CHAPTER 1

GENERAL PROVISIONS

§101. Short title

This Title may be known and cited as the "Maine Nonprofit Corporation Act." [PL 2003, c. 344, Pt. B, §6 (AMD).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 2003, c. 344, §B6 (AMD).

§102. Definitions

As used in this Act, unless the context otherwise requires, the following words shall have the following meanings. [PL 1977, c. 525, §13 (NEW).]

1. Articles of incorporation. "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto. It includes the certificate of incorporation, articles of merger, articles of consolidation and, in the case of a corporation created by special Act of the Legislature, the special Act and any amendments thereto.
[PL 1977, c. 525, §13 (NEW).]

2. Board of directors. "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the various names, such as board of trustees or board of managers, by which such group is designated.
[PL 1977, c. 525, §13 (NEW).]

3. Bylaws. "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated and includes the corporation's constitution unless the constitution is filed as the articles of incorporation or enacted by the Legislature in a special Act.
[PL 1977, c. 525, §13 (NEW).]

4. Corporation. "Corporation" or "domestic corporation" means a nonprofit corporation subject to this Act, including a nonprofit hospital and medical organization subject to Title 24, chapter 19. It shall not include:

A. A foreign corporation; [PL 1977, c. 592, §12 (NEW).]

B. A corporation subject to the laws regulating banking and insurance companies; or [PL 1977, c. 592, §12 (NEW).]

C. An instrumentality, agency, political subdivision or body politic and corporate of the State. [PL 1977, c. 592, §12 (NEW).]

[PL 1977, c. 592, §12 (RPR).]

4-A. Deliver; delivery. "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery and electronic transmission.
[PL 2005, c. 302, §1 (NEW).]

5. Director. "Director" means one member of the board of directors.
[PL 1977, c. 525, §13 (NEW).]

5-A. Domestic condominium corporation.
[PL 1991, c. 780, Pt. U, §11 (RP); PL 1991, c. 837, Pt. A, §35 (RP).]

5-B. Entity. "Entity" has the same meaning as set out in Title 13-C, section 102, subsection 11.
[PL 2003, c. 344, Pt. B, §7 (NEW).]

5-C. Electronic transmission. "Electronic transmission" means any process of communication that does not directly involve the physical transfer of paper and that is suitable for the retention, retrieval and reproduction of information by the recipient.
[PL 2005, c. 302, §1 (NEW).]

6. Foreign corporation. "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this State.
[PL 1977, c. 525, §13 (NEW).]

6-A. Individual. "Individual" means a natural person.
[PL 2003, c. 344, Pt. B, §7 (NEW).]

7. Insolvent. "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.
[PL 1977, c. 525, §13 (NEW).]

8. Member. "Member" includes persons by whatever name designated, including corporators, and means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws. In the case of a corporation without members entitled to vote, references in this Act to acts of members shall be taken to mean acts of directors.
[PL 1977, c. 592, §13 (AMD).]

8-A. Mutual benefit corporation. "Mutual benefit corporation" means a mutual benefit corporation described in section 1406 or a corporation formed as a mutual benefit corporation pursuant to chapter 4.
[PL 2001, c. 550, Pt. C, §6 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

9. Nonprofit corporation. "Nonprofit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors or officers.
[PL 1977, c. 525, §13 (NEW).]

9-A. Person. "Person" includes an individual and an entity.
[PL 2003, c. 344, Pt. B, §7 (NEW).]

10. President. "President" means the chief executive officer by whatever name known.
[PL 1977, c. 525, §13 (NEW).]

10-A. Public benefit corporation. "Public benefit corporation" means a public benefit corporation described in section 1406 or a domestic corporation formed as a public benefit corporation pursuant to chapter 4.
[PL 2001, c. 550, Pt. C, §7 (NEW); PL 2001, c. 550, Pt. C, §29 (AFF).]

11. Secretary or clerk. "Secretary or clerk" means the officer responsible for the keeping of records.
[PL 1977, c. 525, §13 (NEW).]

11-A. Sign; signature. "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.
[PL 2005, c. 302, §1 (NEW).]

12. Treasurer. "Treasurer" means the chief fiscal officer.
[PL 1977, c. 525, §13 (NEW).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 1977, c. 592, §§12,13 (AMD). PL 1991, c. 465, §26 (AMD). PL 1991, c. 780, §U11 (AMD). PL 1991, c. 837, §A35 (AMD). PL 2001, c. 550, §§C6,7 (AMD). PL 2001, c. 550, §C29 (AFF). PL 2003, c. 344, §B7 (AMD). PL 2005, c. 302, §1 (AMD).

§103. Applicability

1. Domestic corporations. The provisions of this Act relating to domestic corporations shall apply to:

A. All corporations organized hereunder; [PL 1977, c. 525, §13 (NEW).]

B. All nonstock corporations heretofore organized under any prior general Act or under any Act providing for the creation of special classes of corporations and for a purpose or purposes for which a corporation might be organized under this Act; and [PL 1977, c. 525, §13 (NEW).]

C. All nonstock corporations created by special Act of the Legislature, and all nonstock corporations located in Maine and created prior to the Articles of Separation by special Act of the General Court of the Commonwealth of Massachusetts; provided the purposes of the corporations are purposes for which a corporation may be organized under this Act. [PL 1977, c. 592, §14 (RPR).]

[PL 1977, c. 592, §14 (AMD).]

2. Foreign corporations. The provisions of this Act relating to foreign corporations shall apply to all foreign nonprofit corporations conducting affairs in this State for a purpose or purposes for which a corporation might be organized under this Act.

[PL 1977, c. 525, §13 (NEW).]

3. Class of corporations. Subject to the provisions of section 201, this Act does not apply to any class of corporations, including, but not limited to, corporations subject to Title 24, chapter 19 or Title 24-A, to the extent that any provision of any other public law is specifically applicable to such class of corporations and is inconsistent with any provision of this Act, in which case such other provision prevails, and does not apply to any corporation created by special Act of the Legislature, to the extent that this Act is inconsistent with such special Act; nor does the Act apply to any mutual insurer, as defined in Title 24-A, section 401, nor to any financial institution incorporated by special Act of the Legislature or pursuant to general law.

[PL 2001, c. 550, Pt. C, §8 (AMD); PL 2001, c. 550, Pt. C, §29 (AFF).]

4. Enactment not to affect existence of certain corporations. The enactment of this Act shall not affect the existence of any corporation existing on the effective date of this Act.

[PL 1977, c. 525, §13 (NEW).]

5. Other provisions not affected. The enactment of this Act shall not affect any cause of action, liability, penalty or action which on the effective date of this Act is accrued, existing, incurred or pending, but the same may be asserted, enforced, prosecuted or defended as if this Act had not been enacted.

[PL 1977, c. 525, §13 (NEW).]

6. Validity. The validity of any corporate act and of any incorporation, prior to the effective date of this Act, shall be determined with reference to the law then in effect.

[PL 1977, c. 525, §13 (NEW).]

7. Validity of provisions of articles or bylaws. The validity of any provision of the articles or the bylaws of a corporation existing on the effective date of this Act shall be determined with reference to the law which was in effect at the time when the same was adopted, or with reference to this Act, whichever supports the validity of such provision. A provision of the articles or the bylaws which was valid under the law in existence at the time the same was adopted shall remain in effect, notwithstanding a contrary provision of this Act, until repealed or amended by voluntary act of the corporation; but any

amendment thereof shall be adopted by the procedures set out in this Act and the provision, as amended, shall conform to the requirement of this Act.
[PL 1977, c. 525, §13 (NEW).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 1977, c. 592, §14 (AMD). PL 2001, c. 550, §C8 (AMD). PL 2001, c. 550, §C29 (AFF).

§104. Execution of documents

Whenever any provision of this Act specifically requires any document to be executed by the corporation in accordance with this section, unless otherwise specifically stated in this Act and subject to any additional provisions of this Act, such requirements shall mean that: [PL 1977, c. 525, §13 (NEW).]

1. Signature required. The document must be signed:

A. In the case of articles of incorporation, by the incorporator or incorporators; [PL 2007, c. 323, Pt. B, §1 (AMD); PL 2007, c. 323, Pt. G, §4 (AFF).]

B. In the case of other documents:

(1) By the clerk or secretary;

(2) By the chair of the board of directors of a foreign corporation or a domestic corporation, by its president or by another of its officers; or

(4) If there are no directors, then by a specific member or members as may be designated by the members at a lawful meeting; [PL 2005, c. 302, §2 (AMD).]

C. In the case of annual reports, as provided in section 1301, subsection 3; or [PL 1997, c. 376, §17 (AMD).]

D. In the case of an application for authority to carry on activities, by any duly authorized individual. All other documents filed on behalf of foreign corporations may be signed by any duly authorized individual; [PL 2007, c. 323, Pt. B, §2 (AMD); PL 2007, c. 323, Pt. G, §4 (AFF).]
[PL 2007, c. 323, Pt. B, §§1, 2 (AMD); PL 2007, c. 323, Pt. G, §4 (AFF).]

2. Name typed or printed. Any person signing a document shall, either opposite or beneath his signature, clearly and legibly print or type his name and the capacity in which he signs.
[PL 1977, c. 525, §13 (NEW).]

3. Title set forth. The document shall set forth the title of the document at the head of the document.
[PL 1977, c. 525, §13 (NEW).]

4. Current complete address. The document shall set forth the current address of the registered office of the corporation, including the street or rural route address, post office box, if any, town or city, county and state.
[PL 1977, c. 525, §13 (NEW).]

5. Failure to comply. If the document is accepted for filing and filed, a failure to comply with the requirements of subsections 2, 3 or 4 shall have no effect on the validity of the document, and the document shall have the same legal effect as though those subsections had been complied with fully.
[PL 1977, c. 525, §13 (NEW).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 1989, c. 501, §§L33,34 (AMD). PL 1997, c. 376, §17 (AMD). PL 1999, c. 594, §9 (AMD). PL 2005, c. 302, §2 (AMD). PL 2007, c. 323, Pt. B, §§1, 2 (AMD). PL 2007, c. 323, Pt. G, §4 (AFF).

§105. Verification of documents

1. Oath not required. Unless required by some other law, no document required or permitted to be filed under any provision of this Act need be under oath or acknowledged.
[PL 1977, c. 525, §13 (NEW).]

2. Signature is verification. The signature of any person on a document required or permitted to be filed under any provisions of this Act constitutes that person's representation that:

A. He has read and understood the meaning and purport of the statements contained in the document; [PL 1977, c. 525, §13 (NEW).]

B. Such statements are true, either by personal knowledge or according to his information and belief; and [PL 1977, c. 525, §13 (NEW).]

C. If he signed in a representative capacity or as a corporate officer, that he had the authority so to sign. If any of the above representations is false, the person who signed the document shall be liable as specified in section 1303. [PL 1977, c. 525, §13 (NEW).]

[PL 1977, c. 525, §13 (NEW).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW).

§106. Filing of documents

1. Meaning of filing. Whenever any provision of this Act requires any document to be delivered for filing, or filed in accordance with this section, unless otherwise specifically stated in this Act and subject to any additional provisions of this Act, such requirement shall mean that:

A. The original or a duplicate original of the document shall be delivered to the Office of the Secretary of State; [PL 1977, c. 525, §13 (NEW).]

B. If the document records, reflects or depends upon any action taken by a vote or the consent of the members, the document shall include or be accompanied by a certificate of the clerk, the secretary or an assistant secretary of the corporation stating that he has in his custody minutes properly reflecting such action by the members; [PL 1977, c. 525, §13 (NEW).]

C. All fees required for filing the document shall be tendered to the Secretary of State; [PL 1977, c. 525, §13 (NEW).]

D. Upon delivery of the document and upon tender of the required fees, if the Secretary of State finds that the document conforms to the requirements of rules promulgated in accordance with this Act, the Secretary of State shall certify that the document has been filed in the Secretary of State's office by endorsing thereon the word "filed" and the day, month and year thereof, and by signing or initialing such endorsement in person or by agent; if the person delivering the document for filing so requests, such endorsement shall further include the hour and minute of the filing of the document. Such endorsement shall be known as the "filing date" of the document and shall be conclusive of the date, and the time if included in the endorsement, of filing in the absence of actual fraud. An identifying mark may be used in lieu of signing or initialing. The filing date shall be the date first received unless otherwise specified by law or rule. The Secretary of State shall thereafter file and index the original; [PL 1989, c. 501, Pt. L, §35 (AMD).]

E. The Secretary of State shall promptly make a copy of the original and shall attest the copy by making upon it the same endorsement which is required to appear upon the original, together with a further endorsement that the copy is a true copy of the original document; and [PL 1991, c. 465, §27 (AMD).]

F. The copy, so attested, must be returned to the person or persons delivering the documents to the Secretary of State and it must be retained as a part of the permanent records of the corporation. [PL 1991, c. 465, §27 (AMD).]

[PL 1991, c. 465, §27 (AMD).]

2. Fully effective. Any document required to be filed shall be fully effective as of the filing date of the document.

[PL 1977, c. 525, §13 (NEW).]

3. Microfilmed. If he so determines by rule, the Secretary of State may copy, on microfilm, any document filed by him under this Act or under any predecessor of this Act and retain such microfilm copy in lieu of retaining the original as required by subsection 1, paragraph D; and he may thereafter destroy the original document or return it to the person who delivered the same to him for filing.

[PL 1977, c. 525, §13 (NEW).]

4. Inaccurate record filed. Whenever any document authorized to be filed with the Secretary of State under any provision of this Act has been so filed and is an inaccurate record of the corporate action therein referred to, or was defectively or erroneously executed, sealed or acknowledged, such document may be corrected by filing with the Secretary of State a certificate of correction of such document which shall be executed and delivered for filing in accordance with section 104 and this section. The certificate of correction shall specify the inaccuracy or defect to be corrected and shall set forth the portion of the instrument in corrected form. The corrected instrument shall be effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the corrected instrument shall be effective from the filing date.

[PL 1977, c. 525, §13 (NEW).]

5. Rulemaking. The Secretary of State may promulgate rules permitting the filing of documents by electronic transmission and permitting facsimile signatures on documents to be filed; and

[PL 1989, c. 501, Pt. L, §36 (NEW).]

6. Document filing. The Secretary of State's duty to file documents under this section is ministerial. The Secretary of State's filing or refusing to file a document does not, except as otherwise provided by law or rule:

A. Affect the validity or invalidity of the document in whole or part; [PL 1989, c. 501, Pt. L, §36 (NEW).]

B. Relate to the correctness or incorrectness of information contained in the document; or [PL 1989, c. 501, Pt. L, §36 (NEW).]

C. Create a presumption that the document is valid or invalid or that the information contained in the document is correct or incorrect. [PL 1989, c. 501, Pt. L, §36 (NEW).]

[PL 1989, c. 501, Pt. L, §36 (NEW).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 1989, c. 501, §§L35,36 (AMD). PL 1991, c. 465, §27 (AMD).

§107. Effect of corporate seal on document

1. Seal of corporation. The seal of the corporation may, but need not, be affixed to any document executed in accordance with section 104, and its absence therefrom shall not impair the validity of the document or of any action taken in pursuance thereof or in reliance thereon.

[PL 1979, c. 127, §93 (AMD).]

2. Corporate seal prima facie evidence. The presence of the corporate seal on a document purporting to be executed by authority of a domestic or foreign corporation shall be prima facie evidence that the document was so executed.

[PL 1977, c. 525, §13 (NEW).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW). PL 1979, c. 127, §93 (AMD).

§108. Computation of time for giving notice

In computing the period of time for the giving of any notice required or permitted under this Act, or under the articles, the bylaws of the corporation, or a resolution of its members or directors, the day on which the notice is given shall be excluded, and the day when the act for which notice is given to be done shall be included, unless the instrument calling for the notice otherwise specifically provides. [PL 1977, c. 525, §13 (NEW).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW).

§109. Reservation of power

Acts of incorporation passed since March 17, 1831, including this Act, may be amended, altered or repealed by the Legislature as if express provision to amend, alter or repeal were made in them, unless they contain an express limitation. This section does not deprive the courts of any power that they have at common law over a corporation or its officer. [RR 1991, c. 2, §43 (COR).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW). RR 1991, c. 2, §43 (COR).

§110. Effect of invalidity

If any provision of this Act or any application of any provision to any person or circumstances is held unconstitutional or otherwise invalid, such invalidity shall not nullify or otherwise impair the remainder of this Act or any other provision or application thereof, but the effect shall be confined to the specific provision or application thereof held invalid, and for this purpose the provisions of this Act are declared to be severable. [PL 1977, c. 525, §13 (NEW).]

SECTION HISTORY

PL 1977, c. 525, §13 (NEW).

§111. Certificate of existence; certificate of authority; certificate of fact

1. Application. Any person may apply to the Secretary of State for a certificate of existence for a domestic corporation or a certificate of authority for a foreign corporation.
[PL 2003, c. 631, §1 (NEW).]

2. Contents. A certificate of existence or certificate of authority sets forth:

A. The corporation's name used in this State; [PL 2003, c. 631, §1 (NEW).]

B. That, if a domestic corporation, the corporation is duly incorporated under the laws of this State and the date of its incorporation; [PL 2003, c. 631, §1 (NEW).]

C. That, if a foreign corporation, the foreign corporation is authorized to carry on activities in this State, the date on which the corporation was authorized to carry on activities in this State and its jurisdiction of incorporation; [PL 2003, c. 631, §1 (NEW).]

D. That all fees and penalties owed to this State have been paid if:

(1) Payment is reflected in the records of the Secretary of State; and

(2) Nonpayment affects the existence or authorization of the domestic or foreign corporation; [PL 2003, c. 631, §1 (NEW).]

E. That the corporation's most recent annual report required by section 1301 has been delivered to the Secretary of State; and [PL 2003, c. 631, §1 (NEW).]

F. Any facts of record in the office of the Secretary of State that may be requested by the applicant under subsection 1. [PL 2003, c. 631, §1 (NEW).]

[PL 2003, c. 631, §1 (NEW).]

3. Evidence of existence or authority. Subject to any qualification stated in the certificate, a certificate of existence or certificate of authority issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to carry on activities in this State.

[PL 2003, c. 631, §1 (NEW).]

4. Certificate of fact. In addition to the certificate authorized under subsection 2, the Secretary of State may issue a certificate attesting to any fact of record in the office of the Secretary of State that may be requested by the applicant under subsection 1.

[PL 2003, c. 631, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 631, §1 (NEW).

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