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H.P. 1103

House of Representatives, April 20, 2011

An Act To Amend the Maine Business Corporation Act

Received by the Clerk of the House on April 15, 2011. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative PRIEST of Brunswick.
Cosponsored by Senator HASTINGS of Oxford and
Representatives: DILL of Cape Elizabeth, FOSTER of Augusta, MALONEY of Augusta,
MOULTON of York, NASS of Acton, ROCHELO of Biddeford, Senators: BLISS of
Cumberland, WOODBURY of Cumberland.

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

2 **Sec. 1. 13-C MRSA §102, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2 and
3 affected by Pt. B, §7, is amended to read:

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

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

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

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

14 **6-A. Document.** "Document" means:

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

17 B. An electronic record.

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

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

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

23 **8-A. Electronic.** "Electronic" means relating to technology that has electrical,
24 digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

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

26 **8-B. Electronic record.** "Electronic record" means information that is stored in an
27 electronic or other medium and is retrievable in paper form through an automated process
28 used in conventional commercial practice, unless otherwise authorized in accordance
29 with section 103-A, subsection 10.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **§103-A. Notice or other communication**

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

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

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

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

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

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

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

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

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

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

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

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

30 **9. Notice or communication; when effective.** Notice or other communication, if in
31 a comprehensible form or manner, is effective:

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

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

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

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

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

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

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

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

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

9 E. If oral, when communicated.

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

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

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

17 **11. Specific notice requirements govern.** If this Act prescribes requirements for
18 notices or other communications in particular circumstances, those requirements govern.
19 If articles of incorporation or bylaws prescribe requirements for notices or other
20 communications not inconsistent with this section or other provisions of this Act, those
21 requirements govern.

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

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

30 **§206. Bylaws**

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

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

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

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

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

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

16 **Sec. 14. 13-C MRSA §621, sub-§4**, as enacted by PL 2001, c. 640, Pt. A, §2 and
17 affected by Pt. B, §7, is amended to read:

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

24 **Sec. 15. 13-C MRSA §625, sub-§3** is enacted to read:

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

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

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

36 **Sec. 16. 13-C MRSA §703, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and
37 affected by Pt. B, §7, is amended to read:

38 **2. Court may prescribe specifics.** The Superior Court may fix the time and place
39 of a meeting ordered pursuant to this section, determine the shares entitled to participate
40 in the meeting, specify a record date or dates for determining shareholders entitled to
41 notice of and to vote at the meeting, prescribe the form and content of the meeting notice,

1 fix the quorum required for specific matters to be considered at the meeting or direct that
2 the votes represented at the meeting constitute a quorum for action on those matters and
3 enter other orders necessary to accomplish the purpose or purposes of the meeting.

4 **Sec. 17. 13-C MRSA §704, sub-§7**, as enacted by PL 2007, c. 289, §7, is
5 repealed.

6 **Sec. 18. 13-C MRSA §704, sub-§8**, as enacted by PL 2007, c. 289, §7, is
7 repealed.

8 **Sec. 19. 13-C MRSA §705, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2 and
9 affected by Pt. B, §7, is amended to read:

10 **1. Notification to shareholders.** A corporation shall notify shareholders of the date,
11 time and place of each annual or special shareholders' meeting no fewer than 10 days, or
12 3 days for close corporations, nor more than 60 days before the meeting date. The notice
13 must include the record date for determining the shareholders entitled to vote at the
14 meeting, if such date is different than the record date for determining shareholders
15 entitled to notice of the meeting. If the board of directors has authorized participation by
16 means of remote communication pursuant to section 709 for any class or series of
17 shareholders, the notice to such class or series of shareholders must describe the means of
18 remote communication to be used. Unless this Act or the corporation's articles of
19 incorporation require otherwise, the corporation is required only to give notice to
20 shareholders entitled to vote at the meeting as of the record date for determining the
21 shareholders entitled to notice of the meeting.

22 **Sec. 20. 13-C MRSA §705, sub-§5**, as enacted by PL 2001, c. 640, Pt. A, §2 and
23 affected by Pt. B, §7, is amended to read:

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

32 **Sec. 21. 13-C MRSA §707, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2 and
33 affected by Pt. B, §7, is amended to read:

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

1 **Sec. 22. 13-C MRSA §707, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2 and
2 affected by Pt. B, §7, is amended to read:

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

7 **Sec. 23. 13-C MRSA §707, sub-§4**, as enacted by PL 2001, c. 640, Pt. A, §2 and
8 affected by Pt. B, §7, is amended to read:

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

13 **Sec. 24. 13-C MRSA §707, sub-§5** is enacted to read:

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

22 **Sec. 25. 13-C MRSA §709** is enacted to read:

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

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

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

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

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

37 **Sec. 26. 13-C MRSA §721**, as amended by PL 2007, c. 323, Pt. C, §13 and
38 affected by Pt. G, §4, is further amended to read:

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

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

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

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

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

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

39 **Sec. 27. 13-C MRSA §723, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and
40 affected by Pt. B, §7, is amended to read:

41 **2. Appointment of proxy.** A shareholder or the shareholder's agent or attorney-in-
42 fact may appoint a proxy to vote or otherwise act for the shareholder by signing an

1 appointment form or by an electronic transmission. An electronic transmission must
2 contain or be accompanied by information from which ~~one~~ the recipient can determine
3 ~~that the shareholder, the shareholder's~~ the date of the transmission and that the
4 transmission was authorized by the sender or the sender's agent or the shareholder's
5 attorney-in-fact authorized the transmission.

6 **Sec. 28. 13-C MRSA §727, sub-§7** is enacted to read:

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

10 **Sec. 29. 13-C MRSA §753, sub-§2,** as enacted by PL 2001, c. 640, Pt. A, §2 and
11 affected by Pt. B, §7, is amended to read:

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

16 **Sec. 30. 13-C MRSA c. 7, sub-c. 5** is enacted to read:

17 **SUBCHAPTER 5**

18 **PROCEEDINGS TO APPOINT CUSTODIAN OR RECEIVER**

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

20 **1. Court may appoint.** The Superior Court may appoint one or more persons to be
21 custodians or, if the corporation is insolvent, to be receivers of and for a corporation in a
22 proceeding by a shareholder when it is established that:

23 A. The directors are deadlocked in the management of the corporate affairs, the
24 shareholders are unable to break the deadlock and irreparable injury to the
25 corporation is threatened or being suffered; or

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

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

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

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

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

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

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

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

11 B. A receiver:

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

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

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

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

23 **Sec. 31. 13-C MRSA §827** is enacted to read:

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

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

28 **Sec. 32. 13-C MRSA §854, sub-§1**, as amended by PL 2007, c. 289, §23, is
29 further amended to read:

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

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

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

5 **Sec. 33. 13-C MRSA §859, sub-§1-A** is enacted to read:

6 **1-A. Right to indemnification or to advances for expenses.** A right to
7 indemnification or to advances for expenses created by this subchapter or under
8 subsection 1 and in effect at the time of an act or omission giving rise to the right to
9 indemnification or advances may not be eliminated or impaired with respect to that act or
10 omission by an amendment of the articles of incorporation or bylaws or a resolution of
11 the board of directors or shareholders, adopted after the occurrence of the act or omission,
12 unless, in the case of a right to indemnification or to advances for expenses created under
13 subsection 1, the provision creating the right and in effect at the time of the act or
14 omission explicitly authorizes the elimination or impairment after the act or omission has
15 occurred.

16 **Sec. 34. 13-C MRSA §859, sub-§3**, as amended by PL 2003, c. 344, Pt. B, §68,
17 is further amended to read:

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

21 **Sec. 35. 13-C MRSA §874, sub-§1**, as amended by PL 2007, c. 289, §30, is
22 further amended to read:

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

27 A. Notice to shareholders describing the action to be taken regarding the transaction;

28 B. Provision to the corporation of the information referred to in subsection 4; and

29 C. Communication to the shareholders entitled to vote on the transaction of the
30 information that is the subject of required disclosure, to the extent the information is
31 not known by them.

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

34 **Sec. 36. 13-C MRSA §921, sub-§5**, as amended by PL 2003, c. 344, Pt. B, §74,
35 is further amended to read:

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

1 refer to a domestication of the corporation, the provision is deemed to apply to a
2 domestication of the corporation until the provision is amended.

3 **Sec. 37. 13-C MRSA §922, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and
4 affected by Pt. B, §7, is repealed and the following enacted in its place:

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

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

12 B. Section 827 applies.

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

15 **Sec. 38. 13-C MRSA §922, sub-§6**, as enacted by PL 2001, c. 640, Pt. A, §2 and
16 affected by Pt. B, §7, is amended to read:

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

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

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

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

28 **Sec. 39. 13-C MRSA §922, sub-§6-A** is enacted to read:

29 **6-A. Separate voting.** The corporation's articles of incorporation may expressly
30 limit or eliminate the separate voting rights provided in subsection 6, paragraph A;

31 **Sec. 40. 13-C MRSA §922, sub-§7**, as amended by PL 2003, c. 344, Pt. B, §76,
32 is further amended to read:

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

1 **Sec. 41. 13-C MRSA §931, sub-§5**, as amended by PL 2003, c. 344, Pt. B, §79,
2 is further amended to read:

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

10 **Sec. 42. 13-C MRSA §932, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and
11 affected by Pt. B, §7, is repealed and the following enacted in its place:

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

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

19 B. Section 827 applies.

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

22 **Sec. 43. 13-C MRSA §932, sub-§7**, as amended by PL 2003, c. 344, Pt. B, §81,
23 is further amended to read:

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

31 **Sec. 44. 13-C MRSA §952, sub-§5**, as amended by PL 2003, c. 344, Pt. B, §86,
32 is further amended to read:

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

1 **Sec. 45. 13-C MRSA §954, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2 and
2 affected by Pt. B, §7, is repealed and the following enacted in its place:

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

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

10 B. Section 827 applies.

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

13 **Sec. 46. 13-C MRSA §954, sub-§7**, as amended by PL 2003, c. 344, Pt. B, §88,
14 is further amended to read:

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

21 **Sec. 47. 13-C MRSA §1003, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2
22 and affected by Pt. B, §7, is repealed and the following enacted in its place:

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

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

31 B. Section 827 applies.

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

34 **Sec. 48. 13-C MRSA §1004, sub-§1, ¶E**, as enacted by PL 2001, c. 640, Pt. A,
35 §2 and affected by Pt. B, §7, is amended to read:

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

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

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

6 **Sec. 50. 13-C MRSA §1020, sub-§2, ¶B**, as enacted by PL 2001, c. 640, Pt. A,
7 §2 and affected by Pt. B, §7, is amended to read:

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

11 **Sec. 51. 13-C MRSA §1104, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2
12 and affected by Pt. B, §7, is repealed and the following enacted in its place:

13 **2. Shareholders approve plan.** Except as provided in subsection 7 and in section
14 1105, after adopting the plan of merger or share exchange, the corporation's board of
15 directors shall submit the plan to the shareholders for their approval. The board of
16 directors also shall transmit to the shareholders a recommendation that the shareholders
17 approve the plan, unless:

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

21 B. Section 827 applies.

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

24 **Sec. 52. 13-C MRSA §1104, sub-§6**, as amended by PL 2003, c. 344, Pt. B, §99,
25 is further amended to read:

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

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

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

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

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

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

4 **Sec. 53. 13-C MRSA §1104, sub-§6-A** is enacted to read:

5 **6-A. Limitations on separate voting groups.** The corporation's articles of
6 incorporation may expressly limit or eliminate the separate voting rights provided in
7 subsection 6, paragraph A, subparagraph (1) and subsection 6, paragraph B as to any
8 class or series of shares, except for a transaction that:

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

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

13 **Sec. 54. 13-C MRSA §1106, sub-§1**, as amended by PL 2003, c. 344, Pt. B,
14 §101, is further amended to read:

15 **1. Signing of plan of merger or share exchange.** After a plan of merger or share
16 exchange has been adopted and approved as required by this Act, articles of merger or
17 share exchange must be ~~executed~~ signed on behalf of each party to the merger or share
18 exchange by an officer or other duly authorized representative. The articles must set
19 forth:

20 A. The names, types of entity and jurisdictions of the parties to the merger or share
21 exchange and the date on which the merger or share exchange occurred or is to be
22 effective;

23 B. If the articles of incorporation of the survivor of a merger are amended or if a new
24 corporation is created as a result of a merger, the amendments to the survivor's
25 articles of incorporation or the articles of incorporation of the new corporation;

26 C. If the plan of merger or share exchange required approval by the shareholders of a
27 domestic corporation that was a party to the merger or share exchange, a statement
28 that the plan was duly approved by the shareholders and, if voting by any separate
29 voting group was required, by each separate voting group in the manner required by
30 this Act and the corporation's articles of incorporation;

31 D. If the plan of merger or share exchange did not require approval by the
32 shareholders of a domestic corporation that was a party to the merger or share
33 exchange, a statement to that effect; and

34 E. For each foreign corporation and eligible entity that was a party to the merger or
35 share exchange, a statement that the participation of the foreign corporation or
36 eligible entity was duly authorized as required by the organic law of the corporation
37 or eligible entity.

38 **Sec. 55. 13-C MRSA §1108, sub-§2**, as amended by PL 2003, c. 344, Pt. B,
39 §103, is further amended to read:

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

12 **Sec. 56. 13-C MRSA §1202, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2
13 and affected by Pt. B, §7, is repealed and the following enacted in its place:

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

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

23 B. Section 827 applies.

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

26 **Sec. 57. 13-C MRSA §1301, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2
27 and affected by Pt. B, §7, is amended to read:

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

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

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

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

34 **Sec. 58. 13-C MRSA §1301, sub-§5-A** is enacted to read:

35 **5-A. Interested transaction.** "Interested transaction" means a corporate action
36 described in section 1302, subsection 1, other than a merger pursuant to section 1105,
37 involving an interested person in which any of the shares or assets of the corporation are
38 being acquired or converted. For the purposes of this subsection:

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

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

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

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

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

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

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

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

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

40 **Sec. 59. 13-C MRSA §1302, sub-§1, ¶A**, as enacted by PL 2001, c. 640, Pt. A,
41 §2 and affected by Pt. B, §7, is amended to read:

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

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

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

12 **Sec. 61. 13-C MRSA §1302, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2
13 and affected by Pt. B, §7, is repealed and the following enacted in its place:

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

17 A. Under the terms of the corporate action approved by the shareholders, there is to
18 be distributed to shareholders in cash the corporation's net assets, in excess of a
19 reasonable amount reserved to meet claims of the type described in sections 1407 and
20 1408:

21 (1) Within one year after the shareholders' approval of the action; and

22 (2) In accordance with the shareholders' respective interests determined at the
23 time of distribution; and

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

25 **Sec. 62. 13-C MRSA §1303, sub-§2, ¶A**, as amended by PL 2005, c. 302, §4, is
26 further amended to read:

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

30 **Sec. 63. 13-C MRSA §1303, sub-§3**, as amended by PL 2005, c. 302, §5, is
31 repealed and the following enacted in its place:

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

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

1 B. In the case of the consummation of a disposition of assets pursuant to section
2 1202, the cash, shares or proprietary interests under paragraph A are, under the terms
3 of the corporate action approved by the shareholders, to be distributed to the
4 shareholders as part of the distribution to shareholders of the net assets of the
5 corporation in excess of a reasonable amount to meet claims of the type described in
6 sections 1407 and 1408:

7 (1) Within one year after the shareholders' approval of the action; and

8 (2) In accordance with their respective interests determined at the time of the
9 distribution; or

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

13 **Sec. 64. 13-C MRSA §1304**, as enacted by PL 2001, c. 640, Pt. A, §2 and
14 affected by Pt. B, §7, is repealed and the following enacted in its place:

15 **§1304. Limitation or elimination of appraisal rights in articles of incorporation**

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

19 **1. Class or series.** No such limitation or elimination is effective if the class or series
20 does not have the right to vote separately as a voting group, alone or as part of a group,
21 on the action or if the action is a nonprofit conversion under chapter 9, subchapter 2, a
22 conversion to an unincorporated entity under chapter 9, subchapter 4 or a merger having a
23 similar effect; and

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

32 **Sec. 65. 13-C MRSA §1305**, as amended by PL 2003, c. 344, Pt. B, §107, is
33 repealed.

34 **Sec. 66. 13-C MRSA §1321, sub-§3, ¶A**, as enacted by PL 2007, c. 289, §33, is
35 amended to read:

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

1 **Sec. 67. 13-C MRSA §1322-A, sub-§2**, as enacted by PL 2007, c. 289, §35, is
2 amended to read:

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

8 **Sec. 68. 13-C MRSA §1323, sub-§1**, as amended by PL 2007, c. 289, §36, is
9 further amended to read:

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

16 **Sec. 69. 13-C MRSA §1323, sub-§2**, as amended by PL 2007, c. 289, §37, is
17 further amended to read:

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

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

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

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

30 B. Include the following information:

31 (1) Where the form must be sent and where certificates for certificated shares
32 must be deposited and the date by which those certificates must be deposited,
33 which date may not be earlier than the date for receiving the required form under
34 subparagraph (2);

35 (2) A date by which the corporation must receive the form, which date may not
36 be fewer than 40 nor more than 60 days after the date the appraisal notice ~~and~~
37 ~~form are~~ is sent, and a statement that the shareholder has waived the right to
38 demand appraisal with respect to the shares unless the form is received by the
39 corporation by the specified date;

40 (3) A corporation's estimate of the fair value of the shares;

1 (4) That, if requested in writing, a corporation will provide, to the shareholder so
2 requesting, within 10 days after the date specified in subparagraph (2) the number
3 of shareholders who return the forms by the specified date and the total number
4 of shares owned by those shareholders; and

5 (5) The date by which the notice to withdraw under section 1324 must be
6 received, which date must be within 20 days after the date specified in
7 subparagraph (2); and

8 C. Be accompanied by a copy of this chapter.

9 **Sec. 70. 13-C MRSA c. 13, sub-c. 4** is enacted to read:

10 **SUBCHAPTER 4**

11 **OTHER REMEDIES**

12 **§1341. Other remedies limited**

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

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

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

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

20 **(2) The articles of incorporation or bylaws; or**

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

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

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

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

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

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

1 **Sec. 71. 13-C MRSA §1402, sub-§2, ¶A**, as enacted by PL 2001, c. 640, Pt. A,
2 §2 and affected by Pt. B, §7, is repealed and the following enacted in its place:

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

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

7 (2) Section 827 applies.

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

10 **Sec. 72. 13-C MRSA §1524, sub-§1**, as amended by PL 2003, c. 344, Pt. B,
11 §129, is further amended to read:

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

19 A. The name of the foreign corporation, the current state or country under whose
20 laws it is incorporated as it appears on the records of the Secretary of State and the
21 date on which the corporation was authorized to transact business in this State;

22 B. The type of entity to which it has been converted and the jurisdiction whose laws
23 govern its internal affairs; and

24 C. Any other information that would be required in a filing under the laws of this
25 State by an entity of the type the corporation has become seeking authority to transact
26 business in this State.

27 **Sec. 73. 13-C MRSA §1601, sub-§4**, as enacted by PL 2001, c. 640, Pt. A, §2
28 and affected by Pt. B, §7, is amended to read:

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

32 **Sec. 74. 13-C MRSA §1602, sub-§2**, as enacted by PL 2001, c. 640, Pt. A, §2
33 and affected by Pt. B, §7, is amended to read:

34 **2. Inspect; copy records.** A shareholder of a corporation is entitled to inspect and
35 copy during regular business hours at the corporation's principal office or its registered
36 office, if the corporation keeps such records at its registered office, any of the records of
37 the corporation described in section 1601, subsection 5 if the shareholder gives the
38 corporation a signed written notice of the shareholder's demand at least 5 business days
39 before the date on which the shareholder wishes to inspect and copy, except that a

1 shareholder's rights under this subsection are subject to any reasonable restrictions on the
2 disclosure of financial information about the corporation that are set forth in the
3 corporation's articles of incorporation or bylaws.

4 **Sec. 75. 13-C MRSA §1602, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2
5 and affected by Pt. B, §7, is amended to read:

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

12 A. Excerpts from minutes of any meeting of the board of directors, ~~records of any~~
13 ~~action of~~ or a committee of the board of directors while acting in place of the board of
14 directors on behalf of the corporation, minutes of any meeting of the shareholders;
15 and records of action taken by the shareholders ~~of~~ the board of directors or a
16 committee of the board without a meeting, to the extent not subject to inspection
17 under subsection 2;

18 B. Accounting records of the corporation; and

19 C. The record of shareholders.

20 **Sec. 76. 13-C MRSA §1602, sub-§7** is enacted to read:

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

31 **Sec. 77. 13-C MRSA §1606, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2
32 and affected by Pt. B, §7, is amended to read:

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

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

39 B. All, but not less than 2, payments of dividends on securities during a 12-month
40 period, or 2 consecutive payments of dividends on securities during a period of more

1 than 12 months, have been sent to the shareholder at the shareholder's address as
2 shown on the records of the corporation and have been returned undeliverable or
3 could not be delivered.

4 **Sec. 78. 13-C MRSA §1620, sub-§1**, as enacted by PL 2001, c. 640, Pt. A, §2
5 and affected by Pt. B, §7, is amended to read:

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

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

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

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

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

32 **Sec. 80. 13-C MRSA §1701, sub-§4** is enacted to read:

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

38 SUMMARY

39 This bill amends the Maine Business Corporation Act to reflect recent changes made
40 to the model act on which the Maine Business Corporation Act is based.