws

1. Adoption of bylaws. The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

2. Contents of bylaws. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or its articles of incorporation.

§207. Emergency bylaws

1. Emergency defined. For purposes of this section, an emergency exists if a quorum of the corporation's directors can not readily be assembled because of some catastrophic event.

2. Emergency bylaws authorized. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during an emergency, including:

A. Procedures for calling a meeting of the board of directors;

B. Quorum requirements for a meeting of the board of directors; and

C. Designation of additional or substitute directors.

3. Effect of nonemergency bylaws. All provisions of the regular bylaws that are consistent with the emergency bylaws remain effective during an emergency. The emergency bylaws are not effective after the emergency ends.

4. Effect of corporate action in accord with emergency bylaws. Corporate action taken in good faith in accordance with the emergency bylaws:

A. Binds the corporation; and

B. May not be used to impose liability on a corporate director, officer, employee or agent.

CHAPTER 3

PURPOSES AND POWERS

§301. Corporate purposes

1. Purpose of engaging in lawful business. A corporation incorporated under this Act has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

2. Subject to other regulation by this State. A corporation engaging in a business that is subject to regulation under another statute of this State may incorporate under this Act only if permitted by, and subject to all limitations of, the other statute.

§302. General powers

Unless its articles of incorporation provide otherwise, a corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including, without limitation, power to:

1. Suit. Sue and be sued, complain and defend in its corporate name;

2. Corporate seal. Have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

3. Bylaws. Make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for managing the business and regulating the affairs of the corporation;

4. Acquire property. Purchase, receive, lease or otherwise acquire, and own, hold, improve, use and otherwise deal with, real or personal property or any legal or equitable interest in property, wherever located;

5. Dispose of property. Sell, convey, mortgage, pledge, lease, exchange and otherwise dispose of all or any part of its property;

6. Interest in obligations of other entity. Purchase, receive, subscribe for or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

7. Incur obligations. Make contracts and guarantees; incur liabilities; borrow money; issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the corporation; and secure any of its obligations by mortgage or pledge of any of its property, franchises or income;

8. Use of funds. Lend money, invest and reinvest its funds and receive and hold real and personal property as security for repayment;

9. Partnership; joint venture. Be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

10. Conduct business. Conduct its business, locate offices and exercise the powers granted by this Act within or without this State;

11. Directors, officers, employees, agents. Elect directors and appoint officers, employees and agents of the corporation, define their duties, fix their compensation and lend them money and credit;

12. Establish benefit or incentive plans. Pay pensions and establish pension plans, pension trusts, profit-sharing plans, share-bonus plans, share-option plans and benefit or incentive plans for any or all of its current or former directors, officers, employees and agents;

13. Make donations. Make donations for the public welfare or for charitable, scientific or educational purposes;

14. Transact business. Transact any lawful business that will aid governmental policy;

15. Actions in futherance of corporation. Make payments or donations or do any other lawful act that furthers the business and affairs of the corporation;

16. Cease activity. Cease its corporate activities and surrender its corporate franchise;

17. Other corporations. Form or acquire control of other corporations;

18. Life insurance. Provide, for its benefit, insurance on the life of any of its directors, officers or employees, or on the life of any shareholder;

19. Litigation expenses. Reimburse and indemnify litigation expenses of directors, officers and employees, as provided in chapter 8, subchapter V; and

20. Acquire and dispose of own shares. Purchase and otherwise acquire and dispose of its own shares.

§303. Emergency powers

1. Emergency defined. For the purposes of this section, an emergency exists if a quorum of the corporation's directors can not readily be assembled because of some catastrophic event.

2. Authorized powers in event of emergency. In anticipation of or during an emergency, the board of directors of a corporation may:

A. Modify lines of succession to accommodate the incapacity of any director, officer, employee or agent; and

B. Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

3. Notice of meeting; quorum. During an emergency, unless emergency bylaws pursuant to chapter 2 provide otherwise:

A. Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

B. One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

4. Effect of corporate action taken during emergency. Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

A. Binds the corporation; and

B. May not be used to impose liability on a corporate director, officer, employee or agent.

§304. Ultra vires

1. Corporate action not subject to challenge. Except as provided in subsection 2, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

2. Corporate action subject to challenge. A corporation's power to act may be challenged:

A. In a proceeding by a shareholder against the corporation to enjoin the act;

B. In a proceeding by the corporation, directly, derivatively or through a receiver, trustee or other legal representative against an incumbent or former director, officer, employee or agent of the corporation; or

C. In a proceeding by the Attorney General under section 1430.

3. Available remedies in proceeding by shareholder. In a shareholder's proceeding under subsection 2, paragraph A to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss, other than anticipated profits, suffered by the corporation or another party because of enjoining the unauthorized act.

CHAPTER 4

NAME

§401. Corporate name

1. Prohibition. A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 301 and the corporation's articles of incorporation.

2. Distinguishable name. Except as authorized by subsections 3 and 4, a corporate name must be distinguishable on the records of the Secretary of State from:

A. The name of a corporation, limited liability company, limited liability partnership or limited partnership that is incorporated, organized or authorized to transact business or carry on activities in this State;

B. Assumed, fictitious, reserved and registered name filings for all entities; and

C. Marks registered under Title 10, chapter 301-A.

3. Refuse to file name. The Secretary of State, in the Secretary of State's discretion, may refuse to file a name that:

A. Consists of or comprises language that is obscene;

B. Inappropriately promotes abusive or unlawful activity;

C. Falsely suggests an association with public institutions; or

D. Violates any other provision of the law of this State with respect to names.

4. Authorization to use name. A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable on the records of the Secretary of State from one or more of the names described in subsection 2. The Secretary of State shall authorize use of the name applied for if:

A. The entity in possession of the name consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable on the records of the Secretary of State from the name of the applicant; or

B. The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

5. Use of another corporation's name. A corporation may use the name, including the assumed or fictitious name, of another domestic or foreign corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the corporation proposing to use the name:

A. Has merged with the other corporation;

B. Has been formed by reorganization of the other corporation; or

C. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

6. Determining distinguishability. In determining whether names are "distinguishable on the records," the Secretary of State shall disregard the following:

A. The words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "limited," "limited partnership," "limited liability company," "limited liability partnership" or "professional corporation";

B. The presence or absence of the words or symbols of the words "and," "the" and "a";

C. The differences in the use of punctuation, capitalization or special characters; and

D. The differences in the uses of singular and plural forms of words.

§402. Reserved name

1. Reserve use of name. A person may reserve the exclusive use of a corporate name, including an assumed or fictitious name, by delivering for filing an application to the Secretary of State. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable period of 120 days.

2. Transfer of reservation. The owner of a reserved corporate name under subsection 1 may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, signed by the transferor, that states the name and address of the transferee.

§403. Registered name of foreign corporation

1. Register corporate name. A foreign corporation may register its corporate name if the name is distinguishable on the records of the Secretary of State pursuant to section 401.

2. Application. To register its corporate name a foreign corporation must deliver to the Secretary of State for filing an application that:

A. Sets forth its corporate name, the state or country and date of its incorporation, the address of its principal office and a brief description of the nature of the business in which it is engaged; and

B. Is accompanied by a certificate of existence or a document of similar import duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated. Such certificate of existence shall have been made not more than 90 days prior to the delivery of the application for filing.

3. Applicant's exclusive use. The corporate name is registered for the foreign corporation's exclusive use upon the effective date of the application until the end of the calendar year in which the application was filed.

4. Renewal of registered name. A foreign corporation whose registration is effective may renew it for a successive year by delivering for filing to the Secretary of State a renewal application that complies with the requirements of subsection 2 between October 1st and December 31st. The renewal application, when filed, renews the registration for the following calendar year.

5. Qualify as foreign corporation. A foreign corporation whose registration is effective may, after the registration is effective, qualify as a foreign corporation under the registered name or may consent in writing to the use of that name by a corporation incorporated under this Act or by another foreign corporation authorized to transact business in this State. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

§404. Assumed or fictitious name of corporation

1. Assumed name; defined. As used in this section, "assumed name" includes a trade name, the name of a division not separately incorporated and not used in conjunction with the true corporate name and any name other than the true name of a corporation, except a fictitious name.

2. Fictitious name; defined. As used in this section, "fictitious name" is a name adopted by a foreign corporation authorized to transact business in this State because its real name is unavailable pursuant to section 401.

3. Authorized to transact business. Upon complying with this section, a domestic or foreign corporation authorized to transact business in this State may transact its business in this State under one or more assumed or fictitious names.

4. File statement indicating use of assumed or fictitious name. Prior to transacting business in this State under an assumed or fictitious name, a corporation shall execute and deliver for filing, in accordance with section 121, a statement setting forth:

A. The corporate name and the address of its registered office;

B. That it intends to transact business under an assumed or fictitious name;

C. The assumed or fictitious name that it proposes to use; and

D. If the assumed or fictitious name is not to be used at all of the corporation's places of business in this State, the locations where it will be used.

A separate statement must be executed and delivered for filing with respect to each assumed or fictitious name that the corporation proposes to use.

5. Compliance required. Each assumed or fictitious name must comply with the requirements of section 401.

6. Enjoin use of assumed or fictitious name. If a corporation uses an assumed or fictitious name without complying with the requirements of this section, the continued use of the assumed or fictitious name may be enjoined upon suit by the Attorney General or by any person adversely affected by the use of the assumed or fictitious name.

7. Enjoin use despite compliance. Notwithstanding its compliance with the requirements of this section, the use of an assumed or fictitious name may be enjoined upon suit of the Attorney General or of any person adversely affected by such use if:

A. The assumed or fictitious name did not, at the time the statement required by subsection 4 was filed, comply with the requirements of section 401; or

B. The assumed or fictitious name is not distinguishable on the records of the Secretary of State from a name in which the plaintiff has prior rights by virtue of the common law or statutory law of unfair competition, unfair trade practices, common law copyright or similar law.

The mere filing of a statement pursuant to subsection 4 does not constitute actual use of the assumed or fictitious name set out in that statement for purposes of determining priority of rights.

8. Terminate use of assumed or fictitious name. A corporation may terminate an assumed or fictitious name by executing and delivering, in accordance with section 121, a statement setting forth:

A. The name of the corporation and the address of its registered office;

B. That it no longer intends to transact business under the assumed or fictitious name; and

C. The assumed or fictitious name it intends to terminate.

CHAPTER 5

OFFICE AND CLERK

§501. Registered office and clerk

1. Clerk. Each domestic corporation to which this Act applies shall maintain in this State a clerk, who is a natural person resident in this State. The clerk may be, but is not required to be, one of the directors or officers of the corporation, or the clerk may be a person holding no other position with the corporation. The clerk of a corporation is not an officer but performs the functions provided in this Act.

2. Registered office. The clerk shall maintain a registered office at some fixed place within this State, which may be, but need not be, the corporation's place of business. The clerk shall perform those duties required of the clerk elsewhere in this Act.

3. Acceptance of appointment. Unless the clerk signed the document making the appointment, the appointment of a clerk or a successor clerk on whom process may be served is not effective until the clerk delivers a written statement to the Secretary of State accepting the appointment.

4. Change of clerk. A corporation may change its clerk by executing and delivering for filing as provided by section 121 a statement setting forth:

A. The name of the corporation;

B. The name and address of its current clerk;

C. The name and address of its successor clerk; and

D. Either:

(1) That the change of clerk was duly authorized by the board of directors of the corporation and that the power to appoint the clerk is not reserved to the shareholders by the articles or the bylaws; or

(2) That the change of clerk was duly authorized by the shareholders of the corporation.

5. Resignation of clerk. The clerk of a corporation may resign upon filing a written notice of the resignation with the Secretary of State and by mailing a copy of the notice to the president or treasurer of the corporation or, if both of those offices are vacant, to any of the corporation's directors. The notice filed with the Secretary of State must recite that a copy of the notice has been mailed to the corporate officer designated in this subsection and must specify the corporate officer's name and corporate office. The

resignation takes effect upon the filing of the resignation by the Secretary of State.

6. Appointment of new clerk. If a clerk dies, becomes incapacitated, resigns or otherwise is unable to perform the clerk's duties, the corporation shall promptly appoint another clerk and shall execute and file with the Secretary of State a written statement of the appointment of the new clerk, as provided in subsection 4.

7. Name or address change. If the name or address of the registered office of the clerk of one or more corporations changes from the name or address of the registered office appearing on the record in the office of the Secretary of State, the clerk shall execute and deliver for filing, in accordance with section 121, a statement setting forth:

A. The name of the clerk appearing on the record in the office of the Secretary of State;

B. If the current clerk has had a name change, the new name of the clerk;

C. The address of the registered office appearing on the record in the office of the Secretary of State;

D. If the address of the registered office has changed, the address of the new registered office;

E. The names of each of the corporations of which the clerk is clerk; and

F. A recitation that states that a notice of the change has been sent to each of the corporations.

In lieu of the bulk filing, the clerk may file for each such corporation a separate statement containing the information.

8. Statement of change. Filing by a corporation of a statement of a change of its clerk, as provided in subsection 4, constitutes both an appointment of the new clerk named in the statement of change and a termination of the appointment of its former clerk.

9. Clerk named in articles of incorporation. The initial clerk of a corporation must be named in the articles of incorporation for that corporation. A clerk continues in office until a successor is chosen and qualifies and the statement required by subsection 4 is filed or until the resignation notice required by subsection 5 is filed.

The articles of incorporation or bylaws may provide that changes in the clerk and election of a new clerk must be by vote of the shareholders. Unless the articles or bylaws expressly so provide, changes in the clerk and election of a new clerk must be by resolution of the board of directors.

10. Document filed to change clerk. Any document to be filed by the Secretary of State, the effect of which is to change the clerk, must be signed by the person designated in the document as the new clerk or in accordance with section 121, subsection 5, paragraph A, B or C.

§502. Service on corporation

1. Service of process; agent. A corporation's clerk is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the corporation.

2. Service by mail. If a corporation has no clerk, or the clerk can not with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the president of the corporation at its principal office. Service is perfected under this subsection at the earliest of:

A. The date the corporation receives the mail;

B. The date shown on the return receipt, if signed on behalf of the corporation; or

C. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. Service on corporation not limited. This section does not prescribe the only means or necessarily the required means of serving a corporation.

CHAPTER 6

SHARES AND DISTRIBUTIONS

SUBCHAPTER I

SHARES

§601. Authorized shares

1. Classes and number of shares authorized. A corporation's articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class and, prior to the issuance of shares of a class, the preferences, limitations and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations and relative rights identical with those of other shares of the same class, except to the extent otherwise permitted by section 602.

2. Voting rights authorized. A corporation's articles of incorporation must authorize one or more classes of shares that together have unlimited voting rights and one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

3. Designations, preferences, limitations and relative rights. A corporation's articles of incorporation may authorize one or more classes of shares that:

A. Have special, conditional or limited voting rights or no right to vote, except to the extent prohibited by this Act;

B. Are redeemable or convertible as specified in the articles of incorporation:

(1) At the option of the corporation, the shareholder or another person or upon the occurrence of a designated event;

(2) For cash, indebtedness, securities or other property; or

(3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

C. Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative; or

D. Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

The description of the designations, preferences, limitations, and relative rights of share classes in this subsection is not exhaustive.

4. Rules of construction for preferred shares. Unless otherwise provided by this Act or by a corporation's articles of incorporation or by resolution of the board of directors in the case of shares whose terms may be fixed as provided by section 602:

A. Shares that are preferred as to dividends are deemed cumulative preferred shares;

B. Shares that are preferred as to dividends are not entitled to participate in dividends beyond the amount of the stated dividend preference;

C. Shares that are preferred as to dividends are preferred, on liquidation of the corporation, to the extent of the par or stated value of the shares, if any;

D. Shares that are preferred as to liquidation are not entitled to participate in liquidation payments beyond the amount of the liquidation preference stated in the articles of incorporation or implied under paragraph C;

E. If preferred shares cumulative as to dividends are entitled to a preferential payment on liquidation, the payment must also include the amount of dividends accrued but unpaid as of the date of liquidation;

F. Shares that are preferred as to dividends or as to payments upon liquidation are not entitled to vote; and

G. "Liquidation," "rights upon liquidation" and terms of like import shall refer to the formal dissolution of the corporation. Sale of all the corporate assets or participation of the corporation in a merger or consolidation is not deemed a liquidation.

This subsection does not apply to shares already issued or authorized on December 31, 1971.

§602. Terms of class or series determined by board of directors

1. Determination by board of directors. If a corporation's articles of incorporation provide, the board of directors may determine, in whole or part, the preferences, limitations and relative rights within the limits set forth in section 601 of any class of shares before the issuance of any shares of that class or one or more series within a class before the issuance of any shares of that series.

2. Series must have distinguishing designation. Each series of a class must be given a distinguishing designation.

3. Identical terms. A share of a series must have preferences, limitations and relative rights identical with those of all other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

4. Filing articles of amendment. Before issuing any shares of a class or series created under this section, the corporation shall deliver to the Secretary of State for filing articles of amendment, which are effective without shareholder action, that set forth:

A. The name of the corporation;

B. The text of the amendment determining the terms of the class or series of shares;

C. The date the amendment was adopted; and

D. A statement that the amendment was duly adopted by the board of directors.

§603. Issued and outstanding shares

1. Issue number of shares authorized. A corporation may issue the number of shares of each class or series authorized by its articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted or cancelled.

2. Limitations on reacquisition, redemption or conversion. The reacquisition, redemption or conversion of outstanding shares is subject to the limitations of subsection 3 and to section 6.40.

3. Requirement. At all times that shares of the corporation are outstanding, there must be outstanding:

A. One share that has, or more shares that together have, unlimited voting rights; and

B. One share that is, or more shares that together are, entitled to receive the net assets of the corporation upon dissolution.

§604. Fractional shares

1. Authorization. A corporation may:

A. Issue fractions of a share or pay in money the value of fractions of a share;

B. Arrange for disposition of fractional shares by the shareholders; or

C. Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

2. Scrip. Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section 626, subsection 2.

3. Rights. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

4. Conditions. The board of directors may authorize the issuance of scrip subject to any condition it considers desirable, including:

A. That the scrip will become void if not exchanged for full shares before a specified date; and

B. That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

SUBCHAPTER II

ISSUANCE OF SHARES

§621. Subscription for shares before incorporation

1. Revocability. A subscription for shares entered into before incorporation is irrevocable for 6 months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

2. Payment terms. The board of directors of a corporation may determine the payment terms of a subscription for shares that was entered into before incorporation, unless the subscription agreement specifies the payment terms. A call for payment by the board of directors must be uniform as far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

3. Receipt of consideration. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

4. Default; rescission. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than 20 days after the corporation sends written demand for payment to the subscriber.

5. Contract. A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section 622.

§622. Issuance of shares

1. Reservation of powers. The powers granted in this section to the board of directors of a corporation may be reserved to the shareholders by the articles of incorporation.

2. Consideration. The board of directors of a corporation may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

3. Determination of adequate consideration. Before the corporation issues shares, its board of directors must determine that the consideration received or to be received for shares to be issued is adequate. The determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid and nonassessable.

4. Fully paid; nonassessable. When the corporation receives the consideration for which its board of directors authorized the issuance of shares under subsection 3, those shares issued are fully paid and nonassessable.

5. Escrow. The corporation may place in escrow shares issued for a contract for future services or benefits or for a promissory note or may make other arrangements to restrict the transfer of the shares and may credit distributions in respect of the shares against their purchase price until the services are performed, the note is paid or the benefits received. If the services are not performed, the note is not paid or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

§623. Liability of shareholders

1. Liability for paying consideration. A purchaser from a corporation of that corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.

2. Personal liability. Unless otherwise provided in a corporation's articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that the shareholder may become personally liable by reason of the shareholder's acts or conduct.

§624. Share dividends

1. Pro rata shares. Unless a corporation's articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series of shares. An issuance of shares under this subsection is a share dividend.

2. Shares of different classes. Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

A. The articles of incorporation so authorize;

B. A majority of the votes entitled to be cast by the class or series to be issued approves the issue; or

C. There are no outstanding shares of the class or series to be issued.

3. Record date. If a corporation's board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date is the date the board of directors authorizes the share dividend.

§625. Share options

A corporation may issue rights, options or warrants for the purchase of shares of the corporation. Its board of directors shall determine the terms upon which the rights, options or warrants are issued, their form and content and the consideration for which the shares are to be issued.

§626. Form and content of certificates

1. Certificate not required. Shares may but need not be represented by certificates. Unless this Act or another law expressly provides otherwise, whether the shares are represented by certificates or not does not affect the rights and obligations of shareholders.

2. Content of certificate. At a minimum each share certificate must state on its face:

A. The name of the issuing corporation and that the corporation is organized under the laws of this State;

B. The name of the person to whom issued; and

C. The number and class of shares and the designation of the series, if any, the certificate represents.

3. Classes. If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences and limitations applicable to each class and the variations in rights, preferences and limitations determined for each series and the authority of its board of directors to determine variations for future series must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

4. Signatures. Each share certificate must be signed, either manually or in facsimile, by:

A. Two officers designated in the bylaws;

B. The clerk and an officer designated in the bylaws; or

C. The corporation's board of directors.

A share certificate may bear the corporate seal or its facsimile.

5. Signatory no longer holds office. If the person who signed a share certificate pursuant to subsection 4 no longer holds office when the certificate is issued, the certificate is nevertheless valid.

§627. Shares without certificates

1. Authorization. Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issue of some or all of the shares of any or all of its classes or series of shares without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

2. Written statement. Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section 626, subsections 2 and 3 and, if applicable, section 628.

§628. Restriction on transfer of shares and other securities

1. Share includes. For purposes of this section, "share" includes a security convertible into or carrying a right to subscribe for or acquire shares.

2. Imposition of restrictions. A corporation's articles of incorporation or bylaws, an agreement among shareholders or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

3. Existence of restriction must be made known. A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section 627, subsection 2. Unless so noted, a restriction is not enforceable against a person who has no knowledge of the restriction.

4. Purpose of restriction. A restriction on the transfer or registration of transfer of shares is authorized:

A. To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

B. To preserve exemptions under federal or state securities law; or

C. For any other reasonable purpose.

5. Authorized restrictions. A restriction on the transfer or registration of transfer of shares may:

A. Obligate the shareholder first to offer the corporation or other persons, separately, consecutively or simultaneously, an opportunity to acquire the restricted shares;

B. Obligate the corporation or other persons, separately, consecutively or simultaneously, to acquire the restricted shares;

C. Require the corporation, the holders of any class of its shares or another person to approve the transfer of the restricted shares if the requirement is not manifestly unreasonable; or

D. Prohibit the transfer of the restricted shares to designated persons or classes of persons if the prohibition is not manifestly unreasonable.

§629. Expense of issue

A corporation may pay the expenses of selling or underwriting its shares and of organizing or reorganizing the corporation from the consideration received for shares.

SUBCHAPTER III

SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

§641. Shareholders' preemptive rights

1. Share includes. For purposes of this section, "share" includes a security convertible into or carrying a right to subscribe for or acquire shares.

2. No preemptive right absent statement in articles of incorporation. The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation provide.

3. Statement. A statement included in the articles of incorporation that "the corporation elects to have preemptive rights," or containing words of similar import, means that the principles set out in paragraphs A to F apply except to the extent the articles of incorporation expressly provide otherwise.

A. The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts

of the corporation's unissued shares upon the decision of the board of directors to issue them.

B. A shareholder may waive that shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration.

C. There is no preemptive right with respect to:

(1) Shares issued as compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(2) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents or employees of the corporation, its subsidiaries or affiliates;

(3) Shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation; or

(4) Shares sold otherwise than for money.

D. Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class.

E. Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

F. Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the corporation's board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

§642. Corporation's acquisition of its own shares

1. Acquisition. A corporation may acquire its own shares. Shares so acquired constitute authorized but unissued shares.

2. Prohibition on reissuance. If a corporation's articles of incorporation prohibit the reissue of the acquired shares, the number of authorized shares is reduced by the number of shares acquired.

SUBCHAPTER IV

DISTRIBUTIONS

§651. Distributions to shareholders

1. Distributions. A board of directors of a corporation may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection 3.

2. Record date. If the board of directors of a corporation does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption or other acquisition of the corporation's shares, then the record date is the date the board of directors authorizes the distribution.

3. Distribution prohibited. A distribution may not be made if, after giving the distribution effect:

A. The corporation would not be able to pay its debts as they become due in the usual course of business; or

B. The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

4. Basis for determination. The board of directors of a corporation may base a determination that a distribution is not prohibited under subsection 3 either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

5. Effect measured. Except as provided in subsection 7, the effect of a distribution under subsection 3 is measured:

A. In the case of distribution by purchase, redemption or other acquisition of the corporation's shares, as of the earlier of the date money or other property is transferred or debt incurred by the corporation or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

B. In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

C. In all other cases, as of the date the distribution is authorized if the payment occurs within 120 days after the date of authorization or the date the payment is made if it occurs more than 120 days after the date of authorization.

6. Indebtedness to shareholder. A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

7. Indebtedness issued as a distribution. Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection 3 if the terms of the indebtedness provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

8. Application. This section does not apply to distributions in liquidation under chapter 14.

CHAPTER 7

SHAREHOLDERS

SUBCHAPTER I

MEETINGS

§701. Annual meeting

1. Timing of meeting. A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with its bylaws.

2. Place. Annual shareholders' meetings may be held in or out of the State at the place stated in or fixed in accordance with a corporation's bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings must be held at the corporation's principal office.

3. Failure to hold meeting. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

§702. Special meeting

1. Special meeting required. A corporation shall hold a special meeting of its shareholders:

A. On call of the board of directors or the person or persons authorized to do so by its articles of incorporation or bylaws; or

B. If the holders of at least 10% of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date and deliver to the corporation one or more written demands for the meeting describing the purpose or purposes for which it is to be held, except that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25% of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

2. Record date for determining entitlement to special meeting. If not otherwise fixed under section 703 or 707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

3. Place of special meetings. Special meetings may be held in or out of this State at the place stated in or fixed in accordance with the corporation's bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings must be held at the corporation's principal office.

4. Scope of special meeting. Only business within the purpose or purposes described in the meeting notice required by section 705, subsection 3 may be conducted at a special meeting.

§703. Court-ordered meeting

1. Shareholder application. The Superior Court of the county in which a corporation's principal office is located, or, if the principal office is not located in this State, in which its registered office is located, may summarily order a meeting to be held:

A. On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of 6 months after the end of the corporation's fiscal year or 15 months after its last annual meeting; or

B. On application of a shareholder who signed a demand for a special meeting valid under section 702 if:

(1) Notice of the special meeting was not given within 30 days after the date the de-

mand was delivered to the corporation's secretary; or

(2) The special meeting was not held in accordance with the notice required by section 705, subsection 3.

2. Court may prescribe specifics. The Superior Court may fix the time and place of a meeting ordered pursuant to this section, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters and enter other orders necessary to accomplish the purpose or purposes of the meeting.

§704. Action without meeting

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

2. Record date. If not otherwise fixed under section 703 or 707, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection 1. Written consent is not effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date appearing on a consent delivered to the corporation in the manner required by this section, written consents signed by all shareholders entitled to vote on the action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

3. Effect of signed consent. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

4. Notice to nonvoting shareholders. If this Act requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this Act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

§705. Notice of meeting

1. Notification to shareholders. A corporation shall notify shareholders of the date, time and place of each annual or special shareholders' meeting no fewer than 10 days, or 3 days for close corporations, nor more than 60 days before the meeting date. Unless this Act or the corporation's articles of incorporation require otherwise, the corporation is required only to give notice to shareholders entitled to vote at the meeting.

2. Annual meeting; description of purpose not required. Unless this Act or a corporation's articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3. Special meeting; description of purpose required. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

4. Record date. If not otherwise fixed under section 703 or 707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

5. Adjournment to new date, time or place. Unless a corporation's bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time or place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

§706. Waiver of notice

1. Shareholder may waive notice. A shareholder may waive any notice required by this Act or a corporation's articles of incorporation or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. Attendance of meeting. A shareholder's attendance at a meeting:

A. Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

B. Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

§707. Record date

1. Establishment of record date. A corporation's bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

2. Limitation on date. A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

3. Determination effective. A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

4. Court-ordered meeting. If a court orders a shareholders' meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

§708. Conduct of meeting

1. Chair presides. At each meeting of a corporation's shareholders under this chapter, a chair shall preside. The chair must be appointed as provided in the bylaws or, in the absence of such provision, by the board of directors.

2. Order of business. The chair, unless the corporation's articles of incorporation or bylaws provide otherwise, shall determine the order of business and has the authority to establish rules for the conduct of a meeting held pursuant to this chapter.

3. Fairness of rules. Rules adopted for the meeting and the conduct of a meeting held pursuant to this chapter must be fair to shareholders.

4. Announcement when polls close. The chair of a meeting held pursuant to this chapter shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls are deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes thereto may be accepted.

SUBCHAPTER II

VOTING

§721. Shareholders list for meeting

1. List of shareholders' names. After fixing a record date for a meeting called pursuant to subchapter I, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be classified by voting group, and within each voting group by class or series of shares, and must show the address of and number of shares held by each shareholder. In the case of a close corporation, the requirement of a shareholders list may be satisfied by a stock transfer book or records, which need not be maintained in alphabetized order and need not contain the addresses of shareholders so long as the address of each shareholder is otherwise maintained in the records of the corporation.

2. Available for inspection. The shareholders list must be available for inspection by any shareholder, beginning 2 business days after notice of the meeting for which the list was prepared is given, or the next business day in the case of a close corporation that has provided fewer than 10 days' notice of such meeting, and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, subject to the requirements of section 1602, subsection 4, to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

3. Inspection of list. The corporation shall make the shareholders list available at the meeting, and a shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

4. Refusal by corporation. If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect the shareholders list before or at the meeting or copy the list as permitted by subsection 2, the Superior Court of the county where a corporation's principal office is located, or, if there is no principal office located in this State, where the

corporation's registered office is located, on application of the shareholder may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

5. Effect of unavailability of shareholders list. Refusal or failure to prepare or make available the shareholders list does not affect the validity of action taken at the meeting.

§722. Voting entitlement of shares

1. Entitlement to vote. Except as provided in subsections 2 and 4 or unless a corporation's articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote. The articles of incorporation may grant, either absolutely or conditionally, to the holders of bonds, debentures or other obligations of the corporation the power to vote on specified matters, including the election of directors. This power may not be terminated except upon written assent of the holders of 2/3 in the aggregate face amount of such bonds, debentures or other obligations. When this power has been granted to holders of bonds, debentures or other obligations of a corporation, the term "shareholder," whenever used in this Act, includes holders of such obligations to the extent necessary to give effect to their voting power so granted.

2. Ownership of shares by 2nd corporation. Absent special circumstances, a share of a corporation is not entitled to vote if it is owned, directly or indirectly, by a 2nd corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the 2nd corporation.

3. Voting of shares held in fiduciary capacity. Subsection 2 does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

4. Redeemable shares. Redeemable shares are not entitled to vote after notice of redemption is mailed to the shareholders and a sum sufficient to redeem the shares has been deposited with a bank, trust company or other financial institution under an irrevocable obligation to pay the shareholders the redemption price on surrender of the shares.

§723. Proxies

1. Voting authorized. A shareholder may vote the shareholder's shares in person or by proxy.

2. Appointment of proxy. A shareholder or the shareholder's agent or attorney-in-fact may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent or the shareholder's attorney-in-fact authorized the transmission.

3. Appointment of proxy effective. An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election appointed pursuant to section 731 or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

4. Appointment of proxy revocable. An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

A. A pledgee;

B. A person who purchased or agreed to purchase the shares;

C. A creditor of the corporation who extended the credit under terms requiring the appointment;

D. An employee of the corporation whose employment contract requires the appointment; or

E. A party to a voting agreement created under section 742.

5. Death or incapacity of shareholder. The death or incapacity of a shareholder who appointed a proxy does not affect the right of a corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

6. Appointment revoked when interest extinguished. An appointment made irrevocable under subsection 4 is revoked when the interest with which it is coupled is extinguished.

7. Transfer of shares subject to irrevocable appointment. A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of the existence of the irrevocable appointment when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

8. Acceptance of proxy's vote. Subject to section 725 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

9. Proxies given by holders of corporation's obligations. The provisions of subsections 1 to 7 apply to proxies given by the holders of a corporation's bonds, debentures or other obligations when a right to vote is conferred upon such holders by the articles of incorporation of a corporation, as permitted by section 722, subsection 1.

§724. Shares held by nominees

1. Recognition of beneficial owner as shareholder. A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

2. Procedure for recognition. The procedure under subsetion 1 may set forth:

A. The types of nominees to which it applies;

B. The rights or privileges that the corporation recognizes in a beneficial owner;

C. The manner in which the procedure is selected by the nominee;

D. The information that must be provided when the procedure is selected;

E. The period for which selection of the procedure is effective; and

F. Other aspects of the rights and duties created.

§725. Corporation's acceptance of votes

1. Corresponding name. If the name signed on a vote, consent, waiver or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder.

2. Different name. If the name signed on a vote, consent, waiver or proxy appointment does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver or proxy appointment and give it effect as the act of the shareholder if:

A. The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

B. The name signed purports to be that of an administrator, executor, guardian or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

C. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver or proxy appointment;

D. The name signed purports to be that of a pledgee, beneficial owner or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver or proxy appointment; or

E. Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

3. Rejection authorized. A corporation is entitled to reject a vote, consent, waiver or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

4. Not liable for damages. A corporation and its officer or agent who accept or reject a vote, consent, waiver or proxy appointment in good faith and in accordance with the standards of this section or section 723, subsection 2 are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

5. Corporate action valid. Corporate action based on the acceptance or rejection of a vote, consent, waiver or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

§726. Shares held by minor

If the record owner of shares is a minor and the shares are voted under this subchapter by the minor, a guardian or other legal representative of the minor or a

natural or adoptive parent of the minor, the minor may not thereafter disaffirm or avoid that vote.

§727. Quorum and voting requirements for voting groups

1. Quorum. Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the corporation's articles of incorporation or this Act provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

2. Share represented deemed present. Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

3. Voting requirement. If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action unless the corporation's articles of incorporation or this Act requires a greater number of affirmative votes.

4. Altering quorum or voting requirement. An amendment of a corporation's articles of incorporation adding, changing or deleting a quorum or voting requirement for a voting group greater than specified in subsection 1 or 3 is governed by section 729.

5. Election of directors. The election of directors is governed by section 730.

6. Application to mutual insurer. This section does not apply to any mutual insurer as defined in Title 24-A, section 401.

§728. Action by single and multiple voting groups

1. Voting by single voting group. If a corporation's articles of incorporation or this Act provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in section 727.

2. Voting by multiple voting groups. If a corporation's articles of incorporation or this Act provides for voting by 2 or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section 727. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

§729. Greater quorum or voting requirements

1. Greater number may be required. A corporation's articles of incorporation may provide for a greater quorum or voting requirement for shareholders or voting groups of shareholders than is provided for by this Act.

2. Amendment of articles of incorporation. An amendment to a corporation's articles of incorporation that adds, changes or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

§730. Voting for directors; cumulative voting

1. Election by plurality. Unless otherwise provided in a corporation's articles of incorporation, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

2. No right to cumulate votes. Shareholders do not have a right to cumulate their votes for directors unless a corporation's articles of incorporation so provide.

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

4. Requirements. Shares otherwise entitled to vote cumulatively may not be voted cumulatively at a particular meeting unless:

A. The meeting notice or proxy statement accompanying the notice states conspicuously that cumulative voting is authorized; or

B. A shareholder who has the right to cumulate votes gives notice to the corporation not less than 48 hours before the time set for the meeting of the shareholder's intent to cumulate that shareholder's votes during the meeting, and if one shareholder gives this notice all other shareholders in the same voting group participating in the election are entitled to cumulate their votes without giving further notice.

§731. Inspectors of election

1. Appointment of inspector. A corporation having any shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.

2. Duties of inspector. An inspector shall:

A. Ascertain the number of shares outstanding and the voting power of each;

B. Determine the shares represented at a meeting;

C. Determine the validity of proxies and ballots;

D. Count all votes; and

E. Determine the result.

3. Officer; employee. An inspector may be an officer or employee of the corporation.

SUBCHAPTER III

VOTING TRUSTS AND AGREEMENTS

§741. Voting trusts

1. Creation of voting trust. One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

2. Effective date of voting trust. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than 21 years after its effective date unless extended under subsection 3.

3. Extension authorized. All or some of the parties to a voting trust may extend it for additional terms of not more than 21 years each by signing written consent to the extension. An extension is valid for 21 years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

§742. Voting agreements

1. Creation of voting agreement. Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to the provisions of section 741.

2. Enforceable. A voting agreement created under this section is specifically enforceable.

3. Rescission. Any purchaser of shares for value that are subject to a voting agreement who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase against the transferor of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 180 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

§743. Shareholder agreements

1. Shareholder agreement effective despite inconsistency with Act. An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this Act in that it:

A. Eliminates the board of directors or restricts the discretion or powers of the board of directors;

B. Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in section 651;

C. Establishes who are directors or officers of the corporation or their terms of office or manner of selection or removal;

D. Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

E. Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer or employee of the corporation or among any of them;

F. Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the

resolution of any issue about which there exists a deadlock among directors or shareholders;

G. Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

H. Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them, and is not contrary to public policy.

2. Requirements for shareholder agreement. An agreement authorized by this section must comply with each of the following paragraphs.

A. The agreement must be set forth:

(1) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(2) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation.

B. The agreement must be subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise or unless the amendment is governed by subsection 8.

C. The agreement must be valid for an unlimited term, unless the agreement provides otherwise.

3. Notation of existence of agreement required. The existence of an agreement authorized by this section must be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by section 627, subsection 2. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement is entitled to rescission of the purchase. A purchaser is deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 180 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

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

5. Limitation on discretion or powers of directors limits liability of directors. An agreement authorized by this section that limits the discretion or powers of the board of directors relieves the directors of, and imposes upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

6. Personal liability on shareholder. The existence or performance of an agreement authorized by this section is not a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

7. Incorporators or subscribers. Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

8. Articles of incorporation provide for elimination of board of directors. If the articles of incorporation of a corporation provide for the elimination of the board of directors, the provisions of this subsection apply, except to the extent an agreement among the shareholders of a corporation that complies with this section expressly provides otherwise.

A. The shareholders of the corporation are deemed directors for purposes of applying provisions of this Act when the context requires and have the powers of directors under this Act.

B. The shareholders of the corporation, when taking actions required of directors under this Act, have liability to the extent otherwise imposed by law on directors under this Act.

C. When acting as directors, shareholders approve a corporate action by a vote of their shares and not by a per capita vote.

D. An amendment to delete a provision that eliminates a board of directors from the articles of incorporation must be adopted by a majority of the votes entitled to be cast by each voting group entitled to vote as a separate voting group on that amendment.

E. The provisions of subsection 3 do not apply to certificates of shareholder-managed corporations issued prior to the effective date of this Act but apply to all certificates or information statements issued by shareholder-managed corporations issued after the effective date of this Act.

F. The principles applicable to shareholder-managed corporations referred to in this subsection may be varied by or incorporated in an agreement among the shareholders, as long as that agreement complies with and is governed by the provisions of subsections 1 to 7.

SUBCHAPTER IV

DERIVATIVE PROCEEDINGS

§751. Definitions

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

1. Derivative proceeding. "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in section 758, in the right of a foreign corporation.

2. Shareholder. "Shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

§752. Standing

A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

1. Shareholder at time of act or omission. Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

2. Represents interests. Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

§753. Demand

A shareholder may not commence a derivative proceeding until:

1. Written demand. A written demand has been made upon the corporation to take suitable action; and

2. Expiration of 90 days. Ninety days have expired from the date the demand was made, unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

§754. Stay of proceedings

If the corporation commences an inquiry into the allegations made in the complaint or demand under section 753, the court may stay any derivative proceeding for such period as the court considers appropriate.

§755. Dismissal

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

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

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

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

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

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

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

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

3. Complaint must allege with particularity. If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint must allege with particularity facts establishing either that a majority of the board of directors did not consist of independent directors at the time the determination was made or that the requirements of subsection 1 have not been met.

4. Burden of proof. If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation has the burden of proving that the requirements of subsection 1 have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff has the burden of proving that the requirements of subsection 1 have not been met.

§756. Discontinuance or settlement

A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

§757. Payment of expenses

On termination of the derivative proceeding the court may:

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

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

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

§758. Applicability to foreign corporations

In any derivative proceeding in the right of a foreign corporation, the matters covered by this subchapter, except for sections 754, 756 and 757, are governed by the laws of the jurisdiction of incorporation of the foreign corporation.

CHAPTER 8

DIRECTORS AND OFFICERS

SUBCHAPTER I

BOARD OF DIRECTORS

§801. Requirement; duties of board of directors

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

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

§802. Qualifications of directors

The corporation's articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this State or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

§803. Number and election of directors

1. Number of directors. A corporation's board of directors must consist of one or more individuals. The corporation's articles of incorporation or bylaws may fix the number of directors or otherwise regulate the size of the board.

2. Increase or decrease in number. Unless the corporation's articles of incorporation or bylaws provide otherwise, the number of directors may be

increased or decreased from time to time by resolution of the shareholders or the directors. A decrease in the number of directors may not have the effect of shortening the term of any incumbent director.

3. Election. Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section 806.

§804. Election of directors by certain classes of shareholders

If the corporation's articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. Each class of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

§805. Terms of directors

1. Terms of initial directors. The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

2. Terms of subsequent directors. The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section 806.

3. Decrease in number of directors. A decrease in the number of directors does not shorten an incumbent director's term.

4. Term of director elected to fill vacancy. The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected or, in the case of staggered terms, at such other time as the corporation's articles of incorporation may provide.

5. Continue service. Despite the expiration of a director's term, the director continues to serve until a successor is elected and qualifies or until there is a decrease in the number of directors.

§806. Staggered terms for directors

The corporation's articles of incorporation may provide for staggering the terms of directors by dividing the total number of directors into 2 or 3 groups, with each group containing, as close as possible, 1/2 or 1/3, as the case may be, of the total. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the 2nd group expire at the 2nd annual shareholders' meeting after their election and the terms of the 3rd group, if any, expire at the 3rd annual shareholders' meeting after their election. At each annual shareholders' meeting thereafter, directors must be chosen for a term of 2 years or 3 years, as the case may be, to succeed those whose terms expire.

§807. Resignation of directors

1. Notice of resignation. A director may resign at any time by delivering written notice to the corporation's board of directors or its chair or to the corporation.

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

§808. Removal of directors by shareholders

The shareholders may remove one or more directors with or without cause unless the corporation's articles of incorporation provide that directors may be removed only for cause. A director may be removed by the shareholders only at a meeting called for the purpose of removing that director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

1. Removal by voting group. If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove that director.

2. Cumulative voting. If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect that director under cumulative voting is voted against that director's removal. If cumulative voting is not authorized, a director may be removed only by the affirmative vote of at least 2/3 of the shares entitled to vote on the removal. The corporation's articles of incorporation may require a greater or lesser vote in order to remove directors but not less than a majority of votes cast, including, but not limited to, the necessity of a unanimous vote of shareholders or relevant voting group.

§809. Removal of directors by judicial proceeding

1. Removal by Superior Court. The Superior Court of the county where a corporation's principal office or, if there is no principal office in this State, its registered office is located may remove a director of the corporation from office in a proceeding commenced by or in the right of the corporation if the court finds that:

A. The director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director or intentionally inflicted harm on the corporation; and

B. Considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.

2. Comply with requirements. A shareholder proceeding on behalf of the corporation under subsection 1 shall comply with all of the requirements of chapter 7, subchapter IV, except section 752, subsection 1.

3. Bar from reelection. The court, in addition to removing the director, may bar the director from reelection for a period prescribed by the court.

4. Other relief. This section does not limit the equitable powers of the court to order other relief.

§810. Vacancy on board

1. Vacancy. Unless the corporation's articles of incorporation or bylaws provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, the vacancy may be filled:

A. By the shareholders;

B. By the corporation's board of directors; or

C. If the directors remaining in office constitute fewer than a quorum of the board, by the affirmative vote of a majority of all the directors remaining in office.

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

3. Specified date of vacancy. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

§811. Compensation of directors

Unless the corporation's articles of incorporation or bylaws provide otherwise, the corporation's board of directors may fix the compensation of directors.

SUBCHAPTER II

MEETINGS AND ACTION OF BOARD

§821. Meetings

1. Location. The corporation's board of directors may hold regular or special meetings in or out of this State.

2. Participation of directors. Unless the corporation's articles of incorporation or bylaws provide otherwise, the corporation's board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

§822. Action without meeting

1. Action without meeting. Except to the extent that the corporation's articles of incorporation or bylaws require that action by the corporation's board of directors be taken at a meeting, action required or permitted by this Act to be taken by a corporation's board of directors may be taken without a meeting if each director signs a consent describing the action to be taken and delivers it to the corporation.

2. Delivery of consents; revocation. Action taken under this section is the act of the corporation's board of directors when one or more consents signed by all the directors are delivered to the corporation. The consent may specify the time at which the action taken under the consent is to be effective. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all of the directors.

3. Effect of signed consent. A consent signed under this section has the effect of action taken at a meeting of the corporation's board of directors and may be described as such in any document.

§823. Notice of meeting

1. Regular meetings. Unless the corporation's articles of incorporation or bylaws provide otherwise, regular meetings of the corporation's board of directors may be held without notice of the date, time, place or purpose of the meeting.

2. Special meetings. Unless the corporation's articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the corporation's board of directors must be preceded by at least 2 days' notice of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the corporation's articles of incorporation or bylaws.

3. Calling of meeting. Unless the corporation's articles of incorporation or bylaws otherwise provide, special meetings of the corporation's board of directors may be called by the chair of the board, by the president or, if the president is absent or is unable to

act, by any vice-president, by any 2 directors or by any other person or persons authorized by the bylaws.

4. Notice of meeting. At the written request of any person permitted to call a special meeting of the corporation's board of directors pursuant to subsection 3, the secretary or clerk shall send notices of the meeting to all the directors or the person calling the meeting may send such notices. The person calling the special meeting shall set the time of the meeting and, unless the place of meetings is specified in the bylaws or by prior resolution of the directors, the place of the meeting.

§824. Waiver of notice

1. Waive notice of meeting. A director may waive any notice required by this Act, the corporation's articles of incorporation or bylaws before or after the date and time stated in the notice. Except as provided by subsection 2, the waiver must be in writing, signed by the director entitled to the notice and filed with the minutes or corporate records.

2. Attendance at meeting waives requirement of notice. A director's attendance at or participation in a meeting waives any required notice to that director of the meeting unless the director at the beginning of the meeting or promptly upon the director's arrival objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

3. Objection to action taken at meeting. If a meeting otherwise valid of the corporation's board of directors is held without call or notice when a notice is required, any action taken at the meeting is deemed ratified by a director who did not attend unless, after learning of the action taken and of the impropriety of the meeting, the director makes prompt objection to the action taken.

§825. Quorum and voting

1. Quorum. Unless the corporation's articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this Act, a quorum of a corporation's board of directors consists of:

A. A majority of the fixed number of directors if the corporation has a fixed board size; or

B. A majority of the number of directors prescribed, or if no number is prescribed, the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

2. Fixed number of directors. The corporation's articles of incorporation or bylaws may authorize a quorum of a corporation's board of directors to consist of no fewer than 1/3 of the fixed or prescribed number of directors determined under subsection 1.

3. Majority vote. If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the corporation's board of directors unless the corporation's articles of incorporation or bylaws require the vote of a greater number of directors.

4. Dissent; abstention. A director who is present at a meeting of the corporation's board of directors or a committee of the corporation's board of directors when corporate action is taken is deemed to have assented to the action taken unless:

A. The director objects at the beginning of the meeting or promptly upon arrival to holding or transacting business at the meeting;

B. The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or

C. The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

§826. Committees

1. Create committees. Unless the articles of incorporation or bylaws provide otherwise, a corporation's board of directors may create one or more committees and appoint members of the corporation's board of directors to serve on them. Each committee must have 2 or more members, who serve at the pleasure of the corporation's board of directors.

2. Approval of committee. The creation of a committee and appointment of members to a committee must be approved by the greater of:

A. A majority of all the directors in office when the action is taken; or

B. The number of directors required by the corporation's articles of incorporation or bylaws to take action under section 825.

3. Requirements apply to committees. Sections 821 to 825 apply to committees and their members.

4. Authority. To the extent specified by the corporation's board of directors or in the corporation's articles of incorporation or bylaws, each committee

may exercise the authority of the corporation's board of directors under section 801.

5. No authority. A committee may not:

A. Authorize distributions;

B. Approve or propose to shareholders action that this Act requires be approved by shareholders;

C. Fill vacancies on the corporation's board of directors or on any of its committees;

D. Amend a corporation's articles of incorporation pursuant to section 1005;

E. Adopt, amend or repeal a corporation's bylaws;

F. Approve a plan of merger not requiring shareholder approval;

G. Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the corporation's board of directors; or

H. Authorize or approve the issuance or sale or contract for sale of shares or determine the designation and relative rights, preferences and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the corporation's board of directors.

6. Standards of conduct. The creation of, delegation of authority to or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 831.

SUBCHAPTER III

DIRECTORS

§831. Standards of conduct for directors

1. Basic standard of conduct. Each member of the corporation's board of directors when discharging the duties of a director shall act:

A. In good faith; and

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

2. General standard of care. The members of the corporation's board of directors or a committee of the board, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, shall discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

3. Permitted delegation. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection 5, paragraph A or C to whom the board may have delegated, formally or informally by course of conduct, the authority or duty to perform one or more of the board's functions that are delegable under applicable law.

4. Information provided by others. In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection 5.

5. Standard for reliance. A director is entitled in accordance with subsection 3 or 4 to rely on:

A. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

B. Legal counsel, public accountants or other persons retained by the corporation as to matters involving skills or expertise the director reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence; or

C. A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

6. Interests of other constituencies. In discharging their duties, the directors and officers of the corporation may, in considering the best interests of the corporation and of its shareholders, consider the effects of any action upon employees, suppliers and customers of the corporation, communities in which offices or other establishments of the corporation are located and all other pertinent factors.

§832. Standards of liability for directors

1. Basis for potential liability. A director of a corporation is not liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director, unless the party asserting liability in a proceeding establishes that:

A. Any provision in the corporation's articles of incorporation authorized by section 202, subsection 2, paragraph D or the protection afforded by section 872 for action taken in compliance with section 873 or 874, if interposed as a bar to the proceeding by the director, does not preclude liability; and

B. The challenged conduct consisted or was the result of:

(1) Action not in good faith;

(2) A decision:

(a) That the director did not reasonably believe to be in the best interests of the corporation; or

(b) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;

(3) A lack of objectivity due to the director's familial, financial or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct when that relationship or domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to that corporation, and, after a reasonable expectation to that effect has been established, the director did not establish that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;

(4) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation, or a failure to devote timely attention, by making or causing to be made appropriate inquiry, when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(5) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

2. Additional elements. In addition to the burden set forth in subsection 1, the party seeking to hold the director liable:

A. For money damages has the burden of establishing that:

(1) Harm to the corporation or its shareholders has been suffered; and

(2) The harm suffered was proximately caused by the director's challenged conduct;

B. For money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, has whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

C. For money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

3. Other causes of action. This section does not:

A. In any instance when fairness is at issue, such as consideration of the fairness of a transaction to the corporation under section 872, subsection 2, paragraph C, alter the burden of proving the fact or lack of fairness otherwise applicable;

B. Alter the fact or lack of liability of a director under another section of this Act, such as the provisions governing the consequences of an unlawful distribution under section 833 or a transactional interest under section 872; or

C. Affect any rights to which the corporation or a shareholder may be entitled under another law of this State or the United States.

§833. Director's liability for unlawful distributions

1. Personal liability. A director who votes for or assents to a distribution in excess of what may be authorized and made pursuant to section 651, subsection 1 is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section 651, subsection 1 if the party asserting liability establishes that when taking the action the director did not comply with section 831.

2. Contribution; recoupment. A director held liable under subsection 1 for an unlawful distribution is entitled to:

A. A. contribution from every other director who could be held liable under subsection 1 for the unlawful distribution; and

B. Recoupment from each shareholder of the pro rata portion of the amount of the unlawful distribution the shareholder accepted, knowing the distribution was made in violation of section 651, subsection 1.

3. Proceeding to enforce liability; 2-year period. A proceeding to enforce the liability of a director under subsection 1 is barred unless it is commenced within 2 years after the date on which the effect of the distribution was measured under section 651, subsection 5 or 7 or as of which the violation of section 651, subsection 1 occurred as the consequence of disregard of a restriction in the corporation's articles of incorporation.

4. Proceeding to enforce contribution or recoupment; one-year period. A proceeding to enforce a contribution or recoupment under subsection 2 is barred unless it is commenced within one year after the liability of the claimant has been finally adjudicated under subsection 1.

SUBCHAPTER IV

OFFICERS

§841. Required officers

1. Officers. A corporation must have the officers described in its bylaws or appointed by the corporation's board of directors in accordance with the bylaws.

2. Officer may appoint another officer. A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the corporation's board of directors.

3. Preparation of minutes. The bylaws or the corporation's board of directors shall delegate to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

4. Multiple positions. The same individual may simultaneously hold more than one office in a corporation.

§842. Duties of officers

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

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

§843. Standards of conduct for officers

1. Basic standard of conduct. An officer when performing in the capacity of an officer shall act:

A. In good faith;

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

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

2. Basis for reliance. In discharging duties under section 842, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

A. The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated;

B. Information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

C. Legal counsel, public accountants or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence.

3. Basis for potential liability. An officer is not liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as an officer if the duties of the office are performed in compliance with this section. Whether an officer who does not comply with this section has liability depends on applicable law, including those principles of section 832 that have relevance.

§844. Resignation and removal of officers

1. Resignation. An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective time. If a resignation is made effective at a later time, including, but not limited to, the time at which some specified future event occurs and the corporation's board of directors or the appointing officer accepts the future effective time, the corporation's board of directors or the appointing officer may fill the pending vacancy before the effective time if the corporation's board of directors or the appointing officer provides that the successor does not take office until the effective time.

2. Removal from office. An officer may be removed at any time with or without cause by:

A. The corporation's board of directors;

B. The officer who appointed that officer, unless the bylaws or the corporation's board of directors provides otherwise; or

C. Any other officer if authorized by the bylaws or the corporation's board of directors.

3. Appointing officer defined. As used in this section, "appointing officer" means the officer, including any successor to that officer, who appointed the officer resigning or being removed.

§845. Contract rights of officers

1. No implied contract rights. The appointment of an officer does not itself create contract rights.

2. Effect of removal or resignation on contract rights. An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

§846. Clerk

1. Clerk; appointment. The corporation's board of directors shall appoint an individual to fill the position of clerk, unless the corporation's articles of incorporation reserves appointment of the clerk to the shareholders.

2. Duties. The clerk shall perform the functions described in sections 501 and 502. Unless otherwise provided by the bylaws, the clerk shall keep on file a list of all shareholders of the corporation and keep, in a book kept for that purpose, the records of all shareholders' meetings, including records of all votes and minutes of the meetings. These records may be kept by the clerk at the registered office or another office of the corporation to which the clerk has ready access. The clerk may certify all votes, resolutions and actions of the shareholders and may certify all votes, resolutions and actions of the corporation's board of directors and its committees.

3. Clerk not officer. The clerk is not considered an officer of the corporation in the clerk's capacity as clerk. The duties of the clerk are ministerial only, and the clerk is not liable in that capacity for any liabilities of the corporation, including, but not limited to, debts, claims, taxes, fines or penalties.

SUBCHAPTER V

INDEMNIFICATION AND ADVANCE FOR EXPENSES

§851. Definitions

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

1. Corporation. "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

2. Director; officer. "Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the director's or officer's duties to the corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

3. Disinterested director. "Disinterested director" means a director who, at the time of a vote referred to in section 854, subsection 3 or a vote or selection referred to in section 856, subsection 2 or 3, is not:

A. A party to the proceeding; or

B. An individual having a familial, financial, professional or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

4. Expenses. "Expenses" includes attorney's fees.

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

6. Official capacity. "Official capacity" means:

A. When used with respect to a director, the office of director in a corporation; and

B. When used with respect to an officer, as contemplated in section 857, the office in a corporation held by the officer.

"Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan or other entity.

7. Party. "Party" means an individual who was, is or is threatened to be made a defendant or respondent in a proceeding.

8. Proceeding. "Proceeding" means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative and whether formal or informal.

§852. Permissible indemnification

1. Indemnification of director. Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because that individual is a director of the corporation against liability incurred in the proceeding if:

A. The individual's conduct was in good faith and the individual reasonably believed:

(1) In the case of conduct in the individual's capacity as director, that the individual's conduct was in the best interests of the corporation;

(2) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation; and

(3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful; or

B. The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the corporation's articles of incorporation as authorized by section 202, subsection 2, paragraph E.

2. Employee benefit plan. The conduct of a director with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subsection 1, paragraph A.

3. Termination of proceeding. The termination of a proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent is not of itself determinative that the director did not meet the relevant standard of conduct described in this section.

4. Court order. Unless ordered by a court under section 855, subsection 1, paragraph C, a corporation may not indemnify one of its directors:

A. In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection 1; or

B. In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

§853. Mandatory indemnification

A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

§854. Advance for expenses

1. Advance funds. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the director is a director of that corporation if the director delivers to the corporation:

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

B. The director's written undertaking to repay any funds advanced if the director is not entitled

to mandatory indemnification under section 853 and it is ultimately determined under section 855 or 856 that the director has not met the relevant standard of conduct described in section 852.

2. Unlimited obligation. The undertaking required by subsection 1, paragraph B must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

3. Authorization. Authorizations under this section must be made:

A. By the corporation's board of directors:

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

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

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

§855. Court-ordered indemnification; advance for expenses

1. Application for indemnification or advance. A director who is a party to a proceeding because that director is a director of the corporation may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice the court considers necessary, the court shall:

A. Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 853;

B. Order indemnification or an advance for expenses if the court determines that the director is entitled to indemnification or an advance for expenses pursuant to a provision authorized by section 859, subsection 1; or

C. Order indemnification or an advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(1) To indemnify the director; or

(2) To advance expenses to the director even if the director has not met the relevant standard of conduct set forth in section 852, subsection 1, failed to comply with section 854 or was adjudged liable in a proceeding referred to in section 852, subsection 4, paragraph A or B, but, if the director was adjudged so liable, the director's indemnification must be limited to reasonable expenses incurred in connection with the proceeding.

2. Court determines director entitled to indemnification. If the court determines that the director is entitled to indemnification under subsection 1, paragraph A or to indemnification or an advance for expenses under subsection 1, paragraph B, the court shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining the court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or an advance for expenses under subsection 1, paragraph C, the court may also order the corporation to pay the director's reasonable expenses to obtain the court-ordered indemnification or advance for expenses.

§856. Determination and authorization of indemnification

1. Indemnify. A corporation may not indemnify a director under section 852 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in section 852.

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

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

B. By special legal counsel:

(1) Selected in the manner prescribed in paragraph A; or

(2) If there are fewer than 2 disinterested directors, selected by the corporation's board of directors in which selection directors who do not qualify as disinterested directors may participate; or

C. By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

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

§857. Indemnification of officers

1. Indemnify. A corporation may indemnify and advance expenses under this subchapter to an officer of the corporation who is a party to a proceeding because that officer is an officer of the corporation:

A. To the same extent as a director; and

B. If the officer is an officer but not a director, to such further extent as may be provided by the corporation's articles of incorporation, the bylaws, a resolution of the corporation's board of directors or a contract except for:

(1) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(2) Liability arising out of conduct that constitutes:

(a) Receipt by the officer of a financial benefit to which the officer is not entitled;

(b) An intentional infliction of harm on the corporation or the shareholders; or

(c) An intentional violation of criminal law.

2. Action of officer. Subsection 1, paragraph B applies to an officer who is also a director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer.

3. Mandatory indemnification. An officer who is not a director is entitled to mandatory indemnification under section 853 and may apply to a court under section 855 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or an advance for expenses under those provisions.

§858. Insurance

A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan or other entity against liability asserted against or incurred by that individual in that capacity or arising from the individual's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the individual against the same liability under this subchapter.

§859. Variation by corporate action; application of subchapter

1. Obligatory provision. A corporation may, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section 852 or advance funds to pay for or reimburse expenses in accordance with section 854. Any such obligatory provision is deemed to satisfy the requirements for authorization referred to in sections 854, subsection 3 and 856, subsection 3. Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law is deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section 854 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

2. Indemnify predecessor. Any provision pursuant to subsection 1 may not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation pertaining to conduct with respect to the predecessor unless otherwise specifically provided. Any provision for indemnification or an advance for expenses in the corporation's articles of incorporation or bylaws or a resolution of the corporation's board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, is governed by section 1107, subsection 1, paragraph D.

3. Limit indemnification. A corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or an advance for expenses created by or pursuant to this subchapter.

4. Appearance as witness. This subchapter does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the director or officer is not a party.

5. Maintain insurance. This subchapter does not limit a corporation's power to indemnify, advance expenses to or provide or maintain insurance on behalf of an employee or agent.

§860. Exclusivity of subchapter

A corporation may provide indemnification or advance expenses to a director or an officer only as permitted by this subchapter.

SUBCHAPTER VI

DIRECTORS' CONFLICTING-INTEREST TRANSACTIONS

§871. Definitions

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

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

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

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

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

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

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

2. Director's conflicting-interest transaction. "Director's conflicting-interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest respecting which a director of the corporation has a conflicting interest.

3. Related person. "Related person" means:

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

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

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

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

B. All facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

5. Time of commitment. "Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or its subsidiary or the entity in which it has a controlling interest

becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability or other damage.

§872. Judicial action

1. Nonconflicting-interest transaction not enjoined. A transaction effected or proposed to be effected by a corporation or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest that is not a director's conflicting-interest transaction may not be enjoined, set aside or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because a director of the corporation or any person with whom or which the director has a personal, economic or other association has an interest in the transaction.

2. Conflicting-interest transaction not enjoined if standards met. A director's conflicting-interest transaction may not be enjoined, set aside or give rise to an award of damages or other sanctions in a proceeding by a shareholder or by or in the right of the corporation because the director or any person with whom or which the director has a personal, economic or other association has an interest in the transaction if:

A. The directors' action respecting the transaction was at any time taken in compliance with section 873;

B. The shareholders' action respecting the transaction was at any time taken in compliance with section 874; or

C. The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

§873. Directors' action

1. Action respecting transaction. A directors' action respecting a transaction is effective for purposes of section 872, subsection 2, paragraph A if the transaction received the affirmative vote of a majority, but no fewer than 2, of those qualified directors on the corporation's board of directors or on a duly empowered committee of the board of directors who voted on the transaction after either required disclosure to them, to the extent the information was not known by them, or compliance with subsection 2, except that action by a committee is effective under this section only if:

A. All of the committee's members are qualified directors; and

B. The committee's members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

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

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

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

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

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

A. A conflicting interest respecting the transaction; or

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

§874. Shareholders' action

1. Shareholders' action. Shareholders' action respecting a transaction is effective for purposes of section 872, subsection 2, paragraph B if a majority of the votes entitled to be cast by the holders of all qualified shares was cast in favor of the transaction after:

A. A notice was given to the shareholders describing the director's conflicting-interest transaction;

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

C. Required disclosure, as defined in section 871, subsection 4, to the shareholders who voted on the transaction, to the extent the information was not known by them.

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

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

4. Compliance. For purposes of compliance with subsection 1, a director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to tabulate votes of the number and the identity of persons holding or controlling the vote of all shares that the director knows are beneficially owned or the voting of which is controlled by the director or by a related person of the director, or both.

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

CHAPTER 9

DOMESTICATION AND CONVERSION

SUBCHAPTER I

DOMESTICATION

§921. Domestication

1. Foreign business corporation may become domestic business corporation. A foreign business corporation may become a domestic business corporation only if the domestication is permitted by the organic law of the foreign corporation. The laws of this State govern the effect of domesticating in this State pursuant to this subchapter.

2. Domestic business corporation may become foreign business corporation. A domestic business corporation may become a foreign business corporation only if the domestication is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of domestication, the domestication must be approved by the adoption by the domestic business corporation of a plan of domestication in the manner provided in this subchapter. The laws of the foreign jurisdiction govern the effect of domesticating in that jurisdiction.

3. Plan of domestication. A domestic business corporation's plan of domestication in accordance with subsection 2 must include:

A. The name of the jurisdiction in which the corporation is to be domesticated;

B. The terms and conditions of the domestication;

C. The manner and basis of reclassifying the shares of the corporation following its domestication into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property or any combination thereof; and

D. Any desired amendments to the articles of incorporation of the corporation following its domestication.

4. Amend plan. A domestic business corporation's plan of domestication submitted in accordance with subsection 2 may also include a provision that the plan may be amended prior to the filing of the document required by the laws of this State or the other jurisdiction to consummate the domestication, except that after approval of the plan by the shareholders the plan may not be amended to change:

A. The amount or kind of shares or other securities, obligations, rights to acquire shares or other securities, cash or other property to be received by the shareholders under the plan;

B. The articles of incorporation of the corporation as they will be in effect immediately following the domestication, except for changes permitted by section 1005 or by comparable provisions of the laws of the other jurisdiction; or

C. Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

5. Evidence of indebtedness. If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind issued, incurred or executed by a domestic business corporation before July 1, 2003 contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision is deemed to apply to a domestication of the corporation until such time after that date as the provision is amended.

§922. Action on plan of domestication

In the case of a domestication of a domestic business corporation, in this section referred to as the "corporation," in a foreign jurisdiction:

1. Plan adopted by directors. The plan of domestication must be adopted by the corporation's board of directors;

2. Shareholders' approval. After adopting the plan of domestication, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination;

3. Conditional submission. The corporation's board of directors may condition its submission of the plan of domestication to the shareholders on any basis;

4. Notice of meeting. If the approval of the shareholders of the plan of domestication under subsection 2 is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the corporation's articles of incorporation as they will be in effect immediately after the domestication;

5. Majority approval. Unless the corporation's articles of incorporation or its board of directors acting pursuant to subsection 3 requires a greater vote, approval of the plan of domestication requires the approval of the shareholders and, if any class or series of shares is entitled to vote as a separate group on the plan, the approval of each such separate voting group by a majority of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide that the plan may be approved by a lesser vote of each voting group entitled to vote on the plan but in no case less than a majority of the votes cast by that voting group at a meeting at which there exists, for each such voting group, a quorum consisting of at least a majority of the votes entitled to be cast on the plan by each voting group entitled to vote on the plan;

6. Voting groups. Separate voting by voting groups is required by each class or series of shares that:

A. Is to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property or any combination thereof;

B. Would be entitled to vote as a separate group on a provision of the plan of domestication that, if contained in a proposed amendment to the corporation's articles of incorporation, would require action by separate voting groups under section 1004; or

C. Is entitled under the corporation's articles of incorporation to vote as a voting group to approve an amendment of the articles; and

7. Merger provisions applicable to domestications. If any provision of the corporation's articles of incorporation or bylaws or of an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2003, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision is deemed to apply to a domestication of the corporation until such time after that date as the provision is amended.

§923. Articles of domestication

1. Articles of domestication. After the domestication of a foreign business corporation, referred to in this section as the "corporation," has been authorized as required by the laws of the foreign jurisdiction, articles of domestication must be executed by an officer or other duly authorized representative of the corporation. The articles must set forth:

A. The name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in this State or the corporation desires to change its name in connection with the domestication, a

name that satisfies the requirements of section 401;

B. The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and the date the corporation was incorporated in that jurisdiction; and

C. A statement that the domestication of the corporation in this State was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication in this State.

2. Provisions of articles of domestication. The articles of domestication of a corporation must either contain all the provisions that section 202, subsection 1 requires to be set forth in articles of incorporation with any other desired provisions that section 202, subsection 2 permits to be included in articles of incorporation or have attached articles of incorporation. In either case, provisions that would not be required by chapter 10 to be included in restated articles of incorporation may be omitted.

3. Delivery to Secretary of State. The articles of domestication of a corporation must be delivered to the Secretary of State for filing and take effect at the effective time provided in section 125.

4. Certificate of authority. If the corporation is authorized to transact business in this State under chapter 15, its certificate of authority is cancelled automatically on the effective date of its domestication.

§924. Surrender of charter upon domestication

1. Articles of charter surrender. Whenever a domestic business corporation, referred to in this section as the "corporation," has adopted and approved, in the manner required by this subchapter, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, articles of charter surrender must be executed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender must set forth:

A. The name of the corporation;

B. A statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;

C. A statement that the domestication was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this Act and the corporation's articles of incorporation; and

D. The corporation's new jurisdiction of incorporation.

2. Filing of articles of charter surrender. The articles of charter surrender must be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender take effect on the effective time provided in section 125.

§925. Effect of domestication

1. Domestication of foreign business corporation. When a domestication in this State of a foreign business corporation, referred to in this subsection as the "corporation," becomes effective:

A. The title to all real and personal property, both tangible and intangible, of the corporation remains in the corporation without reversion or impairment;

B. The liabilities of the corporation remain the liabilities of the corporation;

C. An action or proceeding pending against the corporation continues against the corporation as if the domestication had not occurred;

D. The articles of domestication, or the articles of incorporation attached to the articles of domestication, constitute the articles of incorporation of the corporation;

E. The shares of the corporation are reclassified into shares, other securities, obligations, rights to acquire shares or other securities or into cash or other property in accordance with the terms of the domestication as approved under the laws of the foreign jurisdiction, and the shareholders are entitled only to the rights provided by those terms and under those laws; and

F. The corporation is deemed to:

(1) Be incorporated under the laws of this State for all purposes;

(2) Be the same corporation without interruption as the corporation that existed under the laws of the foreign jurisdiction; and

(3) Have been incorporated on the date it was originally incorporated in the foreign jurisdiction.

2. Domestication of domestic business corporation. When a domestication of a domestic business corporation in a foreign jurisdiction becomes effective, that foreign business corporation is deemed to:

A. Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the domestication and that foreign business corporation shall provide a mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State; and

B. Agree to promptly pay the amount, if any, to which the shareholders are entitled under chapter 13.

3. Owner liability. The owner liability of a shareholder in a foreign business corporation that is domesticated in this State, referred to in this subsection as the "corporation," is as provided in this subsection.

A. The domestication does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any owner liability arose before the effective time of the articles of domestication.

B. The shareholder does not have owner liability under the laws of the foreign jurisdiction for any debt, obligation or liability of the corporation that arises after the effective time of the articles of domestication.

C. The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any owner liability preserved by paragraph A as if the domestication had not occurred and the corporation were still incorporated under the laws of the foreign jurisdiction.

D. The shareholder has whatever rights of contribution from other shareholders that are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by paragraph A as if the domestication had not occurred and the corporation were still incorporated under the laws of that jurisdiction.

§926. Abandonment of domestication

1. Abandonment of domestication by domestic business corporation. Unless otherwise provided in a plan of domestication of a domestic business corporation, after the plan has been adopted and approved as required by this subchapter and at any time before the domestication has become effective, it may be abandoned by the corporation's board of directors without action by the shareholders.

If a domestication is abandoned under this subsection after articles of charter surrender have been filed with the Secretary of State but before the domestication has become effective, a statement that the domestication has been abandoned in accordance with this section, executed by an officer or other duly authorized representative or the corporation, must be delivered to the Secretary of State for filing prior to the effective date of the domestication. The statement takes effect upon filing, and the domestication is considered abandoned and does not become effective.

2. Abandonment of domestication by foreign business corporation. If the domestication of a foreign business corporation in this State is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication have been filed with the Secretary of State, a statement that the domestication has been abandoned, executed by an officer or other duly authorized representative of the corporation, must be delivered to the Secretary of State for filing. The statement takes effect upon filing, and the domestication is considered abandoned and does not become effective.

SUBCHAPTER II

NONPROFIT CONVERSION

§931. Nonprofit conversion

1. Domestic nonprofit corporation; nonprofit conversion plan. A domestic business corporation may become a domestic nonprofit corporation pursuant to a plan of nonprofit conversion as provided in this subchapter.

2. Foreign nonprofit corporation; nonprofit conversion plan. A domestic business corporation may become a foreign nonprofit corporation if the nonprofit conversion is permitted by the laws of the foreign jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the adoption of a plan of nonprofit conversion, the foreign nonprofit conversion must be approved by the adoption by the domestic business corporation of a plan of nonprofit conversion in the manner provided in this subchapter. The laws of the foreign jurisdiction govern the effect of the foreign nonprofit conversion.

3. Nonprofit conversion plan. A plan of nonprofit conversion pursuant to subsection 1 or 2 must include:

A. The terms and conditions of the conversion;

B. The manner and basis of reclassifying the shares of the corporation following its conversion into memberships, if any, or securities, obligations, rights to acquire memberships or securities, cash, other property or any combination thereof;

C. Any desired amendments to the articles of incorporation of the corporation following its conversion; and

D. If the domestic business corporation is to be converted to a foreign nonprofit corporation, a statement naming the jurisdiction in which the corporation will be incorporated after the conversion.

4. Amendment provision. A plan of nonprofit conversion under this section may also include a provision that the plan may be amended prior to the filing of articles of nonprofit conversion, except that after approval of the plan by the shareholders the plan may not be amended to change:

A. The amount or kind of memberships or securities, obligations, rights to acquire memberships or securities, cash or other property to be received by the shareholders under the plan;

B. The articles of incorporation as they will be in effect immediately following the conversion, except for changes permitted by section 1005; or

C. Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

5. Evidence of indebtedness. If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind issued, incurred or executed by a domestic business corporation before July 1, 2003 contains a provision applying to a merger of the domestic business corporation and the document does not refer to a nonprofit conversion of the domestic business corporation, the provision is deemed to apply to a nonprofit conversion of the domestic business corporation until such time after that date as the provision is amended.

§932. Action on plan of nonprofit conversion

In the case of a conversion of a domestic business corporation to a domestic or foreign nonprofit corporation:

1. Plan adopted by directors. The plan of nonprofit conversion must be adopted by the corporation's board of directors;

2. Shareholders' approval. After adopting the plan of nonprofit conversion, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination;

3. Conditional submission. The corporation's board of directors may condition its submission of the plan of nonprofit conversion to the shareholders on any basis;

4. Notice of meeting. If the approval of the shareholders of the plan of nonprofit conversion is to be given at a meeting, the domestic business corporation shall notify each shareholder of the meeting of shareholders at which the plan of nonprofit conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the corporation's articles of incorporation as they will be in effect immediately after the nonprofit conversion;

5. Majority approval. Unless the corporation's articles of incorporation or its board of directors acting pursuant to subsection 3 requires a greater vote, approval of the plan of nonprofit conversion requires the approval of the shareholders by a majority of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide that the plan may be approved by a lesser vote of each voting group entitled to vote on the plan but in no case less than a majority of the votes cast by that voting group at a meeting at which there exists, for each such voting group, a quorum consisting of at least a majority of the votes entitled to be cast on the plan by each voting group entitled to vote on the plan;

6. Voting groups. In addition to the vote required under subsection 5, separate voting by voting groups is also required by each class or series of shares. Unless the corporation's articles of incorporation or its board of directors acting pursuant to subsection 3 requires a greater vote or a greater number of votes to be present, if the corporation has more than one class or series of shares outstanding, approval of the plan of nonprofit conversion requires the approval of each separate voting group by a majority of the votes entitled to be cast on the nonprofit conversion by that voting group; and

7. Merger of corporation. If any provision of the corporation's articles of incorporation or bylaws or of an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2003, applies to a merger of the domestic business corporation and the document does not refer to a nonprofit conversion of the domestic business corporation, the provision is deemed to apply to a

nonprofit conversion of the domestic business corporation until such time after that date as the provision is amended.

§933. Articles of nonprofit conversion

1. Articles of nonprofit conversion. After a plan of nonprofit conversion providing for the conversion of a domestic business corporation, referred to in this section as the "corporation," to a domestic nonprofit corporation has been adopted and approved as required by this Act, articles of nonprofit conversion must be executed on behalf of the corporation by an officer or other duly authorized representative of the corporation. The articles must set forth:

A. The name of the corporation immediately before the filing of the articles of nonprofit conversion and, if that name does not satisfy the requirements of the Maine Nonprofit Corporation Act or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of the Maine Nonprofit Corporation Act; and

B. A statement that the plan of nonprofit conversion was duly approved by the shareholders in the manner required by this Act and the articles of incorporation.

2. Provisions of articles of nonprofit conversion. The articles of nonprofit conversion must either contain all the provisions that the Maine Nonprofit Corporation Act requires to be set forth in articles of incorporation of a domestic nonprofit corporation with any other desired provisions permitted by the Maine Nonprofit Corporation Act or have attached articles of incorporation that satisfy the requirements of the Maine Nonprofit Corporation Act. In either case, provisions that would not be required by chapter 10 to be included in restated articles of incorporation of a domestic nonprofit corporation may be omitted.

3. Delivery to Secretary of State. The articles of nonprofit conversion must be delivered to the Secretary of State for filing and take effect at the effective time provided in section 125.

§934. Surrender of charter upon foreign nonprofit conversion

1. Articles of charter surrender. Whenever a domestic business corporation, referred to in this section as the "corporation," has adopted and approved, in the manner required by this subchapter, a plan of nonprofit conversion providing for the corporation to be converted to a foreign nonprofit corporation, articles of charter surrender must be executed on behalf of the corporation by an officer or other duly authorized representative of the corporation. The articles of charter surrender must set forth:

A. The name of the corporation;

B. A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign nonprofit corporation;

C. A statement that the foreign nonprofit conversion was duly approved by the shareholders in the manner required by this Act and the corporation's articles of incorporation; and

D. The corporation's new jurisdiction of incorporation.

2. Filing of articles of charter surrender. The articles of charter surrender must be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender take effect on the effective time provided in section 125.

§935. Effect of nonprofit conversion

1. Conversion to domestic nonprofit corporation. When the conversion of a domestic business corporation to a domestic nonprofit corporation, referred to in this subsection as the "corporation," becomes effective:

A. The title to all real and personal property, both tangible and intangible, of the domestic business corporation remains in the corporation without reversion or impairment;

B. The liabilities of the domestic business corporation remain the liabilities of the corporation;

C. An action or proceeding pending against the domestic business corporation continues against the corporation as if the conversion had not occurred;

D. The articles of nonprofit conversion, or the articles of incorporation attached to the articles of nonprofit conversion, constitute the articles of incorporation of the corporation;

E. The shares of the corporation are reclassified into memberships, securities, obligations, rights to acquire memberships or securities or into cash or other property in accordance with the plan of conversion, and the shareholders are entitled only to the rights provided in the plan of nonprofit conversion or to any rights they may have under chapter 13; and

F. The corporation is deemed to:

(1) Be a domestic nonprofit corporation for all purposes;

(2) Be the same corporation without interruption as the domestic business corporation; and

(3) Have been incorporated on the date that it was originally incorporated as a domestic business corporation.

2. Conversion to foreign nonprofit corporation. When the conversion of a domestic business corporation to a foreign nonprofit corporation becomes effective, that foreign nonprofit corporation is deemed to:

A. Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

B. Agree to promptly pay the amount, if any, to which the shareholders are entitled under chapter 13.

§936. Abandonment of nonprofit conversion

1. Abandonment of plan. Unless otherwise provided in a plan of nonprofit conversion of a domestic business corporation, after the plan has been adopted and approved as required by this subchapter and at any time before the nonprofit conversion has become effective, the plan may be abandoned by the corporation's board of directors without action by the shareholders.

2. Statement of abandonment. If a nonprofit conversion is abandoned under subsection 1 after articles of nonprofit conversion or articles of charter surrender have been filed with the Secretary of State but before the nonprofit conversion has become effective, a statement that the nonprofit conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative of the corporation, must be delivered to the Secretary of State for filing prior to the effective date of the nonprofit conversion. The statement takes effect upon filing, and the nonprofit conversion is considered abandoned and does not become effective.

SUBCHAPTER III

FOREIGN NONPROFIT DOMESTICATION AND CONVERSION

§941. Foreign nonprofit domestication and conversion

A foreign nonprofit corporation may become a domestic business corporation only if the domestication and conversion is permitted by the organic law of the foreign nonprofit corporation. The laws of this State govern the effect of converting to a domestic business corporation pursuant to this subchapter.

§942. Articles of domestication and conversion

1. Conversion to domestic business corporation. After the conversion of a foreign nonprofit corporation to a domestic business corporation, referred to in this subsection as the "corporation," has been authorized as required by the laws of the foreign jurisdiction, articles of domestication and conversion must be executed by an officer or other duly authorized representative of the corporation. The articles must set forth:

A. The name of the corporation immediately before the filing of the articles of domestication and conversion and, if that name is unavailable for use in this State or the corporation desires to change its name in connection with the domestication and conversion, a name that satisfies the requirements of section 401;

B. The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and conversion and the date the corporation was incorporated in that jurisdiction; and

C. A statement that the domestication and conversion of the corporation in this State was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication and conversion in this State.

2. Provision of articles of domestication and conversion. The articles of domestication and conversion executed in accordance with subsection 1 must either contain all the provisions that section 202, subsection 1 requires to be set forth in articles of incorporation with any other desired provisions that section 202, subsection 2 permits to be included in articles of incorporation or have attached articles of incorporation. In either case, provisions that would not be required by chapter 10 to be included in restated articles of incorporation may be omitted.

3. Filing with Secretary of State. Articles of domestication and conversion executed in accordance with subsection 1 must be delivered to the Secretary of State for filing and take effect at the effective time provided in section 125.

4. Certificate of authority. If the foreign nonprofit corporation is authorized to transact business in this State under the provisions of the Maine Nonprofit Corporation Act, its certificate of authority is cancelled automatically on the effective date of its domestication and conversion.

§943. Effect of foreign nonprofit domestication and conversion

1. Effect of domestication and conversion. When a domestication and conversion of a foreign nonprofit corporation to a domestic business corporation, referred to in this subsection as the "corporation," becomes effective:

A. The title to all real and personal property, both tangible and intangible, of the foreign nonprofit corporation remains in the corporation without reversion or impairment;

B. The liabilities of the foreign nonprofit corporation remain the liabilities of the corporation;

C. An action or proceeding pending against the foreign nonprofit corporation continues against the corporation as if the domestication and conversion had not occurred;

D. The articles of domestication and conversion, or the articles of incorporation attached to the articles of domestication and conversion, constitute the articles of incorporation of the corporation;

E. Shares, other securities, obligations, rights to acquire shares or other securities of the corporation or cash or other property must be issued or paid as provided pursuant to the laws of the foreign jurisdiction, so long as at least one share is outstanding immediately after the effective time; and

F. The corporation is deemed to:

(1) Be a domestic business corporation for all purposes;

(2) Be the same corporation without interruption as the corporation that existed under the laws of the jurisdiction in which it was formerly domiciled; and

(3) Have been incorporated on the date it was originally incorporated in the former jurisdiction.

2. Owner liability. The owner liability of a member of a foreign nonprofit corporation that domesticates and converts to a domestic business corporation is as provided in this subsection.

A. The domestication and conversion does not discharge any owner liability under the laws of the foreign jurisdiction to the extent any such owner liability arose before the effective time of the articles of domestication and conversion.

B. The member does not have owner liability under the laws of the foreign jurisdiction for any debt, obligation or liability of the corporation that arises after the effective time of the articles of domestication and conversion.

C. The provisions of the laws of the foreign jurisdiction continue to apply to the collection or discharge of any owner liability preserved by paragraph A as if the domestication and conversion had not occurred and the domestic business corporation were still incorporated under the laws of the foreign jurisdiction.

D. The member has whatever rights of contribution from other members are provided by the laws of the foreign jurisdiction with respect to any owner liability preserved by paragraph A as if the domestication and conversion had not occurred and the domestic business corporation were still incorporated under the laws of that jurisdiction.

§944. Abandonment of foreign nonprofit domestication and conversion

If the domestication and conversion of a foreign nonprofit corporation to a domestic business corporation is abandoned in accordance with the laws of the foreign jurisdiction after articles of domestication and conversion have been filed with the Secretary of State, a statement that the domestication and conversion has been abandoned, executed by an officer or other duly authorized representative of the corporation, must be delivered to the Secretary of State for filing. The statement takes effect upon filing, and the domestication and conversion is considered abandoned and does not become effective.

SUBCHAPTER IV

ENTITY CONVERSION

§951. Definitions

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

1. Converting entity. "Converting entity" means the domestic business corporation or domestic unincorporated entity that adopts a plan of entity conversion or the foreign unincorporated entity converting to a domestic business corporation.

2. Surviving entity. "Surviving entity" means the corporation or unincorporated entity as it continues in existence immediately after consummation of an entity conversion pursuant to this subchapter.

§952. Entity conversion authorized

1. Domestic other entity. A domestic business corporation may become a domestic unincorporated entity pursuant to a plan of entity conversion. If the organic law of the unincorporated entity does not provide for such a conversion, section 957 governs the effect of converting to that form of unincorporated entity.

2. Foreign unincorporated entity. A domestic business corporation may become a foreign unincorporated entity only if the entity conversion is permitted by the laws of the foreign jurisdiction. The laws of the foreign jurisdiction govern the effect of converting to an unincorporated entity in that jurisdiction.

3. Entity conversion. A domestic unincorporated entity may become a domestic business corporation. Section 957 governs the effect of converting to a domestic business corporation. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of an entity conversion, the conversion must be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the unincorporated entity, and its interest holders are entitled to appraisal rights if appraisal rights are available upon any type of merger under the organic law of the unincorporated entity. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion must be adopted and approved, the entity conversion effectuated and appraisal rights exercised in accordance with the procedures in this subchapter and chapter 13. Without limiting the provisions of this subsection, a domestic unincorporated entity whose organic law does not provide procedures for the approval of an entity conversion is subject to subsection 5 and section 954, subsection 7. For purposes of applying this subchapter and chapter 13:

A. The unincorporated entity and its interest holders, interests and organic documents taken together are deemed to be a domestic business corporation and its shareholders, shares and articles of incorporation, respectively and vice versa, as the context may require; and

B. If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group is deemed to be the board of directors.

4. Authorization to become corporation. A foreign unincorporated entity may become a domestic business corporation if the organic law of the foreign unincorporated entity authorizes it to become a corporation in another jurisdiction. The laws of this State govern the effect of conversion to a domestic business corporation pursuant to this subchapter.

5. Merger of corporation. If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind issued, incurred or executed by a domestic business corporation before July 1, 2003, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision is deemed to apply to an entity conversion of the corporation until such time after that date as the provision is amended.

§953. Plan of entity conversion

1. Plan of entity conversion. A plan of entity conversion under section 952 must include:

A. A statement of the type of unincorporated entity the surviving entity will be and, if the other entity will be a foreign unincorporated entity, its jurisdiction of organization;

B. The terms and conditions of the conversion;

C. The manner and basis of converting the shares of the domestic business corporation following its conversion into interests or other securities, obligations, rights to acquire interests or other securities, cash, other property, or any combination thereof; and

D. The full text of the organic documents of the surviving entity as they will be in effect immediately after consummation of the conversion.

2. Amendment of plan. A plan of entity conversion may also include a provision that the plan may be amended prior to the filing of articles of entity conversion, except that after approval of the plan by the shareholders the plan may not be amended to change:

A. The amount or kind of shares or other securities, interests, obligations, rights to acquire shares, other securities or interests, cash or other property to be received under the plan by the shareholders;

B. The organic documents that will be in effect immediately following the conversion, except for changes permitted by a provision of the organic law of the surviving entity comparable to section 1005; or

C. Any of the other terms or conditions of the plan if the change would adversely affect any of the shareholders in any material respect.

§954. Action on plan of entity conversion

In the case of an entity conversion of a domestic business corporation, referred to in this section as the

"corporation," to a domestic or foreign unincorporated entity:

1. Plan adopted by board. The plan of entity conversion must be adopted by the corporation's board of directors;

2. Shareholders' approval. After adopting the plan of entity conversion, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination;

3. Conditional submission. The corporation's board of directors may condition its submission of the plan of entity conversion to the shareholders on any basis;

4. Notice of meeting. If the approval of the shareholders of the plan of entity conversion under subsection 2 is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan of entity conversion is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. The notice must include or be accompanied by a copy of the organic documents of the surviving entity as they will be in effect immediately after the entity conversion;

5. Majority approval. Unless the corporation's articles of incorporation or its board of directors acting pursuant to subsection 3 requires a greater vote, approval of the plan of entity conversion requires the approval of the shareholders at a meeting by a majority of all the votes entitled to be cast on the plan by that voting group. The articles of incorporation may provide that the plan may be approved by a lesser vote of each voting group entitled to vote on the plan but in no case less than a majority of the votes cast by that voting group at a meeting at which there exists, for each such voting group, a quorum consisting of at least a majority of the votes entitled to be cast on the plan by each voting group entitled to vote on the plan;

6. Voting groups. In addition to the vote required under subsection 5, separate voting by voting groups is also required by each class or series of shares. Unless the corporation's articles of incorporation or the board of directors acting pursuant to subsection 3 requires a greater vote or a greater number of votes to be present, if the corporation has more than one class or series of shares outstanding, approval of the plan of entity conversion requires the approval of each such separate voting group by a majority of the votes entitled to be cast on the conversion by that voting group;

7. Merger of corporation. If any provision of the corporation's articles of incorporation or bylaws or of an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2003, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision is deemed to apply to an entity conversion of the corporation until such time after that date as the provision is amended; and

8. Written consent. If as a result of an entity conversion one or more shareholders of the corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the plan of conversion requires the execution by each such shareholder of a separate written consent to become subject to such owner liability.

§955. Articles of entity conversion

1. Conversion to domestic unincorporated entity. After the conversion of a domestic business corporation, referred to in this subsection as the "corporation," to a domestic unincorporated entity has been adopted and approved as required by this Act, articles of entity conversion must be executed on behalf of the corporation by an officer or other duly authorized representative. The articles must:

A. Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which must be a name that satisfies the organic law of the surviving entity;

B. State the type of unincorporated entity that the surviving entity will be;

C. Set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by this Act and the corporation's articles of incorporation; and

D. If the surviving entity is a filing entity, either contain all the provisions required to be set forth in its public organic document with any other desired provisions that are permitted or have attached a public organic document; except that, in either case, provisions that would not be required by chapter 10 to be included in a restated public organic document may be omitted.

2. Conversion to domestic business corporation. After the conversion of a domestic unincorporated entity to a domestic business corporation has been adopted and approved as required by the organic law of the unincorporated entity, articles of entity conversion must be executed on behalf of the unincorporated entity by an officer or other duly authorized representative of the corporation. The articles must:

A. Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which must be a name that satisfies the requirements of section 401;

B. Set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the unincorporated entity; and

C. Either contain all the provisions that section 202, subsection 1 requires to be set forth in articles of incorporation with any other desired provisions that section 202, subsection 2 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required under chapter 10 to be included in restated articles of incorporation of a domestic business corporation may be omitted.

3. Conversion by law of foreign jurisdiction. After the conversion of a foreign unincorporated entity to a domestic business corporation is authorized as required by the laws of the foreign jurisdiction, articles of entity conversion must be executed on behalf of the foreign unincorporated entity by an officer or other duly authorized representative of the corporation. The articles must:

A. Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed, which must be a name that satisfies the requirements of section 401;

B. Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

C. Set forth a statement that the conversion of the unincorporated entity was duly approved in the manner required by its organic law; and

D. Either contain all the provisions that section 202, subsection 1 requires to be set forth in articles of incorporation with any other desired provisions that section 202, subsection 2 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required by chapter 10 to be included in restated articles of incorporation of a domestic business corporation may be omitted.

3. File with Secretary of State. The articles of entity conversion must be delivered to the Secretary of State for filing and take effect at the effective time provided in section 125.

4. Certificate of authority; cancelled. If the converting entity is a foreign unincorporated entity that is authorized to transact business in this State under a provision of law similar to chapter 15, its certificate of authority or other type of foreign qualification is cancelled automatically on the effective date of its conversion.

§956. Surrender of charter upon conversion

1. Articles of charter surrender; domestic business corporation. Whenever a domestic business corporation has adopted and approved, in the manner required by this subchapter, a plan of entity conversion providing for the domestic business corporation, referred to in this section as the "corporation," to be converted to a foreign unincorporated entity, articles of charter surrender must be executed on behalf of the corporation by an officer or other duly authorized representative of the corporation. The articles of charter surrender must set forth:

A. The name of the corporation;

B. A statement that the articles of charter surrender are being filed in connection with the conversion of the corporation to a foreign unincorporated entity;

C. A statement that the conversion was duly approved by the shareholders in the manner required by this Act and the corporation's articles of incorporation;

D. The jurisdiction under the laws of which the surviving entity is organized; and

E. If the surviving entity is a nonfiling entity, the address of its executive office immediately after the conversion.

2. File with Secretary of State. The articles of charter surrender must be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender take effect on the effective time provided in section 125.

§957. Effect of entity conversion

1. Conversion to domestic business corporation or domestic other entity. When a conversion under this subchapter in which the surviving entity is a domestic business corporation or domestic unincorporated entity becomes effective:

A. The title to all real and personal property, both tangible and intangible, of the converting entity remains in the surviving entity without reversion or impairment;

B. The liabilities of the converting entity remain the liabilities of the surviving entity;

C. An action or proceeding pending against the converting entity continues against the surviving entity as if the conversion had not occurred;

D. In the case of a surviving entity that is a filing entity, the articles of conversion or the articles of incorporation or public organic document attached to the articles of conversion constitute the articles of incorporation or public organic document of the surviving entity;

E. In the case of a surviving entity that is a nonfiling entity, the private organic document provided for in the plan of entity conversion constitutes the private organic document of the surviving entity;

F. The shares or interests of the converting entity are reclassified into shares, interests, other securities, obligations, rights to acquire shares, interests or other securities or into cash or other property in accordance with the plan of entity conversion; and the shareholders or interest holders of the converting entity are entitled only to the rights provided in the plan of entity conversion and to any rights they may have under chapter 13; and

G. The surviving entity is deemed to:

(1) Be a domestic business corporation or domestic unincorporated entity for all purposes;

(2) Be the same corporation or unincorporated entity without interruption as the converting entity; and

(3) Have been incorporated or otherwise organized on the date that the converting entity was originally incorporated or organized.

2. Conversion to a foreign other entity. When a conversion of a domestic business corporation to a foreign unincorporated entity becomes effective, the surviving entity is deemed to:

A. Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion and shall provide a mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State; and

B. Agree to promptly pay the amount, if any, to which the shareholders are entitled under chapter 13.

3. Owner liability; shareholder. A shareholder who becomes subject to owner liability for some or all of the debts, obligations or liabilities of the surviving entity is personally liable only for those debts, obligations or liabilities of the surviving entity that arise after the effective time of the articles of entity conversion.

4. Interest holder; owner liability. The owner liability of an interest holder in an unincorporated entity that converts to a domestic business corporation is as provided in this subsection.

A. The conversion does not discharge any owner liability under the organic law of the unincorporated entity to the extent any owner liability arose before the effective time of the articles of entity conversion.

B. The interest holder does not have owner liability under the organic law of the unincorporated entity for any debt, obligation or liability of the domestic business corporation that arises after the effective time of the articles of entity conversion.

C. The provisions of the organic law of the unincorporated entity continue to apply to the collection or discharge of any owner liability preserved by paragraph A as if the conversion had not occurred and the surviving entity were still the converting entity.

D. The interest holder has whatever rights of contribution from other interest holders are provided by the organic law of the unincorporated entity with respect to any owner liability preserved by paragraph A as if the conversion had not occurred and the surviving entity were still the converting entity.

§958. Abandonment of entity conversion

1. Conversion abandoned by board of directors. Unless otherwise provided in a plan of entity conversion of a domestic business corporation, after

the plan has been adopted and approved as required by this subchapter and at any time before the entity conversion has become effective, it may be abandoned by the corporation's board of directors without action by the shareholders.

2. Statement of abandonment. If an entity conversion is abandoned after articles of entity conversion or articles of charter surrender have been filed with the Secretary of State but before the entity conversion has become effective, a statement that the entity conversion has been abandoned in accordance with this section, executed by an officer or other duly authorized representative of the corporation, must be delivered to the Secretary of State for filing prior to the effective date of the entity conversion. Upon filing, the statement takes effect and the entity conversion is considered abandoned and does not become effective.

CHAPTER 10

AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

SUBCHAPTER I

AMENDMENT OF ARTICLES OF INCORPORATION

§1001. Authority to amend

1. Generally. A corporation may amend its articles of incorporation at any time to add or change a provision that, as of the effective date of the amendment, is required or permitted in the articles of incorporation or to delete a provision that is not required to be contained in the articles of incorporation.

2. No vested property right. A shareholder of a corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend entitlement or purpose or duration of the corporation.

3. Organized under special Act. If a corporation was organized under a special Act of the Legislature, the corporation may amend its articles of incorporation only if:

A. The corporation could now be organized under this Act; or

B. The proposed amendment would not be materially inconsistent with the special Act creating the corporation.

§1002. Amendment before issuance of shares

If a corporation has not yet issued shares, its board of directors or if it has no board of directors, its incorporators, may adopt one or more amendments to the corporation's articles of incorporation.

§1003. Amendment by board of directors and shareholders

If a corporation has issued shares, an amendment to the articles of incorporation must be adopted in accordance with the following.

1. Amendment adopted by board of directors. The proposed amendment must be adopted by the board of directors.

2. Approval by shareholders. Except as provided in sections 1005, 1007, and 1008, after adopting the proposed amendment the board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation. In that case, the board of directors shall transmit to the shareholders the basis for that determination.

3. Condition of submission. The board of directors may condition its submission of the amendment to the shareholders on any basis.

4. Notice of meeting. If the amendment is required to be approved by the shareholders and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the amendment and must contain or be accompanied by a copy of the amendment.

5. Approval by majority. Unless the articles of incorporation or the board of directors, acting pursuant to subsection 3, requires a greater vote, approval of the amendment requires the approval of the shareholders by a majority of all the votes entitled to be cast on the amendment by the shareholders. If any class or series is entitled to vote as a separate voting group on the amendment, except as provided in section 1004, subsection 3, the amendment requires the approval of each separate voting group by a majority of all the votes entitled to be cast on the amendment by that voting group. The articles of incorporation may provide that an amendment may be approved by a lesser vote of each voting group entitled to vote on the amendment, but in no case less than a majority of the votes cast by that voting group at a meeting at which there exists, for each such voting group, a quorum

consisting of at least a majority of the votes entitled to be cast on the amendment by each voting group entitled to vote on the amendment.

6. Written consent. The articles of incorporation may be amended by written consent of all shareholders entitled to vote on the amendment, as provided by section 704, subsection 1; if a unanimous written consent is given, a resolution of the board of directors proposing the amendment is not necessary.

§1004. Voting on amendments by voting groups

1. Separate voting groups. If a corporation has more than one class of shares outstanding, the holders of the outstanding shares of a class are entitled to vote as a separate voting group, if shareholder voting is otherwise required by this Act, on a proposed amendment to the articles of incorporation if the amendment would:

A. Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

B. Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

C. Change the rights, preferences or limitations of all or part of the shares of the class;

D. Change the shares of all or part of the class into a different number of shares of the same class;

E. Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

F. Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or superior to the shares of the class;

G. Limit or deny an existing preemptive right of all or part of the shares of the class; or

H. Cancel or otherwise affect rights to distributions that have accumulated but have not yet been authorized on all or part of the shares of the class.

2. Voting rights of series. If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection 1, the holders of shares of that series are entitled to vote as a separate voting group on the proposed amendment.

3. Two or more classes or series affected; vote as one group. If a proposed amendment that entitles the holders of 2 or more classes or series of shares to vote as separate voting groups under this section would affect those 2 or more classes or series in the same or a substantially similar way, the holders of shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or required by the board of directors.

4. Nonvoting shares. A class or series of shares is entitled to the voting rights granted by this section even if the articles of incorporation provide that the shares are nonvoting shares.

§1005. Amendment by board of directors

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt amendments to the corporation's articles of incorporation without shareholder approval:

1. Extend duration of corporation. To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

2. Initial directors. To delete the names and addresses of the initial directors;

3. Initial registered agent or registered office. To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;

4. One class of shares outstanding. If the corporation has only one class of shares outstanding:

A. To change each issued and unissued authorized share of the class into a greater number of whole shares of that class; or

B. To increase the number of authorized shares of the class to the extent necessary to permit the issuance of shares as a share dividend;

5. Change corporate name. To change the corporate name by substituting the word "corporation," "incorporated," "company," or "limited" or the abbreviation "corp.," "inc.," "co." or "ltd." for a similar word or abbreviation in the name or by adding, deleting or changing a geographical attribution for the name;

6. Reduction in authorized shares. To reflect a reduction in authorized shares, as a result of the operation of section 642, subsection 2, when the corporation has acquired its own shares and the articles of incorporation prohibit the reissue of the acquired shares;

7. Delete class of shares. To delete a class of shares from the articles of incorporation, as a result of the operation of section 642, subsection 2, when there are no remaining shares of the class because the corporation has acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired shares; or

8. Make approved changes. To make any change expressly permitted by section 602, subsection 4 to be made without shareholder approval.

§1006. Articles of amendment

1. Content. After an amendment to the articles of incorporation has been adopted and approved in the manner required by this Act and by the articles of incorporation, the corporation shall deliver to the Secretary of State for filing articles of amendment that must set forth:

A. The name of the corporation;

B. The text of each amendment adopted;

C. If an amendment provides for an exchange, reclassification or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

D. The date of each amendment's adoption;

E. If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement that the amendment was duly approved by the incorporators or by the board of directors, as the case may be, and that shareholder approval was not required; and

F. If an amendment required approval by the shareholders, a statement that the amendment was duly approved by the shareholders in the manner required by this Act and by the articles of incorporation.

§1007. Restated articles of incorporation

1. Consolidation into single document. A corporation's board of directors may restate its articles of incorporation at any time, with or without shareholder approval, to consolidate all amendments into a single document.

2. Inclusion of amendments requiring shareholder approval. If the restated articles of incorporation include one or more new amendments that require shareholder approval, the amendments must be adopted and approved as provided in section 1003.

3. Filing restated articles. A corporation that restates its articles of incorporation shall deliver to the Secretary of State for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate that states that the restated articles of incorporation consolidate all amendments into a single document. If a new amendment is included in the restated articles of incorporation, the certificate must also include the statements required under section 1006.

4. Original articles superseded. Duly adopted restated articles of incorporation supersede the original articles of incorporation and all earlier amendments to the articles of incorporation.

5. Certification of restated articles. The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection 3.

§1008. Amendment pursuant to reorganization

1. Court ordered reorganization. A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States.

2. Individual appointed by court. The individual or individuals designated by the court pursuant to subsection 1 shall deliver to the Secretary of State for filing articles of amendment setting forth:

A. The name of the corporation;

B. The text of each amendment approved by the court;

C. The date of the court's order or decree approving the articles of amendment;

D. The title of the reorganization proceeding in which the order or decree was entered; and

E. A statement that the court had jurisdiction of the proceeding under federal statute.

3. Final decree. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§1009. Effect of amendment

An amendment to a corporation's articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does

not abate a proceeding brought by or against the corporation in its former name.

SUBCHAPTER II

AMENDMENT OF BYLAWS

§1020. Amendment by board of directors or shareholders

1. Shareholders amend; repeal bylaws. A corporation's shareholders may amend or repeal the corporation's bylaws.

2. Board of directors amend bylaws. A corporation's board of directors may amend or repeal the corporation's bylaws, unless:

A. The articles of incorporation or section 1021 reserve that power exclusively to the shareholders in whole or part; or

B. The shareholders in amending, repealing or adopting a bylaw expressly provide that the board of directors may not amend, repeal or reinstate that bylaw.

§1021. Bylaw increasing quorum or voting requirement for directors

1. Increase quorum or voting requirement. A bylaw that increases a quorum or voting requirement for the corporation's board of directors may be amended or repealed:

A. If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

B. If adopted by the board of directors, either by the shareholders or by the board of directors.

2. Bylaw increasing quorum or voting requirement. A bylaw adopted or amended by the shareholders that increases a quorum or voting requirement for the corporation's board of directors may provide that it can be amended or repealed only by a specified vote of either the shareholders or the board of directors.

3. Amendment quorum requirement. Action by the corporation's board of directors under subsection 1 to amend or repeal a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

CHAPTER 11

MERGERS AND SHARE EXCHANGES

§1101. Definitions

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

1. Eligible entity. "Eligible entity" means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

2. Eligible interests. "Eligible interests" means interests and memberships.

3. Merger. "Merger" means a business combination pursuant to section 1102.

4. Party to a merger or party to a share exchange. "Party to a merger" or "party to a share exchange" means any domestic or foreign corporation or eligible entity that will:

A. Merge under a plan of merger;

B. Acquire shares or eligible interests of another corporation or an eligible entity in a share exchange; or

C. Have all of its shares or eligible interests or all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

5. Share exchange. "Share exchange" means a business combination pursuant to section 1103.

6. Survivor. "Survivor" in a merger means the corporation or eligible entity into which one or more other corporations or eligible entities are merged. A survivor of a merger may preexist the merger or be created by the merger.

§1102. Merger

1. General authority of domestic corporations. One or more domestic business corporations may merge with one or more domestic or foreign business or nonprofit corporations or unincorporated entities pursuant to a plan of merger under this section.

2. Merger with foreign entities. A foreign business or nonprofit corporation or a foreign unincorporated entity may be a party to a merger with a domestic business corporation or may be created by the terms of a plan of merger under this section only if the merger is permitted by the laws under which the foreign business or nonprofit corporation or unincorporated entity is organized or by which it is governed; and

3. Merger not contemplated in organic law. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of a merger, a plan of merger may be adopted and approved, the merger effectuated, and appraisal rights exercised in accordance with the procedures in this chapter and chapter 13. For the purposes of applying this chapter and chapter 13:

A. The unincorporated entity, its interest holders, interests and organic documents taken together are deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and

B. If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group is deemed to be the board of directors.

4. Plan of merger. A plan of merger must include:

A. The name of each domestic or foreign business or nonprofit corporation or unincorporated entity that will merge and the name of the corporation or unincorporated entity that will be the survivor of the merger;

B. The terms and conditions of the merger;

C. The manner and basis of converting the shares of each merging domestic or foreign business corporation, memberships of each domestic or foreign nonprofit corporation and interests of each merging domestic or foreign unincorporated entity into shares or other securities, memberships, interests, obligations, rights to acquire shares, other securities or interest, cash or other property or any combination thereof;

D. The articles of incorporation of any domestic or foreign business or nonprofit corporation or the organic documents of any domestic or foreign unincorporated entity to be created by the merger or, if a new domestic or foreign business or nonprofit corporation or unincorporated entity is not to be created by the merger, any amendments to the survivor's articles of incorporation or organic documents; and

E. Any other provisions required by the laws under which any party to the merger is organized or by which it is governed, or by the articles of incorporation or organic documents of any such person.

5. Plan dependent on facts. The terms of the plan of merger referred to in subsection 4, paragraphs B and C may be made dependent on facts ascertainable outside the plan of merger, as long as those facts are objectively ascertainable. For the purposes of this subsection, "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

6. Amend plan prior to filing articles of merger. The plan of merger may also include a provision that the plan may be amended prior to filing the articles of merger with the Secretary of State under section 1106, subsection 2. If the shareholders of a domestic corporation that is a party to the merger are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by the shareholders the plan may not be amended to:

A. Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property to be received under the plan by the shareholders or owners of interests in any party to the merger;

B. Change the articles of incorporation or the organic documents of any other entity that will survive or be created as a result of the merger, except for changes permitted by section 1005 or by comparable provisions of the organic laws of any such foreign corporation or domestic or foreign other entity; or

C. Change any of the other terms or conditions of the plan if the change would adversely affect the shareholders in any material respect.

§1103. Share exchange

1. Share exchange. Through a share exchange:

A. A domestic corporation may acquire all of the shares of one or more classes or series of shares of another domestic or foreign corporation, or all of the interests of one or more classes or series of interests of a domestic or foreign other entity, in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property or any combination thereof pursuant to a plan of share exchange; or

B. All of the shares of one or more classes or series of shares of a domestic corporation may be acquired by another domestic or foreign corporation or other entity in exchange for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property or any combination thereof pursuant to a plan of share exchange.

2. Party to share exchange. A foreign corporation or a foreign unincorporated entity may be a

party to a share exchange under this section only if the share exchange is permitted by the laws under which the corporation or other entity is organized or governed.

3. Share exchange not contemplated in organic law. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of a share exchange, a plan of share exchange may be adopted and approved and the share exchange effectuated in accordance with the procedures, if any, for a merger. If the organic law of a domestic unincorporated entity does not provide procedures for the approval of either a share exchange or a merger, a plan of share exchange may be adopted and approved, the share exchange effectuated and appraisal rights exercised in accordance with the procedures in this chapter and chapter 13. For the purposes of applying this chapter and chapter 13:

A. The unincorporated entity, its interest holders, interests and organic documents taken together are deemed to be a domestic business corporation, shareholders, shares and articles of incorporation, respectively and vice versa as the context may require; and

B. If the business and affairs of the unincorporated entity are managed by a group of persons that is not identical to the interest holders, that group is deemed to be the board of directors.

4. Plan of share exchange. A plan of share exchange must include:

A. The name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire those shares or interests;

B. The terms and conditions of the share exchange;

C. The manner and basis of exchanging shares of a corporation or interests in an other entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property or any combination thereof; and

D. Any other provisions required by the laws under which any party to the share exchange is organized, or by the articles of incorporation or organic documents of any such party.

5. Provisions dependent on facts. The provisions of the plan of share exchange referred to in subsection 4, paragraphs B and C may be made dependent on facts ascertainable outside the plan of share exchange, as long as those facts are objectively ascertainable. For purposes of this subsection, "facts" includes, but is not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

6. Amend plan prior to filing articles of share exchange. The plan of share exchange also may include a provision that the plan may be amended prior to filing the articles of share exchange with the Secretary of State under section 1106, subsection 2. If the shareholders of a domestic corporation that is a party to the share exchange are required or permitted to vote on the plan, the plan must provide that subsequent to approval of the plan by the shareholders the plan may not be amended to:

A. Change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, interests, cash or other property to be issued by the corporation or to be received under the plan by the shareholders or owners of interests in any party to the share exchange; or

B. Change any of the terms or conditions of the plan if the change would adversely affect the shareholders in any material respect.

This section does not limit the power of a domestic corporation to acquire shares of another corporation or interests in an other entity in a transaction other than a share exchange.

§1104. Action on plan of merger or share exchange

In the case of a domestic corporation that is a party to a merger or share exchange under this chapter:

1. Plan adopted by board of directors. The plan of merger or share exchange must be adopted by the corporation's board of directors;

2. Shareholders approve plan. Except as provided in subsection 7 and in section 1105, after adopting the plan of merger or share exchange, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors also shall transmit to the shareholders a recommendation that the shareholders approve the plan, unless the board of directors makes a determination that, because of conflicts of interest or other special circumstances, the board of directors should not make that recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination;

3. Conditional submission of plan. The corporation's board of directors may condition its submission of the plan of merger or share exchange to the shareholders on any basis;

4. Notice of meeting. If the plan of merger or share exchange under this chapter is required by the corporation's articles of incorporation to be approved by the shareholders and if the approval is to be given at a meeting of shareholders, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing corporation or other entity, the notice also must include or be accompanied by a copy or summary of the articles of incorporation or organizational documents of that corporation or other entity. If the corporation is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice also must include or be accompanied by a copy or a summary of the articles of incorporation or organizational documents of the new corporation or other entity;

5. Majority vote. Unless the corporation's articles of incorporation, or the corporation's board of directors acting pursuant to subsection 3, require a greater vote, approval of the plan of merger or share exchange requires the approval of the shareholders by a majority of all the votes entitled to be cast on the plan by that voting group and, if any class or series is entitled to vote as a separate voting group on the plan, the approval of each separate voting group by a majority of all the votes entitled to be cast on the plan by that voting group. The corporation's articles of incorporation may provide that a plan of merger or share exchange may be approved by a lesser vote of each voting group entitled to vote on the plan, but in no case less than a majority of the votes cast by that voting group at a meeting at which there exists for each such voting group a quorum consisting of at least a majority of the votes entitled to be cast on the plan by each voting group entitled to vote on the plan;

6. Voting groups. Separate voting by voting group is required:

A. On a plan of merger by each class or series of shares that:

(1) Are to be converted under the plan of merger into shares or other securities, interests, obligations, rights to acquire shares or other securities or interests, cash or other property or any combination thereof; or

(2) Would be entitled to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to articles of incorporation, would require action by separate voting groups under section 1004;

B. On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

C. On a plan of merger or share exchange if a voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange;

7. Approval not required. Unless the corporation's articles of incorporation otherwise provide, approval by the corporation's shareholders of a plan of merger or share exchange is not required if:

A. The corporation will survive the merger or is the acquiring corporation in a share exchange;

B. The corporation's articles of incorporation will not be changed, except for amendments permitted by section 1005;

C. Each shareholder of the corporation whose shares are outstanding immediately before the effective date of the merger or share exchange will hold the same number of shares, with identical preferences, limitations and relative rights, immediately after the effective date of the change;

D. The number of voting shares outstanding immediately after the merger plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

E. The number of participating shares outstanding immediately after the merger plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.

For the purposes of this subsection, "participating shares" means shares that entitle their holders to participate without limitation in distributions, and "voting shares" means shares that entitle their holders to vote unconditionally in elections of directors;

8. Personal liability; written consent. If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to owner liability for the debts, obligations or liabilities of any other person or entity, approval of the

plan of merger or share exchange must require the execution by each such shareholder of a separate written consent to become subject to that owner liability;

9. Participating corporation. A corporation organized under any special act of the Legislature of this State may be a participating corporation in a merger or share exchange unless the act authorizing the creation of the corporation provides to the contrary; and

10. Unanimous written consent. A plan of merger or share exchange may be approved by written consent of all shareholders of a participating corporation, whether or not entitled to vote by the corporation's articles of incorporation, as provided in section 704, subsection 1. If the unanimous written consent is given, a resolution of the board of directors of the participating corporation approving, proposing, submitting, recommending or otherwise respecting the plan of merger or share exchange is not necessary and shareholders of the participating corporation are not entitled to receive notice of or to dissent from the plan of merger or share exchange.

§1105. Merger between parent corporation and subsidiary corporation or between subsidiary corporations

1. Merger of subsidiary corporations. A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carry at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary that have voting power may merge the subsidiary into the parent corporation or another such subsidiary or may merge the parent corporation into the subsidiary without the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation of any of the corporations otherwise provide and unless, in the case of a foreign subsidiary, approval by the subsidiary's board of directors or shareholders is required by the laws under which the subsidiary is organized.

2. Notice to shareholders. If approval of a merger by a subsidiary corporation's shareholders is not required under subsection 1, the parent corporation shall, within 10 days after the effective date of the merger, notify each of the subsidiary's shareholders that the merger has become effective.

3. Provisions of merger. Except as provided in subsections 1 and 2, a merger between a parent corporation and a subsidiary corporation is governed by the provisions of this chapter applicable to mergers generally.

§1106. Articles of merger or share exchange

1. Execution of plan of merger or share exchange. After a plan of merger or share exchange has been adopted and approved as required by this Act, articles of merger or share exchange must be executed on behalf of each party to the merger or share exchange by an officer or other duly authorized representative. The articles must set forth:

A. The names of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;

B. If the articles of incorporation of the survivor of a merger are amended or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;

C. If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group in the manner required by this Act and the corporation's articles of incorporation;

D. If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and

E. For each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or other entity was duly authorized as required by the organic law of the corporation or other entity.

2. File articles with Secretary of State. Articles of merger or share exchange must be delivered to the Secretary of State for filing by the survivor of the merger or the acquiring corporation in a share exchange and take effect at the effective time provided in section 125.

§1107. Effect of merger or share exchange

1. Merger. When a merger becomes effective:

A. The corporation or other entity that is designated in the plan of merger as the survivor continues or comes into existence, as the case may be;

B. The separate existence of every corporation or other entity that is merged into the survivor ceases;

C. All property owned by and every contract right possessed by each corporation or other entity that merges into the survivor is vested in the survivor without reversion or impairment;

D. All liabilities of each corporation or other entity that is merged into the survivor are vested in the survivor;

E. The name of the survivor may but need not be substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;

F. The articles of incorporation or organizational documents of the survivor are amended to the extent provided in the plan of merger;

G. The articles of incorporation or organizational documents of a survivor that is created by the merger become effective;

H. The shares of each corporation that is a party to the merger and the interests in an other entity that is a party to a merger that are to be converted under the plan of merger into shares, interests, obligations, rights to acquire securities, other securities, cash or other property or any combination thereof are converted, and the former holders of the shares or interests are entitled only to the rights provided to them in the plan of merger or to any rights they may have under chapter 13.

2. Share exchange. When a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property or any combination thereof are entitled only to the rights provided to them in the plan of share exchange or to any rights they may have under chapter 13.

3. Shareholder's liabilities and obligations. A person who becomes subject to owner liability for some or all of the debts, liabilities or obligations of any entity as a result of a merger or share exchange has owner liability only to the extent provided in the organic law of the entity and only for those debts, liabilities and obligations that arise after the effective time of the articles of merger or share exchange.

4. Foreign corporation. When a merger becomes effective, a foreign corporation or a foreign other entity that is the survivor of the merger is deemed to:

A. Appoint the Secretary of State as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

B. Agree to promptly pay the amount, if any, to which the shareholders under paragraph A are entitled under chapter 13.

5. Effect of merger or share exchange on liability. The effect of a merger or share exchange on the owner liability of a person who had owner liability for some or all of the debts, obligations or liabilities of a party to the merger or share exchange is as follows.

A. The merger or share exchange does not discharge any liability under the organic law of the entity in which the person was a shareholder or interest holder to the extent any such owner liability arose before the effective time of the articles of merger or share exchange.

B. The person does not have owner liability under the organic law of the entity in which the person was a shareholder or interest holder prior to the merger or share exchange for any debt, obligation or liability that arises after the effective time of the articles of merger or share exchange.

C. The provisions of the organic law of any entity for which the person had owner liability before the merger or share exchange continue to apply to the collection or discharge of any owner liability preserved by paragraph A, as if the merger or share exchange had not occurred.

D. The person has whatever rights of contribution from other persons are provided by the organic law of the entity for which the person had owner liability with respect to any owner liability preserved by paragraph A, as if the merger or share exchange had not occurred.

§1108. Abandonment of merger or share exchange

1. Abandoned merger or share exchange prior to becoming effective. Unless otherwise provided in a plan of merger or share exchange or in the laws under which a foreign corporation or a domestic or foreign other entity that is a party to a merger or a share exchange is organized or by which it is governed, after the plan has been adopted and approved as required by this chapter, and at any time before the merger or share exchange has become effective, the merger or share exchange may be abandoned by any party to the merger or share exchange without action by the party's shareholders or owners of interests, in accordance with any procedures set forth in the plan of merger or share exchange or, if procedures are not set forth in the plan, in the manner determined by the corporation's board of directors or the managers of an other entity, subject to any

contractual rights of other parties to the merger or share exchange.

2. Abandoned merger or share exchange after articles of merger or share exchange are filed. If a merger or share exchange is abandoned under subsection 1 after articles of merger or share exchange have been filed with the Secretary of State under section 1106, subsection 2 but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, executed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, must be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. Upon filing, the statement takes effect and the merger or share exchange is considered abandoned and does not become effective.

§1109. Required vote of shareholders in certain business combinations

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

A. "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a specified person.

B. "Announcement date," when used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for that business combination.

C. "Associate," when used to indicate a relationship with a person, means:

(1) Any corporation or organization of which that person is a director, officer or partner or is, directly or indirectly, the beneficial owner of 10% or more of any class of voting shares;

(2) Any trust or other estate in which that person has a substantial beneficial interest or to which that person serves as trustee or in a similar fiduciary capacity; and

(3) Any relative or spouse of that person, or any relative of that spouse, who has the same home as that person.

D. "Beneficial owner," when used with respect to shares, means a person that:

(1) Individually or with or through any affiliate or associate, beneficially owns shares, directly or indirectly;

(2) Individually or with or through any affiliate or associate, has the right to:

(a) Acquire shares, whether that right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, except that a person is not considered the beneficial owner of shares tendered pursuant to a tender or exchange offer made by that person or any of that person's affiliates or associates until the tendered shares are accepted for purchase or exchange; or

(b) Vote shares pursuant to any agreement, arrangement or understanding, whether or not in writing, except that a person is not considered the beneficial owner of any shares under this division if the agreement, arrangement or understanding to vote shares arises solely from a revocable proxy given in response to a proxy solicitation made in accordance with the applicable rules and regulations under the Exchange Act, and is not then reportable on a Schedule 13D under the Exchange Act, or any comparable or successor report; or

(3) Has any agreement, arrangement or understanding, whether or not in writing, for the purpose of acquiring, holding, voting, except voting pursuant to a revocable proxy as described in subparagraph (2), or disposing of shares with another person who beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, the shares.

E. "Business combination," when used in reference to any domestic corporation and any interested shareholder of that domestic corporation, means:

(1) Any merger or consolidation of that domestic corporation or any subsidiary of that domestic corporation with that interested shareholder, any other corporation, whether or not it is an interested shareholder of that domestic corporation, that is, or after a merger or consolidation would be, an affiliate or associate of that interested shareholder, or any other corporation if the merger or consolidation is caused by that interested shareholder and as a result of that

merger or consolidation this section is not applicable to the surviving corporation;

(2) Any sale, lease, exchange, mortgage, pledge, transfer or other disposition, in one transaction or a series of transactions, of assets of that domestic corporation or any subsidiary of that domestic corporation having an aggregate market value equal to 10% or more of the aggregate market value, or book value determined in accordance with good accounting practices, of all the assets, determined on a consolidated basis, of that domestic corporation, having an aggregate market value equal to 10% or more of the aggregate market value of all the outstanding shares of that domestic corporation, or representing 10% or more of the earning power or income, determined on a consolidated basis, of that domestic corporation proposed by, on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with that interested shareholder or any affiliate or associate of that interested shareholder;

(3) The issuance or transfer by that domestic corporation or any subsidiary of that domestic corporation, in one transaction or a series of transactions, of any shares of that domestic corporation or any subsidiary of that domestic corporation that has an aggregate market value equal to 5% or more of the aggregate market value of all the outstanding shares of that domestic corporation to that interested shareholder or any affiliate or associate of that interested shareholder, except pursuant to the exercise of warrants or rights to purchase shares offered, or a dividend or distribution paid or made, pro rata to all shareholders of that domestic corporation;

(4) The adoption of any plan or proposal for the liquidation or dissolution of that domestic corporation proposed by, on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with that interested shareholder or any affiliate or associate of that interested shareholder;

(5) Any reclassification of securities, including, without limitation, any share split, share dividend or other distribution of shares, or any reverse share split, or recapitalization of that domestic corporation, or any merger or consolidation of that domestic corporation, with any subsidiary of that domestic corporation, or any other transaction, whether or not with, or into, or otherwise involving that interested shareholder, proposed by, on behalf of or pursuant to any agreement, arrangement or understanding, whether or not in writing, with that interested shareholder or any affiliate or associate of that interested shareholder, any of which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting shares or securities convertible into voting shares of that domestic corporation or any subsidiary of that domestic corporation that is directly or indirectly owned by that interested shareholder or any affiliate or associate of that interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(6) Any receipt by that interested shareholder or any affiliate or associate of that interested shareholder of the benefit, directly or indirectly, except proportionately as a shareholder of the domestic corporation, of any loans, advances, guarantees, pledges or other financial assistance or any tax credits or other tax advantages provided by or through that domestic corporation.

F. "Control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise. A person's beneficial ownership of 10% or more of the outstanding voting shares of a corporation creates a presumption that that person has control of that corporation. Notwithstanding this paragraph, a person is not considered to have control of a corporation if that person holds voting power, in good faith and not for the purpose of circumventing this paragraph, as an agent, bank, broker, nominee, custodian or trustee for one or more beneficial owners who do not individually or as a group have control of that corporation.

G. "Exchange Act" means the United States Securities Exchange Act of 1934 as that Act has been or may be amended from time to time.

H. "Interested shareholder," when used in reference to any domestic corporation, means any person, other than that domestic corporation or any subsidiary of that domestic corporation, that:

(1) Is the beneficial owner, directly or indirectly, of 25% or more of the outstanding

voting shares of that domestic corporation; or

(2) Is an affiliate or associate of that domestic corporation and at any time within the 5-year period immediately prior to the date in question was the beneficial owner, directly or indirectly, of 25% or more of the outstanding voting shares of that domestic corporation. For the purpose of determining whether a person is an interested shareholder pursuant to this paragraph, the number of shares of voting shares of that domestic corporation considered to be outstanding must include shares considered to be beneficially owned by the person through application of paragraph D, but does not include any other unissued voting shares of that domestic corporation that may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise. The term "interested shareholder" does not include any person whose ownership of voting shares in excess of the 25% limitation set forth in this paragraph is the result of action taken solely by the corporation and not caused directly or indirectly by that person; however, that person is an interested shareholder if thereafter that person acquires additional voting shares of the corporation, except as a result of further corporate action not caused, directly or indirectly, by that person.

I. "Market value," when used in reference to property of any domestic corporation, means:

(1) In the case of shares, the highest closing sale price during the 30-day period immediately preceding the date in question of a share on the composite tape for New York Stock Exchange listed stocks; or, if that share is not quoted on that composite tape or, if that share is not listed on that exchange, then on the principal United States Securities Exchange registered under the Exchange Act on which that share is listed, or, if that share is not listed on any such exchange, the highest closing bid quotation with respect to the share during the 30-day period preceding the date in question on the National Association of Securities Dealers Automated Quotations System, or any system then in use, or, if no such quotations are available, the fair market value on the date in question of the share as determined in good faith by the board of directors of that corporation; and

(2) In the case of property other than cash or shares, the fair market value of that property on the date in question as determined in good faith by the board of directors of that domestic corporation.

J. "Share" means:

(1) Any share or similar security, any certificate of interest, any participation in any profit-sharing agreement, any voting trust certificate or any certificate of deposit for shares; and

(2) Any security convertible, with or without consideration, into shares or any warrant, call or other option or privilege of buying shares without being bound to do so, or any other security carrying any right to acquire, subscribe to or purchase shares.

K. "Share acquisition date," with respect to any person and any domestic corporation, means the date that the person first becomes an interested shareholder of that domestic corporation.

L. "Subsidiary" of any domestic corporation means any other corporation of which voting shares having 50% or more of the votes entitled to be cast is owned, directly or indirectly, by that domestic corporation.

M. "Voting shares" means shares of a corporation entitled to vote generally in the election of directors.

2. Business combination. Notwithstanding anything to the contrary in this Act, except subsection 3, a domestic corporation may not engage in any business combination for a period of 5 years following an interested shareholder's share acquisition date unless that business combination is:

A. Approved by the board of directors of that domestic corporation prior to that interested shareholder's share acquisition date; or

B. Approved, subsequent to that interested shareholder's share acquisition date, by the board of directors of that domestic corporation and authorized by the affirmative vote, at a meeting called for that purpose, of at least a majority of the outstanding voting shares not beneficially owned by that interested shareholder or any affiliate or associate of that interested shareholder or by persons who are either directors or officers and also employees of that domestic corporation.

3. Exemptions. This section does not apply to business combinations as provided in this subsection.

A. Unless the articles of incorporation of a domestic corporation provide otherwise, this section does not apply to any business combination of that domestic corporation if that domestic corporation did not have a class of voting shares registered or traded on a national securities exchange or registered with the United States Securities and Exchange Commission pursuant to 15 United States Code, Section 78 l(g) on that interested shareholder's share acquisition date.

B. Unless the articles of incorporation of that domestic corporation provide otherwise, this section does not apply to any business combination involving a domestic corporation that does not have any interested shareholders other than an interested shareholder who was an interested shareholder immediately prior to the effective date of this section unless, subsequent to the effective date of this section, that interested shareholder increased its proportion of that domestic corporation's outstanding voting shares to a proportion in excess of the proportion of voting shares that interested shareholder held immediately prior to the effective date of this section.

C. This section does not apply to any business combination involving a domestic corporation that does not have an interested shareholder other than an interested shareholder of that domestic corporation that became an interested shareholder inadvertently if that interested shareholder:

(1) As soon as practicable divests itself of a sufficient amount of the voting shares of that domestic corporation so that the interested shareholder no longer is the beneficial owner, directly or indirectly, of 25% or more of the outstanding voting shares of that domestic corporation; and

(2) Has not been at any time within the 5-year period preceding the announcement date with respect to that business combination, an interested shareholder of that domestic corporation but for that inadvertent acquisition.

D. This section does not apply to any business combination involving a domestic corporation that, in its original articles of incorporation, has expressly elected not to be governed by this section.

E. This section does not apply to any business combination involving a domestic corporation that, by action of its shareholders, adopts an amendment to its articles of incorporation or bylaws expressly electing not to be governed by this section; however, in addition to any other vote required by law, the amendment to the articles of incorporation or bylaws must be approved by the affirmative vote of at least 66 2/3% of the shares entitled to vote. An amendment adopted pursuant to this paragraph is effective immediately. A bylaw amendment adopted pursuant to this paragraph may not be further amended or repealed by the board of directors.

The requirements of this section are in addition to the requirements of applicable law, including this Act, and any additional requirements contained in the articles of incorporation or bylaws of a domestic corporation with respect to business combinations as defined in this section.

§1110. Right of shareholders to receive payment for shares following control transaction

1. Shareholders entitled to rights; exceptions. A holder of the voting shares of a corporation that becomes the subject of a control transaction described in subsection 2 is entitled to the rights and remedies provided in this section, unless the articles of incorporation provide that this section is not applicable to the corporation.

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

A. "Controlling person" means:

(1) A person who has, or a group of persons acting in concert that has, voting power over voting shares of the corporation that entitle the holders of those shares to cast at least 25% of the votes that all shareholders are entitled to cast in an election of the directors of the corporation; or

(2) A person who has, or a group of persons acting in concert that has, voting power over at least 25% of the shares in any class of shares entitled to elect all the directors, or any specified number of them.

Notwithstanding this paragraph, a person or group of persons that would otherwise be a controlling person within the meaning of this subsection is not considered a controlling person unless, subsequent to the effective date of this section, that person or group increases the percentage of outstanding voting shares of the corporation over which that person or group has voting power to a percentage in excess of the percentage of outstanding voting shares of the corporation over which that person or group had voting power on the effective date of this section,

and to at least the amount specified in this paragraph.

For the purposes of this section, a person is not a controlling person if that person holds voting power, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee or trustee for one or more beneficial owners who do not individually or, if they are a group acting in concert, as a group have the voting power specified in this paragraph or who are not considered a controlling person under this paragraph. A person has voting power over a voting share if that person has or shares, directly or indirectly, through any option, contract, arrangement, understanding, voting trust, conversion right or relationship, or by acting jointly or in concert or otherwise, the power to vote, or to direct the voting of, that voting share.

A person engaged in business as an underwriter or group consisting of persons engaged in business as underwriters is not a controlling person under this paragraph if that person or group holds voting power specified in this paragraph, in good faith and not for the purpose of circumventing this section, over shares of the corporation acquired through participation in good faith in a firm commitment underwriting of an offering of shares registered under the United States Securities Act of 1933.

B. "Control transaction" means the acquisition by a person or group of the status of a controlling person.

C. "Control transaction date" means the date on which a controlling person becomes a controlling person.

D. "Demanding shareholder" means a shareholder who has made a demand for payment pursuant to subsection 4.

3. Notice of control transaction to be given to shareholders. Within 15 days of the control transaction date, notice that a control transaction has occurred must be given by the controlling person to each shareholder of the corporation holding voting shares. If the controlling person so requests, the corporation shall, at the option of the corporation and at the expense of the controlling person, either furnish a list of all shareholders holding voting shares to the person or group or mail the notice to those shareholders. A copy of this section of law must be included in, or enclosed with, the notice. Any list provided by the corporation to a controlling person pursuant to this subsection may be used only for the purpose of giving the notice required by this subsection.

4. Shareholder demand for payment. After the control transaction date, any holder of voting shares of the corporation, prior to or within 30 days after the notice required by subsection 3 is given, which time period must be specified in the notice, may make written demand on the controlling person for payment of the amount provided in subsection 5 with respect to the voting shares of the corporation held by the shareholder, and the controlling person shall pay that amount to the shareholder. The demand of the shareholder must state the number and class or series, if any, of the shares owned by the shareholder with respect to which the demand is made.

5. Shareholder entitled to receive payment for shares. A shareholder making written demand under subsection 4 is entitled to receive cash for each of the shareholder's shares in an amount equal to the fair value of each voting share as of the day prior to the control transaction date, taking into account all relevant factors, including an increment representing a proportion of any value payable for acquisition of control of the corporation.

6. Submission of certificates; notation. At the time the shareholder files demand for payment for shares pursuant to subsection 4, or within 20 days after filing the demand, each shareholder demanding payment with respect to certificated shares shall submit the certificate or certificates representing the shareholder's shares to the corporation or the corporation's transfer agent for notation on the certificate that the demand has been made; the certificates must be returned promptly after entry of the notation. A shareholder's failure to submit the certificates terminates, at the option of the controlling person, the shareholder's rights under this section, unless a court of competent jurisdiction, for good and sufficient cause shown, otherwise directs. If shares represented by a certificate on which notation has been so made are transferred, each new certificate issued for those shares must bear a similar notation, together with the name of the original holder of the shares who made the written demand, and a transferee of the shares does not acquire by the transfer any rights in the corporation other than those that the original demanding shareholder had after making demand for payment of the fair value of the shares.

Following a demand for payment with respect to shares without certificates, a notation that a demand for payment pursuant to subsection 4, together with the name of the original holder of the shares who made the written demand, must be included in the information statement required by section 627, subsection 2. A transferee of shares without certificates as to which a notation is included in the information statement required by section 627, subsection 2 does not acquire by the transfer any rights in the corporation other than those that the original demand-

ing shareholder had after making demand for payment of the fair value of the shares.

7. Written offer; balance sheet. Within 10 days after the expiration of the period provided in subsection 4 for making demand, the controlling person shall make a written offer to each demanding shareholder to pay for those shares at a specified price determined by the controlling person to be the fair value of those shares. The offer must be made at the same price per share to all demanding shareholders of the same class. The notice and offer must be accompanied by a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the making of the offer and a profit and loss statement of the corporation for the 12-month period ending on the date of the balance sheet.

8. Agreement on fair value; payment. If, within 30 days after the expiration of the period provided in subsection 4 for making demand, the fair value of the shares is agreed upon between any demanding shareholder and the controlling person, payment for those shares must be made within 90 days after the date on which the written offer required by subsection 7 is made, upon surrender of the certificate or certificates representing those shares, if certificated. Upon payment of the agreed value, the demanding shareholder ceases to have any interest in the shares.

9. Failure to reach agreement on fair value of shares. If, within the additional 30-day period prescribed by subsection 8, one or more demanding shareholders and the controlling person have failed to agree as to the fair value of shares:

A. The controlling person may, or shall, if the controlling person receives a demand as provided in subparagraph (1), bring an action in the Superior Court in the county in this State where the registered office of the corporation is located asking that the fair value of those shares be found and determined. This action:

(1) Must be brought by the controlling person, if the controlling person receives a written demand for suit from any demanding shareholder, which demand is made within 60 days after the date on which the written offer required by subsection 7 was made. The controlling person shall bring the action within 30 days after receipt of the written demand; or

(2) In the absence of a demand for suit, may be brought by the controlling person at that controlling person's election at any time from the expiration of the additional 30-day period prescribed by subsection 8 until the expiration of 60 days after the date on which the written offer required by subsection 7 was made;

B. If the controlling person fails to institute the action within the period specified in paragraph A, a demanding shareholder may bring the action in the name of the controlling person;

C. An action may not be brought, either by the controlling person or by a demanding shareholder, more than 6 months after the date on which the written offer required by subsection 7 was made;

D. In any action, whether initiated by the controlling person or by a demanding shareholder, all demanding shareholders, wherever residing, except those who have agreed with the controlling person upon the price to pay for their shares, must be made parties to the proceeding as an action against their shares quasi in rem. A copy of the complaint must be served on each demanding shareholder who is a resident of this State as in other civil actions and must be served by registered or certified mail or by personal service outside the State on each demanding shareholder who is a nonresident. The jurisdiction of the court is plenary and exclusive;

E. For each demanding shareholder for whom the controlling person has brought an action for the determination of the value of the shares, the court shall determine whether that demanding shareholder has satisfied the requirements of this section and is entitled to receive payment for the demanding shareholder's shares; the burden is on that shareholder to prove that the shareholder is entitled to receive payment. The court shall then proceed to fix the fair value of the shares. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the power and authority specified in the order of their appointment or an amendment to the order of appointment;

F. All shareholders who are parties to the proceedings are entitled to judgment against the controlling person for the amount of the fair value of their shares, except for any shareholder whom the court has determined is not entitled to receive payment for the shareholder's shares. The judgment may be payable only upon and concurrently with the surrender to the controlling person of the certificate or certificates representing those shares, if certificated. Upon payment of the judgment, the demanding shareholder ceases to have any interest in those shares;

G. The judgment must include an allowance for interest at a rate the court finds fair and equitable in all the circumstances, from the control transaction date to the date of payment. If the court finds that the refusal of any shareholder to accept the controlling person's offer of payment for that shareholder's shares was arbitrary, vexatious or not in good faith, the court may in its discretion refuse to allow interest to that shareholder;

H. The costs and expenses of a proceeding must be determined by the court and assessed against the controlling person, but all or part of those costs and expenses may be apportioned and assessed as the court determines equitable against any or all of the demanding shareholders who are parties to the proceeding to whom the controlling person has made an offer to pay for the shares if the court finds that the action of those shareholders in failing to accept that offer was arbitrary, vexatious or not in good faith. Those expenses must include reasonable compensation for and reasonable expenses of the appraisers, but exclude the fees and expenses of counsel for any party and must exclude the fees and expenses of experts employed by any party, unless the court otherwise orders for good cause. The court shall award each shareholder who is a party to the proceeding reasonable compensation for any expert employed by the shareholder in the proceeding and the shareholder's reasonable attorney's fees and expenses, if:

(1) No offer was made; or

(2) The fair value of the shares as determined materially exceeds the amount that the controlling person offered to pay for the shares; and

I. At all times during the pendency of any proceeding, the court may make any order that is necessary to protect the corporation, the controlling person or the demanding shareholders, or that is otherwise just and equitable. Those orders may include, without limitation, orders:

(1) Requiring the controlling person to pay the court, or post security for, the amount of the judgment or its estimated amount, either before final judgment or pending appeal;

(2) Requiring the deposit with the court of certificates representing certificated shares held by the demanding shareholders;

(3) Imposing a lien on the property of the controlling person to secure the payment of the judgment, which lien may be given priority over liens and incumbrances contracted by the controlling person after the control transaction date; and

(4) Staying the action pending the determination of any similar action pending in another court having jurisdiction.

10. Holding and disposal of shares acquired by payment. Shares acquired by a controlling person pursuant to payment of the agreed value for the shares or to payment of the judgment entered, as provided in this section, may be held and disposed of as authorized and issued shares.

11. Minors. In the case of a shareholder who is a minor or otherwise legally incapacitated, the demand required by subsection 4 may be made either by the shareholder, notwithstanding the shareholder's legal incapacity, by the shareholder's guardian or by any person acting for the shareholder as next friend. The shareholder is bound by the time limitations set forth in this section, notwithstanding the shareholder's legal incapacity.

12. Appeals. Appeals from judgments in actions brought under this section are permitted as in other civil actions in which equitable relief is sought.

13. Compliance; shareholder rights. If a person or group of persons proposing to engage in a control transaction complies with the requirements of this section in connection with the control transaction, the effectiveness of the rights afforded in this section to shareholders may be conditioned upon the consummation of the control transaction.

The person or group of persons shall give prompt written notice of the satisfaction of any condition under this subsection to each shareholder who has made demand as provided in this section.

14. Application. This section does not apply to:

A. Any corporation that is the subject of a control transaction and that does not have a class of voting shares:

(1) Registered or traded on a national securities exchange; or

(2) Registered with the Securities and Exchange Commission pursuant to the Act of Congress known as the Securities Exchange Act of 1934, as that Act has been or may be amended;

B. A person or group that inadvertently becomes a controlling person if that controlling person divests itself of a sufficient amount of its voting shares so that it is no longer a controlling person, as soon as practicable, but in no event more than

30 days after that person or group receives notice from the corporation that it has become a controlling person, or to any corporation that is the subject of a control transaction and that on the effective date of this section was a subsidiary of any other corporation. For purposes of this paragraph, "subsidiary" means any corporation as to which any other corporation has acquired or has the right to acquire, directly or indirectly, through the exercise of warrants, options and rights and the conversion of all convertible securities, whether issued or granted by the subsidiary or otherwise, voting power over voting shares of the subsidiary that would entitle the holders of those shares to cast in excess of 50% of the votes that all shareholders are entitled to cast in the election of directors of that subsidiary; except that a subsidiary does not cease to be a subsidiary as long as the corporation remains a controlling person within the meaning of subsection 2;

C. Any person or group that becomes a controlling person solely as a result of the corporation's purchase or redemption of its own voting shares; or

D. Any corporation incorporated prior to the effective date of this section that was not subject to former Title 13-A, section 910 as it existed immediately prior to the effective date of this section because that corporation had adopted the provision in its bylaws described in former section 910, subsection 1, paragraph A or had adopted the provision in its articles of incorporation described in former section 910, subsection 1, paragraph B, if in either case that provision is not subsequently rescinded by an amendment to the articles of incorporation.

CHAPTER 12

DISPOSITION OF ASSETS

§1201. Disposition of assets not requiring shareholder approval

Approval of the shareholders of a corporation is not required, unless the articles of incorporation otherwise provide, to:

1. Usual and regular course of business. Sell, lease, exchange or otherwise dispose of any or all of the corporation's assets in the usual and regular course of business;

2. Grants of security, etc. Mortgage, pledge, dedicate to the repayment of indebtedness, whether with or without recourse, or otherwise encumber any or all of the corporation's assets, whether or not in the usual and regular course of business;

3. Transfers to subsidiaries. Transfer any or all of the corporation's assets to one or more corporations or other entities, all of the shares or interests of which are owned by the corporation; or

4. Distribute assets to shareholders. Distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

§1202. Shareholder approval of certain dispositions

1. No significant continuing business activity. A sale, lease, exchange or other disposition of assets, other than a disposition described in section 1201, requires approval of the corporation's shareholders if the disposition would leave the corporation without a significant continuing business activity. If a corporation retains a business activity that represented at least 25% of total assets at the end of the most recently completed fiscal year, and 25% of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the corporation has retained a significant continuing business activity.

2. Resolution authorizing disposition. A disposition that requires approval of the shareholders under subsection 1 must be initiated by a resolution by the corporation's board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless the board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation, in which case the board of directors shall transmit to the shareholders the basis for that determination.

3. Conditioning submission of disposition. The corporation's board of directors may condition its submission of a disposition to the shareholders under subsection 2 on any basis.

4. Meeting notice. If a disposition is required to be approved by the shareholders under subsection 1 and if the approval is to be given at a meeting, the corporation shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the disposition is to be submitted for approval. The notice must state that the purpose or one of the purposes of the meeting is to consider the disposition. The notice must contain a description of the disposition, including the terms and conditions of the

disposition, and the consideration to be received by the corporation.

5. Majority approval of disposition. Unless the articles of incorporation or the corporation's board of directors acting pursuant to subsection 3 requires a greater vote, approval of a disposition requires the approval of the shareholders and, if any class or series is entitled to vote as a separate voting group on the disposition, the approval of each separate voting group by a majority of all the votes entitled to be cast on the disposition by that voting group. The articles of incorporation may provide that a disposition may be approved by a lesser vote of each voting group entitled to vote on the disposition, but in no case may a disposition be approved by less than a majority of the votes cast by that voting group at a meeting at which there exists, for each such voting group, a quorum consisting of at least a majority of the votes entitled to be cast on the disposition by each voting group entitled to vote on the disposition.

6. Disposition abandoned. After a disposition has been approved by the shareholders under subsection 2 and at any time before the disposition has been consummated, it may be abandoned by the corporation without action by the shareholders, subject to any contractual rights of other parties to the disposition.

7. Disposition by dissolution. A disposition of assets in the course of dissolution under chapter 14 is not governed by this section.

8. Consolidated subsidiary; assets. The assets of a direct or indirect consolidated subsidiary are deemed the assets of the parent corporation for the purposes of this section.

9. Disposition; written consent. A disposition that requires approval of the corporation's shareholders under subsection 1 may be authorized by written consent of all shareholders of the corporation, whether or not the shareholders are entitled to vote by the articles of incorporation, as provided by section 704, subsection 1. If a unanimous written consent is given, a resolution of the corporation's board of directors approving, proposing, submitting, recommending or otherwise respecting the disposition is not necessary, and the shareholders of the corporation are not entitled to notice of or to dissent from the disposition.

CHAPTER 13

APPRAISAL RIGHTS

SUBCHAPTER I

APPRAISAL RIGHTS AND PAYMENT FOR SHARES

§1301. Definitions

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

1. Affiliate. "Affiliate" means:

A. A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person; or

B. A senior executive of a person described in paragraph A.

For purposes of section 1303, subsection 3, paragraphs B and C, a person is deemed to be an affiliate of its senior executives.

2. Beneficial shareholder. "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

3. Corporation. "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 1323 to 1332, includes the surviving entity in a merger.

4. Fair value. "Fair value" means the value of a corporation's shares determined:

A. Immediately before the effectuation of the corporate action to which a shareholder objects;

B. Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

C. Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the corporation's articles of incorporation pursuant to section 1302, subsection 5.

5. Interest. "Interest" means interest from the effective date of a corporate action until the date of payment, at the rate of interest on judgments in this State on the effective date of the corporate action.

6. Preferred shares. "Preferred shares" means a class or series of shares whose holders have preference over any other class or series of shares with respect to distributions.

7. Record shareholder. "Record shareholder" means a person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

8. Senior executive. "Senior executive" means a chief executive officer, chief operating officer, chief financial officer and anyone in charge of a principal business unit or function.

9. Shareholder. "Shareholder" means both a record shareholder and a beneficial shareholder.

§1302. Appraisal rights

A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

1. Merger to which corporation is party. Consummation of a merger to which a corporation is a party if:

A. Shareholder approval is required for the merger by section 1104 and the shareholder is entitled to vote on the merger, except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

B. The corporation is a subsidiary and the merger is governed by section 1105;

2. Share exchange to which corporation is party. Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the exchange, except that appraisal rights are not available to any shareholder of the corporation with respect to any class or series of shares of the corporation that are not exchanged;

3. Disposition of assets. Consummation of a disposition of assets pursuant to section 1202 if a shareholder is entitled to vote on the disposition;

4. Fractional shares. An amendment of the corporation's articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

5. Other amendment. Any other amendment to the corporation's articles of incorporation, merger, share exchange or disposition of assets to the extent provided by the articles of incorporation, bylaws or a resolution of the corporation's board of directors;

6. Domestication. Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation as the shares held by the shareholder before the domestication;

7. Conversion to nonprofit status. Consummation of a conversion of the corporation to nonprofit status pursuant to chapter 9, subchapter III; or

8. Conversion to other entity. Consummation of a conversion of the corporation to a form of other entity pursuant to chapter 9, subchapter IV.

§1303. Limitations on appraisal rights

Notwithstanding section 1302, the availability of appraisal rights under section 1302, subsections 1 to 4, 6 and 8 is limited in accordance with this section.

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

A. Is listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers; or

B. Has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least $20,000,000 exclusive of the value of such shares held by a corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than 10% of such shares.

2. Date of determination. The applicability of subsection 1 is determined as of:

A. The record date fixed to determine the shareholders entitled to receive notice of and to vote at the meeting of shareholders to act upon a corporate action requiring appraisal rights pursuant to section 1302 to 1305; or

B. The day before the effective date of a corporate action that requires appraisal rights if there is no meeting of shareholders.

3. Exception. Notwithstanding subsection 1, appraisal rights are available pursuant to section 1302 to 1305 for the holders of any class or series of shares:

A. Who are required by the terms of a corporate action requiring appraisal rights pursuant to sections 1302 to 1305 to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection 1 at the time the corporate action becomes effective;

B. When any of the shares or assets of a corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to a corporate action pursuant to sections 1302 to 1305 by a person, or by an affiliate of a person, who:

(1) Is, or at any time in the one-year period immediately preceding approval by the corporation's board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20% or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within one year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

(2) Directly or indirectly has, or at any time in the one-year period immediately preceding approval by the corporation's board of directors of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25% or more of the directors to the corporation's board of directors; or

C. When any of the shares or assets of a corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to a corporate action by a person, or by an affiliate of a person, who is, or at any time in the one-year period immediately preceding approval by the corporation's board of directors of the corporate action requiring appraisal rights pursuant to section 1302 was, a senior executive or director of the corporation or a senior executive of any affiliate of the corporation, and that senior executive or director, as a result of the corporate action, receives a financial benefit not generally available to other shareholders as such, other than:

(1) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action;

(2) Employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 873; or

(3) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

For the purposes of this subsection, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares, except that a member of a national securities exchange may not be considered to be a beneficial owner of securities held directly or indirectly by the member on behalf of another person solely because that member is the record holder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When 2 or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed by that agreement is considered to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.

§1304. Limitation or elimination of appraisal rights in articles of incorporation

Notwithstanding section 1302 or 1303, the articles of incorporation of a corporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of those shares that are outstanding immediately prior to the effective date of that amendment or that the corporation is or may be required to issue or sell after the effective date of the amendment pursuant to any conversion, exchange or other right existing immediately before the effective date of that amendment does not apply to any corporate action that becomes effective within one year of that date if that action would otherwise afford appraisal rights.

§1305. Challenge by shareholder

A shareholder entitled to appraisal rights under this subchapter may not challenge a completed corporate action requiring appraisal rights unless the corporate action:

1. Not authorized. Was not effectuated in accordance with the applicable provisions of chapter 9, 10, 11 or 12 or the corporation's articles of incorporation, bylaws or board of directors' resolution authorizing the corporate action; or

2. Fraud; misrepresentation. Was procured as a result of fraud or material misrepresentation.

§1306. Assertion of appraisal rights

1. Record shareholder assert appraisal rights. A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection must be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

2. Beneficial shareholder; appraisal rights. A beneficial shareholder may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if the shareholder:

A. Submits to the corporation the record shareholder's written consent to the assertion of the rights no later than the date referred to in section 1322, subsection 2, paragraph B, subparagraph (2); and

B. Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder.

SUBCHAPTER II

PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

§1321. Notice of appraisal rights

1. Meeting notice. If a proposed corporate action described in section 1302 is to be submitted to a vote at a shareholders' meeting, the meeting notice must state that the corporation has concluded that shareholders are, are not or may be entitled to assert appraisal rights under this chapter. If the corporation concludes that appraisal rights are or may be available, a copy of this chapter must accompany the meeting notice sent to those record shareholders entitled to exercise appraisal rights.

2. Notice of corporate action. In a merger pursuant to section 1105, the parent corporation shall notify in writing all record shareholders of the subsidiary who are entitled to assert appraisal rights that a corporate action became effective. The notice must be sent within 10 days after the corporate action became effective and include the materials described in section 1323.

§1322. Notice of intent to demand payment

If a proposed corporate action requiring appraisal rights under sections 1302 to 1305 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

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

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

A shareholder who does not satisfy the requirements of subsection 1 is not entitled to payment under this chapter.

§1323. Appraisal notice and form

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

2. Appraisal notice. The appraisal notice required by subsection 1 must be sent no earlier than the date a corporate action became effective and no later than 10 days after that date and must:

A. Supply a form that specifies the date of the first announcement to shareholders of the principal terms of the proposed corporate action and requires the shareholder asserting appraisal rights to certify:

(1) Whether or not beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(2) That the shareholder did not vote for the transaction;

B. Include the following information:

(1) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph (2);

(2) A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the appraisal notice and form are sent, and a statement that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;

(3) A corporation's estimate of the fair value of the shares;

(4) That, if requested in writing, a corporation will provide, to the shareholder so requesting, within 10 days after the date specified in subparagraph (2) the number of shareholders who return the forms by the specified date and the total number of shares owned by those shareholders; and

(5) The date by which the notice to withdraw under section 1324 must be received, which date must be within 20 days after the date specified in subparagraph (2); and

C. Be accompanied by a copy of this chapter.

§1324. Perfection of rights; right to withdraw

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

2. Withdraw from appraisal process. A shareholder who has complied with subsection 1 may nevertheless decline to exercise appraisal rights and withdraw from the appraisal process by notifying the corporation in writing by the date set forth in the appraisal notice pursuant to section 1323, subsection 2, paragraph B, subparagraph (5). A shareholder who fails to withdraw from the appraisal process may not thereafter withdraw without the corporation's written consent.

3. Failure to execute and return form; nonpayment. A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates where required, each by the date set forth in the notice described in section 1323, subsection 2, is not entitled to payment under this chapter.

§1325. Payment

1. Fair value. Except as provided in section 1326, within 30 days after the form required by section 1323, subsection 2, paragraph B, subparagraph (2) is due, a corporation shall pay in cash to those shareholders who complied with section 1324, subsection 1 the amount the corporation estimates to be the fair value of their shares, plus interest.

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

A. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of a fiscal year ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

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

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

§1326. After-acquired shares

1. Withhold payment. A corporation may elect to withhold payment required by section 1325 from any shareholder who did not certify that beneficial ownership of all of the shareholder's shares for which

appraisal rights are asserted was acquired before the date set forth in the appraisal notice sent pursuant to section 1323, subsection 2, paragraph A.

2. Notify shareholders. If a corporation elected to withhold payment under subsection 1, the corporation shall, within 30 days after the date by which the corporation must receive the form is given as required by section 1323, subsection 2, paragraph B, subparagraph (2) is due, notify all shareholders who are described in subsection 1:

A. Of the information required by section 1325, subsection 2, paragraph A;

B. Of the corporation's estimate of fair value pursuant to section 1325, subsection 2, paragraph B;

C. That the shareholders may accept the corporation's estimate of fair value, plus interest, in full satisfaction of their demands or demand appraisal under section 1327;

D. That those shareholders who wish to accept the offer pursuant to paragraph B must notify the corporation of their acceptance of the corporation's offer within 30 days after receiving the offer pursuant to paragraph B; and

E. That those shareholders who do not satisfy the requirements for demanding appraisal under section 1327 are deemed to have accepted the corporation's offer pursuant to paragraph B.

3. Shareholders who accept offer. Within 10 days after receiving the shareholder's acceptance pursuant to subsection 2, a corporation must pay in cash the amount it offered under subsection 2, paragraph B to each shareholder who agreed to accept the corporation's offer in full satisfaction of the shareholder's demand.

4. Shareholders deemed to accept offer; payment. Within 40 days after sending the notice described in subsection 2, a corporation shall pay in cash the amount the corporation offered to pay under subsection 2, paragraph B to each shareholder described in subsection 2, paragraph E.

§1327. Procedure if shareholder dissatisfied with payment or offer

1. Notification; demand. A shareholder paid pursuant to section 1325 who is dissatisfied with the amount of the payment shall notify the corporation in writing of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus interest less any payment under section 1325. A shareholder offered payment under section 1326 who is dissatisfied with that offer must reject the offer and demand payment of the shareholder's stated estimate of the fair value of the shares plus interest.

2. Failure to notify corporation in writing. A shareholder who fails to notify a corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection 1 within 30 days after receiving the corporation's payment or offer of payment under section 1325 or 1326 waives the right to demand payment under this section and is entitled only to the payment made or offered pursuant to those sections.

SUBCHAPTER III

JUDICIAL APPRAISAL OF SHARES

§1331. Court action

1. Commence proceeding. If a shareholder makes demand for payment under section 1327 that remains unsettled, a corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the 60-day period, the corporation shall pay in cash to each shareholder the amount the shareholder demanded pursuant to section 1327 plus interest.

2. Appropriate court. A corporation shall commence the proceeding under subsection 1 in the appropriate court of the county where the corporation's principal office or, if there is no principal office, its registered office in this State is located. If the corporation is a foreign corporation without a registered office in this State, the corporation shall commence the proceeding in the county in this State where the principal office or registered office of the domestic corporation merged with the foreign corporation was located at the time of the transaction.

3. Shareholders party to proceeding. A corporation shall make all shareholders whether or not residents of this State whose demands remain unsettled parties to the proceeding as in an action against their shares, and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

4. Jurisdiction; appraisers. The jurisdiction of the court in which the proceeding is commenced under subsection 2 is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to the order. The shareholders demanding appraisal rights under this chapter are entitled to the same discovery rights as parties in other civil proceedings.

Shareholders demanding appraisal rights under this chapter do not have a right to a jury trial.

5. Shareholder entitled to judgment. Each shareholder made a party to the proceeding under subsection 1 is entitled to judgment for the:

A. Amount, if any, by which the court finds the fair value of the shareholder's shares, plus interest, exceeds the amount paid by a corporation to the shareholder for the shares; or

B. Fair value, plus interest, of the shareholder's shares for which a corporation elected to withhold payment under section 1326.

§1332. Court costs and counsel fees

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

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

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

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

3. Fees awarded from settlement. If the court in an appraisal proceeding under section 1331 finds that the services of counsel for any shareholder were of substantial benefit to other shareholders similarly situated and that the fees for those services should not be assessed against a corporation, the court may award to the counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefitted.

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

CHAPTER 14

DISSOLUTION

SUBCHAPTER I

VOLUNTARY DISSOLUTION

§1401. Dissolution by incorporators or initial directors

A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the Secretary of State for filing articles of dissolution that set forth:

1. Name. The name of the corporation;

2. Date. The date of incorporation;

3. Shares. That none of the corporation's shares have been issued or that the corporation has not commenced business;

4. Debt. That no debt of the corporation remains unpaid;

5. Net assets. That, if shares were issued, the net assets of the corporation remaining after winding up have been distributed to the shareholders; and

6. Authorization of dissolution. That a majority of the incorporators or initial directors authorized the dissolution.

§1402. Dissolution by board of directors and shareholders

1. Dissolution proposal. A corporation's board of directors may propose dissolution for submission to the shareholders.

2. Adoption of proposal of dissolution. For a proposal to dissolve to be adopted:

A. A corporation's board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances the board of directors should make no recommendation and communicates the basis for its determination to the shareholders; and

B. The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection 5.

3. Condition submission of proposal. A corporation's board of directors may condition the board of directors' submission of the proposal for dissolution on any basis.

4. Notice of meeting to dissolve. A corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting. The notice must also state that the purpose or one of the purposes of the meeting is to consider dissolving the corporation.

5. Adoption of dissolution by majority. Unless the corporation's articles of incorporation or the board of directors acting pursuant to subsection 3 requires a greater vote, a greater number of shares to be present or a vote by voting group, adoption of the proposal to dissolve requires the approval of shareholders holding a majority of the votes entitled to be cast at a meeting at which a quorum consisting of at least a majority of the votes entitled to be cast exists.

§1403. Dissolution by written consent of all shareholders

A corporation may be voluntarily dissolved by unanimous written consent of its shareholders, whether or not entitled to vote by the corporation's articles of incorporation. If a unanimous written consent is given, a resolution of the corporation's board of directors proposing the dissolution is not necessary.

§1404. Articles of dissolution

1. File articles of dissolution with Secretary of State. At any time after dissolution is authorized, a corporation may dissolve by delivering to the Secretary of State for filing articles of dissolution setting forth:

A. The name of the corporation;

B. The date dissolution was authorized; and

C. If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this Act and by the corporation's articles of incorporation.

2. Effective date of dissolution. A corporation is dissolved upon the effective date of its articles of dissolution.

3. Dissolved corporation. For purposes of this subchapter, "dissolved corporation" means a corporation whose articles of dissolution have become effective. "Dissolved corporation" includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

§1405. Revocation of dissolution

1. Revoke dissolution. A corporation may revoke its dissolution within 120 days of its effective date.

2. Authorization of revocation. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized under this subchapter unless that authorization permitted revocation by action of the corporation's board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

3. Articles of revocation of dissolution. After the revocation of dissolution is authorized, a corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

A. The name of the corporation;

B. The effective date of the dissolution that was revoked;

C. The date that the revocation of dissolution was authorized;

D. If the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

E. If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action of the board of directors alone pursuant to that authorization; and

F. If shareholder action was required to revoke the dissolution, the information required by section 1404, subsection 1, paragraph C.

4. Effective date of revocation. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. Resume business. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the corporation resumes business as if dissolution had not occurred.

§1406. Effect of dissolution

1. Extension of corporate existence. A dissolved corporation continues corporate existence for a

period not exceeding 3 years from the effective date of the articles of dissolution, except that the 3-year period may be extended if the extension is approved by 2/3 vote of the shareholders of the dissolved corporation and notice of the extension is filed with the Secretary of State prior to the expiration of the 3-year period. A dissolved corporation may not carry on any business except that which is appropriate to wind up and liquidate its business and affairs, including:

A. Collecting the corporation's assets;

B. Disposing of properties that will not be distributed in kind to shareholders;

C. Discharging or making provision for discharging its liabilities;

D. Distributing remaining property among shareholders according to their interests; and

E. Doing every other act necessary to wind up and liquidate its business and affairs.

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

A. Transfer title to the corporation's property;

B. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

C. Subject the corporation's directors or officers to standards of conduct different from those prescribed in chapter 8;

D. Change quorum or voting requirements for the board of directors or shareholders; change provisions for selection, resignation or removal of the directors or officers or both; or change provisions for amending its bylaws;

E. Prevent commencement of a proceeding by or against the corporation in its corporate name;

F. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

G. Terminate the authority of the clerk of the corporation.

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

§1407. Known claims against dissolved corporation

1. Disposition of known claims. A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after the effective date of the dissolution.

2. Written notice. The written notice required by subsection 1 must:

A. Describe information that must be included in a claim against the corporation;

B. Provide a mailing address where a claim may be sent;

C. State the deadline, which may not be later than 120 days after the effective date of the written notice, by which the dissolved corporation must receive the claim; and

D. State that the claim may be barred if not received by the deadline.

3. Claim barred. A claim against the dissolved corporation, other than a liquidated claim that is known to the corporation, has fully matured and is not disputed in good faith by the corporation, is barred:

A. If a claimant who was given written notice under subsection 2 does not deliver the claim to the dissolved corporation by the deadline; or

B. If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

4. Claim. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

§1408. Other claims against dissolved corporation

1. Publish notice of dissolution. In addition to the written notice under section 1407, a dissolved corporation may publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice.

2. Content of notice. The notice under section 1 must:

A. Be published one time in a newspaper of general circulation in the county where the dis-

solved corporation's principal office or, if there is no principal office in this State, its registered office is or was last located;

B. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

C. State that a claim against the dissolved corporation will be barred unless a proceeding to enforce the claim is commenced within 3 years after the publication of the notice.

3. Claim barred. If the dissolved corporation publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 3 years after the publication date of the newspaper notice:

A. A claimant who was not given written notice under section 1407;

B. A claimant whose claim was timely sent to the dissolved corporation but not acted on; or

C. A claimant whose claim is contingent on or is based on an event occurring after the effective date of dissolution.

4. Enforcement of claim. A claim that is not barred by subsection 3 or section 1407, subsection 2 may be enforced:

A. Against the dissolved corporation to the extent of its undistributed assets; or

B. Except as provided in section 1409, subsection 4, if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to the shareholder.

§1409. Court proceedings

1. Security provided for payment of claim. A dissolved corporation that has published a notice under section 1408 may file an application with the Superior Court of the county where the dissolved corporation's principal office or, if there is no principal office in this State, its registered office is located for a determination of the amount and form of security to be provided for payment of claims that are contingent or have not been made known to the dissolved corporation or that are based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be barred under section 1408, subsection 3.

2. Notice to claimant. Within 10 days after the filing of the application under subsection 1, notice of the proceeding must be given by the dissolved corporation to each claimant holding a contingent claim whose contingent claim is shown on the records of the dissolved corporation.

3. Guardian ad litem. The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of the guardian ad litem, including all reasonable expert witness fees, must be paid by the dissolved corporation.

4. Satisfaction of obligations. Provision by the dissolved corporation for security in the amount and the form ordered by the court under subsection 1 satisfies the dissolved corporation's obligations with respect to claims that are contingent, have not been made known to the dissolved corporation or are based on an event occurring after the effective date of dissolution, and such claims may not be enforced against a shareholder who received assets in liquidation.

§1410. Duties of directors

1. Duties. Directors of a dissolved corporation shall cause the corporation to discharge or make reasonable provision for the payment of claims and make distributions of assets to shareholders after payment of or provision for claims.

2. Liability of directors. Directors of a dissolved corporation that has disposed of claims under section 1407, 1408 or 1409 are not liable for breach of section 1410, subsection 1 with respect to claims against the dissolved corporation that are barred or satisfied under sections 1407, 1408 or 1409.

SUBCHAPTER II

ADMINISTRATIVE DISSOLUTION

§1420. Grounds for administrative dissolution

Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under section 1421 to administratively dissolve a corporation if:

1. Nonpayment of fees, penalties. The corporation does not pay within 60 days after they are due any fees or penalties imposed by this Act or other law;

2. Failure to file annual report. The corporation does not deliver its annual report to the Secretary of State within 60 days after it is due;

3. Failure to pay late filing penalty. The corporation does not pay the annual report late filing penalty, if required, within 60 days after it is due;

4. Failure to maintain clerk or registered office. The corporation is without a clerk or registered office in this State for 60 days or more;

5. Failure to notify of change of clerk or registered office. The corporation does not notify the Secretary of State within 60 days that its clerk or registered office has been changed, that its clerk has resigned or that its registered office has been discontinued; or

6. Filing of false information. An incorporator, director, officer or agent of the corporation signed a document with the knowledge that the document was false in a material respect and with the intent that the document be delivered to the Secretary of State for filing.

§1421. Procedure for and effect of administrative dissolution

1. Notice of determination to administratively dissolve corporation. If the Secretary of State determines that one or more grounds exist under section 1420 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination under section 502.

2. Administrative dissolution. If a corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after service of the notice is perfected under section 502, the Secretary of State shall administratively dissolve the corporation by issuing a notice of dissolution that recites the ground or grounds for dissolution and the effective date of dissolution. The Secretary of State shall use the procedures set forth in section 502 to send notice to the corporation.

3. Effect of administrative dissolution. A corporation administratively dissolved continues its corporate existence but may not transact any business except that necessary to wind up and liquidate its business and affairs under section 1406 and notify claimants under sections 1407 and 1408.

4. Authority of clerk. The administrative dissolution of a corporation does not terminate the authority of its clerk.

5. Protecting corporate name after administrative dissolution. The name of a corporation remains in the Secretary of State's records of corporate names and protected for a period of 3 years following administrative dissolution.

6. Prohibition. A corporation while administratively dissolved may not engage in business in this State.

§1422. Reinstatement following administrative dissolution

1. Reinstatement. A corporation administratively dissolved under section 1421 may apply to the Secretary of State for reinstatement within 6 years after the effective date of dissolution. The application must:

A. State the name of the corporation and the effective date of its administrative dissolution;

B. State that the ground or grounds for dissolution either did not exist or have been eliminated; and

C. State that the corporation's name satisfies the requirements of section 401.

2. Reinstatement after administrative dissolution. If the Secretary of State determines that the application contains the information required under subsection 1 and is accompanied by the reinstatement fee set forth in section 123, subsection 1, paragraph V and that the information is correct, the Secretary of State shall cancel the administrative dissolution and prepare a notice of reinstatement that recites that determination and the effective date of reinstatement. The Secretary of State shall use the procedures set forth in section 502 to deliver the notice to the corporation.

3. Effect of reinstatement. When the reinstatement is effective under subsection 2, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes business as if the administrative dissolution had not occurred.

§1423. Appeal from denial of reinstatement

1. Denial of reinstatement. If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, the Secretary of State shall serve the corporation under section 502 with a written notice that explains the reason or reasons for denial.

2. Appeal. A corporation may appeal a denial of reinstatement under subsection 1 to the Superior Court of the county where the corporation's principal office is located or, if there is no principal office in this State, in Kennebec County within 30 days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement and the Secretary of State's notice of denial.

3. Court action. The court may summarily order the Secretary of State to reinstate an administratively dissolved corporation or may take other action the court considers appropriate.

4. Final decision. The court's final decision in an appeal under this section may be appealed as in other civil proceedings.

SUBCHAPTER III

JUDICIAL DISSOLUTION

§1430. Grounds for judicial dissolution

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

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

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

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

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

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

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

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

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

E. The corporate assets are being misapplied or wasted;

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

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

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

4. Corporation. The corporation to have its voluntary dissolution continued under court supervision.

§1431. Procedure for judicial dissolution

1. Venue. Venue for a proceeding by the Attorney General to dissolve a corporation lies in Kennebec County. Venue for a proceeding brought by any other party named in section 1430 lies in the county where a corporation's principal office or, if there is no principal office in this State, its registered office is or was last located.

2. Shareholders parties to proceeding. It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against the shareholders individually.

3. Preserve corporate assets. A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located and carry on the business of the corporation until a full hearing can be held.

§1432. Receivership

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

2. Post bond. A court under subsection 1 may appoint an individual or a domestic or foreign

corporation authorized to transact business in this State as a receiver. The court may require the receiver to post bond, with or without sureties, in an amount the court directs.

3. Powers; duties. A court shall describe the powers and duties of the receiver in the court's appointing order under subsection 1, which may be amended from time to time. The receiver may, in addition to other specified powers:

A. Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court;

B. Sue and defend in the receiver's own name as receiver of the corporation in all courts of this State; and

C. Exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

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

§1433. Decree of dissolution

1. Decree dissolving corporation. If after a hearing a court determines that one or more grounds for judicial dissolution described in section 1430 exist, it may enter a decree dissolving a corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

2. Liquidation of corporation. After entering a decree of dissolution under subsection 1, the court shall direct the winding-up and liquidation of the corporation's business and affairs in accordance with section 1406 and the notification of claimants in accordance with sections 1407 and 1408.

§1434. Discretion of court to grant relief other than dissolution

1. Intervention by shareholder. Any shareholder of a corporation may intervene in an action brought by another shareholder under section 1430, subsection 2 to dissolve the corporation in order to seek relief other than dissolution.

2. Motion of court. On the application of a plaintiff or any other shareholder or on the court's own motion in any action filed by a shareholder to dissolve a corporation on any of the grounds enumerated in section 1430, subsection 2, or on the court's own motion in any other action to dissolve a corporation, the court may make an order or grant relief, other than dissolution, that in its discretion it considers appropriate, including, without limitation, an order:

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

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

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

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

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

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

3. Protection of interests. Pursuant to this section, the court may grant relief other than dissolution as an alternative to a decree of dissolution or whenever the circumstances of the case are such that relief, but not dissolution, would be appropriate when such relief would furnish greater protection of the interests of creditors and shareholders than would dissolution.

SUBCHAPTER IV

MISCELLANEOUS

§1440. Deposit with Treasurer of State

Assets of a dissolved corporation that should be transferred to a creditor, claimant or shareholder of the corporation who can not be found or who is not competent to receive the assets must be reduced to cash

and deposited with the Treasurer of State or other appropriate state official for safekeeping in accordance with Title 33, chapter 41. When the creditor, claimant or shareholder furnishes satisfactory proof of entitlement to the amount deposited, the Treasurer of State or other appropriate state official shall pay the creditor, claimant or shareholder or that person's representative that amount.

CHAPTER 15

FOREIGN CORPORATIONS

SUBCHAPTER I

AUTHORIZATION OF FOREIGN CORPORATION TO TRANSACT BUSINESS IN THIS STATE

§1501. Authority to transact business required

1. Certificate of authority. A foreign corporation may not transact business in this State until it files an application for authority to transact business with the Secretary of State.

2. Transacting business. Activities that do not constitute transacting business within the meaning of subsection 1 include but are not limited to:

A. Maintaining, defending or settling any proceeding;

B. Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

C. Maintaining bank accounts;

D. Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;

E. Selling through independent contractors;

F. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;

G. Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

H. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

I. Owning, without more, real or personal property other than agricultural real estate;

J. Conducting an isolated transaction that is completed within 30 days and that is not one in the course of repeated transactions of a like nature;

K. Transacting business in interstate commerce;

L. Engaging as a trustee in those actions defined by Title 18-A, section 7-105 as not in themselves requiring local qualification of a foreign corporate trustee; or

M. Owning and controlling a subsidiary corporation incorporated in or transacting business within this State.

§1502. Consequences of transacting business without authority

1. No court proceeding. A foreign corporation transacting business in this State without authority may not maintain a proceeding in any court in this State until it files an application for authority and pays the applicable filing fee.

2. Successor; assignee of cause of action. The successor to a foreign corporation that transacted business in this State without authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this State until the foreign corporation or its successor files an application for authority.

3. Stay proceeding. A court may stay a proceeding commenced by a foreign corporation, its successor or assignee until the court determines whether the foreign corporation or its successor requires authorization. If the court so determines, the court may further stay the proceeding until the foreign corporation or its successor files an application for authority.

4. Civil penalty. A foreign corporation is liable for a civil penalty of $500 for each year, or portion thereof, it transacts business in this State without authority. The Attorney General may collect all penalties due under this subsection.

5. Validity of corporate acts. Notwithstanding subsections 1 and 2, the failure of a foreign corporation to file an application for authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this State.

§1503. Application for authority

1. Application for authority. A foreign corporation may apply for authority to transact business in this State by delivering an application to the Secretary of State for filing. The application must set forth:

A. The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section 1506;

B. The name of the state or country under whose law it is incorporated;

C. Its date of incorporation;

D. The street address and mailing address, if different, of its principal office wherever located;

E. The address of its registered office in this State and the name of its registered agent at that office; and

F. The names and usual business addresses of its current directors and officers.

2. Certificate of existence. A foreign corporation shall deliver with the application completed pursuant to subsection 1, a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated. The certificate of existence must have been made not more than 90 days prior to the delivery of the application for filing.

3. Signed acceptance. The signed acceptance of the registered agent must be filed with or as part of the Application for Authority.

§1504. Amended application for authority

1. Amended application for authority. A foreign corporation authorized to transact business in this State must file an amended application for authority with the Secretary of State if the foreign corporation changes:

A. Its corporate name;

B. Its registered or principal office; or

C. The state or country of its incorporation.

2. Application for authority; requirements. The requirements of section 1503 for filing an application for authority apply to filing an amended application under this section.

§1505. Effect of authorization to transact business in this State

1. Authorization to transact business. Upon filing by the Secretary of State of an application for authority, a foreign corporation is authorized to transact business in this State subject to the right of this State to revoke the foreign corporation's authority to transact business in this State as provided in this Act.

2. Same rights as domestic corporation. A foreign corporation with valid authority has the same but no greater rights and has the same but no greater privileges as a domestic corporation of like character. Except as otherwise provided by this Act, a foreign corporation with a valid certificate of authority is subject to the same duties, restrictions, penalties and liabilities now or later imposed on a domestic corporation of like character.

3. State may not regulate affairs of foreign corporation. This Act does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this State.

§1506. Corporate name of foreign corporation

1. Corporate name. If the corporate name of a foreign corporation does not satisfy the requirements of section 401, the foreign corporation may use a fictitious name to transact business in this State if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

2. Name distinguishable. Except as authorized by subsections 3 and 4, the corporate name, including a fictitious name, of a foreign corporation must be distinguishable on the records of the Secretary of State from:

A. The name of a corporation, limited liability company, limited liability partnership or limited partnership that is incorporated, organized or authorized to transact business or carry on activities in this State;

B. Assumed, fictitious, reserved and registered name filings for all entities; and

C. Marks registered under Title 10, chapter 301-A.

3. Apply for authorization to use another corporation's name. A foreign corporation may apply to the Secretary of State for authorization to use in this State the name of another corporation incorporated or authorized to transact business in this State that is not distinguishable on the Secretary of State's records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

A. The other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable on the

records of the Secretary of State from the name of the applying corporation; or

B. The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

4. Use of another corporation's name. A foreign corporation may use in this State the name, including the fictitious name, of another domestic or foreign corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the foreign corporation:

A. Has merged with the other corporation;

B. Has been formed by reorganization of the other corporation; or

C. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

5. Change of corporate name. If a foreign corporation authorized to transact business in this State changes its corporate name to one that does not satisfy the requirements of section 401, it may not transact business in this State under the changed name until it adopts a name satisfying the requirements of section 401 and files an amended application for authority under section 1504.

§1507. Registered office and registered agent of foreign corporation

A foreign corporation authorized to transact business in this State must continuously maintain in this State:

1. Registered office. A registered office that may be the same as any of its places of business; and

2. Registered agent. A registered agent who may be:

A. An individual who resides in this State and whose business office is identical with the registered office;

B. A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

C. A foreign corporation or foreign not-for-profit corporation authorized to transact business in the State whose business office is identical with the registered office.

§1508. Change of registered office or registered agent of foreign corporation

1. Statement of change. A foreign corporation authorized to transact business in this State may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

A. Its name;

B. The street address of its current registered office;

C. If the current registered office is to be changed, the street address of its new registered office;

D. The name of its current registered agent;

E. If the current registered agent is to be changed, the name of its new registered agent and the new registered agent's written consent to the appointment either on the statement or attached to it;

F. The acceptance of the new registered agent; and

G. That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

2. Change of street address. If a registered agent changes the street address of that registered agent's business office, the registered agent may change the street address of the registered office of any foreign corporation for which the registered agent is the registered agent by notifying the foreign corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection 1 and states that the foreign corporation has been notified of the change.

§1509. Resignation of registered agent of foreign corporation

1. Resignation of agent. The registered agent of a foreign corporation may resign upon filing a written notice thereof with the Secretary of State and by mailing a copy of the written notice to the president or treasurer of the corporation or, if both of those offices are vacant, to any of its directors. The notice filed with the Secretary of State must state that a copy of the notice has been mailed to a corporate officer in accordance with this subsection and must specify the corporate officer's name and corporate office.

2. Agency appointment terminated. The agency appointment is terminated, and the registered office discontinued if so provided, upon the filing of the notice of resignation by the Secretary of State.

§1510. Service on foreign corporation

1. Agent for service of process. The registered agent of a foreign corporation authorized to transact business in the State is the foreign corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation.

2. Method of service. A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for authority or in its most recent annual report if the foreign corporation:

A. Has no registered agent or its registered agent can not with reasonable diligence be served;

B. Has withdrawn from transacting business in this State under section 1521; or

C. Has had its authority revoked under section 1532.

3. Perfection of service. Service is perfected under subsection 2 at the earliest of:

A. The date the foreign corporation receives the mail;

B. The date shown on the return receipt for the mail, if signed on behalf of the foreign corporation; or

C. Five days after the deposit of the mail in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

4. Other means of service. This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

SUBCHAPTER II

WITHDRAWAL OR TRANSFER OF AUTHORITY

§1521. Withdrawal of foreign corporation

1. Application of withdrawal. A foreign corporation authorized to transact business in this State may not withdraw from this State until it files an application of withdrawal with the Secretary of State.

2. Application for certificate of withdrawal. A foreign corporation authorized to transact business in this State may file an application of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

A. The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

B. That the foreign corporation is not transacting business in this State and that it surrenders its authority to transact business in this State;

C. That the foreign corporation revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this State;

D. A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under paragraph C; and

E. A commitment to notify the Secretary of State in the future of any change in the foreign corporation's mailing address.

3. Service of process on Secretary of State. After the withdrawal of a foreign corporation under subsection 2 is effective, service of process on the Secretary of State under this section is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection 2.

§1522. Automatic withdrawal upon certain conversions

A foreign business corporation authorized to transact business in this State that converts to a domestic nonprofit corporation or any form of domestic filing entity is deemed to have withdrawn on the effective date of the conversion.

§1523. Withdrawal upon conversion to a nonfiling entity

1. Withdrawal upon conversion. A foreign business corporation authorized to transact business in this State that converts to a domestic or foreign nonfiling entity shall file an application of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

A. The name of the foreign business corporation and the name of the state or country under whose law it was incorporated before the conversion;

B. That the foreign business corporation surrenders its authority to transact business in this State as a foreign business corporation;

C. The type of other entity to which the foreign business corporation has been converted and the jurisdiction whose laws govern its internal affairs; and

D. If the foreign business corporation has been converted to a foreign other entity, the following information:

(1) That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this State;

(2) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subparagraph (1); and

(3) A commitment to notify the Secretary of State in the future of any change in its mailing address.

2. Conversion to foreign other entity; service of process. After the withdrawal under this section of a corporation that has converted to a foreign other entity is effective, service of process on the Secretary of State is service on the foreign other entity. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign other entity at the mailing adress set forth under subsection 1, paragraph D.

3. Conversion to domestic other entity, service of process. After the withdrawal under this section of a corporation that has converted to a domestic other entity is effective, service of process must be made on the other entity in accordance with the regular procedures for service of process on the form of other entity to which the corporation was converted.

§1524. Transfer of authority

1. Application for transfer of authority; contents. A foreign business corporation authorized to transact business in this State that converts to a foreign nonprofit corporation or to any form of foreign other entity that is required to file an application for authority or make a similar type of filing with the Secretary of State if it transacts business in this State shall file with the Secretary of State an application for transfer of authority executed by any officer or other duly authorized representative. The application must set forth:

A. The name of the corporation;

B. The type of entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; and

C. Any other information that would be required in a filing under the laws of this State by an entity of the type the corporation has become seeking authority to transact business in this State.

2. Delivery. The application for transfer of authority must be delivered to the Secretary of State for filing and takes effect at the effective time provided in section 125.

3. Authority to transact business uninterrupted. When the application for transfer of authority takes effect, the authority of the corporation under this chapter to transact business in this State is transferred without interruption to the converted entity, which thereafter holds that authority subject to the provisions of the laws of this State applicable to that type of entity.

SUBCHAPTER III

REVOCATION OF AUTHORITY

§1531. Grounds for revocation

The Secretary of State may commence a proceeding under section 1532 to revoke the authority of a foreign corporation authorized to transact business in this State if:

1. Annual report. The foreign corporation does not deliver its annual report to the Secretary of State within 60 days after the annual report is due;

2. Fees; penalties. The foreign corporation does not pay within 60 days after they are due any fees or penalties imposed by this Act or other law;

3. No registered agent or office. The foreign corporation is without a registered agent or registered office in this State for 60 days or more;

4. Notice of change of registered agent or office. The foreign corporation does not inform the Secretary of State under section 1508 or 1509 that its registered agent or registered office has changed, that its registered agent has resigned or that its registered office has been discontinued within 60 days of the change, resignation or discontinuance;

5. False documentation. An incorporator, director, officer or agent of the foreign corporation

signed a document the incorporator, director, officer or agent knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

6. Authenticated certificate of dissolution or merger. The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that the foreign corporation has been dissolved or disappeared as the result of a merger.

§1532. Procedure for and effect of revocation

1. Notice of determination. If the Secretary of State determines that one or more grounds exist under section 1531 for the revocation of authority, the Secretary of State shall serve the foreign corporation with written notice of the Secretary of State's determination under section 1510.

2. Correct grounds for revocation. If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after service of the notice is perfected under section 1510, the Secretary of State may revoke the foreign corporation's authority to transact business in this State by issuing a notice of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall follow the procedures set forth in section 1510 when issuing the notice of revocation.

3. Authority to transact business ceased. The authority of a foreign corporation to transact business in this State ceases on the date of revocation of its authority.

4. Secretary of State appointed as agent for service of process. The Secretary of State's revocation of a foreign corporation's authority appoints the Secretary of State as the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this State. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if no other address is on file, in its application for authority.

5. Registered agent; not terminated. Revocation of a foreign corporation's authority to transact business in this State does not terminate the authority of the registered agent of the corporation.

6. Authorization after revocation. A foreign corporation whose authority to transact business in this State has been revoked under section 1531 that wishes to transact business again in this State must be authorized as provided in this chapter.

§1533. Appeal from revocation

1. Petition to appeal revocation. A foreign corporation may appeal the Secretary of State's revocation of its authority to the Kennebec County Superior Court within 30 days after service of the notice of revocation is perfected under section 1510. The foreign corporation may appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its application for authority and the Secretary of State's notice of revocation.

2. Court order. The court may summarily order the Secretary of State to reinstate the authority or may take any other action the court considers appropriate.

3. Appeal of court's decision. The court's final decision may be appealed as in other civil proceedings.

CHAPTER 16

RECORDS AND REPORTS

SUBCHAPTER I

RECORDS

§1601. Corporate records

1. Minutes of meetings. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. Accounting records. A corporation shall maintain appropriate accounting records.

3. Record of shareholders. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. Records; written. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. Copy of records. A corporation shall keep a copy of the following records at its principal office or its registered office:

A. Its articles or restated articles of incorporation and all amendments to them currently in effect;

B. Its bylaws or restated bylaws and all amendments to them currently in effect;

C. Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences and limitations, if shares issued pursuant to those resolutions are outstanding;

D. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past 3 years;

E. All written communications to shareholders generally within the past 3 years, including any financial statements furnished for the past 3 years under section 1620;

F. A list of the names and business addresses of its current directors and officers; and

G. Its most recent annual report delivered to the Secretary of State under section 1621.

§1602. Inspection of records by shareholders

1. Shareholder defined. For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.

2. Inspect; copy records. A shareholder of a corporation is entitled to inspect and copy during regular business hours at the corporation's principal office or its registered office, if the corporation keeps such records at its registered office, any of the records of the corporation described in section 1601, subsection 5 if the shareholder gives the corporation written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy, except that a shareholder's rights under this subsection are subject to any reasonable restrictions on the disclosure of financial information about the corporation that are set forth in the corporation's articles of incorporation or bylaws.

3. Certain documents inspected; copied. A shareholder of a corporation is entitled to inspect and copy during regular business hours at a reasonable location specified by the corporation any of the following records of the corporation if the shareholder meets the requirements of subsection 4 and gives the corporation written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

A. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection 2;

B. Accounting records of the corporation; and

C. The record of shareholders.

4. Requirements. A shareholder may inspect and copy the records described in subsection 3 only if:

A. The shareholder's demand is made in good faith and for a proper purpose;

B. The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect;

C. The records are directly connected with the shareholder's purpose; and

D. The shareholder complies with such reasonable restrictions regarding the disclosure of such records as may be set forth in the corporation's articles of incorporation or bylaws.

5. Right of inspection. The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

6. Shareholder's rights. Nothing in this section affects:

A. The right of a shareholder to inspect records under section 721 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

B. The power of a court, independently of this Act, to compel the production of corporate records for examination.

§1603. Scope of inspection right

1. Agent; attorney. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder that the agent or attorney represents.

2. Right to copy. The right to copy records under section 1602 includes, if reasonable, the right to receive copies made by photographic, xerographic or other means.

3. Charge for copies. The corporation may impose a reasonable charge covering the costs of labor and material for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records.

4. Comply with demand. The corporation may comply with a shareholder's demand to inspect the record of shareholders under section 1602, subsection 3, paragraph C by providing the shareholder with a list of shareholders that was compiled no earlier than the date of the shareholder's demand.

§1604. Court-ordered inspection

1. Order inspection. If a corporation does not allow a shareholder who complies with section 1602, subsection 2 to inspect and copy any records required by that subsection to be available for inspection, the Superior Court of the county where the corporation's principal office or registered office is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the shareholder.

2. Court order. If a corporation does not within a reasonable time allow a shareholder to inspect and copy any other record pursuant to this Act, the shareholder who complies with section 1602, subsections 3 and 4 may apply to the Superior Court in the county where the corporation's principal office or registered office is located for an order to permit inspection and copying of the records demanded. The court shall dispose of an application under this subsection on an expedited basis.

3. Refuse inspection; good faith. If the court orders inspection and copying of the records demanded under subsection 1 or 2, the court shall also order the corporation to pay the shareholder's costs including reasonable counsel 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 shareholder to inspect the records demanded.

4. Restrictions. If the court orders inspection and copying of the records demanded under subsection 1 or 2, the court may impose reasonable restrictions on the use or distribution of the records by the demanding shareholder.

§1605. Inspection of records by directors

1. Inspect; copy records. A director of a corporation is entitled to inspect and copy the books, records and documents of the corporation at any reasonable time to the extent that the inspection or copying is reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

2. Court order. The Superior Court of the county where the corporation's principal office or, if there is no principal office in this State, registered office is located may order inspection and copying of the books, records and documents at the corporation's expense, upon application of a director who has been refused inspection rights under subsection 1, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

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

§1606. Exception to notice requirement

1. Notice. Whenever notice is required to be given under any provision of this Act to any shareholder, that notice is not required to be given if:

A. Notice of 2 consecutive annual meetings and all notices of meetings during the period between such 2 consecutive annual meetings have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable; or

B. All, but not less than 2, payments of dividends on securities during a 12-month period, or 2 consecutive payments of dividends on securities during a period of more than 12 months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable.

2. Shareholder's address. If a shareholder to whom notice is not required pursuant to subsection 1 delivers to the corporation a written notice setting forth that shareholder's current address, the requirement that notice be given to that shareholder is reinstated.

SUBCHAPTER II

REPORTS

§1620. Financial statements for shareholders

1. Financial statements. No later than 5 months after the close of each fiscal year, each corporation that is not a close corporation shall prepare annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

2. Written demand for copy of financial statement. Upon written demand of any shareholder of a corporation, the corporation shall mail to that shareholder a copy of the most recent annual financial statement prepared in accordance with subsection 1. If the annual financial statement is reported upon by a public accountant, the accountant's report must accompany it. If the annual financial statement is not reported upon by a public accountant, the statement must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

A. Stating the reporter's reasonable belief whether the statement was prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

B. Describing any respects in which the statement was not prepared on a basis of accounting consistent with the statement prepared for the preceding year.

3. Restrictions on disclosure of financial statement. The articles of incorporation or bylaws of a corporation may impose reasonable restrictions regarding the disclosure of financial information as a condition to delivery of an annual financial statement to a shareholder in accordance with this section.

§1621. Annual report of domestic and foreign corporations; excuse

1. Filing of annual report. Each domestic corporation, unless excused as provided in subsection 4 or excluded by subsection 6, and each foreign corporation authorized to do business in this State, shall deliver to the Secretary of State for filing, within the time prescribed by this section, an annual report setting forth:

A. The name of the domestic or foreign corporation and the jurisdiction of its incorporation;

B. The address of the registered office of the domestic or foreign corporation in this State; the name of its clerk, if a domestic corporation, or its registered agent in this State, if a foreign corporation; and, if a foreign corporation, the address of its registered or principal office, wherever located. The address of a registered office must include the street or rural route number, town or city and state;

C. A brief statement of the character of the business in which the domestic or foreign corporation is actually engaged in this State, if any; and

D. The name and business or residence address of the president, the treasurer, the clerk or registered agent and directors or, if no directors, shareholders of the domestic or foreign corporation, including the street or rural route number, town or city and state.

2. Information current. The information contained in the annual report required in subsection 1 must be current as of the date the report is executed. The annual report must be executed as provided by section 121.

3. First annual report. The first annual report required in subsection 1 must be delivered to the Secretary of State between January 1st and June 1st of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the Secretary of State between January 1st and June 1st of the following calendar years. Proof to the satisfaction of the Secretary of State that, prior to the date when penalties become effective for late delivery of annual reports as provided in section 1622, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, is compliance with this requirement. One copy of the report, together with the filing fee required by this Act, must be delivered for filing to the Secretary of State who shall file the report, if the Secretary of State finds that the report conforms to the requirements of this Act. If the Secretary of State finds that the report does not conform to the requirements of this Act, the Secretary of State shall promptly mail or otherwise return the report to the domestic or foreign corporation for any necessary corrections, in which case the penalties prescribed by this Act for failure to file the report within the time herein provided do not apply, as long as the report is corrected to conform to the requirements of this Act and returned to the Secretary of State within 30 days from the date on which it was

mailed or otherwise returned to the domestic or foreign corporation by the Secretary of State.

4. Certificate of excuse. The Secretary of State, upon application by any domestic corporation and satisfactory proof that it has ceased to transact business and that it is not indebted to this State for failure to file an annual report and to pay any fees or penalties accrued, shall file a certificate of the fact and shall give a duplicate certificate to the domestic corporation, after which the corporation is excused from filing annual reports with the Secretary of State, so long as the domestic corporation in fact transacts no business.

5. Resume transaction of business. The shareholders of a domestic corporation that has been excused from filing annual reports pursuant to subsection 4 may vote to resume transacting business at a meeting duly called and held for that purpose. A certificate executed and filed as provided in section 121 setting forth that a shareholders' meeting was held, the date and location of same, and that a majority of the shareholders voted to resume transacting business authorizes that domestic corporation to transact business; and after that certificate is filed, the domestic corporation is required to file annual reports beginning with the next reporting deadline following resumption.

6. Exempt from filing annual report. The requirement under subsection 1 does not apply to religious, charitable, educational or benevolent corporations nor to corporations organized under Title 13, chapters 81, 83, 91 and 93.

§1622. Failure to file annual report; incorrect report; penalties

1. Penalty. A domestic or foreign corporation required to deliver an annual report for filing as provided by section 1621 that fails to deliver its properly completed annual report to the Secretary of State shall pay, in addition to the regular annual report fee, the late filing penalty described in section 123, subsection 1, paragraph EE, as long as the report is received by the Secretary of State prior to administrative dissolution or revocation. Upon a corporation's failure to file the annual report and to pay the annual report fee or the penalty, the Secretary of State, notwithstanding Title 4, chapter 5 and Title 5, chapter 375, shall revoke a foreign corporation's authority to do business in this State and administratively dissolve a domestic corporation. The Secretary of State shall use the procedures set forth in section 1421 to administratively dissolve a corporation and the procedures set forth in section 1532 to revoke a foreign corporation's authority to do business in this State. A domestic corporation that has been administratively dissolved under this subsection may be reinstated by filing the current annual report, together with the current annual filing fee, and by paying the reinstatement fee described in section 123, subsection 1, paragraph V.

2. Excusable neglect. If the annual report of a domestic or foreign corporation is not delivered for filing within the time specified in section 1621, the corporation is excused from the liability provided in this section and from any other penalty for failure to timely file the report if it establishes, to the satisfaction of the Secretary of State, that its failure to file was the result of excusable neglect and it furnishes the Secretary of State with a copy of the report within 30 days after it learns that the Secretary of State failed to receive the original report.

CHAPTER 17

TRANSITION PROVISIONS

§1701. Application

1. Application. Except as provided in subsection 2, this Act applies to all domestic corporations in existence on the effective date of this Act that were incorporated under any general statute of this State providing for incorporation of corporations for profit or with shares or under any act providing for the creation of special classes of corporations and any corporation created by special act of the Legislature, if power to amend or repeal the law under which the corporation was incorporated was reserved.

2. Exceptions. This Act does not apply to:

A. Any class of corporations to the extent that any provision of any other law is specifically applicable to that class of corporations and is inconsistent with any provision of this Act, in which case the other provision of law prevails; and

B. Any corporation created by special act of the Legislature, to the extent that this Act is inconsistent with that special act.

3. Validity of articles or bylaws. The validity of any provision of the articles of incorporation or the bylaws of a corporation existing on July 1, 2003 must be determined with reference to the law that was in effect at the time when the provision was adopted or with reference to this Act, whichever supports the validity of such provision. A provision of a corporation's articles of incorporation or bylaws that was valid under the law in existence at the time the same was adopted remains in effect, notwithstanding a contrary provision of this Act, until repealed or amended by voluntary act of the corporation, but any amendment to such a provision must be adopted by the procedures

set out in this Act and must, as amended, conform to the requirements of this Act.

§1702. Application to qualified foreign corporations

A foreign corporation authorized to transact business in this State on the effective date of this Act is subject to this Act but is not required to obtain a new certificate of authority to transact business under this Act.

Sec. A-3. Savings.

1. Effect of repeal of Maine Revised Statutes, Title 13-A. Except as provided in subsection 2, the repeal of the Maine Revised Statutes, Title 13-A in section 1 of this Act does not affect:

A. The operation of Title 13-A or any action taken under Title 13-A prior to the effective date of this Act;

B. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under Title 13-A prior to the effective date of this Act;

C. Any violation of Title 13-A, or any penalty, forfeiture or punishment incurred because of the violation, prior to the effective date of this Act; or

D. Any proceeding, reorganization or dissolution commenced under Title 13-A prior to the effective date of this Act. The proceeding, reorganization or dissolution may be completed in accordance with Title 13-A as if it had not been repealed.

2. Reduction in penalty or punishment. Notwithstanding the Maine Revised Statutes, Title 1, section 302, if the penalty or punishment for a violation of Title 13-C is less severe than the penalty or punishment for a violation of the equivalent provision under former Title 13-A and the penalty or punishment has not yet been imposed, the penalty or punishment must be imposed in accordance with the provisions of Title 13-C.

PART B

Sec. B-1. 13 MRSA c. 22, as amended, is repealed.

Sec. B-2. 13 MRSA c. 22-A is enacted to read:

CHAPTER 22-A

MAINE PROFESSIONAL SERVICE CORPORATION ACT

SUBCHAPTER I

GENERAL PROVISIONS

§721. Short title

This chapter may be known and cited as the "Maine Professional Service Corporation Act."

§722. Application of Maine Business Corporation Act

The Maine Business Corporation Act applies to professional corporations, both domestic and foreign, to the extent not inconsistent with this chapter.

§723. Definitions

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

1. Disqualified person. "Disqualified person" means an individual or entity that for any reason is or becomes ineligible under this chapter to be issued shares by a professional corporation.

2. Domestic professional corporation. "Domestic professional corporation" means a professional corporation.

3. Foreign professional corporation. "Foreign professional corporation" means a corporation or association for profit incorporated for the purpose of rendering professional services under law other than the law of this State.

4. Professional corporation. "Professional corporation" means a corporation for profit, other than a foreign professional corporation, subject to the provisions of this chapter.

5. Professional limited liability company. "Professional limited liability company" means a limited liability company formed to perform a professional service.

6. Professional limited liability partnership. "Professional limited liability partnership" means a limited liability partnership formed to perform a professional service.

7. Professional service. "Professional service" means the professional services provided by the following persons to the extent they are required to be licensed under state law:

A. Accountants, advanced practice registered nurses, attorneys, chiropractors, dentists, optometrists, osteopathic physicians, physicians and surgeons, physician assistants, podiatrists, registered nurses and veterinarians; and

B. Any person not listed in subsection A who is required by state law to have a license as a precondition to engaging in that person's profession.

8. Qualified person. "Qualified person" means an individual, general partnership, professional limited liability company, professional limited liability partnership, other professional corporation that is eligible under this chapter to be issued shares by a professional corporation or any other entity that is authorized by statute to provide the same professional service provided by the professional corporation.

SUBCHAPTER II

CREATION

§731. Election of professional corporation status

1. Mandatory coverage. A qualified person performing any professional service described in section 723, subsection 7, paragraph A desiring to form a corporation shall incorporate as a professional corporation.

2. Optional coverage. A qualified person or persons performing any professional service described in section 723, subsection 7, paragraph B desiring to form a corporation may incorporate as a professional corporation.

3. Filing requirement. One or more persons may incorporate a professional corporation by delivering to the Secretary of State for filing articles of incorporation that state that the corporation is a professional corporation and the corporation's purpose is to render the specified professional service.

4. Election to be covered. A corporation incorporated under a general law of this State may elect professional corporation status by amending its articles of incorporation to comply with subsection 3 and section 736.

§732. Purposes

1. Single profession. Except to the extent authorized by subsections 2 and 3, a corporation may elect professional corporation status under section 731 solely for the purpose of rendering professional services, including services ancillary to them, and solely within a single profession.

2. Multiple professions. A corporation may elect professional corporation status under section 731 for the purpose of rendering professional services within 2 or more professions and for the purpose of engaging in any lawful business authorized by Title 13-C, section 301, to the extent the combination of professional purposes or of professional and business purposes is not prohibited by the licensing law of this State applicable to each profession in the combination.

3. Accountants. Nonlicensed individuals may organize with individuals who are licensed under Title 32, chapter 113 and may become shareholders of a firm licensed to practice public accountancy under Title 32, section 12252, as long as all of the requirements for licensure under Title 32, section 12252, subsection 3 are met by the firm.

4. Dentists and denturists. For the purposes of this chapter, a denturist licensed under Title 32, chapter 16 may organize with a dentist who is licensed under Title 32, chapter 16 and may become a shareholder of a dental practice incorporated under the corporation laws. At no time may a denturist or denturists in sum have an equal or greater ownership interest in a dental practice than the dentist or dentists have in that practice.

§733. General powers

A professional corporation has the powers enumerated in Title 13-C, section 302.

§734. Rendering professional services

1. License required. A domestic professional corporation or foreign professional corporation may render professional services in this State only through individuals licensed or otherwise authorized in this State to render the services.

2. Scope. Nothing in subsection 1 may be construed to:

A. Require an individual employed by a professional corporation to be licensed to perform services for the corporation if a license is not otherwise required;

B. Prohibit a licensed individual from rendering professional services in that individual's individual capacity even though that individual is a shareholder, director, officer, employee or agent of a domestic professional corporation or foreign professional corporation; or

C. Prohibit an individual licensed in another state from rendering professional services for a domestic professional corporation or foreign professional corporation in this State if not prohibited by the licensing authority having jurisdiction over such professional service.

§735. Prohibited activities

1. Limited activities. A professional corporation may not render any professional service or engage in any business or service other than the professional service and business authorized by its articles of incorporation and services or businesses reasonably related thereto.

2. Investments. Nothing in subsection 1 prohibits a professional corporation from investing its funds in real estate, mortgages, securities or any other type of investment.

§736. Corporate name

1. Words required. The name of a domestic professional corporation or of a foreign professional corporation authorized to transact business in this State, in addition to satisfying the requirements of Title 13-C, sections 401 and 1506:

A. Must contain the words "chartered," "professional corporation," "professional association" or "service corporation" or the abbreviation "P.C.," "P.A." or "S.C.";

B. May not contain language stating or implying that it is incorporated for a purpose other than that authorized by section 732 and its articles of incorporation; and

C. Must conform with any rule adopted by the licensing authority having jurisdiction over a professional service described in the corporation's articles of incorporation.

2. Assumed name. A domestic professional corporation or foreign professional corporation may render professional services and exercise its authorized powers under an assumed name, as long as the corporation has first registered the name to be so used in the manner required by Title 13-C.

SUBCHAPTER III

SHARES

§741. Issuance of shares

1. Qualified shareholders. A professional corporation may issue shares, fractional shares and rights or options to purchase shares only to:

A. Individuals who are authorized by law in this State or another state to render a professional service described in the corporation's articles of incorporation;

B. General partnerships in which all the partners are qualified persons with respect to the professional corporation and in which at least one partner is authorized by law in this State to render a professional service described in the corporation's articles of incorporation;

C. Professional corporations, professional limited liability companies or professional limited liability partnerships, domestic or foreign, authorized by law in this State to render a professional service described in the corporation's articles of incorporation; or

D. Any other entity that is authorized by law to provide the same professional service provided by the professional corporation.

2. Licensing authority jurisdiction. If a licensing authority with jurisdiction over a profession considers it necessary to prevent violation of the ethical standards of the profession, the authority may adopt rules under its general rule-making authority or other regulatory authority to restrict or condition, or revoke in part, the authority of professional corporations subject to its jurisdiction to issue shares. A rule described in this subsection does not, of itself, make a shareholder of a professional corporation at the time the rule becomes effective a disqualified person.

3. Unlawful shares void. Shares issued in violation of this section or a rule described in subsection 2 are void.

§742. Share transfer restriction

1. Limit to transfers. A shareholder of a professional corporation may transfer or pledge shares, fractional shares and rights or options to purchase shares of the corporation only to qualified persons.

2. Other transfers void. A transfer of shares made in violation of subsection 1, except one made by operation of law or court judgment, is void.

§743. Compulsory acquisition of shares after death or disqualification of shareholder

1. Triggering events. A professional corporation must acquire or cause to be acquired by a qualified person the shares of its shareholder if:

A. The shareholder dies;

B. The shareholder becomes a disqualified person, except as provided in subsection 4; or

C. The shares are transferred by operation of law or court judgment to a disqualified person, except as provided in subsection 4.

2. Agreements binding. If a professional corporation's articles of incorporation or bylaws or a private agreement provides the terms, price and other conditions for the acquisition of the shares of a

shareholder upon the occurrence of an event described in subsection 1, then that article, bylaw or private agreement is binding on the parties and is specifically enforceable.

3. Corporate acquisition of shares. In the absence of an article provision, bylaw provision or private agreement described in subsection 2, a professional corporation shall acquire the shares in accordance with section 744; except that, if the disqualified person rejects the corporation's purchase offer, either the person or the corporation may commence a proceeding under section 745 to determine the fair value of the shares.

4. Limited disqualification. In the absence of an article provision, bylaw provision or private agreement described in subsection 2, this section does not require the acquisition of shares in the event of a shareholder's becoming a disqualified person if the disqualification lasts no more than 5 months from the date the disqualification or the transfer of shares pursuant to subsection 1 occurs.

5. Other benefits unaffected. Nothing in this section or section 744 prevents or relieves a professional corporation from paying pension benefits or other deferred compensation for services rendered to a former shareholder if otherwise permitted by law.

§744. Acquisition procedure

1. Written notice. In the absence of an article provision, bylaw provision or private agreement described in section 743, subsection 2, if shares must be acquired under section 743, a professional corporation shall deliver a written notice to the executor or administrator of the estate of its deceased shareholder, or to the disqualified person or transferee, offering to purchase the shares at a price the corporation believes represents their fair value as of the date of death, disqualification or transfer. The offer notice must be accompanied by the corporation's balance sheet for a fiscal year ending not more than 16 months before the effective date of the offer notice, an income statement for that year, a statement of changes in shareholders' equity for that year and the latest available interim financial statements, if any.

2. Option period. A disqualified person has 30 days from the effective date of the notice provided pursuant to subsection 1 to accept the professional corporation's offer or demand that the corporation commence a proceeding under section 745 to determine the fair value of that disqualified person's shares. If the disqualified person accepts the offer, the corporation shall make payment for the shares within 60 days from the effective date of the offer notice, unless a later date is agreed on, upon the disqualified person's surrender of the shares to the corporation.

3. Termination of interest. After a professional corporation makes payment for shares in accordance with this section, a disqualified person has no further interest in those shares.

§745. Court action to appraise shares

1. Demand for proceeding. If a disqualified person does not accept a professional corporation's offer under section 744, subsection 2 within the 30-day period, the disqualified person at any time during the 60-day period following the effective date of the notice may deliver a written notice to the corporation demanding that it commence a proceeding to determine the fair value of the shares. The corporation may commence a proceeding at any time during the 60 days following the effective date of its offer notice. If the corporation does not commence such a proceeding, the disqualified person may commence a proceeding against the corporation to determine the fair value of those shares.

2. Court procedure. A professional corporation or disqualified person shall commence a proceeding under this section in the Superior Court of the county where the corporation's principal office or, if there is no principal office in this State, its registered office is located. The corporation shall make the disqualified person a party to the proceeding as in an action against the disqualified person's shares. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

3. Appraisers. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the power described in the order appointing them or in any amendment to it.

4. Valuation date. A disqualified person is entitled to judgment for the fair value of the person's shares determined by the court as of the date of death, disqualification or transfer together with interest from that date at a rate found by the court to be fair and equitable.

5. Payment installments. The court may order a judgment ordered under this section paid in installments determined by the court.

§746. Court costs and fees of experts

1. Assessment of costs. The court in an appraisal proceeding commenced under section 745 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court, and shall assess the costs against the professional corporation; except that the court may assess costs against the disqualified person in an amount the court finds equitable if the court

finds the person acted arbitrarily, vexatiously or not in good faith in refusing to accept the corporation's offer.

2. Assessment against corporation. In addition to costs assessed under subsection 1, the court may assess the fees and expenses of counsel and experts for a disqualified person against the professional corporation and in favor of the person if the court finds that the fair value of the person's shares substantially exceeded the amount offered by the corporation or that the corporation did not make an offer.

§747. Cancellation of disqualified shares

If the shares of a disqualified person are not acquired pursuant to section 743 within 10 months after the death of the shareholder or within 5 months after the disqualification or transfer, the professional corporation shall immediately cancel the shares on its books and the disqualified person has no further interest as a shareholder in the corporation other than the right to payment for the shares under section 743.

SUBCHAPTER IV

GOVERNANCE

§751. Directors and officers

Not less than a majority of the directors of a professional corporation and all of its officers, except the clerk, secretary and treasurer, if any, must be qualified persons with respect to the corporation.

§752. Voting of shares

1. Right to vote. Except as otherwise provided in this section, only a qualified person may vote the shares of a professional corporation.

2. Proxies. Only a qualified person may be appointed a proxy to vote shares of a professional corporation.

3. Voting trusts. A voting trust with respect to shares of a professional corporation is not valid unless all of its trustees and beneficiaries are qualified persons; except that, if a beneficiary who is a qualified person dies or becomes a disqualified person, a voting trust valid under this subsection continues to be valid for 10 months after the date of death or for 5 months after the disqualification occurred.

4. Limited voting right. Any shares transferred to a disqualified person by reason of the death of a qualified person or by operation of law may be voted by such disqualified person only for the purposes of amending the articles of incorporation to convert to a regular business corporation or dissolving the professional corporation.

§753. Responsibility for professional services

1. Relationship between professional and recipient of services. This chapter does not modify the liability of a person rendering a professional service with respect to that service.

2. Shareholder liability for debts and claims. Except as provided in subsection 3, the liability of shareholders for the debts of and claims against a corporation is the same as that of shareholders of a business corporation.

3. Shareholder liability arising from rendering professional service. A shareholder is jointly and severally liable for claims arising from the rendering of a professional service by a domestic professional corporation or foreign professional corporation if that shareholder:

A. Personally and directly participated in rendering that portion of a professional service that was performed negligently or in breach of any other legal duty; or

B. Directly supervised and controlled that portion of a professional service rendered by another person that was performed negligently or in breach of any other legal duty.

SUBCHAPTER V

REORGANIZATION AND TERMINATION

§761. Merger

1. Merger allowed. A professional corporation may merge with another domestic professional corporation or foreign professional corporation or with a domestic or foreign business entity as defined in Title 13-C if all the interest holders of the constituent entities are qualified to be interest holders of the surviving entity.

2. Compliance. After a merger in accordance with subsection 1, if the surviving corporation is to render in this State any of the professional services described in section 723, subsection 7, paragraph A, the surviving corporation must comply with this Act.

§762. Termination of professional activities

If a professional corporation ceases to render professional services, it must amend its articles of incorporation to delete references to rendering professional services and to conform its corporate name to the requirements of Title 13-C, section 401. After the amendment becomes effective, the corporation may continue in existence as a business corporation under Title 13-C and the corporation is no longer subject to this Act.

§763. Judicial dissolution

The Attorney General may commence a proceeding under Title 13-C, sections 1430 to 1433 to dissolve a professional corporation if:

1. Service of notice of violation. The Secretary of State serves written notice on the professional corporation under Title 13-C, section 502 that it has violated or is violating a provision or provisions of this Act;

2. Failure to correct. The professional corporation does not correct each alleged violation or demonstrate to the reasonable satisfaction of the Secretary of State that the violation or violations did not occur, within 60 days after service of the notice is perfected under Title 13-C, section 502; and

3. Certify. The Secretary of State certifies to the Attorney General a description of the violation or violations, that it notified the professional corporation of the violation or violations and that the corporation did not correct the violation or violations or demonstrate that the violation or violations did not occur, within 60 days after perfection of service of the notice.

SUBCHAPTER VI

FOREIGN PROFESSIONAL CORPORATIONS

§771. Authority to transact business

1. Prohibition. Except as provided in subsection 3, a foreign professional corporation may not transact business in this State until it obtains authority from the Secretary of State.

2. Preconditions. A foreign professional corporation may not obtain authority to transact business in this State unless:

A. Its corporate name satisfies the requirements of section 736;

B. It is incorporated for one or more of the purposes described in section 732; and

C. All of its shareholders, not less than a majority of its directors and all of its officers other than its clerk, secretary and treasurer, if any, are licensed in one or more states to render a professional service described in its articles of incorporation.

3. Office required. A foreign professional corporation is not required to obtain authority to transact business in this State unless it maintains or intends to maintain an office in this State for conduct of business or professional practice.

§772. Application for authority to transact business

The application of a foreign professional corporation for authority to render professional services in this State must contain the information set forth in Title 13-C, section 1503 and in addition include a statement that all of its shareholders, not less than a majority of its directors and all of its officers other than its clerk, secretary and treasurer, if any, are licensed in one or more states to render a professional service described in its articles of incorporation.

Sec. B-3. Application to existing corporations.

1. Existing professional corporations. This Act applies to every corporation incorporated under the Maine Revised Statutes, Title 13, former chapter 22. An existing professional corporation to which this Act applies need not amend its articles of incorporation to specify the professional service that it renders as of the effective date of this Act. A professional corporation that is in existence on the effective date of this Act shall amend its articles of incorporation if, after the effective date of this Act, that professional corporation engages in any additional professional service, which amendment must specify all professional services to be engaged in by the professional corporation.

2. Other corporations. This Act does not apply to a corporation that is or will be incorporated under a law of this State that is not repealed by this Act unless the corporation elects professional corporation status under the Maine Revised Statutes, Title 13, section 731.

3. Other rights unaffected. This Act does not affect any right or privilege to render professional services through the use of any other form of business entity.

Sec. B-4. Saving provisions.

1. Effect of repeal. Except as provided in subsection 2, the repeal of the Maine Revised Statutes, Title 13, chapter 22 by this Act does not affect:

A. The operation of the statute or any action taken under it before its repeal;

B. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued or incurred under the statute before its repeal;

C. Any violation of the statute, or any penalty, forfeiture or punishment incurred because of the violation, before its repeal;

D. Any proceeding, reorganization or dissolution commenced under the statute before its repeal, and the proceeding, reorganization or dissolution may be completed in accordance with the statute as if it had not been repealed; and

E. Any provision in an existing professional corporation's articles of incorporation or bylaws that is legal and enforceable as of the date of the adoption of this Act.

2. Reduction in penalty or punishment. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed must be imposed in accordance with this Act.

Sec. B-5. Revisor's review; cross-references. The Revisor of Statutes shall review the Maine Revised Statutes and include in the errors and inconsistencies bill submitted to the First Regular Session of the 121st Legislature pursuant to Title 1, section 94 any sections necessary to correct and update any cross-references in the statutes to provisions of law repealed in this Act.

Sec. B-6. Authorization to report out legislation. The joint standing committee of the Legislature having jurisdiction over judiciary matters may report out to the First Regular Session of the 121st Legislature legislation to make any conforming changes necessitated by this Act.

Sec. B-7. Effective date. This Act takes effect July 1, 2003.

Effective July 1, 2003.

CHAPTER 641

S.P. 729 - L.D. 1988

An Act to Increase the Opportunities of Retired State Employees to Enroll a Spouse or Dependents in the Maine State Health Insurance Plan

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

Sec. 1. 5 MRSA §285, sub-§3-B is enacted to read:

3-B. Enrollment of spouse and dependents of retirees. Effective January 1, 2003, a retiree eligible for participation in the group health insurance plan under this section may enroll a spouse and dependents in the group plan as follows:

A. Upon retirement, the retiree may enroll a spouse and dependent or dependents for coverage under the plan effective on the date of retirement; or

B. Subsequent to retirement, the retiree may enroll a spouse and dependent or dependents for coverage under the plan if:

(1) At the time of retirement, the retiree designated in writing the name of the spouse and dependent or dependents to be enrolled at a future date; and

(2) The spouse and dependent or dependents can demonstrate coverage for at least 18 months immediately prior to enrollment under another health insurance plan or can demonstrate that health insurance coverage for that person pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 under a prior plan has been exhausted.

See title page for effective date.

CHAPTER 642

H.P. 1509 - L.D. 2012

An Act to Expand the Maine Seed Capital Tax Credit Program

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

Sec. 1. 5 MRSA §13070-J, sub-§1, ¶D, as enacted by PL 1997, c. 761, §2, is amended to read:

D. "Economic development incentive" means:

(1) Assistance from Maine Quality Centers under Title 20-A, chapter 431-A;

(2) The Governor's Training Initiative Program under Title 26, chapter 25, subchapter IV;

(3) Municipal tax increment financing under Title 30-A, chapter 207;

(4) The jobs and investment tax credit under Title 36, section 5215;

(5) The research expense tax credit under Title 36, section 5219-K;

(6) Reimbursement for taxes paid on certain business property under Title 36, chapter 915; ~~or~~