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An Act To Update the Maine Business Corporation Act

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

Sec. 1. 13-C MRSA §102, sub-§11-A is enacted to read:

11-A. Expenses. "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

Sec. 2. 13-C MRSA §102, sub-§30-A is enacted to read:

30-A. Public corporation. "Public corporation" means a corporation that has shares listed on a national securities exchange or has a class of equity securities registered under Section 12 of the federal Securities Exchange Act of 1934, as amended.

Sec. 3. 13-C MRSA §102, sub-§32-A is enacted to read:

32-A. Qualified director. "Qualified director" is defined in this subsection.

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

(1) "Director's conflicting-interest transaction" has the same meaning as in section 871;

(2) "Material interest" means an actual or potential benefit or detriment, other than one that would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(3) "Material relationship" means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

B. "Qualified director" means a person who, at the time action is to be taken under:

(1) Section 755, does not have:

(a) A material interest in the outcome of the proceeding; or

(b) A material relationship with a person who has such an interest;

(2) Section 854 or 856:

(a) Is not a party to the proceeding;

(b) Is not a director as to whom a transaction is a director's conflicting-interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under section 881, which transaction or disclaimer is challenged in the proceeding; and

(c) Does not have a material relationship with a director described in division (a) or (b);

(3) Section 873, is not a director:

(a) As to whom the transaction is a director's conflicting-interest transaction; or

(b) Who has a material relationship with another director as to whom the transaction is a director's conflicting-interest transaction; or

(4) Section 881, would be a qualified director under subparagraph (3) if the business opportunity was a director's conflicting-interest transaction.

C. The presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

(1) Nomination or election of the director to the board by a director who is not a qualified director with respect to the matter, or by any person who has a material relationship with that director, acting alone or participating with others;

(2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter or any individual who has a material relationship with that director is or was also a director; or

(3) With respect to action to be taken under section 755, status as a named defendant, as a director against whom action is demanded or as a director who approved the conduct being challenged.

Sec. 4. 13-C MRS §104, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 104. Number of shareholders; householding

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

- A. Three or fewer co-owners;
- B. A corporation, partnership, trust, estate or other entity; and
- C. The trustees, guardians, custodians or other fiduciaries of a single trust, estate, or account.

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

3. Householding. A corporation is considered to have delivered written notice or any other report or statement under this Act, the articles of incorporation or the bylaws to all shareholders who share a common address if:

- A. The corporation delivers one copy of the notice, report or statement to the common address;
- B. The corporation addresses the notice, report or statement to those shareholders either as a group or to each of those shareholders individually or to the shareholders in a form to which each of those shareholders has consented; and
- C. Each of those shareholders consents to delivery of a single copy of such notice, report or statement to the shareholders' common address.

Consent given under paragraph C is revocable by any shareholder who delivers written notice of revocation to the corporation. If written notice of revocation is delivered, the corporation shall begin providing individual notices, reports or other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

A shareholder who fails to object by written notice to the corporation within 60 days of written notice by the corporation of its intention to send single copies of notices, reports or statements to shareholders who share a common address as permitted by paragraph A is deemed to have consented to receiving a single copy at the common address.

Sec. 5. 13-C MRSA §701, sub-§1, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

1. Annual meeting required; exceptions. AUnless directors are elected by written consent in lieu of an annual meeting as permitted by section 704, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with its bylawsthe bylaws, except that, if a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to section 730, subsection 3, directors may not be elected by less than unanimous written consent.

Sec. 6. 13-C MRSA §703, sub-§1, ¶A, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

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

Sec. 7. 13-C MRSA §704, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 704. Action without meeting

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

1-A. Permissible action by majority consent. The articles of incorporation may provide that any action required or permitted by this Act to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if consent in writing setting forth the action so taken is signed by the holders of outstanding shares having not less than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consent must bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

2. Record date. If not otherwise fixed under section 703 or 707, and if prior board action is not required regarding the action to be taken without a meeting, the record date for determining the shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection 1. Written consent is not first date on which a signed written consent is delivered to the corporation. If not otherwise fixed under section 707 and if prior board action is required regarding the action to be taken without a meeting, the record date is the close of business on the day the resolution of the board taking such prior action is adopted. Written consent is not effective to take the corporate action referred to in the consent unless, within 60 days of the earliest date appearing on which a consent delivered to the corporation in the manner as required by this section was signed, written consents signed by a sufficient number of shareholders entitled to vote onto take the action are received by have been delivered to the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to receipt by delivered to the corporation of before unrevoked written consents sufficient in number to take the corporate action are delivered to the corporation.

3. Effect of signed consent. A consent signed underpursuant to the provisions of this section has the effect of a vote taken at a meeting vote and may be described as such in any document. Unless the articles of incorporation, the bylaws or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by a sufficient number of shareholders to take the action are delivered to the corporation.

4. Notice to nonvoting shareholders. If this Act requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by unanimouswritten consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least 10 days before the action is taken. The notice must contain or be accompanied by the same material that, under this Act, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.not more than 10 days after:

- A. Written consents sufficient to take the action have been delivered to the corporation; or
- B. The date that tabulation of consents is completed pursuant to an authorization under subsection 3, as long as that date is later than that in paragraph A.

The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this Act, would have been required to be sent to nonvoting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

5. Notice of action to nonconsenting voting shareholders. If action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its nonconsenting voting shareholders written notice of the action not more than 10 days after:

- A. Written consents sufficient to take the action have been delivered to the corporation; or
- B. The date that tabulation of consents is completed pursuant to an authorization under subsection 3, as long as that date is later than that in paragraph A.

The notice must reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of this Act, would have been required to be sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

6. Effect of failure to provide notice. The notice requirements in subsections 4 and 5 may not delay the effectiveness of actions taken by written consent. A failure to comply with such notice requirements does not invalidate actions taken by written consent. This subsection may not be construed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

7. Consent by electronic transmission. An electronic transmission may be used to consent to an action if the electronic transmission contains or is accompanied by information from which the corporation can determine the date on which the electronic transmission was signed and that the electronic transmission was authorized by the shareholder, the shareholder's agent or the shareholder's attorney-in-fact.

8. Delivery of a written consent. Delivery of a written consent to the corporation's clerk or registered agent at its registered office or to the corporation at its principal office is considered delivery to the corporation for purposes of this section.

Sec. 8. 13-C MRSA §730, sub-§3, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

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

Sec. 9. 13-C MRSA §731, sub-§1, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

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

Sec. 10. 13-C MRSA §743, sub-§4, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

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

Sec. 11. 13-C MRSA §755, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 755. Dismissal

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

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

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

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

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

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

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

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

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

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

Sec. 12. 13-C MRSA §757, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 757. Payment of expenses

On termination of the derivative proceeding the court may:

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

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

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

Sec. 13. 13-C MRSA §801, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 801. Requirement; functions of board of directors

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

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

Sec. 14. 13-C MRSA §805, sub-§2, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

2. Terms of subsequent directors. The terms of all other directors expire at the next, or if their terms are staggered in accordance with section 806, at the applicable 2nd or 3rd, annual shareholders' meeting following their election ~~unless their terms are staggered under section 806.~~

Sec. 15. 13-C MRSA §807, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 807. Resignation of directors

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

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

A resignation that is conditioned upon failing to receive a specified vote for election as a director may provide that the resignation is irrevocable.

Sec. 16. 13-C MRSA §810, sub-§2, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

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

Sec. 17. 13-C MRSA §831, sub-§7 is enacted to read:

7. Disclosure. In discharging board or committee duties, a director shall disclose, or cause to be disclosed, to the other board or committee members information not already known by them but known by the director to be material to the discharge of their decision-making or oversight functions, except that disclosure is not required to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality or a professional ethics rule.

Sec. 18. 13-C MRSA §832, sub-§1, ¶A, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is repealed and the following enacted in its place:

A. A defense interposed by the director does not preclude liability if the defense is based on:

(1) Any provision in the corporation's articles of incorporation authorized by section 202, subsection 2, paragraph D;

(2) The protection afforded by section 872 for action taken in compliance with section 873 or 874; or

(3) The protection afforded by section 881; and

Sec. 19. 13-C MRSA §842, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 842. Functions of officers

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

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

Sec. 20. 13-C MRSA §843, sub-§1, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

1. Basic standard of conduct. An officer, when performing in the capacity of an officer ~~shall,~~ has the duty to act:

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

Sec. 21. 13-C MRSA §851, sub-§3, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is repealed.

Sec. 22. 13-C MRSA §851, sub-§4, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is repealed.

Sec. 23. 13-C MRSA §851, sub-§5, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

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

Sec. 24. 13-C MRSA §854, sub-§1, as amended by PL 2003, c. 344, Pt. B, §68, is further amended to read:

1. Conditions. A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse the reasonable expenses incurred ~~by a director in connection with the proceeding by an individual who is a party to a~~ the proceeding because the director is a director of that corporation that individual is a member of the board of directors, if the ~~director~~individual delivers to the corporation:

A. A written affirmation of the ~~director's~~individual's good faith belief that the ~~director~~individual has met the relevant standard of conduct described in section 852, subsection 1 or that the proceeding involves conduct for which liability has been eliminated under a provision of the corporation's articles of incorporation as authorized by section 202, subsection 2, paragraph D; and

B. The ~~director's~~individual's written undertaking to repay any funds advanced if the ~~director~~individual is not entitled to mandatory indemnification under section 853 and it is ultimately determined under section 855 or 856 that the ~~director~~individual has not met the relevant standard of conduct described in section 852.

Sec. 25. 13-C MRSA §854, sub-§3, as amended by PL 2003, c. 344, Pt. B, §68, is further amended to read:

3. Authorization process. Authorizations under this section may be made:

A. By the corporation's board of directors:

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

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

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

Sec. 26. 13-C MRSA §856, sub-§2, as amended by PL 2003, c. 344, Pt. B, §68, is further amended to read:

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

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

B. By special legal counsel:

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

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

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

Sec. 27. 13-C MRSA §856, sub-§3, as amended by PL 2003, c. 344, Pt. B, §68, is further amended to read:

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

Sec. 28. 13-C MRSA §871, as corrected by RR 2001, c. 2, Pt. A, §20 and as affected by §21, is amended to read:

§ 871. Definitions

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

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

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

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

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

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

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

1-A. Control. "Control" means:

A. Having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract or otherwise; or

B. Being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

1-B. Controlled by. "Controlled by" means a person subject to control by another person.

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

A. To which, at the relevant time, the director is a party;

B. That the director knew of, at the relevant time, and in which the director had a material financial interest, known by the director; or

C. To which a related person was a party or had a material financial interest in, known, at the relevant time, by the director.

2-A. Material financial interest. "Material financial interest" means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

3. Related person. "Related person" means:

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

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

C. A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half sibling, aunt, uncle, niece or nephew, or spouse of any of those persons, of the director or of the director's spouse;

D. An individual living in the same home as the director;

E. An entity, other than the corporation or an entity controlled by the corporation, controlled by the director or any person specified in paragraph A, C or D;

F. A domestic or foreign:

(1) Business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the director is a director;

(2) Unincorporated entity of which the director is a general partner or a member of the governing body; or

(3) Individual, trust or estate for whom or of which the director is a trustee, guardian, personal representative or like fiduciary; or

G. A person that is, or an entity that is controlled by, an employer of the director.

3-A. Relevant time. "Relevant time," with regards to a transaction, means:

A. The time at which the directors' action regarding the transaction is taken in compliance with section 873; or

B. If the transaction is not brought before the board of directors of the corporation, or its committee, for action under section 873, the time at which the corporation or an entity controlled by the corporation becomes legally obligated to consummate the transaction.

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

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

B. ~~All facts known to the director respecting regarding the subject matter of the transaction that an ordinarily prudent person a director without such conflicting interest would reasonably believe to be material to a judgment about in deciding whether or not to proceed with the transaction.~~

5. Time of commitment. ~~"Time of commitment" respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation or its subsidiary or the entity in which it has a controlling interest becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability or other damage.~~

Sec. 29. 13-C MRSA §872, as amended by PL 2003, c. 344, Pt. B, §69, is further amended to read:

§ 872. Judicial action

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

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

- A. Directors' action ~~respecting~~ regarding the transaction was at any time taken in compliance with section 873 at any time;
- B. Shareholders' action ~~respecting~~ regarding the transaction was at any time taken in compliance with section 874 at any time; or
- C. The transaction, judged according to the circumstances at the relevant time of commitment, is established to have been fair to the corporation. For purposes of this paragraph, a transaction is fair to a corporation if, taken as a whole, the transaction was beneficial to the corporation, taking into appropriate account whether the transaction was:

(1) Fair in terms of the director's dealings with the corporation; and

(2) Comparable to what might have been obtained in an arms-length transaction, given the consideration paid or received by the corporation.

Sec. 30. 13-C MRSA §873, as amended by PL 2003, c. 344, Pt. B, §§70 and 71, is further amended to read:

§ 873. Directors' action

1. Action regarding transaction. ~~Directors' action respecting~~regarding a director's conflicting-interest transaction is effective for purposes of section 872, subsection 2, paragraph A if the transaction received~~has been authorized by the affirmative vote of a majority, but no fewer than 2, of those qualified directors on the corporation's board of directors or on a duly empowered committee of the board of the qualified directors who voted on the transaction, after either required disclosure to them, to by the extent the conflicted director of information was not already known by them, or those qualified directors, or after modified disclosure in compliance with subsection 22-A, except that action by a committee is effective under this section only if:~~

~~A. All of the committee's members are~~The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

~~B. The committee's members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board. When the action has been taken by a committee, all members of the committee were qualified directors and either:~~

~~(1) The committee was composed of all the qualified directors on the board of directors; or~~

~~(2) The members of the committee were appointed by the affirmative vote of a majority of the qualified directors on the board.~~

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

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

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

2-A. Disclosure; conflicting interest. Notwithstanding subsection 1, when a transaction is a director's conflicting-interest transaction only because a related person described in section 871, subsection 3, paragraph F or G is a party to or has a material financial interest in the transaction, the conflicted director is not obligated to make required disclosure to the extent that the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality or a professional ethics rule, as long as the conflicted director discloses to the qualified directors voting on the transaction:

- A. All information required to be disclosed that the director does not believe would violate a duty or obligation of the director;
- B. The existence and nature of the director's conflicting interest; and
- C. The nature of the conflicted director's duty not to disclose the confidential information.

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

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

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

5. Authorization when qualified director's action not taken. When directors' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the board of directors or a committee, in which action directors who are not qualified directors may participate.

Sec. 31. 13-C MRSA §874, as amended by PL 2003, c. 344, Pt. B, §§72 and 73, is further amended to read:

§ 874. Shareholders' action

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

- A. ~~A notice was given~~Notice to the shareholders describing the director's conflicting-interest~~action~~ to be taken regarding the transaction;
- B. Provision to the secretary or other officer or agent of the corporation of the information referred to in subsection 4; and
- C. ~~Required disclosure, as defined in section 871, subsection 4,~~Communication to the shareholders ~~who voted~~entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information ~~was~~is not known by them.

2. Qualified shares. For purposes of this section, "qualified shares" means any shares entitled to vote with respect to the director's conflicting-interest transaction except shares that, to the knowledge, before the vote, of the clerk, the secretary or other officer or agent of the corporation authorized to tabulate votes, are beneficially owned or the voting of which is controlled by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

3. Quorum. A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to subsections 4 and subsection 5, shareholders' action that otherwise complies with this section is not affected by the presence of holders of shares that are not qualified shares, or the voting of shares that are not qualified shares.

4. Identification of holdings. For purposes of compliance with subsection 1, a director who has a conflicting interest respecting regarding the transaction shall, before the shareholders' vote, inform the secretary clerk or other officer or agent of the corporation authorized to tabulate votes, in writing, of the number of all shares that the director knows are not qualified shares under subsection 3 and the identity of persons holding or controlling the vote of all shares that the director knows are beneficially owned or the voting of which is controlled by the director or by a related person of the director, or both the holders of those shares.

5. Failure to comply. If a shareholders' vote does not comply with subsection 1 solely because of a failure of a director director's failure to comply with subsection 4 and if the director establishes that the director's failure did not determine and was not intended by the director to influence and did not in fact determine the outcome of the vote, the court may, with or without further proceedings respecting section 872, subsection 2, paragraph C, take such action respecting regarding the transaction and the director and may give such effect, if any, to the shareholders' vote as it the court considers appropriate in the circumstances.

6. Authorization when qualified shareholder action not taken. When shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation, the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders, in which action shareholders that are not qualified shareholders may participate.

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

A. "Holder" means and "held by" refers to shares held by both a record shareholder and a beneficial shareholder.

B. "Qualified shares" means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or under section 873, subsection 2-A is notified, are held by:

(1) A director who has a conflicting interest regarding the transaction; or

(2) A related person of the director, excluding a person described in section 871, subsection 3, paragraph G.

Sec. 32. 13-C MRSA c. 8, sub-c. 7 is enacted to read:

SUBCHAPTER 7

business opportunities

§ 881. Business opportunities

1. Business opportunity not actionable if standards met. A director's taking advantage, directly or indirectly, of a business opportunity may not be the subject of equitable relief, or give rise to an award of damages or other sanctions against the director, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if before becoming legally obligated regarding the opportunity the director brings it to the attention of the corporation and:

A. Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 873, as if the decision being made concerned a director's conflicting-interest transaction as defined in section 871, subsection 2; or

B. Action by shareholders disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 874, as if the decision being made concerned a director's conflicting-interest transaction as defined in section 871, subsection 2.

In each case, the director, rather than making a required disclosure as defined in section 871, subsection 4, must have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

2. No inference or change in burden of proof. In any proceeding seeking equitable relief or other remedies based upon an alleged improper taking advantage of a business opportunity by a director, the fact that the director did not employ the procedure described in subsection 1 before taking advantage of the opportunity does not create an inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director breached a duty to the corporation in the circumstances.

Sec. 33. 13-C MRSA §1303, sub-§1, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

1. National listing; specific market value. Appraisal rights are not available for the holders of shares of any class or series of shares that:

~~A. Is listed on the New York Stock Exchange or the American Stock Exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers~~ a covered security under Section 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended; or

~~B. Has~~ Is ~~traded in an organized market and has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least \$20,000,000 exclusive of the value of such shares held by a corporation's subsidiaries, senior executives, directors and beneficial shareholders owning more than 10% of such shares;~~ or

~~C. Is issued by an open end management investment company registered with the United States Securities and Exchange Commission under the federal Investment Company Act of 1940 and may be redeemed at the option of the holder at net asset value.~~

Sec. 34. 13-C MRSA §1321, sub-§3 is enacted to read:

3. Action by written consent. If a corporate action specified in section 1302 is to be approved by written consent of the shareholders pursuant to section 704:

A. Written notice that appraisal rights are, are not or may be available must be given to each record shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this chapter; and

B. Written notice that appraisal rights are, are not or may be available must be delivered together with the notice to nonconsenting voting and nonvoting shareholders as required by section 704, subsections 4 and 5, may include the materials described in section 1323 and, if the corporation has concluded that appraisal rights are or may be available, must be accompanied by a copy of this chapter.

Sec. 35. 13-C MRSA §1322, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is repealed.

Sec. 36. 13-C MRSA §1322-A is enacted to read:

§ 1322-A. Notice of intent to demand payment

1. Preservation of appraisal rights if action taken at a meeting. If a proposed corporate action requiring appraisal rights under sections 1302 to 1304 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

A. Shall deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment if the proposed action is effectuated; and

B. May not vote, or cause or permit to be voted, any shares of the class or series in favor of the proposed action.

2. Preservation of appraisal rights if action taken by consent. If a corporate action specified in section 1302 is to be approved by less than unanimous written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares may not execute a consent in favor of the proposed action with respect to that class or series of shares.

3. Effect of failure to preserve. A shareholder who fails to satisfy the requirements of subsection 1 or 2 is not entitled to payment under this chapter.

Sec. 37. 13-C MRSA §1323, sub-§1, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

1. Written appraisal notice; form. If a proposed corporate action requiring appraisal rights under section 1302 becomes effective, a corporation must deliver a written appraisal notice and form required by subsection 2, paragraph A to all shareholders who satisfied the requirements of section 1322-1322-A. In the case of a merger under section 1105, the parent shall deliver a written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

Sec. 38. 13-C MRSA §1323, sub-§2, ¶A, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is repealed and the following enacted in its place:

A. Supply a form that specifies the first date of any announcement to shareholders, made prior to the date the corporate action became effective, of the principal terms of the proposed corporate action, if any. If such announcement was made the form must:

(1) Require the shareholder asserting appraisal rights to certify whether beneficial ownership of those shares for which appraisal rights are asserted was acquired before that date; and

(2) Require the shareholder asserting appraisal rights to certify that the shareholder did not vote for or consent to the transaction;

Sec. 39. 13-C MRSA §1323, sub-§3 is enacted to read:

3. Notice accompanied by financial statements. When corporate action described in section 1302, subsection 1 is proposed, or a merger pursuant to section 1105 is effected, the notice referred to in subsection 1, if the corporation concludes that appraisal rights are or may be available, and in subsection 2 must be accompanied by:

A. The annual financial statements specified in section 1620, subsection 1 of the corporation that issued the shares that may be subject to appraisal, whether or not a close corporation, which must be as of a date ending not more than 16 months before the date of the notice and must comply with section 1620, subsection 2. If such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information; and

B. The latest available quarterly financial statements of such corporation, if any.

Sec. 40. 13-C MRSA §1324, sub-§1, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

1. Perfection of rights. A shareholder who receives notice pursuant to section 1323 and who wishes to exercise appraisal rights shall ~~certify on sign and return~~ the form sent by the corporation and, ~~in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 1323, subsection 2, paragraph B, subparagraph (2) and certify~~ whether the beneficial owner of the shares acquired beneficial ownership of the shares before the date required to be set forth in the notice pursuant to section 1323, subsection 2, paragraph A. If a shareholder fails to make this certification, the corporation may elect to treat the shareholder's shares as after-acquired shares under section 1326. A shareholder who wishes to exercise appraisal rights shall execute and return the form and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to section 1323, subsection 2, paragraph B, subparagraph (2). Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the executed forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection 2.

Sec. 41. 13-C MRSA §1325, sub-§2, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

2. Additional information. The payment to each shareholder pursuant to subsection 1 must be accompanied by:

A. ~~Financial~~Annual financial statements specified in section 1620, subsection 1 of the corporation that issued the shares to be appraised, ~~consisting of a balance sheet as of the end of a fiscal year whether or not a close corporation, that must be as of a date ending not more than 16 months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any~~must comply with section 1620, subsection 2. If such annual financial statements are not reasonably available, the corporation shall provide reasonably equivalent financial information;

B. A statement of the corporation's estimate of the fair value of the shares, which estimate must equal or exceed the corporation's estimate given pursuant to section 1323, subsection 2, paragraph B, subparagraph (3); and

C. A statement that shareholders described in subsection 1 have the right to demand further payment under section 1327 and that if any such shareholder does not do so within the time period specified in section 1327, that shareholder is deemed to have accepted the payment in full satisfaction of the corporation's obligations under this chapter; and

D. The latest available quarterly financial statements of the corporation, if any.

Sec. 42. 13-C MRSA §1332, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 1332. Court costs and counsel fees

1. Court costs. The court in an appraisal proceeding commenced under section 1331 shall determine all court costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the court costs against a corporation, except that the court may assess court costs against all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the extent the court finds the shareholders acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this chapter.

2. Counsel; expert fees. The court in an appraisal proceeding under section 1331 may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

A. Against a corporation and in favor of any or all shareholders demanding appraisal if the court finds the corporation did not substantially comply with the requirements of section 1321, 1323, 1325 or 1326; or

B. Against either a corporation or a shareholder demanding appraisal, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by this chapter.

3. Fees awarded from settlement. If the court in an appraisal proceeding under section 1331 finds that the ~~services of counsel for~~ expenses incurred by any shareholder were of substantial benefit to other shareholders similarly situated and that ~~the fees for those services~~ expenses should not be assessed against ~~the~~ corporation, the court may award ~~to the counsel~~ reasonable fees to direct that those expenses be paid out of the amounts awarded the shareholders who were benefitted.

4. Corporation fails to make payment. To the extent a corporation fails to make a required payment pursuant to section 1325, 1326 or 1327, a shareholder may sue directly for the amount owed and, to the extent successful, is entitled to recover from the corporation all ~~costs and~~ expenses of the suit, ~~including counsel fees.~~

Sec. 43. 13-C MRSA §1406, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 1406. Effect of dissolution

1. Extension of corporate existence. ~~A dissolved corporation continues corporate existence for a period not exceeding 3 years from the effective date of the articles of dissolution, except that the 3-year period may be extended if the extension is approved by 2/3 vote of the shareholders of the dissolved corporation and notice of the extension is filed with the Secretary of State prior to the expiration of the 3-year period. A dissolved corporation may not carry on any business except that which is appropriate to wind up and liquidate its business and affairs, including:~~

A. Collecting the corporation's assets;

B. Disposing of properties that will not be distributed in kind to shareholders;

- C. Discharging or making provision for discharging its liabilities;
- D. Distributing remaining property among shareholders according to their interests; and
- E. Doing every other act necessary to wind up and liquidate its business and affairs.

2. Dissolution; exclusions. Dissolution of a corporation does not:

- A. Transfer title to the corporation's property;
- B. Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
- C. Subject the corporation's directors or officers to standards of conduct different from those prescribed in chapter 8;
- D. Change quorum or voting requirements for the board of directors or shareholders; change provisions for selection, resignation or removal of the directors or officers or both; or change provisions for amending its bylaws;
- E. Prevent commencement of a proceeding by or against the corporation in its corporate name;
- F. Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
- G. Terminate the authority of the clerk of the corporation.

3. Abatement of action. ~~With respect to any action, suit or proceeding begun by or against the corporation prior to the commencement of or during the 3-year period after the date of its dissolution, the action does not abate by reason of the dissolution of the corporation; the corporate existence of the dissolved corporation, solely for purposes of the action, suit or proceeding, continues beyond that period and until any judgments, orders or decrees are fully executed.~~

4. Transfer of property. Those shareholders of the corporation and their successors in interest who, collectively, represent a majority of the voting power of the corporation are empowered to act as liquidating trustees to take all actions necessary or appropriate to distribute or dispose of any undistributed property of the corporation if:

- A. There are no officers authorized to act on a matter for a dissolved corporation;
- B. There are no directors of the corporation; or
- C. The directors are unable to act on the matter on behalf of the corporation.

Sec. 44. 13-C MRSA §1430, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

§ 1430. Grounds for judicial dissolution

A corporation may be dissolved by a judicial dissolution in a proceeding by:

1. Attorney General. The Attorney General if it is established that:

- A. The corporation obtained its articles of incorporation through fraud; or
- B. The corporation has continued to exceed or abuse the authority conferred upon it by law;

2. Shareholder. A shareholder if it is established that:

- A. The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock and, because of the deadlock, irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally;
- B. The directors or those in control of the corporation have acted, are acting or will act in a manner that is illegal, oppressive or fraudulent;
- C. The shareholders are so divided ~~respecting~~regarding the management of the business and affairs of the corporation that the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally;
- D. The shareholders are deadlocked in voting power and have failed, for a period that includes at least 2 consecutive annual meeting dates, to elect successors to directors whose terms have expired; or
- E. The corporate assets are being misapplied or wasted;

This subsection does not apply in the case of a corporation that, on the date of the filing of the proceeding, is a public corporation or that has a class or series of shares that is a covered security under the federal Securities Act of 1933, Section 18(b)(A) or (B), as amended;

3. Creditor. A creditor if it is established that:

- A. The creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied and the corporation is insolvent; or
- B. The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

4. Corporation. The corporation to have its voluntary dissolution continued under court supervision; or

5. Abandonment of business. A shareholder of the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

Sec. 45. 13-C MRSA §1432, sub-§1, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

1. Appoint receivers. A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to manage and to wind up and liquidate the business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver. The court appointing a receiver has exclusive jurisdiction over the corporation and all of its property wherever located.

Sec. 46. 13-C MRSA §1432, sub-§4, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

4. Compensation; expenses. A court from time to time during a receivership under this section may order compensation paid and ~~expense disbursements or reimbursements made~~expenses paid or reimbursed to the receiver and the receiver's counsel from the assets of the corporation or proceeds from the sale of the assets.

Sec. 47. 13-C MRSA §1434, sub-§2, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

2. Motion of court. On the application of a plaintiff or any other shareholder or on the court's own motion in any action filed by a shareholder to dissolve a corporation that is not a public corporation on any of the grounds enumerated in section 1430, subsection 2, or on the court's own motion in any other action to dissolve a corporation, the court may make an order or grant relief, other than dissolution, that in its discretion it considers appropriate, including, without limitation, an order:

- A. Providing for the purchase at their fair value of shares of any shareholder either by the corporation or by other shareholders;
- B. Providing for the sale of all the property and franchises of the corporation to a single purchaser, who succeeds to all the rights and privileges of the corporation and may reorganize the same under the direction of the court;
- C. Directing or prohibiting any act of the corporation or of shareholders, directors, officers or other persons party to the action;
- D. Canceling or altering any provision contained in the articles of incorporation, in any amendment to the articles of incorporation or in the bylaws of the corporation;
- E. Appointing a person who is qualified under the laws of this State to act as a receiver and who has no close personal, business or financial relationship to the members of any contending faction within the corporation to act as an additional director, either in all matters or in those matters the court directs, and to hold office as a director for any period the court orders, but not longer than 2 years. The person must be paid by the corporation compensation as ordered by the court and may be required to post security for the faithful performance of the director's duties in an amount and with any sureties the court orders; or

F. Canceling, altering or enjoining any resolution or other act of the corporation.

Sec. 48. 13-C MRS §1604, sub-§3, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

3. Refuse inspection; good faith. If the court orders inspection and copying of the records demanded under subsection 1 or 2, the court shall also order the corporation to pay the shareholder's costs ~~including reasonable counsel fees~~ expenses incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded.

Sec. 49. 13-C MRS §1605, sub-§3, as enacted by PL 2001, c. 640, Pt. A, §2 and as affected by Pt. B, §7, is amended to read:

3. Provisions to protect corporation. If an order is issued under subsection 2, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, ~~including reasonable counsel fees~~, expenses incurred in connection with the application.

SUMMARY

This bill amends the Maine Business Corporation Act to reflect changes made by the American Bar Association to the Model Business Corporation Act, on which the Maine Business Corporation Act is based.

This bill also makes other changes to the Maine Business Corporation Act, including:

1. Adding definitions of "expenses," "public corporation" and "qualified director";
2. Allowing the delivery by a corporation of one copy of a notice, the articles of incorporation or bylaws to be delivered to a common address occupied by more than one shareholder and still satisfy the requirements that all shareholders receive the notice, articles or bylaws. A shareholder can opt out of this arrangement by providing written notice to the corporation;
3. Allowing, with the prior consent of shareholders, the inclusion in the articles of incorporation of a provision that allows action to be taken regarding the corporation without a meeting or notice to the shareholders; and
4. Changing the class or series of shares held by a shareholder for the purpose of limiting the appraisal rights of that shareholder.