

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND ELEVEN

H.P. 1103 - L.D. 1502

An Act To Amend 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-§3**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

**Sec. 2. 13-C MRSA §102, sub-§5**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**5. Deliver; delivery.** "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and, if authorized in accordance with section 103-A, by electronic transmission.

**Sec. 3. 13-C MRSA §102, sub-§6-A** is enacted to read:

**6-A. Document.** "Document" means:

A. A tangible medium on which information is inscribed and includes any writing or any written instrument; or

B. An electronic record.

**Sec. 4. 13-C MRSA §102, sub-§8**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**8. Effective date of notice.** "Effective date of notice" has the meaning set forth in section ~~403~~ 103-A.

**Sec. 5. 13-C MRSA §102, sub-§8-A** is enacted to read:

**8-A. Electronic.** "Electronic" means relating to technology that has electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

**Sec. 6. 13-C MRSA §102, sub-§8-B** is enacted to read:

**8-B. Electronic record.** "Electronic record" means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section 103-A, subsection 10.

**Sec. 7. 13-C MRSA §102, sub-§9**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**9. Electronic transmission; electronically transmitted.** "Electronic transmission" or "electronically transmitted" means any form or process of communication, not directly involving the physical transfer of paper or other tangible medium, that:

A. Is suitable for the retention, retrieval and reproduction of information by the recipient; and

B. Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with section 103-A, subsection 10.

**Sec. 8. 13-C MRSA §102, sub-§24**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**24. Notice.** "Notice" has the meaning set forth in section ~~103~~ 103-A.

**Sec. 9. 13-C MRSA §102, sub-§36**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**36. Sign; signature.** "Sign" or "signature" means, with present intent to authenticate or adopt the document:

A. To execute or adopt a tangible symbol to a document and includes any manual, facsimile or conformed signature; or

B. To attach or logically associate with an electronic transmission an electronic sound, symbol or process and includes an electronic signature in an electronic transmission.

**Sec. 10. 13-C MRSA §102, sub-§43** is enacted to read:

**43. Writing; written.** "Writing" or "written" means any information in the form of a document.

**Sec. 11. 13-C MRSA §103**, as amended by PL 2007, c. 323, Pt. C, §§1 and 2 and affected by Pt. G, §4, is repealed.

**Sec. 12. 13-C MRSA §103-A** is enacted to read:

## **§103-A. Notice or other communication**

**1. Written notice required unless oral notice reasonable; English.** Notice under this Act must be in writing unless oral notice is reasonable under the circumstances. Unless otherwise agreed by the sender and the recipient, words in a notice or other communication under this Act must be in English.

**2. Methods of communicating notice.** A notice or other communication may be given or sent by any method of delivery, except that electronic transmissions must be in accordance with this section. If these methods of delivery are impracticable, a notice or other communication may be communicated by a newspaper of general circulation in the area where published or by radio, television or other form of public broadcast communication.

**3. Written notice to corporation.** Written notice to a domestic or foreign corporation authorized to transact business in this State is governed by Title 5, section 113.

**4. Communication by electronic transmission.** Notice or other communication may be delivered by electronic transmission if consented to by the recipient or if authorized by subsection 11.

**5. Revocation of consent to electronic transmission.** Any consent under subsection 4 may be revoked by the person who consented by written or electronic notice to the person to whom the consent was delivered. Any such consent is deemed revoked if:

**A.** The corporation is unable to deliver 2 consecutive electronic transmissions given by the corporation in accordance with such consent; and

**B.** Such inability becomes known to the clerk, the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice or other communication. The inadvertent failure to treat such inability as a revocation does not invalidate any meeting or other action.

**6. Receipt of electronic transmission.** Unless otherwise agreed between the sender and the recipient, an electronic transmission is deemed received when:

**A.** It enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent and from which the recipient is able to retrieve the electronic transmission; and

**B.** It is in a form capable of being processed by the information processing system described in paragraph A.

**7. Receipt from information processing system.** Receipt of an electronic acknowledgment from an information processing system described in subsection 6, paragraph A establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

**8. No individual aware of receipt.** An electronic transmission is received under this section even if no individual is aware of its receipt.

**9. Notice or communication; when effective.** Notice or other communication, if in a comprehensible form or manner, is effective at the earliest of the following:

**A. If in physical form, the earliest of when it is actually received and when it is left at:**

**(1) A shareholder's address shown on the corporation's record of shareholders maintained by the corporation under section 1601, subsection 3;**

**(2) A director's residence or usual place of business; or**

**(3) The corporation's principal place of business;**

**B. If mailed by United States mail postage prepaid and correctly addressed to a shareholder, upon deposit in the United States mail;**

**C. If mailed by United States mail postage prepaid and correctly addressed to a recipient other than a shareholder, the earliest of when it is actually received and:**

**(1) If sent by registered or certified mail, return receipt requested, the date shown on the return receipt signed by or on behalf of the addressee; or**

**(2) Five days after it is deposited in the United States mail;**

**D. If an electronic transmission, when it is received as provided in subsection 6; or**

**E. If oral, when communicated.**

**10. Electronic transmission that cannot be directly reproduced in paper.** A notice or other communication may be in the form of an electronic transmission that cannot be directly reproduced in paper form by the recipient through an automated process used in conventional commercial practice only if:

**A. The electronic transmission is otherwise retrievable in perceivable form; and**

**B. The sender and the recipient have consented in writing to the use of such form of electronic transmission.**

**11. Specific notice requirements govern.** If this Act prescribes requirements for notices or other communications in particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe requirements for notices or other communications not inconsistent with this section or other provisions of this Act, those requirements govern. The articles of incorporation or bylaws may authorize or require delivery of notices of meetings of directors by electronic transmission.

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

**Sec. 13. 13-C MRSA §132** is enacted to read:

**§132. Unsworn falsification**

The execution of a certificate or articles containing one or more false statements constitutes unsworn falsification under Title 17-A, section 453.

**Sec. 14. 13-C MRSA §206**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**§206. Bylaws**

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

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

**3. Provisions for solicitation of proxies or consents.** The bylaws may contain one or both of the following provisions:

A. A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

B. A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures or conditions as are provided in the bylaws, as long as no bylaw so adopted applies to elections for which any record date precedes its adoption.

**4. Reasonable, practicable and orderly process.** Notwithstanding section 1020, subsection 2, paragraph B, the shareholders in amending, repealing or adopting a bylaw described in subsection 3 may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw in order to provide for a reasonable, practicable and orderly process.

**Sec. 15. 13-C MRSA §621, sub-§4**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

**Sec. 16. 13-C MRSA §625, sub-§3** is enacted to read:

**3. Authorized officers.** The board of directors may authorize one or more officers to:

A. Designate the recipients of rights, options, warrants or other equity compensation awards that involve the issuance of shares; and

B. Determine, within an amount and subject to any other limitations established by the board and, if applicable, the stockholders, the number of such rights, options, warrants or other equity compensation awards and the terms thereof to be received by the recipients, except that an officer or officers may not use such authority to designate themselves or such other persons as the board of directors may specify as a recipient or recipients of such rights, options, warrants or other equity compensation awards.

**Sec. 17. 13-C MRSA §703, sub-§2,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

**Sec. 18. 13-C MRSA §704, sub-§7,** as enacted by PL 2007, c. 289, §7, is repealed.

**Sec. 19. 13-C MRSA §704, sub-§8,** as enacted by PL 2007, c. 289, §7, is repealed.

**Sec. 20. 13-C MRSA §705, sub-§1,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**1. Notification to shareholders.** A corporation shall notify shareholders of the date, time and place of each annual or special shareholders' meeting no fewer than 10 days, or 3 days for close corporations, nor more than 60 days before the meeting date. The notice must include the record date for determining the shareholders entitled to vote at the meeting, if such date is different than the record date for determining shareholders entitled to notice of the meeting. If the board of directors has authorized participation by means of remote communication pursuant to section 709 for any class or series of shareholders, the notice to such class or series of shareholders must describe the means of remote communication to be used. Unless this Act or the corporation's articles of incorporation require otherwise, the corporation is required only to give notice to shareholders entitled to vote at the meeting as of the record date for determining the shareholders entitled to notice of the meeting.

**Sec. 21. 13-C MRSA §705, sub-§5,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

**Sec. 22. 13-C MRSA §707, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

**Sec. 23. 13-C MRSA §707, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

**Sec. 24. 13-C MRSA §707, sub-§4**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

**Sec. 25. 13-C MRSA §707, sub-§5** is enacted to read:

**5. Determining shareholder entitlements.** The record date for a shareholders' meeting fixed by or in the manner provided in the bylaws or by the board of directors is the record date for determining shareholders entitled both to notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed by the board of directors and to the extent not prohibited by the bylaws, the board, at the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later record date on or before the date of the meeting to determine the shareholders entitled to vote at the meeting.

**Sec. 26. 13-C MRSA §709** is enacted to read:

## **§709. Remote participation in annual and special meetings**

**1. Participation by means of remote communication.** Shareholders of any class or series may participate in any meeting of shareholders by means of remote communication to the extent the board of directors authorizes participation for the class or series. Participation by means of remote communication is subject to guidelines and procedures adopted by the board of directors and must be in conformity with subsection 2.

**2. Shareholder presence and voting.** Shareholders participating in a shareholders' meeting by means of remote communication are deemed present and may vote at the meeting if the corporation has implemented reasonable measures:

A. To verify that each person participating remotely is a shareholder; and

B. To provide the shareholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to communicate and to read or hear the proceedings of the meeting, substantially concurrently with the proceedings.

**Sec. 27. 13-C MRSA §721**, as amended by PL 2007, c. 323, Pt. C, §13 and affected by Pt. G, §4, is further amended to read:

### **§721. Shareholders lists for meeting**

**1. Lists of shareholders' names.** After fixing a record date for a shareholders' meeting ~~called pursuant to subchapter I~~, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. ~~The~~ If the board of directors fixes a different record date under section 707, subsection 5 to determine the shareholders entitled to vote at the meeting, a corporation also shall prepare an alphabetical list of the names of all its shareholders who are entitled to vote at the meeting. A list must be classified by voting group, and within each voting group by class or series of shares, and must show the address of and number of shares held by each shareholder. In the case of a close corporation, the requirement of a shareholders list may be satisfied by a stock transfer book or records, which need not be maintained in alphabetized order and need not contain the addresses of shareholders so long as the address of each shareholder is otherwise maintained in the records of the corporation.

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

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

**4. Refusal by corporation.** If the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect ~~the~~ a shareholders list before or at the meeting or copy ~~the~~ a list as permitted by subsection 2, the Superior Court of the county where a corporation's principal office is located, or, if there is no principal office located in this State, of Kennebec County, on application of the shareholder may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

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

**Sec. 28. 13-C MRSA §723, sub-§2,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

**Sec. 29. 13-C MRSA §727, sub-§7** is enacted to read:

**7. Classes or series voting together as a single group.** Whenever a provision of this Act provides for voting of classes or series as separate voting groups, section 1004, subsection 3 applies to that provision.

**Sec. 30. 13-C MRSA §753, sub-§2,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

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

**Sec. 31. 13-C MRSA c. 7, sub-c. 5** is enacted to read:

## **SUBCHAPTER 5**

## **PROCEEDINGS TO APPOINT CUSTODIAN OR RECEIVER**

### **§781. Shareholder action to appoint custodian or receiver**

**1. Court may appoint.** The Superior Court may appoint one or more persons to be custodians or, if the corporation is insolvent, to be receivers of and for a corporation in a proceeding by a shareholder when 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 irreparable injury to the corporation is threatened or being suffered; or

B. The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

**2. Remedies; procedures.** The Superior Court:

A. May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets, wherever located, and carry on the business of the corporation until a full hearing is held;

B. Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

C. Has jurisdiction over the corporation and all of its property, wherever located.

**3. Appointments; bonds.** The Superior Court may appoint an individual, a domestic corporation or a foreign corporation authorized to transact business in this State as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

**4. Powers and duties.** The Superior Court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. The powers include but are not limited to the following.

A. A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation.

B. A receiver:

(1) May dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale, if authorized by the court; and

(2) May sue and defend in the receiver's own name as receiver in all courts of this State.

**5. Resignations.** The Superior Court during a custodianship may redesignate the custodian as a receiver and during a receivership may redesignate the receiver as a custodian, if doing so is in the best interests of the corporation.

**6. Compensation and expenses.** The Superior Court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

**Sec. 32. 13-C MRSA §827** is enacted to read:

**§827. Submission of matters for shareholder vote**

A corporation may agree to submit a matter to a vote of its shareholders even if, after approving the matter, the board of directors determines it no longer recommends the matter.

**Sec. 33. 13-C MRSA §854, sub-§1**, as amended by PL 2007, c. 289, §23, is further amended to read:

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

A. A signed written affirmation of the individual's good faith belief that the 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 individual's signed written undertaking to repay any funds advanced if the individual is not entitled to mandatory indemnification under section 853 and it is ultimately determined under section 855 or 856 that the individual has not met the relevant standard of conduct described in section 852.

**Sec. 34. 13-C MRSA §859, sub-§1-A** is enacted to read:

**1-A. Right to indemnification or to advances for expenses.** A right to indemnification or to advances for expenses created by this subchapter or under subsection 1 and in effect at the time of an act or omission giving rise to the right to indemnification or advances may not be eliminated or impaired with respect to that act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the board of directors or shareholders, adopted after the occurrence of the act or omission, unless, in the case of a right to indemnification or to advances for expenses created under subsection 1, the provision creating the right and in effect at the time of the act or omission explicitly authorizes the elimination or impairment after the act or omission has occurred.

**Sec. 35. 13-C MRSA §859, sub-§3**, as amended by PL 2003, c. 344, Pt. B, §68, is further amended to read:

**3. Limits.** A Subject to subsection 1-A, a corporation may, by a provision in its articles of incorporation, limit the ~~rights~~ right to indemnification or to an advance for expenses created by or pursuant to this subchapter.

**Sec. 36. 13-C MRSA §874, sub-§1,** as amended by PL 2007, c. 289, §30, is further amended to read:

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

- A. Notice to shareholders describing the action to be taken regarding the transaction;
- B. Provision to the corporation of the information referred to in subsection 4; and
- C. Communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure, to the extent the information is not known by them.

In the case of shareholders' action at a meeting, the shareholders entitled to vote are determined as of the record date for notice of the meeting.

**Sec. 37. 13-C MRSA §921, sub-§5,** as amended by PL 2003, c. 344, Pt. B, §74, is further amended to read:

**5. Transitional rule.** If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind issued, incurred or ~~executed~~ signed by a domestic business corporation before July 1, 2003 contains a provision applying to a merger of the corporation and the document does not refer to a domestication of the corporation, the provision is deemed to apply to a domestication of the corporation until the provision is amended.

**Sec. 38. 13-C MRSA §922, sub-§2,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**2. Shareholders' approval.** After adopting the plan of domestication, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless:

- A. The board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation; or
- B. Section 827 applies.

If paragraph A or B applies, the board of directors shall transmit to the shareholders the basis for so proceeding;

**Sec. 39. 13-C MRSA §922, sub-§6,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**6. Voting groups.** ~~Separate~~ Subject to subsection 6-A, separate voting by voting groups is required by each class or series of shares that:

A. Is to be reclassified under the plan of domestication into other securities, obligations, rights to acquire shares or other securities, cash, other property or any combination thereof;

B. ~~Would be~~ Is entitled to vote as a separate group on a provision of the plan of domestication that, ~~if contained in~~ constitutes a proposed amendment to the corporation's articles of incorporation, ~~would require~~ following its domestication that requires action by separate voting groups under section 1004; or

C. Is entitled under the corporation's articles of incorporation to vote as a voting group to approve an amendment of the articles; ~~and~~

**Sec. 40. 13-C MRSA §922, sub-§6-A** is enacted to read:

**6-A. Separate voting.** The corporation's articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsection 6, paragraph A;

**Sec. 41. 13-C MRSA §922, sub-§7**, as amended by PL 2003, c. 344, Pt. B, §76, is further amended to read:

**7. Transitional rule.** If any provision of the corporation's articles of incorporation or bylaws or of an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2003, applies to a merger of the corporation and that document does not refer to a domestication of the corporation, the provision is deemed to apply to a domestication of the corporation until the provision is amended; ~~and~~ and

**Sec. 42. 13-C MRSA §931, sub-§5**, as amended by PL 2003, c. 344, Pt. B, §79, is further amended to read:

**5. Transitional rule.** If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind issued, incurred or ~~executed~~ signed by a domestic business corporation before July 1, 2003 contains a provision applying to a merger of the domestic business corporation and the document does not refer to a nonprofit conversion of the domestic business corporation, the provision is deemed to apply to a nonprofit conversion of the domestic business corporation until the provision is amended.

**Sec. 43. 13-C MRSA §932, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**2. Shareholders' approval.** After adopting the plan of nonprofit conversion, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless:

A. The board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation; or

B. Section 827 applies.

If paragraph A or B applies, the board of directors shall transmit to the shareholders the basis for so proceeding;

**Sec. 44. 13-C MRSA §932, sub-§7**, as amended by PL 2003, c. 344, Pt. B, §81, is further amended to read:

**7. Transitional rule.** If any provision of the corporation's articles of incorporation or bylaws or of an agreement to which any of the directors or shareholders are parties, adopted or entered into before July 1, 2003, other than a provision that eliminates or limits voting or appraisal rights, applies to a merger ~~of the domestic business corporation~~ and the document does not refer to a nonprofit conversion of the domestic business corporation, the provision is deemed to apply to a nonprofit conversion of the domestic business corporation until the provision is amended.

**Sec. 45. 13-C MRSA §952, sub-§5**, as amended by PL 2003, c. 344, Pt. B, §86, is further amended to read:

**5. Transitional rule.** If any debt security, note or similar evidence of indebtedness for money borrowed, whether secured or unsecured, or a contract of any kind issued, incurred or ~~executed~~ signed by a domestic business corporation before July 1, 2003, applies to a merger of the corporation and the document does not refer to an entity conversion of the corporation, the provision is deemed to apply to an entity conversion of the corporation until the provision is amended.

**Sec. 46. 13-C MRSA §954, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**2. Shareholders' approval.** After adopting the plan of entity conversion, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the plan, unless:

A. The board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation; or

B. Section 827 applies.

If paragraph A or B applies, the board of directors shall transmit to the shareholders the basis for so proceeding;

**Sec. 47. 13-C MRSA §954, sub-§7**, as amended by PL 2003, c. 344, Pt. B, §88, is further amended to read:

**7. Transitional rule.** If any provision of the corporation's articles of incorporation or bylaws or of an agreement to which any of the directors or shareholders are parties,

adopted or entered into before July 1, 2003, other than a provision that eliminates or limits voting or appraisal rights, applies to a merger ~~of the corporation~~ and the document does not refer to an entity conversion of the corporation, the provision is deemed to apply to an entity conversion of the corporation until the provision is amended;

**Sec. 48. 13-C MRSA §1003, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**2. Approval by shareholders.** Except as provided in sections 1005, 1007 and 1008, after adopting the proposed amendment the corporation's board of directors shall submit the amendment to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless:

A. The board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation; or

B. Section 827 applies.

If paragraph A or B applies, the board of directors shall transmit to the shareholders the basis for so proceeding.

**Sec. 49. 13-C MRSA §1004, sub-§1, ¶E**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

E. Create a new class of shares having rights or preferences with respect to distributions ~~or to dissolution~~ that are prior or superior to the shares of the class;

**Sec. 50. 13-C MRSA §1004, sub-§1, ¶F**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

F. Increase the rights, preferences or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions ~~or to dissolution~~ that are prior or superior to the shares of the class;

**Sec. 51. 13-C MRSA §1020, sub-§2, ¶B**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

B. ~~The~~ Except as provided in section 206, subsection 4, the shareholders in amending, repealing or adopting a bylaw expressly provide that the board of directors may not amend, repeal or reinstate that bylaw.

**Sec. 52. 13-C MRSA §1104, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**2. Shareholders approve plan.** Except as provided in subsection 7 and in section 1105, after adopting the plan of merger or share exchange, the corporation's board of directors shall submit the plan to the shareholders for their approval. The board of directors also shall transmit to the shareholders a recommendation that the shareholders approve the plan, unless:

A. The board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make that recommendation; or

B. Section 827 applies.

If paragraph A or B applies, the board of directors shall transmit to the shareholders the basis for so proceeding;

**Sec. 53. 13-C MRSA §1104, sub-§6**, as amended by PL 2003, c. 344, Pt. B, §99, is further amended to read:

**6. Voting groups.** ~~Separate~~ Subject to subsection 6-A, separate voting by voting group is required:

A. On a plan of merger by each class or series of shares that:

(1) Are to be converted under the plan of merger into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities or eligible interests, cash or other property or any combination thereof; or

(2) ~~Would be~~ Is entitled to vote as a separate group on a provision in the plan that, ~~if contained in~~ constitutes a proposed amendment to articles of incorporation, ~~would require~~ of a surviving corporation that requires action by separate voting groups under section 1004;

B. On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and

C. On a plan of merger or share exchange if a voting group is entitled under the articles of incorporation to vote as a voting group to approve a plan of merger or share exchange;

**Sec. 54. 13-C MRSA §1104, sub-§6-A** is enacted to read:

**6-A. Limitations on separate voting groups.** The corporation's articles of incorporation may expressly limit or eliminate the separate voting rights provided in subsection 6, paragraph A, subparagraph (1) and subsection 6, paragraph B as to any class or series of shares, except for a transaction that:

A. Includes what is or would be, if the corporation were the surviving corporation, an amendment subject to subsection 6, paragraph A, subparagraph (2); and

B. Will effect no significant change in the assets of the resulting entity, including all parents and subsidiaries on a consolidated basis.

**Sec. 55. 13-C MRSA §1106, sub-§1**, as amended by PL 2003, c. 344, Pt. B, §101, is further amended to read:

**1. Signing of plan of merger or share exchange.** After a plan of merger or share exchange has been adopted and approved as required by this Act, articles of merger or share exchange must be ~~executed~~ signed on behalf of each party to the merger or share

exchange by an officer or other duly authorized representative. The articles must set forth:

- A. The names, types of entity and jurisdictions of the parties to the merger or share exchange and the date on which the merger or share exchange occurred or is to be effective;
- B. If the articles of incorporation of the survivor of a merger are amended or if a new corporation is created as a result of a merger, the amendments to the survivor's articles of incorporation or the articles of incorporation of the new corporation;
- C. If the plan of merger or share exchange required approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group in the manner required by this Act and the corporation's articles of incorporation;
- D. If the plan of merger or share exchange did not require approval by the shareholders of a domestic corporation that was a party to the merger or share exchange, a statement to that effect; and
- E. For each foreign corporation and eligible entity that was a party to the merger or share exchange, a statement that the participation of the foreign corporation or eligible entity was duly authorized as required by the organic law of the corporation or eligible entity.

**Sec. 56. 13-C MRSA §1108, sub-§2**, as amended by PL 2003, c. 344, Pt. B, §103, is further amended to read:

**2. Abandoned merger or share exchange after articles of merger or share exchange are filed.** If a merger or share exchange is abandoned under subsection 1 after articles of merger or share exchange have been filed with the Secretary of State under section 1106, subsection 2 but before the merger or share exchange has become effective, a statement that the merger or share exchange has been abandoned in accordance with this section, ~~executed~~ signed on behalf of a party to the merger or share exchange by an officer or other duly authorized representative, must be delivered to the Secretary of State for filing prior to the effective date of the merger or share exchange. The statement must also include the names, types of entity and the jurisdictions of the parties to the merger or share exchange. Upon filing, the statement takes effect and the merger or share exchange is considered abandoned and does not become effective.

**Sec. 57. 13-C MRSA §1202, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**2. Resolution authorizing disposition.** A disposition that requires approval of the shareholders under subsection 1 must be initiated by a resolution by the corporation's board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless:

A. The board of directors makes a determination that because of conflicts of interest or other special circumstances the board of directors should not make such a recommendation; or

B. Section 827 applies.

If paragraph A or B applies, the board of directors shall transmit to the shareholders the basis for so proceeding.

**Sec. 58. 13-C MRSA §1301, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**1. Affiliate.** "Affiliate" means:

A. A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person; or

B. A senior executive of a person described in paragraph A.

For purposes of section 1303, subsection 3, ~~paragraphs paragraph B and C~~, a person is deemed to be an affiliate of its senior executives.

**Sec. 59. 13-C MRSA §1301, sub-§5-A** is enacted to read:

**5-A. Interested transaction.** "Interested transaction" means a corporate action described in section 1302, subsection 1, other than a merger pursuant to section 1105, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. For the purposes of this subsection:

A. "Beneficial owner" means any person who, directly or indirectly, through any contract, arrangement or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares; except that a member of a national securities exchange is not considered to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When 2 or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is considered to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group;

B. "Excluded shares" means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; and

C. "Interested person" means a person, or an affiliate of a person, who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(1) Was the beneficial owner of 20% or more of the voting power of the corporation, other than as owner of excluded shares;

(2) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of 25% or more of the directors to the board of directors of the corporation; or

(3) Was a senior executive or director of the corporation or a senior executive of any affiliate thereof and will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(a) Employment, consulting, retirement or similar benefits established separately and not as part of or in contemplation of the corporate action;

(b) Employment, consulting, retirement or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 873; or

(c) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of the entity or the affiliate.

**Sec. 60. 13-C MRSA §1302, sub-§1, ¶A,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

A. Shareholder approval is required for the merger by section 1104 ~~and the shareholder is entitled to vote on the merger~~, except that appraisal rights are not available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger; or

**Sec. 61. 13-C MRSA §1302, sub-§2,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**2. Share exchange to which corporation is party.** Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired ~~if the shareholder is entitled to vote on the exchange~~, except that appraisal rights are not available to any shareholder of the corporation with respect to any class or series of shares of the corporation that are not exchanged;

**Sec. 62. 13-C MRSA §1302, sub-§3,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**3. Disposition of assets.** Consummation of a disposition of assets pursuant to section 1202, except that appraisal rights are not available to a shareholder of the corporation with respect to shares of a class or series if:

A. Under the terms of the corporate action approved by the shareholders, there is to be distributed to shareholders in cash the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in sections 1407 and 1408:

- (1) Within one year after the shareholders' approval of the action; and
- (2) In accordance with the shareholders' respective interests determined at the time of distribution; and

B. The disposition of assets is not an interested transaction;

**Sec. 63. 13-C MRSA §1303, sub-§2, ¶A**, as amended by PL 2005, c. 302, §4, is further amended to read:

A. The record date fixed to determine the shareholders entitled to receive notice of ~~and to vote at~~ the meeting of shareholders to act upon a corporate action requiring appraisal rights; or

**Sec. 64. 13-C MRSA §1303, sub-§3**, as amended by PL 2005, c. 302, §5, is repealed and the following enacted in its place:

**3. Exception.** Notwithstanding subsection 1, appraisal rights are available pursuant to section 1302 for the shareholders of any class or series of shares:

A. Who are required by the terms of a corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of a corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subsection 1 at the time the corporate action becomes effective;

B. In the case of the consummation of a disposition of assets pursuant to section 1202, the cash, shares or proprietary interests under paragraph A are, under the terms of the corporate action approved by the shareholders, to be distributed to the shareholders as part of the distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in sections 1407 and 1408:

- (1) Within one year after the shareholders' approval of the action; and
- (2) In accordance with their respective interests determined at the time of the distribution; or

C. When any of the shares or assets of a corporation are being acquired or converted, whether by merger, share exchange or otherwise, pursuant to a corporate action that is an interested transaction.

**Sec. 65. 13-C MRSA §1304**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

**§1304. Limitation or elimination of appraisal rights in articles of incorporation**

Notwithstanding section 1302 or 1303, the articles of incorporation of a corporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, except that:

**1. Class or series.** No such limitation or elimination is effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group,

on the action or if the action is a nonprofit conversion under chapter 9, subchapter 2, a conversion to an unincorporated entity under chapter 9, subchapter 4 or a merger having a similar effect; and

2. Appraisal rights. Any limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of those shares that are outstanding immediately prior to the effective date of that amendment or that the corporation is or may be required to issue or sell after the effective date of the amendment pursuant to any conversion, exchange or other right existing immediately before the effective date of that amendment does not apply to any corporate action that becomes effective within one year of that date if that action would otherwise afford appraisal rights.

**Sec. 66. 13-C MRSA §1305**, as amended by PL 2003, c. 344, Pt. B, §107, is repealed.

**Sec. 67. 13-C MRSA §1321, sub-§3, ¶A**, as enacted by PL 2007, c. 289, §33, is amended to read:

A. Written notice that appraisal rights are, are not or may be available must be ~~given~~ sent 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

**Sec. 68. 13-C MRSA §1322-A, sub-§2**, as enacted by PL 2007, c. 289, §35, is amended to read:

**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~~ sign a consent in favor of the proposed action with respect to that class or series of shares.

**Sec. 69. 13-C MRSA §1323, sub-§1**, as amended by PL 2007, c. 289, §36, is further 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~~ send a written appraisal notice and the form required by subsection 2, paragraph A to all shareholders who satisfied the requirements of section 1322-A. In the case of a merger under section 1105, the parent shall ~~deliver a written~~ send an appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

**Sec. 70. 13-C MRSA §1323, sub-§2**, as amended by PL 2007, c. 289, §37, is further amended to read:

**2. Appraisal notice.** The appraisal notice required by subsection 1 must be ~~sent~~ delivered no earlier than the date a corporate action became effective and no later than 10 days after that date and must:

A. Supply a form that specifies the 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;

B. Include the following information:

- (1) Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date for receiving the required form under subparagraph (2);
- (2) A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the appraisal notice ~~and form are~~ is sent, and a statement that the shareholder has waived the right to demand appraisal with respect to the shares unless the form is received by the corporation by the specified date;
- (3) A corporation's estimate of the fair value of the shares;
- (4) That, if requested in writing, a corporation will provide, to the shareholder so requesting, within 10 days after the date specified in subparagraph (2) the number of shareholders who return the forms by the specified date and the total number of shares owned by those shareholders; and
- (5) The date by which the notice to withdraw under section 1324 must be received, which date must be within 20 days after the date specified in subparagraph (2); and

C. Be accompanied by a copy of this chapter.

**Sec. 71. 13-C MRSA c. 13, sub-c. 4** is enacted to read:

## **SUBCHAPTER 4**

### **OTHER REMEDIES**

#### **§1341. Other remedies limited**

**1. Limitation on proposed or completed corporate actions.** The legality of a proposed or completed corporate action described in section 1302 may not be contested nor may the corporate action be enjoined, set aside or rescinded in a legal or equitable proceeding by a shareholder after the shareholders have approved the corporate action.

**2. Exceptions.** Subsection 1 does not apply to a corporate action that:

A. Was not authorized and approved in accordance with the applicable provisions of:

(1) Chapter 9, 10, 11 or 12;

(2) The articles of incorporation or bylaws; or

(3) The resolution of the board of directors authorizing the corporate action;

B. Was procured as a result of fraud, a material misrepresentation or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading;

C. Is an interested transaction, unless it has been recommended by the board of directors in the same manner as is provided in section 873 and has been approved by the shareholders in the same manner as is provided in section 874 as if the interested transaction were a director's conflicting-interest transaction; or

D. Is approved by less than unanimous consent of the voting shareholders pursuant to section 704 if:

(1) The challenge to the corporate action is brought by a shareholder who did not consent and as to whom notice of the approval of the corporate action was not effective at least 10 days before the corporate action was effected; and

(2) The proceeding challenging the corporate action is commenced within 10 days after notice of the approval of the corporate action is effective as to the shareholder bringing the proceeding.

**Sec. 72. 13-C MRSA §1402, sub-§2, ¶A,** as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

A. A corporation's board of directors must recommend dissolution to the shareholders unless:

(1) The board of directors determines that because of conflict of interest or other special circumstances the board of directors should make no recommendation; or

(2) Section 827 applies.

If subparagraph (1) or (2) applies, the board of directors must transmit to the shareholders the basis for so proceeding; and

**Sec. 73. 13-C MRSA §1524, sub-§1,** as amended by PL 2003, c. 344, Pt. B, §129, is further amended to read:

**1. Application for transfer of authority; contents.** A foreign business corporation authorized to transact business in this State that converts to a foreign nonprofit corporation or to any form of foreign other entity that is required to file an application for authority or make a similar type of filing with the Secretary of State if it transacts business in this State shall file with the Secretary of State an application for transfer of authority ~~executed~~ signed by any officer or other duly authorized representative. The application must set forth:

- A. The name of the foreign corporation, the current state or country under whose laws it is incorporated as it appears on the records of the Secretary of State and the date on which the corporation was authorized to transact business in this State;
- B. The type of entity to which it has been converted and the jurisdiction whose laws govern its internal affairs; and
- C. Any other information that would be required in a filing under the laws of this State by an entity of the type the corporation has become seeking authority to transact business in this State.

**Sec. 74. 13-C MRSA §1601, sub-§4**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**4. Records; written, electronic.** A corporation shall maintain its records in ~~written form~~ the form of a document, including an electronic record, or in another form capable of conversion into ~~written paper~~ form within a reasonable time.

**Sec. 75. 13-C MRSA §1602, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**2. Inspect; copy records.** A shareholder of a corporation is entitled to inspect and copy during regular business hours at the corporation's principal office or its registered office, if the corporation keeps such records at its registered office, any of the records of the corporation described in section 1601, subsection 5 if the shareholder gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy, except that a shareholder's rights under this subsection are subject to any reasonable restrictions on the disclosure of financial information about the corporation that are set forth in the corporation's articles of incorporation or bylaws.

**Sec. 76. 13-C MRSA §1602, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**3. Certain documents inspected; copied.** A shareholder of a corporation is entitled to inspect and copy during regular business hours at a reasonable location specified by the corporation any of the following records of the corporation if the shareholder meets the requirements of subsection 4 and gives the corporation a signed written notice of the shareholder's demand at least 5 business days before the date on which the shareholder wishes to inspect and copy:

- A. Excerpts from minutes of any meeting of the board of directors, ~~records of any action of or~~ a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders ~~or, the~~ board of directors or a committee of the board without a meeting, to the extent not subject to inspection under subsection 2;
- B. Accounting records of the corporation; and
- C. The record of shareholders.

**Sec. 77. 13-C MRSA §1602, sub-§7** is enacted to read:

**7. Notice and information to new shareholders.** For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, a person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting, unless the corporation has made such information generally available to shareholders by posting it on its publicly accessible website or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of an action taken at the meeting.

**Sec. 78. 13-C MRSA §1606, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**1. Notice.** Whenever notice is would otherwise be required to be given under any provision of this Act to ~~any~~ a shareholder, that notice is need not ~~required~~ to be given if:

A. ~~Notice~~ Notices to the shareholders of 2 consecutive annual meetings and all notices of meetings during the period between such 2 consecutive annual meetings have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered; or

B. All, but not less than 2, payments of dividends on securities during a 12-month period, or 2 consecutive payments of dividends on securities during a period of more than 12 months, have been sent to the shareholder at the shareholder's address as shown on the records of the corporation and have been returned undeliverable or could not be delivered.

**Sec. 79. 13-C MRSA §1620, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**1. Financial statements.** No later than 5 months after the close of each fiscal year, each corporation that is not a close corporation shall ~~prepare~~ deliver to its shareholders annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for the year unless that information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis. A public corporation may fulfill its responsibilities under this section by delivering the specified financial statements or otherwise making them available in any manner permitted by the applicable rules and regulations of the United States Securities and Exchange Commission.

**Sec. 80. 13-C MRSA §1620, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**2. Written demand for copy of financial statement.** Upon written demand of any shareholder of a corporation, the corporation shall ~~mail~~ deliver to that shareholder a copy of the most recent annual financial statement prepared in accordance with subsection 1. If the annual financial statement is reported upon by a public accountant, the accountant's report must accompany it. If the annual financial statement is not reported upon by a public accountant, the statement must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

A. Stating the reporter's reasonable belief whether the statement was prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

B. Describing any respects in which the statement was not prepared on a basis of accounting consistent with the statement prepared for the preceding year.

**Sec. 81. 13-C MRSA §1701, sub-§4** is enacted to read:

**4. Electronic Signatures in Global and National Commerce Act.** In the event that any provisions of this Act are deemed to modify, limit or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq., the provisions of this Act shall control to the maximum extent permitted by Section 102(a)(2) of that federal Act.

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In House of Representatives, ..... 2011

Read twice and passed to be enacted.

..... Speaker

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In Senate, ..... 2011

Read twice and passed to be enacted.

..... President

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Approved ..... 2011

..... Governor