

MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 2

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

general may apply to the appropriate court for an order enjoining the person from engaging or continuing to engage in the activity violative of this chapter and upon a showing that such person has engaged, or is about to engage in any such activity, a permanent or temporary injunction, restraining order or other order may be granted. (1955, c. 105, § 1.)

Sec. 7. Agreements and cooperative arrangements authorized.—

Any appropriate department or agency may cooperate with the federal government in performing functions on behalf of the federal government relating to atomic energy, and in the administration of this chapter or any matter pertaining thereto, and for that purpose may, with the approval of the coordinator, enter into agreements or cooperative arrangements with the federal government.

Such department or agency may receive, administer and disburse any funds or contributions received from the federal government for the purposes mentioned herein. (1957, c. 210, § 8.)

Chapter 53. Corporations.

Sections 72-A to 72-K. Simplification of Fiduciary Security Transfers.
Sections 127 to 135-A. Foreign Corporations.

General Provisions.

Sec. 2. Acts of incorporation altered or repealed.

Cited in *First Nat. Bank of Boston v. Maine Turnpike Authority*, 153 Me. 131, 136 A. (2d) 699.

Organization under General Law.

Sec. 8. Purposes.

Nothing in this section shall be construed to prevent the organization of small business investment companies organized to carry out the provisions of the Small Business Investment Act enacted by the 85th Congress of the United States, and acts amendatory thereto and additional thereto and which become such corporations under said Small Business Investment Act of 1958. Such small business investment companies shall not be deemed banking corporations or institutions. (R. S. c. 49, § 8, 1959, c. 178, § 4.)

Effect of amendment.—The 1959 amendment. As the rest of the section was not affected by the amendment, it is not set out.

Sec. 10. Certificate of organization; fees.

Quoted in *McGary v. Barrows*, 156 Me. 250, 163 A. (2d) 747.

Sec. 10-A. Protection for name of corporation. — No corporation organizing under this chapter shall assume, adopt or use the name of a corporation incorporated under the laws of the state of Maine, or a name so nearly resembling the name of such corporation as to be a colorable imitation thereof or calculated to deceive any person. (1961, c. 22.)

Sec. 12. Quasi-public corporations; fees. — No certificate of organization of any corporation for banking, insurance, construction and operation of railroads, or aiding in the construction thereof, the business of trust companies or corporations intended to derive a profit from the loan or use of money, safe deposit companies, renting of safes and burglar and fire-proof vaults, telegraph and telephone companies, electric or gas light companies, water companies or any corporation authorized to exercise the right of eminent domain shall be received and filed by the secretary of state except upon payment to him for the

use of the state of: \$25 if the capital stock does not exceed \$5,000; \$50 if the capital stock exceeds \$5,000 and does not exceed \$10,000; \$100 if the capital stock exceeds \$10,000 and does not exceed \$50,000; \$200 if the capital stock exceeds \$50,000 and does not exceed \$100,000; \$75 upon every \$100,000 or fraction thereof in excess of \$100,000, if the capital stock exceeds \$100,000; also 1¢ per share and in no case less than \$10 on all shares authorized without par value. (R. S. c. 49, § 11. 1961, c. 395, § 27.)

Effect of amendment.—The 1961 amendment, which became effective upon its approval, June 17, 1961, deleted “street rail-road companies” following “gas light companies.”

Corporate Powers. Meetings.

Sec. 19. Issue of stock for property and services; issue of rights or options.—Any corporation may purchase mines, manufactories and other property necessary for its business and the stock of any company or companies owning, mining, manufacturing or producing materials or other property necessary for its business, and issue stock to the amount of the value thereof in payment therefor, and may likewise issue stock for services rendered to such corporation and the stock so issued shall be fully paid stock and not liable to any further call or payment thereon, and may create and issue rights or options entitling the holders thereof to purchase from the corporation any shares of its stock for such consideration not less than par and, in the case of stock having no par value, in accordance with the provisions of section 20 hereof, upon such conditions as the stockholders or the directors, acting under authority granted by the stockholders, may prescribe, and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property purchased, services rendered and rights or options granted, shall be conclusive. (R. S. c. 49 § 18. 1955, c. 284.)

Effect of amendment.—The 1955 amendment inserted the provisions authorizing a corporation to create and issue rights and options.

Sec. 23. Power to make and alter by-laws.—The power to make and alter by-laws shall be in the stockholders but any corporation may, in the certificate of organization or in any amendment thereto or by a provision of the by-laws, confer that power upon the directors. By-laws made by the directors under power so conferred may be altered or repealed by the directors or stockholders. Corporations may, among other provisions, determine by their by-laws the manner of calling and conducting meetings; the number of members that constitute a quorum; the number of votes to be given by shareholders; the date as of which stockholders shall be entitled to vote at any meeting or to receive dividends or rights and whether or not stock transfer books shall be closed; by whom any and all officers, except president and directors, shall be elected; by whom vacancies in the board of directors or other offices may be filled; the tenure of the several offices; the mode of voting by proxy and of selling shares for neglect to pay assessments; and may enforce such by-laws by penalties not exceeding \$20. Public utility corporations organized under the laws of this state but doing business wholly outside the limits of this state may provide by their by-laws for the holding of meetings of their stockholders outside the state. (R. S. c. 49, § 22. 1959, c. 142.)

Effect of amendment.—The 1959 amendment added the last sentence to this section.

Officers and Their Duties.

Sec. 32. Officers of corporation; qualifications of directors; treasurer to give bond; clerk sworn; directors divided into classes; may hold meetings without this state.—Corporations shall have a president, directors, clerk, treasurer and any other desirable officers. Such officers shall be chosen annually and shall continue in office until others are chosen and qualified in their stead. There shall not be less than 3 directors, one of whom shall be by them

elected president. Directors need not be stockholders if the charter or by-laws of the corporation so provide. The treasurer shall give bond for the faithful discharge of his duties, in such sum and with such sureties as are required. The clerk shall be sworn and shall record all votes of the corporation in a book kept for that purpose; nothing herein shall prohibit corporations from providing by their by-laws for the division of their directors into classes and their election for a longer term than 1 year. After the certificate of organization required by law is filed in the office of the secretary of state, directors of all corporations may hold meetings without the state and there transact business and perform all corporate acts not expressly required by statute to be performed within the state. Directors of corporations may act through committees whose powers shall be defined in the by-laws. (R. S. c. 49, § 31. 1955, c. 103. 1957, c. 397, § 35. 1959, c. 129.)

Effect of amendments. — The 1955 amendment deleted the words "not charged with the performance of any public duty within the state," formerly appearing after the word "corporations" in the seventh sentence, and the word "such," formerly appearing before the word "corporations" in the eighth sentence.

The 1957 amendment substituted "which" for "who", which formerly appeared in the fourth sentence.

The 1959 amendment rewrote the fourth sentence of this section, which formerly required directors to be and remain stockholders or be members of another corporation owning stock.

Sec. 33. Appointment of directors by court; proceedings. — If any corporation organized under the general laws of the state shall fail to elect directors within 6 months after the time provided in its by-laws for the annual meeting, the supreme judicial court and the superior court shall have jurisdiction, upon application by any one or more of its stockholders holding at least 50% of the capital stock issued, to appoint a board of directors for such corporation not exceeding in membership the number authorized by the by-laws. The 6-month period shall be computed from the date of the 1st annual meeting at which such failure to elect occurs and not from the date of a subsequent annual meeting or meetings at which such failure is continued. Such appointments may be made from among the stockholders or otherwise as the court may see fit. The application shall be made by petition filed in the county where such corporation is located and shall be brought in behalf of all stockholders desiring to be joined therein; such notice shall be given to the corporation and its stockholders as the court may direct. Such appointees of the court shall have the same rights, powers and duties and the same tenure of office as directors duly elected by the stockholders at the annual meeting held at the time prescribed therefor in the by-laws, next prior to the date of the court's appointment, would have had. (R. S. c. 49, § 32. 1947, c. 57. 1961, c. 317, § 135.)

Effect of amendment.—The 1961 amendment substituted "jurisdiction" near the middle of the first sentence of this section.

Sec. 35. Preventing use of records and books.—Any officer or member of a corporation, who prevents access to and use of the records and books as provided in section 34, is liable for all damages occasioned thereby, in a civil action. (R. S. c. 49, § 34. 1961, c. 317, § 136.)

Effect of amendment.—The 1961 amendment substituted "section 34" for "the preceding section" and "a civil action" for "an action on the case" in this section.

Sec. 38. Neglect to publish statement.—If any officer of a corporation, charged by law with the duty of making and causing to be published any statement in regard to such corporation, neglects to do so, such officer, in addition to penalties already provided, forfeits \$500 to the prosecutor, to be recovered in a civil action. (R. S. c. 49, § 37. 1961, c. 317, § 137.)

Effect of amendment.—The 1961 amendment substituted "in a civil action" for "by action of debt or action on the case" at the end of this section.

Sec. 39. Dividends; limitation on payment.—Dividends of profit may be made by the directors, but the capital shall not thereby be reduced until all debts due from the corporation are paid. Any officer or member, who votes or aids to make a dividend in violation hereof, shall be punished by a fine of not more than \$2,000 and by imprisonment for less than one year. All sums received for such dividends may be recovered by any creditor of the corporation in a civil action. (R. S. c. 49, § 38. 1961, c. 317, § 138.)

Effect of amendment.—The 1961 amendment divided the former last sentence of this section into two sentences and substituted “a civil action” for “an action on the case” at the end thereof.

Annual Returns.

Sec. 41. Contents; filed.—Every corporation incorporated under the laws of this state, excepting religious, charitable, educational and benevolent corporations, and excepting such corporations as may be organized under the provisions of the first 20 sections of chapter 54, and such corporations as are liable to a franchise tax other than the tax provided for in section 106 of chapter 16, and such corporations as have been or may hereafter be excused from filing annual returns under the provisions of section 45 so long as their franchises remain unused shall, on or before the 1st day of June, annually, make a return to the secretary of state, signed by its president or treasurer, verified under oath, containing the names of its directors, president, treasurer and clerk, with the residence of each, the location of its principal office in this state and the amount of its authorized capital stock; and for this purpose the secretary of state shall furnish blanks in proper form and safely keep in his office all such returns. (R. S. c. 49, § 39. 1949, c. 349, § 87. 1955, c. 405, § 33.)

Effect of amendment.—The 1955 amendment substituted “20” for “19” in line four.

Sec. 42. Deposit in post office sufficient; neglect or refusal.—A deposit of the return required in the preceding section in a post office, postage paid, properly directed, is a compliance therewith. For the neglect or refusal of its officers to make such return, the corporation forfeits \$500, to be recovered in a civil action, to be prosecuted in the name of the state by the attorney general. (R. S. c. 49, § 40. 1961, c. 317, § 139.)

Effect of amendment.—The 1961 amendment substituted “a civil action” for “an action of debt” in the last sentence of this section.

Sec. 43. Action to collect penalty.—Whenever any corporation or its officers neglect to make to the secretary of state any return required by law, the secretary of state shall forthwith notify the attorney general, who shall proceed at once, by action in the name of the state, to enforce the penalties therefor and shall make itemized return thereof in his annual report. The secretary of state, on or before the first day of July, annually, shall furnish the attorney general with a statement showing which of said corporations, if any, have failed to comply with section 42, with such other memoranda from his office as will aid the attorney general in obtaining service upon such delinquent corporation. In addition to said penalties, the following costs shall be recovered in behalf of the state against said corporation, to wit: for the attorney general, for the summons, an attorney fee and travel and attendance at court not exceeding 2 terms; and for the state, such other costs as are legally taxable in civil actions. Such action may be brought in any county. (R. S. c. 49, § 41. 1961, c. 317, § 140.)

Effect of amendment.—The 1961 amendment deleted “of debt” following “action” in the first sentence of this section, substituted “section 42” for “the preceding section” in the second sentence, and substituted “summons” for “writ” and “in civil actions” for “in actions at law” in the third sentence.

Transfer of Shares of Stock Issued on or after July 9, 1943.

Sec. 64. Creditor's remedies to each certificate. — A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed in regard to property which cannot readily be attached or levied upon by ordinary legal process. (R. S. c. 49, § 62, 1961, c. 317, § 141.)

Effect of amendment.—The 1961 amendment deleted “at law or in equity” formerly preceding “in regard to property” in this section.

Simplification of Fiduciary Security Transfers.

Effective date.—P. L. 1959, c. 244, adding 3 thereof as follows: “This act shall take sections 72-A to 72-K, provided in section effect: January 1, 1960.”

Sec. 72-A. Definitions.—In sections 72-A to 72-K, unless the context otherwise requires:

“Assignment” includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

“Claim of beneficial interest” includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties.

“Corporation” means a private or public corporation, association or trust issuing a security.

“Fiduciary” means an executor, administrator, trustee, guardian, receiver, trustee in bankruptcy, assignee for the benefit of creditors, committee, conservator, curator, custodian, partner, agent, officer of a corporation, public or private, public officer, nominee or any other person acting in a fiduciary capacity, for any person, trust or estate.

“Person” includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

“Security” includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

“Transfer” means a change on the books of a corporation in the registered ownership of a security.

“Transfer agent” means a person employed or authorized by a corporation to transfer securities issued by the corporation. (1959, c. 244, § 1.)

Sec. 72-B. Registration in the name of a fiduciary.—A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security. (1959, c. 244, § 1.)

Sec. 72-C. Assignment by a fiduciary.—Except as otherwise provided in sections 72-A to 72-K, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

I. May assume without inquiry that the assignment, even though to the fi-

duciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

II. May assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

III. Is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession. (1959, c. 244, § 1.)

Sec. 72-D. Evidence of appointment or incumbency.—A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

I. In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer; or

II. In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency. (1959, c. 244, § 1.)

Sec. 72-E. Adverse claims.—

I. A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in sections 72-A to 72-K relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection II.

II. As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order. (1959, c. 244, § 1.)

Sec. 72-F. Nonliability of corporation and transfer agent.—A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by sections 72-A to 72-K. (1959, c. 244, § 1.)

Sec. 72-G. Nonliability of 3rd person.—

I. No person who participates in the acquisition, disposition, assignment or

transfer of a security by or to a fiduciary, including a person who guarantees the signature of the fiduciary, is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

II. If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of sections 72-A to 72-K incurs no liability.

III. This section does not impose any liability upon the corporation or its transfer agent. (1959, c. 244, § 1.)

Sec. 72-H. Territorial application.—

I. The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

II. Sections 72-A to 72-K apply to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction. (1959, c. 244, § 1.)

Sec. 72-I. Tax obligations.—Sections 72-A to 72-K do not affect any obligation of a corporation or transfer agent with respect to estate, inheritance or other taxes imposed by the laws of this state. (1959, c. 244, § 1.)

Sec. 72-J. Uniformity of interpretation.—Sections 72-A to 72-K shall be so construed as to effectuate the general purpose to make uniform the law of those states which enact them. (1959, c. 244, § 1.)

Sec. 72-K. Short title.—Sections 72-A to 72-K may be cited as the Uniform Act for Simplification of Fiduciary Security Transfers. (1959, c. 244, § 1.)

Registration or Transfer of Securities to or by Fiduciaries.

Secs. 73, 74. Repealed by Public Laws 1959, c. 244, § 2.

Effective date.—P. L. 1959, c. 244, re- section 3 thereof as follows: "This act shall pealing sections 73 and 74, provided in take effect January 1, 1960."

Rights of Minority Stockholders

Sec. 84. Corporation not to sell franchises or entire property without consent of stockholders.

II. To effect a consolidation under the provisions of the foregoing subsection and subject to the provisions of this and the 11 following sections, any 2 or more corporations organized or to be organized under the provisions of this chapter or existing under the laws of this state may consolidate into a single corporation, which may be any one of said corporations or a new corporation organized under the laws of this state to be formed by means of such consolidation, by entering into an agreement duly authorized by a majority of the directors of the respective corporations and signed by the duly authorized officers and under the respective seals of said corporations, prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, when the consolidation shall be effective, whether or not the consolidated cor-

poration shall be one of the constituent corporations or a new corporation created by such consolidation and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set out in the certificate of organization of corporations organized under this chapter and as are pertinent in the case of a consolidation, the manner of converting the capital stock of each of such consolidating corporations or, if the consolidated corporation is to be one of the constituent corporations and the outstanding shares of such surviving constituent corporation are not to be changed, the shares of each of the other constituent corporations, into the stock or obligations of such consolidated corporation together with such other provisions and details as shall be deemed necessary to perfect the consolidation. Said agreement shall be acknowledged by one of the executing officers of each of the consolidating corporations before an officer authorized by the laws of this state to take acknowledgements of deeds, to be the respective act, deed and agreement of each of said corporations. (1955, c. 357, § 1)

III. Subject to provisions of by-laws with reference to closing stock books prior to stockholders' meetings, said consolidation agreement shall be submitted to the stockholders of record of each corporation at a meeting thereof called separately for the purpose of taking the same into consideration, and at said meeting a vote in person or by proxy shall be taken for the adoption or rejection of said agreement, and if the votes of stockholders of each corporation representing a majority of the voting power, on a proposal to consolidate said corporation with another, shall be for the adoption of said agreement, then that fact shall be certified on said agreement by the clerk or secretary of each corporation and the agreement so signed, acknowledged, adopted and certified, after it has been examined by the attorney general and been by him certified to be properly drawn and signed and to be conformable to the constitution and laws of this state, shall be recorded in the registry of deeds in the county where the said consolidated corporation is located, and within 60 days after the day of the meeting at which said consolidation agreement is adopted by the stockholders, a copy thereof certified by such register shall be filed in the office of the secretary of state, who shall enter the date of filing thereon and on the original agreement, certified as aforesaid, to be kept by the consolidated corporation, and shall record said copy. From the time of filing the copy of such agreement in the office of the secretary of state, said agreement shall be taken and deemed to be the agreement of consolidation of the said corporations. Where the time such consolidation shall be effective is fixed by some event other than filing such copy with the secretary of state or a specified date, the clerk of each such constituent corporation shall certify to the secretary of state that the event fixing the effective date has occurred. Said original consolidation agreement or a certified copy thereof and a certified copy of such clerks' certificates shall be evidence of the existence of such consolidated corporation and of the observance and performance of all acts and conditions necessary to have been observed and performed precedent to such consolidation. (1955, c. 357, § 2)

VII. When said agreement is so signed, acknowledged, adopted, recorded and filed and any required clerks' certificates of the occurrence of events fixing the effective date have been so filed or the effective date specified in said agreement has arrived, the separate existence of all of the constituent corporations or of all of such constituent corporations except the one into which such constituent corporations shall have been consolidated shall cease; and the constituent corporations, whether consolidated into a new corporation or merged into one of such constituent corporations, as the case may be, shall become the consolidated corporation by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities, restrictions and duties of each of such corporations so consolidated and all and singular the

rights, privileges, powers, franchises and immunities of each of said corporations and all property, real, personal and mixed, wheresoever located, and all debts due to any of said constituent corporations on whatever account, and all other things in action of or belonging to each of said corporations shall be vested in the consolidated corporation: and all property, rights, privileges, powers, franchises and immunities and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective constituent corporations and the title to any real estate, whether by deed or otherwise, under the laws of this state, vested in any of such constituent corporations, shall not revert or be in any way impaired by reason thereof, provided that all rights of creditors and all liens upon the property of any of said constituent corporations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations shall thenceforth attach to said consolidated corporation and may be enforced against it to the same extent as if said debts, liabilities and duties has been incurred or contracted by it. (1955, c. 357, § 3)

XI. The provisions of this section with reference to consolidation shall neither restrict nor enlarge the provisions of section 47 of chapter 44. [1957, c. 397, § 34]. (R. S. c. 49, § 80. 1953, cc. 16, 73. 1955, c. 357, §§ 1-3. 1957, c. 397, § 34.)

Effect of amendments. — The 1955 amendment inserted the words "when the consolidation shall be effective" near the middle of subsection II. In subsection III the amendment rewrote the former second sentence to appear as the present second and fourth sentences and inserted the present third sentence. The amendment also inserted near the beginning of subsection VII the words "and any re-

quired clerks' certificates of the occurrence of events fixing the effective date have been so filed or the effective date specified in said agreement has arrived."

The 1957 amendment deleted "section 1 of chapter 50 and" which formerly appeared in subsection XI.

Only the subsections changed by the amendments are set out.

Sec. 85. Remedy of dissenting stockholder.—If any stockholder in any corporation which shall vote to sell, lease, consolidate or in any manner part with its franchises or its entire property, or any of its property, corporate rights or privileges essential to the conduct of its corporate business and purposes, otherwise than in the ordinary and usual course of its business, shall vote in the negative and shall file his written dissent therefrom with the president, clerk or treasurer of such corporation within one month from the day of such vote, the corporation in which he is a stockholder may, within one month after such dissent is so filed, file a complaint seeking equitable relief in the superior court in the county where it held its last annual meeting, setting forth in substance the material facts of the transaction, the action of the corporation thereon, the names and residences of all dissenting stockholders whose dissents were so filed, making such dissenting stockholders parties thereto, and praying that the value of the shares of such dissenting stockholder may be determined and for other appropriate relief. (R. S. c. 49, § 81. 1961, c. 317, § 142.)

Effect of amendment.—The 1961 amendment substituted "file a complaint seeking equitable relief in the superior court" for "enter a petition with the supreme judicial

court or the superior court sitting in equity" and deleted "in term time or in vacation" formerly following "last annual meeting" in this section.

Sec. 86. If corporation fails to seek equitable relief, dissenting stockholder may file and prosecute complaint. — If any such corporation shall fail to file a complaint seeking such equitable relief, any stockholder dissenting may within one month thereafter file a complaint seeking such relief and prosecute the same, making such corporation party defendant. In either case the court shall fix the time of hearing and shall order notice thereof to

all parties interested, by publication in some newspaper or newspapers at least 2 weeks successively and such personal service as is required in civil actions. (R. S. c. 49, § 82. 1961, c. 317, § 143.)

Effect of amendment.—The 1961 amendment rewrote this section.

Sec. 87. Court to determine value of shares and secure rights of stockholders; corporation to deposit amount of award in some bank; shares to become property of corporation. — The court or any justice thereof shall hear the parties and determine as soon as practicable the value of the stock of such dissenting stockholders; and shall make and enforce all such orders and decrees as may be necessary to secure to such stockholders all their rights. Such corporation shall, notwithstanding any appeal as hereinafter authorized, forthwith deposit the amount so awarded in some bank or trust company designated by the court, to be by it held until final judgment and paid to the parties as thereafter ordered by the court directing such deposit. Upon such deposit and upon compliance with final judgment as hereinafter provided, the shares of such stockholders shall become the property of such corporation, and the court may make and enforce such orders as may be necessary to secure its title thereto. (R. S. c. 49, § 83. 1961, c. 317, § 144.)

Effect of amendment.—The 1961 amendment formerly following “any justice thereof” deleted “in term time or in vacation” in the first sentence of this section.

Sec. 88. Either party may appeal to the law court; appellant to have lien on property of corporation.—Within 30 days after filing the decree determining such values, either party may enter an appeal therefrom to the law court as in civil actions in which equitable relief is sought. If a stockholder is an appellant, he shall have a lien upon all the property of the corporation until 30 days after judgment on appeal for the amount of his award. Such lien shall have precedence over any mortgages or leases made after any vote of sale, lease or consolidation. All such liens may be released upon filing with the court a bond in such amount and with such sureties as the court may approve. Two or more stockholders may join in the same appeal. (R. S. c. 49, § 84. 1951, c. 170. 1961, c. 317, § 145.)

Effect of amendment.—The 1961 amendment deleted “as aforesaid” formerly following “such values” and substituted “civil actions in which equitable relief is sought” for “the case of ordinary bills in equity” in the first sentence of this section.

Dissolution of Corporations.

Sec. 104. Judgment of dissolution and injunction against continuing business.—Whenever

I. It is made to appear in a civil action brought by any creditor or stockholder, that

A. A corporation is insolvent or is in imminent danger of insolvency, or

B. Through fraud, neglect, gross mismanagement of its affairs, attachment, litigation or otherwise, its estate and effects are in danger of being wasted or lost, or

C. It has ceased to do business, or

D. Its charter has expired or been forfeited, or

II. It is made to appear in a civil action brought by any stockholder of a corporation organized under the general laws and having no more than 10 stockholders that, notwithstanding the fact that the corporation is solvent or earning profits in the conduct of its business,

A. The voting stockholders are evenly divided into 2 independent ownerships, interests or factions, and the number of directors is even and equally divided respecting the management of the corporation with $\frac{1}{2}$ of the stock-

holders favoring the course advocated by $\frac{1}{2}$ of the directors and the other $\frac{1}{2}$ of the stockholders favoring the course of the other $\frac{1}{2}$ of the directors, or

B. The number of directors is uneven, but the 2 factions of the ownership are unable to agree on or elect successor directors and the old directors are holding over, or

C. The corporation is otherwise deadlocked in its management, the court may, if equity so requires, enter judgment dissolving the corporation. The action shall be brought in the county in which the corporation has an established place of business or in which it held its last stockholders' meeting. At any time during the pendency of the action and in aid of judgment the court may, if it finds that sufficient cause exists, issue injunctions and restraining orders, both temporary and permanent, restraining said corporation, its officers and agents from receiving any moneys, paying any debts, selling or transferring any assets of the corporation or exercising any of its privileges or franchises until further order. (R. S. c. 49, § 100. 1961, c. 317, § 146; c. 329.)

Effect of amendments.—Chapter 329, P. L. 1961, rewrote this section without giving any recognition or effect to chapter 317, P. L. 1961, which had substituted "complaint seeking equitable relief filed in the superior court" for "bill in equity filed in the supreme judicial court or the superior court", substituted "request" for

"bill", substituted "by such court, the court may" for "by any justice of either of such courts, in term time or vacation, either of such courts may", and substituted "preliminary" for "temporary". The section is set out as it appears in chapter 329, P. L. 1961.

Sec. 105. Receivers; attachments dissolved; distribution of assets; priorities.—At the time of ordering any such injunction or at any time afterwards during its continuance, such court may also appoint one or more receivers to wind up the affairs of the company, who shall be duly sworn, and give bond in such sum and upon such conditions as such court shall determine and shall at all times be subject to the direction and control of the court, which may at any time remove said receiver and appoint another in his place. All attachments, made within 4 months before the filing of any such complaint seeking equitable relief wherein a receiver is so appointed, shall thereupon be dissolved. The distribution of the assets of any insolvent corporation shall be subject to the same priorities of indebtedness as specified in the National Bankruptcy Act of 1898 and amendments thereof. (R. S. c. 49, § 101. 1961, c. 317, § 147.)

Effect of amendment.—The 1961 amendment substituted "complaint seeking equitable relief" for "bill in equity" in the second sentence of this section.

Sec. 106. Authority of receiver; to report to court. — Such receiver shall have power to institute or defend actions in his own name as receiver, to demand, collect and receive all property and assets of said corporation, to sell, transfer or otherwise convert the same into cash and to conduct and carry on the business of said corporation, as ordered by the court, if it appears for the best interests of all concerned. He shall report to the court at least as often as every 6 months a statement of all the assets and liabilities of said corporation, and from time to time shall distribute the assets of said corporation as provided in section 110. (R. S. c. 49, § 102. 1961, c. 317, § 148.)

Effect of amendment.—The 1961 amendment substituted "actions" for "suits at law or in equity" near the beginning of the first sentence of this section.

Sec. 109. Jurisdiction.—The court shall have jurisdiction of all proceedings hereunder and may make such orders and decrees as equity may require. (R. S. c. 49, § 105. 1961, c. 317, § 149.)

Effect of amendment.—The 1961 amendment deleted "in equity" formerly following "jurisdiction" in this section.

Sec. 111. Equitable relief against corporations for dissolution; if no liabilities, dissolution had without trustees.—Except where otherwise provided by statute, whenever at any meeting of its stockholders, legally called therefor, such stockholders vote to dissolve such corporations, a complaint seeking equitable relief against the same for dissolution thereof may be filed by any officer, stockholder or creditor in the superior court in the county in which it has an established place of business or in which it held its last stockholders meeting. Upon said action, notice shall be given by the clerk of courts to the attorney general and such notice shall be given to others as may be ordered by any justice of said court, and upon proof thereof, such proceedings may be had according to the usual course of civil actions in which equitable relief is sought that said corporation shall be dissolved and terminated. Upon proof that there are no existing liabilities against said corporation and no existing assets thereof requiring distribution among the stockholders, said court may dissolve said corporation without the appointment of trustees or receivers. (R. S. c. 49, § 107. 1961, c. 317, § 150.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences and re-wrote the same.

Sec. 112. Jurisdiction of court; court may superintend collection and distribution of assets; fees; disposal of assets.—Said courts have jurisdiction in said cause to appoint receivers, issue injunctions and pass interlocutory decrees and orders according to the usual course of civil actions in which equitable relief is sought; and shall upon dissolving said corporation or upon terminating its charter, appoint one or more trustees, who shall have all the powers conferred upon similar trustees by sections 103, 110 and 124 or by any other law of the state, with such special powers as may be given them by said court. Notwithstanding the appointment of such trustees, said court may superintend the collection and distribution of the assets of said corporation and may retain said action for that purpose.

The court may from time to time allow the trustee or trustees such fees and expenses as it may deem sufficient, said fees and expenses to be paid from the assets in the hands of the trustee or trustees then held for distribution to the stockholders. Subsequent distribution to stockholders shall be reduced proportionately. Whenever the stockholders are unknown, or fail or refuse to accept their distribution or their whereabouts cannot be ascertained by reasonable diligence, said trustee or trustees may file a petition with the court setting forth the names of the stockholders, their last known addresses and the number of shares held by said stockholders. The court may thereupon order the trustee or trustees, after payment of all their expenses and fees, to pay over the funds in their hands distributable to said stockholders to the treasurer of state, together with a statement giving the names of such stockholders, the number of shares held thereby, the amount due each, the same to be held in trust for a period of 20 years for payment to the person or persons establishing a legal right thereto. Any claimant to said funds shall make application within said 20-year period to any justice of the supreme judicial court or the superior court who, if satisfied as to the claimant's legal right to the fund, shall issue an order under the seal of the court directing the treasurer of state to pay said fund to the claimant and said fund shall be paid as directed. At the end of said 20-year period, any funds remaining in the state treasury shall escheat to the state. Any income earned on such funds shall be paid into the general fund as compensation for administration. (R. S. c. 49, § 108. 1951, c. 368. 1959, c. 51. 1961, c. 317, § 151.)

Effect of amendments. — The 1959 amendment added the last sentence at the end of this section. The 1961 amendment divided the first paragraph of this section, which formerly consisted of one sentence, into two sentences; substituted "civil actions in which equitable relief is sought" for "proceed-

ings in equity" in the present first sentence of such paragraph; substituted "action" for "bill" in the present second sen-

tence of such paragraph; and made other minor changes in the section.

Sec. 115. Judgment creditor may file request for equitable relief.— When such a corporation has unlawfully made a division of any of its property, or has property which cannot be attached or is not by law attachable, any judgment creditor may file a complaint seeking equitable relief in the superior court, setting forth the facts and the names of such persons as are alleged to have possession of any of such property or choses in action, either before or after division. Names of defendants may be struck out or added by leave of court; costs awarded at discretion and service made on the defendants named, as in other civil actions in which equitable relief is sought. They shall, in answer thereto, disclose on oath all facts within their knowledge relating to such property in their hands or received by a division among stockholders. When either of them has the custody of the records of the corporation, he shall produce them and make extracts therefrom and annex them to his answer, as the court directs. (R. S. c. 49, § 111. 1961, c. 317, § 152.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences, substituted "complaint seeking equitable relief in the superior court" for "bill in equity in the

supreme judicial court or the superior court" in the present first sentence, and substituted "civil actions in which equitable relief is sought" for "equity suits" at the end of the present second sentence.

Sec. 116. Proceedings, trial and decree in the action. — The court shall determine, with or without a jury, whether the allegations in the complaint are sustained, and it may decree that any such property shall be paid to such creditor in satisfaction of his judgment and cause such decree to be enforced as in civil actions in which equitable relief is sought. Any question arising may, at the election of either party, be submitted to the decision of a jury under the direction of the court. (R. S. c. 49, § 112. 1961, c. 317, § 153.)

Effect of amendment.—The 1961 amendment substituted "complaint" for "bill" and substituted "civil actions in which

equitable relief is sought" for "other chancery cases" in the first sentence of this section.

Liability of Stockholders.

Sec. 124. Proceedings by action; stockholder not liable unless debt was contracted during ownership of stock, nor for mortgage debt. — Any person having such judgment or any such trustees, receivers or other persons appointed to close up the affairs of an insolvent corporation may, within 2 years after their right of action herein given accrues, commence a civil action without demand or other previous formalities, against any persons, who have subscribed for or agreed to take stock in said corporation and have not paid for the same; or who have received dividends declared from the capital stock or in violation of law; or who have withdrawn any portion of the capital stock, or canceled and surrendered any of their stock and received any valuable consideration therefor from the corporation, except its own stock or obligation therefor; or who have transferred any of their stock to the corporation as collateral security or otherwise and received any valuable consideration therefor. In such action they may recover the amount of the capital stock so remaining unpaid or withdrawn, not exceeding the amounts of said judgments or the deficiency of the assets of such insolvent corporation. No stockholder is liable for the debts of the corporation not contracted during his ownership of such unpaid stock, nor for any mortgage debt of said corporation. No action for the recovery of the amounts mentioned shall be maintained against a stockholder unless proceedings to obtain judgment against the corporation are commenced during the ownership of such stock or within one year after its transfer by such stockholder is recorded on the corporation books. (R. S. c. 49, § 120. 1961, c. 317, § 154.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into two sentences and divided the former last sentence of this section into two sentences. It also substituted “a civil action” for “an action on the case or

bill in equity” and deleted “if a bill in equity jointly or severally, otherwise severally” formerly following “against any persons” in the first sentence thereof and made other minor changes in the section.

Sec. 125. Evidence in defense.—A defendant in such action may prove that he has already in good faith paid, by himself or through another person who has assumed his stock or subscription, to any person holding a bona fide judgment, or to any such trustee or receiver, or other person authorized to receive it, or to the corporation itself, the whole or any part of any amounts for which he would be liable under this chapter; or that he has already in good faith and without collusion been sued for and is still in peril of being compelled to pay such amounts in whole or in part to some other person, in which latter case the action may be continued to await, on payment of defendant’s costs from term to term; or he may prove that the amounts illegally received by him from said corporation were received more than 2 years before the claim arose on which such judgment was obtained, or if the action is by trustees, receivers or other such person, more than 2 years before the commencement of the legal proceeding by virtue of which such corporation passed into the hands of trustees or receivers; or he may prove the invalidity of such judgment in any particular by which the corporation could have relief from the judgment or that said judgment was not bona fide; or he may prove that he has bona fide claims in contract or tort, several or joint with other persons against said corporation, absolute or contingent, or which could be asserted by counterclaim in court or on execution for the whole or any part of the amounts for which he would be liable under this chapter; or in case his stock was transferred to such corporation as collateral security or as payment, he may either prove that the same was so transferred in good faith as security or payment for or of, an anterior liability incurred without any concurrent agreement for the transfer of such stock and for which the corporation was unable to obtain other sufficient security or payment, or in such case he may prove that whatever sum was received thereon, has been in whole or part repaid to such corporation; and proof of any of such matters is a full or partial defense for such defendant. (R. S. c. 49, § 121. 1961, c. 317, § 155.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in three places in this section, substituted “by which the corporation could have relief from the judgment” for “which could avail

the corporation on a writ of error” near the middle of such section, substituted “asserted by counterclaim” for “availed of by setoff” below the middle of such section, and made other minor changes therein.

Sec. 126. Stockholders, paying for corporation, may recover contribution.—When members of a corporation are liable for its debts, or for any acts of its officers or members, or to contribute for money paid on account of such debts or acts, the amount due may be recovered of such corporation in a civil action. The court may make all necessary orders and decrees. (R. S. c. 49, § 122. 1961, c. 317, § 156.)

Effect of amendment.—The 1961 amendment divided this section, which formerly consisted of one sentence, into two sen-

tences and substituted “in a civil action” for “by an action at law or a bill in equity” at the end of the present first sentence.

Foreign Corporations.

Sec. 127. Foreign corporations, before doing business in the state to appoint an attorney; power of attorney and copy of vote filed; service of process.

Any foreign corporation which does business in this state without appointing an agent as required by this section shall be deemed to have appointed the sec-

retary of state, or his successor in office, to be his true and lawful attorney upon whom may be served all lawful processes in any action or proceeding against such corporation, arising as a result of such corporation doing business in this state and such service shall be of the same legal force and validity as if otherwise served on such corporation.

Service of such process shall be made by leaving a copy thereof with a fee of \$2 in the hands of the secretary of state, or in his office, and such service shall be sufficient service upon such foreign corporation: provided that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff to the defendant corporation, and the defendant corporation's return receipt and the plaintiff's affidavit of compliance herewith are appended to writ and are filed with the clerk of courts in which the action is pending, or that such notice and copy are served upon an officer of such foreign corporation if found within the state, by an officer duly qualified to serve legal process, or, if found without the state, by any duly constituted public officer qualified to serve like process in the state or jurisdiction where such officer is found, and the officer's return showing such service to have been made is filed in the case on or before the return day of the process or within such further time as the court may allow. The court in which the action is pending may order such continuance as may be necessary to afford the defendant corporation reasonable opportunity to defend the action. (R. S. c. 49, § 123. 1949, c. 5. 1955, c. 24.)

Effect of amendment.—The 1955 amendment added the above two paragraphs at the end of this section. As the two original paragraphs of the section were not changed by the amendment, they are not set out.

Sec. 129. Secretary of state may refuse to file papers or accept appointment as attorney; charter containing purposes not permitted domestic corporations.

When a foreign corporation otherwise qualifies under the laws of this state, but its charter contains purposes in conflict with the purposes permitted domestic corporations under the laws of this state, the secretary of state shall accept or file certificates or other papers of such foreign corporation pursuant to section 128, if such foreign corporation files therewith a copy of a vote of either its stockholders or board of directors duly certified by the officer having charge of the original record, that such purposes in conflict with the laws of this state shall not be exercised by the foreign corporation in the course of doing business within this state, and that such foreign corporation so admitted or qualified shall not thereafter transact in this state any business which a corporation organized under the laws of this state is not permitted to transact. (R. S. c. 49, § 125. 1961, c. 12, § 1.)

Effect of amendment.—The 1961 amendment added the above paragraph at the end of the section. As the first paragraph of the section was not affected by the amendment, it is not set out.

Sec. 132. Violation of sections 129 and 131; failure to pay license fee; revocation of license.—The secretary of state, upon the failure of any such foreign corporation to file the certificate required by section 131 within the calendar year or to pay the annual license fee, or upon the violation of section 129, shall revoke the license of such corporation to do business in the state and shall forthwith notify such corporation of such revocation. (R. S. c. 49, § 128. 1961, c. 12, § 2.)

Effect of amendment.—The 1961 amendment added "or upon the violation of section 129".

Sec. 133. Liability of officers.—The officers of such foreign corporations shall be jointly and severally liable for all the debts and contracts of the corporation contracted or entered into while they are officers thereof, if any statement or

report required by the provisions of the 6 preceding sections, made by them, is false in any material representation and known to them to be false; but only the officers who sign such statement or report shall be so liable. (R. S. c. 49, § 129. 1955, c. 405, § 34.)

Effect of amendment.—The 1955 amendment deleted the word “and” before the word “if” in line three.

Sec. 135-A. Fees to foreign charitable corporations.—Foreign charitable corporations shall be exempt from the payment of any fees payable by foreign corporations to the secretary of state. (1955, c. 224.)

Miscellaneous Provisions.

Sec. 136. Repealed by Public Laws 1957, c. 405, § 7.

Cross references.—For present provisions with regard to debt liability of residents of municipalities, see c. 90-A, § 23, and for debt liability of residents of counties, see c. 89, § 31-A.

Sec. 137. Issue of bonds payable by installments.—Any corporation organized under the laws of this state, having occasion to issue bonds, may make them payable in installments of uniform or increasing amounts extending over a period not exceeding 50 years. Provisions shall be made for the payment of not less than 1% of the whole issue each year and, in case the time of payment extends over a period of 50 years, the installments shall cover the whole issue. In case the time of payment extends over a period of less than 50 years, a portion of the issue greater than the regular installment may be made payable at the end of the period. Limitations upon the time for which bonds may be issued are modified in accordance herewith. This section shall not be construed to prevent any corporation organized under the laws of this state from issuing bonds and making them payable in the same manner as it might do, if this section were not enacted. No bonds issued prior to the 3rd day of July, 1909, if valid in other respects, shall be deemed invalid on account of any failure to comply with the provisions of this section. (R. S. c. 49, § 133. 1957, c. 405, § 8.)

Effect of amendment.—The 1957 amendment deleted the former references in this section to “county, city, town or water district” and made other minor changes.

Chapter 54.

Corporations without Capital Stock.

Chapter cited in *Thirkell v. Johnson*, 150 Me. 131, 107 A. (2d) 489.

Organization. Powers. General Provisions.

Sec. 1. Organization.—When 7 or more persons desire to be incorporated as proprietors of a social, military, literary, scientific or county law library; as a masonic lodge or chapter of any order or degree; as a masonic association consisting of members of different orders or degrees; as a lodge of the independent order of odd fellows; as a lodge of the knights of Pythias; as a tribe of the improved order of redmen; as a division of the sons of temperance; as a tent of the rechabites; as a grange of patrons of husbandry; as a council of the sovereigns of industry; as a lodge of the benevolent and protective order of elks; as a grand army post; as an American legion post; as a veterans of foreign wars post; as a council of the boy scouts of America; as a relief or benefit association for mutual assistance; as a cemetery association; as a monument or memorial association;