

# MAINE STATE LEGISLATURE

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REVISED STATUTES  
OF THE  
STATE OF MAINE  
1954

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1963 CUMULATIVE SUPPLEMENT

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ANNOTATED

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IN FIVE VOLUMES

VOLUME 2

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**Discard Previous Supplement**

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THE MICHIE COMPANY  
CHARLOTTESVILLE, VIRGINIA  
1963

## 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 Acts of incorporation altered or repealed.

Legislature reserves power, etc. 659.

In accord with original. See *East Boothbay Water Dist. v. Inhabitants of Town of Boothbay Harbor*, 158 Me. 32, 177 A. (2d) 136 A. (2d) 699. 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 added the last paragraph to this section. 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 one mill per share but not less than the following on all shares authorized without par value:

\$25	if the number of shares does not exceed 5,000 shares
\$50	if the number of shares exceeds 5,000 but does not exceed 50,000 shares
\$100	if the number of shares exceeds 50,000 but does not exceed 100,000 shares

\$250 if the number of shares exceeds 100,000 but does not exceed 250,000 shares

\$500 if the number of shares exceeds 250,000 but does not exceed 500,000 shares

\$750 if the number of shares exceeds 500,000 but does not exceed 750,000 shares

\$1,250 if the number of shares exceeds 750,000 but does not exceed 1,250,000 shares

\$500 additional for each 500,000 shares, or any part thereof, in excess of 1,250,000 shares. (R. S. c. 49, § 11. 1961, c. 395, § 27. 1963, c. 104.)

**Effect of amendments.** — The 1961 amendment, which became effective upon its approval, June 17, 1961, deleted "street railroad companies" following "gas light companies." Prior to the 1963 amendment the fee on all shares authorized without par value was 1¢ per share and in no case less than \$10.00.

### 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.

**Sec. 24. Right of indemnification.**—The certificate of incorporation of a corporation or other certificate filed pursuant to law or the by-laws of a corporation or a resolution in a specific case or an amendment to any of the foregoing, adopted by the vote of the holders of record of a majority of the outstanding shares at the time entitled to vote for the election of directors, or in case of a nonstock corporation, by a vote of a majority of the members, may provide that each officer and each director of the corporation shall be indemnified by the corporation against expenses actually and necessarily incurred by him in connection with the defense of any action or proceeding in which he is made a party by reason of his being or having been an officer or a director of the corporation, except in relation to matters as to which he shall be adjudged in such action or proceeding to be liable for negligence or misconduct in the performance of his duties as such officer or director. Such right of indemnification shall not be deemed exclusive of any other rights to which he may be entitled under any by-law, agreement, vote of stockholders or otherwise. (R. S. c. 49, § 23. 1963, c. 414, § 29.)

**Effect of amendment.**—The 1963 amendment divided this section into two sentences and deleted the word "suit" twice following the word "action" in the present first sentence.

### 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 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; c. 417, § 135.)

**Effect of amendments.** — The 1961 and 1961 amendment deleted “the supreme amendment deleted “in equity” formerly judicial court and” preceding “the superior following “jurisdiction” near the middle of court” near the middle of the first sentence of this section. The sec-

**Sec. 34. Clerk's office, books, etc.; inspection of and copying records and list of stockholders.**—All corporations existing by virtue of the laws of this state shall have a clerk who is a resident of this state and shall keep, at some fixed place within the state, a clerk's office where shall be kept records of all stockholders' meetings; and such corporations shall file with said clerk, at least once a year on the date set for holding the annual meeting of stockholders, as also at each special meeting of stockholders, a record showing a true and complete list of all stockholders, their residences and the amount of stock held by each; and such record or a duly proved copy thereof shall be competent evidence in any court of this state to prove who are stockholders in such corporation and the amount of stock held by each stockholder. Such records and list of stockholders shall be open at all reasonable hours to the inspection of any person who is and shall have been a stockholder of record in such corporation for at least 6 months immediately preceding his demand, or who is the actual owner, free from encumbrance, of 5% of all the outstanding shares of the corporation, provided such person shall certify in writing to the clerk that such inspection shall not be for the purpose of communicating with stockholders in the interest of a business or object other than the business of the corporation, and that such stockholder or other holder has not within 5 years sold or offered for sale any list of stockholders of such corporation or any other corporation, or aided or abetted any person in procuring any stock list for such purpose; and provided that any of the foregoing requirements may be waived by vote of the directors of the corporation; and such person may take copies and minutes therefrom of such parts as concern their interests and have them produced in court on trial of an action in which such person is interested. The above provisions as to list of stockholders shall not apply to any corporation doing business in this state and having a treasurer's office at some fixed place in the state where a stockbook is kept giving the names, residences and amount of stock of each stockholder. (R. S. c. 49, § 33. 1963, c. 143.)

**Effect of amendment.**—The 1963 amendment rewrote the second sentence of this section, relating to the inspection and copying of records and list of stockholders.

**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.

**Sec. 44. Discontinuance of action.**—If within 30 days from the commencement of an action under section 43 such corporation makes to the secretary of state the returns required by law, he shall forthwith notify the attorney general, who shall discontinue such action upon payment of the costs already accrued. (R. S. c. 49, § 42. 1963, c. 414, § 30.)

**Effect of amendment.**—The 1963 amendment substituted “action” for “suit” near the end of this section.

### Transfer of Shares of Stock Issued Prior to July 9, 1943.

**Secs. 48, 49.** Repealed by Public Laws 1963, c. 362, § 5.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

**Sec. 50. Issuance of certificates of shares.**—Every shareholder shall be entitled to a share certificate or certificates representing the shares owned by him. The share certificates shall be signed by such officer or officers as the by-laws of the corporation may provide and sealed with the corporate seal, which may be a facsimile, engraved or printed, but where any such certificate is signed by a transfer agent or by a transfer clerk or by a registrar, the signature of any corporate officer upon such certificate may be a facsimile, engraved or printed. In case any officer who has signed, or whose facsimile signature has been placed upon any share certificate, shall have ceased to be such officer because of death, resignation or otherwise before the certificate is issued, it may be issued by the corporation with the same effect as if the officer had not ceased to be such at the time of its issue. (R. S. c. 49, § 48. 1963, c. 39; c. 362, § 6.)

**Effect of amendments.**—The first 1963 31, 1964, again rewrote the section to read amendment rewrote this section. The second 1963 amendment, effective December as rewritten by the first 1963 amendment.

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

**Secs. 51-63.** Repealed by Public Laws 1963, c. 362, § 7.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

**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.

**Repeal of section.**—Section 7, c. 362, P. L. 1963, repealed §§ 51-72, effective December 31, 1964.



**Secs. 65-72.** Repealed by Public Laws 1963, c. 362, § 7.

**Effective date.**—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

### **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 fiduciary 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. Law of jurisdiction where corporation organized.** 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 or, in the case of a national bank, by the laws of the state in which the bank has its principal place of business.

**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. 1963, c. 362, § 8.)

**Effect of amendment.**—The 1963 amendment, effective December 31, 1964, added laws of the state in which the bank has its principal place of business” at the end of “or, in the case of a national bank, by the subsection I.

**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; provisions to control.**—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. If in any respect there is any inconsistency between sections 72-A to 72-K and the Revised Statutes, chapter 190, article 8, the provisions of sections 72-A to 72-K shall control. (1959, c. 244, § 1. 1963, c. 362, § 9.)

**Effect of amendment.**—The 1963 amendment, effective December 31, 1964, added the second sentence.

**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, repealing sections 73 and 74, provided in section 3 thereof as follows: “This act shall take effect January 1, 1960.”

**Changes in Charter or Certificate of Organization.**

**Sec. 75. Increase in capital stock; change of purposes or number of directors; fees; changes in certificate of organization.** — The stockholders of any corporation may, at any meeting, the call for which shall give notice of the proposed action, by a vote representing a majority of the voting power, except as otherwise provided, increase or decrease its authorized capital stock, change the number or par value of its shares or their classifications, change shares with par value into an equal or different number of shares without par value or shares without par value into an equal or different number either with or without par value, change the number of its directors and, if not specially

chartered, change its purposes by altering, abridging or enlarging the same or make any other change or alteration in its certificate of organization as originally filed or subsequently amended that may be desired, provided such change or alteration is not otherwise specifically provided for and would be proper to insert in an original certificate of organization. The corporation shall file within 20 days thereafter, a certificate setting forth such changes with the secretary of state, who shall duly record the same and thereupon said changes shall take effect. Every certificate of change of purposes shall be submitted to the Attorney General for examination and shall not be filed until it has been certified by him to be properly drawn and signed and to be conformable to the Constitution and laws and that he is satisfied that such change of purposes is made in good faith and not for the purpose of avoiding payment of fees or taxes to the State.

(1963, c. 3.)

**Effect of amendment.**—The 1963 amendment divided the first paragraph into three sentences, deleted “herein” following “except as” near the beginning of the first sentence, inserted “within 20 days thereafter” following “shall file” near the beginning of the present second sentence,

and deleted “within 20 days thereafter” following “record the same” in such sentence.

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

### **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 corporation 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 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; c. 417, § 136.)

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

tion. The second 1961 amendment deleted “or any justice thereof” following “court” near the beginning of the first sentence.

**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.

**Sec. 90. Stockholders to deposit in court certificates of shares; transfers subject to final decree.**—Every stockholder appearing in answer to, or filing any complaint by himself, guardian or other legal representative shall, simultaneously therewith or within such time as the court may allow, deposit in court his certificate of shares duly indorsed to the corporation of which he is a shareholder, or some other sufficient transfer thereof, which shall there remain subject to the order of the court. All attachments and transfers of such shares shall be subject to the final decrees in such proceeding; and any such attaching creditor or transferee shall be allowed to become a party to the proceedings to protect his interests; and if such person, so claiming under such transfer or attachment, omits or fails to intervene in such proceedings, his omission as a party shall not bar or impair the proceedings. (R. S. c. 49, § 86. 1963, c. 414, § 31.)

**Effect of amendment.**—The 1963 amendment substituted “complaint” for “petition” near the beginning of the first sentence.

**Sec. 91. If corporation fails to pay amount decreed, rights of stockholder; lien of dissenting stockholder.**—If none of the corporations interested in such complaint shall pay or deposit the amount as ascertained and decreed with interest thereon, within such time as the court shall order, any stockholder entitled to such amount may at his option take judgment and execution therefor, with interest and costs, against such corporation or withdraw his stock. After such withdrawal or if said execution is returned unsatisfied within 30 days after judgment, the owner of such shares shall retain all the rights of a dissenting stockholder as though no proceeding had taken place. All stockholders entitled to a remedy hereunder shall have a lien upon the property of the corporations in which they are stockholders which shall take precedence of all mortgages or leases of any kind made after any vote of sale, lease or consolidation. Such liens may be released as provided in section 88. (R. S. c. 49, § 87. 1963, c. 414, § 32.)

**Effect of amendment.**—The 1963 amendment divided the first sentence into two sentences, substituted “complaint” for “petition” near the beginning of the present

first sentence, deleted “herein” preceding “ascertained” in such sentence, and deleted “aforesaid” at the end of such sentence.

**Sec. 92. Court may hear and determine complaints; make orders for enforcement of rights of all parties.**—The superior court may hear and determine said complaints and make all orders for giving notice to nonresident

parties, and taking action with reference to them for the enforcement of the rights of any party to the proceedings, for the consolidation of 2 or more complaints, for the payment of interest on the adjudged value of the shares, for the payment of dividends pending the proceedings, for interest upon the deposit for the distribution of costs between the parties and for enforcing its orders and decrees as are consistent with the principles of equity practice and as the convenient and speedy settlement of the controversy may require. (R. S. c. 49, § 88. 1963, c. 414, § 33.)

**Effect of amendment.**—The 1963 amendment substituted “superior court may” for “supreme judicial court, or the superior court or any justice thereof may in term time or vacation” near the beginning of

this section, substituted “complaints” for “petitions” near the middle of the section, and deleted “aforesaid” formerly following “deposit.”

**Sec. 93. If complaint fails for any matter of form, new complaint filed.**—If any complaint shall fail for any matter of form, any party interested therein may file a new complaint within 2 months thereafter. No complaint shall be abated by the death of any party, but may thereupon be summarily revived by suggestion and amendment. (R. S. c. 49, § 89. 1963, c. 414, § 34.)

**Effect of amendment.**—The 1963 amendment substituted “complaint” for “petition” three times in this section.

**Sec. 95. Proceedings for valuing stock under the laws of other states bar to any under this chapter.**—If either of the corporations interested has consolidated its stock with corporations created by any other state or states, or the stock therein is held by virtue of concurrent legislation of one or more states and proceedings have been commenced for valuing the stock and paying the value thereof in any state having jurisdiction, such proceedings shall, while pending, be a bar to any under this chapter. If such proceedings in any other state shall fail for any reason not touching the merits, a complaint may be filed as provided within 2 months thereafter. (R. S. c. 49, § 91. 1963, c. 414, § 35.)

**Effect of amendment.**—The 1963 amendment divided this section into two sentences, substituted “complaint” for “peti-

tion” in the present second sentence, and deleted “herein” formerly preceding “provided” in such sentence.

### Corporate Contracts and Liabilities.

**Sec. 100. Officer, having an execution, may elect to take debts due to corporation; proceedings.** — An officer, having an execution against a manufacturing corporation and unable to find property liable to seizure, or the creditor may elect to satisfy it in whole or in part by a debt due to the corporation not exceeding the amount due to the creditor. The person having custody of the evidence of such debt shall deliver it to such officer with a written transfer thereof to him for the use of the creditor, which shall constitute an assignment thereof, and the creditor, in the name of the corporation, may sue for and collect it, subject to any equitable counterclaim by the debtor. (R. S. 49, c. 96. 1963, c. 414, § 36.)

**Effect of amendment.**—The 1963 amendment divided this section into two sentences and substituted “counterclaim” for

“setoff” near the end of the present second sentence.

### Dissolution of Corporations.

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

**I. Judgment of dissolution.** The superior court may, if equity so requires, enter judgment dissolving a corporation:



**A.** Whenever it is made to appear in a civil action brought by any creditor or stockholder, that

1. The corporation is insolvent or is in imminent danger of insolvency, or
2. 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
3. It has ceased to do business, or
4. Its charter has expired or been forfeited, or

**B.** Whenever 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,

1. The voting stock is 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 favoring the course advocated by  $\frac{1}{2}$  of the directors and the other  $\frac{1}{2}$  of the stock favoring the course of the other  $\frac{1}{2}$  of the directors, or
2. 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
3. The corporation is otherwise deadlocked in its management.

**II. Where action brought; injunctions and restraining orders.** 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 preliminary and permanent injunctions and temporary restraining orders, 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 franchising until further order. (R. S. c. 49, § 100. 1961, c. 317, § 146; c. 329; c. 417, § 137.)

**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". Chapter 417, P. L. 1961, which referred to both prior 1961 amendments, again rewrote this section. The section is set out as it appears in c. 417, P. L. 1961.

**Sec. 105. Receivers; attachments dissolved; distribution of assets; priorities.**—At any time during the pendency of the action authorized by section 104 or in aid of any judgment entered in the action, the court may appoint one or more receivers to wind up the affairs of the corporation, who shall be duly sworn, and give bond in such sum and upon such conditions as the court shall determine and shall at all times be subject to the direction and control of the court, which may at any time remove any such receiver and appoint another in his place. All attachments, made within 4 months before the commencement of any action under section 104, subsection I, paragraph A, 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. 1961, c. 417, § 138.)

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

ond 1961 amendment substituted "any time during the pendency of the action authorized by section 104 or in aid of any judgment entered in the action, the" for "the time of ordering any such injunction or at any time afterwards during its continuance, such" near the beginning of the first sentence, substituted "corporation" for

"company" in such sentence, substituted "commencement of any action under section 104, subsection I, paragraph A" for "filing of any such complaint seeking equitable relief wherein a receiver is so appointed" in the second sentence, and made other minor changes.

**Sec. 106. Authority of receiver; to report to court.**—A receiver appointed under section 105 shall have power to institute or defend any action 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; c. 417, § 139.)

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

receiver appointed under section 105" for "Such receiver" at the beginning of this section and also substituted "any action" for "actions" in the first sentence.

**Sec. 107. Presentation of claims.**—In any action under section 104, subsection I, paragraph A, the court shall limit a time, not less than 4 months, of which order notice shall be given, within which all claims against said corporation shall be presented, and make such further orders for the manner of hearing and proving such claims as may be just and proper. (R. S. c. 49, § 103. 1961, c. 417, § 140.)

**Effect of amendment.**—The 1961 amendment substituted "In any action under section 104, subsection I, paragraph A" for "Whenever a receiver is appointed as above" at the beginning of this section,

substituted "order" for "decree," substituted "further orders" for "order," and substituted "such claims" for "the same" near the end of this section.

**Sec. 108. Sale of property and franchises; receiver may accept claims in payment.**—In any action under section 104, the court may in its discretion, in lieu of entering judgment dissolving the corporation, order the sale of its property and franchises. The purchaser thereof shall succeed to all the rights and privileges of such corporation and may reorganize the same under the direction of the court. At any sale of such property at public auction, the court may, in its discretion, authorize payment in the form of credit for duly allowed claims against such corporation, at a proper valuation. (R. S. c. 49, § 104. 1961, c. 417, § 141.)

**Effect of amendment.**—The 1961 amendment divided the first sentence into two sentences, rewrote the present first sentence, deleted "the receiver to accept in"

preceding "payment" in the present third sentence, and inserted "in the form of credit for" following "payment" in such sentence.

**Sec. 109. Jurisdiction.**—In any action under section 104, the court may make such orders and decrees as equity may require. (R. S. c. 49, § 105. 1961, c. 317, § 149; c. 417, § 142.)

**Effect of amendments.**—The first 1961 amendment deleted "in equity" formerly following "jurisdiction" in this section. The second 1961 amendment substituted

"In any action under section 104, the court" for "The court shall have jurisdiction of all proceedings hereunder and" at the beginning of this section.

**Sec. 110. Distribution of assets.**—The debts of any corporation dissolved under section 104 shall be paid in full when the funds are sufficient; when not, ratably to those creditors who prove their debts as the law provides or as the court directs. Any balance remaining shall be distributed among the stockholders or their legal representatives in proportion to their interests. (R. S. c. 49, § 106. 1961, c. 417, § 143.)

**Effect of amendment.**—The 1961 amendment substituted “any corporation dissolved under section 104” for “the corporation” near the beginning of this section.

**Sec. 111. Voluntary dissolution.**—Except where otherwise provided by statute, whenever at any meeting of its stockholders, legally called therefor, the stockholders vote to dissolve such corporation, any officer, stockholder or creditor of the corporation may commence a civil action against the corporation seeking the dissolution thereof. 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. Notice of the action shall be given by the clerk of courts to the attorney general and such notice shall be given to such others as may be ordered by the court. Upon proof that there are no existing liabilities against said corporation and no existing assets thereof requiring distribution among the stockholders, the court may enter judgment dissolving the corporation without the appointment of trustees or receivers. (R. S. c. 49, § 107. 1961, c. 317, § 150; c. 417, § 144.)

**Effect of amendments.**—The first 1961 amendment divided the former first sentence into two sentences and rewrote the same. The second 1961 amendment rewrote this section.

**Sec. 112. Jurisdiction of court; court may superintend collection and distribution of assets; fees; disposal of assets.**—In any action under section 111, the court may 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 if there are existing liabilities against the corporation or there are existing assets thereof requiring distribution among the stockholders, appoint one or more trustees, who shall have all the powers conferred upon corporations and similar trustees by sections 103, 110 and 124 or by any other statute, 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 the superior court which if satisfied as to claimant’s legal right to the fund, shall issue an order 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; c. 417, § 145.)

**Effect of amendments.** — The 1959 amendment added the last sentence at the end of this section.

The first 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 "proceedings in equity" in the present first sentence of such paragraph; substituted "action" for "bill" in the present second sentence of such paragraph; and made other minor changes in the section. The second 1961 amendment substituted "In any action

under section 111, the court may" for "Said courts have jurisdiction in said cause to" at the beginning of this section, inserted "if there are existing liabilities against the corporation or there are existing assets thereof requiring distribution among the stockholders" and "corporations and" in the first sentence, substituted "statute" for "law of the state" in such sentence, deleted "any justice of the supreme judicial court or" from the fifth sentence of the second paragraph, substituted "which" for "who" in such sentence, and deleted "under the seal of the court" in such sentence.

**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 sentences 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 secretary 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.