

MAINE STATE LEGISLATURE

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Maine
REVISED STATUTES
1964

*Prepared Under the Supervision
of the
Committee on Revision of Statutes*

Being the Tenth Revision of the
Revised Statutes of the State
of Maine, 1964

Volume 2
Titles 11 to 13



Boston, Mass.
Boston Law Book Co.

Orford, N. H.
Equity Publishing Corporation

St. Paul, Minn.
West Publishing Co.

Text of Revised Statutes
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CHAPTER 7

MERGER, CONSOLIDATION, SALE OF ASSETS

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SUBCHAPTER I

PROCEDURE

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§ 241. Sale, lease or consolidation; consent of stockholders

No corporation shall 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, except with the consent of its stockholders at an annual or special meeting, the call for which shall give notice of the proposed sale, lease or consolidation. All such sales, leases and consolidations, except as otherwise provided in this subchapter, shall be subject to this chapter and to the prior lien of stockholders as therein defined. This chapter shall not apply to mortgages of corporate property, and provisions of this chapter in respect of rights of minority and dissenting stockholders shall be inapplicable to railroad corporations so long as federal law requires approval by the Interstate Commerce Commission of terms and conditions of sale, lease or other disposition of properties or consolidation or merger of corporations.

This subchapter with reference to consolidation shall neither restrict nor enlarge the provisions of Title 35, section 211.

R.S.1954, c. 53, § 84; 1957, c. 397, § 34.

§ 242. Agreement to consolidate

To effect a consolidation under section 241 and subject to this chapter any 2 or more corporations organized or to be organized under chapters 1 to 21 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 chapters 1 to 21 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 acknowledgments of deeds, to be the respective act, deed and agreement of each of said corporations.

R.S.1954, c. 53, § 84; 1955, c. 357, § 1.

§ 243. Vote on consolidation agreement

Subject to bylaws 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. 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 adop-

tion 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, 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.

R.S.1954, c. 53, § 84; 1955, c. 357, § 2.

§ 244. Notice of dissent

The notice provided for shall be given to all stockholders of record of all of the consolidating corporations, whether or not entitled to vote, but subject to any bylaw provisions with reference to closing stock books prior to stockholders' meetings. If the holder of record of any share not entitled to vote in any constituent corporation selling, leasing, consolidating or otherwise disposing of its property shall, at or prior to the taking of the vote, dissent therefrom in writing and shall at such time, or within one month from the date of such vote, file his written dissent therefrom with the president, clerk or treasurer of such corporation, then such nonvoting shares of such stockholder shall be subject to and be entitled to all of the rights granted by subchapter II in like manner as if they had been voting shares.

R.S.1954, c. 53, § 84.

§ 245. Consolidation with foreign corporation

Any one or more corporations organized or to be organized under chapters 1 to 21, or existing under the laws of this State, may consolidate with any corporation or corporations organized under the laws of any other state or states permitting such consolidation into a single corporation, which may be any one of said corporations or a new corporation formed by means of such consolidation organized under the laws of this State or those of the state of incorporation of any of the other constituent corporations as shall be specified in the agreement, by entering into an agreement prescribing the terms and conditions of the consolidation, the mode of carrying the same into effect, whether or not it shall be one of the constituent corporations or a new corporation created by such consolidation, the manner of converting the shares of each of such constituent corporations or, if the surviving corporation is to be one of the constituent corporations and outstanding shares of such surviving constituent corporation are not to be changed, the shares of each of the constituent corporations, into the shares of the corporation resulting from or surviving such consolidation, the state of incorporation of the resulting or surviving corporation and stating in such altered form as the circumstances of the case may require such other facts as are necessary to be set forth in certificates of organization or incorporation of the laws of the state governing the resulting or surviving corporation. Said agreement shall be authorized, adopted, approved, signed and acknowledged by each of said constituent corporations in accordance with the laws of the state under which it is formed, and in the case of a Maine corporation, in the manner provided. The agreement so authorized, adopted, signed and acknowledged shall be approved by the Attorney General of this State and, if the resulting or surviving corporation is a Maine corporation, it shall be recorded and filed in accordance with the law governing the consolidation of domestic corporations but if it is a foreign corporation a copy thereof shall be filed in the office of said Secretary of State. From the time of filing the copy of such agreement in the office of the Secretary of State, said agreement shall thenceforth be taken and deemed to be the agreement and act of consolidation of said constituent corporation for all purposes of the laws of this State.

R.S.1954, c. 53, § 84.

§ 246. Law governing; service of process

If the corporation resulting or surviving such consolidation is to be governed by the laws of any state other than the laws of this State, it shall agree that it may be served with process in this State in any proceeding for enforcement of any obligation of any constituent corporation of this State, including any amount determined pursuant to subchapter II, and shall irrevocably appoint the Secretary of State as its agent to accept service of process in an action for the enforcement of payment of any such obligation or any amount determined under subchapter II, and shall specify the address to which a copy of such process shall be mailed by the Secretary of State. Service of such process shall be made by personally delivering to and leaving with the Secretary of State duplicate copies of such process, with a fee of \$2. The Secretary of State shall forthwith send by registered mail one of such copies to such resulting or surviving corporation address so specified, unless such resulting or surviving corporation shall thereafter have designated in writing to the Secretary of State a different address for such purpose, in which case it shall be mailed to the last address so designated.

R.S.1954, c. 53, § 84.

§ 247. Status of new corporation

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 all of such constituent corporations except the one into which such constituent corporations shall have been consolidated shall cease. 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. All prop-

erty, 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 had been incurred or contracted by it.

R.S.1954, c. 53, § 84; 1955, c. 357, § 3.

§ 248. Change of location

If the location of the resulting or surviving corporation is not the same as that of the constituent corporation or corporations, or if the resulting or surviving corporation is a foreign corporation, then the clerk or secretary of the resulting or surviving corporation shall, within 60 days after such consolidation has become effective, file a certificate of the consolidation, setting forth the names and locations of the resulting or surviving and constituent corporations in the registry of deeds of each county in this State, other than that of the resulting or surviving corporation, where the constituent corporation may be located.

R.S.1954, c. 53, § 84.

§ 249. Definitions

“Consolidate” as used in this subchapter shall be construed to include and authorize either a merger or consolidation or both. This shall not be taken to imply that heretofore a merger could not be accomplished under this subchapter. Subchapter II shall be construed as applicable to domestic corporations only, and, notwithstanding any other provisions of this subchapter, shall not apply to the consolidation or merger of one or more wholly-owned subsidiaries into its or their parent corporation, provided the latter survives such consolidation or merger and the amount of capital stock which the latter is authorized to issue is not changed thereby. “Wholly-owned subsidiary” as used in this subchapter shall

mean a corporation all the shares of which are beneficially owned by another corporation which is herein called the "parent corporation".

R.S.1954, c. 53, § 84.

§ 250. Fees

The fee of the Attorney General for approving the agreement under this subchapter shall be \$20.

R.S.1954, c. 53, § 84.

SUBCHAPTER II

RIGHTS OF DISSENTING STOCKHOLDERS

Sec.

- 281. Filing of petition.
- 282. Failure to enter petition; prosecution by stockholder.
- 283. Valuation of shares; deposit of award; shares as corporate property.
- 284. Appeals; lien of appellant.
- 285. Assent assumed if dissent not filed; guardian for incapacitated stockholder.
- 286. Deposit of shares in court; transfers subject to final decree.
- 287. Failure to pay amount decreed; lien of dissenting stockholder.
- 288. Hearing and determination; orders for enforcement of rights.
- 289. Formal defects; new petition.
- 290. Exceptions.
- 291. Pending proceedings bar action.

§ 281. Filing of petition

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.1954, c. 53, § 85; 1961, c. 317, § 142.

§ 282. Failure to enter petition; prosecution by stockholder

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.1954, c. 53, § 86; 1961, c. 317, § 143.

§ 283. Valuation of shares; deposit of award; shares as corporate property

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 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, 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.1954, c. 53, § 87; 1961, c. 317, § 144; c. 417, § 136.

§ 284. Appeals; lien of appellant

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.1954, c. 53, § 88; 1961, c. 317, § 145.

§ 285. Assent assumed if dissent not filed; guardian for incapacitated stockholder

Any stockholder failing to file his dissent as required in section 281 shall be deemed to have assented to such vote. If it appears that any stockholder is legally incapacitated from giving such assent or waiver, the court shall appoint suitable guardians or representatives for such persons, and the case shall then be heard and determined as if such stockholders had filed their dissent as required by section 281. If the proceedings authorized are not had, then as against any stockholder who is a minor or otherwise legally incapacitated and who has no guardian, the period of one month in which to file the written dissents shall not begin to run until the removal of the incapacity by the appointment of a guardian or otherwise and actual notice of the vote of sale, lease or consolidation.

R.S.1954, c. 53, § 89.

§ 286. Deposit of shares in court; 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. Any such attaching creditor or transferee shall be allowed to become a party to the proceedings to protect his interests. 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.1954, c. 53, § 90; 1963, c. 414, § 31.

§ 287. Failure to pay amount decreed; 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 proceedings 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 284.

R.S.1954, c. 53, § 91; 1963, c. 414, § 32.

§ 288. Hearing and determination; orders for enforcement of rights

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.1954, c. 53, § 92; 1963, c. 414, § 33.

§ 289. Formal defects; new petition

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.1954, c. 53, § 93; 1963, c. 414, § 34.

§ 290. Exceptions

The proceedings authorized shall not apply to nor affect any special act relating to the rights of minority stockholders in any particular corporations enacted before the 4th day of April, 1891 nor any mortgage legally made.

R.S.1954, c. 53, § 94.

§ 291. Pending proceedings bar action

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 chapters 1 to 21. 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.1954, c. 53, § 95; 1963, c. 414, § 35.