

**Maine Revised Statutes**  
**Title 13-B: MAINE NONPROFIT CORPORATION ACT**

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# Title 13-B: MAINE NONPROFIT CORPORATION ACT

## Chapter 1: GENERAL PROVISIONS

### §101. SHORT TITLE

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

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 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. [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.

[ 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.

[ 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.

[ 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; [1977, c. 592, §12 (NEW).]

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

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

[ 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.

[ 2005, c. 302, §1 (NEW) .]

**5. Director.** "Director" means one member of the board of directors.

[ 1977, c. 525, §13 (NEW) .]

**5-A. Domestic condominium corporation.**

[ 1991, c. 780, Pt. U, §11 (RP); 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.

[ 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.

[ 2005, c. 302, §1 (NEW) .]

**6. Foreign corporation.** "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this State.

[ 1977, c. 525, §13 (NEW) .]

**6-A. Individual.** "Individual" means a natural person.

[ 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.

[ 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.

[ 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.

[ 2001, c. 550, Pt. C, §6 (NEW); 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.

[ 1977, c. 525, §13 (NEW) .]

**9-A. Person.** "Person" includes an individual and an entity.

[ 2003, c. 344, Pt. B, §7 (NEW) .]

**10. President.** "President" means the chief executive officer by whatever name known.

[ 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.

[ 2001, c. 550, Pt. C, §7 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**11. Secretary or clerk.** "Secretary or clerk" means the officer responsible for the keeping of records.

[ 1977, c. 525, §13 (NEW) .]

**11-A. Sign; signature.** "Sign" or "signature" includes any manual, facsimile, conformed or electronic signature.

[ 2005, c. 302, §1 (NEW) .]

**12. Treasurer.** "Treasurer" means the chief fiscal officer.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1977, c. 592, §§12,13 (AMD). 1991, c. 465, §26 (AMD). 1991, c. 780, §U11 (AMD). 1991, c. 837, §A35 (AMD). 2001, c. 550, §§C6,7 (AMD). 2001, c. 550, §C29 (AFF). 2003, c. 344, §B7 (AMD). 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; [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 [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. [1977, c. 592, §14 (RPR) .]

[ 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.

[ 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.

[ 2001, c. 550, Pt. C, §8 (AMD); 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.

[ 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.

[ 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.

[ 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.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1977, c. 592, §14 (AMD). 2001, c. 550, §C8 (AMD). 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: [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; [2007, c. 323, Pt. B, §1 (AMD); 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; [2005, c. 302, §2 (AMD) .]

C. In the case of annual reports, as provided in section 1301, subsection 3; or [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; [2007, c. 323, Pt. B, §2 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

[ 2007, c. 323, Pt. B, §§1, 2 (AMD); 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.

[ 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.

[ 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.

[ 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.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

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

[ 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; [1977, c. 525, §13 (NEW).]

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

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

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; [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; [1977, c. 525, §13 (NEW).]

C. All fees required for filing the document shall be tendered to the Secretary of State; [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; [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 [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. [1991, c. 465, §27 (AMD).]

[ 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.

[ 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.

[ 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.

[ 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

[ 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; [1989, c. 501, Pt. L, §36 (NEW) .]

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

[ 1989, c. 501, Pt. L, §36 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1989, c. 501, §§L35,36 (AMD). 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.

[ 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.

[ 1977, c. 525, §13 (NEW) . ]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 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. [1977, c. 525, §13 (NEW) . ]

#### SECTION HISTORY

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. [1991, c. 2, §43 (COR) . ]

#### SECTION HISTORY

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. [1977, c. 525, §13 (NEW) . ]

#### SECTION HISTORY

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.

[ 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; [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; [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; [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; [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 [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. [2003, c. 631, §1 (NEW).]

[ 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.

[ 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.

[ 2003, c. 631, §1 (NEW) .]

#### SECTION HISTORY

2003, c. 631, §1 (NEW).

## Chapter 2: CORPORATE PURPOSES AND POWERS

### §201. PURPOSES

**1. Corporations organized.** Except as provided in subsections 2 and 3, all nonprofit corporations shall be organized under this Act and may be organized for any lawful purpose or purposes, including without being limited to any of the following purposes:

A. Charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, literary, cultural, athletic, scientific, agricultural, horticultural and animal husbandry; [1977, c. 525, §13 (NEW).]

B. Professional, commercial, industrial, trade association or collective bargaining; and [1991, c. 2, §44 (COR).]

C. Land development condominiums, homesteads, unit owners or home owners. [1977, c. 525, §13 (NEW).]

[ 1991, c. 2, §44 (COR) .]

**2. Corporations not organized.** The following types of corporations may not be organized under this Act:

A. Parishes and societies, as that term is used in Title 13, chapter 93, subchapter I; independent local churches, as that term is used in Title 13, chapter 93, subchapter II; meeting houses, as that term is used in Title 13, chapter 93, subchapter IV; and churches organized as noncapital stock corporations under Title 13, chapter 81, subchapter I.

If any of the foregoing corporations files an annual report pursuant to section 1301 of this Act, the filing of the report is deemed an election by that corporation to be governed by all of the provisions of this chapter, unless clearly inapplicable; and [1993, c. 680, Pt. A, §22 (AMD).]

B. Cooperatives, as that term is used in Title 13, chapter 85, subchapter II; credit unions, as defined in Title 9-B, section 131; rural electrification cooperatives, as that term is used in Title 35-A, chapter 37, subchapters I, II and III; consumers' cooperatives, as that term is used in Title 13, chapter 85, subchapter I; and fish marketing associations, as that term is used in Title 13, chapter 87. [1993, c. 680, Pt. A, §22 (AMD).]

[ 1993, c. 680, Pt. A, §22 (AMD) .]

**3. Corporations which may elect to be organized under this chapter.** The following types of corporations may elect to be organized under and governed by applicable provisions of this chapter or under any other applicable statutory provisions:

A. [1981, c. 698, §85 (RP).]

B. Proprietors of lands and wharves, as that term is used in Title 13, chapter 91; [1985, c. 737, Pt. A, §35 (AMD).]

C. Fraternal beneficiary associations, as that term is used in Title 24-A, chapter 55; [1985, c. 737, Pt. A, §35 (AMD).]

D. Cemetery corporations which do not issue shares, as that term is used in Title 13, chapter 83; [1985, c. 737, Pt. A, §35 (AMD).]

E. Agricultural societies, as that term is used in Title 7, chapter 4; [2005, c. 563, §11 (AMD).]

F. Local development corporations; and [2001, c. 703, §7 (AMD).]

G. Volunteer fire associations, as that term is used in Title 30-A, chapter 153. [1995, c. 462, Pt. A, §36 (AMD).]

If any of the foregoing corporations are organized under applicable provisions of this Act, they are governed by the provisions of this chapter unless clearly inapplicable; provided further that if any of the foregoing corporations files an annual report pursuant to section 1301 of this Act, the filing of the report is deemed an election by that corporation to be governed by all of the provisions of this chapter unless clearly inapplicable.

[ 2005, c. 563, §11 (AMD) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §94 (AMD). 1979, c. 541, §§B16-B20 (AMD). 1981, c. 698, §85 (AMD). 1985, c. 714, §40 (AMD). 1985, c. 737, §A35 (AMD). 1987, c. 141, §B13 (AMD). 1987, c. 402, §A102 (AMD). 1989, c. 502, §A38 (AMD). RR 1991, c. 2, §44 (COR). 1993, c. 316, §§29,30 (AMD). 1993, c. 680, §A22 (AMD). 1995, c. 462, §A36 (AMD). 2001, c. 703, §7 (AMD). 2005, c. 563, §11 (AMD).

## §202. GENERAL POWERS

**1. Powers.** Subject to any limitations contained in this Act or in any other law, each corporation shall have power:

- A. To exist perpetually. No corporation formed under this Act may specify a lesser period of existence, but this shall not limit the power of a corporation to terminate its existence as provided by law; [1977, c. 525, §13 (NEW).]
- B. To sue and be sued in its corporate name, and to participate in any judicial, administrative, arbitative or other proceeding; [1977, c. 525, §13 (NEW).]
- C. To adopt and alter a corporate seal and to use the same as a facsimile thereof; [1977, c. 525, §13 (NEW).]
- D. To elect, appoint or hire officers, agents and employees of the corporation, and to define their duties and fix their compensation; [1977, c. 525, §13 (NEW).]
- E. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the activities of the corporation; [1977, c. 525, §13 (NEW).]
- F. To cease its corporate activities and surrender its corporate franchise; [1977, c. 525, §13 (NEW).]
- G. To make donations irrespective of corporate benefit for any charitable, scientific, educational or welfare purpose; and contributions for political candidates, parties and issues, to the extent permitted by law; [1977, c. 525, §13 (NEW).]
- H. To establish and carry out pension plans, pension trusts, other incentive plans for any or all of its directors, officers and employees; and to pay pensions and similar payments to its directors, officers or employees, and their families; [1977, c. 525, §13 (NEW).]
- I. With respect to any property of any description or interest therein, wherever situated, including, but not limited to, real property:
  - (1) To acquire, by purchase, lease, gift, will or otherwise;
  - (2) To own, hold, use, improve and otherwise deal in; and
  - (3) To sell, convey, encumber, mortgage, pledge, lease, exchange or otherwise dispose of all or any part of such property; [1977, c. 525, §13 (NEW).]

J. To make contracts and incur liabilities, borrow money on such terms and conditions as it may determine, issue its notes and bonds and other obligations and secure any of its obligations by mortgage, pledge or other encumbrance of all or any part of its property, franchises and income; [1977, c. 525, §13 (NEW).]

K. To enter into contracts of guaranty or suretyship, unless in doing so the corporation would be engaging in an activity prohibited to business corporations organized under Title 13-C; [2003, c. 344, Pt. D, §11 (AMD).]

L. To lend money, invest its funds from time to time and take and hold any property, including, but not limited to, real property, as security for payment of funds so loaned or invested, unless in doing so the corporation would be engaging in a business prohibited to business corporations organized under Title 13-C; [2003, c. 344, Pt. D, §11 (AMD).]

M. To lend money to its employees other than its officers and directors and otherwise to assist its employees, officers and directors; [1977, c. 525, §13 (NEW).]

N. To conduct its activities, carry on its operations and have offices and exercise the powers granted by this Act in any state, territory, district or possession of the United States or in any foreign country; [1977, c. 525, §13 (NEW).]

O. To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise use and deal in and with:

(1) The shares or other interests in or obligations of domestic business or foreign business corporations, associations, partnerships or individuals; and

(2) The obligations of the United States or any other government, state, territory, municipality or governmental district, or of any instrumentality thereof; [1997, c. 376, §18 (AMD).]

P. To form, or acquire the control of, other corporations or business corporations; [1977, c. 525, §13 (NEW).]

Q. To participate with others in any corporation, partnership, transaction, arrangement, operation, organization or venture which the corporation has power to conduct by itself, even if such participation involves sharing or delegation of control with or to others; [1977, c. 525, §13 (NEW).]

R. To reimburse and indemnify litigation expenses of directors, officers and employees, as provided for in section 714; [1989, c. 857, §51 (AMD).]

S. To have and exercise all powers necessary or convenient to effect the purposes for which the corporation is organized, or to further the activities in which the corporation may lawfully be engaged; and [1989, c. 857, §51 (AMD).]

T. To engage in legislative liaison activities, including gathering information regarding legislation, analyzing the effect of legislation, communicating with Legislators and attending and giving testimony at legislative sessions, public hearings or committee hearings, notwithstanding any rule adopted by the Department of Health and Human Services. [2005, c. 397, Pt. C, §11 (AMD).]

[ 2005, c. 397, Pt. C, §11 (AMD) .]

**2. Limitation.** The articles of incorporation of any corporation subject to this Act may limit the powers conferred by subsection 1, except to the extent that any such limitation is inconsistent with any provision of this Act or with any other law of this State.

[ 1977, c. 525, §13 (NEW) .]

**3. Powers enumerated.** It shall not be necessary to set forth in the articles of incorporation any of the powers enumerated in this section; but unless expressly excluded by the articles or limited by statute, each corporation shall have all the powers enumerated in this section whether or not some or all of them are also enumerated in the articles.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1989, c. 857, §§51,52 (AMD). 1997, c. 376, §18 (AMD). 2003, c. 344, §D11 (AMD). 2005, c. 397, §C11 (AMD).

## §203. DEFENSE OF ULTRA VIRES

**1. Beyond legal powers.** No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

A. In a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained; [1977, c. 525, §13 (NEW).]

B. In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through members in a representative suit, against the officers or directors of the corporation for exceeding their authority; or [1977, c. 525, §13 (NEW).]

C. In a proceeding by the Attorney General, as provided in this Act, to dissolve the corporation, or in a proceeding by the Attorney General to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the Attorney General. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## Chapter 3: CORPORATE NAME; REGISTERED OFFICE AND AGENT; SERVICE OF PROCESS

### §301. CORPORATE NAME

*(REPEALED)*

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §95 (AMD). 1979, c. 572, §§11-13 (AMD). 1979, c. 663, §72 (AMD). 1983, c. 50, §§2,3 (AMD). 1983, c. 86, §3 (AMD). 1983, c. 583, §6 (AMD). 1989, c. 501, §§L37,38 (AMD). 1993, c. 316, §§31-36 (AMD). 1993, c. 616, §6 (AMD). 1993, c. 718, §§B6-8 (AMD). 1995, c. 514, §2 (AMD). 1995, c. 633, §§C7-9 (AMD). 1997, c. 633, §4 (AMD). 2003, c. 344, §B8 (RP).

### §301-A. CORPORATE NAME

**1. Prohibition.** A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 201 and the corporation's articles of incorporation.

[ 2003, c. 344, Pt. B, §9 (NEW) .]

**2. Distinguishable name.** Except as authorized by subsections 3 and 4, a corporate name must be distinguishable on the records of the Secretary of State from:

A. The name of a corporation, limited liability company, limited liability partnership or limited partnership that is incorporated, organized or authorized to transact business or carry on activities in this State; [2003, c. 344, Pt. B, §9 (NEW).]

B. Assumed, fictitious, reserved and registered name filings for all entities; and [2003, c. 344, Pt. B, §9 (NEW).]

C. Marks registered under Title 10, chapter 301-A unless the registered owner or holder of the mark is the same person or entity as the corporation seeking to use a name that is not distinguishable on the records of the Secretary of State and files proof of ownership with the Secretary of State. [2003, c. 344, Pt. B, §9 (NEW).]

[ 2003, c. 344, Pt. B, §9 (NEW) .]

**3. Refuse to file name.** The Secretary of State, in the Secretary of State's discretion, may refuse to file a name that:

A. Consists of or comprises language that is obscene; [2003, c. 344, Pt. B, §9 (NEW).]

B. Inappropriately promotes abusive or unlawful activity; [2003, c. 344, Pt. B, §9 (NEW).]

C. Falsely suggests an association with public institutions; or [2003, c. 344, Pt. B, §9 (NEW).]

D. Violates any other provision of the law of this State with respect to names. [2003, c. 344, Pt. B, §9 (NEW).]

[ 2003, c. 344, Pt. B, §9 (NEW) .]

**4. Authorization to use name.** A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable on the records of the Secretary of State from one or more of the names described in subsection 2. The Secretary of State shall authorize use of the name applied for if:

A. The entity in possession of the name consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State as provided in sections 104 and 106 or as provided in the applicable law for that entity to change its name to a name that is distinguishable on the records of the Secretary of State from the name of the applicant; or [2003, c. 344, Pt. B, §9 (NEW).]

B. The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State. [2003, c. 344, Pt. B, §9 (NEW).]

[ 2003, c. 344, Pt. B, §9 (NEW) .]

**5. Use of another corporation's name.** A corporation may use the name, including the assumed or fictitious name, of another domestic or foreign corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the corporation proposing to use the name:

A. Has merged with the other corporation; [2003, c. 344, Pt. B, §9 (NEW).]

B. Has been formed by reorganization of the other corporation; or [2003, c. 344, Pt. B, §9 (NEW).]

C. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation. [2003, c. 344, Pt. B, §9 (NEW).]

[ 2003, c. 344, Pt. B, §9 (NEW) .]

**6. Determining distinguishability.** In determining whether names are distinguishable on the records, the Secretary of State shall disregard the following:

A. The words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" and "professional corporation"; [2005, c. 543, Pt. D, §10 (AMD); 2005, c. 543, Pt. D, §18 (AFF).]

B. The presence or absence of the words or symbols of the words "and" and "the"; and [2003, c. 344, Pt. B, §9 (NEW).]

C. The differences in the use of punctuation, capitalization or special characters. [2003, c. 344, Pt. B, §9 (NEW).]

[ 2005, c. 543, Pt. D, §10 (AMD); 2005, c. 543, Pt. D, §18 (AFF) .]

**7. Change of corporate name by foreign corporation.** If a foreign corporation authorized to carry on activities in this State changes its corporate name to one that does not satisfy the requirements of this section, the foreign corporation may not carry on activities in this State under the proposed new name until it adopts a name satisfying the requirements of this section and files an amended application for authority under section 1207 that is accompanied by a statement of use of a fictitious name under section 308-A.

[ 2003, c. 344, Pt. B, §9 (NEW) .]

**8. Violations of this section.** If a corporation has in other respects complied with this Title and its articles of incorporation have been filed, or if a foreign corporation has in other respects satisfied this Title and has been authorized to carry on activities in this State, subsequent discovery of a violation of the

foregoing provisions of this section does not invalidate its corporate existence or authority, but the courts of this State may, upon application of the State or of any interested or affected person, enjoin such violation and grant any other appropriate relief.

[ 2003, c. 344, Pt. B, §9 (NEW) .]

#### SECTION HISTORY

2003, c. 344, §B9 (NEW). 2005, c. 543, §D10 (AMD). 2005, c. 543, §D18 (AFF).

## §302. RESERVED NAME

*(REPEALED)*

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §96 (AMD). 2003, c. 344, §B10 (RP).

## §302-A. RESERVED NAME

**1. Reserve use of name.** A person may reserve the exclusive use of a corporate name, including an assumed or fictitious name, by executing and delivering for filing as provided in section 106 an application to the Secretary of State. The application must be executed by a duly authorized person and must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a period of 120 days. The reservation may not be renewed, but after the expiration of the reservation, the same name may be reserved by the same or another applicant.

[ 2013, c. 99, §1 (AMD) .]

**2. Transfer of reservation.** The owner of a reserved corporate name under subsection 1 may transfer the reservation to another person by executing and delivering for filing to the Secretary of State as provided in section 106 a notice of the transfer, signed by the transferor, that states the name and address of the transferee.

[ 2003, c. 344, Pt. B, §11 (NEW) .]

#### SECTION HISTORY

2003, c. 344, §B11 (NEW). 2013, c. 99, §1 (AMD).

## §303. REGISTERED NAME AND RENEWAL; TERMINATION

*(REPEALED)*

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §97 (AMD). 1979, c. 572, §14 (AMD). 1993, c. 316, §37 (AMD). 1995, c. 458, §6 (AMD). 1997, c. 376, §19 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B35 (COR). 2003, c. 344, §B12 (RP).

## §303-A. REGISTERED NAME OF FOREIGN CORPORATION

**1. Register corporate name.** A foreign corporation may register its corporate name if the name is distinguishable on the records of the Secretary of State pursuant to section 301-A.

[ 2003, c. 344, Pt. B, §13 (NEW) .]

**2. Application.** To register its corporate name, a foreign corporation must execute and deliver to the Secretary of State for filing as provided in sections 104 and 106 an application that:

A. Sets forth its corporate name, the state or country and date of its incorporation, the address of its principal office wherever located and a brief description of the nature of the activities in which it is engaged; and [2003, c. 344, Pt. B, §13 (NEW).]

B. Is accompanied by a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated. The certificate of existence must have been made not more than 90 days prior to the delivery of the application for filing. [2003, c. 344, Pt. B, §13 (NEW).]

[ 2003, c. 344, Pt. B, §13 (NEW) .]

**3. Applicant's exclusive use.** A corporate name is registered for a foreign corporation's exclusive use upon the effective date of the application under subsection 2 until the end of the calendar year in which the application was filed.

[ 2003, c. 344, Pt. B, §13 (NEW) .]

**4. Renewal of registered name.** A foreign corporation whose registration is effective may renew the registration for a successive year by delivering for filing to the Secretary of State a renewal application that complies with the requirements of subsection 2 between October 1st and December 31st. The renewal application, when filed, renews the registration for the following calendar year.

[ 2003, c. 344, Pt. B, §13 (NEW) .]

**5. Qualify as foreign corporation.** A foreign corporation whose registration is effective may, after the registration is effective, qualify as a foreign corporation under the registered name or may consent in writing to the use of that name by a corporation incorporated under this Title or by another foreign corporation authorized to transact business in this State. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

[ 2003, c. 344, Pt. B, §13 (NEW) .]

#### SECTION HISTORY

2003, c. 344, §B13 (NEW).

## **§304. REGISTERED OFFICE AND REGISTERED AGENT**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1993, c. 316, §38 (AMD). 1997, c. 376, §20 (AMD). 2007, c. 323, Pt. B, §3 (RP). 2007, c. 323, Pt. G, §4 (AFF).

## **§304-A. REGISTERED AGENT OF DOMESTIC NONPROFIT CORPORATION**

Each domestic nonprofit corporation must have and shall continuously maintain a registered agent in this State as defined in Title 5, chapter 6-A. [2007, c. 535, Pt. B, §2 (NEW).]

#### SECTION HISTORY

2007, c. 535, Pt. B, §2 (NEW).

**§305. REGISTERED AGENT; REGISTERED OFFICE; CHANGES***(REPEALED)*

## SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §98 (AMD). 1989, c. 501, §L39 (AMD). 1991, c. 780, §U12 (AMD). 1993, c. 316, §39 (AMD). 1997, c. 376, §21 (AMD). 1997, c. 376, §22 (AMD). 1997, c. 376, §23 (AMD). 1999, c. 594, §10 (AMD). 2003, c. 631, §2 (AMD). 2007, c. 323, Pt. B, §4 (RP). 2007, c. 323, Pt. G, §4 (AFF).

**§306. SERVICE OF PROCESS ON CORPORATION***(REPEALED)*

## SECTION HISTORY

1977, c. 525, §13 (NEW). 2007, c. 323, Pt. B, §5 (RP). 2007, c. 323, Pt. G, §4 (AFF).

**§306-A. SERVICE OF PROCESS UPON NONPROFIT CORPORATION**

Service of process, notice or demand required or permitted by law on a nonprofit corporation is governed by Title 5, section 113. [2007, c. 323, Pt. B, §6 (NEW); 2007, c. 323, Pt. G, §4 (AFF).]

## SECTION HISTORY

2007, c. 323, Pt. B, §6 (NEW). 2007, c. 323, Pt. G, §4 (AFF).

**§307. SERVICE ON NONRESIDENT DIRECTORS OF DOMESTIC CORPORATIONS**

**1. Nonresident directors.** Each director of a domestic corporation who is a nonresident of this State at the time of his election or who becomes a nonresident during his term of office shall, by his acceptance of election or by continuing in office as director, be deemed to have appointed the Secretary of State as an agent to receive service of process upon him in any action or proceeding relating to actions of such corporation and arising while he held office as director of such corporation.

[ 1977, c. 525, §13 (NEW) .]

**2. Service of process.** Service of process upon the Secretary of State must be made in the same manner as is provided by the Maine Rules of Civil Procedure, rule 4(d)(8), as amended, in the case of service upon the Secretary of State as an agent of a corporation. The copy of the process must be mailed to the nonresident director at the address of such director shown on the most recent annual report of the corporation.

[ 1993, c. 316, §40 (AMD) .]

**3. Other service of process.** Service under this section may also be made by delivery of a copy of the process of the nonresident director at his address outside the State. Proof of such delivery shall be made by affidavit of the person making delivery and the affidavit shall be filed with the clerk of courts in which the action or proceeding is pending.

[ 1977, c. 525, §13 (NEW) .]

**4. Termination of application.** The resignation of any nonresident director shall, effective as of the date of filing in accordance with section 106 a notice of his resignation signed by such former director, terminate the application to him of the provisions of this section, except for any cause of action already accrued.

[ 1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §99 (AMD). 1993, c. 316, §40 (AMD).

## **§308. ASSUMED NAME OF CORPORATION**

*(REPEALED)*

SECTION HISTORY

1983, c. 86, §4 (NEW). 1993, c. 316, §41 (AMD). 1995, c. 458, §7 (AMD). 2003, c. 344, §B14 (RP).

### **§308-A. ASSUMED OR FICTITIOUS NAME OF CORPORATION**

**1. Assumed name defined.** As used in this section, "assumed name" means a trade name, the name of a division not separately incorporated and not used in conjunction with the real corporate name or any name other than the real name of a corporation except a fictitious name.

[ 2003, c. 344, Pt. B, §15 (NEW) .]

**2. Fictitious name defined.** As used in this section, "fictitious name" means a name adopted by a foreign corporation authorized to carry on activities in this State because its real name is unavailable pursuant to section 301-A.

[ 2003, c. 344, Pt. B, §15 (NEW) .]

**3. Authorized to transact business.** Upon complying with this section, a domestic or foreign corporation authorized to carry on activities in this State may carry on its activities in this State under one or more assumed or fictitious names.

[ 2003, c. 344, Pt. B, §15 (NEW) .]

**4. File statement indicating use of assumed or fictitious name.** Prior to carrying on any activities in this State under an assumed or fictitious name, a corporation shall execute and deliver for filing, in accordance with sections 104 and 106, a statement setting forth:

A. The corporate name and the address of the corporation's registered office; [ 2003, c. 344, Pt. B, §15 (NEW) .]

B. That the corporation intends to carry on activities under an assumed or fictitious name; [ 2003, c. 344, Pt. B, §15 (NEW) .]

C. The assumed or fictitious name that the corporation proposes to use; [ 2003, c. 344, Pt. B, §15 (NEW) .]

D. If the assumed name is not to be used at all of the corporation's places of activity in this State, the locations where it will be used; and [ 2003, c. 344, Pt. B, §15 (NEW) .]

E. If the corporation is a foreign corporation:

(1) The jurisdiction of incorporation; and

(2) The date on which it was authorized to carry on activities in this State. [2003, c. 344, Pt. B, §15 (NEW).]

A separate statement must be executed and delivered to the Secretary of State for filing with respect to each assumed or fictitious name that the corporation proposes to use.

[2003, c. 344, Pt. B, §15 (NEW) .]

**5. Compliance required.** An assumed or fictitious name must comply with the requirements of section 301-A.

[2003, c. 344, Pt. B, §15 (NEW) .]

**6. Enjoin use of assumed or fictitious name.** If a corporation uses an assumed or fictitious name without complying with the requirements of this section, the continued use of the assumed or fictitious name may be enjoined upon suit by the Attorney General or by any person adversely affected by the use of the assumed or fictitious name.

[2003, c. 344, Pt. B, §15 (NEW) .]

**7. Enjoin use despite compliance.** Notwithstanding its compliance with the requirements of this section, the use of an assumed or fictitious name may be enjoined upon suit of the Attorney General or of any person adversely affected by such use if:

A. The assumed or fictitious name did not, at the time the statement required by subsection 4 was filed, comply with the requirements of section 301-A; or [2003, c. 344, Pt. B, §15 (NEW) .]

B. The assumed or fictitious name is not distinguishable on the records of the Secretary of State from a name in which the plaintiff has prior rights by virtue of the common law or statutory law of unfair competition, unfair trade practices, common law copyright or similar law. [2003, c. 344, Pt. B, §15 (NEW) .]

The filing of a statement pursuant to subsection 4 does not constitute actual use of the assumed or fictitious name set out in that statement for purposes of determining priority of rights.

[2003, c. 344, Pt. B, §15 (NEW) .]

**8. Terminate use of assumed or fictitious name.** A corporation may terminate an assumed or fictitious name by executing and delivering, in accordance with sections 104 and 106, a statement setting forth:

A. The name of the corporation and the address of its registered office; [2003, c. 344, Pt. B, §15 (NEW) .]

B. That the corporation no longer intends to carry on activities under the assumed or fictitious name; and [2003, c. 344, Pt. B, §15 (NEW) .]

C. The assumed or fictitious name the corporation intends to terminate. [2003, c. 344, Pt. B, §15 (NEW) .]

[2003, c. 344, Pt. B, §15 (NEW) .]

#### SECTION HISTORY

2003, c. 344, §B15 (NEW) .

## Chapter 4: ORGANIZATION OF NONPROFIT CORPORATIONS

### §401. INCORPORATORS

**1. Incorporate.** One or more persons acting as incorporators shall execute and file, in accordance with sections 403 and 404, articles of incorporations for a corporation.

[ 1991, c. 780, Pt. U, §13 (AMD) .]

**2. Need not be residents.** Incorporators need not be residents of this State.

[ 1977, c. 525, §13 (NEW) .]

**3. Incorporators.** The incorporator or incorporators may be natural persons or domestic or foreign corporations, whether or not authorized to do business or carry on activities in this State, or any combination of natural persons or domestic or foreign corporations. If a corporation acts as an incorporator, the articles of incorporation must be accompanied by a certificate of an appropriate officer of that corporation, not the person signing the articles, certifying that the person executing the articles on its behalf is authorized to do so.

[ 1997, c. 376, §24 (AMD) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1991, c. 780, §§U13,14 (AMD). 1997, c. 376, §24 (AMD).

### §402. MEMBERS

**1. Classes of members.** A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation. If the corporation has no members, that fact shall be set forth in the articles of incorporation. A corporation may issue certificates evidencing membership therein.

[ 1977, c. 525, §13 (NEW) .]

**2. Directors, officers, employees and members not liable.** The directors, officers, employees and members of the corporation shall not, as such, be liable on its obligations.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

### §403. ARTICLES OF INCORPORATION

**1. Form of articles of incorporation.** The articles of incorporation shall set forth:

A. The name of the corporation; [1977, c. 525, §13 (NEW) .]

A-1. Whether the corporation is a public benefit corporation or a mutual benefit corporation, as described in section 1406; [2001, c. 550, Pt. C, §9 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

B. If the corporation is a public benefit corporation, the purpose or purposes for which the corporation is organized and, if the corporation is a mutual benefit corporation, the purpose or purposes for which the corporation is organized or a statement that it is organized for all purposes permitted under the Act; [2001, c. 550, Pt. C, §10 (AMD); 2001, c. 550, Pt. C, §29 (AFF).]

C. Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation; [1977, c. 525, §13 (NEW).]

D. The information required by Title 5, section 105, subsection 1; [2007, c. 323, Pt. B, §7 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

E. The number of directors constituting the initial board if the number has been designated or if the initial directors have been chosen; [1997, c. 376, §25 (AMD).]

F. The maximum and minimum, not less than 3, number of directors if they differ from the initial board; and [1977, c. 525, §13 (NEW).]

G. The name and address of each incorporator. [1977, c. 525, §13 (NEW).]

[ 2007, c. 323, Pt. B, §7 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**2. Corporate powers not set forth in incorporation.** It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

[ 1977, c. 525, §13 (NEW) .]

**3. Controlling amendment to bylaws.** Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1997, c. 376, §25 (AMD). 2001, c. 550, §§C9,10 (AMD). 2001, c. 550, §C29 (AFF). 2007, c. 323, Pt. B, §7 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §404. FILING OF ARTICLES OF INCORPORATION

**1. Filing.** When the articles of incorporation are delivered for filing by the Secretary of State, the Secretary of State shall, before filing them, determine that the articles:

A. Comply with the requirements of sections 104 and 106; [1977, c. 525, §13 (NEW).]

B. Set forth the information required by sections 402 and 403; and [1989, c. 501, Pt. L, §40 (AMD).]

C. Do not adopt as the name of the corporation a name that is in violation of section 301-A. [2003, c. 344, Pt. B, §16 (AMD).]

D. [1989, c. 501, Pt. L, §40 (RP).]

[ 2003, c. 344, Pt. B, §16 (AMD) .]

**2. Secretary of State to file articles of incorporation.** Upon making such determination, the Secretary of State shall file the articles of incorporation.

[ 1977, c. 525, §13 (NEW) . ]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1989, c. 501, §L40 (AMD). 2003, c. 344, §B16 (AMD).

## **§405. BEGINNING OF CORPORATE EXISTENCE; FILING AS CONCLUSIVE EVIDENCE OF INCORPORATION; EXCEPTIONS**

**1. Filed articles constitute charter and authority.** The filed articles constitute the corporation's charter and authority to carry on activities.

[ 1977, c. 525, §13 (NEW) . ]

**2. Beginning of corporate existence.** The existence of the corporation shall begin as of the filing date of the articles of incorporation, endorsed by the Secretary of State upon the articles filed as provided by section 106.

[ 1977, c. 525, §13 (NEW) . ]

**3. Filing of articles of incorporation; conclusive evidence.** The fact that the articles of incorporation have been filed by the Secretary of State shall be conclusive evidence that all conditions required by this Act to be performed by the incorporators have been complied with, that the corporation has been incorporated and that its corporate existence has begun. Nothing in this subsection shall be construed to prohibit the State from instituting proceedings to:

A. Cancel or revoke the articles of incorporation; [1977, c. 525, §13 (NEW) . ]

B. Enjoin any person from acting as a corporation within this State without being duly incorporated; or [1977, c. 525, §13 (NEW) . ]

C. Compel dissolution of the corporation; and in any such proceeding by the State, this section shall not give rise to any presumptions against the State. [1977, c. 525, §13 (NEW) . ]

[ 1977, c. 525, §13 (NEW) . ]

**4. Fact of filing.** The fact of filing the articles may be proved by production of a certified copy thereof or in any other manner permitted by law.

[ 1977, c. 525, §13 (NEW) . ]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## **§406. POWERS OF INCORPORATORS; ORGANIZATIONAL MEETING**

**1. Management of affairs until first annual meeting.** If the persons who are to serve as directors until the first annual meeting of the members have not been named in the articles of incorporation, the incorporator or incorporators, until the directors are elected, shall manage the affairs of the corporation and may do whatever is necessary and proper to perfect the organization of the corporation, including the adoption of the original bylaws of the corporation and the election of directors. If the persons who are to serve as directors until the first annual meeting have been named in the articles of incorporation, the power of the incorporator

or incorporators to act for the corporation shall terminate upon filing of the articles. If the initial directors have not been named in the articles, the power of the incorporator or incorporators shall terminate upon the election and qualification of at least one director.

[ 1977, c. 525, §13 (NEW) .]

**2. Organizational meeting.** At any time before or after the filing date of the articles of incorporation, an organizational meeting of the incorporator or incorporators, or of the board of directors if the initial directors were named in the articles of incorporation, shall be held, either within or without this State, to adopt bylaws of the corporation, to elect directors, if the meeting is of the incorporators, to serve or hold office until the first annual meeting of the members, to elect officers if the meeting is of the directors, to do any other or further acts to complete the organization of the corporation and to transact such other business as may come before the meeting. Such meeting may be held without call, upon the unanimous agreement of the incorporators or directors, as the case may be, or upon call as provided in subsection 3.

[ 1977, c. 525, §13 (NEW) .]

**3. Meeting; how called.** If the organizational meeting is of the incorporators, it shall be held at the call of a majority of the incorporators. If the organizational meeting is of the directors named in the articles of incorporation, it shall be held at the call either of a majority of the incorporators or of a majority of the directors named in the articles. The person or persons calling the meeting shall give to each other incorporator or director, as the case may be, at least 3 days' written notice thereof by any usual means of communication. The notice shall state the time, place and purposes of the meeting.

[ 1977, c. 525, §13 (NEW) .]

**4. Waiver of notice.** The provisions of section 705 pertaining to waiver of notice shall apply to the organizational meeting.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §407. SHARES OF STOCK AND DIVIDENDS PROHIBITED

A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes and upon dissolution or final liquidation may make distributions to its members as permitted by this Act, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income or profit. Upon dissolution or liquidation, the assets of a corporation whose purposes and activities have been primarily charitable, religious, eleemosynary, benevolent or educational shall be transferred or conveyed only to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation. [1977, c. 592, §15 (AMD).]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1977, c. 592, §15 (AMD).

## Chapter 6: BYLAWS AND VOTING

### §601. BYLAWS

The initial bylaws of a corporation shall be adopted by its incorporators or its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the activities of a corporation not inconsistent with law or the articles of incorporation. [1979, c. 127, §100 (AMD).]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §100 (AMD).

### §602. MEETINGS OF MEMBERS

**1. Where held.** Meetings of members, if any, may be held at such place, either within or without this State, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this State.

[ 1977, c. 525, §13 (NEW) .]

**2. Annual meetings.** A meeting shall be held annually at such time as may be provided in the articles of incorporation or bylaws. If there shall be a failure, for whatever reason, to hold the annual meeting for a period of 30 days after the date for such meeting specified in the bylaws or articles of incorporation, or if no date has been specified, for a period of 13 months after the organization of the corporation or after its last annual meeting, a substitute annual meeting may be called by any person or persons entitled to call a special meeting of the members.

[ 1977, c. 525, §13 (NEW) .]

**3. Special meetings.** Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having 1/20th of the votes entitled to be cast at such meeting.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

### §603. NOTICE OF MEMBERS' MEETINGS

**1. Written notice of meetings.** Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

[ 1977, c. 525, §13 (NEW) .]

**2. Affidavit of designated officer prima facie evidence of facts stated therein.** An affidavit of the officer designated under subsection 1, or of such other person who gave notice as required by this section, that such notice has been given shall in the absence of fraud be prima facie evidence of the facts stated therein.

[ 1977, c. 525, §13 (NEW) .]

**3. Notice of adjourned meeting.** When a meeting is adjourned, for whatever reason, for 30 days or more, notice of the adjourned meeting must be given as provided by this section. Notice of a meeting adjourned for less than 30 days need not be given if the time and place of the adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business that might have been transacted at the meeting at which the adjournment was taken.

[ 1991, c. 2, §45 (COR) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). RR 1991, c. 2, §45 (COR).

## §604. VOTING

**1. Members entitled to vote.** The right of the members or any class or classes of members to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

[ 1977, c. 525, §13 (NEW) .]

**2. Members to vote in person or by proxy; validity.** A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after 11 months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

[ 1977, c. 525, §13 (NEW) .]

**3. Cumulative voting for directors not permitted.** The articles of incorporation or the bylaws shall not permit cumulative voting for directors. Any provision purporting to permit cumulative voting shall be void.

[ 1977, c. 525, §13 (NEW) .]

**4. Corporations with no right to vote.** If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §605. QUORUM

**1. Members entitled to vote.** The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding 1/10 of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum. A majority of the votes entitled to be cast on a matter to be voted upon

by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by this Act, the articles of incorporation or the bylaws.

[ 1977, c. 525, §13 (NEW) .]

**2. Meeting with less than a quorum.** The members present at a duly called or held meeting at which a quorum was once present may continue to do business at the meeting or at any adjournment thereof, notwithstanding the withdrawal of enough members to leave less than a quorum.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## **§606. UNANIMOUS ACTION BY MEMBERS WITHOUT A MEETING**

Any action required or permitted under this Act to be taken at a meeting of the members may be taken without a meeting if written consents, setting forth the action so taken, are signed by all the members entitled to vote on such action and are filed with the clerk of the corporation as part of the corporate records. Such written consents shall have the same effect as a unanimous vote of the members and may be stated as such in any certificate or document required or permitted to be filed with the Secretary of State, and in any certificate or document prepared or certified by any officer of the corporation for any purpose. [1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## Chapter 7: DIRECTORS AND OFFICERS

### §701. BOARD OF DIRECTORS

The activities of a corporation must be managed by a board of directors. Directors need not be residents of this State or members of the corporation unless required by the articles of incorporation or the bylaws. The articles of incorporation or the bylaws may prescribe other qualifications for the directors. [1991, c. 85, (AMD).]

Boards of directors shall ensure that no employee of the corporation may be terminated for contacting a director or directors. Directors may not preclude contact between employees of the corporation and members of the board of directors. [1991, c. 85, (NEW).]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1991, c. 85, (AMD).

### §702. NUMBER AND ELECTION OF DIRECTORS

**1. Number of directors fixed by bylaws.** The number of directors of a corporation shall not be less than 3. Subject to such limitation, the number of directors or a maximum and minimum number of directors shall be fixed by the bylaws or articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. If the articles of incorporation or bylaws set a maximum and minimum number of directors, the number of directors may be increased or decreased by a resolution of the members, or by a resolution of the directors, if the articles authorize such a resolution. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

[ 1977, c. 525, §13 (NEW) .]

**2. First board of directors named in articles of incorporation.** The directors constituting the first board of directors shall either be named in the articles of incorporation or elected by the incorporators and shall hold office until the first annual meeting of members or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or by the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be for one year.

[ 1977, c. 525, §13 (NEW) .]

**3. Directors divided into classes.** Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term to which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §703. VACANCIES

**1. Vacancies filled.** Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

[ 1977, c. 525, §13 (NEW) . ]

**2. Director to fill unexpired term of predecessor.** A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office.

[ 1977, c. 525, §13 (NEW) . ]

**3. Limited directorship.** Unless otherwise provided by the articles of incorporation or the bylaws, the directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

[ 1977, c. 525, §13 (NEW) . ]

### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §704. REMOVAL OF DIRECTORS

**1. Removal for cause.** At a special meeting of members called expressly for that purpose, the entire board of directors or any individual director may be removed, with or without cause, by a vote of the members as provided in this section.

[ 1977, c. 525, §13 (NEW) . ]

**2. Vote of 2/3 of membership required for removal.** Subject to the limitation in subsection 4, if the corporation does not have a board of directors so classified that different classes of members elect different directors, such removal may be accomplished by the affirmative vote of 2/3 of the members entitled to vote for directors. The articles of incorporation may provide that such removal be accomplished by a lesser vote, but in no case by a vote of less than a majority of members voting on the proposed removal.

[ 1977, c. 525, §13 (NEW) . ]

**3. Articles of incorporation may provide removal by lesser vote.** Subject to the limitation in subsection 4, if the directors are so classified that different classes of members elect different directors, a director may be removed only by the affirmative vote of 2/3 of the members of that class that elected the director. The articles of incorporation may provide that such removal may be accomplished by a lesser vote of the members of that class, but in no case by a vote of less than a majority of the members of that class voting on the proposed removal.

[ 2001, c. 550, Pt. C, §11 (AMD); 2001, c. 550, Pt. C, §29 (AFF) . ]

**4. All directors removed at meeting.** If any or all directors are removed at such meeting of the members, new directors may be elected at the same meeting without express notice being given of such election.

[ 1977, c. 525, §13 (NEW) . ]

**5. Action in court for removal from office.**

[ 2001, c. 550, Pt. C, §29 (AFF); 2001, c. 550, Pt. C, §12 (RP) .]

## SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §101 (AMD). 2001, c. 550, §§C11,12 (AMD). 2001, c. 550, §C29 (AFF).

**§704-A. REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING**

**1. Removal.** The Superior Court may remove any director of a corporation from office if the court finds that removal is in the best interest of the corporation and that:

A. The director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the corporation; [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. Section 713-A has been violated; or [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. A final judgment has been entered finding that the director has violated a duty set forth in section 712 or sections 717 to 720. [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Who may bring action.** A petition for removal under subsection 1 may be filed by:

A. The corporation, if 2/3 of the directors then in office resolve that an individual director should be removed; [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. Two-thirds of the members entitled to vote for that director or a lesser number as provided in the articles of incorporation of the corporation for removal of a director pursuant to section 704; or [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. In the case of a public benefit corporation, the Attorney General. [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**3. Place of filing.** The petition for removal under subsection 2 must be filed:

A. In the county where the corporation's principal office is located; [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. In the county where the corporation's registered office is located if the corporation has no principal office in this State; or [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. In the Superior Court of Kennebec County if the corporation has no principal office or registered office in this State. [2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**4. Court action.** The court that removes a director under this section may bar the director from serving on the board of directors for a period prescribed by the court.

[ 2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**5. Notice to Attorney General; Attorney General actions.** If the members of a corporation or the Attorney General commences a proceeding under this section, the corporation is made a party defendant. If a public benefit corporation or its members commence a proceeding under subsection 1, the public benefit corporation shall give the Attorney General written notice of the proceeding.

[ 2001, c. 550, Pt. C, §13 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

#### SECTION HISTORY

2001, c. 550, §C13 (NEW). 2001, c. 550, §C29 (AFF).

## §705. PLACE AND NOTICE OF DIRECTORS' MEETINGS

**1. Purpose of meeting; business transacted not specified in notice.** Meetings of the board of directors, regular or special, may be held either within or without this State, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting, unless the articles, the bylaws or this Act so requires.

[ 1977, c. 525, §13 (NEW) .]

**2. Participation at meetings by conference telephone.** Unless otherwise restricted by the certificate of incorporation or bylaws, members of the board of directors of any corporation, or any committee designated by such board, may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §706. QUORUM AND VOTE OF DIRECTORS

**1. Quorum fixed by bylaws.** A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or the bylaws, but in no event shall a quorum consist of less than 1/5 of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by this Act, the articles of incorporation or the bylaws.

[ 1977, c. 525, §13 (NEW) .]

**2. Special meetings.** Special meetings of the directors may be called by the chairman of the board, the president, or if he is absent or is unable to act, by any vice-president, by any 2 directors, or by any other person or persons authorized by the bylaws.

[ 1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

## §707. UNANIMOUS ACTION BY DIRECTORS WITHOUT A MEETING

Unless otherwise provided by the articles of incorporation or bylaws, any action required by this Act to be taken at a meeting of the directors of a corporation, or any action which may be taken at a meeting of the directors or of a committee of the directors, may be taken without a meeting if all of the directors, or all of the members of the committee, as the case may be, sign written consents setting forth the action taken or to be taken, at any time before or after the intended effective date of such action. Such consents shall be filed with the minutes of directors' meetings or committee meetings, as the case may be, and shall have the same effect as a unanimous vote. [1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

## §708. INFORMAL OR IRREGULAR ACTION BY DIRECTORS

**1. Action taken without a meeting.** Action taken without a meeting by agreement of a majority of directors, or by agreement of such larger percentage as the articles of incorporation or the bylaws may require, shall be deemed action of the board of directors:

A. If the corporation has no members and all directors know of the action taken and no director makes prompt objection to such action; [1977, c. 525, §13 (NEW) .]

B. If all members know of the action taken and no member makes prompt objection to such action; or [1977, c. 525, §13 (NEW) .]

C. If the directors take informal action pursuant to a custom of that corporation known generally to its members and all directors know of the action taken, and no director makes prompt objection thereto. [1977, c. 525, §13 (NEW) .]

[ 1977, c. 525, §13 (NEW) .]

**2. Meeting ratified by a director.** If a meeting otherwise valid of the board of directors or of any committee is held without call or notice where such is required, any action taken at such meeting shall be deemed ratified by a director or committee member who did not attend, unless, after learning of the action taken and of the impropriety of the meeting, he makes prompt objection thereto.

[ 1977, c. 525, §13 (NEW) .]

**3. Objections in writing to secretary of corporation.** Objection by a member, director or committee member shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the clerk or the secretary of the corporation.

[ 1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

## §709. COMMITTEES

**1. Executive committee.** If the articles of incorporation or the bylaws so provide, the board of directors, by a resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee consisting of 2 or more directors, and may delegate to such executive committee all the authority of the board of directors, except that no such executive committee shall have or exercise the authority of the board of directors to:

- A. Amend the articles of incorporation; [1977, c. 525, §13 (NEW).]
- B. Adopt a plan of merger or consolidation; [1977, c. 525, §13 (NEW).]
- C. Recommend to the members the sale or other disposition of all or substantially all of the property and assets of the corporation other than in the usual course of its business; [1977, c. 525, §13 (NEW).]
- D. Recommend to the members voluntary dissolution of the corporation or revocation of such dissolution; or [1977, c. 525, §13 (NEW).]
- E. Amend the bylaws of the corporation. [1977, c. 525, §13 (NEW).]

[ 1981, c. 307, §1 (AMD) .]

**1-A. Other committees.** If the articles of incorporation or the bylaws so provide, the board of directors may designate such other committees as the board deems necessary, which committees may consist of either members of the board or other persons as designated in the bylaw or resolution authorizing that committee.

[ 1981, c. 307, §2 (NEW) .]

**2. Designation to committee.** The designation of any such committee and the delegation to it of authority shall not relieve the board of directors, or any member thereof, of any responsibility imposed by law.

[ 1977, c. 525, §13 (NEW) .]

**3. Conduct of meetings.** So far as applicable, the provision of this chapter relating to the conduct of meetings of the board of directors shall govern meetings of the executive or other committees.

[ 1977, c. 525, §13 (NEW) .]

**4. Board of directors may appoint alternate.** At the time an executive committee or any other committee is created, or at any time thereafter, the board of directors may designate one or more alternate members of such committee, and may specify their order of preference, provided that alternate members of an executive committee may be designated only from among members of the board of directors. Each such alternate member may attend all meetings of the committee, but shall be without vote unless one or more of the regularly designated members of the committee fails to attend a meeting. In the absence of one or more of the regularly designated members of the committee, such alternate member or members may be counted toward a quorum and may vote as though they were regular members of the committee. In the event that there are more alternate committee members present than there are absent regular committee members, the alternate members shall have the right to vote in the order of preference specified by the directors in designating them or, if no order of preference was specified, in the order of their appointment or their listing in a single appointment.

[ 1981, c. 470, Pt. B, §3 (AMD) .]

### SECTION HISTORY

1977, c. 525, §13 (NEW). 1981, c. 307, §§1-3 (AMD). 1981, c. 470, §B3 (AMD).

## §710. OFFICERS

**1. Officers elected or appointed.** The officers of a corporation shall consist of a president, a secretary or clerk, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such term as may be prescribed in the articles of incorporation, in the bylaws or in a resolution of the board of directors. In the absence of such provision, all officers shall be elected or appointed annually by a board of directors. Any 2 or more offices may be held by the same person unless otherwise provided in the articles of incorporation or bylaws.

[ 1977, c. 525, §13 (NEW) .]

**2. Authority to make contracts.** Unless they have reason to believe otherwise, persons dealing with a corporation are entitled to assume that its president has authority to make, on its behalf, all contracts which are within the ordinary course of those activities in which the corporation is already engaged.

[ 1977, c. 525, §13 (NEW) .]

### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §711. REMOVAL OF OFFICERS

**1. Removal.** Any officer elected or appointed as provided in the articles of incorporation or bylaws may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

[ 1977, c. 525, §13 (NEW) .]

**2. Contract rights not created by appointment.** Election or appointment of an officer or agent shall not of itself create contract rights.

[ 1977, c. 525, §13 (NEW) .]

**3. Vacancy.** Any vacancy, however occurring, in any office may be filled by the directors, unless the articles of incorporation shall have specifically reserved such power to the members.

[ 1977, c. 525, §13 (NEW) .]

### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §712. LOANS TO DIRECTORS AND OFFICERS PROHIBITED

No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof. [1977, c. 525, §13 (NEW).]

### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §713. TRANSACTIONS BETWEEN A CORPORATION AND ITS DIRECTORS AND OFFICERS

*(REPEALED)*

### SECTION HISTORY

1977, c. 525, §13 (NEW). 1977, c. 592, §16 (AMD). 2001, c. 550, §C29 (AFF). 2001, c. 550, §C14 (RP).

## §713-A. PUBLIC BENEFIT CORPORATION; BOARD

**1. Financially interested person.** For the purposes of this section, "financially interested person" means:

A. An individual who has received or is entitled to receive compensation from a public benefit corporation for personal services rendered to the corporation by that individual within the previous 12 months, whether as a full-time or part-time employee, independent contractor, consultant or otherwise, excluding any reasonable payments made to directors for serving as directors. An individual is considered to receive compensation for services rendered to a public benefit corporation by that individual if the individual is entitled to receive, other than as a shareholder of a publicly held corporation, a portion of the net income of a corporate or other business entity that provides, for compensation, personal services to that public benefit corporation; or [2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. A spouse, brother, sister, parent or child of the individual described in paragraph A. [2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Board.** No more than 49% of the individuals on the board of directors of a public benefit corporation may be financially interested persons.

[ 2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**2-A. Compensation information.** A public benefit corporation that receives at least 25% of its total funding from one or more municipal, county, state or federal sources shall provide to the public information about the total compensation paid by the corporation to any director or officer of the corporation if the compensation exceeds \$250,000 in any 12-month period. The corporation shall make the information available by posting the information on its publicly accessible website or through other comparable means. "Compensation" includes all remuneration and benefits.

[ 2007, c. 624, §1 (NEW) .]

**3. Validity; enforceability.** The failure to comply with this section does not affect the validity or enforceability of any transaction entered into by a corporation.

[ 2001, c. 550, Pt. C, §15 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

### SECTION HISTORY

2001, c. 550, §C15 (NEW). 2001, c. 550, §C29 (AFF). 2007, c. 624, §1 (AMD).

## §714. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS; INSURANCE

**1. Power to indemnify.** A corporation shall have power to indemnify, or if so provided in the bylaws shall in all cases indemnify, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding; provided that no indemnification shall be provided for any person with respect to any matter as to which he shall have been finally adjudicated in any action, suit or proceeding not to have acted in good faith in the reasonable belief that his action was in the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order or conviction adverse to such person, or by settlement or plea of nolo contendere or its equivalent, shall not of itself create a presumption that such person did not act in good faith in the reasonable belief that his action was in the best interests of the corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

[ 1977, c. 525, §13 (NEW) .]

**2. Indemnity against expenses.** Any provision of subsections 1 or 3 to the contrary notwithstanding, to the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsection 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith. The right to indemnification granted by this subsection may be enforced by a separate action against the corporation, if an order for indemnification is not entered by a court in the action, suit or proceeding wherein he was successful on the merits or otherwise.

[ 1977, c. 525, §13 (NEW) .]

**3. Indemnity made by corporation.** Any indemnification under subsection 1, unless ordered by a court or required by the bylaws, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in subsection 1. Such determination shall be made by the board of directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion. Such a determination, once made by the board of directors may not be revoked by the board of directors, and upon the making of such determination by the board of directors, the director, officer, employee or agent may enforce the indemnification against the corporation by a separate action notwithstanding any attempted or actual subsequent action by the board of directors.

[ 1981, c. 470, Pt. A, §31 (AMD) .]

**4. Expenses incurred in civil or criminal action.** Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding as authorized by the board of directors in the manner provided in subsection 3 upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount, unless it shall ultimately be determined that he is entitled to be indemnified by the corporation as authorized in this section.

[ 1977, c. 525, §13 (NEW) .]

**5. Provisions of indemnification.** The indemnification provided by this section shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person. A right to indemnification required by the bylaws may be enforced by a separate action against the corporation, if an order for indemnification has not been entered by a court in any action, suit or proceeding in respect to which indemnification is sought.

[ 1979, c. 541, Pt. A, §134 (AMD) .]

**6. Power to purchase and maintain insurance.** A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under this section.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 541, §A134 (AMD). 1981, c. 470, §A31 (AMD).

## §715. BOOKS AND RECORDS

**1. Books; records of accounts.** Each corporation shall keep correct and complete books and records of accounts and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors and shall keep at its registered office or principal office in this State a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any officer, director or voting member or the officer's, director's or voting member's agent or attorney, for any proper purpose at any reasonable time, as long as the officer, director or voting member or the officer's, director's or voting member's agent or attorney gives the corporation written notice at least 5 business days before the date on which the officer, director or voting member or the officer's, director's or voting member's agent or attorney wishes to inspect and copy any books or records. The only proper purpose for which a voting member may inspect and copy books or records under this section is the purpose of enabling the member to fulfill duties and responsibilities conferred upon members by the articles of incorporation or the bylaws of the corporation or by law. The corporation may require the officer, director or member or the officer's, director's or member's agent or attorney to pay the reasonable cost of the copies made and may impose reasonable restrictions on the use or distribution of the records by such a person.

[ 2001, c. 550, Pt. C, §16 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Refusal to allow inspection.** If a corporation does not make available for inspection or copying the books and records required by subsection 1 or if the corporation seeks to impose unreasonable restrictions on the use or distribution of such books and records, the Superior Court in the county where the corporation's principal office is located or, if the corporation has no principal office in this State, in the county where its registered office is located may order inspection and copying of the records demanded at the corporation's expense upon application of the officer, director or member or the officer's, director's or member's agent or attorney.

A. If the court orders inspection and copying of the records demanded, the court shall also order the corporation to pay the costs of the officer, director or member or the officer's, director's or member's agent or attorney, including reasonable attorney's fees, 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 officer, director or member to inspect the records demanded. [2001, c. 550, Pt. C, §16 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. If the court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding officer, director or member or the officer's, director's or member's agent or attorney. [2001, c. 550, Pt. C, §16 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §16 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2001, c. 550, §C29 (AFF). 2001, c. 550, §C16 (RPR).

## §716. DUTIES OF DIRECTORS AND OFFICERS

*(REPEALED)*

#### SECTION HISTORY

1981, c. 7, (NEW). 2001, c. 550, §C29 (AFF). 2001, c. 550, §C17 (RP).

## §717. GENERAL STANDARDS FOR DIRECTORS

**1. Discharge duties.** A director shall discharge the director's duties:

A. In good faith; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. In a manner the director reasonably believes to be in the best interests of the corporation. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Rely on information.** In discharging the director's duties, a director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

A. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. Legal counsel or a public accountant or other person as to matters the director reasonably believes are within the person's professional or expert competence; or [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. A committee of the board of directors of which the director is not a member, as to the matters within its jurisdiction, if the director reasonably believes the committee merits confidence. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

A director is not acting in good faith if the director relies on information, opinions, reports or statements that the director knows or has reason to believe are unwarranted.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**3. Performance; compliance.** A director is not liable for the performance of the duties of the director's office if the director acted in compliance with this section and, if a conflict-of-interest transaction is involved, the transaction was fair to the corporation or was approved pursuant to section 718.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**4. Trustee.** A director is not considered a trustee with respect to the director's corporation or with respect to any property held or administered by that corporation, including, without limitation, property that may be subject to restrictions imposed by the donor or transferor of the property.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

#### SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

## §718. DIRECTOR OR OFFICER CONFLICT OF INTEREST

**1. Conflict-of-interest transaction.** A conflict-of-interest transaction is a transaction in which a director or officer of a corporation has a direct or indirect financial interest. For the purposes of this section, a director or officer has an indirect interest in a transaction if:

A. Another entity in which the director or officer has a material interest or in which the director or officer is a general partner is a party to the transaction; or [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. Another entity of which the director or officer is a director, officer or trustee is a party to the transaction. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Transaction not voidable or grounds for liability.** A conflict-of-interest transaction is not voidable or grounds for imposing liability on a director or officer of a corporation if the transaction was fair at the time it was entered into or is approved as provided in subsection 3 or 4.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**3. Public benefit corporation; approval.** A transaction in which a director or officer of a public benefit corporation has a conflict of interest may be approved before or after consummation of the transaction as follows.

A. The board of directors of a public benefit corporation or a committee of the board may authorize, approve or ratify a transaction under this section if the material facts of the transaction and the director's or officer's interest are disclosed or known to the board or committee of the board. The transaction may be approved only if it is fair and equitable to the corporation as of the date the transaction is authorized, approved or ratified. The party asserting fairness of any such transaction has the burden of establishing fairness. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

B. If the board of a public benefit corporation so requests, a transaction under this section may be approved by the Attorney General or by the Superior Court in an action in which the Attorney General is joined as a party. If the board is unable to make a decision regarding a transaction, one or more directors or officers may request approval of the Attorney General or the court in accordance with this subsection. The transaction may be approved only if it is fair and equitable to the corporation as of the date the

transaction is authorized, approved or ratified. The party asserting fairness of any such transaction has the burden of establishing fairness. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**4. Mutual benefit corporation; approval.** A transaction in which a director or officer of a mutual benefit corporation has a conflict of interest may be approved by the directors or the members of the corporation before or after consummation of the transaction as follows.

A. The board of directors of a mutual benefit corporation or a committee of the board may authorize, approve or ratify a transaction under this section if the material facts of the transaction and the director's or officer's interest are disclosed or known to the board or committee of the board. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. The members of a mutual benefit corporation may authorize, approve or ratify a transaction under this section if in accordance with subsection 6 the material facts of the transaction and the director's or officer's interest are disclosed or known to the members. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**5. Approval by directors of public benefit or mutual benefit corporation.** For purposes of subsections 3 and 4, a conflict-of-interest transaction is approved if it receives the affirmative vote of a majority of the directors on the board of directors of the corporation or on a committee of the board who have no direct or indirect interest in the transaction, but a transaction may not be approved under this subsection by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to approve the transaction, a quorum is present for the purpose of taking action under this section.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**6. Approval by members of mutual benefit corporation.** For purposes of subsection 4, paragraph B, a conflict-of-interest transaction is approved by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director or officer who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subsection 1, paragraph A may not be counted in a vote of members to determine whether to approve a conflict-of-interest transaction under subsection 4, paragraph B. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the voting power, whether or not present, that is entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**7. Additional requirements.** The articles of incorporation, the bylaws or a resolution of the board of directors of a corporation may impose additional requirements on conflict-of-interest transactions under this section.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**8. Attorney General action to void transaction.** If the Attorney General has reasonable grounds to believe that a public benefit corporation has engaged in a conflict-of-interest transaction and that the transaction was neither fair nor properly approved pursuant to the procedures and standards set forth in subsection 3 or 4, the Attorney General may bring an action in Superior Court in Kennebec County to void

the transaction. At least 10 days before bringing such an action, the Attorney General shall send written notice to the board of directors of the corporation of the intent to bring the action. The Attorney General may proceed without such notice if necessary to prevent immediate irreparable harm to the public.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**9. Authority to fix compensation.** Except to the extent that the articles of incorporation or bylaws otherwise provide, the board of directors of a corporation or the executive committee of the board of directors, without regard to this section, has authority to fix the compensation of directors for their services as directors or officers or in any other capacity.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

#### SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

## §719. DUTIES AND AUTHORITY OF OFFICERS

Each officer is authorized to and shall perform the duties set forth in the bylaws. In addition, each officer, to the extent consistent with the bylaws, has the authority and shall perform the duties prescribed in a resolution of the board of directors of the corporation. The board may authorize an officer, pursuant to a resolution of the board and to the extent consistent with the bylaws, to prescribe the duties and authority of other officers. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

#### SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

## §720. GENERAL STANDARDS FOR OFFICERS

**1. Discretionary authority.** An officer of a corporation with discretionary authority shall discharge that officer's duties under that authority:

- A. In good faith; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]
- B. With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]
- C. In a manner the officer reasonably believes to be in the best interests of the corporation and its members. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Rely on information.** In discharging the officer's duties, an officer of a corporation is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

- A. One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]
- B. Legal counsel or a public accountant or other person as to matters the officer reasonably believes are within the person's professional or expert competence. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

An officer is not acting in good faith if the officer relies on information, opinions, reports or statements that the officer knows or has reason to believe are unwarranted.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) . ]

**3. Compliance.** An officer of a corporation is not liable to a corporation, any member or other person for any action taken or not taken as an officer if the officer acted in compliance with this section and, if a conflict-of-interest transaction is involved, the transaction was fair to the corporation or was approved pursuant to section 718.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) . ]

#### SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

## §721. MISAPPLICATION OF FUNDS OR ASSETS OF PUBLIC BENEFIT CORPORATION

**1. Prohibited transaction.** The funds or assets of a public benefit corporation may not be transferred or applied and a director or officer of a public benefit corporation may not authorize the transfer or application of funds or assets of the public benefit corporation if:

A. The transfer constitutes a conflict-of-interest transaction that is neither fair nor properly approved as determined under section 718; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. The transfer misapplies the funds or assets in violation of statute, including conversion transactions in violation of Title 5, sections 194-C to 194-H; [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. The transfer is to a director or officer of the public benefit corporation or to another person in a position to exercise substantial influence over the affairs of the corporation and constitutes private inurement or excess benefits that exceed the fair market value of the property or services received in return; or [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

D. The transfer of funds or assets is to a subsidiary or joint venture organized as a for-profit entity, unless the board of the public benefit corporation determines in good faith under the facts and circumstances at the time of transfer or commitment to transfer that:

- (1) The organization and operations of the for-profit entity will serve, further or support a charitable purpose of the public benefit corporation;
- (2) The transfer or the commitment to transfer is fair to the public benefit corporation;
- (3) Distributions of net income by the for-profit entity to owners and investors will be proportionate to their investment interests; and
- (4) The articles of incorporation, bylaws or similar organizational documents require that compensation transactions between the for-profit entity and investors in the entity or directors or officers of the entity or others in a position to exercise substantial influence over the affairs of the entity be established in amounts that do not exceed the fair market value of services or property to be provided to the entity. [2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) . ]

**2. Conversion transactions.** If a transfer under this section constitutes a conversion transaction as defined in Title 5, section 194-B, subsection 2, the provisions of Title 5, sections 194-B to 194-K may apply and nothing in this section is intended to supersede those provisions applicable to such transactions.

[ 2001, c. 550, Pt. C, §18 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

2001, c. 550, §C18 (NEW). 2001, c. 550, §C29 (AFF).

## Chapter 8: AMENDMENT OF ARTICLES OF INCORPORATION

### §801. RIGHT TO AMEND ARTICLES OF INCORPORATION

A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation, as amended, contain only such provisions as might lawfully be contained in original articles of incorporation on the effective date of such amendment. [1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

### §801-A. AMENDMENT BEFORE ORGANIZATIONAL MEETING

The articles of incorporation may be amended before the organizational meeting by the following procedures. [1995, c. 458, §8 (NEW).]

**1. Timing.** The articles of incorporation may be amended:

A. If the initial directors were not named in the articles of incorporation, before the election of the initial directors; or [1995, c. 458, §8 (NEW).]

B. If the initial directors were named in the articles of incorporation, before the organizational meeting of the board of directors required by section 406. [1995, c. 458, §8 (NEW).]

[ 1995, c. 458, §8 (NEW) .]

**2. Authority to amend.** The articles of incorporation may be amended by:

A. The incorporator; or [1995, c. 458, §8 (NEW).]

B. If there is more than one incorporator, by 2/3 of the incorporators. [1995, c. 458, §8 (NEW).]

[ 1995, c. 458, §8 (NEW) .]

**3. Accepted signature.** If the incorporators do not sign the document, the Secretary of State shall accept the signature of either the clerk or secretary of the corporation.

[ 1995, c. 458, §8 (NEW) .]

#### SECTION HISTORY

1995, c. 458, §8 (NEW).

### §802. PROCEDURE TO AMEND ARTICLES OF INCORPORATION

**1. Amendments.** Amendments to the articles of incorporation shall be made in the following manner.

A. If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least a majority of the votes which members present at such meeting or represented by proxy are entitled to cast. [1977, c. 525, §13 (NEW).]

B. If there are no members, or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office. [1977, c. 525, §13 (NEW).]

C. Upon adoption, articles of amendment shall be executed and delivered for filing as provided in sections 104 and 106. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

**2. Number of amendments.** Any number of amendments may be submitted and voted upon at any one meeting.

[ 1977, c. 525, §13 (NEW) .]

**3. Provision prescribing amendment of articles.** The articles of incorporation may contain a provision prescribing for amendment of the articles a vote greater than, but in no event less than, that prescribed by subsection 1.

[ 1977, c. 525, §13 (NEW) .]

**4. Articles of incorporation amended.** The articles of incorporation may be amended by written consent of all members entitled to vote on such amendment, as provided by section 606. If such unanimous written consent is given, no resolution of the board of directors proposing the amendment is necessary.

[ 1977, c. 525, §13 (NEW) .]

**5. Amendment of articles of incorporation of public benefit corporation.** If an amendment of the articles of incorporation of a public benefit corporation results in a material change in the nature of the activities conducted by the corporation, the corporation shall give notice to the Attorney General of the amendment simultaneously with the filing of the amended articles with the Secretary of State.

[ 2001, c. 550, Pt. C, §19 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2001, c. 550, §C19 (AMD). 2001, c. 550, §C29 (AFF).

## §803. ARTICLES OF AMENDMENT

**1. Executed by corporation.** The articles of amendment shall be executed by the corporation and shall set forth:

A. The name of the corporation; [1977, c. 525, §13 (NEW).]

B. The amendment so adopted; [1977, c. 525, §13 (NEW).]

C. The date of adoption of the amendment; [1977, c. 525, §13 (NEW).]

D. If there are members entitled to vote thereon, (1) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least a majority of the votes which members present at such meeting or represented by proxy were entitled to cast, or (2) where the articles require a vote of more than a majority of the votes which members present at such meeting or represented by proxy were entitled to cast, a statement that such amendment received at least the percentage of such votes required by the articles, or (3) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and [1977, c. 525, §13 (NEW).]

E. If there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of fact that such amendment received the vote of a majority of the directors in office. [1977, c. 525, §13 (NEW) .]

[ 1977, c. 525, §13 (NEW) .]

**2. Determination by Secretary of State.** When the articles of amendment are delivered for filing by the Secretary of State, he shall, before filing them, make the same determination provided in section 404 in the case of original articles, to the extent applicable to a given amendment or amendments.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW) .

## §804. EFFECT OF AMENDMENT

**1. Effective date.** An amendment takes effect on the date of filing the articles of amendment by the Secretary of State as provided by section 106.

[ 1991, c. 2, §46 (COR) .]

**2. Prejudice of claims of creditors; corporation liability.** No amendment shall prejudice any claims of creditors or relieve the corporation of any liability already created or assumed, or effect any existing cause of action in favor of or against the corporation, or any pending suit to which the corporation shall be a party, or the existing rights of persons other than members, but for all such purposes the corporation, although operating under the amended articles of incorporation, shall be regarded as the same corporation. In the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate because of the change of name.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). RR 1991, c. 2, §46 (COR) .

## §805. RESTATED ARTICLES OF INCORPORATION

**1. Restatement of articles adopted.** A corporation may at any time adopt a restatement of its articles of incorporation which shall integrate into a single document the text of its original articles of incorporation, merger or consolidation, together with all amendments theretofore adopted and, if authorized, further amendments.

[ 1977, c. 525, §13 (NEW) .]

**2. Method of restatement of articles of incorporation.** A corporation may restate its articles of incorporation by submitting to the members for their approval the proposed restatement thereof, with or without any new amendments which under section 802 or under the articles of incorporation require the vote of the members. The procedure specified in, and the vote or votes required by, this chapter for amendment of the articles of incorporation shall be applicable. If the restatement includes new amendments not theretofore voted upon by the members, the notice of the meeting at which it is to be voted upon shall specifically refer to such new amendments and summarize the changes to be effected thereby, whether or not the full text of

the restatement accompanies such notice. If the directors in good faith believe that the restatement includes no such new amendments, the notice of the meeting shall so state and shall be accompanied by a copy of the proposed restatement of articles of incorporation.

[ 1977, c. 525, §13 (NEW) .]

**3. Form.** Upon adoption of the restatement, a form entitled "Restated Articles of Incorporation" shall be executed in accordance with section 104, which shall set forth the same information as is required by section 803 in the case of articles of amendment substituting, wherever applicable, the word "restatement" for the word "amendment" and shall have the restatement attached thereto as an exhibit. Upon filing the restated articles with the restatement by the Secretary of State, in accordance with section 106, the original articles of incorporation as amended and supplemented shall be superseded, and the restatement, including any further amendments and changes made thereby, shall be the articles of incorporation of the corporation.

[ 1977, c. 525, §13 (NEW) .]

**4. Changes effected subject to this chapter.** Any amendment or change effected in connection with the restatement of the articles of incorporation shall be subject to any other provision of this chapter, not inconsistent with this section, which would apply, if separate articles of amendment were filed to effect such amendment or change.

[ 1977, c. 525, §13 (NEW) .]

**5. Omitted statements.** The restatement may omit statements as to the incorporator or incorporators and the initial directors. In all other respects, the restatement shall contain the same information and provisions as are required by this Act for original articles.

[ 1977, c. 525, §13 (NEW) .]

**6. Determination by Secretary of State; restated articles.** When the restated articles with the restatement are delivered for filing by the Secretary of State, he shall, before filing them, make the same determinations as provided in section 404 in the case of original articles.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## Chapter 9: MERGERS AND CONSOLIDATION

### §901. PROCEDURE FOR MERGER

**1. Domestic corporations may merge.** Any 2 or more domestic corporations organized under this Act or under Title 13, chapter 81 may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this Act.

[ 2005, c. 531, §2 (AMD) .]

**2. Plan of merger.** Each corporation shall adopt a plan of merger setting forth:

A. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation; [1977, c. 525, §13 (NEW).]

B. The terms and conditions of the proposed merger; [1977, c. 525, §13 (NEW).]

C. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and [1977, c. 525, §13 (NEW).]

D. Such other provisions with respect to the proposed merger as are deemed necessary or desirable. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2005, c. 531, §2 (AMD).

### §902. PROCEDURE FOR CONSOLIDATION

**1. Domestic corporations may consolidate.** Any 2 or more domestic corporations organized under this Act or under Title 13, chapter 81 may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Act.

[ 2005, c. 531, §3 (AMD) .]

**2. Consolidation plan.** Each corporation shall adopt a plan of consolidation setting forth:

A. The names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation; [1977, c. 525, §13 (NEW).]

B. The terms and conditions of the proposed consolidation; [1977, c. 525, §13 (NEW).]

C. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act, including the names of each member of the new board of directors; and [1977, c. 525, §13 (NEW).]

D. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2005, c. 531, §3 (AMD).

## §903. APPROVAL OF MERGER OR CONSOLIDATION

**1. Plan of merger.** A plan of merger or consolidation shall be adopted in the following manner.

A. If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least a majority of the votes which members present at each meeting or represented by proxy are entitled to cast. [1977, c. 525, §13 (NEW).]

B. If any merging or consolidating corporation has no members, or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

**2. Vote on merger.** The articles of incorporation of any corporation may contain a provision prescribing for approval of a plan of merger or consolidation, a vote greater than, but in no event less than, that prescribed by subsection 1, paragraphs A and B.

[ 1977, c. 525, §13 (NEW) .]

**3. Merger abandoned.** After such approval, and at any time prior to the filing of the articles of merger or consolidation, or pursuant to a majority vote of the members of any participating corporation entitled to vote thereon, or if the corporation has no members entitled to vote pursuant to a majority vote of the board of directors of that corporation, the merger or consolidation may be abandoned.

[ 1977, c. 525, §13 (NEW) .]

**4. Plan of merger approved.** A plan of merger or consolidation may be approved by written consent of all members of a participating corporation entitled to vote by the articles of incorporation or bylaws, as provided by section 606. If such unanimous written consent is given, no resolution of the board of directors of such participating corporation approving, proposing, submitting, recommending or otherwise respecting such plan of merger or consolidation is necessary, and no members of such participating corporation shall be entitled to notice of, or to dissent from, such plan of merger or consolidation.

[ 1977, c. 525, §13 (NEW) .]

### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §904. ARTICLES OF MERGER OR CONSOLIDATION

**1. Form of articles of merger or consolidation.** Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation and shall be delivered for filing pursuant to sections 104 and 106. The articles of merger or consolidation shall set forth:

A. The plan of merger or the plan of consolidation; [1977, c. 525, §13 (NEW).]

B. If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation (1) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting and that such plan received at least a majority

of the votes which members present at such meeting or represented by proxy were entitled to cast, or (2) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; [1977, c. 525, §13 (NEW).]

C. If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office; and [1977, c. 525, §13 (NEW).]

D. When the articles of merger or consolidation are delivered for filing by the Secretary of State, he shall, before filing them, make the same determinations, to the extent applicable, as provided in section 404 in the case of original articles. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §905. EFFECT OF MERGER OR CONSOLIDATION

**1. Effect.** Any merger or consolidation under this section shall take effect when the articles of merger or consolidation are filed with the Secretary of State, or on the date specified in the articles of merger or consolidation, not to exceed 60 days after the filing date, if the articles of merger or consolidation so provide.

[ 1977, c. 525, §13 (NEW) .]

**2. Merger or consolidation effected.** When such merger or consolidation has been effected:

A. The several corporations' parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation; [1977, c. 525, §13 (NEW).]

B. The separate existence of all corporations' parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease; [1977, c. 525, §13 (NEW).]

C. The surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act; [1977, c. 525, §13 (NEW).]

D. The surviving or new corporation shall possess all the rights, privileges, immunities and franchises, of a public nature as well as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation; and [1977, c. 525, §13 (NEW).]

E. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and in the case of a consolidation, the statements set forth in the articles of consolidation and which are

required or permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the articles of incorporation of the new corporation. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §906. MERGER OR CONSOLIDATION OF DOMESTIC AND FOREIGN CORPORATIONS

**1. Manner of merger.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized.

A. Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized. If the domestic corporation is a public benefit corporation, the merger or consolidation must comply with any applicable provisions of Title 5, sections 194-B to 194-K; [2001, c. 550, Pt. C, §20 (AMD); 2001, c. 550, Pt. C, §29 (AFF).]

B. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this State, it shall comply with the provisions of this Act with respect to foreign corporations if it is to conduct activities in this State, and in every case it shall execute and deliver to the Secretary of State of this State a document setting forth:

- (1) The name of the surviving or new corporation;
- (2) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and
- (3) An irrevocable appointment of the Secretary of State of this State as its agent to accept service of process in any such proceeding. [1977, c. 525, §13 (NEW).]

[ 2001, c. 550, Pt. C, §20 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Provisions of effect of merger.** The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this State. If the surviving or new corporation is to be governed by the laws of any state other than this State, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, except insofar as the laws of the other state provide otherwise.

[ 1977, c. 525, §13 (NEW) .]

**3. Articles delivered for filing.** Whether the surviving or new corporation is or is to be a domestic corporation or a foreign corporation, articles of merger or consolidation shall be executed and delivered for filing as is provided in this Act for mergers and consolidations of domestic corporations.

[ 1977, c. 525, §13 (NEW) .]

**4. Date of effect.** Any merger or consolidation under this section shall take effect when the articles of merger or consolidation are filed with the Secretary of State, or on the date specified in the articles of merger or consolidation, not to exceed 60 days after the filing date, if the articles of merger or consolidation so provide.

[ 1977, c. 525, §13 (NEW) .]

**5. Abandonment.** After approval by the members, and at any time prior to the filing of the articles of merger or consolidation, or pursuant to a majority vote of the members of any participating corporation entitled to vote thereon, or if the corporation has no members entitled to vote pursuant to a majority vote of the board of directors of that corporation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2001, c. 550, §C20 (AMD). 2001, c. 550, §C29 (AFF).

## §907. LIMITATIONS ON MERGER OR CONSOLIDATION BY PUBLIC BENEFIT CORPORATION

**1. Compliance with nonprofit conversion law required.** In addition to complying with provisions of this Title, a public benefit corporation shall comply with all applicable provisions of Title 5, sections 194-B to 194-K.

[ 2001, c. 550, Pt. C, §21 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Bequests, devises and gifts.** Any bequest, devise, gift, grant or promise contained in a will or other instrument of donation, subscription or conveyance that is made to a public benefit corporation and that takes effect or remains payable after a merger or consolidation inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

[ 2001, c. 550, Pt. C, §21 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**3. Notice; merger or consolidation.** Written notice of a merger or consolidation of a public benefit corporation into another public benefit corporation must be provided to the Attorney General simultaneously with the filing of the articles of merger or consolidation with the Secretary of State.

[ 2001, c. 550, Pt. C, §21 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

#### SECTION HISTORY

2001, c. 550, §C21 (NEW). 2001, c. 550, §C29 (AFF).

## Chapter 10: SALE AND OTHER DISPOSITIONS OF CORPORATE ASSETS

### §1001. SALE OF ASSETS OTHER THAN IN REGULAR COURSE OF ACTIVITIES

**1. Terms and conditions.** Sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner.

A. If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation must be given to each member entitled to vote at such meeting, within the time and in the manner provided by this Act for the giving of notice of meetings of members. At such meeting, the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation thereto. Such authorization requires at least a majority of the votes that members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge or other disposition of assets, subject to the rights of 3rd parties under any contracts relating thereto, without further action or approval by members. [2001, c. 550, Pt. C, §22 (AMD); 2001, c. 550, Pt. C, §29 (AFF).]

B. If there are no members, or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation are authorized upon receiving the vote of a majority of the directors in office. [2001, c. 550, Pt. C, §22 (AMD); 2001, c. 550, Pt. C, §29 (AFF).]

C. If all members entitled to vote by the articles of incorporation authorize by written consent a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation, no resolution of the board of directors, approving, proposing, submitting, recommending or otherwise respecting such sale is necessary. [1977, c. 525, §13 (NEW).]

[ 2001, c. 550, Pt. C, §22 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Provision prescribing for approval of sale.** The articles of incorporation of any corporation may contain a provision prescribing for approval of any sale of assets a vote greater than, but in no event less than, that prescribed by subsection 1.

[ 1977, c. 525, §13 (NEW) .]

**3. Compliance with conversion law.** If the proposed transaction constitutes a conversion transaction, as defined in Title 5, section 194-B, subsection 2, a public benefit corporation must comply with the provision of Title 5, sections 194-C to 194-H.

[ 2001, c. 550, Pt. C, §22 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2001, c. 550, §C22 (AMD). 2001, c. 550, §C29 (AFF).

## Chapter 11: DISSOLUTION

### §1101. VOLUNTARY DISSOLUTION

**1. Manner of dissolution.** A corporation may dissolve and wind up its activities in the following manner.

A. If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice, stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least a majority of the votes which members present at such meeting or represented by proxy are entitled to cast. [1977, c. 525, §13 (NEW).]

B. If there are no members, or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office. [1977, c. 525, §13 (NEW).]

C. If all the members entitled to vote by the articles of incorporation authorize the dissolution of the corporation by written consent, upon the execution of such written consent, a statement of intent to dissolve shall be executed and delivered for filing, as provided by sections 104 and 106 and shall set forth the name of the corporation, the names and respective addresses of its officers and directors, a copy of the written consent signed by all the members of the corporation, and a statement that such written consent has been signed by all members of the corporation entitled to vote. Voluntary dissolution pursuant to this section does not require any vote or action of the directors. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

**2. Cessation of activities; notice.** Upon the adoption of such resolution by the members, or by the board of directors if there are no members, or no members entitled to vote thereon, the corporation shall cease to conduct its activities except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this Act.

[ 1977, c. 525, §13 (NEW) .]

**3. Provision for prescribing dissolution.** The articles of incorporation of any corporation may contain a provision prescribing for approval of any resolution to dissolve the corporation a vote greater than, but in no event less than, that prescribed by subsection 1.

[ 1977, c. 525, §13 (NEW) .]

**4. Statement of intent.** Upon the adoption of such resolution, a statement of intent to dissolve shall be executed and delivered for filing, as provided by sections 104 and 106, and shall set forth:

- (1) The name of the corporation;
- (2) The names and respective addresses of its officers and directors;
- (3) A copy of the resolution adopted by the members or directors authorizing the dissolution of the corporation;
- (4) The number of members entitled to vote; and

(5) The number of members voted for and against the resolution, respectively.

[ 1977, c. 525, §13 (NEW) . ]

**5. Cessation of activities.** Upon the filing by the Secretary of State of a statement of intent to dissolve, the corporation shall cease to carry on its activities, except insofar as may be necessary or appropriate for the winding up thereof, but its corporate existence shall continue until the filing date of the articles of dissolution, or until a decree dissolving the corporation has been entered by a court of competent jurisdiction.

[ 1977, c. 525, §13 (NEW) . ]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

### §1101-A. VOLUNTARY DISSOLUTION BY INCORPORATORS

A corporation that has not carried on activities may be voluntarily dissolved by its incorporator or incorporators at any time after the filing date of its articles of incorporation in the following manner.

[1995, c. 458, §9 (NEW).]

**1. Articles of dissolution.** Articles of dissolution must be executed by a majority of the incorporators and delivered for filing, as provided by sections 104 and 106, and must set forth:

A. The name of the corporation; [1995, c. 458, §9 (NEW).]

B. The filing date of its articles of incorporation; [1995, c. 458, §9 (NEW).]

C. That the corporation has not carried on activities; [1995, c. 458, §9 (NEW).]

D. That no debts of the corporation remain unpaid, including the filing of the annual report as required by section 1301 and any fees or penalties owed to the Secretary of State under section 1112; and [2007, c. 231, §9 (AMD).]

E. That a majority of the incorporators consent to the dissolution of the corporation. [1995, c. 458, §9 (NEW).]

[ 2007, c. 231, §9 (AMD) . ]

**2. Corporation's existence ceases.** On the filing date of the articles of dissolution, the existence of the corporation ceases.

[ 1995, c. 458, §9 (NEW) . ]

**3. No vote or action of directors.** Dissolution pursuant to this section does not require any vote or action of the directors.

[ 1995, c. 458, §9 (NEW) . ]

#### SECTION HISTORY

1995, c. 458, §9 (NEW). 2007, c. 231, §9 (AMD).

### §1102. REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS

A corporation may, at any time prior to the filing of the articles of dissolution by the Secretary of State, revoke the action theretofore taken to dissolve the corporation, in the following manner. [1977, c. 525, §13 (NEW).]

**1. Notice.** If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of the revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least a majority of the votes which members present at the meeting or represented by proxy are entitled to cast.

[ 1977, c. 525, §13 (NEW) . ]

**2. When no members entitled to vote on revocation.** If there are no members, or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

[ 1977, c. 525, §13 (NEW) . ]

**3. Statement of revocation of voluntary dissolution proceeding.** If all the members entitled to vote revoke voluntary dissolution proceeding previously authorized by written consent at any time prior to the date of filing the articles of dissolution by the Secretary of State, upon execution of the written consent, a statement of revocation of voluntary dissolution proceeding shall be executed and delivered for filing as provided by sections 104 and 106, and this statement shall set forth the name of the corporation, the names and respective addresses of its officers and directors, a copy of the written consent signed by all members of the corporation, revoking the voluntary dissolution proceedings, that the written consent has been signed by all members of the corporation.

[ 1977, c. 525, §13 (NEW) . ]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §1103. EFFECT OF STATEMENT OF REVOCATION OF VOLUNTARY DISSOLUTION PROCEEDINGS

Upon the filing by the Secretary of State of a statement of revocation of voluntary dissolution proceedings, whether by resolution of the board approved by the members or by action of the board in the absence of any members, or any members entitled to vote thereon, the revocation of the voluntary dissolution proceedings shall become effective, and the corporation may again carry on its activities. [1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §1104. ARTICLES OF DISSOLUTION

**1. Certification provided.** If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all remaining property and assets of the corporation have been distributed as provided in paragraph D, articles of dissolution shall be executed and delivered for filing as provided by sections 104 and 106, and such articles shall set forth:

A. The name of the corporation; [1977, c. 525, §13 (NEW) . ]

B. That the Secretary of State has previously filed a statement of intent to dissolve the corporation and the date on which such statement was filed; [1977, c. 525, §13 (NEW).]

C. That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor; [1977, c. 525, §13 (NEW).]

D. That all remaining property and assets of the corporation have been distributed among its members in accordance with their respective rights and interests, or have been otherwise distributed pursuant to the articles or bylaws of the corporation, as long as the remaining property and assets of a public benefit corporation are transferred to a public benefit corporation engaged in activities substantially similar to those of the dissolving or liquidating corporation or to another entity pursuant to a conversion plan approved pursuant to Title 5, sections 194-B to 194-K; and [2001, c. 550, Pt. C, §23 (AMD); 2001, c. 550, Pt. C, §29 (AFF).]

E. That there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit. [1977, c. 525, §13 (NEW).]

[ 2001, c. 550, Pt. C, §23 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Existence of corporation ceased.** Upon the filing date of the articles of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by and against the members, directors and officers as provided in this Act.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1983, c. 50, §4 (AMD). 2001, c. 550, §C23 (AMD). 2001, c. 550, §C29 (AFF).

## §1104-A. BYLAWS; DISPOSAL OF ASSETS

After the effective date of this section, a domestic corporation organized under this Title or a domestic corporation filing an annual report under section 1301 shall provide for the disposal of the corporation's assets in its bylaws. [1995, c. 300, §3 (NEW).]

#### SECTION HISTORY

1995, c. 300, §3 (NEW).

## §1105. DISSOLUTION PURSUANT TO COURT ORDER

Courts of equity have full power to decree the dissolution of, and to liquidate the assets and affairs of, a corporation: [2001, c. 550, Pt. C, §24 (AMD); 2001, c. 550, Pt. C, §29 (AFF).]

**1. Action by member or director.** In an action by a member or director when it is made to appear:

A. That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason of the deadlock, and either that the members are unable to break the deadlock or there are no members having voting rights; [2001, c. 550, Pt. C, §24 (AMD); 2001, c. 550, Pt. C, §29 (AFF).]

B. That the acts of the directors or those in control of the corporation are illegal or fraudulent; [1977, c. 525, §13 (NEW).]

C. That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least 2 years to elect successors to directors whose terms have expired or would have expired upon the election of their successors; [1977, c. 525, §13 (NEW).]

D. That the corporate assets are being misapplied or wasted; or [1977, c. 525, §13 (NEW).]

E. That the corporation is unable to carry out its purposes; [1977, c. 525, §13 (NEW).]

[ 2001, c. 550, Pt. C, §24 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Action by creditor of corporation.** In an action by a creditor of the corporation:

A. When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or [1977, c. 525, §13 (NEW) .]

B. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent; [1977, c. 525, §13 (NEW) .]

[ 1977, c. 525, §13 (NEW) .]

**2-A. Action by Attorney General regarding public benefit corporation.** In an action brought to court by the Attorney General relating to a public benefit corporation, if it is established that:

A. The corporation obtained its articles of incorporation through fraud; [2001, c. 550, Pt. C, §24 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. The corporation has exceeded or abused the authority conferred upon it by law; [2001, c. 550, Pt. C, §24 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. The assets of the corporation are being misapplied or wasted; or [2001, c. 550, Pt. C, §24 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

D. The corporation is no longer able to carry out its purposes; [2001, c. 550, Pt. C, §24 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §24 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**3. Complaint.** Upon complaint by a corporation to have its dissolution continued under the supervision of the court; and

[ 2001, c. 550, Pt. C, §24 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

**4. Liquidation of affairs precedes entry of decree.** When an action has been filed by the Attorney General to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

[ 2001, c. 550, Pt. C, §24 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

**5. Proceedings brought in county where registered.**

[ 2001, c. 550, Pt. C, §29 (AFF); 2001, c. 550, Pt. C, §24 (RP) .]

A proceeding under this section must be brought in the county in which the registered office or the principal office of the corporation is situated. It is not necessary to make directors or members parties to such an action or proceeding unless relief is sought against them personally. [2001, c. 550, Pt. C, §24 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

SECTION HISTORY

1977, c. 525, §13 (NEW). 2001, c. 550, §C24 (AMD). 2001, c. 550, §C29 (AFF).

## §1106. PROCEDURE IN LIQUIDATION OF CORPORATION BY COURT

**1. Court's power.** In proceedings to liquidate the assets and activities of a corporation, the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the activities of the corporation until a full hearing can be had.

[ 1977, c. 525, §13 (NEW) . ]

**2. Court to appoint liquidating receiver.** After a hearing and upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

[ 1977, c. 525, §13 (NEW) . ]

**3. Assets of corporation.** The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied and distributed as the court may order, after taking into account the following standards.

A. All cost and expenses of the court proceedings and all liabilities and obligations of the corporation shall, to the extent that unencumbered assets are available therefor, be paid first toward the payment of costs and expenses of court proceeding, and then toward other liabilities and obligations of the corporation. [1979, c. 127, §102 (AMD).]

B. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements. [1977, c. 525, §13 (NEW).]

C. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct. [1977, c. 525, §13 (NEW).]

D. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members, or any class or classes of members, or provide for distribution to others. [1977, c. 525, §13 (NEW).]

E. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, as the court may direct. [1977, c. 525, §13 (NEW).]

[ 1979, c. 127, §102 (AMD) . ]

**4. Court to direct payments.** The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

[ 1977, c. 525, §13 (NEW) . ]

**5. Receiver to have power to sue and defend.** A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

[ 1977, c. 525, §13 (NEW) .]

**6. Receiver to be a citizen of the United States.** A receiver shall in all cases be a citizen of the United States and shall in all cases give such bond as the court may direct with such sureties as the court may require.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §102 (AMD).

### §1107. FILING OF CLAIMS IN LIQUIDATION PROCEEDINGS

**1. Proceedings to liquidate assets and affairs.** In proceedings to liquidate the assets and affairs of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claims on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

[ 1977, c. 525, §13 (NEW) .]

**2. Attachments dissolved.** If it is determined in the course of such proceedings that the assets of the corporation, after subtracting the expenses of liquidating them and the expenses of the proceeding, will be less than the debts of the corporation, all attachments made within 4 months before the commencement of the action shall be dissolved.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

### §1108. DISCONTINUANCE OF LIQUIDATION PROCEEDINGS

The liquidation of the assets and activities of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event, the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets. [1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

### §1109. DECREE OF DISSOLUTION

**1. Decree.** In proceedings to liquidate the assets and activities of a corporation, when the costs and expenses of the proceedings and all debts, obligations and liabilities of the corporation have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this

Act, or when its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts and obligations, and all the property and assets have been applied to their payment, the court shall enter a decree dissolving the corporation, after which the existence of the corporation ceases.

[ 2001, c. 550, Pt. C, §25 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Certified copy of decree to Secretary of State.** When the court enters a decree dissolving a corporation, it is the duty of the clerk of the court to cause a certified copy of the decree to be filed with the Secretary of State. A fee may not be charged by the Secretary of State for the filing of the decree.

[ 2001, c. 550, Pt. C, §25 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2001, c. 550, §C25 (AMD). 2001, c. 550, §C29 (AFF).

## §1110. DEPOSIT WITH TREASURER OF STATE OF UNDISTRIBUTED ASSETS

**1. Distributive portions not received.** Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and for whom there is no person legally competent to receive such distributive portion, or who fails or refuses to accept his distribution, shall be reduced to cash and deposited with the Treasurer of State, along with a statement setting forth the name, last known address, amount due to and other pertinent information concerning each such distributee.

[ 1977, c. 525, §13 (NEW) .]

**2. Deposit with Treasurer of State.** A deposit with the Treasurer of State must, to the extent of the deposit, absolutely discharge the persons having control and supervision over the distribution of the corporation's assets from liability to the unknown, unlocated, legally disabled or nonaccepting persons. If the dissolution is under the supervision of the Superior Court pursuant to section 1105, the deposit may not be made with the Treasurer of State, except pursuant to order of the court, on terms as the court may order.

[ 2001, c. 550, Pt. C, §26 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

**3. Proof required.** The Treasurer of State shall pay over such sums deposited with him to the person entitled thereto, or to his legal representative, upon proof satisfactory to the Treasurer of State of his right thereto.

[ 1977, c. 525, §13 (NEW) .]

**4. Civil action.** If the Treasurer of State is not satisfied as to the right of any claimant to such funds, the claimant may bring a civil action in the Superior Court against the Treasurer of State; if the court is satisfied as to the claimant's right to the funds, it shall issue an order directing the Treasurer of State to pay the same to such claimant. Such action may not be brought after the expiration of 20 years from the time of deposit of such funds with the Treasurer of State. At the end of such 20-year period, any such funds remaining in the State Treasury shall escheat to the State. Any income earned on such funds shall be paid into the General Fund as compensation for administration.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2001, c. 550, §C26 (AMD). 2001, c. 550, §C29 (AFF).

## §1111. SURVIVAL OF REMEDY AFTER DISSOLUTION; LIQUIDATING TRUSTEES

**1. Survival of remedy.** The dissolution of a corporation, either by the filing by the Secretary of State of the articles of dissolution or by a decree of court, shall not take away or impair any remedy available to or against such corporation, its directors, officers or members for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within 2 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right or claim.

[ 1977, c. 525, §13 (NEW) .]

**2. Liquidating trustees.** After dissolution of a corporation, the directors as of the date of dissolution, or the survivors of such directors, shall be deemed liquidating trustees of the corporation with authority to take all action necessary or appropriate to dispose of any undistributed property of the corporation.

[ 1977, c. 525, §13 (NEW) .]

### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §1112. GROUNDS FOR ADMINISTRATIVE DISSOLUTION

Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under section 1113 to administratively dissolve a corporation if: [ 2003, c. 631, §3 (NEW) .]

**1. Nonpayment of fees or penalties.** The corporation does not pay when they are due any fees or penalties imposed by this Title or other law;

[ 2003, c. 631, §3 (NEW) .]

**2. Failure to file annual report.** The corporation does not deliver its annual report to the Secretary of State as required by section 1301;

[ 2003, c. 631, §3 (NEW) .]

**3. Failure to pay late filing penalty.** The corporation does not pay the annual report late filing penalty as required by section 1302;

[ 2003, c. 631, §3 (NEW) .]

**4. Failure to maintain registered agent.** The corporation is without a registered agent in this State as required by Title 5, section 105, subsection 1;

[ 2007, c. 323, Pt. B, §8 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**5. Failure to notify of change of registered agent or address.** The corporation does not notify the Secretary of State that its registered agent has changed as required by Title 5, section 108, subsection 1 or the address of its registered agent has been changed as required by Title 5, section 109 or 110 or that its registered agent has resigned as required by Title 5, section 111; or

[ 2007, c. 323, Pt. B, §9 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**6. Filing of false information.** An incorporator, director, officer or agent of the corporation signed a document with the knowledge that the document was false in a material respect and with the intent that the document be delivered to the Secretary of State for filing.

[ 2003, c. 631, §3 (NEW) .]

#### SECTION HISTORY

2003, c. 631, §3 (NEW). 2007, c. 323, Pt. B, §§8, 9 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1113. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE DISSOLUTION

**1. Notice of determination to administratively dissolve corporation.** If the Secretary of State determines that one or more grounds exist under section 1112 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination as required by subsection 7.

[ 2007, c. 323, Pt. B, §10 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**2. Administrative dissolution.** The corporation is administratively dissolved if within 60 days after the notice under subsection 1 was issued and is perfected under subsection 7 the Secretary of State determines that the corporation has failed to correct the ground or grounds for the dissolution. The Secretary of State shall send notice to the corporation as required by subsection 7 that recites the ground or grounds for dissolution and the effective date of dissolution.

[ 2007, c. 323, Pt. B, §11 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**3. Effect of administrative dissolution; prohibition.** A corporation administratively dissolved continues its corporate existence but may not carry on any activities in this State except as necessary to wind up the activities of the corporation.

[ 2003, c. 631, §3 (NEW) .]

**4. Authority of registered agent.** The administrative dissolution of a corporation does not terminate the authority of its registered agent.

[ 2003, c. 631, §3 (NEW) .]

**5. Protecting corporate name after administrative dissolution.** The name of a corporation remains in the Secretary of State's record of corporate names and is protected for a period of 3 years following administrative dissolution.

[ 2003, c. 631, §3 (NEW) .]

**6. Notice to Attorney General in case of public benefit corporation.** In the case of a public benefit corporation, the Secretary of State shall notify the Attorney General of the administrative dissolution of the corporation under this section.

[ 2003, c. 631, §3 (NEW) .]

**7. Delivery of notice.** The Secretary of State shall send notice of its determination under subsection 1 by regular mail and the service upon the corporation is perfected 5 days after the Secretary of State deposits its determination in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed to the registered agent of the corporation.

[ 2007, c. 323, Pt. B, §12 (NEW); 2007, c. 323, Pt. G, §4 (AFF) .]

#### SECTION HISTORY

2003, c. 631, §3 (NEW). 2007, c. 323, Pt. B, §§10-12 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1114. REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION

**1. Application for reinstatement.** A corporation administratively dissolved under section 1113 may apply to the Secretary of State for reinstatement within 6 years after the effective date of dissolution. The application must:

- A. State the name of the corporation and the effective date of its administrative dissolution; [ 2003, c. 631, §3 (NEW) .]
- B. State that the ground or grounds for dissolution either did not exist or have been eliminated; and [ 2003, c. 631, §3 (NEW) .]
- C. State that the corporation's name satisfies the requirements of section 301-A. [ 2003, c. 631, §3 (NEW) .]

[ 2003, c. 631, §3 (NEW) .]

**2. Reinstatement after administrative dissolution.** If the Secretary of State determines that the application contains the information required under subsection 1 and is accompanied by the reinstatement fee set forth in section 1401, subsection 35, and that the information is correct, the Secretary of State shall cancel the administrative dissolution and prepare a notice of reinstatement that recites that determination and the effective date of reinstatement. The Secretary of State shall use the procedures set forth in section 1113, subsection 7 to deliver the notice to the corporation.

[ 2007, c. 323, Pt. B, §13 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**3. Effect of reinstatement.** When the reinstatement is effective under subsection 2, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes activities as if the administrative dissolution had not occurred.

[ 2003, c. 631, §3 (NEW) .]

#### SECTION HISTORY

2003, c. 631, §3 (NEW). 2007, c. 323, Pt. B, §13 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1115. APPEAL FROM DENIAL OF REINSTATEMENT

**1. Denial of reinstatement.** If the Secretary of State denies a corporation's application for reinstatement following administrative dissolution, the Secretary of State shall serve the corporation as required under section 1113, subsection 7 with a written notice that explains the reason or reasons for denial.

[ 2007, c. 323, Pt. B, §14 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**2. Appeal.** A corporation may appeal a denial of reinstatement under subsection 1 to the Superior Court of the county where the corporation's principal office is located or, if there is no principal office in this State, in Kennebec County within 30 days after the date of the notice of denial. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's notice of administrative dissolution, the corporation's application for reinstatement and the Secretary of State's notice of denial.

[ 2003, c. 631, §3 (NEW) .]

**3. Court action.** The court may summarily order the Secretary of State to reinstate an administratively dissolved corporation or may take other action the court considers appropriate.

[ 2003, c. 631, §3 (NEW) .]

**4. Final decision.** The court's final decision in an appeal under this section may be appealed as in other civil proceedings.

[ 2003, c. 631, §3 (NEW) .]

#### SECTION HISTORY

2003, c. 631, §3 (NEW). 2007, c. 323, Pt. B, §14 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1116. REINSTATEMENT OF SUSPENDED CORPORATE CHARTER

**1. Reinstatement after charter suspension.** A corporation whose charter was suspended before July 1, 2004 may apply to the Secretary of State for reinstatement and the reinstatement may be granted, if:

A. The Secretary of State determines that the application contains the information required under section 1114, subsection 1; [2003, c. 631, §3 (NEW).]

B. The application for reinstatement is accompanied by the reinstatement fee set forth in section 1401, subsection 35; and [2003, c. 631, §3 (NEW).]

C. The application for reinstatement is received by the Secretary of State by June 30, 2010. [2003, c. 631, §3 (NEW).]

[ 2003, c. 631, §3 (NEW) .]

**2. Effect on corporation failing to reinstate by June 30, 2010.** A corporation that fails to meet the requirements of subsection 1 is administratively dissolved and may not reinstate.

[ 2003, c. 631, §3 (NEW) .]

**3. Protecting corporate name after suspension.** The name of a corporation whose charter is suspended remains in the Secretary of State's record of corporate names and is protected for a period of 3 years following its suspension.

[ 2003, c. 631, §3 (NEW) .]

#### SECTION HISTORY

2003, c. 631, §3 (NEW).

## §1117. REVIVAL OF NONPROFIT CORPORATION AFTER DISSOLUTION

**1. Determination of need to revive corporation.** If the Secretary of State finds that a nonprofit corporation has dissolved in any manner under this chapter and that the nonprofit corporation should be revived for any specified purpose or purposes for a specific period of time, the Secretary of State may upon application by an interested party file a certificate of revival in a form or format prescribed by the Secretary of State for reviving the nonprofit corporation.

[ 2007, c. 231, §10 (NEW) .]

**2. Certificate of revival.** The certificate of revival must include:

- A. The name of the nonprofit corporation and its original date of incorporation; [ 2007, c. 231, §10 (NEW) .]
- B. The name of the nonprofit corporation's registered agent and the address of its registered agent at the time of dissolution; [ 2007, c. 231, §10 (NEW) .]
- C. The name and address of the party or parties requesting the revival; [ 2007, c. 231, §10 (NEW) .]
- D. The purpose or purposes for which revival is requested; and [ 2007, c. 231, §10 (NEW) .]
- E. The time period needed to complete the purpose or purposes specified under paragraph D. [ 2007, c. 231, §10 (NEW) .]

[ 2007, c. 231, §10 (NEW) .]

**3. Notice of revival.** The Secretary of State shall issue a notice to the nonprofit corporation to the address provided in subsection 2, paragraph C stating that the revival has been granted for the purpose or purposes and for the time period specified pursuant to the certificate of revival under this section.

[ 2007, c. 231, §10 (NEW) .]

**4. Termination of revival.** When the time period specified in subsection 2, paragraph E has expired, the Secretary of State shall send a notice to the nonprofit corporation at the address provided in subsection 2, paragraph C that the status of the nonprofit corporation has returned to the status prior to filing the certificate of revival under this section.

[ 2007, c. 231, §10 (NEW) .]

### SECTION HISTORY

2007, c. 231, §10 (NEW) .

## §1118. LATE REINSTATEMENT OF NONPROFIT CORPORATION AFTER ADMINISTRATIVE DISSOLUTION

**1. Application to reinstate nonprofit corporation.** A nonprofit corporation that has been administratively dissolved for more than 6 years may apply to the Secretary of State for reinstatement. The application must:

- A. Provide the name of the corporation and the effective date of its administrative dissolution; [ 2015, c. 254, §1 (NEW) .]
- B. Provide a statement together with supporting documentation that the officer or director signing the application is duly authorized to act for the corporation; [ 2015, c. 254, §1 (NEW) .]
- C. Establish that the grounds for dissolution either did not exist or have been eliminated; [ 2015, c. 254, §1 (NEW) .]

D. Demonstrate that the corporation's name satisfies the requirements of section 301-A or that the corporation is filing an amendment to change the name to satisfy the requirements of section 301-A; [ 2015, c. 254, §1 (NEW) . ]

E. Attest that no lawsuits are pending against the corporation; and [ 2015, c. 254, §1 (NEW) . ]

F. Explain the reason or reasons that reinstatement is being requested. [ 2015, c. 254, §1 (NEW) . ]

[ 2015, c. 254, §1 (NEW) . ]

**2. Determination of need to reinstate nonprofit corporation.** If the Secretary of State determines that the application satisfies the requirements of subsection 1 and is accompanied by the reinstatement fee set forth in section 1401, subsection 35, the Secretary of State shall cancel the administrative dissolution and prepare a notice of reinstatement that recites that determination and the effective date of reinstatement. The Secretary of State may deny reinstatement if there are material misstatements provided in the application. The Secretary of State shall use the procedures set forth in section 1113, subsection 7 to deliver the notice to the corporation.

[ 2015, c. 254, §1 (NEW) . ]

**3. Effect of reinstatement.** When the reinstatement is effective under subsection 2, it relates back to and takes effect as of the effective date of the administrative dissolution, and the corporation resumes activities as if the administrative dissolution had not occurred.

[ 2015, c. 254, §1 (NEW) . ]

#### SECTION HISTORY

2015, c. 254, §1 (NEW).

## Chapter 12: FOREIGN CORPORATIONS

### §1201. AUTHORIZATION OF FOREIGN CORPORATIONS TO CARRY ON ACTIVITIES IN THIS STATE; CERTAIN ACTIVITIES NOT DEEMED CARRYING ON AFFAIRS

**1. Authorization needed.** Except as provided in section 1215, no foreign corporation shall carry on activities in this State until it shall have been authorized to do so as provided in this chapter, or as provided by some other public law of this State. A foreign corporation shall not be denied authority to carry on activities in this State solely because the laws of the jurisdiction of its incorporation differ from the laws of this State with respect to the organization and internal affairs of the corporation.

[ 1977, c. 525, §13 (NEW) .]

**2. Activities not deemed carrying on affairs.** Without excluding other activities which may not constitute carrying on activities in this State, a foreign corporation shall not be deemed to be carrying on activities in this State, for purposes of this chapter, solely by reason of carrying on in this State any one or more of the following activities:

A. Maintaining, defending or participating in any action or proceeding whether judicial, administrative, arbitral or otherwise, or effecting the settlement thereof or the settlements of claims or disputes; [1977, c. 525, §13 (NEW).]

B. Holding meetings of its directors or members or carrying on other activities concerning its internal affairs; [1977, c. 525, §13 (NEW).]

C. Maintaining bank accounts; [1977, c. 525, §13 (NEW).]

D. Securing or collecting debts or enforcing any rights in property covering the same; [1977, c. 525, §13 (NEW).]

E. Effecting a transaction in interstate or foreign commerce; [1977, c. 525, §13 (NEW).]

F. Conducting within this State an isolated transaction which is completed within a period of 30 days and which is not in the course of a series or number of repeated transactions; [1977, c. 525, §13 (NEW).]

G. Soliciting by mail contributions to the corporation; or [1977, c. 525, §13 (NEW).]

H. Owning real estate [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

**3. Standard for activities not established.** This section shall not be deemed to establish a standard for activities which may subject a foreign corporation to service of process under this chapter or any other statute of this State.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

### §1202. APPLICATION FOR AUTHORITY

**1. Application.** A foreign corporation may apply for authority to carry on activities in this State by executing and delivering for filing, as provided by sections 104 and 106, an application setting forth:

- A. The name of the corporation; [1977, c. 525, §13 (NEW).]
- B. The jurisdiction of its incorporation; [1977, c. 525, §13 (NEW).]
- C. The date of incorporation; [1999, c. 594, §11 (AMD).]
- D. A statement of the purpose or purposes which it is authorized to pursue under the laws of its jurisdiction of incorporation; and a statement of the purpose or purposes which it seeks authority to pursue in this State if it does not ask authority to pursue all of the purposes authorized under the laws of its jurisdiction of incorporation; [1977, c. 525, §13 (NEW).]
- E. The address of the registered or principal office of the corporation in the jurisdiction of its incorporation or the principal office wherever located; and [1997, c. 376, §26 (AMD).]
- F. The information required by Title 5, section 105, subsection 1. [2007, c. 323, Pt. B, §15 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

[ 2007, c. 323, Pt. B, §15 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**2. Certificate of existence.** The application of the corporation for authority must be accompanied by a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated. The certificate of existence must have been made not more than 90 days prior to the delivery of the application for filing.

[ 2003, c. 344, Pt. B, §17 (AMD) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1997, c. 376, §26 (AMD). 1999, c. 594, §11 (AMD). 2003, c. 344, §B17 (AMD). 2007, c. 323, Pt. B, §15 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1203. EFFECT OF AUTHORIZATION TO CARRY ON AFFAIRS IN STATE

**1. Filing of application authorization to carry on activities.** Upon filing by the Secretary of State of the application for authority, the foreign corporation shall be authorized to carry on activities in this State, and may carry on any activities:

- A. Which it is authorized to carry on in the jurisdiction of its incorporation; and [1977, c. 525, §13 (NEW).]
- B. Which may be carried on by a domestic corporation organized under this Act, unless in its application for authority, the corporation expressly limited itself to a lesser number or type of activities, in which case the corporation may carry on the affairs to which it so limited its application if such affairs qualify under this paragraph and paragraph A. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

**2. Continuation of authority.** Such authority shall continue so long as the corporation retains its authority to carry on such affairs in its jurisdiction of incorporation, and so long as its authority to carry on affairs in this State has not been revoked or otherwise terminated as provided in this chapter.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §1204. POWERS OF FOREIGN CORPORATION

A foreign corporation authorized to carry on activities in this State shall, until such authority is revoked or otherwise terminated, have the same, but no greater, powers, rights and privileges as a domestic corporation organized under this Act, and except as otherwise provided in this Act, shall be subject to the same duties, restrictions, liabilities and penalties now or hereafter imposed upon a domestic corporation of like character. [1977, c. 525, §13 (NEW).]

### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §1205. CORPORATE NAME OF FOREIGN CORPORATION

**1. Name.** A foreign corporation is not authorized to carry on activities in this State unless the name of the corporation complies with the requirements of section 301-A.

[ 2003, c. 344, Pt. B, §18 (AMD) .]

**2. Change of name.** If a foreign corporation authorized to carry on activities in this State shall change its name in its jurisdiction of incorporation, it shall, within 30 days after the effective date thereof, amend its application for authority, as provided by section 1207.

[ 1977, c. 525, §13 (NEW) .]

**3. Unavailable name.** If the name to which the foreign corporation has changed would be unavailable to it on an original application for authority, the corporation shall not thereafter carry on any activities in this State until it has adopted or assumed a name which is available to it under the laws of this State.

[ 1977, c. 525, §13 (NEW) .]

### SECTION HISTORY

1977, c. 525, §13 (NEW). 2003, c. 344, §B18 (AMD).

## §1206. MERGER OF FOREIGN CORPORATION AUTHORIZED TO CARRY ON ACTIVITIES IN STATE

Whenever a foreign corporation authorized to carry on activities in this State shall be the surviving corporation in a statutory merger permitted by the laws of its jurisdiction of incorporation, it shall, within 30 days after the effective date of the merger, deliver to the Secretary of State for filing, as provided by section 106, a copy of the articles of merger duly authenticated by the proper officer of the jurisdiction of its incorporation. It shall not be necessary for such corporation to secure either new or additional authority to carry on activities in this State unless the name of such corporation is changed, or unless the corporation proposes to carry on other or additional activities than those which it is then authorized to carry on in this State. [1977, c. 525, §13 (NEW).]

### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §1207. AMENDED APPLICATION FOR AUTHORITY

**1. Provisions for amendment.** A foreign corporation authorized to carry on activities in this State shall amend its application for authority if it shall:

A. Change its corporate name, provided that such change has been effected under the laws of its jurisdiction of incorporation; [1991, c. 465, §28 (AMD).]

B. Enlarge, limit or otherwise change the kinds of activities which it seeks authority to engage in in this State; or [1991, c. 465, §28 (AMD).]

C. Change the address of its registered or principal office wherever located. [2007, c. 323, Pt. B, §16 (AMD); 2007, c. 323, Pt. G, §4 (AFF).]

[ 2007, c. 323, Pt. B, §16 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**2. Filing with Secretary of State.** Such amendment shall be executed and delivered for filing to the Secretary of State, as provided by sections 104 and 106, and shall set forth:

A. The name of the foreign corporation as it appears on the index of names of authorized foreign corporations in the office of the Secretary of State; [1977, c. 525, §13 (NEW).]

B. The jurisdiction under the laws of which it is incorporated; [1977, c. 525, §13 (NEW).]

C. The date on which it was authorized to carry on activities in this State; [1977, c. 525, §13 (NEW).]

D. The proposed amendment to its application of authority; [1977, c. 525, §13 (NEW).]

E. If the name of the corporation is to be changed, a statement that the change of name has been effected under the laws of its jurisdiction of incorporation, and the date the change was effected; and [1977, c. 525, §13 (NEW).]

F. If the activities which it is to be authorized to engage in in this State are to be enlarged, limited or otherwise changed, a statement that it is authorized to carry on those activities under the laws of its jurisdiction of incorporation. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1991, c. 465, §§28,29 (AMD). 1997, c. 376, §27 (AMD). 2007, c. 323, Pt. B, §16 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1208. SURRENDER OF FOREIGN CORPORATION'S AUTHORITY TO CARRY ON ACTIVITIES IN STATE

**1. Surrender of authority.** A foreign corporation authorized to carry on activities in this State may surrender its authority by executing and delivering for filing, as provided in sections 104 and 106, an application for surrender of authority which shall set forth:

A. The name of the foreign corporation as it appears on the index of names of authorized foreign corporations in the office of Secretary of State; [1977, c. 525, §13 (NEW).]

B. The jurisdiction of its incorporation; [1977, c. 525, §13 (NEW).]

C. The date on which it was authorized to carry on activities in this State; [1977, c. 525, §13 (NEW).]

D. That the corporation is not as of the date of application carrying on activities in this State; [1977, c. 525, §13 (NEW).]

E. That it surrenders its authority to carry on activities in this State; [1977, c. 525, §13 (NEW).]

F. That it revokes the authority of its registered agent in this State to accept services of process and consents that process in any action, suit or proceeding based upon any cause of action arising in this State before the date of filing the application may be served on the Secretary of State after the filing by the Secretary of State of the application; and [1977, c. 525, §13 (NEW).]

G. A post office address to which the Secretary of State shall mail a copy of any process served upon him against the corporation. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

**2. Termination of authority.** The authority of the foreign corporation to carry on activities in this State shall terminate as of the date of filing by the Secretary of State of the application for surrender of authority.

[ 1977, c. 525, §13 (NEW) .]

**3. Cancellation of authority.** If a foreign nonprofit corporation files articles of domestication and conversion as set forth in Title 13-C, chapter 9, its authority is cancelled automatically on the effective date of its domestication and conversion.

[ 2003, c. 344, Pt. B, §19 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2003, c. 344, §B19 (AMD).

## §1209. FOREIGN CORPORATION'S TERMINATION OF EXISTENCE IN JURISDICTION OF ITS INCORPORATION; EFFECT UPON AUTHORITY IN THIS STATE

**1. Termination of existence.** When a foreign corporation authorized to carry on activities in this State shall be dissolved, or its authority or existence otherwise cancelled or terminated in its jurisdiction of incorporation, or when the corporation is merged or consolidated into another foreign corporation which is not authorized to carry on activities in this State, the corporation or its successor or trustee shall deliver for filing with the Secretary of State a certificate of the appropriate official of its jurisdiction of incorporation attesting to, or a certified copy of an order or decree of a court of its jurisdiction of incorporation directing the dissolution of such foreign corporation, the termination of existence, the cancellation or revocation of its authority, or its merger into or consolidation with another foreign corporation.

[ 1977, c. 525, §13 (NEW) .]

**2. Effect on authority.** The authority of the foreign corporation to carry on activities in this State shall terminate on the effective date of its dissolution, or of the cancellation of its existence or authority in its jurisdiction of incorporation, or of its merger or consolidation into another foreign corporation not authorized to carry on activities in this State, as the case may be. If those persons in charge of the foreign corporation's affairs in this State continue to function in this State under the name of the foreign corporation after such effective date, the effect shall be the same as that provided for in this Act for foreign corporations carrying on activities in this State without authority; and the persons in charge of its business in this State shall, if they know of such cause for termination of authority, be personally liable for the penalties against the corporation provided for in section 1214. Termination of authority for such cause shall not affect the accrual of or enforcement of any cause of action against the foreign corporation, its assets in this State, or its successors in interest, nor the usual means of serving summons upon it, until the certificate or other document required by subsection 1 to be filed is delivered for filing to the Secretary of State; and thereafter summons may only be served in the manner and in those cases mentioned in subsection 3.

[ 1977, c. 525, §13 (NEW) .]

**3. Agent.** The Secretary of State shall be the agent of the foreign corporation for service of process in any action, suit or proceeding based upon any case of action arising in this State before the date of filing the certificate, order or decree. Service of summons and proof of service must be as provided in Title 5, section 113.

[ 2007, c. 323, Pt. B, §17 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 2007, c. 323, Pt. B, §17 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1210. REVOCATION OF FOREIGN CORPORATION'S AUTHORITY TO CARRY ON AFFAIRS IN STATE

*(REPEALED)*

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1977, c. 694, §289 (AMD). 1979, c. 127, §103 (AMD). 1979, c. 541, §A135 (AMD). 1989, c. 501, §L41 (AMD). 1993, c. 316, §42 (AMD). 1999, c. 547, §B36 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 344, §B20 (AMD). 2003, c. 631, §4 (RP).

### §1210-A. GROUNDS FOR REVOCATION

Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under section 1210-B to revoke the authority of a foreign corporation authorized to carry on activities in this State if: [2003, c. 631, §5 (NEW) .]

**1. Nonpayment of fees or penalties.** The foreign corporation does not pay when they are due any fees or penalties imposed by this Act or other law;

[ 2003, c. 631, §5 (NEW) .]

**2. Failure to file annual report.** The foreign corporation does not deliver its annual report to the Secretary of State as required by section 1301;

[ 2003, c. 631, §5 (NEW) .]

**3. Failure to pay late filing penalty.** The foreign corporation does not pay the annual report late filing penalty as required by section 1302;

[ 2003, c. 631, §5 (NEW) .]

**4. Failure to maintain registered agent.** The foreign corporation is without a registered agent in this State as required by Title 5, section 105, subsection 1;

[ 2007, c. 323, Pt. B, §18 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**5. Failure to notify of change of registered agent or address.** The foreign corporation does not notify the Secretary of State that its registered agent has changed as required by Title 5, section 108, subsection 1 or the address of its registered agent has been changed as required by Title 5, section 109 or 110 or that its registered agent has resigned as required by Title 5, section 111;

[ 2007, c. 323, Pt. B, §19 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**6. Filing of false information.** An incorporator, director, officer or agent of the foreign corporation signed a document with the knowledge that the document was false in a material respect and with the intent that the document be delivered to the Secretary of State for filing; or

[ 2003, c. 631, §5 (NEW) .]

**7. Authenticated certificate of dissolution or merger.** The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that the foreign corporation has been dissolved or has disappeared as the result of a merger.

[ 2003, c. 631, §5 (NEW) .]

#### SECTION HISTORY

2003, c. 631, §5 (NEW). 2007, c. 323, Pt. B, §§18, 19 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1210-B. PROCEDURE FOR AND EFFECT OF REVOCATION

**1. Notice of determination.** If the Secretary of State determines that one or more grounds exist under section 1210-A for the revocation of authority, the Secretary of State shall serve the foreign corporation with written notice of the Secretary of State's determination as required by subsection 7.

[ 2007, c. 323, Pt. B, §20 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**2. Revocation.** The foreign corporation's authority is revoked if within 60 days after the notice under subsection 1 was issued and is perfected under subsection 7 the Secretary of State determines that the foreign corporation has failed to correct the ground or grounds for revocation. The Secretary of State shall send notice to the foreign corporation, as required by subsection 7, that recites the ground or grounds for revocation and the effective date of revocation.

[ 2007, c. 323, Pt. B, §21 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**3. Authority to carry on activities ceases.** The authority of a foreign corporation to carry on activities in this State ceases on the date of revocation of its authority.

[ 2003, c. 631, §5 (NEW) .]

**4. Secretary of State appointed as agent for service of process.** The Secretary of State's revocation of a foreign corporation's authority appoints the Secretary of State as the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to carry on activities in this State. Service of process on the Secretary of State under this subsection is service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office or, if no other address is on file, in its application for authority.

[ 2003, c. 631, §5 (NEW) .]

**5. Registered agent; not terminated.** Revocation of a foreign corporation's authority to carry on activities in this State does not terminate the authority of the registered agent of the corporation.

[ 2003, c. 631, §5 (NEW) .]

**6. Authorization after revocation.** A foreign corporation whose authority to carry on activities in this State has been revoked under this section and that wishes to carry on activities again in this State must be authorized as provided in this chapter.

[ 2003, c. 631, §5 (NEW) .]

**7. Delivery of notice.** The Secretary of State shall send notice of its determination under subsection 1 by regular mail and the service upon the foreign corporation is perfected 5 days after the Secretary of State deposits its determination in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed to the registered agent in this State and the registered or principal office, wherever located, of the corporation.

[ 2007, c. 323, Pt. B, §22 (NEW); 2007, c. 323, Pt. G, §4 (AFF) .]

#### SECTION HISTORY

2003, c. 631, §5 (NEW). 2007, c. 323, Pt. B, §§20-22 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1210-C. APPEAL FROM REVOCATION

**1. Petition to appeal revocation.** A foreign corporation may appeal the Secretary of State's revocation of its authority to the Kennebec County Superior Court within 30 days after the notice of revocation. The foreign corporation may appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its application for authority and the Secretary of State's notice of revocation.

[ 2003, c. 631, §5 (NEW) .]

**2. Court order.** The court may summarily order the Secretary of State to reinstate the authority or may take any other action the court considers appropriate.

[ 2003, c. 631, §5 (NEW) .]

**3. Appeal of court's decision.** The court's final decision may be appealed as in other civil proceedings.

[ 2003, c. 631, §5 (NEW) .]

#### SECTION HISTORY

2003, c. 631, §5 (NEW).

## §1211. SUITS BY ATTORNEY GENERAL AGAINST FOREIGN CORPORATIONS

The Attorney General may bring an action to restrain a foreign corporation from carrying on in this State without authority any activity for which authority is required by this chapter; any activity which it is not authorized to carry on in its jurisdiction of incorporation, or which it is not authorized to do under this Act, or which it is engaging in without securing any license or other authority required under the laws of this State; any activity, authority for which was obtained through fraud, misrepresentation or concealment of a material fact. A certified copy of any order or judgment restraining or enjoining any such corporation from carrying on activities or a particular activity in this State shall be filed with the Secretary of State. [1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §1212. SERVICE OF PROCESS ON AUTHORIZED FOREIGN CORPORATIONS; REGISTERED OFFICE AND REGISTERED AGENT

*(REPEALED)*

### SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 663, §73 (AMD). 1989, c. 501, §L42 (AMD). 1993, c. 316, §43 (AMD). 1997, c. 376, §28 (AMD). 1997, c. 376, §29 (AMD). 1999, c. 594, §§12-14 (AMD). 2007, c. 323, Pt. B, §23 (RP). 2007, c. 323, Pt. G, §4 (AFF).

## §1212-A. SERVICE OF PROCESS UPON AUTHORIZED FOREIGN NONPROFIT CORPORATION

Service of process, notice or demand required or permitted by law on a foreign nonprofit corporation qualified to carry on activities in this State is governed by Title 5, section 113. [2007, c. 323, Pt. B, §24 (NEW); 2007, c. 323, Pt. G, §4 (AFF).]

### SECTION HISTORY

2007, c. 323, Pt. B, §24 (NEW). 2007, c. 323, Pt. G, §4 (AFF).

## §1212-B. REGISTERED AGENT OF FOREIGN NONPROFIT CORPORATION

Each foreign nonprofit corporation must have and shall continuously maintain a registered agent in this State as defined in Title 5, chapter 6-A. [2007, c. 535, Pt. B, §3 (NEW).]

### SECTION HISTORY

2007, c. 535, Pt. B, §3 (NEW).

## §1213. SERVICE OF PROCESS ON FOREIGN CORPORATION NOT AUTHORIZED TO CARRY ON ACTIVITIES IN STATE

**1. Limited jurisdiction.** Every foreign corporation that carries on any activities in this State without having been authorized to carry on activities in this State thereby submits itself to the jurisdiction of the courts of this State, with respect to any action arising out of or in connection with activities actually carried on in this State, and also thereby designates the Secretary of State as its agent upon whom any process, notice or demand upon it may be served in any action or proceeding arising out of or in connection with the carrying on of any activities in this State.

[ 1991, c. 2, §47 (COR) .]

**2. Other methods of service.** In addition to other methods of service that may be authorized by statute or by rule, service of such process may be made as provided in Title 5, section 113.

[ 2007, c. 323, Pt. B, §25 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

### SECTION HISTORY

1977, c. 525, §13 (NEW). RR 1991, c. 2, §47 (COR). 2007, c. 323, Pt. B, §25 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

## §1214. EFFECT OF FOREIGN CORPORATION CARRYING ON ACTIVITIES IN STATE WITHOUT AUTHORITY

**1. Corporation liable.** A foreign corporation which carries on activities in this State without authority, when such authority is required by this Act, shall be liable to this State for all fees and penalties which would have been imposed under this Act upon such corporation had it duly applied for and received authority under this chapter, for the years or parts thereof during which it carried on activities in this State without authority. In addition, such corporation shall be liable to the State in the sum of \$25 per day for each day it fails to pay such fees and penalties. The Attorney General shall bring proceedings to recover all such amounts due under this section.

[ 1977, c. 525, §13 (NEW) . ]

**2. Corporation may be sued.** A foreign corporation carrying on activities in this State without authority, when such authority is required by this Act, shall not maintain any action, suit or proceeding in this State unless and until such corporation shall have been authorized to carry on activities in this State and shall have paid to the State all fees and penalties due under subsection 1. This prohibition shall apply to any assignee except a subrogee; and shall apply to a successor in interest, whether by merger, consolidation or otherwise, and to a purchaser of all or substantially all of the assets of such corporation. If it appears in any pending action that the plaintiff is such a foreign corporation carrying on activities in this State without authority, or is such an assignee, successor or purchaser, the action shall abate until such foreign corporation becomes authorized to carry on activities in this State, or shall be dismissed without prejudice to the right to bring the same after the foreign corporation becomes so authorized.

[ 1977, c. 525, §13 (NEW) . ]

**3. Failure to obtain authority to carry on activities.** The failure of a foreign corporation to obtain authority to carry on activities in this State shall not impair the validity of any contract or act of such corporation or the right of any other party to the contract to maintain an action or other proceeding thereon, and shall not prevent such corporation from defending any action, suit or proceeding in this State.

[ 1977, c. 525, §13 (NEW) . ]

### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §1215. APPLICATION OF CHAPTER TO CORPORATIONS PREVIOUSLY AUTHORIZED TO CARRY ON ACTIVITIES IN STATE

**1. Continuation of activities.** Every foreign corporation which, on the effective date of this Act, is authorized to carry on activities in this State shall continue to have such authority for any purpose or purposes for which a corporation might secure authority under this chapter. Such foreign corporation shall have the same rights and privileges, and shall be subject to the same duties, limitations, restrictions, liabilities and penalties as a foreign corporation authorized under this chapter.

[ 1977, c. 525, §13 (NEW) . ]

**2. Qualified to carry on activities.** Every foreign corporation which, on the effective date of this Act, was lawfully carrying on activities in this State, even though not theretofore qualified as a foreign corporation or otherwise expressly authorized to do so, may continue to carry on such activities, and in every other respect such foreign corporation shall be treated as though it were a foreign corporation authorized to carry on activities in this State.

[ 1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

## **§1216. MEMBERS' INSPECTION OF RECORDS OF FOREIGN CORPORATIONS**

**1. Right to inspect corporate records.** Every foreign corporation, authorized to carry on activities in this State and actually keeping or maintaining within this State any books or records, shall afford to its members the same right to inspect books and records kept or maintained in this State, including, but not limited to, records of members as is provided in this Act in the case of domestic corporations.

[ 1977, c. 525, §13 (NEW) .]

SECTION HISTORY

1977, c. 525, §13 (NEW).

## **§1217. SERVICE OF PROCESS ON SECRETARY OF STATE FOR FOREIGN CORPORATION**

*(REPEALED)*

SECTION HISTORY

1977, c. 525, §13 (NEW). 2007, c. 323, Pt. B, §26 (RP). 2007, c. 323, Pt. G, §4 (AFF).

## Chapter 13: ANNUAL REPORTS: POWERS OF SECRETARY OF STATE; EXCUSE; MISCELLANEOUS

### §1301. ANNUAL REPORT OF DOMESTIC AND FOREIGN CORPORATIONS; EXCUSE

**1. Annual report.** Each domestic corporation, unless excused as provided in subsection 5, and each foreign corporation authorized to carry on activities in this State shall deliver for filing, within the time prescribed by this Act, an annual report to the Secretary of State setting forth:

- A. The name of the domestic or foreign corporation and the jurisdiction of its incorporation; [ 2007, c. 323, Pt. B, §27 (AMD); 2007, c. 323, Pt. G, §4 (AFF). ]
- B. The information required by Title 5, section 105, subsection 1; [ 2007, c. 323, Pt. B, §27 (AMD); 2007, c. 323, Pt. G, §4 (AFF). ]
- C. The names and business or residence addresses, of the president, the treasurer, the registered agent, the secretary or clerk, and directors of the corporation, including the street or rural route number, town or city and state; [ 2007, c. 323, Pt. B, §27 (AMD); 2007, c. 323, Pt. G, §4 (AFF). ]
- D. A brief statement of the character of the activities in which the domestic or foreign corporation is actually engaged in this State, if any; and [ 2007, c. 323, Pt. B, §27 (NEW); 2007, c. 323, Pt. G, §4 (AFF). ]
- E. The address of its principal office, wherever located. [ 2007, c. 323, Pt. B, §27 (NEW); 2007, c. 323, Pt. G, §4 (AFF). ]

[ 2007, c. 323, Pt. B, §27 (AMD); 2007, c. 323, Pt. G, §4 (AFF). ]

**2. Information contained in annual report.** The Secretary of State shall specify by rule the period of time to which the annual report applies as provided in subsection 4. The information contained in the annual report must be current as of the date the report is signed.

[ 1993, c. 680, Pt. A, §23 (RPR). ]

#### **2-A. Information contained in annual report.**

[ 1993, c. 680, Pt. A, §23 (RP). ]

**3. Execution.** The annual report must be executed as provided by section 104, except that signing by the president, a vice-president, the secretary, the treasurer, an assistant secretary or any other duly authorized individual without a 2nd signature is deemed valid under section 104, subsection 1, paragraph B, subparagraph (2).

[ 1993, c. 680, Pt. A, §23 (RPR). ]

**4. Filing.** Subject to rules adopted under section 1302-A, subsection 4, the annual report must be delivered for filing to the Secretary of State or a designee. The annual reports may be delivered to the Secretary of State on a staggered basis as defined by the Secretary of State by rule in accordance with the Maine Administrative Procedure Act. The report must apply to the 12-month period specified by the Secretary of State. Proof to the satisfaction of the Secretary of State that the report was deposited in the United States mail in a sealed envelope, properly addressed and with postage prepaid, before the date that penalties become effective for late delivery of annual reports, as established by the Secretary of State by rule, is considered compliance with this subsection. One copy of the report, together with the filing fee required

by this Act, must be delivered for filing to the Secretary of State, who shall file the report if the Secretary of State finds that it conforms to the requirements of this Act. If the Secretary of State finds that the report does not conform, the Secretary of State shall promptly mail or otherwise return the report to the corporation for necessary corrections, in which event the penalties prescribed by this Act for failure to file the report within the time provided in this section do not apply if the report is corrected to conform to the requirements of this Act and returned to the Secretary of State within 30 days from the date on which it was mailed or otherwise returned to the corporation by the Secretary of State.

[ 1993, c. 680, Pt. A, §23 (RPR) . ]

**5. Certificate of excuse.** The Secretary of State, upon application by a corporation and satisfactory proof that it has ceased to carry on activities, shall file a certificate of that fact and shall give a duplicate certificate to the corporation. The corporation is then excused from filing annual reports with the Secretary of State as long as the corporation carries on no activities. The name of a corporation remains in the Secretary of State's record of corporate names and is protected for a period of 5 years following the filing of the certificate under this subsection.

[ 2007, c. 535, Pt. A, §2 (AMD); 2007, c. 535, Pt. A, §7 (AFF) . ]

**6. Vote to carry on activities.** The members entitled to vote or, if none, the directors of a corporation that has been excused pursuant to subsection 5 may vote to resume carrying on activities at a meeting duly called and held for that purpose. A certificate executed and filed as provided in sections 104 and 106, setting forth that a members' or directors' meeting was held, the date and location of the meeting and that a majority of the members or directors voted to resume carrying on activities, authorizes that corporation to carry on activities; after that certificate is filed, the corporation is required to file annual reports beginning with the next reporting deadline following resumption as established by subsection 4.

[ 1993, c. 680, Pt. A, §23 (RPR) . ]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). 1977, c. 696, §161 (AMD). 1987, c. 402, §C4 (AMD). 1989, c. 501, §L43 (AMD). 1989, c. 875, §E11 (AMD). RR 1991, c. 2, §48 (COR). 1991, c. 465, §30 (AMD). 1991, c. 780, §U16 (AMD). 1991, c. 837, §A37 (AMD). 1993, c. 316, §44 (RPR). 1993, c. 349, §35 (RPR). 1993, c. 680, §A23 (RPR). 1995, c. 458, §10 (AMD). 1997, c. 376, §30 (AMD). 2007, c. 323, Pt. B, §27 (AMD). 2007, c. 323, Pt. G, §4 (AFF). 2007, c. 535, Pt. A, §2 (AMD). 2007, c. 535, Pt. A, §7 (AFF).

### **§1301-A. ANNUAL REPORT OF DOMESTIC CONDOMINIUM CORPORATIONS; EXCUSE**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 875, §E12 (NEW). 1991, c. 465, §31 (AMD). 1991, c. 780, §U17 (RP). 1991, c. 837, §A38 (RP).

### **§1301-B. FAILURE TO FILE ANNUAL REPORT; INCORRECT REPORT; PENALTIES**

*(REPEALED)*

#### SECTION HISTORY

1989, c. 875, §E12 (NEW). 1991, c. 780, §U18 (RP). 1991, c. 837, §A39 (RP).

## §1301-C. AMENDED ANNUAL REPORT OF DOMESTIC OR FOREIGN CORPORATION

**1. Amended annual report.** If the information contained in an annual report filed under section 1301 has changed, a corporation may, if it determines it to be necessary, deliver to the Secretary of State for filing an amended annual report to change the information on file. The amended annual report must be executed as provided by section 1301, subsection 3.

[ 2003, c. 631, §6 (NEW) . ]

**2. Contents.** The amended annual report must set forth:

A. The name of the domestic or foreign corporation and the jurisdiction of its incorporation; [ 2003, c. 631, §6 (NEW) . ]

B. The date on which the original annual report was filed; and [ 2003, c. 631, §6 (NEW) . ]

C. The information that has changed and the date on which it changed. [ 2003, c. 631, §6 (NEW) . ]

[ 2003, c. 631, §6 (NEW) . ]

**3. Period for filing.** An amended annual report may be filed by the corporation after the date of the original filing and until December 31st of that filing year.

[ 2003, c. 631, §6 (NEW) . ]

### SECTION HISTORY

2003, c. 631, §6 (NEW) .

## §1302. FAILURE TO FILE ANNUAL REPORT; INCORRECT REPORT; PENALTIES

**1. Failure to file annual report; penalty.** A domestic or foreign corporation that is required to deliver an annual report for filing, as provided by section 1301, that fails to deliver its properly completed annual report to the Secretary of State shall pay, in addition to the regular annual report fee, the late filing penalty described in section 1401, subsection 34, as long as the report is received by the Secretary of State prior to administrative dissolution or revocation. Upon a corporation's failure to file the annual report and to pay the annual report fee or the penalty, the Secretary of State, notwithstanding Title 4, chapter 5 and Title 5, chapter 375, shall revoke a foreign corporation's authority to carry on activities in this State and administratively dissolve a domestic corporation. The Secretary of State shall use the procedures set forth in section 1113 to administratively dissolve a domestic corporation and the procedures set forth in section 1210-B to revoke a foreign corporation's authority to carry on activities in this State. A domestic corporation that has been administratively dissolved under section 1113 must follow the requirements set forth in section 1114 to reinstate.

[ 2003, c. 631, §7 (AMD) . ]

**2. Nonconformity.** If the Secretary of State finds that an annual report of a domestic or foreign corporation delivered for filing does not conform with the requirements of section 1301, the Secretary of State may return the report for correction.

[ 2003, c. 631, §7 (AMD) . ]

**3. Excusable neglect.** If the annual report of a domestic or foreign corporation is not delivered for filing within the time specified in section 1301, the corporation is excused from the liability provided in this section and from any other penalty for failure to timely file the report if it establishes, to the satisfaction of the Secretary of State, that its failure to file was the result of excusable neglect and it furnishes the Secretary of State a copy of the report within 30 days after it learns that the Secretary of State failed to receive the original report.

[ 2003, c. 631, §7 (AMD) .]

**4. Notice to Attorney General in case of public benefit corporation.**

[ 2003, c. 631, §7 (RP) .]

SECTION HISTORY

1977, c. 525, §13 (NEW). 1977, c. 694, §290 (AMD). 1991, c. 780, §U19 (AMD). 1991, c. 837, §A40 (AMD). 1993, c. 349, §36 (RPR). 1999, c. 547, §B37 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 550, §C27 (AMD). 2001, c. 550, §C29 (AFF). 2003, c. 631, §7 (AMD).

**§1302-A. POWERS OF SECRETARY OF STATE**

The Secretary of State shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him. These powers shall include, without limitation: [1977, c. 592, §17 (NEW) .]

**1. Make rules.** The power to make rules not inconsistent with this Act;

[ 1977, c. 592, §17 (NEW) .]

**2. Prescribe forms.** The power to prescribe forms for all documents required or permitted to be filed with him and to refuse to file documents not utilizing those forms to the extent possible;

[ 1987, c. 402, Pt. C, §5 (AMD) .]

**3. Refuse to file.** The power to refuse to file any document which is not clearly legible or which may not be clearly reproducible photographically; and

[ 1987, c. 402, Pt. C, §5 (AMD) .]

**4. Report dates.** The power, through the rule-making process, to provide alternative dates for filing annual reports and for determining the dates covered by those reports.

[ 1991, c. 780, Pt. U, §20 (AMD); 1991, c. 837, Pt. A, §41 (AMD) .]

SECTION HISTORY

1977, c. 592, §17 (NEW). 1987, c. 402, §§C5,C6 (AMD). 1989, c. 875, §E13 (AMD). 1991, c. 780, §U20 (AMD). 1991, c. 837, §A41 (AMD).

**§1303. FALSE AND MISLEADING STATEMENTS IN DOCUMENTS REQUIRED TO BE FILED WITH SECRETARY OF STATE**

**1. Penalties.** No person shall sign any document required or permitted to be delivered for filing with the Secretary of State by any corporation, domestic or foreign, when that person knows that the document contains any untrue statement of a material fact or omits to state a material fact necessary in order to make

the statements contained in the document, when considered in the light of the circumstances under which they were made, not misleading. Any violation of this subsection shall be a civil violation for which a forfeiture of not more than \$25 may be adjudged.

[ 1977, c. 525, §13 (NEW) .]

**2. Liable.** Any person who violates subsection 1 shall be liable to any person who is damaged thereby.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

### **§1304. CERTIFIED COPIES OF DOCUMENTS FILED WITH SECRETARY OF STATE TO BE RECEIVED IN EVIDENCE**

All copies of documents which have been filed in the office of the Secretary of State, as required or permitted by any provision of this Act, shall, when certified by him, be taken and received in all courts, public offices and official bodies as prima facie evidence of the facts therein stated. A certificate by the Secretary of State under the seal of his office as to the nonexistence of a document in the files of his office shall be taken and received in all courts, public offices and official bodies as prima facie evidence of the nonexistence of such document. [1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

### **§1305. CERTIFIED RECORDS OF CORPORATION AS PRIMA FACIE EVIDENCE OF FACTS STATED THEREIN**

In addition to any rule of evidence provided by rule of court: [1977, c. 525, §13 (NEW).]

**1. Prima facie evidence.** When certified under oath of the secretary or an assistant secretary of the corporation to be true and correct, the original or a copy of:

- A. The minutes of the proceedings of the incorporators; [1977, c. 525, §13 (NEW).]
- B. The minutes of the meetings or other proceedings of the members or any class thereof; [2013, c. 2, §22 (COR).]
- C. The minutes of the meetings or other proceedings of the directors or of any committee thereof; [1977, c. 525, §13 (NEW).]
- D. Any written consent, waiver, release or agreement entered into the records of minutes; and [1977, c. 525, §13 (NEW).]
- E. A statement that no specified meeting or proceeding was held, or that no specified consent, waiver, release or agreement exists; [1977, c. 525, §13 (NEW).]

shall be prima facie evidence of the facts stated therein. Such certification may be by oral testimony or by affidavit, but after admitting such affidavit into evidence the court shall permit cross-examination of each affiant. A certification shall be sufficient if it is to the effect that a given document is the original, or a true, correct and complete copy, of minutes, consent, waiver or other document contained in the minute book of the corporation, even though the affiant has no personal knowledge of the facts set forth in such document; and the lack of personal knowledge of the certifying officers shall go to the weight, but not the admissibility, of such document as evidence.

[ 2013, c. 2, §22 (COR) .]

**2. Meeting duly called.** Every meeting referred to in such certified original or copy shall be deemed duly called and held, and all motions and resolutions adopted and proceedings had at such meeting shall be deemed duly adopted and had, and all elections of directors and all elections or appointments of officers chosen at such meeting shall be deemed valid, until the contrary is proven.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW). RR 2013, c. 2, §22 (COR).

## §1306. SHORT FORM CERTIFICATE OF CHANGE IN CORPORATE IDENTITY

**1. Secretary of State authorized to issue certificate.** The Secretary of State is authorized to issue his certificate in such short form as is adopted by him:

A. Of a change in the name of a domestic or foreign corporation, which change of name is reflected in articles of amendment which have been duly filed in his office. Such certificate shall state the new name of the corporation, its former name and such other information as the Secretary of State deems desirable; [1977, c. 525, §13 (NEW).]

B. Of the consolidation or merger of 2 or more corporations, domestic or foreign or both, which merger or consolidation is reflected in articles of merger or consolidation which have been duly filed in his office. Such certificate shall state the name of the new or surviving corporation, the names of the corporations participating in the merger or consolidation and such other information as the Secretary of State deems desirable. [1977, c. 525, §13 (NEW).]

[ 1977, c. 525, §13 (NEW) .]

**2. Certificate recorded in registry of deeds.** Any certificate issued pursuant to subsection 1 shall be accepted for recording, without acknowledgement, at any registry of deeds in the State. Such certificates shall be indexed and filed as are the items enumerated in Title 33, section 654. The register of deeds shall receive a fee equal to that chargeable for a deed for recording such a certificate.

[ 1977, c. 525, §13 (NEW) .]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## §1307. PRACTICING PROFESSION OR OCCUPATION

Except as otherwise expressly provided by law, a nonprofit corporation shall not be required to obtain a license or to be registered to practice a profession or occupation. Any employee of such a corporation who practices or holds himself out to practice a profession or occupation shall be licensed or registered as required by law. [1977, c. 525, §13 (NEW).]

#### SECTION HISTORY

1977, c. 525, §13 (NEW).

## Chapter 14: FEES

### §1401. FEES FOR FILING DOCUMENTS AND SERVICES

In addition to any fees required by section 1402, the Secretary of State shall charge the following fees for filing documents required or permitted to be filed in his office by this Act, and for services specified herein: [1977, c. 525, §13 (NEW).]

#### 1. Proof of resolution.

[ 2003, c. 344, Pt. B, §21 (RP) .]

**1-A. Application for indistinguishable name.** Application for the use of an indistinguishable name as provided by section 301-A, subsection 4, \$5;

[ 2003, c. 344, Pt. B, §22 (NEW) .]

**2. Application to reserve name.** Application to reserve corporate name, as provided by section 302-A, \$5;

[ 2003, c. 344, Pt. B, §23 (AMD) .]

**3. Notice of transfer of reserved corporate name.** Notice of transfer of a reserved corporate name, as provided by section 302-A, \$5;

[ 2003, c. 344, Pt. B, §23 (AMD) .]

**4. Application to register corporate name.** Application to register corporate name, as provided by section 303-A, \$5 per month for the number of months or fraction of a month remaining in the calendar year when the application is first filed;

[ 2003, c. 344, Pt. B, §23 (AMD) .]

**5. Application to renew registered name.** Application to renew the registration of a registered name, as provided by section 303-A, \$50;

[ 2003, c. 344, Pt. B, §23 (AMD) .]

#### 5-A. Termination of registered name.

[ 2003, c. 344, Pt. B, §24 (RP) .]

#### 6. Statement of change in registered agent or registered agent and registered office.

[ 2007, c. 323, Pt. B, §28 (RP); 2007, c. 323, Pt. G, §4 (AFF) .]

#### 7. Notice of resignation of registered agent.

[ 2007, c. 323, Pt. B, §29 (RP); 2007, c. 323, Pt. G, §4 (AFF) .]

#### 8. Statement of change in registered office.

[ 2007, c. 323, Pt. B, §30 (RP); 2007, c. 323, Pt. G, §4 (AFF) .]

**9. Process on Secretary of State as agent.** Accompanying service of process upon the Secretary of State as agent of nonresident director of a domestic corporation, as provided by section 307, \$5 for each such process;

[ 2007, c. 323, Pt. B, §31 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**10. Notice of resignation of nonresident director.** Notice of resignation of a nonresident director, as provided by section 307, subsection 4, \$2;

[ 1977, c. 525, §13 (NEW) .]

**10-A. Assumed or fictitious name statement.** Assumed or fictitious name statement, as provided by section 308-A, \$25;

[ 2003, c. 673, Pt. WWW, §4 (AMD); 2003, c. 673, Pt. WWW, §37 (AFF) .]

**10-B. Termination of assumed or fictitious name.** Termination of assumed or fictitious name, as provided by section 308-A, subsection 8, \$5;

[ 2003, c. 344, Pt. B, §26 (AMD) .]

**11. Articles of incorporation.** Articles of incorporation, as provided by section 403, \$40;

[ 2003, c. 673, Pt. WWW, §5 (AMD); 2003, c. 673, Pt. WWW, §37 (AFF) .]

**12. Articles of amendment.** Articles of amendment, as provided by sections 802 and 803, \$10; if the amendment changes the corporation's purposes, a further additional amount of \$10;

[ 2003, c. 673, Pt. WWW, §6 (AMD); 2003, c. 673, Pt. WWW, §37 (AFF) .]

**12-A. Certificate of correction.** Certificate of correction, as provided by section 106, subsection 4, \$10;

[ 2003, c. 673, Pt. WWW, §7 (AMD); 2003, c. 673, Pt. WWW, §37 (AFF) .]

**13. Restated articles of incorporation.** Restated articles of incorporation, as provided by section 805, \$10; and if they change the purposes of the corporation, a further additional amount of \$10;

[ 2007, c. 231, §11 (AMD) .]

**14. Articles of merger or consolidation.** Articles of merger or consolidation, as provided by section 904, \$25; and if the merger or consolidation changes the survivor's purposes, a further additional amount of \$10;

[ 2007, c. 231, §12 (AMD) .]

**15. Articles of merger or consolidation of corporations.** Articles of merger or consolidation of domestic and foreign corporations, as provided by section 906, \$25, if the new or surviving corporation is a foreign corporation, plus the appropriate fee for authority to carry on activities in this State, if not previously so authorized; if the new or surviving corporation is a domestic corporation, the same sum as would be required for the merger or consolidation of domestic corporations;

[ 2007, c. 231, §13 (AMD) .]

**16. Document required.** Document required by section 906, subsection 4, in the event that the surviving or new corporation is a foreign corporation, no fee in addition to that specified in the preceding subsection;

[ 1977, c. 525, §13 (NEW) .]

**17. Articles of dissolution.** Articles of dissolution, as provided by section 1104, \$10;

[ 2003, c. 673, Pt. WWW, §8 (AMD); 2003, c. 673, Pt. WWW, §37 (AFF) .]

**18. Statement of intent.** Statement of intent to dissolve as provided by section 1101, \$10;

[ 2003, c. 673, Pt. WWW, §9 (AMD); 2003, c. 673, Pt. WWW, §37 (AFF) .]

**19. Statement of revocation.** Statement of revocation of voluntary dissolution proceedings, as provided by section 1102, \$5;

[ 1977, c. 525, §13 (NEW) .]

**20. Application for authority.** Application of a foreign corporation for authority to carry on activities in this State, as provided by section 1202, \$45;

[ 2003, c. 2, §23 (COR) .]

**21. Articles of merger.** Articles of merger of a foreign corporation, as provided by section 1206, \$25;

[ 2007, c. 231, §14 (AMD) .]

**22. Amendment to foreign corporation's application.** An amendment to a foreign corporation's application for authority to carry on activities in this State, as provided by section 1207, \$15;

[ 2007, c. 231, §15 (AMD) .]

**23. Application for surrender of authority.** An application of a foreign corporation for surrender of its authority, as provided by section 1208, \$15;

[ 2007, c. 231, §16 (AMD) .]

**24. Statement of termination of existence.** Statement of a foreign corporation's termination of existence, as provided by section 1209, \$5;

[ 1977, c. 525, §13 (NEW) .]

**24-A. Application for excuse.** An application for excuse, as provided by section 1301, subsection 5, \$5;

[ 1993, c. 316, §45 (NEW) .]

**25. Certificate of resumption of activity.** A certificate of resumption of activity, as provided by section 1301, subsection 6, \$25;

[ 1979, c. 127, §109 (AMD) .]

**26. Issuing certificate.** For issuing a certificate of existence, certificate of authority or certificate of fact as provided by section 111 or 1306, \$10 per certificate;

[ 2003, c. 631, §8 (RPR) .]

**27. Statement of change in registered agent or registered agent and registered office.**

[ 2007, c. 323, Pt. B, §32 (RP); 2007, c. 323, Pt. G, §4 (AFF) .]

**28. Other documents.** Any other documents not herein specifically provided for, \$5;

[ 1989, c. 501, Pt. L, §44 (AMD) .]

**29. Statement of change in registered office.**

[ 2007, c. 323, Pt. B, §33 (RP); 2007, c. 323, Pt. G, §4 (AFF) .]

**30. Report of name search.**

[ 2003, c. 344, Pt. B, §27 (RP) .]

**31. Annual report.** Annual report of a domestic or foreign corporation as provided by section 1301, \$35;

[ 2003, c. 673, Pt. XXX, §1 (AMD); 2003, c. 673, Pt. XXX, §10 (AFF) .]

**31-A. Amended annual report.** An amended annual report of a domestic or foreign corporation as provided by section 1301-C, \$35;

[ 2005, c. 529, §3 (AMD) .]

**32. Document preclearance.** Preclearance of any document for filing, \$100;

[ 2003, c. 631, §10 (AMD) .]

**33. Information request.**

[ 2003, c. 631, §11 (RP) .]

**34. Late filing; penalty.** For failing to deliver an annual report by its due date, in addition to the annual report filing fee, \$25;

[ 2007, c. 231, §17 (AMD) .]

**35. Reinstatement fee after administrative dissolution of domestic or foreign corporation.** For failure to file an annual report, a fee of \$25 per report, to a maximum fee of \$150, regardless of the number of delinquent reports or the period of delinquency; for failure to pay the annual report late filing penalty, \$25; for failure to appoint or maintain a registered agent, \$25; for failure to notify the Secretary of State that its registered agent or the address of the registered agent has been changed or that its registered agent has resigned, \$25; and for filing false information, \$25; and

[ 2015, c. 254, §2 (AMD) .]

**36. Certificate of revival after dissolution.** Certificate of revival after dissolution for a domestic nonprofit corporation, as provided in section 1117, \$25.

[ 2007, c. 231, §19 (NEW) .]

## SECTION HISTORY

1977, c. 525, §13 (NEW). 1979, c. 127, §§104-111 (AMD). 1983, c. 86, §5 (AMD). 1989, c. 501, §§L44-46 (AMD). 1989, c. 875, §§E14-16 (AMD). RR 1991, c. 2, §49 (COR). 1991, c. 780, §§U21-23 (AMD). 1991, c. 837, §§A42,43 (AMD). 1993, c. 316, §§45,46 (AMD). 1993, c. 349, §§37,38 (AMD). 1997, c. 376, §31 (AMD). 1999, c. 594, §§15-18 (AMD). RR 2003, c. 2, §23 (COR). 2003, c. 344, §§B21-27 (AMD). 2003, c. 631, §§8-12 (AMD). 2003, c. 673, §§WWW3-10,XX X1 (AMD). 2003, c. 673, §§WWW37,XXX10 (AFF). 2005, c. 12, §FF2 (AMD). 2005, c. 529, §§1-3 (AMD). 2007, c. 231, §§11-19 (AMD). 2007, c. 323, Pt. B, §§28-34 (AMD). 2007, c. 323, Pt. G, §4 (AMD). 2007, c. 695, Pt. A, §17 (AMD). 2007, c. 695, Pt. A, §18 (AFF). 2015, c. 254, §2 (AMD).

## **§1402. FEES FOR COPYING, COMPARING AND AUTHENTICATING DOCUMENTS**

**1. Secretary of State to furnish copies.** The Secretary of State shall furnish to any person a copy of any document filed under this Act or retained in file, having been filed under a predecessor to this Act; for locating, copying and certifying a document subsequent to its filing, the Secretary of State shall charge a fee of \$2 per page. The Secretary of State may reduce the fee for governmental bodies.

[ 1989, c. 501, Pt. L, §47 (AMD) . ]

### SECTION HISTORY

1977, c. 525, §13 (NEW). 1989, c. 501, §L47 (AMD).

### **§1402-A. EXPEDITED SERVICE**

The Secretary of State may provide an expedited service for the processing of documents in accordance with this Title. If the service is provided, the Secretary of State shall establish by rule a fee schedule and governing procedures in accordance with the Maine Administrative Procedure Act. All fees collected as provided by this section must be deposited in a fund for use by the Secretary of State in providing an improved filing service. [1991, c. 465, §32 (NEW). ]

### SECTION HISTORY

1991, c. 465, §32 (NEW).

### **§1403. REMITTANCE TO TREASURER OF STATE**

All fees collected as provided by this chapter must be remitted to the Treasurer of State for the use of the State with the exception of those fees collected under sections 1402-A and 1405. [1991, c. 465, §33 (AMD) . ]

### SECTION HISTORY

1977, c. 525, §13 (NEW). 1991, c. 465, §33 (AMD).

### **§1404. ACCESS TO SECRETARY OF STATE'S DATABASE**

The Secretary of State may provide public access to the database of the Department of the Secretary of State through a dial-in modem, public terminals and electronic duplicates of the database. If access to the database is provided to the public, the Secretary of State may promulgate rules in accordance with the Maine Administrative Procedure Act to establish a fee schedule and governing procedures. [1991, c. 465, §34 (NEW) . ]

### SECTION HISTORY

1991, c. 465, §34 (NEW).

## §1405. PUBLICATIONS

**1. Informational publications.** The Secretary of State may establish by rule in accordance with the Maine Administrative Procedure Act a fee schedule to cover the cost of printing and distribution of publications and to set forth the procedures for the sale of these publications.

[ 1991, c. 465, §34 (NEW) .]

**2. Fund; fees deposited.** All fees collected pursuant to this section must be deposited in a fund for use by the Secretary of State for the purpose of replacing and updating publications offered in accordance with this Title and for funding new publications.

[ 1991, c. 465, §34 (NEW) .]

### SECTION HISTORY

1991, c. 465, §34 (NEW).

## §1406. PUBLIC AND MUTUAL BENEFIT CORPORATION

**1. Public benefit corporation.** A domestic corporation subject to this Act is a public benefit corporation if:

A. It is designated a public benefit corporation by statute; [2001, c. 550, Pt. C, §28 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. It is recognized as exempt under the Internal Revenue Code, Section 501(c)(3) or any successor provision; [2001, c. 550, Pt. C, §28 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

C. Pursuant to its articles of incorporation or its bylaws or by statute, it:

(1) Is organized for a public or charitable purpose; and

(2) Upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person that is recognized as exempt under the Internal Revenue Code, Section 501(c)

(3) or any successor provision; [2001, c. 550, Pt. C, §28 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

D. It elects to be a public benefit corporation in accordance with subsection 3 or section 403, subsection 1, paragraph A-1. [2001, c. 550, Pt. C, §28 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

[ 2001, c. 550, Pt. C, §28 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**2. Mutual benefit corporation.** A domestic corporation other than one described in subsection 1 is a mutual benefit corporation.

[ 2001, c. 550, Pt. C, §28 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

**3. Filings by corporation existing on effective date.** Not later than January 1, 2004, a domestic corporation in existence on January 1, 2003 shall specify on a filing with the Secretary of State whether it is a public benefit corporation or a mutual benefit corporation.

A. The specification may be made on an annual report, on an amendment or restatement of articles of incorporation or on articles of merger, conversion or domestication. [2001, c. 550, Pt. C, §28 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

B. A corporation that fails to comply with this subsection is a public benefit corporation until proper filing is made. [2001, c. 550, Pt. C, §28 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

[ 2001, c. 550, Pt. C, §28 (NEW); 2001, c. 550, Pt. C, §29 (AFF) .]

SECTION HISTORY

2001, c. 550, §C28 (NEW). 2001, c. 550, §C29 (AFF).

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