

## MRS Title 13: CORPORATIONS

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**Title 13: CORPORATIONS**  
**Part 1: CORPORATIONS GENERALLY**  
**Chapter 1: GENERAL PROVISIONS**

**13 §1. Application**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §2. Acts of incorporation altered or repealed**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

**Chapter 3: FORMATION, CERTIFICATES AND MEETINGS**

**Subchapter 1: ORGANIZATION UNDER SPECIAL ACT**

**13 §41. First meeting**

The first meeting of any corporation chartered by special act of the Legislature, unless otherwise provided, shall be called by a notice signed by some person named in the act of incorporation, setting forth the time, place and purpose of the meeting, a copy of which shall be delivered to each member or published in a newspaper of general circulation in the county 7 days before the meeting. [1987, c. 667, §6 (AMD).]

SECTION HISTORY

1987, c. 667, §6 (AMD).

**13 §42. Capital stock; record of owners**

The capital of corporations incorporated by special Act of the Legislature must be fixed and divided into shares. The names of the owners and the number of shares owned by each must be entered of record at the first meeting. The capital may be subsequently increased as provided in Title 13-C, chapter 10, by an appropriate amendment to its articles of incorporation. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §25 (COR).]

SECTION HISTORY

1971, c. 439, §11 (AMD). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B25 (COR).

**13 §43. Certificate of organization**

Before commencing business, the president, treasurer and a majority of the directors of any corporation chartered by special act of the Legislature shall prepare a certificate setting forth the date of approval of its charter, the name and purposes of the corporation, the amount of capital stock, the amount already paid in, the par value of the shares having par value and the number of shares without par value, the names and residences of the owners, the name of the county where it is located, the number and names of the directors and the name and residence of the clerk, and shall sign and make oath to it. Such certificate shall be recorded in the registry of deeds in the county where its principal office is to be located in a book kept for that purpose and a copy thereof, certified by such register, shall be filed in the office of the Secretary of State, who shall enter the date

of filing thereon and on the original certificate to be kept by the corporation and shall record said copy in a book kept for that purpose. From the time of filing such certificate in the office of the Secretary of State, the stockholders of said corporation, their successors and assigns shall be a corporation.

### **13 §44. Fees**

The certificate mentioned in section 43 shall not be received and filed by the Secretary of State except upon the payment to him for the use of the State of: \$15 if the capital stock does not exceed \$5,000; \$25 if the capital stock exceeds \$5,000 and does not exceed \$10,000; \$75 if the capital stock exceeds \$10,000 and does not exceed \$50,000; \$125 if the capital stock exceeds \$50,000 and does not exceed \$100,000; \$60 upon every \$100,000 or fraction thereof in excess of \$100,000 if the capital stock exceeds \$100,000; also 1¢ per share and in no case less than \$10 on all shares authorized without par value. This section shall not apply to corporations chartered for charitable and benevolent purposes.

### **13 §45. Business forbidden until certificate filed**

No corporation created by special act of the Legislature, municipal corporations excepted, shall carry on any business whatsoever before filing in the office of the Secretary of State the certificate of organization provided by section 43. Whoever, whether named in the act of the Legislature or not, conducts and carries on any business whatsoever in the name of such corporation before said certificate is filed shall be personally and individually liable for all contracts and debts of said corporation contracted prior to the filing of said certificate. This section shall apply to all individuals granted special rights and privileges by act of the Legislature.

## **Subchapter 2: ORGANIZATION UNDER GENERAL LAW**

### **13 §71. Purposes**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §72. First meeting; notice of waiver**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §73. Certificate of organization; fees**

*(REPEALED)*

#### SECTION HISTORY

1965, c. 276, §1 (AMD). 1971, c. 439, §25 (RP).

### **13 §74. Protection for corporate name**

*(REPEALED)*

#### SECTION HISTORY

1965, c. 67, (AMD). 1967, c. 187, (AMD). 1971, c. 439, §25 (RP).

### **13 §75. Composite certificate of organization**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §76. Quasi-public corporations; fees**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §77. Certificates of organization filed prior to March 15, 1893**

*(REPEALED)*

SECTION HISTORY

1967, c. 319, (AMD). 1971, c. 439, §25 (RP).

### **13 §78. Organization complete on filing of certificate**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §79. Nonpar stock certificates**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

## Subchapter 3: MEETINGS

### **13 §101. Meetings by consent**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §102. Meetings called by justice of peace**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §103. Presiding officer**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §104. Proxies; general power of attorney**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §105. Voting pledged stock**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §106. Officers holding over; election after annual meeting; objections**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §107. New election if objections filed**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 439, §25 (RP).

## **Chapter 5: POWERS AND AMENDMENTS**

### **Subchapter 1: POWERS**

### **13 §141. General powers**

*(REPEALED)*

#### SECTION HISTORY

1969, c. 227, (AMD). 1969, c. 355, (AMD). 1971, c. 439, §25 (RP).

### **13 §142. Out-of-state business**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §143. Ownership of corporate stock**

*(REPEALED)*

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §144. Sale of installment bonds**

*(REPEALED)*

#### SECTION HISTORY

1967, c. 332, (RP).

### **13 §145. Making and altering bylaws**

*(REPEALED)*



## SECTION HISTORY

1965, c. 276, §2 (AMD). 1965, c. 376, (AMD). 1971, c. 439, §25 (RP).

**13 §146. Right of indemnification**

*(REPEALED)*

## SECTION HISTORY

1965, c. 278, (RPR). 1971, c. 439, §25 (RP).

**13 §147. Assessments; sale of shares for neglect to pay**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §148. Sale of stock**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**Subchapter 2: LIMITATIONS****13 §171. Formation of trusts forbidden**

It is unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining or mining any article or product that enters into general use and consumption by the people, to form or organize any trust or to enter into any combination of firms, incorporated or unincorporated companies or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the power to conduct and direct the business of the whole number of firms, corporations, companies or associations that have formed or that propose to form a trust, combination or association inconsistent with this section and contrary to public policy. No association or corporation organized for the sole purpose of marketing fish, shellfish or any of the fish products or agricultural products of this State, or the members of or stockholders in which are actually engaged in the production of such products, or in the selling, canning or otherwise preserving of fish products, may be deemed to be a conspiracy or a combination or in restraint of trade or an attempt to lessen competition or to fix prices arbitrarily; nor may the marketing contracts and agreements between such association or corporation and its members or stockholders be considered illegal as such or in unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose. [2003, c. 46, §2 (AMD).]

## SECTION HISTORY

1973, c. 489, §2 (AMD). 2003, c. 46, §2 (AMD).

**13 §172. Evidence of interest in trust has no legal recognition**

No certificate of stock or other evidence of interest in any trust, combination or association, as named in section 171, shall have legal recognition in any court in this State, and any deed of real estate given by any person, firm or corporation for the purpose of becoming interested in such trust, combination or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void.

**13 §173. Penalties**

Any firm, incorporated or unincorporated company, or association of persons or stockholders, who shall enter into or become interested in such trust, combination or association, shall be punished by a fine of not less than \$5,000 nor more than \$10,000.

**Subchapter 3: CHANGES AND AMENDMENTS****13 §201. Increase in capital stock; change of purpose; number of directors or certificate; fees**

*(REPEALED)*

## SECTION HISTORY

1965, c. 268, (AMD). 1971, c. 439, §25 (RP).

**13 §202. Reduction of capital stock**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §203. Reorganizations and changes under federal law**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §204. Change of name; certificate filed in registry of deeds**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §205. Change of location; certificate filed in registry of deeds**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §206. Certificate of every change filed with Secretary of State**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**Chapter 7: MERGER, CONSOLIDATION, SALE OF ASSETS****Subchapter 1: PROCEDURE****13 §241.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §242.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §243.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §244.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §245.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 129, (AMD). 1971, c. 439, §25 (RP).

**13 §246.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §247.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §248.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §249.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §250.**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

## Subchapter 2: RIGHTS OF DISSENTING STOCKHOLDERS

**13 §281.**

*(REPEALED)*

SECTION HISTORY

1969, c. 128, §1 (AMD). 1971, c. 439, §25 (RP).

**13 §282.**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §283.**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §284.**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §285.**

*(REPEALED)*

SECTION HISTORY

1969, c. 433, §12 (AMD). 1971, c. 439, §25 (RP).

**13 §286.**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §287.**

*(REPEALED)*

SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §288.**

***(REPEALED)***

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §289.**

***(REPEALED)***

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §290.**

***(REPEALED)***

#### SECTION HISTORY

1971, c. 439, §25 (RP).

### **13 §291.**

***(REPEALED)***

#### SECTION HISTORY

1971, c. 439, §25 (RP).

## **Chapter 9: CONTRACTS AND LIABILITIES**

### **13 §331. Parol contracts**

Corporations are bound by parol contracts made by an agent authorized by vote or by their bylaws. Contracts may be implied from corporate acts or from the acts of the general agent.

### **13 §332. Mortgages**

Title 23, chapter 605, subchapters IV and V, shall apply to and include all mortgages of franchises, lands or other hereditaments or of all of them heretofore or hereafter given by any corporation to trustees to secure scrip or bonds of said corporation. The holder of said scrip or bonds shall have the benefit of all said sections, whether the said mortgages have been or may be foreclosed in the manner provided by Title 23, section 5161, or in any other legal manner, and to the extent of and with reference to the property covered by the mortgage. The new corporation, when organized, shall have the rights and privileges of the original corporation. [1987, c. 141, Pt. B, §12 (AMD).]

#### SECTION HISTORY

1987, c. 141, §B12 (AMD).

### **13 §333. Property and franchise taken for debts**

The property of any corporation, and the franchise of one having a right to receive a toll established by the State, with its privileges and immunities, are liable to attachment on mesne process and levy on execution for debts of the corporation in the manner prescribed by law.

**13 §334. Information for process server**

Every agent or person having charge of corporate property shall on request furnish to any officer, having a writ or execution against the corporation for service, the names of the directors and clerk and a schedule of all property, including debts known by him to belong to the corporation. Any officer of a judgment debtor corporation may be cited to disclose the affairs of the corporation in the same manner as provided for the disclosure of other judgment debtors.

**13 §335. Execution satisfied from debts due; proceedings**

An officer, having an execution against a manufacturing corporation and unable to find property liable to seizure, or the creditor may elect to satisfy it in whole or in part by a debt due to the corporation not exceeding the amount due to the creditor. The person having custody of the evidence of such debt shall deliver it to such officer with a written transfer thereof to him for the use of the creditor, which shall constitute an assignment thereof, and the creditor, in the name of the corporation, may sue for and collect it, subject to any equitable counterclaim by the debtor.

**13 §336. Neglect of duty; penalty**

Any officer or other person who unnecessarily neglects or refuses to comply with sections 334 and 335 forfeits not exceeding 4 times the amount due on such execution and may be imprisoned for less than one year.

**13 §337. Books produced for trial; refusal**

When a suit or prosecution is pending for a violation, either of sections 334 to 336 or to enforce the liabilities created by Title 13-C, section 833, the clerk or person having custody of the books of the corporation shall, upon reasonable written notice, produce them on trial; and for neglect or refusal to do so, the person is liable to the same fine or imprisonment as the party on trial would be. [2003, c. 344, Pt. D, §6 (AMD).]

## SECTION HISTORY

1971, c. 565, §1 (AMD). 2003, c. 344, §D6 (AMD).

**Chapter 11: DIRECTORS AND OFFICERS****13 §371.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §372.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §373.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §374.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §375.*****(REPEALED)***

## SECTION HISTORY

1965, c. 61, §1 (AMD). 1971, c. 439, §25 (RP).

**13 §376.*****(REPEALED)***

## SECTION HISTORY

1965, c. 61, §2 (AMD). 1971, c. 439, §25 (RP).

**13 §377.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §378.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §379.*****(REPEALED)***

## SECTION HISTORY

1967, c. 394, (RPR). 1971, c. 439, §25 (RP).

**13 §380.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**Chapter 13: STOCK AND STOCKHOLDERS****Subchapter 1: CAPITAL STOCK****13 §421.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §422.***(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §423.***(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §424.***(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §425.***(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

## Subchapter 2: LIABILITY OF STOCKHOLDERS

**13 §451.***(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §452.***(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §453.***(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §454.***(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).



**13 §455.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §456.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §457.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §458.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**Chapter 15: ANNUAL RETURNS****13 §501. Contents; filing*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §502. Deposit in post office sufficient; neglect or refusal*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §503. Action of debt to collect penalty*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §504. Discontinuance of action*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §505. Filing excused*****(REPEALED)***

SECTION HISTORY

1971, c. 439, §25 (RP).

**Chapter 17: DISSOLUTION AND TERMINATION****13 §541.*****(REPEALED)***

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §542.*****(REPEALED)***

SECTION HISTORY

1969, c. 127, (AMD). 1969, c. 128, §2 (AMD). 1971, c. 439, §25 (RP).

**13 §543.*****(REPEALED)***

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §544.*****(REPEALED)***

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §545.*****(REPEALED)***

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §546.*****(REPEALED)***

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §547.*****(REPEALED)***

SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §548.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §549.*****(REPEALED)***

## SECTION HISTORY

1969, c. 128, §3 (AMD). 1971, c. 439, §25 (RP).

**13 §550.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §551.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §552.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §553.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §554.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §555.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §556.*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §557.**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**Chapter 19: FOREIGN CORPORATIONS****13 §591. Designation of attorney for service of process**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §592. Filing of charter or certificate; officers and directors subject to penalties; validity of contracts not affected**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §593. Secretary of State may refuse to accept appointment or file papers**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §594. Increase or decrease of capital stock; filing of certificate**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §595. License fee; changes in certificate or charter**

*(REPEALED)*

## SECTION HISTORY

1969, c. 225, §9 (AMD). 1971, c. 439, §25 (RP).

**13 §596. Violations; revocation of license**

*(REPEALED)*

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §597. Liability of officers*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §598. Service of process; foreign mortgages*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §599. Right to sue and be sued; attachment; effect of agent's acts*****(REPEALED)***

## SECTION HISTORY

1971, c. 439, §25 (RP).

**13 §600. Charitable organization exempt from fees*****(REPEALED)***

## SECTION HISTORY

1969, c. 517, §3 (RP).

**Chapter 21: FIDUCIARY SECURITY TRANSFERS****13 §641. Short title*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**13 §642. Definitions*****(REPEALED)***

## SECTION HISTORY

1979, c. 541, §A132 (AMD). 1997, c. 429, §C33 (RP).

**13 §643. Inquiry into fiduciary relationship*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**13 §644. Assignment by a fiduciary*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**13 §645. Evidence of appointment or incumbency*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**13 §646. Adverse claims*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**13 §647. Nonliability of corporation and transfer agent*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**13 §648. Nonliability of 3rd person*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**13 §649. Territorial application*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**13 §650. Tax obligations*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**13 §651. Uniformity of interpretation*****(REPEALED)***

## SECTION HISTORY

1997, c. 429, §C33 (RP).

**Chapter 22: THE PROFESSIONAL SERVICE CORPORATION ACT****13 §701. Short title*****(REPEALED)***

## SECTION HISTORY

1969, c. 411, (NEW). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §702. Intent*****(REPEALED)***

## SECTION HISTORY

1969, c. 411, (NEW). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §703. Definitions*****(REPEALED)***

## SECTION HISTORY

1969, c. 411, (NEW). 1973, c. 625, §79 (AMD). 2001, c. 640, §B7 (AFF).  
2001, c. 640, §B1 (RP).

**13 §704. Exemptions*****(REPEALED)***

## SECTION HISTORY

1969, c. 411, (NEW). 1973, c. 625, §80 (AMD). 2001, c. 640, §B7 (AFF).  
2001, c. 640, §B1 (RP).

**13 §705. Corporate organization*****(REPEALED)***

## SECTION HISTORY

1969, c. 411, (NEW). 1989, c. 613, (AMD). 1997, c. 313, §1 (AMD).  
2001, c. 260, §F1 (AMD). 2001, c. 337, §1 (AMD). 2001, c. 640, §B7  
(AFF). 2001, c. 640, §B1 (RP). 2001, c. 471, §F1 (RPR).

**13 §706. Method of organization*****(REPEALED)***

## SECTION HISTORY

1969, c. 411, (NEW). 1971, c. 439, §12 (AMD). 2001, c. 640, §B7 (AFF).  
2001, c. 640, §B1 (RP).

**13 §707. Limitation*****(REPEALED)***

## SECTION HISTORY

1969, c. 411, (NEW). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §708. Interpretation; liability*****(REPEALED)***

## SECTION HISTORY

1969, c. 411, (NEW). 1995, c. 141, §1 (RP).

**13 §708-A. Interpretation; liability*****(REPEALED)***

## SECTION HISTORY

1995, c. 141, §2 (NEW). 1995, c. 526, §1 (AMD). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §709. Business transactions**

*(REPEALED)*

## SECTION HISTORY

1969, c. 411, (NEW). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §710. Capital stock**

*(REPEALED)*

## SECTION HISTORY

1969, c. 411, (NEW). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §711. Disqualifications**

*(REPEALED)*

## SECTION HISTORY

1969, c. 411, (NEW). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §712. Alienation of shares**

*(REPEALED)*

## SECTION HISTORY

1969, c. 411, (NEW). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §713. Corporate and assumed names**

*(REPEALED)*

## SECTION HISTORY

1969, c. 411, (NEW). 1971, c. 565, §§1-A (AMD). 1975, c. 439, §1 (AMD). 1981, c. 78, (AMD). 1993, c. 316, §7 (AMD). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §714. Applicability of Title**

*(REPEALED)*

## SECTION HISTORY

1969, c. 411, (NEW). 1971, c. 565, §2 (AMD). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

**13 §715. Dissolutions**

*(REPEALED)*

## SECTION HISTORY

1969, c. 411, (NEW). 1971, c. 439, §13 (AMD). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).



## 13 §716. Construction of law

(REPEALED)

### SECTION HISTORY

1969, c. 411, (NEW). 2001, c. 640, §B7 (AFF). 2001, c. 640, §B1 (RP).

## Chapter 22-A: MAINE PROFESSIONAL SERVICE CORPORATION ACT

### Subchapter 1: GENERAL PROVISIONS HEADING:

PL 2001, c. 640, Pt. B, §2 (new); §7 (aff); eff. 7/1/03

## 13 §721. Short title

This chapter may be known and cited as the "Maine Professional Service Corporation Act." [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

## 13 §722. Application of Maine Business Corporation Act

The Maine Business Corporation Act applies to professional corporations, both domestic and foreign, to the extent not inconsistent with this chapter. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

## 13 §723. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

**1. Disqualified person.** "Disqualified person" means an individual or entity that for any reason is or becomes ineligible under this chapter to be issued shares by a professional corporation.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Domestic professional corporation.** "Domestic professional corporation" means a professional corporation.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Foreign professional corporation.** "Foreign professional corporation" means a corporation or association for profit incorporated for the purpose of rendering professional services under law other than the law of this State.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Professional corporation.** "Professional corporation" means a corporation for profit, other than a foreign professional corporation, subject to the provisions of this chapter.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**5. Professional limited liability company.** "Professional limited liability company" means a limited liability company formed to perform a professional service.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**6. Professional limited liability partnership.** "Professional limited liability partnership" means a limited liability partnership formed to perform a professional service.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**7. Professional service.** "Professional service" means the professional services provided by the following persons to the extent they are required to be licensed under state law:

A. Accountants, advanced practice registered nurses, attorneys, chiropractors, dentists, optometrists, osteopathic physicians, physicians and surgeons, physician assistants, podiatrists, registered nurses and veterinarians; and [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

B. Any person not listed in paragraph A who is required by state law to have a license as a precondition to engaging in that person's profession. [2001, c. 2, Pt. A, §17 (AFF); 2001, c. 2, Pt. A, §16 (COR) .]

[ 2001, c. 2, Pt. A, §17 (AFF); 2001, c. 2, Pt. A, §16 (COR) .]

**8. Qualified person.** "Qualified person" means an individual, general partnership, professional limited liability company, professional limited liability partnership, other professional corporation or other entity or trust that is eligible under this chapter to be issued shares by a professional corporation or any other entity that is authorized by statute to provide the same professional service provided by the professional corporation.

[ 2003, c. 344, Pt. B, §1 (AMD) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). RR 2001, c. 2, §A17 (AFF). 2001, c. 640, §B7 (AFF). RR 2001, c. 2, §A16 (COR). 2003, c. 344, §B1 (AMD).

### Subchapter 2: CREATION HEADING: PL 2001, c. 640, Pt. B, §2 (new); §7 (aff); eff. 7/1/03

## 13 §731. Election of professional corporation status

**1. Mandatory coverage.** A qualified person performing any professional service described in section 723, subsection 7, paragraph A desiring to form a corporation shall incorporate as a professional corporation.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Optional coverage.** A qualified person or persons performing any professional service described in section 723, subsection 7, paragraph B desiring to form a corporation may incorporate as a professional corporation.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Filing requirement.** One or more persons may incorporate a professional corporation by delivering to the Secretary of State for filing articles of incorporation that state that the corporation is a professional corporation and the corporation's purpose is to render the specified professional service.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Election to be covered.** A corporation incorporated under a general law of this State may elect professional corporation status by amending its articles of incorporation to comply with subsection 3 and section 736.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

## 13 §732. Purposes

**1. Single profession.** Except to the extent authorized by subsections 2 and 3, a corporation may elect professional corporation status under section 731 solely for the purpose of rendering professional services, including services ancillary to them, and solely within a single profession.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Multiple professions.** A corporation may elect professional corporation status under section 731 for the purpose of rendering professional services within 2 or more professions and for the purpose of engaging in any lawful business authorized by Title 13-C, section 301, to the extent the combination of professional purposes or of professional and business purposes is not prohibited by the licensing law of this State applicable to each profession in the combination.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Accountants.** Nonlicensed individuals and qualified employee stock ownership plans or programs or other employee ownership programs and other entities may organize with individuals who are licensed under Title 32, chapter 113 and may become shareholders of a firm licensed to practice public accountancy under Title 32, section 12252, as long as all of the requirements for licensure under Title 32, section 12252, subsection 3 are met by the firm.

[ 2003, c. 344, Pt. B, §2 (AMD) .]

**4. Dentists and denturists.** For the purposes of this chapter, a denturist licensed under Title 32, chapter 16 may organize with a dentist who is licensed under Title 32, chapter 16 and may become a shareholder of a dental practice incorporated under the corporation laws. At no time may a denturist or denturists in sum have an equal or greater ownership interest in a dental practice than the dentist or dentists have in that practice.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**5. Legal guardian or personal representative of deceased or incapacitated dentist.** For the purposes of this chapter, the legal guardian or personal representative of a dentist licensed under Title 32, chapter 16 may contract with another dentist to continue the operations of the practice of the deceased or incapacitated dentist for a period of up to 24 months after the death or incapacitation of the dentist or until the practice is sold, whichever occurs first. For purposes of this subsection, "personal representative" has the same meaning as in Title 18-A, section 1-201, subsection 30.

[ 2007, c. 210, §1 (NEW) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B2 (AMD). 2007, c. 210, §1 (AMD).

### 13 §733. General powers

A professional corporation has the powers enumerated in Title 13-C, section 302. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

### 13 §734. Rendering professional services

**1. License required.** A domestic professional corporation or foreign professional corporation may render professional services in this State only through individuals licensed or otherwise authorized in this State to render the services.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Scope.** Nothing in subsection 1 may be construed to:

A. Require an individual employed by a professional corporation to be licensed to perform services for the corporation if a license is not otherwise required; [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Prohibit a licensed individual from rendering professional services in that individual's individual capacity even though that individual is a shareholder, director, officer, employee or agent of a domestic professional corporation or foreign professional corporation; or [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Prohibit an individual licensed in another state from rendering professional services for a domestic professional corporation or foreign professional corporation in this State if not prohibited by the licensing authority having jurisdiction over such professional service. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

### 13 §735. Prohibited activities

**1. Limited activities.** A professional corporation may not render any professional service or engage in any business or service other than the professional service and business authorized by its articles of incorporation and services or businesses reasonably related thereto.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Investments.** Nothing in subsection 1 prohibits a professional corporation from investing its funds in real estate, mortgages, securities or any other type of investment.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

## 13 §736. Corporate name

**1. Words required.** The name of a domestic professional corporation or of a foreign professional corporation authorized to transact business in this State, in addition to satisfying the requirements of Title 13-C, sections 401 and 1506:

A. Must contain the words "chartered," "professional corporation," "professional association" or "service corporation" or the abbreviation "P.C.," "P.A." or "S.C."; [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. May not contain language stating or implying that it is incorporated for a purpose other than that authorized by section 732 and its articles of incorporation; and [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Must conform with any rule adopted by the licensing authority having jurisdiction over a professional service described in the corporation's articles of incorporation. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Assumed or fictitious name.** A domestic professional corporation or foreign professional corporation may render professional services and exercise its authorized powers under an assumed or fictitious name, as long as the corporation has met the requirements for filing an assumed or fictitious name under Title 13-C, section 404.

[ 2003, c. 344, Pt. B, §3 (AMD) .]

### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §B3 (AMD) .

## Subchapter 3: SHARES HEADING: PL 2001, c. 640, Pt. B, §2 (new); §7 (aff); eff. 7/1/03

## 13 §741. Issuance of shares

**1. Qualified shareholders.** A professional corporation may issue shares, fractional shares and rights or options to purchase shares only to:

A. Individuals who are authorized by law in this State or another state to render a professional service described in the corporation's articles of incorporation; [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

A-1. Nonlicensed individuals authorized to organize with licensed individuals pursuant to section 732, subsection 3; [2003, c. 344, Pt. D, §7 (NEW).]

B. General partnerships in which all the partners are qualified persons with respect to the professional corporation and in which at least one partner is authorized by law in this State to render a professional service described in the corporation's articles of incorporation; [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. Professional corporations, professional limited liability companies or professional limited liability partnerships, domestic or foreign, authorized by law in this State to render a professional service described in the corporation's articles of incorporation; [2003, c. 344, Pt. B, §4 (AMD).]

D. Any other entity that is authorized by law to provide the same professional service provided by the professional corporation; or [2003, c. 344, Pt. B, §4 (AMD).]

E. Any other person or entity, including employee stock ownership plans or programs and other employee ownership programs, that the licensing authority with jurisdiction over the professional corporation determines is qualified to hold shares of such a professional corporation. [ 2003, c. 344, Pt. B, §5 (NEW). ]

[ 2003, c. 344, Pt. B, §§4, 5 (AMD); 2003, c. 344, Pt. D, §7 (AMD) . ]

**2. Licensing authority jurisdiction.** If a licensing authority with jurisdiction over a profession considers it necessary to prevent violation of the ethical standards of the profession, the authority may adopt rules under its general rule-making authority or other regulatory authority to restrict or condition, or revoke in part, the authority of professional corporations subject to its jurisdiction to issue shares. A rule described in this subsection does not, of itself, make a shareholder of a professional corporation at the time the rule becomes effective a disqualified person.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

**3. Unlawful shares void.** Shares issued in violation of this section or a rule described in subsection 2 are void.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF). 2003, c. 344, §§B4,5,D7 (AMD).

### 13 §742. Share transfer restriction

**1. Limit to transfers.** A shareholder of a professional corporation may transfer or pledge shares, fractional shares and rights or options to purchase shares of the corporation only to qualified persons.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

**2. Other transfers void.** A transfer of shares made in violation of subsection 1, except one made by operation of law or court judgment, is void.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

### 13 §743. Compulsory acquisition of shares after death or disqualification of shareholder

**1. Triggering events.** A professional corporation must acquire or cause to be acquired by a qualified person the shares of its shareholder if:

A. The shareholder dies; [ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

B. The shareholder becomes a disqualified person, except as provided in subsection 4; or [ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) . ]

C. The shares are transferred by operation of law or court judgment to a disqualified person, except as provided in subsection 4. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Agreements binding.** If a professional corporation's articles of incorporation or bylaws or a private agreement provides the terms, price and other conditions for the acquisition of the shares of a shareholder upon the occurrence of an event described in subsection 1, then that article, bylaw or private agreement is binding on the parties and is specifically enforceable.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Corporate acquisition of shares.** In the absence of an article provision, bylaw provision or private agreement described in subsection 2, a professional corporation shall acquire the shares in accordance with section 744; except that, if the disqualified person rejects the corporation's purchase offer, either the person or the corporation may commence a proceeding under section 745 to determine the fair value of the shares.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Limited disqualification.** In the absence of an article provision, bylaw provision or private agreement described in subsection 2, this section does not require the acquisition of shares in the event of a shareholder's becoming a disqualified person if the disqualification lasts no more than 5 months from the date the disqualification or the transfer of shares pursuant to subsection 1 occurs.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**5. Other benefits unaffected.** Nothing in this section or section 744 prevents or relieves a professional corporation from paying pension benefits or other deferred compensation for services rendered to a former shareholder if otherwise permitted by law.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

## 13 §744. Acquisition procedure

**1. Written notice.** In the absence of an article provision, bylaw provision or private agreement described in section 743, subsection 2, if shares must be acquired under section 743, a professional corporation shall deliver a written notice to the executor or administrator of the estate of its deceased shareholder, or to the disqualified person or transferee, offering to purchase the shares at a price the corporation believes represents their fair value as of the date of death, disqualification or transfer. The offer notice must be accompanied by the corporation's balance sheet for a fiscal year ending not more than 16 months before the effective date of the offer notice, an income statement for that year, a statement of changes in shareholders' equity for that year and the latest available interim financial statements, if any.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Option period.** A disqualified person has 30 days from the effective date of the notice provided pursuant to subsection 1 to accept the professional corporation's offer or demand that the corporation commence a proceeding under section 745 to determine the fair value of that disqualified person's shares. If

the disqualified person accepts the offer, the corporation shall make payment for the shares within 60 days from the effective date of the offer notice, unless a later date is agreed on, upon the disqualified person's surrender of the shares to the corporation.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Termination of interest.** After a professional corporation makes payment for shares in accordance with this section, a disqualified person has no further interest in those shares.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

### 13 §745. Court action to appraise shares

**1. Demand for proceeding.** If a disqualified person does not accept a professional corporation's offer under section 744, subsection 2 within the 30-day period, the disqualified person at any time during the 60-day period following the effective date of the notice may deliver a written notice to the corporation demanding that it commence a proceeding to determine the fair value of the shares. The corporation may commence a proceeding at any time during the 60 days following the effective date of its offer notice. If the corporation does not commence such a proceeding, the disqualified person may commence a proceeding against the corporation to determine the fair value of those shares.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Court procedure.** A professional corporation or disqualified person shall commence a proceeding under this section in the Superior Court of the county where the corporation's principal office or, if there is no principal office in this State, its registered office is located. The corporation shall make the disqualified person a party to the proceeding as in an action against the disqualified person's shares. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Appraisers.** The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the power described in the order appointing them or in any amendment to it.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Valuation date.** A disqualified person is entitled to judgment for the fair value of the person's shares determined by the court as of the date of death, disqualification or transfer together with interest from that date at a rate found by the court to be fair and equitable.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**5. Payment installments.** The court may order a judgment ordered under this section paid in installments determined by the court.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).



### 13 §746. Court costs and fees of experts

**1. Assessment of costs.** The court in an appraisal proceeding commenced under section 745 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court, and shall assess the costs against the professional corporation; except that the court may assess costs against the disqualified person in an amount the court finds equitable if the court finds the person acted arbitrarily, vexatiously or not in good faith in refusing to accept the corporation's offer.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Assessment against corporation.** In addition to costs assessed under subsection 1, the court may assess the fees and expenses of counsel and experts for a disqualified person against the professional corporation and in favor of the person if the court finds that the fair value of the person's shares substantially exceeded the amount offered by the corporation or that the corporation did not make an offer.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

### 13 §747. Cancellation of disqualified shares

If the shares of a disqualified person are not acquired pursuant to section 743 within 10 months after the death of the shareholder or within 5 months after the disqualification or transfer, the professional corporation shall immediately cancel the shares on its books and the disqualified person has no further interest as a shareholder in the corporation other than the right to payment for the shares under section 743. [ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF). ]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

#### Subchapter 4: GOVERNANCE HEADING: PL 2001, c. 640, Pt. B, §2 (new); §7 (aff); eff. 7/1/03

### 13 §751. Directors and officers

Not less than a majority of the directors of a professional corporation and all of its officers, except the clerk, secretary and treasurer, if any, must be qualified persons with respect to the corporation. [ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF). ]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

### 13 §752. Voting of shares

**1. Right to vote.** Except as otherwise provided in this section, only a qualified person may vote the shares of a professional corporation.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Proxies.** Only a qualified person may be appointed a proxy to vote shares of a professional corporation.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Voting trusts.** A voting trust with respect to shares of a professional corporation is not valid unless all of its trustees and beneficiaries are qualified persons; except that, if a beneficiary who is a qualified person dies or becomes a disqualified person, a voting trust valid under this subsection continues to be valid for 10 months after the date of death or for 5 months after the disqualification occurred.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**4. Limited voting right.** Any shares transferred to a disqualified person by reason of the death of a qualified person or by operation of law may be voted by such disqualified person only for the purposes of amending the articles of incorporation to convert to a regular business corporation or dissolving the professional corporation.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

### 13 §753. Responsibility for professional services

**1. Relationship between professional and recipient of services.** This chapter does not modify the liability of a person rendering a professional service with respect to that service.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Shareholder liability for debts and claims.** Except as provided in subsection 3, the liability of shareholders for the debts of and claims against a corporation is the same as that of shareholders of a business corporation.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Shareholder liability arising from rendering professional service.** A shareholder is jointly and severally liable for claims arising from the rendering of a professional service by a domestic professional corporation or foreign professional corporation if that shareholder:

A. Personally and directly participated in rendering that portion of a professional service that was performed negligently or in breach of any other legal duty; or [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. Directly supervised and controlled that portion of a professional service rendered by another person that was performed negligently or in breach of any other legal duty. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

### Subchapter 5: REORGANIZATION AND TERMINATION

HEADING: PL 2001, c. 640, Pt. B, §2 (new); §7 (aff); eff. 7/1/03

## 13 §761. Merger

**1. Merger allowed.** A professional corporation may merge with another domestic professional corporation or foreign professional corporation or with a domestic or foreign business entity as defined in Title 13-C if all the interest holders of the constituent entities are qualified to be interest holders of the surviving entity.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Compliance.** After a merger in accordance with subsection 1, if the surviving corporation is to render in this State any of the professional services described in section 723, subsection 7, paragraph A, the surviving corporation must comply with this Act.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

## 13 §762. Termination of professional activities

If a professional corporation ceases to render professional services, it must amend its articles of incorporation to delete references to rendering professional services and to conform its corporate name to the requirements of Title 13-C, section 401. After the amendment becomes effective, the corporation may continue in existence as a business corporation under Title 13-C and the corporation is no longer subject to this Act. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

## 13 §763. Judicial dissolution

### (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

The Attorney General may commence a proceeding under Title 13-C, sections 1430 to 1433 to dissolve a professional corporation if: [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**1. (TEXT EFFECTIVE UNTIL 7/1/08) Service of notice of violation.** The Secretary of State serves written notice on the professional corporation under Title 13-C, section 502 that it has violated or is violating a provision or provisions of this Act;

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**1. (TEXT EFFECTIVE 7/1/08) Service of notice of violation.** The Secretary of State serves written notice on the professional corporation under Title 5, section 113 that it has violated or is violating a provision or provisions of this Act;

[ 2007, c. 323, Pt. G, §1 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**2. (TEXT EFFECTIVE UNTIL 7/1/08) Failure to correct.** The professional corporation does not correct each alleged violation or demonstrate to the reasonable satisfaction of the Secretary of State that the violation or violations did not occur, within 60 days after service of the notice is perfected under Title 13-C, section 502; and

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. (TEXT EFFECTIVE 7/1/08) Failure to correct.** The professional corporation does not correct each alleged violation or demonstrate to the reasonable satisfaction of the Secretary of State that the violation or violations did not occur, within 60 days after service of the notice is perfected under Title 5, section 113; and

[ 2007, c. 323, Pt. G, §2 (AMD); 2007, c. 323, Pt. G, §4 (AFF) .]

**3. Certify.** The Secretary of State certifies to the Attorney General a description of the violation or violations, that it notified the professional corporation of the violation or violations and that the corporation did not correct the violation or violations or demonstrate that the violation or violations did not occur, within 60 days after perfection of service of the notice.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF). 2007, c. 323, Pt. G, §§1, 2 (AMD). 2007, c. 323, Pt. G, §4 (AFF).

### Subchapter 6: FOREIGN PROFESSIONAL CORPORATIONS HEADING: PL 2001, c. 640, Pt. B, §2 (new); §7 (aff); eff. 7/1/03

## 13 §771. Authority to transact business

**1. Prohibition.** Except as provided in subsection 3, a foreign professional corporation may not transact business in this State until it obtains authority from the Secretary of State.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**2. Preconditions.** A foreign professional corporation may not obtain authority to transact business in this State unless:

A. Its corporate name satisfies the requirements of section 736; [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

B. It is incorporated for one or more of the purposes described in section 732; and [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

C. All of its shareholders, not less than a majority of its directors and all of its officers other than its clerk, secretary and treasurer, if any, are licensed in one or more states to render a professional service described in its articles of incorporation. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

**3. Office required.** A foreign professional corporation is not required to obtain authority to transact business in this State unless it maintains or intends to maintain an office in this State for conduct of business or professional practice.

[ 2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF) .]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

### **13 §772. Application for authority to transact business**

The application of a foreign professional corporation for authority to render professional services in this State must contain the information set forth in Title 13-C, section 1503 and in addition include a statement that all of its shareholders, not less than a majority of its directors and all of its officers other than its clerk, secretary and treasurer, if any, are licensed in one or more states to render a professional service described in its articles of incorporation. [2001, c. 640, Pt. B, §2 (NEW); 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

2001, c. 640, §B2 (NEW). 2001, c. 640, §B7 (AFF).

## **Chapter 23: TAKEOVER BID DISCLOSURE LAW**

### **13 §801. Short title; legislative findings**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 669, (NEW). 1981, c. 659, §1 (AMD). 1985, c. 619, (RP).

### **13 §802. Definitions**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 669, (NEW). 1979, c. 127, §89 (AMD). 1981, c. 659, §§2-9 (AMD). 1985, c. 619, (RP).

### **13 §803. Disclosure**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 669, (NEW). 1981, c. 659, §§10-12 (AMD). 1985, c. 619, (RP).

### **13 §804. Permission to proceed; hearings**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 669, (NEW). 1981, c. 659, §§13,14 (AMD). 1985, c. 619, (RP).

### **13 §805. Mailing to shareholders; payment of expenses**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 669, (NEW). 1985, c. 619, (RP).

### **13 §806. Time for filing**

*(REPEALED)*

#### SECTION HISTORY

1977, c. 669, (NEW). 1985, c. 619, (RP).

**13 §807. Investigations*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1985, c. 619, (RP).

**13 §808. Prohibited acts*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1981, c. 659, §§15,16 (AMD). 1985, c. 619, (RP).

**13 §809. Limitation on tender offers*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1981, c. 659, §17 (AMD). 1985, c. 619, (RP).

**13 §810. Voting of securities; restrictions*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1985, c. 619, (RP).

**13 §811. Promulgation of regulations*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1981, c. 659, §18 (AMD). 1985, c. 619, (RP).

**13 §812. Injunctions*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1979, c. 127, §90 (AMD). 1981, c. 659, §§19-21 (AMD). 1985, c. 619, (RP).

**13 §813. Criminal penalties*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1985, c. 619, (RP).

**13 §814. Civil penalties*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1985, c. 619, (RP).

**13 §815. Rights and remedies*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1985, c. 619, (RP).

**13 §816. Appeals procedure; judicial review*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1985, c. 619, (RP).

**13 §817. Application of law*****(REPEALED)***

## SECTION HISTORY

1977, c. 669, (NEW). 1981, c. 659, §§22-24 (AMD). 1985, c. 619, (RP).

## Part 2: CORPORATIONS WITHOUT CAPITAL

### Chapter 81: GENERAL PROVISIONS

#### Subchapter 1: ORGANIZATION; MEETING; CERTIFICATES

#### 13 §901. Organization

When 3 or more persons desire to be incorporated for any literary, scientific, musical, charitable, educational, social, agricultural, environmental, moral, religious, civic or other lawful and similarly benevolent or nonprofit purpose or for the purpose of fostering, encouraging and assisting the physical location, settlement or resettlement of industrial, manufacturing, fishing, agricultural and other business enterprises and recreational projects in any locality within the State, as a corporation without capital stock, they may do so by preparing and filing a certificate as set forth in section 903. The formation of a corporation by one or more municipalities, including a local development corporation, a council of government and a regional planning commission, must be incorporated by a majority of the municipal officers of each of its charter member municipalities. This section does not apply to corporations that are required to be organized under Title 13-B or that elect to be organized under Title 13-B. [1993, c. 316, §8 (AMD).]

##### SECTION HISTORY

1965, c. 495, §2 (AMD). 1967, c. 525, §14 (AMD). 1973, c. 534, §1 (AMD). 1973, c. 677, §4 (AMD). 1975, c. 487, §1 (AMD). 1977, c. 525, §3 (AMD). 1977, c. 592, §1 (AMD). 1991, c. 780, §U4 (AMD). 1993, c. 316, §8 (AMD).

#### 13 §902. Notice of meeting; waiver

*(REPEALED)*

##### SECTION HISTORY

1975, c. 487, §2 (RP).

#### 13 §903. Certificate of organization

The incorporators shall prepare, sign, date and deliver for filing with the Secretary of State a certificate of organization setting forth the name, location, officers and directors, trustees or managing board and purposes of the corporation. The certificate must clearly state that the corporation is not organized for profit and that no property or profit of the corporation inures to the benefit of any person, partnership or corporation except in furtherance of the benevolent or nonprofit purposes of the corporation. Once the Secretary of State has filed the certificate of organization, the corporation may carry on activities pursuant to this chapter. [2003, c. 523, §1 (RPR).]

##### SECTION HISTORY

1969, c. 225, §10 (AMD). 1971, c. 544, §39 (AMD). 1971, c. 565, §3 (AMD). 1973, c. 625, §81 (AMD). 1975, c. 635, §1 (AMD). 1975, c. 770, §73 (AMD). 1975, c. 487, §3 (RPR). 1977, c. 78, §108 (AMD). 1977, c. 522, §§1,2 (AMD). 1991, c. 465, §14 (AMD). RR 1993, c. 1, §39 (COR). 2003, c. 523, §1 (RPR).



### 13 §904. 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, §15 (NEW).]

#### SECTION HISTORY

1991, c. 465, §15 (NEW).

### 13 §905. 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, §15 (NEW) .]

**2. Funds; 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, §15 (NEW) .]

#### SECTION HISTORY

1991, c. 465, §15 (NEW).

### 13 §906. Information requests

The Secretary of State shall charge a fee of \$5 for responding in writing to a request for information on file. [1993, c. 349, §31 (RPR).]

#### SECTION HISTORY

1991, c. 780, §U5 (NEW). 1991, c. 837, §A31 (NEW). 1993, c. 349, §31 (RPR).

### 13 §907. Filing duty of the Secretary of State

If a certificate delivered for filing with the Secretary of State satisfies the requirements of this chapter, the Secretary of State shall file the certificate. The date of filing is the date of receipt by the Secretary of State. After filing any certificate under this chapter, the Secretary of State shall deliver to the corporation or its representative a copy of the document with an acknowledgement of the date of filing. [2003, c. 523, §2 (NEW).]

#### SECTION HISTORY

2003, c. 523, §2 (NEW).

### 13 §908. Fees for filing certificates

A fee of \$5 must be submitted with any certificate required or permitted to be filed with the Secretary of State under this chapter. [2003, c. 523, §2 (NEW).]

#### SECTION HISTORY

2003, c. 523, §2 (NEW).

## Subchapter 2: POWERS

### 13 §931. Powers; change of name; proceedings; fee

The incorporators shall adopt a corporate name, and they, their associates and successors may have continual succession; have a common seal; elect all necessary officers; adopt bylaws not inconsistent with law and enforce the same by suitable penalties; have the same rights and be under the same liabilities as other corporations in prosecuting and defending civil actions; and enjoy all other rights, privileges and immunities of a legal corporation. Any corporation organized under this subchapter may by a majority vote at a legal meeting of its members at which at least 25% are present or at a legal meeting of its directors, trustees or managing board, however designated, change its name and adopt a new one. A notice of the intention to change the name must be given in the call for the meeting. When the proceedings of the meeting relating to the change of name are certified by the clerk or secretary of the corporation, the corporation shall deliver for filing with the Secretary of State a certificate of name change signed and dated by the clerk or secretary of the corporation. The corporation, under its new name, has the same rights, powers and privileges, and is subject to the same duties, obligations and liabilities as before, and holds and is entitled to the same property and property rights as it held under its former name, and may sue or be sued by its new name, but no action brought against it by its former name may be defeated on that account. [2003, c. 523, §3 (AMD).]

#### SECTION HISTORY

1969, c. 225, §11 (AMD). 1971, c. 565, §4 (AMD). 1975, c. 487, §4 (AMD). 1975, c. 635, §2 (AMD). 1977, c. 525, §4 (AMD). 1977, c. 592, §2 (AMD). RR 1991, c. 2, §40 (COR). 2003, c. 523, §3 (AMD).

### 13 §931-A. Bylaws; disposal of assets

The bylaws of a corporation organized under this chapter after the effective date of this section must provide for the disposal of the corporation's assets. [1995, c. 300, §1 (NEW).]

#### SECTION HISTORY

1995, c. 300, §1 (NEW).

### 13 §932. Right to hold property

Every corporation organized under sections 901 and 903 to 931 may take and hold by purchase, gift, devise or bequest, tangible or intangible personal property or real estate, and may use and dispose thereof only for the purposes for which the corporation was organized. Any corporation organized under this chapter for the purpose of establishing and maintaining a hospital, a free public library or a school or academy accredited by the State Board of Education and conducted on a nonprofit basis, or a laboratory exclusively engaged in research for the benefit of mankind, or an educational television or radio station operated on a nonprofit basis, or a private vocational school conducted on a nonprofit basis may receive and hold real and personal estate to any amount, which may from time to time be given, granted, bequeathed or devised to it and accepted by the corporation for the uses and purposes of the hospital, free public library, school or academy, laboratory, or educational television or radio station provided always both the principal and income thereof shall be appropriated according to the terms of the donation, devise or bequest. [1981, c. 698, §82 (AMD).]

Corporations formed under this chapter for the purposes of fostering, encouraging and assisting the physical location, settlement and resettlement of industrial, manufacturing, fishing, agricultural and other business enterprises and recreational projects in any locality within the State shall have the power to use, sell, convey, mortgage, lease or rent real or personal property and to do any and all things necessary to carry out the purposes of such corporation. [1967, c. 525, §15 (RPR).]

Unless the instrument creating the trust prohibits, the corporation may treat 2 or more trust funds as a single fund solely for the purpose of investment. This section shall not apply to corporations organized under or governed by Title 13-B. [1977, c. 592, §3 (AMD).]

#### SECTION HISTORY

1965, c. 267, (AMD). 1965, c. 282, (AMD). 1967, c. 494, §14 (AMD). 1967, c. 525, §15 (AMD). 1969, c. 504, §23 (AMD). 1973, c. 571, §7 (AMD). 1975, c. 770, §74 (AMD). 1977, c. 525, §5 (AMD). 1977, c. 592, §3 (AMD). 1981, c. 698, §82 (AMD).

### **13 §933. Change of name**

*(REPEALED)*

#### SECTION HISTORY

1969, c. 225, §12 (AMD). 1971, c. 565, §5 (RP).

### **13 §934. Amendments**

In addition to any other method provided by law, a corporation organized under this chapter, including specially chartered churches, but not other specially chartered corporations, may change the number of its officers, directors, trustees or members of its managing board, however designated, and change its purposes by altering, abridging or enlarging the same, and make any other changes in its certificate of organization as originally filed or subsequently amended that may be desired, if such changes would be proper to insert in an original certificate of organization. The change must be made by vote of a majority of those members with voting rights present at, or if the corporation does not have members with voting rights, then by a majority vote of its whole board of directors or trustees or managing board, however designated, taken at any legal meeting. The notice of the meeting must give notice of the proposed action. If the corporation amends any provision of any certificate filed with the Secretary of State, the corporation must promptly deliver for filing with the Secretary of State a certificate of amendment signed and dated by the clerk or secretary of the corporation. [2003, c. 523, §4 (AMD).]

#### SECTION HISTORY

1969, c. 225, §13 (AMD). 1971, c. 544, §40 (AMD). 1971, c. 565, §§6,7 (AMD). 1971, c. 373, §1 (RPR). 1973, c. 409, (AMD). 1977, c. 522, §3 (AMD). 1977, c. 525, §6 (AMD). 1977, c. 592, §4 (AMD). 2003, c. 523, §4 (AMD).

### **13 §935. Right to act as trustees**

Corporations without capital stock may become trustees under section 1222.

### **13 §936. Facilities for winter sports**

Any corporation organized under this chapter or under Title 13-B, and which owns, operates and maintains facilities for recreation for the benefit of the people of the State not as a commercial proposition, may enclose so much of the surface of any great pond, not exceeding 5 acres in area, during the time when said area is covered with ice, as is not being used for ice cutting operations, for the purpose of maintaining on said area facilities for winter sports of any kind; and shall have the right to exclude from said area persons not contributing to the financial support of said corporation, and may make and enforce rules and regulations for the use of said area for the purpose of insuring the use and enjoyment thereof and the protection of persons using said facilities. [1977, c. 525, §7 (AMD).]

#### SECTION HISTORY

1977, c. 525, §7 (AMD).

### 13 §937. Dissolution

Except as provided in section 938, any corporation organized under this chapter may be dissolved by using the procedures set forth in Title 13-B, chapter 11 and deliver for filing with the Secretary of State the required certificates, signed and dated by the clerk or secretary of the corporation. Solely for the purposes of this section and the dissolution of a corporation organized under this chapter, each member with voting rights of the corporation, or if the corporation does not have members with voting rights, each director, trustee or member of the managing board, however designated, has one vote for the purposes of calling, noticing, conducting and holding meetings and voting at those meetings, and for the purpose of commencing or otherwise participating as a party in civil actions in respect of dissolution, but for no other purposes. In addition to other parties who may commence or participate in such civil actions as provided in the law relating to corporations organized under this chapter, the Attorney General may commence, or otherwise participate in, any civil action relating to the dissolution of any corporation organized under this chapter. [2003, c. 523, §5 (AMD).]

#### SECTION HISTORY

1971, c. 369, (NEW). 1971, c. 373, §2 (NEW). 1971, c. 622, §51 (RP).  
1977, c. 525, §8 (AMD). 1977, c. 592, §5 (AMD). 2003, c. 523, §5 (AMD).

### 13 §938. Distribution of assets

In case of the dissolution of a corporation pursuant to section 937 or any other provision of law, the assets of the corporation remaining after the payment of all of its debts must be distributed in the manner and to the persons, firms, associations, corporations, trusts or other legal entities provided in its certificate of organization or any amendment thereto; however, the assets of a charitable corporation that is dissolved may not be devoted to other than charitable purposes. In the case of the dissolution of a corporation organized under this chapter other than a charitable corporation, unless contrary provision is made in its certificate of organization or any amendment thereto, the assets of the corporation remaining after the payment of its debts must be distributed equally to its members. [2003, c. 523, §6 (AMD).]

#### SECTION HISTORY

1971, c. 373, §3 (NEW). 1977, c. 525, §9 (AMD). 1977, c. 592, §6 (AMD).  
2003, c. 523, §6 (AMD).

### 13 §939. Prohibitions and requirements applicable to corporations which are private foundations

**1. Prohibitions.** No corporation which is a "private foundation" as defined in section 509 (a) of the Internal Revenue Code of 1954, shall:

A. Engage in any act of "self-dealing," as defined in section 4941 (d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4941 (a) of the Internal Revenue Code of 1954; [1971, c. 622, §52 (NEW).]

B. Retain any "excess business holdings," as defined in section 4943 (c) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4943 (a) of the Internal Revenue Code of 1954; [1971, c. 622, §52 (NEW).]

C. Make any investment which would jeopardize the carrying out of any of its exempt purposes, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944 (a) of the Internal Revenue Code of 1954; and [1971, c. 622, §52 (NEW).]

D. Make any "taxable expenditures," as defined in section 4945 (d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4945 (a) of the Internal Revenue Code of 1954. [1977, c. 622, §52 (NEW).]

[ 1971, c. 622, §52 (NEW) .]

**2. Requirements.** Each corporation which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954 shall distribute, for the purposes specified in its certificate of incorporation, for each taxable year, amounts at least sufficient to avoid liability for the tax imposed by section 4942 (a) of the Internal Revenue Code of 1954.

[ 1971, c. 622, §52 (NEW) .]

**3. Application.** Subsections 1 and 2 shall not apply to any corporation to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the certificate of incorporation or other instrument governing such corporation or governing the administration of charitable funds held by it and that the same may not properly be changed to conform to such subsections.

[ 1971, c. 622, §52 (NEW) .]

**4. Impairment.** Nothing in this section shall impair the rights and powers of the courts or the Attorney General of this State with respect to any corporation.

[ 1971, c. 622, §52 (NEW) .]

**5. References.** All references to sections of the Internal Revenue Code of 1954 shall include future amendments to such sections and corresponding provisions of future internal revenue laws.

[ 1971, c. 622, §52 (NEW) .]

#### SECTION HISTORY

1971, c. 622, §52 (NEW).

### 13 §940. Indemnification

Any domestic corporation organized without capital stock and any corporation located in Maine and chartered by the Commonwealth of Massachusetts prior to the Articles of Separation may, by vote of its directors, trustees or managing board, however designated, or pursuant to bylaw, indemnify its trustees, directors, managing board, officers, employees and agents and may purchase and maintain insurance to indemnify any such person to the extent provided by Title 13-C, chapter 8, subchapter 5, except where inconsistent with any specific provision of any public law or private and special act applicable thereto. This section does not apply to corporations organized under or governed by Title 13-B. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §26 (COR).]

#### SECTION HISTORY

1975, c. 439, §2 (NEW). 1977, c. 525, §10 (AMD). 1977, c. 592, §7 (AMD). RR 1991, c. 2, §41 (COR). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B26 (COR).

## Subchapter 3: CONSOLIDATION

## 13 §961. Procedure

Any 2 or more corporations organized under this chapter may consolidate into a single corporation, which may be either one of the corporations or a new corporation under the laws of this State to be formed by means of the consolidation. The consolidation may be effected by vote of the directors, trustees or managing board, however designated, of each of those corporations at a legal meeting thereof ratifying a proposed agreement of consolidation. The resulting corporation shall deliver for filing with the Secretary of State a certificate of consolidation signed and dated by the clerk or secretary of the corporation. When the certificate of consolidation is filed, the separate existence of all of the constituent corporations, or of all of the constituent corporations except the one into which the constituent corporations have been consolidated, ceases and the constituent corporations, whether consolidated into a new corporation or merged into one of the constituent corporations, as the case may be, become the consolidated corporation by the name provided in the agreement, possessing all the rights, privileges, powers, franchises and immunities of a public and private nature and being subject to all the liabilities, restrictions and duties of each of those corporations so consolidated, and all the rights, privileges, powers, franchises and immunities of each of those constituent corporations, and all real, personal and mixed property of those constituent corporations, all debts due to any of those constituent corporations on whatever account and all other things in action of or belonging to each of those constituent corporations are vested in the consolidated corporation. All property, rights, privileges, powers, franchises, immunities and all other interests are thereafter the property of the consolidated corporation in the same manner as they were of the several and respective constituent corporations, and the title to any real estate, whether by deed or otherwise vested under the laws of this State in any of those constituent corporations, may not revert or in any way be impaired by reason of the consolidation. All rights of creditors and all liens upon the property of any of those constituent corporations are preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent corporations henceforth attach to the consolidated corporation and may be enforced against it to the same extent as if those debts, liabilities and duties had been incurred or contracted by it. [2003, c. 523, §7 (RPR).]

Any corporation organized under this chapter may merge or consolidate with or into a corporation formed under Title 13-B. The procedure, manner of adoption of the plan of merger or consolidation, form of articles of merger or consolidation and effect of such merger or consolidation for any such merger or consolidation are governed by the provisions of Title 13-B, chapter 9. [2005, c. 531, §1 (NEW).]

### SECTION HISTORY

1969, c. 225, §14 (AMD). 1971, c. 544, §41 (AMD). 1977, c. 522, §4 (AMD). 1977, c. 525, §11 (AMD). 1977, c. 592, §8 (AMD). 2003, c. 523, §7 (RPR). 2005, c. 531, §1 (AMD).

## Subchapter 4: MISCELLANEOUS PROVISIONS

### 13 §981. Charitable corporations, suits by or against

No corporation, organized for charitable or benevolent purposes, shall sue any of its members for dues or contributions of any kind, or be sued by any member for any benefit or sum due him, but all such rights and benefits, dues and liabilities shall be regulated and enforced only in accordance with its bylaws.

#### 13 §981-A. Acknowledgement of previously unrecognized corporations

An existing nonprofit corporation that is not currently recognized by the Secretary of State may prepare, sign, date and deliver for filing with the Secretary of State a certificate of organization setting forth the original name, the date, place and purpose of the incorporation, any subsequent changes to the corporate name and the current name, location and officers of the corporation. If the Secretary of State by examination of the corporate records or other substantial evidence finds that the corporation was formed, the Secretary of State shall file the certificate of organization. [2003, c. 523, §8 (RPR).]

### SECTION HISTORY

1967, c. 544, §33 (NEW). 1977, c. 522, §5 (AMD). 1979, c. 596, §3 (AMD). 1993, c. 316, §9 (AMD). 2003, c. 523, §8 (RPR).

### **13 §982. Use of state name; forfeiture of appropriation**

**(REPEALED)**

#### SECTION HISTORY

1973, c. 653, (AMD). 1977, c. 522, §§6,7 (AMD). 1977, c. 564, §65 (AMD). 1977, c. 592, §§9,10 (AMD). 1983, c. 50, §1 (RP).

### **13 §983. Protection in use of name**

No person, society, association or corporation shall assume, adopt or use the name of a benevolent, humane, fraternal or charitable organization incorporated under the laws of this State, or any other state, or of the United States, or holding its charter or warrant under some recognized supreme grand body having authority to issue the same, or a name so nearly resembling the name of such incorporated or chartered organization as to be a colorable imitation thereof or calculated to deceive persons not members with respect to such organizations. In all cases where 2 or more such societies, associations, corporations or organizations claim the right to the same name, or to names substantially similar as above provided, the organization which was first organized and used the name, or first became incorporated under the laws of the United States or of any state, shall be entitled in this State to the prior and exclusive use of such name, and the rights of such societies, associations, corporations or organizations and of their individual members shall be fixed and determined accordingly. This section shall not apply to corporations organized under or governed by Title 13-B. [1977, c. 592, §11 (AMD).]

#### SECTION HISTORY

1977, c. 525, §12 (AMD). 1977, c. 592, §11 (AMD).

### **13 §984. Use of badges, emblems or names without authority**

No person shall wear or exhibit the badge, button, emblem, decoration, insignia or charm, or shall assume or use the name of any benevolent, humane, fraternal or charitable corporation incorporated under the laws of this State, or any other state, or of the United States, or holding its charter or warrant under some recognized supreme grand body having authority to issue the same, or shall assume or claim to be a member thereof, or of a benevolent, humane, fraternal or charitable corporation or organization, the name of which shall so nearly resemble the name of any other corporation or organization existing prior to the organization of the corporation, organization or association of which such person may claim to be a member, the name whereof may be calculated to deceive the people with respect to any such prior corporation or organization, unless he shall be authorized under the laws, statutes, rules, regulations and bylaws of such former corporation or organization to wear such badge, button, emblem, decoration, insignia or charm, or to use and assume such name as a member thereof. Nothing in this chapter shall be construed to forbid the use of such badge as a measure of protection by the wife, mother, sister or daughter of any man entitled to wear the same.

### **13 §985. Injunctions**

Whenever there shall be an actual or threatened violation of any of the provisions of sections 983 and 984, the Supreme Judicial Court and the Superior Court shall have jurisdiction to issue an injunction, upon notice to the defendant of not less than 5 days, restraining such actual or threatened violation. If it shall appear to the court that the defendant is in fact using the name of a benevolent, humane, fraternal or charitable corporation or organization, incorporated or organized as provided, or a name so nearly resembling it as to be calculated to deceive the public, or is wearing or exhibiting the badge, insignia or emblem of such corporation

or organization without authority thereof and in violation of sections 983 and 984, an injunction may be issued, enjoining or restraining such actual or threatened violation, without requiring proof that any person has in fact been misled or deceived thereby.

### **13 §986. Violations**

Whoever violates sections 983 or 984 shall be punished by a fine of not more than \$50 or by imprisonment for not more than 30 days, or by both.

### **13 §987. Applicability of Title 13-B**

A corporation or other entity created pursuant to this Title or regulated by this Title is subject to Title 5, section 194 and sections 194-B to 194-K if it is a public benefit corporation under Title 13-B, section 1406. [2001, c. 550, Pt. C, §1 (NEW); 2001, c. 550, Pt. C, §29 (AFF).]

#### SECTION HISTORY

2001, c. 550, §C1 (NEW). 2001, c. 550, §C29 (AFF).

## **Chapter 83: CEMETERY CORPORATIONS**

### **Subchapter 1: GENERAL PROVISIONS**

### **13 §1031. Unauthorized establishment; injunction**

Any cemetery, community mausoleum or columbarium established, maintained or operated in violation of or contrary to this chapter is declared to be a nuisance, which may be abated or enjoined as such by the civil action of any citizen of this State.

### **13 §1032. Disposal of bodies**

Except as otherwise provided by law, or in case of a dead body being rightfully carried through or removed from the State for the purpose of burial or disposition elsewhere, every dead body of a human being dying within the State and the remains of any body after dissection therein shall be decently buried, entombed in a mausoleum, vault or tomb, or cremated within a reasonable time after death. The permanent disposition of such bodies or remains shall be by interment in the earth, or deposit in a chamber, vault or tomb of a cemetery owned, maintained and operated in accordance with the laws of this State, by deposit in a crypt of a mausoleum, or by cremation. The remains of a human body after cremation may be deposited in a niche of a columbarium or a crypt of a mausoleum, buried or disposed of in any manner not contrary to law. No deposit of the bodies or remains of the human dead shall be made in a single chamber, vault or tomb partly above and partly below the natural surface of the ground, unless the part thereof below such surface is of a permanent character, constructed of materials capable of withstanding extreme climatic conditions, waterproof and air tight, and capable of being sealed permanently to prevent all escape of effluvia, and unless the part thereof above the natural surface of the ground is constructed of natural stone of a standard not less than that required by the United States Government for monuments erected in national cemeteries, or durability sufficient to withstand all conditions of weather.

### **13 §1033. Vested rights**

This chapter shall not be construed as affecting any vested rights of any cemetery association or other agency owning, maintaining and operating a cemetery or crematory immediately prior to July 24, 1937. Insofar as this chapter does not violate any such vested rights, it shall, except as otherwise provided, apply to all such cemetery associations or other agencies.



### **13 §1034. Jurisdiction**

The Superior Court shall have original and concurrent jurisdiction in all cases under this chapter. Judges of the District Court may cause the persons brought before them on complaint for violation of sections 1342 or 1343 to recognize with sufficient sureties to appear at the next term of the Superior Court and, in default thereof, shall commit them.

### **13 §1035. Penalties**

Except as otherwise provided in this chapter, a person who fails to comply with or violates any of the provisions of this chapter in respect to the establishment, maintenance or operation of a cemetery, community mausoleum, crematory or columbarium or to the disposal of dead human bodies commits a Class E crime except that, notwithstanding Title 17-A, section 1301, the fine may not be less than \$100 or more than \$500. [2007, c. 112, §1 (AMD).]

#### SECTION HISTORY

2007, c. 112, §1 (AMD).

### **13 §1036. Recovery of fines or penalties**

All fines or penalties provided by section 1035 may be recovered or enforced by indictment, and the necessary processes for causing the crypts and catacombs to be sealed or the bodies to be removed and buried, and execution to recover the necessary expenses thereof, may be issued by the Superior Court.

## **Subchapter 2: BURYING GROUNDS**

### **Article 1: Organization**

### **13 §1071. Incorporation**

Persons of lawful age may organize themselves into a nonprofit-sharing corporation for the purpose of purchasing land for a burying ground and for the purpose of owning, maintaining and operating a cemetery or cemeteries, as provided in sections 901 and 903 and may proceed in the manner and, except as restricted, with the powers provided in section 931. [1975, c. 770, §75 (AMD).]

#### SECTION HISTORY

1965, c. 66, (AMD). 1975, c. 770, §75 (AMD).

### **Article 2: Duties of Town or County**

### **13 §1101. Maintenance and repairs; municipality**

In any ancient burying ground, as referenced in Title 30-A, section 5723, or public burying ground in which any Revolutionary soldiers or sailors or veterans of the Armed Forces of the United State of America who served in any war are buried, the municipality in which said burying ground is located shall keep in good condition and repair all graves, headstones, monuments or markers designating the burial place of said Revolutionary soldiers or sailors or veterans of the Armed Forces of the United States of America who served in any war and shall keep the grass suitably cut and trimmed on those graves from May 1st to September 30th of each year. [1999, c. 700, §1 (AMD).]

#### SECTION HISTORY

1977, c. 255, §1 (AMD). 1999, c. 700, §1 (AMD).

### **13 §1101-A. Definition**

As used in this article, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 421, §1 (AMD).]

**1. Ancient burying ground.** "Ancient burying ground" means a private cemetery established before 1880.

[ 1999, c. 700, §2 (NEW) .]

**2. Columbarium.** "Columbarium" means a structure or room or space in a mausoleum or other building containing niches or recesses for disposition of cremated human remains.

[ 2003, c. 421, §1 (NEW) .]

**3. Community mausoleum.** "Community mausoleum" means an aboveground structure designed for entombment of human remains of the general public, as opposed to the entombment of the remains of family members in a privately owned, family mausoleum of no more than 6 crypts.

[ 2003, c. 421, §1 (NEW) .]

#### SECTION HISTORY

1999, c. 700, §2 (NEW). 2003, c. 421, §1 (AMD).

### 13 §1101-B. Ancient burying grounds

**1. Access to ancient burying grounds on privately owned land.** The owner of an ancient burying ground shall provide municipalities access necessary to perform the duties pursuant to section 1101 and Title 30-A, section 2901. Any unreasonable denial to provide municipalities access may result in the owner being held responsible for any fines, court costs and attorney's fees incurred by municipalities in legally obtaining access or for failing to meet the requirements of section 1101.

[ 1999, c. 700, §2 (NEW) .]

**2. Maintenance by landowner.** A person who owns a parcel of land that contains an ancient burying ground and chooses to deny access to the municipality shall assume the duties as described in section 1101 and Title 30-A, section 2901, subsection 1. Maintenance of an ancient burying ground by the owner exempts the municipality from performing the duties as described in section 1101.

[ 1999, c. 700, §2 (NEW) .]

#### SECTION HISTORY

1999, c. 700, §2 (NEW).

### 13 §1101-C. Notice of responsibility

When a municipality fails without good reason to maintain the good condition and repair of a grave, headstone, monument or marker or fails to keep the grass suitably cut and trimmed on any such grave pursuant to section 1101 and at least one of the municipal officers has had 14 days' actual notice or knowledge of the neglected condition, a penalty of not more than \$100 may be assessed on the municipality.

[1999, c. 700, §2 (NEW).]

#### SECTION HISTORY

1999, c. 700, §2 (NEW).

### **13 §1101-D. Unorganized townships**

If an ancient burying ground or a public burying ground as described in section 1101 is located in an unorganized township, the county in which the township is located is subject to sections 1101, 1101-B and 1101-C. [1999, c. 700, §2 (NEW).]

#### SECTION HISTORY

1999, c. 700, §2 (NEW).

### **13 §1101-E. Graves on land owned by Federal Government**

Veterans' graves as described in section 1101 that are located on a site that was owned by the Federal Government as of January 1, 2000 are not subject to the requirements of section 1101. [1999, c. 700, §2 (NEW).]

#### SECTION HISTORY

1999, c. 700, §2 (NEW).

### **13 §1102. -- neglect**

If such officers, treasurer or committee neglect so to apply such fines, they each forfeit the amount thereof, in a civil action, to any person suing therefor.

### **13 §1103. -- unincorporated places**

*(REPEALED)*

#### SECTION HISTORY

1983, c. 471, §1 (RP).

## **Article 3: Exemption From Attachment**

### **13 §1141. Grounds inalienable; description recorded**

When any persons appropriate for a burying ground a piece of land containing not more than 1/2 of an acre, it shall be exempt from attachment and execution, and inalienable and indivisible by the owners without the consent of all; and be kept fenced or otherwise substantially marked and occupied as a burying ground. They shall cause a written description of it, under their hands, attested by 2 disinterested witnesses, to be recorded in the registry of deeds in the county or district where it lies or by the clerk of the town where it is situated.

### **13 §1142. Family burying grounds**

When a person appropriates for a family burying ground a piece of land containing not more than 1/4 of an acre, causes a description of it to be recorded in the registry of deeds of the same county or by the clerk of the town where it is situated and substantially marks the bounds of the burying ground or encloses it with a fence, it is exempt from attachment and execution. No subsequent conveyance of it is valid while any person is interred in the burying ground; but it must remain to the person who appropriated, recorded and marked that burying ground and to that person's heirs as a burial place forever. If property surrounding a burying ground appropriated pursuant to this section is conveyed, the property is conveyed by the person who appropriated the property or by an heir of that person and the conveyance causes the burying ground to be inaccessible from any public way, the conveyance is made subject to an easement for the benefit of the spouse, ancestors and descendants of any person interred in the burying ground. The easement may be used only by persons to walk in a direct route from the public way nearest the burying ground to the burying ground at reasonable hours. [1991, c. 412, §1 (AMD).]

#### SECTION HISTORY

1991, c. 412, §1 (AMD).

### **13 §1143. Lots**

Lots in public or private cemeteries are exempt from attachment and levy on execution and from liability to be sold by executors and administrators of insolvent estates for the payment of debts and charges of administration. Only one lot shall be so exempt for any one person.

## **Article 4: Enlargement of Grounds**

### **13 §1181. Restrictions and conditions**

The municipal officers of any town may on petition of 10 voters enlarge any public cemetery or burying ground or incorporated cemetery or burying ground within their town by taking land of adjacent owners, to be paid for by the town or otherwise as the municipal officers may direct, when in their judgment public necessity requires it. The limits thereof shall not be extended nearer any improved land used for recreational purposes or dwelling house than 100 feet, or nearer any well, from which the water is used for domestic purposes, than 200 feet, against the written protest of the owner made to the officers at the time of the hearing on the petition. Nor shall any person, corporation or association establish, locate or enlarge any cemetery or burying ground by selling or otherwise disposing of land so that the limits thereof shall be extended nearer any improved land used for recreational purposes or dwelling house than 100 feet, or nearer any well, from which the water is used for domestic purposes, than 200 feet, against the written protest of the owner. Nothing in this section shall prohibit the sale or disposition of lots within the limits of any existing cemetery or burying ground, nor the extension thereof away from any improved land used for recreational purposes or dwelling house or well. This section shall not apply to land acquired under Title 37-A, section 15. [1981, c. 33, (AMD).]

#### **SECTION HISTORY**

1967, c. 502, §1 (AMD). 1973, c. 537, §18 (AMD). 1981, c. 33, (AMD).

### **13 §1182. Notice**

Notice of a time and place for a hearing held under section 1181 shall be given by posting written notices thereof, signed by said officers, at least 7 days prior thereto, in 2 public places in said town. A copy of such notice and of the petition shall be served on the owners of the land at least 10 days before the day of hearing.

### **13 §1183. Damages for land taken; town vote**

If the municipal officers at the hearing held under section 1181 grant the prayer of the petitioners, they shall then determine what land shall be taken and assess the damages suffered by each person thereby, as if the land were taken for town ways, make a written return of their proceedings, specifying the land taken and the damages awarded each person and file the same with the town clerk. Such cemetery or burying ground shall not be enlarged, pursuant to such return, until so voted by the town at its next annual meeting. [1975, c. 431, §3 (AMD).]

#### **SECTION HISTORY**

1975, c. 431, §3 (AMD).

### **13 §1184. Persons aggrieved; remedy**

Any person aggrieved by the amount of damages awarded may have them determined by written complaint to the Superior Court in the manner provided respecting damages for the establishment of town ways.

## **Article 5: Conveyance to Town**

### 13 §1221. Proceedings

Any private cemetery or burying ground, by written agreement of all the owners thereof, recorded by the clerk of the town in which it is situated may, by vote of such town within one month after the recording of such agreement by the town clerk, become public and subject to the law relating to public cemeteries or burying grounds, provided such agreement is not in conflict with the terms of any conveyance or devise of land for the purposes of a burying ground.

### 13 §1222. Acceptance; exemption from liability; trust funds for repairs

Any city, town, cemetery corporation, trust company or trustee may accept any conveyance of land not exceeding 1/2 acre, to be forever held, kept and used for a private or family burying ground for the grantors and such of their heirs and relatives by blood or marriage as the conveyance shall designate. Such lot and all erections thereon, including the erection and maintenance of the same, and fixtures thereto suitable for its use or adornment as a burying ground, are forever inalienable and indivisible and exempt from liability for debt. Such city, town, corporation, company or trustee may accept and forever hold any donation or legacy for insuring proper care and attention to any burial lot or ground and the avenues thereof and the monuments thereon. Having accepted such donation or legacy, said trustee becomes bound to perform the duties appertaining to the trust as specified in the writing creating the same or, in default of such specification, as required by law, and as in cases of public charity. Any city or town without giving bond therefor may be appointed by the probate court testamentary trustee for the purpose of holding forever, in accordance with this section and the terms of the devise, any fund devised for the purposes aforesaid. Any such city, town, cemetery corporation, trust company, or trustee failing to furnish proper care and attention to any burial lot, the perpetual care whereof has been provided for as above, shall be punished by a fine of not less than \$50 nor more than \$100, to be recovered by complaint or indictment. The District Court and the Superior Court shall have concurrent jurisdiction. Of all fines provided for under this section and recovered on complaint, 1/2 shall go to the prosecutor and 1/2 to the county where the city, town, cemetery corporation; trust company or trustee committing the offense is situated. Nothing herein contained shall be construed to compel any such city, town, cemetery corporation, trust company or trustee to expend in any one year upon any such lot more than the income from any such fund.

### 13 §1223. Investment of funds

Cemetery trust funds of any cemetery corporation or association, trust company, church, religious or charitable society, or other trustee, shall be invested in the manner provided in Title 30-A, chapter 223, subchapter III-A, and, unless the instrument or order creating the trusts prohibits, may be combined with other similar trust funds in the manner provided in Title 30-A, section 5654, and the annual income only shall be expended in performance of the requirements of the trust. [1987, c. 737, Pt. C, §§24, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

#### SECTION HISTORY

1987, c. 737, §§C24,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

### 13 §1224. Recording of acceptance

A copy of the record of the vote of the trustee so accepting a conveyance of lands shall be indorsed on the conveyance and certified thereon by the clerk of the grantee and recorded in the registry of deeds with the conveyance.

## Article 6: Trust Funds

### 13 §1261. Authority to hold

Any person owning or interested in a lot or lots in a public burying ground of a city or town may deposit with the treasurer of such city or town a sum of money for the purpose of providing for the preservation and care of such lot or lots, or their appurtenances, which sum shall be entered upon the books of the treasurer and invested and held in accordance with Title 30-A, chapter 223, subchapter III-A. [1987, c. 737, Pt. C, §§25, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §8, 10 (AMD).]

#### SECTION HISTORY

1987, c. 737, §§C25,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

### 13 §1262. Bylaws and ordinances

A city or town may pass such ordinances or bylaws as may be necessary for the purposes of section 1261 and not repugnant to law, and may receive such money for said purposes, and may invest and hold the same as provided in section 1261.

### 13 §1263. Acceptance of deposits

When any person owning or interested in a lot in a public burying ground in a city or town deposits with the treasurer of such city or town a sum of money for the preservation or care of such lot as provided by section 1262, said city or town may accept a conveyance of such lot for the uses and upon the trusts which may be set forth in said conveyance, and may bind itself to keep and perform the agreements, uses and trusts contained in the deed of conveyance of such lot.

### 13 §1264. Trust funds for services or property

**1. Trust accounts.** Pre-need funds received for cemetery or crematory services or property to be delivered at or after the date of death must be placed in a cemetery or crematory trust account in a bank, trust company, credit union or savings institution. For purposes of this subsection, "pre-need funds" means all money paid during a person's lifetime to a cemetery or crematory by that person or by another person on that person's behalf under an agreement that services will be performed or property will be delivered in connection with the disposition of that person's body after that person's death.

[ 1995, c. 474, §1 (NEW) .]

**2. Trust agreement.** A trust agreement setting forth the following information must be signed by the payor and the payee and the original agreement must be given to the payor and a copy of that agreement must be given to the payee:

A. The name and address of the individual for whose benefit services or property will be delivered;

[1995, c. 474, §1 (NEW).]

B. The name of the entity acting as trustee; [1995, c. 474, §1 (NEW).]

C. The name and address of the payor; [1995, c. 474, §1 (NEW).]

D. The services or property that will be provided by the payee; [1995, c. 474, §1 (NEW).]

E. Statements that a full refund of the principal of the funds placed in trust must be made by the payee upon written request of the payor, the payor's attorney-in-fact or the payor's personal representative and that, in the absence of such a request, the payee may withdraw the funds only upon the death of the person for whose benefit the funds were paid and shall use the funds in accordance with the purposes identified in the trust agreement; and [1995, c. 474, §1 (NEW).]

F. A statement that interest on funds placed in trust will not be paid to the payor in the event of a refund of principal of trust funds and any interest that may accrue remains with the payee. [1995, c. 474, §1 (NEW).]

[ 1995, c. 474, §1 (NEW) .]

**3. Services and property covered.** This section applies to cemetery or crematory services such as cremation fees, grave opening and closing charges and inscription of death dates. This section does not apply to the sale of cemetery lots or plots, monuments and memorials, garden crypts, lawn crypts, mausoleum crypts, cremation urns and niches, vaults, liners and similar tangible personal property if title to and physical possession of the specific property has passed to the buyer. Any funds expended to purchase tangible personal property when that personal property is held by the payee until the time of need are not considered funds that must be placed in the trust account.

[ 1995, c. 474, §1 (NEW) .]

**4. Refund provisions.** A full refund of the principal of the funds placed in trust must be made by the payee upon written request of the payor, the payor's attorney-in-fact or the payor's personal representative. In the absence of such a request, the payee may withdraw the funds only upon the death of the person for whose benefit the funds were paid and shall use the funds in accordance with the purposes identified on the trust agreement.

[ 1995, c. 474, §1 (NEW) .]

**5. Administrative fees.** The payee may not charge the payor, the payor's attorney-in-fact or the payor's personal representative an administrative fee for funds or tangible personal property held in trust.

[ 1995, c. 474, §1 (NEW) .]

**6. Application.** The provisions of this section apply only to funds received by a payee of a trust account after the effective date of this section.

[ 1995, c. 474, §1 (NEW) .]

#### SECTION HISTORY

1995, c. 474, §1 (NEW).

### 13 §1265. Tangible personal property

Upon written request and payment of any reasonable out-of-pocket expenses, a cemetery or crematory shall deliver to a person, the person's attorney-in-fact or the person's personal representative any item of tangible personal property purchased by that person but remaining in the possession of the cemetery or crematory. [1995, c. 474, §1 (NEW).]

#### SECTION HISTORY

1995, c. 474, §1 (NEW).

### 13 §1266. Solicitation of cemetery or crematory services or property

Uninvited telephone or door-to-door solicitations for crematory or cemetery services or property are prohibited. This section may not be construed to limit the raising of funds for capital improvements as long as those funds are not raised through the purchase of cemetery or crematory services or property. Uninvited

solicitations may not be construed to include solicitations resulting from uninvited good-faith personal referrals from individuals purchasing services or property from a cemetery or crematory. [1995, c. 474, §1 (NEW).]

#### SECTION HISTORY

1995, c. 474, §1 (NEW).

### **13 §1267. Penalties**

A person is subject to criminal prosecution under Title 17-A, chapter 15 if the person violates section 1264 or 1265. A person who violates section 1266 commits a civil violation for which a fine of not less than \$100 and not more than \$500 may be adjudged. [2003, c. 688, Pt. B, §1 (AMD).]

#### SECTION HISTORY

1995, c. 474, §1 (NEW). 2003, c. 688, §B1 (AMD).

## **Subchapter 3: PUBLIC CEMETERIES**

### **13 §1301. Incorporation; exemption from attachment and taxation**

Any 7 or more persons may be incorporated, not for profit, in the manner provided in section 901 for the purpose of owning, managing and protecting lands and their appurtenances appropriated for public cemeteries. The property of such corporations and the shares of stock therein are exempt from attachment and taxation. Any cemetery corporation may accept and receive donations of money, general legacies and devises of real estate or legacies in trust, for the purpose of landscaping, general beautification and care of lots, memorials, avenues and plots in said cemetery, without being appointed or confirmed by any court as such trustee. [1975, c. 770, §76 (AMD).]

#### SECTION HISTORY

1975, c. 770, §76 (AMD).

### **13 §1302. Recording of deeds**

Deeds of burial lots in any public cemetery may be recorded in the registry of deeds for the county or district where such cemetery is situated.

### **13 §1303. Ownership and operation**

Every cemetery, except Veterans' Memorial Cemetery established under Title 37-A, chapter 2, hereafter established shall be owned, maintained or operated by a municipality or other political subdivision of the State, a church, a religious or charitable society, or by a cemetery association incorporated as provided in section 1071 or 1301. [1973, c. 537, §19.]

Every such cemetery shall be located in accordance with statutes already in force and effect, and only after consent for such location has been obtained from the municipality or other political subdivision where the same is proposed to be located, as well as from the Bureau of Health. No cemetery, community mausoleum, crematory or columbarium hereafter established shall be maintained or operated for the purpose of private profit or gain, either directly or indirectly, to any director, officer or member of the cemetery association or other agency owning, maintaining or operating the same, or of any holding company or development company employed to develop, build and dispose of the same. A cemetery lawfully established prior to July 24, 1937 may continue to be owned, maintained and operated under the form of organization adopted therefor. Any corporation organized prior to July 24, 1937 which is authorized or empowered to own,



construct, maintain or operate cemeteries or burial grounds may lawfully own, construct, maintain or operate mausoleums, crematories or columbaria in connection therewith, in accordance with the laws existing and effective up to the time of July 24, 1937.

#### SECTION HISTORY

1967, c. 502, §2 (AMD). 1973, c. 537, §19 (AMD).

### **13 §1304. Sales for speculation or investment**

The sale of cemetery lots and plots, or the sale of crypts in a community mausoleum or niches in a columbarium for speculative or financial investment purposes, or the conveyance of any portion of a cemetery already dedicated to burial purposes as security for debt, is prohibited. Every such conveyance, whether made by a person or by a cemetery association, or by a company or association owning and operating a community mausoleum, crematory or columbarium, or by any holding, development or subsidiary company, shall be void and of no effect. Whoever makes or attempts to make a sale or conveyance contrary to this section shall be guilty of a misdemeanor and punished as provided in section 1035.

### **13 §1305. Care and maintenance**

The proceeds of the sales of lots and plots in a cemetery shall be applied solely to the management, superintendence, improvement and maintenance of the cemetery and the avenues, paths and structures situated therein, for the purchase of additional cemetery land and for the accumulation of a permanent care and improvement fund. If any indebtedness of a fixed amount is incurred in the purchase of lands for such cemetery, or in making any improvement therein, a sum not exceeding 50% of the gross receipts from the sale of burial lots and plots may be applied to the liquidation of such indebtedness. All moneys received from the sale of personal property and surplus real estate of a cemetery shall be applied first to the liquidation of any fixed indebtedness incurred by it on account of the purchase or improvement of the lands dedicated to cemetery purposes, and any residue remaining after the liquidation of such indebtedness shall be deposited in the permanent care and improvement fund of the cemetery. This section shall not apply to any cemetery now organized and operating.

### **13 §1306. Cemetery perpetual care fund**

A person, corporation or any other private entity that controls a cemetery shall establish a cemetery perpetual care fund. This fund is separate from any permanent care and improvement fund for a community mausoleum on a cemetery's premises established under section 1348. The income from the cemetery perpetual care fund must be devoted to maintenance of the cemetery. This cemetery perpetual care fund must be created by depositing in the fund at least 30% of the proceeds received, in full and in installments, from the sale of lots and plots in the cemetery. This section does not apply to a family burying ground as described in section 1142. The sale of a cemetery lot or plot that is subject to a contract for the perpetual care of the lot or plot or for general cemetery maintenance is exempt from this section, as long as the contract requires that at least 30% of the proceeds from the sale of the lot or plot be set aside with the income from those funds to be used for cemetery maintenance. [1997, c. 140, §1 (NEW).]

#### SECTION HISTORY

1997, c. 140, §1 (NEW).

## **Subchapter 4: MAUSOLEUMS AND VAULTS**

## 13 §1341. Location

**1. Mausoleum, crematory or other structure.** A community mausoleum, community crematory or other community structure that holds or contains dead human bodies may only be erected in a cemetery that is at least 20 acres in size and has been in existence and used for burial for at least 2 years preceding the erection of the structure.

[ 2003, c. 421, §2 (AMD) .]

**2. Columbarium.** A columbarium that holds or contains the cremated remains of dead human bodies may only be erected in a cemetery that is at least 5 acres in size and has been in existence and used for burial for at least 2 years preceding the erection of the structure.

[ 1999, c. 620, §1 (NEW) .]

**3. Exception.** This section does not apply to a structure containing crypts erected or controlled by a church or religious society used for the remains of the clergy or dignitaries of the church or religious society.

[ 1999, c. 620, §1 (NEW) .]

### SECTION HISTORY

1999, c. 620, §1 (RPR). 2003, c. 421, §2 (AMD).

## 13 §1342. Approval of health authority

Before any person, firm or corporation shall build, construct or erect any such community mausoleum, vault or other burial structure entirely above ground or partly above and partly by excavation, with the intention and purpose that when so built, constructed and erected the same may contain 20 or more deceased human bodies for permanent interment, such person, firm or corporation shall present all plans for such construction to the Bureau of Health and shall obtain the written approval of such plans by said bureau before proceeding with the construction and erection of said mausoleum, vault or other burial structure.

## 13 §1343. Type of construction; examinations

Any such community mausoleum or other burial structure shall be constructed of such materials and workmanship as will insure its durability and permanency as well as the safety, convenience, comfort and health of the community in which it is located, as dictated and determined at the time by modern mausoleum construction and engineering science, and all crypts or catacombs placed in a mausoleum, vault or other burial structure as described in section 1342 shall be so constructed that all parts thereof may be readily examined by the Bureau of Health or any other health officer. Such crypts or catacombs, when used for the permanent interment of a deceased body or bodies, shall be so hermetically sealed that no offensive odor or effluvia may escape therefrom.

## 13 §1344. Supervisory control of health authorities

The Bureau of Health shall have supervisory control over the erection of any such community mausoleum and shall enforce compliance with the approved plans and specifications therefor. Such bureau shall determine the reasonable amount of compensation for such supervision, which compensation shall be paid by the cemetery association or other agency erecting such community mausoleum. No departure from the original plans and specifications shall be permitted, except upon approval of the said Bureau of Health evidenced in like manner and form as the approval of the original plans and specifications.

**13 §1345. No use before completion**

No community mausoleum, crypt or structure so erected shall be used for the purpose of depositing therein the remains of any dead body until the same, or a component section thereof, is fully completed and the permanent care and improvement fund required by section 1348 has been provided.

**13 §1346. No sale before completion**

No crypt in a community mausoleum shall be sold or offered for sale before said structure, or a component section thereof, is fully completed.

**13 §1347. Improper conditions; removal of bodies**

Whenever any mausoleum, vault, crypt or other structure containing one or more dead human bodies shall, in the opinion of the Bureau of Health, become a menace to public health and the owner thereof fails to remedy or remove the same to the satisfaction of the said bureau, any court of competent jurisdiction may order the owner of said structure to remove the dead body or bodies for interment in some suitable cemetery at the expense of such owner. If such owner cannot be found, such removal and interment shall be at the expense of the cemetery association in the cemetery in which such mausoleum, vault, crypt or other structure is situated.

**13 §1348. Permanent care and improvement fund**

Every cemetery association or other agency establishing, maintaining and operating a community mausoleum shall create and establish a permanent care and improvement fund, distinct and separate from the permanent care and improvement fund of its cemetery, the income whereof shall be devoted to the care, maintenance and improvement of such community mausoleum. Such permanent care and improvement fund shall be created by applying to such fund at least 30% of the proceeds received, in full and installments, from the sales of crypts in such mausoleum.

**13 §1349. -- custodian**

The treasurer of the cemetery in which such community mausoleum is situated shall be the custodian of the permanent care and improvement fund established therefor in section 1348 and every such fund shall be held, administered and invested in the manner provided by law for funds in savings banks of this State.

**Subchapter 5: PROTECTION AND PRESERVATION****HEADING: PL 1987, c. 326, §1 (new)****13 §1371. Approval for repair, maintenance and removal**

**1. Prior authorization or approval for repair, maintenance or removal.** Any person may repair, maintain or remove, subject to the restrictions of subsection 2, any tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or any portion or fragment of any such memorial, or any fence, railing, curb or other enclosure for the burial of the dead, after obtaining:

A. The authorization of the owner of the burial lot or a lineal descendent of the deceased buried there, if reasonable to locate and notify; or [1987, c. 326, §1 (NEW).]

B. The written approval of the municipality or, in the case of unorganized territory, the county in which the cemetery or burial ground is located. [1987, c. 326, §1 (NEW).]

[ 1987, c. 326, §1 (NEW) . ]

**2. Conditions on removal.** Removal of a tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or a portion or fragment of a memorial, is permitted only for the purpose of preservation. A tomb, monument, gravestone, marker or other structure placed or designed as a memorial to the dead, or a portion or fragment of a memorial, may not be removed from the confines of the cemetery or burial ground, except that a person who has obtained authorization or approval described in

subsection 1, paragraph A or B, may remove all or a portion of a memorial for a period of no longer than 6 months for the purpose of repair, restoration or preservation, but only when repair, restoration or preservation can not reasonably be accomplished on the site of the cemetery or burial ground. Prior to removal of the memorial, a notice must be submitted to the municipality, or to the county in the case of an unorganized territory, stating the location of the burial ground, the identification of the memorial, the authority requesting the removal, the site to which the memorial will be temporarily removed, the proposed date of removal and the proposed date of replacement in the burial ground.

[ 1997, c. 193, §1 (AMD) .]

#### SECTION HISTORY

1987, c. 326, §1 (NEW). 1997, c. 193, §1 (AMD).

### 13 §1371-A. Limitations on construction and excavation near burial sites

**1. Known burial sites.** Construction or excavation near a known burial site or within the boundaries of an established cemetery must comply with any applicable land use ordinance concerning burial sites or established cemeteries, whether or not the burial site or established cemetery is properly recorded in the deed to the property. In the absence of local ordinances, construction or excavation may not be conducted within 25 feet of a known burial site or within 25 feet of the boundaries of an established cemetery, whichever is the greater, whether or not the burial site or established cemetery is properly recorded in the deed to the property, except when the construction or excavation is performed pursuant to a lawful order or permit allowing the relocation of bodies or when necessary for the construction of a public improvement, as approved by the governing body of a city or town or, in the case of a state highway, by the Commissioner of Transportation. A municipality may enforce this subsection or any local ordinance concerning burial sites or established cemeteries pursuant to Title 30-A, section 4452, including the assessment of civil penalties.

In the event of any violation of this subsection, the Attorney General may seek to enjoin a further violation, in addition to any other remedy.

[ 2007, c. 112, §2 (AMD) .]

**2. Undocumented burial site.** The following procedures apply to construction or excavation that threatens an undocumented or unmarked burial site.

A. Whenever any person has knowledge that excavation or other construction activity may disturb or is disturbing a burial site, that person shall notify the local code enforcement officer by providing an affidavit and any other evidence of the location of the burial site. [1991, c. 412, §2 (NEW).]

B. Upon receipt of proper notification, the code enforcement officer shall issue a stop-work order to the person or entity responsible for the activity that threatens to disturb the burial site. [1991, c. 412, §2 (NEW).]

C. Before the construction activity may continue, the excavator or person who owns the land shall notify the Director of the Maine Historic Preservation Commission and the president of any local historical society of the probable location of the burial site. The excavator or the person who owns the land shall also arrange, at that person's own expense, for appropriate investigation to determine the existence and location of graves. [1991, c. 412, §2 (NEW).]

D. When the investigation is complete, if no human remains are discovered, the person responsible for the investigation shall notify the code enforcement officer of the results and the code enforcement officer shall revoke the stop-work order if satisfied that the investigation is complete and accurate. [1991, c. 412, §2 (NEW).]

E. If a burial site is discovered, excavation or construction may not continue except in accordance with subsection 1 and other applicable provisions of state law. [1991, c. 412, §2 (NEW).]

[ 1991, c. 412, §2 (NEW) .]

**3. Application.** This section applies only to burial sites and established cemeteries containing the bodies of humans.

[ 2007, c. 112, §3 (AMD) .]

#### SECTION HISTORY

1991, c. 412, §2 (NEW). 2007, c. 112, §§2, 3 (AMD).

### **13 §1372. Inventories of cemeteries or burial grounds**

A municipality or, in the case of unorganized territory, a county may contract with a cemetery association or historical society to undertake, complete and keep current an inventory of cemeteries and burial grounds located in that municipality or county. [1987, c. 326, §1 (NEW).]

#### SECTION HISTORY

1987, c. 326, §1 (NEW).

### **13 §1373. Authority to maintain**

A municipality may authorize any cemetery association or historical society to maintain any cemetery or burial ground owned, maintained or operated by the municipality. [1987, c. 326, §1 (NEW).]

#### SECTION HISTORY

1987, c. 326, §1 (NEW).

## Subchapter 6: USE OF UNOCCUPIED INTERMENT SPACES HEADING: PL 1987, c. 579 (new)

### **13 §1381. Use of unoccupied interment spaces**

If a cemetery lot, or portion of a cemetery lot, has not been used for interment purposes for 75 consecutive years and if the record owner of the lot has failed to provide for the care and maintenance of the lot for 75 consecutive years, then up to 1/2 of these unoccupied interment spaces within the lot may be used by the person, association, corporation or municipality which owns, maintains and operates the cemetery. If a portion of the interment spaces is occupied, the spaces on either side may not be used under this section. [1987, c. 579, (NEW).]

#### SECTION HISTORY

1987, c. 579, (NEW).

### **13 §1382. Notice of use**

Unoccupied interment spaces may not be used under section 1381 unless after the 75-year period the person, association, corporation or municipality which owns, maintains and operates the cemetery gives notice declaring that the unoccupied interment spaces within the lot may be used. [1987, c. 579, (NEW).]

#### SECTION HISTORY

1987, c. 579, (NEW).

### 13 §1383. Form of notice

**1. Contents.** The notice of use shall state that the cemetery lot, or portion of the lot, containing the unoccupied interment spaces has not been used for interment purposes for 75 consecutive years and that the record owner has failed to provide for the care and maintenance of the lot for 75 consecutive years.

[ 1987, c. 579, (NEW) .]

**2. Time limit.** The notice of use shall also state that use of the unoccupied spaces may begin one year from the time of serving the notice, unless the record owner or the record owner's heirs:

A. Deliver to the person, association, corporation or municipality having ownership or management of the cemetery written notice claiming ownership of or right to sepulture in the unoccupied interment spaces; and [1987, c. 579, (NEW) .]

B. Pay for the permanent care and maintenance of the cemetery lot, or portion of the lot, containing the unoccupied interment spaces. [1987, c. 579, (NEW) .]

[ 1987, c. 579, (NEW) .]

#### SECTION HISTORY

1987, c. 579, (NEW) .

### 13 §1384. Service of notice

The person, association, corporation or municipality having ownership or management of a cemetery shall choose that method of notice most reasonably anticipated to be effective. Personal service on the record owner in the same way service of process is made in accordance with Maine Rules of Civil Procedure shall be the preferred method. If that is not reasonably possible, personal service in the same manner shall be considered on the heirs or devisees. If that is not reasonably possible, the notice shall be served by delivery by certified mail, return receipt requested, to the record owner at the owner's last known address. If the record owner is deceased or his whereabouts are unknown, the notice shall be served by delivery by certified mail, return receipt requested, to the heirs or devisees of the record owner, to their last known address. If the address of the record owner or heirs or devisees of the record owner cannot be ascertained, then notice of the forfeiture shall be given by one publication in the official newspaper of the county in which the cemetery is located. In addition, the notice shall be recorded in the registry of deeds in the county where the cemetery lot is located. [1987, c. 579, (NEW) .]

#### SECTION HISTORY

1987, c. 579, (NEW) .

### 13 §1385. Resale of unoccupied interment spaces

A person, association, corporation or municipality having ownership or management of a cemetery, and which has acquired the right to use unoccupied interment spaces under section 1381, may sell the unoccupied interment spaces and convey the rights to those spaces. The proceeds from the sale of the unoccupied interment spaces shall be applied solely to the cemetery permanent care and improvement fund for the permanent care and maintenance of the cemetery lot containing the unoccupied interment spaces sold. [1987, c. 579, (NEW) .]

#### SECTION HISTORY

1987, c. 579, (NEW) .

### 13 §1386. Applicability

This subchapter does not apply to any cemetery lot containing interment spaces for which permanent care and maintenance has been provided. [1987, c. 579, (NEW).]

This subchapter does not apply to any cemetery of less than 1/2 of an acre. [1987, c. 579, (NEW).]

#### SECTION HISTORY

1987, c. 579, (NEW).

## Chapter 85: COOPERATIVES

### Subchapter 1: CONSUMER COOPERATIVES

#### Article 1: General Provisions

### 13 §1501. Definitions

In this subchapter, unless the subject matter requires otherwise:

**1. Association.** "Association" means a group enterprise legally incorporated under this subchapter and shall be deemed to be a nonprofit corporation.

**2. Cooperative basis.** "Cooperative basis" as applied to any incorporated or unincorporated group referred to in subsequent sections of this subchapter means:

A. That each member has one vote and only one vote, except as may be altered in the articles or bylaws by provisions for voting by member organizations;

B. That the maximum rate at which any return is paid on share or membership capital is limited to not more than 6%; and

C. That the net savings after payment, if any, of said limited return on capital and after making provision for such separate funds as may be required or specifically permitted by statute, articles or bylaws shall be allocated or distributed to member patrons, or to all patrons, in proportion to their patronage; or retained by the enterprise for the actual or potential expansion of its services or the reductions of its charges to the patrons, or for other purposes not inconsistent with its nonprofit character.

**3. Member.** "Member" means not only a member in a nonshare association but also a member in a share association.

**4. Net savings.** "Net savings" means the total income of an association minus the costs of operation.

**5. Savings returns.** "Savings returns" means the amount returned to the patrons in proportion to their patronage or otherwise in accordance with this subchapter.

### 13 §1502. Existing cooperative groups

Any group incorporated under the law of this State and operating on a cooperative basis must file articles of amendment as required by Title 13-C, and any unincorporated group operating on a cooperative basis in this State may elect by a vote of 2/3 of the members voting to secure the benefits of and be bound by this subchapter. The unincorporated group shall amend its bylaws to conform to the provisions of this subchapter and file articles of incorporation as required by section 1551. [2007, c. 231, §2 (AMD).]

#### SECTION HISTORY

2007, c. 231, §2 (AMD).

**13 §1503. Foreign corporations doing business in State**

A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state or District of Columbia wherein it is organized shall be entitled to do business in the State as a foreign cooperative corporation or association upon complying with law for foreign corporations doing business in this State.

**13 §1504. Laws not applicable**

No law of the State conflicting or inconsistent with any part of this subchapter shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed under this subchapter; nor shall any law of the State inappropriate to the purposes of such associations be so construed.

**13 §1505. Taxation**

Associations formed under this subchapter and foreign corporations and associations admitted to do business in the State and entitled to the benefits of this subchapter shall pay the annual license fee required of other business corporations and foreign corporations.

**13 §1506. Registration as dealers in securities**

Associations organized under this subchapter shall be subject to Title 32, chapter 13. The fee charged for registration or renewal shall be \$10.

**13 §1507. Limitation on return on capital**

The return upon capital shall not exceed 6% per year upon the paid-up capital and shall be noncumulative.

Total return upon capital distributed for any single period shall not exceed 50% of the net savings for that period.

**Article 2: Organization and Bylaws****13 §1551. Articles of incorporation; first meeting; fees**

Articles of incorporation for the formation of an association under this subchapter must be drawn up and filed in the same manner and under the same provisions as for organizing business corporations under Title 13-C, except where such procedure would be inconsistent with this subchapter. The same provision applies under Title 13-C to associations organized under this subchapter in respect to the first meeting of the corporation, and as to fees payable to the Secretary of State. [ 2007, c. 231, §3 (AMD). ]

**SECTION HISTORY**

2007, c. 231, §3 (AMD).

**13 §1552. Who may incorporate**

Any 3 or more natural persons or 2 or more associations may incorporate in this State under this subchapter.

**13 §1553. Purposes**

An association may be incorporated under this subchapter to engage in any one or more lawful mode or modes of acquiring, producing, building, operating, manufacturing, furnishing, exchanging or distributing any type or types of property, commodities, goods or services for the primary and mutual benefit of the patrons of the association, or their patrons, if any, as ultimate consumers.



### 13 §1554. Powers

An association shall have the capacity to act possessed by natural persons and the authority to do anything required or permitted by this subchapter and also:

1. **Continuation.** To continue as a corporation for the time specified in its articles;
2. **Seal.** To have a corporate seal and to alter the same at pleasure;
3. **Sue and be sued.** To sue and be sued in its corporate name;
4. **Bylaws.** To make bylaws for the government and regulation of its affairs;
5. **Acquire and dispose of property.** To acquire, own, hold, sell, lease, pledge, mortgage or otherwise dispose of any property incident to its purposes and activities;
6. **Own other corporations.** To own and hold membership in and share capital of other associations and any other corporations and any types of bonds or other obligations; and while the owner thereof to exercise all the rights of ownership;
7. **Borrow money; make contracts.** To borrow money, contract debts and make contracts, including agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis and other nonprofit groups;
8. **Operate within and without State.** To conduct its affairs within or without this State;
9. **Powers of ordinary business corporations.** To exercise in addition any power granted to ordinary business corporations, save those powers inconsistent with this subchapter; and
10. **Other powers.** To exercise all powers not inconsistent with this subchapter which may be necessary, convenient or expedient for the accomplishment of its purposes, and to that end, the powers enumerated in this section shall not be deemed exclusive.

### 13 §1555. Bylaws

Bylaws shall be adopted, amended or repealed by at least a majority vote of the members voting.

### 13 §1556. Meetings

Regular meetings shall be held as prescribed in the bylaws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least 3/10 of the membership, in which case it shall be the duty of the secretary to call such meeting to take place within 30 days after such demand.

## Article 3: Voting

### 13 §1601. One member, one vote

Each member of an association shall have one and only one vote, except that where an association includes among its members any number of other associations or groups organized on a cooperative basis, the voting rights of such member associations or groups may be as prescribed in the articles or bylaws.

No voting agreement or other device to evade the one-member-one-vote rule shall be enforceable by a civil action.

### 13 §1602. No proxies

*(REPEALED)*

SECTION HISTORY

1997, c. 7, §1 (RP).

### 13 §1603. Application of provisions to voting by delegates

If an association has provided for voting by delegates, any provision of this subchapter referring to votes cast by the members shall apply to votes cast by delegates; but this shall not permit delegates to vote by mail.

### 13 §1604. Voting by proxy

Unless specified otherwise in an association's articles of incorporation or bylaws, members are permitted to vote by proxy. [1997, c. 7, §2 (NEW).]

**1. Appointment of agent.** The appointment of one or more agents to vote on behalf of the member must be by written proxy executed by the member or by the member's duly authorized attorney-in-fact. A telegram, cablegram or facsimile appearing to have been transmitted may be considered to satisfy this requirement.

[ 1997, c. 7, §2 (NEW) .]

**2. Duration.** A proxy is valid for only 11 months from the date of its execution, unless otherwise expressly and conspicuously provided in the proxy.

[ 1997, c. 7, §2 (NEW) .]

**3. Revocation.** A proxy is revocable at the pleasure of the person executing it. A proxy may be revoked, without limitation, by an instrument that in terms revokes the proxy or by a subsequent duly executed proxy. The authority of a proxy holder is not revoked by death or supervening incapacity of the member executing the proxy unless, before the authority is exercised, written notice of death or incapacity is filed with the corporate officer responsible for maintaining the list of members. The presence at a members' meeting of the member appointing a proxy does not of itself revoke the proxy. A member may revoke an appointment of a proxy by giving notice to the corporate officer responsible for maintaining a list of members or by giving notice in open meeting of the members.

[ 1997, c. 7, §2 (NEW) .]

#### SECTION HISTORY

1997, c. 7, §2 (NEW).

## Article 4: Members

### 13 §1641. Eligibility and admission to membership

Any natural person, association, incorporated or unincorporated group organized on a cooperative basis or any nonprofit group shall be eligible for membership in an association, if it has met the qualifications for eligibility, if any, stated in the articles or bylaws and shall be deemed a member upon payment in full for the par value of the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership.

### 13 §1642. Subscribers

Any natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or bylaws may determine whether, and the conditions under which, any voting rights or other rights of membership shall be granted to subscribers.

### 13 §1643. Liability of members

Members shall not be jointly or severally liable for any debts of the association, nor shall a subscriber be so liable except to the extent of the unpaid amount on the shares or membership certificates subscribed by him. No subscriber shall be released from such liability by reason of any assignment of his interest in the shares or membership certificate, but shall remain jointly and severally liable with the assignee until the shares or certificates are fully paid-up.

### 13 §1644. Expulsion

A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed thereof in writing at least 10 days in advance of the meeting, and shall have an opportunity to be heard in person or by counsel at said meeting. On decision of the association to expel a member, the board of directors shall purchase the member's holdings at par value, if and when there are sufficient reserve funds.

### 13 §1645. Allocation and distribution of net savings

At least once a year the members or the directors, or both, as the articles or bylaws may provide, shall apportion the net savings of the association in the following order.

**1. Reserve fund.** Not less than 10% shall be placed in a reserve fund until such time as the fund shall equal at least 50% of the paid-up capital; and such fund may be used in the general conduct of the business. The amounts apportioned to the reserve fund shall be allocated on the books of the association on a patronage basis, or in lieu thereof, the books and records of the association shall afford a means for doing so in order that upon dissolution or earlier, if deemed advisable, such reserves may be returned to the patrons who have contributed the same, subject to the limitations of the section on dissolution herein;

**2. Return upon capital.** A return upon capital, within the limitations of sections 1507, 1641 to 1644, 1691 and 1692, may be paid upon share capital; but such return upon capital may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities, including in the latter the amount of the capital stock, after deducting from such aggregate of the assets the amount by which such aggregate was increased by unrealized appreciation in value or revaluation of fixed assets.

**3. Educational fund.** A portion of the remainder, as determined by the articles or bylaws, shall be allocated to an educational fund to be used in teaching cooperation, and a portion may be allocated to funds for the general welfare of the members of the association.

**4. Patronage.** The remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage:

A. In the case of a member patron, his proportionate amount of savings returns shall be distributed to him unless he agrees that the association should credit the amount to his account toward the purchase of an additional share or shares or additional membership capital;

B. In the case of a subscriber patron, his proportionate amount of savings returns may, as the articles or bylaws provide, be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid;

C. In the case of a nonmember patron, his proportionate amount of savings returns shall be set aside in a general fund for such patrons and shall be allocated to individual nonmember patrons only upon request and presentation of evidence of the amount of their patronage. Any savings returns so allocated shall be credited to such patron toward payment of the minimum amount of share or membership capital necessary for membership, or may be paid to such patron. When a sum equal to this amount has been accumulated and so credited at any time within a period of time specified in the bylaws, such patron shall be deemed and become a member of the association if he so agrees or requests and complies with any provisions in the bylaws for admission to membership. The certificates of shares or membership to which he is entitled shall then be issued to him;

D. If within any periods of time specified in the articles or bylaws:

- (1) Any subscriber has not accumulated and paid in the amount of capital subscribed for; or
- (2) Any nonmember patron has not accumulated in his individual account the sum necessary for membership; or
- (3) Any nonmember patron has accumulated the sum necessary for membership, but neither requests nor agrees to become a member or fails to comply with the provisions of the bylaws, if any, for admission to membership;

then the amounts so accumulated or paid in shall go to the educational fund, and thereafter no member or other patron shall have any rights in said paid-in capital or accumulated savings returns as such. Nothing in this section shall prevent an association operating under this subchapter, which is engaged in rendering services, from disposing of the net savings from the rendering of such services in such manner as to lower the fees charged for services or otherwise to further the common benefit of the members. Nothing in this section shall prevent an association from adopting a system whereby the payment of savings returns, which would otherwise be distributed, shall be deferred for a fixed period of months or years; nor from adopting a system whereby the savings returns distributed shall be partly in cash, partly in shares, such shares to be retired at a fixed future date in the order of the serial number or date of issue.

## Article 5: Shares

### 13 §1691. Issuance and contents

No certificate for share or membership capital shall be issued until the par value thereof has been paid for in full. There shall be printed upon each certificate issued by an association a full or condensed statement of the requirements of sections pertaining to one-member-one-vote, no proxy and transfer of shares and membership.

### 13 §1692. Transfer of shares and membership; withdrawal

If a member desires to withdraw from the association or dispose of any or all of his holdings, the directors shall have the power to purchase such holdings by paying him the par value of any or all of the holdings offered. The directors shall then reissue or cancel the same. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

If the association fails, within 60 days of the original offer, to purchase all or any part of the holdings offered, the member may dispose of the unpurchased interest elsewhere, subject to the approval of the transferee by a majority vote of the directors. Any would-be transferee not approved by the directors may appeal to the members at their first regular or special meeting thereafter, and the action of the meeting shall be final. If such transferee is not approved, the directors shall exercise their power to purchase, if and when such purchase can be made without jeopardizing the solvency of the association.

## Article 6: Dissolution

### 13 §1731. Procedure

An association may, at any regular or special meeting legally called, be directed to dissolve by a vote of 2/3 of the entire membership. By a vote of a majority of the members voting, 3 of their number shall be designated as trustees, who shall, on behalf of the association and within a time fixed in their designation or within any extension thereof, liquidate its assets and shall distribute them in the manner set forth in this section. In case of any dissolution of an association, its assets shall be distributed in the following manner and order:

1. **Paying debts and expenses.** By paying its debts and expenses;

**2. Amounts paid by members.** By returning to the members the par value of their shares or of their membership certificates, returning to the subscribers the amounts paid on their subscriptions and returning to the patrons the amount of savings returns credited to their accounts toward the purchase of shares or membership certificates; and

**3. Paying patrons or giving to nonprofit associations.** By distributing any surplus in either or both of the following ways as the articles may provide:

- A. Among those patrons who have been members or subscribers at any time during the past 6 years, on the basis of their patronage during that period; or
- B. As a gift to any consumers' cooperatives association or other nonprofit enterprise which may be designated in the articles.

## Subchapter 1-A: COOPERATIVE AFFORDABLE HOUSING OWNERSHIP HEADING: PL 1993, c. 300, §1 (new)

### 13 §1741. Short title

This subchapter may be known and cited as the "Maine Cooperative Affordable Housing Ownership Act." [1993, c. 300, §1 (NEW).]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1742. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 300, §1 (NEW).]

**1. Conversion.** "Conversion" means a change in character of residential real property from a rental to an ownership basis. Creation of a cooperative affordable housing corporation to own property formerly rented for dwelling purposes is considered such a change in character.

[ 1993, c. 300, §1 (NEW) .]

**2. Cooperative affordable housing corporation.** "Cooperative affordable housing corporation" means a domestic corporation that is organized under or elects to be governed by the provisions of this subchapter.

[ 1993, c. 300, §1 (NEW) .]

**3. Cooperative interest.** "Cooperative interest" means the ownership interest in a cooperative affordable housing corporation that is evidenced by a membership share.

[ 1993, c. 300, §1 (NEW) .]

**4. Cooperative property.** "Cooperative property" means the real and personal property, including mobile and manufactured homes, in this State owned or leased by a cooperative affordable housing corporation for the primary purpose of residential use.

[ 1993, c. 300, §1 (NEW) .]

**5. Lender.** "Lender" includes, but is not limited to, the following institutional lenders whose policies and procedures are subject to governmental supervision:

- A. A federal, state or local housing finance agency; [1993, c. 300, §1 (NEW).]

B. A bank, including savings and loan associations or insured credit unions; [1993, c. 300, §1 (NEW) .]

C. Insurance companies; [1993, c. 300, §1 (NEW) .]

D. Pension and profit-sharing funds or trusts; or [1993, c. 300, §1 (NEW) .]

E. Any combination of the lenders listed in paragraphs A to D. [1993, c. 300, §1 (NEW) .]

"Lender" also includes a community loan fund or similar nonprofit lender to housing projects.

[ 1993, c. 300, §1 (NEW) .]

**6. Limited equity cooperative.** "Limited equity cooperative" means a cooperative affordable housing corporation organized in accordance with section 1754.

[ 1993, c. 300, §1 (NEW) .]

**7. Limited equity formula.** "Limited equity formula" means a rule or method for determining the transfer value of a share in a limited equity cooperative.

[ 1993, c. 300, §1 (NEW) .]

**8. Low income.** "Low income" means income that is less than or equal to 80% of median income for the area, adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under this subchapter and comparable to standards of the federal Department of Housing and Urban Development in existence on the effective date of this section.

[ 1993, c. 300, §1 (NEW) .]

**9. Member.** "Member" means a person who owns a cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

**10. Moderate income.** "Moderate income" means income that is less than or equal to 100% of median income for the area, adjusted for family size, in accordance with federal standards generally accepted at the time of incorporation under this subchapter and comparable to standards of the federal Department of Housing and Urban Development in existence on the effective date of this section.

[ 1993, c. 300, §1 (NEW) .]

**11. Proprietary lease.** "Proprietary lease" means an agreement with a cooperative affordable housing corporation governing a member's right to occupancy under which a member has an exclusive possessory interest in a unit.

[ 1993, c. 300, §1 (NEW) .]

**12. Resident.** "Resident" means any occupant of space owned by the cooperative affordable housing corporation.

[ 1993, c. 300, §1 (NEW) .]

**13. Share loan.** "Share loan" means an agreement entered into by a member and a lender to finance the member's acquisition of the member's cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

**14. Subscription agreement.** "Subscription agreement" means a written agreement between a prospective member and a cooperative affordable housing corporation for the purchase and sale of a cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

**15. Unit.** "Unit" means a portion of the cooperative property leased for exclusive occupancy by a member under a proprietary lease or leased to a tenant by lease agreement.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1743. Application

**1. Nonprofit.** Cooperative affordable housing corporations are considered nonprofit inasmuch as they are not organized to make a profit for themselves or for their members.

[ 1993, c. 300, §1 (NEW) .]

**2. Applicability.** Except as otherwise provided in this subchapter, cooperative affordable housing corporations in the State are governed by and have all the rights, privileges and powers established in Title 13-C. Without limiting the applicability of federal law to any other corporation or unincorporated association that provides housing on a cooperative basis, it is the intent that cooperative affordable housing corporations governed by this subchapter qualify as cooperative housing corporations under federal law.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §27 (COR) .]

**3. Election.** Any corporation governed by Title 13-C may elect by a vote of 2/3 of the members voting to secure the benefits of and be bound by this subchapter and must then amend its articles of incorporation to conform with this subchapter.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §27 (COR) .]

**4. Exemption.** Any corporation or unincorporated association that does not elect to be governed under this subchapter may not be restricted from providing housing on a cooperative basis whether as a consumer cooperative under subchapter I or otherwise.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B27 (COR).

### 13 §1744. Name; use of "cooperative"

A person, firm, corporation or association, domestic or foreign, commencing business in this State after the effective date of this section may not use the word "cooperative" or "co-op" as a part of its corporate name unless it has complied with this subchapter or any other law of this State relating to cooperative associations. A foreign association organized under and complying with the cooperative laws of the state in which it was created is entitled to use the term "cooperative" or "co-op" in this State if it has obtained the privilege of doing business or carrying on activities in this State. [1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1745. Property classification of cooperative interest

**1. Personal property.** A cooperative interest is personal property.

[ 1993, c. 300, §1 (NEW) .]

**2. Nonseverable interest.** The possessory interest evidenced by a proprietary lease is a part of and may not be severed from a cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1746. Perfection of security interests in cooperative interests

**1. Creation of security interest.** Security interests in shares of cooperative affordable housing corporations may be created, perfected and enforced in the same manner as security interests in certificated securities under Title 11, Articles 8-A and 9-A. A lender may perfect such a security interest by possession of shares or by any other method under which security interests in certificated securities may be perfected pursuant to Title 11, Article 8-A.

[ 1999, c. 699, Pt. D, §9 (AMD); 1999, c. 699, Pt. D, §30 (AFF) .]

**2. Notation of secured party.** Upon the request of a secured party, a cooperative affordable housing corporation shall note on its books and records the interest of the secured party in a cooperative interest. Such a request or notation is not required to perfect a security interest in a cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW). 1999, c. 699, §D9 (AMD). 1999, c. 699, §D30 (AFF).

### 13 §1747. Articles of incorporation; minimum requirements

Articles of incorporation of a cooperative affordable housing corporation must contain the following provisions in addition to those required by Title 13-C: [ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §28 (COR).]

**1. One class of stock.** A statement that the cooperative affordable housing corporation has only one class of stock;

[ 1993, c. 300, §1 (NEW) .]

**2. Restrictions on transfers.** A statement of restrictions, if any, upon transfers of shares;

[ 1993, c. 300, §1 (NEW) .]

**3. Rate of dividend.** The rate of dividend, if any, allocable to membership shares, which may not exceed 6% per annum on invested capital;

[ 1993, c. 300, §1 (NEW) .]



**4. Acquire membership.** The conditions, if any, under which the cooperative affordable housing corporation reserves the right to acquire membership shares;

[ 1993, c. 300, §1 (NEW) . ]

**5. Distribution upon dissolution.** The basis for distribution of assets in the event of dissolution;

[ 1993, c. 300, §1 (NEW) . ]

**6. Allocation of ownership and voting interests.** The method of allocation of ownership and voting interests in the cooperative affordable housing corporation; and

[ 1993, c. 300, §1 (NEW) . ]

**7. Right of first refusal.** The conditions, if any, under which the cooperative affordable housing corporation has a right of first refusal upon proposed transfers of cooperative interest.

[ 1993, c. 300, §1 (NEW) . ]

#### SECTION HISTORY

1993, c. 300, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B28 (COR).

### 13 §1748. Organizational meeting

Within 6 months after the first conveyance of a share to a member, an organizational meeting of the cooperative affordable housing corporation must be held for the purpose of adopting bylaws, electing officers and transacting such other business as may come before the meeting. [1993, c. 300, §1 (NEW) . ]

#### SECTION HISTORY

1993, c. 300, §1 (NEW) .

### 13 §1749. Membership

**1. Capital stock.** A cooperative affordable housing corporation must be organized on a membership basis with capital stock.

[ 1993, c. 300, §1 (NEW) . ]

**2. Requirements.** A cooperative affordable housing corporation must have one class of stock and one class of members. The designation, qualifications, requirements, method of acceptance and incidents of membership must be set forth in the articles of incorporation or the bylaws.

[ 1993, c. 300, §1 (NEW) . ]

**3. Transfers.** A member may not transfer membership except as permitted in the articles of incorporation or the bylaws.

[ 1993, c. 300, §1 (NEW) . ]

**4. Termination.** The articles of incorporation or the bylaws may provide for termination of membership and the conditions and terms of termination.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1750. Bylaws; minimum requirements

The bylaws of a cooperative affordable housing corporation must contain procedures under which the cooperative affordable housing corporation's possessory remedy will be pursued in the event of a member's default and the rights of a defaulting member, in accordance with section 1755, subsection 2. [1993, c. 300, §1 (NEW).]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1751. Membership shares; requirements

A cooperative affordable housing corporation shall issue shares to its members as evidence of their ownership of a cooperative interest. The shares must be in a form prescribed in the articles of incorporation or bylaws of the cooperative affordable housing corporation. Restrictions upon transfers of shares must be noted on the face of the certificates representing shares. Membership shares may not be issued under this section and proprietary leases may not be issued under section 1755 before filing of the articles of incorporation as a cooperative affordable housing corporation. [1993, c. 300, §1 (NEW).]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1752. Voting

**1. One vote per member.** Except as provided in subsection 5, the votes in a cooperative affordable housing corporation must be assigned so that each member has one vote.

[ 1993, c. 300, §1 (NEW) .]

**2. Nonmembers on board.** Nonmembers may be elected by the membership of the cooperative affordable housing corporation to serve on the board of directors of the cooperative affordable housing corporation, except that no more than 1/3 of the directors may be nonmembers.

[ 1993, c. 300, §1 (NEW) .]

**3. Proxy voting.** Voting by proxy may be permitted in cooperative affordable housing corporations, subject to the following limitations:

A. Proxies must be assigned to members; and [1993, c. 300, §1 (NEW) .]

B. No more than one proxy may be voted by any member on any question. [1993, c. 300, §1 (NEW) .]

[ 1993, c. 300, §1 (NEW) .]

**4. Absentee ballots.** Voting by absentee ballots may be permitted in cooperative affordable housing corporations.

[ 1993, c. 300, §1 (NEW) . ]

**5. Alternative voting scheme.** Notwithstanding subsection 1, a cooperative affordable housing corporation not organized as a limited equity cooperative pursuant to section 1754 may adopt in its articles of incorporation or bylaws a voting scheme other than one vote per member, except that decisions to merge a cooperative affordable housing corporation with another entity, to dissolve it or to amend its articles of incorporation or bylaws must be made on the basis of one vote per member.

[ 1993, c. 300, §1 (NEW) . ]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1753. Merger; consolidation

A cooperative affordable housing corporation may not consolidate or merge with another corporation other than a cooperative affordable housing corporation. Two or more cooperative affordable housing corporations may consolidate or merge in accordance with Title 13-C, chapter 11. Cooperative affordable housing corporations may not engage in mergers or consolidation if such an action is undertaken for the purpose of circumventing section 1754, 1757, 1758 or 1761. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §29 (COR).]

#### SECTION HISTORY

1993, c. 300, §1 (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B29 (COR).

### 13 §1754. Limited equity cooperatives

A cooperative affordable housing corporation may organize as a limited equity cooperative in order to fulfill the public purpose of providing and preserving housing for persons and households of low income and moderate income at the time that they purchase their memberships. In addition to safeguarding the public purpose, a limited equity cooperative must meet the following requirements. [1993, c. 300, §1 (NEW) . ]

**1. Sale of interest based on limited equity formula.** The articles of incorporation must require that cooperative interests be sold at no more than a transfer value determined by a limited equity formula contained in the articles. That value must be consistent with the object of maintaining long-term affordability of cooperative interests for persons or households of low income and moderate income.

[ 1993, c. 300, §1 (NEW) . ]

**2. Maintenance of affordability.** A limited equity formula, once established by a cooperative affordable housing corporation in its articles of incorporation, may be amended only if that amendment does not make the cooperative membership unaffordable for classes of low-income or moderate-income households for which the cooperative affordable housing corporation was originally incorporated. A cooperative affordable housing corporation once organized under this section may not reorganize as other than a limited equity cooperative without first dissolving.

[ 1993, c. 300, §1 (NEW) . ]

**3. Uphold public purpose.** A limited equity cooperative may not sell all or substantially all of its assets if such sale is intended to circumvent the public purpose of this section.

[ 1993, c. 300, §1 (NEW) .]

**4. Right to repurchase.** The articles of incorporation must require that the cooperative affordable housing corporation has the first right to repurchase a member's cooperative interest.

[ 1993, c. 300, §1 (NEW) .]

**5. Limit on capital distribution.** The articles of incorporation must require that the total distribution of capital to a member not exceed the transfer value.

[ 1993, c. 300, §1 (NEW) .]

**6. Distribution upon dissolution.** The articles of incorporation must require that upon dissolution of the cooperative affordable housing corporation any assets remaining after retirement of corporate debts and distribution to members must be distributed to a charitable organization described in the Internal Revenue Code of 1986, Section 501(c)(3), as amended, a public agency or another limited equity cooperative whose formula for determining transfer value is no less restrictive than that of the cooperative affordable housing corporation being dissolved.

[ 1993, c. 300, §1 (NEW) .]

**7. Sublease limitations.** The articles of incorporation must require that a sublease of a unit may not require monthly payments by the sublessee in excess of 100% of the monthly payments for the unit required in the proprietary lease.

[ 1993, c. 300, §1 (NEW) .]

**8. Minimum occupancy requirement.** At least 80% of a limited equity cooperative's occupied units must be occupied by members.

[ 1993, c. 300, §1 (NEW) .]

**9. Residents only.** Voting authority may not be assigned to nonresidents, except for any assignment as security for a share loan or as security for a loan for construction, acquisition or permanent financing of cooperative property.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1755. Proprietary lease

Every member of a cooperative affordable housing corporation is entitled to receive from the cooperative affordable housing corporation a written proprietary lease that must include the following: [ 1993, c. 300, §1 (NEW) .]

**1. Personal property security interest.** A provision that the collateral for a loan against the member's cooperative interest is in the nature of a personal property security interest and any default of such a loan entitles the lender to treat the default in the same manner as a default of a loan secured by personal property;

[ 1993, c. 300, §1 (NEW) .]

**2. Remedy for default.** A description of the cooperative affordable housing corporation's possessory remedy in the event of default. Good cause is required for termination of the right of occupancy. "Good cause" includes nonpayment of loans, fees, costs or assessments pertaining to the cooperative interest or material violation of bylaws, rules or proprietary lease that continues following reasonable notice and reasonable opportunity to cure the alleged material violations; and

[ 1993, c. 300, §1 (NEW) .]

**3. Maintenance and carrying charges.** Provisions for determining maintenance and carrying charges for the unit.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### **13 §1756. Offering of cooperative interests; subscription agreement; disclosures required**

**1. Materials provided to prospective members.** In conjunction with the offering of cooperative interests to prospective members, a person or entity offering to sell cooperative interests shall provide to a purchaser prior to the execution of a subscription agreement by the purchaser a copy of the proposed or adopted articles of incorporation and bylaws of the cooperative affordable housing corporation, a subscription agreement or sales agreement, a proposed proprietary lease and the most current corporate financial statements, if any exist.

[ 1993, c. 300, §1 (NEW) .]

**2. Contents of agreements.** The subscription agreement or sales agreement must contain:

A. Provisions detailing the cost of acquisition of a cooperative interest, the rights and privileges of membership in the cooperative affordable housing corporation and terms and conditions of occupancy of a unit in the cooperative affordable housing corporation; [1993, c. 300, §1 (NEW).]

B. Provisions, if any, under which the subscription agreement or sales agreement is subordinated to other agreements or otherwise encumbered; [1993, c. 300, §1 (NEW).]

C. Provisions for cancellation of the agreement by either party; and [1993, c. 300, §1 (NEW) .]

D. A legally sufficient description of the property. [1993, c. 300, §1 (NEW).]

[ 1993, c. 300, §1 (NEW) .]

**3. Cancellation.** The subscriber or purchaser has the right to cancel the subscription agreement or sales agreement without penalty upon provision of written notice to the offeror within 10 days of the date of signing the agreement. In the event of a cancellation, all money paid by the subscriber or purchaser to the offeror must be returned to the subscriber or purchaser by the offeror within 14 days of receipt of the notice of cancellation. The offeror shall inform the subscriber or purchaser in writing of the right of cancellation.

[ 1993, c. 300, §1 (NEW) .]

Notwithstanding any other provision of law to the contrary, the offer of membership, shares or other ownership interests in a cooperative affordable housing corporation or any other corporation or unincorporated association organized for the primary purpose of providing housing on a cooperative basis as a consumer cooperative under subchapter 1 or otherwise is not the offer of a security pursuant to Title 32, chapter 135 or any other provision of law. [2005, c. 65, Pt. C, §7 (AMD).]

**SECTION HISTORY**

1993, c. 300, §1 (NEW). 2005, c. 65, §C7 (AMD).

**13 §1757. Consumer protection; enforcement**

Failure or neglect to provide to purchasers the documents and disclosures required by section 1756 is considered a violation of Title 10, chapter 206. [1993, c. 300, §1 (NEW).]

**SECTION HISTORY**

1993, c. 300, §1 (NEW).

**13 §1758. Dissolution**

By vote of at least 80% of its members or any larger percentage specified in the articles of incorporation or bylaws, a cooperative affordable housing corporation may vote to dissolve and terminate its proprietary leases. In addition, a cooperative affordable housing corporation must file articles of dissolution and pay the fee for dissolution as required for business corporations under Title 13-C. [2007, c. 231, §4 (AMD).]

**SECTION HISTORY**

1993, c. 300, §1 (NEW). 2007, c. 231, §4 (AMD).

**13 §1759. Loans**

Any lender is authorized to make loans secured by shares in a cooperative affordable housing corporation, including limited equity cooperatives. For purposes of Title 9-A, section 1-202, subsection (8), a loan secured by shares of a cooperative affordable housing corporation must be considered a loan secured by a mortgage on real estate. [1993, c. 300, §1 (NEW).]

**SECTION HISTORY**

1993, c. 300, §1 (NEW).

**13 §1760. Net income; apportionment**

**1. Apportionment.** Subject to subsection 2, the board of directors of a cooperative affordable housing corporation may apportion annually the remainder of its net income in one or more of the following ways:

A. As a reserve fund for the general operation of the cooperative affordable housing corporation; or  
[1993, c. 300, §1 (NEW).]

B. As a dividend not to exceed 6% per annum on invested capital. [1993, c. 300, §1 (NEW).]

[ 1993, c. 300, §1 (NEW) .]

**2. Cost reduction.** This section does not prevent a cooperative affordable housing corporation from disposing of its net income by reducing the cost of facilities or services or by applying the net income otherwise for the common benefit of its members.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1761. Nondiscrimination

Title 5, chapter 337, subchapter IV applies to all cooperative affordable housing corporations in the State. [1993, c. 300, §1 (NEW).]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

### 13 §1762. Property tax provisions

**1. Property not tax-exempt.** Notwithstanding any provision of law to the contrary, cooperative property does not qualify for property tax exemption under Title 36, section 652, subsection 1, paragraph A.

[ 1993, c. 300, §1 (NEW) .]

**2. Eligibility for property tax relief.** Without limiting the eligibility of members of any other corporation or unincorporated association that provides housing on a cooperative basis for tax relief, a member of a cooperative affordable housing corporation is eligible for any relief afforded to property taxpayers under law.

[ 1993, c. 300, §1 (NEW) .]

**3. Homestead exemption from attachment and execution.** Title 14, section 4422 applies to cooperative interests in cooperative affordable housing corporations.

[ 1993, c. 300, §1 (NEW) .]

#### SECTION HISTORY

1993, c. 300, §1 (NEW).

## Subchapter 2: AGRICULTURAL MARKETING AND BARGAINING

### Article 1: General Provisions

#### 13 §1771. Short title

This subchapter may be cited as the "Uniform Agricultural Cooperative Association Act".

#### 13 §1772. Policy

It is the declared policy of this State, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective associations under the control of such producers, and to that end this subchapter should be liberally construed.

#### 13 §1773. Uniformity of interpretation

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

## 13 §1774. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 541, Pt. A, §133 (AMD).]

**1. Agricultural products.** "Agricultural products" include floricultural, horticultural, viticultural, forestry, nut, dairy, livestock, poultry, bee and any farm products.

**2. Articles.** "Articles" means the articles of incorporation.

**3. Association.** "Association" means a corporation organized under this subchapter, or a similar domestic corporation, or a foreign association or corporation if authorized to do business in this State, organized under any general or special Act as a cooperative association for the mutual benefit of its members, as agricultural producers, and which confines its operations to purposes authorized by this subchapter and restricts the return on the stock or membership capital and the amount of its business with nonmembers to the limits placed thereon by this subchapter for associations organized hereunder.

[ 1993, c. 316, §10 (AMD) .]

**4. Board.** "Board" means the board of directors.

**5. Domestic association.** "Domestic association" means an association or corporation formed under the laws of this State.

**6. Foreign association.** "Foreign association" means an association or corporation not formed under the laws of this State.

**6-A. Independent agricultural contractor.** "Independent agricultural contractor" means a person who grows under contract as his primary activity or as part of a general agricultural activity.

[ 1971, c. 502, (NEW) .]

**6-B. Marketing contract.** "Marketing contract" includes a contract related to the marketing of agricultural products and a contract by an independent agricultural contractor for furnishing services and facilities in raising or growing agricultural products.

[ 1971, c. 502, (NEW) .]

**7. Member.** "Member" includes the holder of a membership in an association without capital stock and the holder of common stock in an association organized with capital stock.

**8. Person.** "Person" includes an individual, a partnership, a corporation and an association.

**8-A. Producers.** "Producers" includes independent agricultural contractors.

[ 1971, c. 502, (NEW) .]

**9. Subchapter.** "This subchapter" means the "Uniform Agricultural Cooperative Association Act."

### SECTION HISTORY

1971, c. 502, (AMD). 1979, c. 541, §A133 (AMD). 1993, c. 316, §10 (AMD).



### 13 §1775. Existing associations

Any existing association formed under any law of this State as a cooperative agricultural association may elect, by a vote of 2/3 of the members voting thereon at a legal meeting, to secure the benefits of and be bound by this subchapter, and shall thereupon amend such of its articles and bylaws as are not in conformity with this subchapter. A certificate of the action taken at such meeting shall be filed with the Secretary of State within 20 days after such meeting, and a fee of \$5 shall be paid.

### 13 §1776. Use of word "cooperative"

No person, firm, corporation or association, domestic or foreign, hereafter commencing business in this State shall use the word "cooperative" as a part of its corporate or business name unless it has complied with this subchapter or some other statute of this State relating to cooperative associations. A foreign association organized under and complying with the cooperative law of the state of such association's creation shall be entitled to use the term "cooperative" in this State if it has obtained the privilege of doing business in this State.

### 13 §1777. Foreign associations

A foreign corporation that can qualify as an association, as defined in section 1774, may be authorized to do business in this State under this subchapter by complying with the laws relating to foreign corporations doing business in the State. It shall pay the same fees and charges as domestic associations. Upon such compliance it shall have all the rights and privileges of like domestic associations.

### 13 §1778. Inducing breach of contract; spreading false reports; penalty

#### 1. Violation. A person may not:

A. Knowingly induce a member or stockholder of an association to violate the member's or stockholder's marketing contract with the association; [2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Knowingly attempt to induce a member or stockholder of an association to violate the member's or stockholder's marketing contract with the association; or [2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Intentionally or knowingly spread false reports about the finances or management of the association. [2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[ 2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Penalties.** A person or corporation whose employees or officers violate this section commits a civil violation for which a fine of not less than \$100 and not more than \$1,000 may be adjudged for each such offense. In addition, the person or corporation is subject to a civil penalty of \$500 for each such offense, to be recovered in a civil action by the aggrieved association.

[ 2003, c. 452, Pt. G, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

#### SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §G1 (RPR).

### 13 §1779. License fees

Domestic associations and foreign associations admitted to do business in this State shall pay an annual license fee of \$10, which shall be in lieu of all other corporation and franchise taxes.

### 13 §1780. Savings clause

This subchapter shall not impair or affect any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to July 21, 1945, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if this subchapter had not been passed.

### 13 §1781. Nonprofit associations

An association is deemed "nonprofit," as the association is not organized to make a profit for that association or for its members, but only for its members as producers of agricultural products. [1993, c. 316, §11 (NEW).]

#### SECTION HISTORY

1993, c. 316, §11 (NEW).

### 13 §1782. General corporation law; applicability

The provisions of the laws related to business corporations and all powers and rights under those laws apply to associations, except when those provisions are in conflict with or inconsistent with the express provisions of this chapter. [1993, c. 316, §11 (NEW).]

#### SECTION HISTORY

1993, c. 316, §11 (NEW).

## Article 2: Organization and Powers

### 13 §1821. Incorporators

Five or more adult persons, engaged in agriculture as bona fide producers of agricultural products, or 2 or more associations of such producers, may form an association with or without capital stock.

### 13 §1822. Purposes

Such association may be organized for the purpose of engaging in any cooperative activity for producers of agricultural products in connection with:

**1. Producing, selling, etc.** Producing, assembling, marketing, buying or selling agricultural products, or harvesting, preserving, drying, processing, manufacturing, blending, canning, packing, ginning, grading, storing, warehousing, handling, shipping or utilizing such products, or manufacturing or marketing the by-products thereof;

**2. Equipment, feed, fertilizer, etc.** Manufacturing, buying for or supplying to its members and other patrons, machinery, equipment, feed, fertilizer, fuel, seeds and other agricultural and household supplies;

**3. Business or educational services.** Performing or furnishing business or educational services, on a cooperative basis, for or to its members and other patrons; or

**4. Financing.** Financing any of the above enumerated activities for its members, subject to the limitations of Title 9-B, section 466.

[ 1977, c. 564, §66 (AMD) .]

#### SECTION HISTORY

1977, c. 564, §66 (AMD).

## 13 §1823. Articles of incorporation

Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least 3 of them if natural persons, and by the president and secretary if associations, before an officer authorized to take acknowledgments, and shall state:

**1. Name.** The name of the association which may or may not include the word "cooperative";

**2. Purposes.** Its purposes;

**3. Duration.** Its duration;

**4. Location of office.** The location and post-office address of its registered office in this State;

**5. Name and address of incorporators; number of shares.** The name and post-office address of the incorporators, and if organized with capital stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribes;

**6. Names and addresses of first directors.** The names of the first directors and their post-office addresses;

**7. With or without capital stock; if with, par value shares.** Whether organized with or without capital stock; and if organized with capital stock the total authorized number of par value shares and the par value of each share, and if any of its shares have no par value, the authorized number of such shares; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences and restrictions granted to or imposed upon the shares of each class and the dividends to which each class shall be entitled;

**8. If without, rights and interests of members.** If organized without capital stock, whether the property rights and interests of each member are equal or unequal; if unequal, the rule by which such rights and interests shall be determined; and

**9. Other provisions.** The articles may contain any other provisions, consistent with law for regulating the association's business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent such districts and the members residing therein, for voting by proxy, and issuance, retirement and transfer of memberships and stock.

## 13 §1824. Filing and recording certificate of incorporation

Before commencing business, the president, treasurer and a majority of the directors or trustees of every corporation organized under this subchapter shall prepare , sign, date and deliver for filing with the Secretary of State articles of incorporation , in a format approved by the Secretary of State, setting forth the names and addresses of the officers. The filing fee for a corporation formed under this subchapter is the same as for a corporation organized under Title 13-C. If articles of incorporation delivered for filing to the Secretary of State pursuant to this section satisfy the requirements of this subchapter, the Secretary of State shall file the articles of incorporation. The date of filing is the date of receipt by the Secretary of State. After filing the articles of incorporation under this subchapter, the Secretary of State shall deliver to the corporation or its representative a copy of the document with an acknowledgement of the date of filing. [ 2007 , c. 231 , §5 (AMD) . ]

### SECTION HISTORY

1977, c. 522, §8 (AMD). 2007, c. 231, §5 (AMD).

## 13 §1825. Amendment of articles

**1. Procedure.** An association may amend its articles of incorporation by the affirmative vote of 2/3 of the members voting thereon at any regular meeting, or at a special meeting called for the purpose, or if the association permits its members to vote on the basis of patronage, by the affirmative vote of a majority of the members representing 2/3 of the membership patronage voting thereon. A written or printed notice of the proposed amendment and of the time and place of holding such meetings shall be delivered to each member, or mailed to his last known address as shown by the books of the association, at least 30 days prior to any such meetings. No amendment affecting the preferential rights of any outstanding stock shall be adopted until the written consent of the holders of 2/3 of the outstanding preference shares has been obtained.

**2. Certificate recorded.** After an amendment has been adopted, the president or vice-president and the treasurer or secretary or assistant secretary shall prepare, sign, date and deliver for filing to the Secretary of State articles of amendment, in a format approved by the Secretary of State, setting forth the amendment adopted by the corporation as proposed in subsection 1. The filing fee for an amendment filed under this section is the same as for a corporation filing articles of amendment under Title 13-C. If articles of amendment delivered for filing to the Secretary of State pursuant to this section satisfy the requirements of this section, the Secretary of State shall file the articles of amendment. The date of filing is the date of receipt by the Secretary of State. After filing the articles of amendment under this section, the Secretary of State shall deliver to the corporation or its representative a copy of the document with an acknowledgement of the date of filing.

[ 2007, c. 231, §6 (AMD) .]

### SECTION HISTORY

1977, c. 522, §9 (AMD). 2007, c. 231, §6 (AMD).

## 13 §1826. Bylaws

The members of the association may adopt bylaws not inconsistent with law or the articles, and they may alter and amend the same from time to time. The bylaws must be adopted by a majority of the members voting thereon, or if the association permits its members to vote on the basis of patronage, then by a majority of members and a majority of the patronage voting thereon. The bylaws may provide for:

**1. Meetings; quorum.** The time, place and manner of calling and conducting meetings of the members, and the number of members that shall constitute a quorum;

**2. Manner of voting.** The manner of voting and the condition upon which members may vote at general and special meetings and by mail or by delegates elected by district groups or other associations, and the voting power of votes based on patronage;

**3. Provisions as to directors and officers.** Subject to any provision thereon in the articles and in this subchapter, the number, qualifications, compensation, duties and terms of office of directors and officers; the time of their election and the mode and manner of giving notice thereof;

**4. Meetings of directors and executive committee; quorum.** The time, place and manner for calling and holding meetings of the directors and executive committee, and the number that shall constitute a quorum;

**5. Rules.** Rules consistent with law and the articles for the management of the association, the establishment of voting districts, the making of contracts, the issuance, retirement and transfer of stock, and the relative rights, interests and preferences of members and shareholders; and

**6. Penalties.** Penalties for violation of the bylaws.

## 13 §1827. General and special meetings

An association may provide in its bylaws for one or more regular meetings each year, which may be held within or without the State at the time and place designated in the bylaws. Special meetings of the members may be called by the board of directors, and it shall be their duty to call such meetings when 10% of the members file with the secretary a petition demanding a special meeting and specifying the business to be considered at such meeting. Notice of all meetings, except as otherwise provided by law, or the articles or bylaws, shall be mailed to each member at least 10 days prior to the meeting, and in case of special meetings the notice shall state the purposes for which it is called, but the bylaws may require that all notices, except of proposed amendments to the articles, shall be given by publication in a periodical published by or for the association, to which substantially all its members are subscribers, or in a newspaper or newspapers whose combined circulation is general in the territory in which the association operates.

## 13 §1828. Powers

**1. Capacity to act.** An association formed under this subchapter, or an association which might be formed under this subchapter and which existed at the time this Act took effect, shall have the capacity to act possessed by natural persons, but such association shall have authority to perform only such acts as are necessary or proper to accomplish the purposes as set forth in its articles and which are not repugnant to law.

**2. Authority.** Without limiting or enlarging the grant of authority contained in subsection 1, it is specifically provided that every such association shall have authority:

A. To act as agent, broker or attorney in fact for its members and other patrons, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and other patrons and for subsidiary and affiliated associations to property handled or managed by the association on their behalf;

B. To make contracts, and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association;

C. To make loans or advances to members or producer-patrons against products delivered or to be delivered to the association, or to the members of an association which is itself a member or subsidiary thereof; to purchase, otherwise acquire, indorse, discount or sell any evidence of debt, obligation or security, but it shall not engage in banking;

D. To establish and accumulate reserves;

E. To own and hold membership in or shares of the capital stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing or marketing or purchasing any of the products handled by the association; or, in financing its activities, and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon;

F. To acquire, hold, sell, dispose of, pledge or mortgage any property which its purposes may require, subject to any limitation prescribed by law or its articles;

G. To borrow money and to give its notes, bonds or other obligations therefor and secure the payment thereof by mortgage or pledge;

H. To deal in products of, and handle machinery, equipment, supplies and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members, but the value of the annual purchases made for persons who are neither members nor producers shall not exceed 15% of the value of all its purchases;

I. To have a corporate seal and to alter the same at pleasure;

J. To continue as a corporation for the time limited in its articles, and if no time limit is specified, then perpetually;

- K. To sue and be sued in its corporate name;
- L. To conduct business in this State and elsewhere as may be permitted by law; and
- M. To dissolve and settle its affairs.

### 13 §1829. Information and advice for members

**1. Not in restraint of trade.** No association complying with the terms hereof shall be deemed to be a conspiracy, or a combination in restraint of trade or an illegal monopoly; or be deemed to have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor shall the contracts between the association and its members, or any agreements authorized in this subchapter, be construed as an unlawful restraint of trade or as part of a conspiracy or combination to accomplish an improper or illegal purpose or act.

**2. Information.** An association may acquire, exchange, interpret and disseminate to its members, to other cooperative associations and otherwise, past, present and prospective crop, market, statistical, economic and other similar information relating to the business of the association, either directly or through an agent created or selected by it or by other associations acting in conjunction with it.

**3. Advice.** An association may advise its members in respect to the adjustment of their current and prospective production of agricultural commodities and its relation to the prospective volume of consumption, selling prices and existing or potential surplus, to the end that every market may be served from the most convenient productive areas under a program of orderly marketing that will assure adequate supplies without undue enhancement of prices or the accumulation of any undue surplus.

#### Article 3: Officers and Directors

### 13 §1871. Directors

**1. Membership; term.** The business of the association shall be managed by a board of not less than 3 directors. The directors shall be members of the association or officers, general managers, directors or members of a member association. A director shall hold office for the term for which he was named or elected and until his successor is elected and qualified.

**2. Names; successors.** The names of the first directors shall be stated in the articles. Their successors shall be elected by the members as prescribed by the articles or bylaws.

**3. Duties, etc.** prescribed by articles or bylaws. The number, qualifications, terms of office, manner of election, time and place of meeting and the powers and duties of the directors may, subject to this subchapter, be prescribed by the articles or bylaws.

**4. District directors.** The bylaws may provide, if not restricted by the articles, that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts, either directly or by district delegates elected by the members in that district. In such case, the bylaws shall specify or vest in the board of directors authority to determine the number of directors to be elected by each district and the manner and method of apportioning the directors and of districting and redistricting the territory covered by the association. The bylaws may provide that primary elections shall be held in each district to nominate the directors apportioned thereto and that the result of all such primary elections may be ratified by the next regular meeting of the association or may be considered as a final election.

**5. Executive committee.** The bylaws may provide for an executive committee to be elected by the board of directors from their number and may allot to such committee all the functions and powers of the board, subject to its general direction and control.

### 13 §1872. -- removal

Any member may ask for the removal of a director by filing charges with the secretary or president of the association, together with a petition signed by 5% of the members requesting the removal of the director in question. The removal shall be voted upon at the next meeting of the members, and by 2/3 of the voting power voting thereon the association may remove the director. The director whose removal is requested shall be served with a copy of the charges not less than 10 days prior to the meeting and shall have an opportunity at the meeting to be heard in person and by counsel and to present evidence. The persons requesting the removal shall have the same opportunity. In case the bylaws provide for election of directors by districts, then the petition for removal of a director must be signed by 20% of the members residing in the district from which he was elected. The board must call a special meeting of the members residing in that district to consider the removal of the director, and by 2/3 of the voting power of the members of that district voting thereon the director in question may be removed from office.

### 13 §1873. Officers

The board shall elect one or more officers as authorized in the bylaws. The bylaws of each cooperative must provide for one or more officers, including the qualifications for and the titles of those officers.  
[1999, c. 48, §1 (AMD).]

#### SECTION HISTORY

1999, c. 48, §1 (AMD).

### 13 §1874. -- removal

Any member may bring charges of misconduct or incompetency against an officer by filing them with the secretary or president of the association, together with a petition signed by 10% of the members requesting the removal of the officer in question. The directors shall vote upon the removal of the officer at the first meeting of the board held after the hearing on the charges, and the officer may be removed by a majority vote, notwithstanding any contract the officer may have with the association, which shall terminate upon his removal, anything in the contract to the contrary notwithstanding. The officer against whom such charges are made shall be served with a copy of the charges not less than 10 days prior to the meeting, and shall have an opportunity at the meeting to be heard in person and by counsel, and to present evidence, and the persons making the charges shall have the same opportunity.

### 13 §1875. Referendum

The articles or bylaws may provide that upon demand of 2/5 of all the directors, any matter of policy that has been approved or passed by the board must be referred to the members for their approval before it becomes effective. No referendum shall be allowed unless it is demanded by the required number of directors at the meeting at which the matter of policy in question is adopted.

## Article 4: Members and Shares

### 13 §1911. Members

**1. Producers of agricultural products.** An association may admit as members only bona fide producers of agricultural products, including tenants and landlords receiving a share of the crop, and cooperative associations of such producers. The incorporators named in the articles are thereby made members of the association, and they shall pay for their membership or stock the same amount and in the same manner as may be required in the case of other members.

**2. Limit of common stock.** The articles may limit the amount of common stock which a member may own.

**3. Vote; liability.** Under the terms and conditions prescribed in the bylaws, a member shall lose his vote if he ceases to belong to the class eligible to membership under this section, but he shall remain subject to any liability incurred by him while a member of the association.

**4. Personal liability.** No member shall be personally liable for any debt or liability of the association.

**5. One vote.** Unless the articles otherwise provide, no member shall have more than one vote.

**6. Member defined.** In agricultural associations organized under this subchapter the term "member" in associations without capital stock may, by the bylaws, include any agricultural producer, either corporate or individual, with whom the association shall do business, either directly or through a member cooperative association, amounting to at least \$100 during any fiscal year, and may, by the bylaws, include employees.

**7. Requirements of statute met.** Whenever under this subchapter an association is permitted to take any action, provided such action is authorized by a vote of the members or the vote of a specified proportion of the voting power based on patronage, the requirements of the statute shall be deemed to have been met by an association which has established voting districts and provided for the election of delegates, if such action is authorized by a vote of the delegates representing such members or such voting power.

## **13 §1912. Certificates; transfers; dividends; preferred stock**

**1. Certificate for membership or stock.** No certificate for membership or stock shall be issued until fully paid for, but bylaws may provide that a member may vote and hold office prior to payment in full for his membership or stock.

**2. Dividends.** Dividends in excess of 8% on the actual cash value of the consideration received by the association shall not be paid on common or preferred stock or membership capital, but dividends may be cumulative.

**3. Net income distributed.** Net income in excess of dividends and additions to reserves shall be distributed on the basis of patronage, and the books of the association shall show the interest of patrons in the reserves. The bylaws may provide that any distribution to a nonmember, eligible for membership, may be credited to such nonmember until the amount thereof equals the value of a membership certificate or a share of the association's common stock. The distribution credited to the account of a nonmember may be transferred to the reserve fund at the option of the board if, after 6 years, the amount is less than the value of the membership certificate or a share of common stock.

**4. Value of member's interest after withdrawal or termination.** The bylaws may fix a time within which a member shall receive from the association, after he has notified the association of his withdrawal, or after the adoption of a resolution by the board terminating his membership, the value in money of his membership interest in the association as appraised by the board of directors. If the board of directors approves the member's designation of a transferee of his membership interest, the association shall be under no obligation to pay him the value of his interest.

**5. Preferred stock.** An association may issue preferred stock to members and nonmembers. Preferred stock may be redeemed or retired by the association on such terms and conditions as may be provided in the articles and printed on the stock certificate. Preferred stockholders shall not be entitled to vote, but no change in their priority or preference rights shall be effective until the written consent of the holders of 2/3 of the preferred stock has been obtained. Payment for preferred stock may be made in cash, services or property on the basis of the fair value of the stock, services and property as determined by the board.

### **Article 5: Consolidation and Dissolution**



### 13 §1951. Consolidation procedure

Any 2 or more associations organized with or without capital stock and existing under this subchapter may consolidate into a single association which may be either one or any one of said associations, or a new association under this subchapter to be formed by means of such consolidation. Such a consolidation may be effected by a vote of the directors, trustees or managing board, however designated, of each of said associations at a legal meeting thereof ratifying a proposed agreement of consolidation and approved by the affirmative vote of 2/3 of the members of each of said associations voting thereon at any regular meeting or at a special meeting called for the purpose, which agreement shall then be submitted to the Secretary of State for his certification as conformable to the laws of this State and when certified by him shall then be recorded in the registry of deeds in the county where the consolidated association is located and in the county or counties where each of the constituent associations is located and a copy thereof certified by the register of deeds shall be filed in the office of the Secretary of State. When said agreement is so certified, recorded and filed, the separate existence of all of the constituent associations, or all of such constituent associations except the one into which such constituent associations shall have been consolidated, shall cease and the constituent associations, whether consolidated into a new association or merged into one of such constituent associations, as the case may be, shall become the consolidated association by the name provided in said agreement, possessing all the rights, privileges, powers, franchises and immunities as well of a public as of a private nature, and being subject to all the liabilities, restrictions and duties of each of such associations so consolidated and all and singular the rights, privileges, powers, franchises and immunities of each of said associations, and all property, real, personal and mixed, and all debts due to any of said constituent associations on whatever account, and all other things in action of or belonging to each of said associations shall be vested in the consolidated association. All property, rights, privileges, powers, franchises and immunities, and all and every other interest shall be thereafter as effectually the property of the consolidated association as they were of the several and respective constituent associations, and the title to any real estate, whether by deed or otherwise, under the laws of this State, vested in any of such constituent associations, shall not revert or be in any way impaired by reason thereof. All rights of creditors and all liens upon the property of any of said constituent associations shall be preserved unimpaired, limited to the property affected by such liens at the time of the consolidation, and all debts, liabilities and duties of the respective constituent associations shall henceforth attach to said consolidated association and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. [1977, c. 522, §10 (AMD).]

#### SECTION HISTORY

1977, c. 522, §10 (AMD).

### 13 §1952. Voluntary dissolution

#### 1. Dissolution.

A. The members of an association may at any regular meeting, or any special meeting called for the purpose, upon 30 days' notice of the time, place and object of the meeting having been given as prescribed in the bylaws, by 2/3 of the voting power voting thereon, discontinue the operations of the association and direct that the association be dissolved and its affairs settled. The members at the meeting shall by like vote designate a committee of 3 members who, as trustees on behalf of the association and within the time fixed in their designation or any extension thereof, shall liquidate the association's assets, pay its debts and divide any remainder among the members or other patrons in accordance with their respective rights and interests under their contracts with the association and the articles and bylaws. Upon final settlement by such trustees, the association is deemed dissolved and ceases to exist. The trustees shall file articles of dissolution as required by subsection 5. [2007, c. 231, §7 (AMD).]

B. The trustees may bring and defend all actions by them deemed necessary to protect and enforce the rights of the association.

C. Any vacancies in the trusteeship may be filled by the remaining trustees. [ 2007, c. 231, §7 (AMD) . ]

[ 2007, c. 231, §7 (AMD) . ]

**2. Power of courts.** In the case of an association dissolving pursuant to this section, the Superior Court, upon the petition of the trustees or a majority of them, or a proper case upon the petition of a creditor or member, or upon the petition of the Attorney General, upon notice to all of the trustees and to such other interested persons as the court may specify, from time to time may order and adjudge in respect to the following matters:

- A. The giving of notice by publication or otherwise of the time and place for the presentation of all claims and demands against the association, which notice may require all creditors of and claimants against the association to present in writing and in detail at the place specified in their respective accounts and demands to the trustees by a day therein specified, which shall not be less than 40 days from the service or first publication of such notice;
- B. The payment or satisfaction in whole or in part of claims and demands against the association or the retention of moneys for such purpose;
- C. The presentation and filing of intermediate and final accounts of the trustees, the hearing thereon, the allowance or disallowance thereof and the discharge of the trustees, or any of them, from their duties and liabilities;
- D. The administration of any trust or the disposition of any property held in trust by or for the association;
- E. The sale and disposition of any remaining property of the association and the distribution or division of such property or its proceeds among the members or persons entitled thereto; and
- F. Such matters as justice may require.

**3. Orders and judgments binding.** All orders and judgments shall be binding upon the association, its property and assets, its trustees, members, creditors and all claimants against it.

**4. Application of section.** This section shall apply to all associations heretofore or hereafter incorporated in this State.

**5. Filing with the Secretary of State.** In addition to the requirements set forth in this section, a corporation organized under this subchapter must file articles of dissolution and pay the fee for dissolution as required for business corporations under Title 13-C.

[ 2007, c. 231, §8 (NEW) . ]

#### SECTION HISTORY

2007, c. 231, §§7, 8 (AMD).

## Article 6: Maine Agricultural Marketing and Bargaining Act of 1973

### 13 §1953. Legislative findings and purpose

Because agricultural products are produced by numerous individual farmers, the marketing and bargaining position of individual farmers will be adversely affected unless they are free to join together voluntarily in cooperative organizations as authorized by law. Furthermore, membership by a farmer in a cooperative organization can only be meaningful, if a handler of agricultural products is required to bargain in good faith with an agricultural cooperative organization as the representative of the members of such organization who have had a previous course of dealing with such handler. The purpose of this Article is to provide standards for the qualification of agricultural cooperative organizations for bargaining purposes, to

define the mutual obligation of handlers and agricultural cooperative organizations to bargain with respect to the production, sale and marketing of agricultural products and to provide for the enforcement of such obligation. [1973, c. 621, §1 (NEW).]

#### SECTION HISTORY

1973, c. 621, §1 (NEW).

### 13 §1954. Short title

Article 6 shall be known and may be cited as the "Maine Agricultural Marketing and Bargaining Act of 1973." [1973, c. 621, §1 (NEW).]

#### SECTION HISTORY

1973, c. 621, §1 (NEW).

### 13 §1955. Definitions

As used in this Article, unless the context otherwise requires, the following words shall have the following meanings. [1973, c. 621, §1 (NEW).]

**1. Association of producers.** "Association of producers" means any association of producers of agricultural products organized and existing under this subchapter.

[ 1973, c. 621, §1 (NEW) .]

**2. Board.** "Board" means the Maine Agricultural Bargaining Board provided for in this Article.

[ 1973, c. 621, §1 (NEW) .]

**3. Handler.** "Handler," in the case of potatoes, means "processor" as defined under Title 7, section 1012, subsection 14 and in the case of other agricultural products means any person engaged in the business or practice of:

A. Acquiring agricultural products from producers or associations of producers for processing or sale; [1973, c. 621, §1 (NEW).]

B. Grading, packaging, handling, storing or processing agricultural products received from producers or associations of producers; [1973, c. 621, §1 (NEW).]

C. Contracting or negotiating contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or [1973, c. 621, §1 (NEW).]

D. Acting as an agent or broker for a handler in the performance of any function or act specified in paragraph A, B or C. [1973, c. 621, §1 (NEW).]

[ 1973, c. 621, §1 (NEW) .]

**4. Person.** "Person" includes one or more individuals, partnerships, corporations and associations.

[ 1973, c. 621, §1 (NEW) .]

**5. Producer.** "Producer" means a person engaged in the production of agricultural products, excluding forest products, as a farmer, planter, rancher, poultryman, dairyman, fruit, vegetable or nut grower, or independent agricultural contractor as specified in section 1774, subsections 6-A and 8-A. If producer is also a handler, he shall be considered only a handler for the purposes of this Act.

[ 1973, c. 621, §1 (NEW) .]

**6. Qualified association.** "Qualified association" means an association of producers accredited in accordance with section 1957.

[ 1973, c. 621, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW).

## 13 §1956. Maine Agricultural Bargaining Board

**1. Board.** The Maine Agricultural Bargaining Board, established by Title 5, section 12004-B, subsection 7, and located in the Department of Agriculture, Food and Rural Resources, shall administer this article.

[ 1989, c. 503, Pt. B, §69 (AMD) .]

**2. Membership.** The Maine Agricultural Bargaining Board established by Title 5, section 12004-B, subsection 7, shall consist of 5 members and 2 alternates, who shall be appointed by the Governor. One member and one alternate shall be appointed from a list of names submitted by agricultural producer organizations organized under this subchapter and chapter 81. One member and one alternate shall be appointed from a list of names submitted by processors of agricultural products. In appointing these members and alternates, the Governor shall seek to represent as many different agricultural products as possible and a member and the alternate for that member may not be associated with the same agricultural product, unless suitable persons cannot otherwise be appointed. An alternate shall serve when for any reason the respective member is unable to serve. Three members shall be representatives of the public. A public member may not hold any interest or stock or securities in any producer, dealer, processor or other person whose activities are subject to the jurisdiction of the board.

A. The term of office for all members and alternates shall be 3 years. Members selected from lists submitted by agricultural producer organizations and by processors of agricultural products may serve no more than 2 terms in succession, not to include the current term of a member serving at the time this section becomes effective. The limitation to 2 successive terms may not apply to the public members or to alternates. [1989, c. 703, §1 (AMD) .]

B. Board members serving at the time this section becomes effective shall continue as members for the duration of their present terms. The Governor shall appoint 2 alternate members in accordance with this subsection. The initial terms of these alternates expire at the same time as that of the current respective members. The Governor shall designate one of the public members to be the board's chair. In the event of a vacancy, the Governor shall, within one month, appoint a successor to fill the unexpired term. All appointments to the board must be made in conformity with the foregoing plan. Members shall take the oath of office prescribed for state officers. [1989, c. 503, Pt. B, §70 (AMD); 1989, c. 703, §1 (AMD) .]

[ 1989, c. 503, Pt. B, §70 (AMD); 1989, c. 703, §1 (AMD) .]

**3. Removal.** Members of the board shall be removed by the Commissioner of Agriculture, Food and Rural Resources upon notice and hearing for neglect of duty or malfeasance in office but for no other cause. If a member is absent from 3 successive meetings of the board and if the board finds the member's reasons for the absence to be without merit, that member's conduct shall be considered to be neglect of duty.

[ 1987, c. 155, §3 (AMD) .]

**4. Quorum.** A vacancy in the board shall not impair the right of the remaining members to exercise all of the powers of the board. Three members of the board shall, at all times, constitute a quorum of the board, provided that reasonable notice has been given to all members of the board of the subject matter and date of any meeting at which the board is to exercise any of its powers.

[ 1973, c. 621, §1 (NEW) .]

**5. Expenses.** Members and alternate members of the board shall be compensated according to the provisions of Title 5, chapter 379 and shall receive necessary expenses.

[ 1987, c. 155, §4 (AMD) .]

**6. Rules.** The board shall have authority from time to time to adopt, amend and repeal, in the manner prescribed by the Maine Administrative Procedure Act, such rules and regulations as may be necessary or appropriate to carry out this Article. The board shall act as expeditiously as possible to adopt interpretive and procedural rules for carrying out the purposes of this article.

[ 1987, c. 155, §5 (AMD) .]

**7. Board's staff and attorney.** In hearings under sections 1958 and 1965, neither the board's staff nor its attorney shall function as an advocate for any party.

[ 1987, c. 155, §6 (NEW) .]

**8. Annual report.** The board shall issue an annual report to the Commissioner of Agriculture, Food and Rural Resources and to the joint standing committee of the Legislature having jurisdiction over agriculture on or before January 15th of each year regarding the operation of this subchapter. This annual report shall take into consideration the following issues as the Maine Agricultural Bargaining Board reviews the effectiveness of the Maine Agricultural Marketing and Bargaining Act of 1973:

- A. Unfair practices; [1987, c. 155, §6 (NEW).]
- B. Qualification of grower associations; [1987, c. 155, §6 (NEW).]
- C. Funding of the Maine Agricultural Bargaining Board; [1987, c. 155, §6 (NEW).]
- D. Investigation and hearing procedures; [1987, c. 155, §6 (NEW).]
- E. Any other issues relating to this subchapter; and [1987, c. 155, §6 (NEW).]
- F. Any recommended changes to this subchapter. [1987, c. 155, §6 (NEW).]

[ 1987, c. 155, §6 (NEW) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 1977, c. 564, §§67,68 (AMD). 1977, c. 694, §277 (AMD). 1979, c. 731, §19 (AMD). 1983, c. 812, §§95,96 (AMD). 1987, c. 155, §§2-6 (AMD). 1989, c. 503, §§B69,B70 (AMD). 1989, c. 703, §1 (AMD).

### 13 §1957. Qualification of associations of producers

**1. Qualification.** Only those associations of producers that have been qualified in accordance with this section shall be entitled to the benefits provided by this Article.

[ 1973, c. 621, §1 (NEW) .]

**2. Petition.** An association of producers desiring qualification shall file with the board a petition for qualification. The petition shall contain such information and be accompanied by such documents as shall be required by the regulations of the board.

[ 1973, c. 621, §1 (NEW) .]

**3. Hearing.** The board shall provide notice and opportunity for a hearing, provided in a manner consistent with the provisions as to adjudicatory proceedings of the Maine Administrative Procedure Act. The board shall qualify such association, if based upon the evidence at such hearing, the board finds:

A. That under the charter documents or the bylaws of the association, the association is directly or indirectly producer-owned and controlled; [1973, c. 621, §1 (NEW) .]

B. The association has membership agreements signed by each of its members which authorize the association to represent the member for the purposes of this article; [1987, c. 155, §7 (AMD) .]

C. The association is financially sound and has sufficient resources and management to carry out the purposes for which it was organized; [1973, c. 621, §1 (NEW) .]

D. The association represents 51% of the producers or produced at least 1/2 of the volume of a particular agricultural product for a specific handler involved with those producers and that agricultural product during the previous 12 months, not including any volume produced by the handler, its subsidiaries, agents or employees or procured by the handler from sources other than producers; for the purposes of this article, members of farmer cooperatives are counted as individual farmer members; if the board has reasonable cause to question such representation, the board shall require a secret ballot election to certify the percentage of representation; and [1991, c. 116, (AMD) .]

E. The association has as one of its functions acting as principal or agent for its producer-members in negotiations with handlers for prices and other terms of contracts with respect to the production, sale and marketing of their product. [1973, c. 621, §1 (NEW) .]

[ 1991, c. 116, (AMD) .]

**4. Refiling of petition.** If after the hearing, the board does not deem an association qualified, it shall, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, clearly specify the reasons for such failure to qualify in its decision and, upon the refile of the petition, shall reconsider its decision within 30 days after the date on which the petition was filed. An association seeking reconsideration shall refile its petition within 30 days of receipt of the board's initial decision.

[ 1987, c. 155, §8 (AMD) .]

**5. Notice.** After the board qualifies such association, it shall give notice of such qualification to all known handlers that, in the ordinary course of business, purchase the agricultural commodities that such association represents.

[ 1973, c. 621, §1 (NEW) .]

**6. Annual report.** A qualified association shall file an annual report with the board in such form as shall be required by the regulations of the board. The annual report shall contain such information as will enable the board to determine whether the association continues to meet the standards for qualification, except that an association which the board has determined to be qualified shall not be required to have its qualification redetermined until it has negotiated and entered into a contract with a handler, with or without resort to arbitration.

[ 1985, c. 578, §1 (AMD) .]

**7. Revocation.** If a qualified association ceases to maintain the standards for qualifications set forth in subsection 3, the board shall, in a manner consistent with the Maine Administrative Procedure Act, apply to the District Court to revoke the qualification of such association, except that the board shall not seek revocation of an association's qualification during the period set out in subsection 6 in which the association cannot be required to have its qualification redetermined.

[ 1985, c. 578, §2 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

**8. Confidentiality.** Information provided to the board by an association regarding the identification of its members and information provided to the board by a handler regarding its volume of purchases of agricultural products and the identification of producers from whom it purchased those products shall be treated by the board as confidential information not to be disclosed to the adverse party or any other person without the consent of the association or the handler, respectively, until the board has rendered its final decision as to the qualification of the association. After a final decision has been rendered, the information is no longer confidential information, but its disclosure shall be governed by Title 1, section 402, subsection 3, paragraph B.

[ 1987, c. 155, §9 (NEW) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 1977, c. 694, §§278-280 (AMD). 1985, c. 578, §§1,2 (AMD). 1987, c. 155, §§7-9 (AMD). 1991, c. 116, (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

## 13 §1958. Bargaining

**1. Definition.** As used in this article, "bargaining" is the mutual obligation of a handler and a qualified association to meet at reasonable times and negotiate in good faith with respect to the price, terms of sale, compensation for commodities produced or sold, or both, under contract and other contract provisions relative to the commodities that such qualified association represents and the execution of a written contract incorporating any agreement reached if requested by either party. Such obligation on the part of any handler shall extend only to a qualified association that represents producers with whom such handler has had a prior course of dealing. Such obligation does not require either party to agree to a proposal or to make a concession. The obligation to bargain continues until the commencement of required mediation, as provided in section 1958-B, subsection 2.

[ 1987, c. 155, §10 (AMD) .]

**2. Prior course of dealing.** A handler shall be deemed to have had a prior course of dealing with a producer if such handler has purchased commodities produced by such producer in any 2 of the preceding 3 years, provided that the sale by a handler of his business shall not negate any prior course of dealing that producers have had with this business.

[ 1973, c. 621, §1 (NEW) .]

**3. Contracts.** Nothing in this Article shall be deemed to prohibit a qualified bargaining association from entering into contracts with handlers to supply the full agricultural production requirements of such handlers.

[ 1973, c. 621, §1 (NEW) .]

#### **4. Limitation.**

[ 1987, c. 155, §11 (RP) .]

**5. Further limitation.** It shall be unlawful for a handler to purchase a product from other persons under terms more favorable to such persons than those terms negotiated with a qualified bargaining association for such product, unless such handler has first offered to purchase said product under said more favorable terms from the members of the qualified association of producers and said members have failed to supply the required product within a reasonable time according to said more favorable terms.

[ 1973, c. 621, §1 (NEW) .]

**6. Notice; opportunity for hearing.** Whenever it is charged that a qualified association or handler refuses to bargain, as that term is defined in subsection 1, the board shall provide that person with notice and opportunity to be heard, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory hearings.

[ 1987, c. 155, §12 (AMD) .]

**7. Hearing.** Hearings held pursuant to subsection 6 shall be held in a manner consistent with the Maine Administrative Procedure Act as to adjudicatory hearings. The board shall request that the Attorney General, or any attorney in his department designated by him, be present at these hearings and shall advise the board on procedure and on the admissibility of any evidence.

[ 1977, c. 694, §282 (RPR) .]

**8. Findings.** If, upon a preponderance of the evidence, the board determines that the person complained of has refused to bargain, in violation of this article, it shall state its findings of fact and shall issue an order requiring him to bargain as that term is defined in subsection 1 and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this article. Failure to comply with such an order is a violation of this article. If the board determines that the person complained of has not refused to bargain, it shall state its findings of fact and shall issue an order dismissing the charges.

[ 1987, c. 155, §13 (AMD) .]

#### **9. Dismissal.**

[ 1977, c. 694, §283 (RP) .]

**10. Modification.** Until the record in a case has been filed in a court, as provided in section 1959, the board may at any time, upon reasonable notice and in such manner as it deems proper, modify or set aside, in a whole or in part, any finding or order made or issued by it.

[ 1973, c. 621, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 1977, c. 694, §§281-283 (AMD). 1987, c. 155, §§10-13 (AMD).

### **13 §1958-A. Final offer arbitration for the potato industry** **(REPEALED)**

#### SECTION HISTORY

1981, c. 274, (NEW). 1985, c. 578, §§3,4 (AMD). 1987, c. 155, §14 (RP).



## 13 §1958-B. Dispute resolution

**1. Voluntary mediation.** At any time prior to the commencement of required mediation under subsection 2, a handler and a qualified association may mutually agree to obtain or may unilaterally obtain the services of a mediator. Regardless whether mediation is sought mutually or unilaterally, both parties shall participate in mediation in good faith. The parties must use the services of the State's Panel of Mediators for mediation and must share all costs of mediation equally. Costs of mediation and any applicable state cost allocation program charges must be paid into a special fund administered by the Maine Labor Relations Board. The Executive Director of the Maine Labor Relations Board shall authorize mediation services and expenditures incurred by members of the panel. All costs must be paid from that special fund. The executive director may estimate costs upon receipt of a request for services and collect those costs prior to providing the services. The executive director shall bill or reimburse the parties, as appropriate, for any difference between the estimated costs that were collected and the actual costs of providing the services. Once one party has paid its share of the estimated cost of providing the service, the mediator is assigned. A party who has not paid an invoice for the estimated or actual cost of providing services within 60 days of the date the invoice was issued is, in the absence of good cause shown, liable for the amount of the invoice together with a penalty in the amount of 25% of the amount of the invoice. Any penalty amount collected pursuant to this provision remains in the special fund administered by the Maine Labor Relations Board and that fund does not lapse. The executive director is authorized to collect any sums due and payable pursuant to this provision through civil action. In such an action, the court shall allow litigation costs, including court costs and reasonable attorney's fees, to be deposited in the General Fund if the executive director is the prevailing party in the action. Voluntary mediation may not last for more than 3 days for annual crops; voluntary mediation for all other commodities may not last more than 5 days. Mediation may be extended by mutual agreement by the bargaining parties.

[ 1991, c. 798, §1 (AMD) . ]

**2. Required mediation.** Any matters remaining in dispute between the handler and a qualified association 30 days prior to the contract date, as defined in subsection 4, must be submitted by the parties to required mediation. No later than 30 days prior to the contract date, the parties must have mutually agreed on a mediator and on sharing the costs of mediation or must have notified the board that the services of the State's Panel of Mediators will be needed. If services of the State's Panel of Mediators are used, the parties shall share all costs of mediation equally. Mediation may not continue for more than 3 consecutive business days for annual crops; all other commodities may not last more than 5 days, unless the mediator earlier declares that resolution by mediation is not possible. Mediation may be extended by mutual agreement by the bargaining parties. At the end of the mediation period or upon the mediator's earlier declaration, the mediator shall promptly prepare a report specifying all agreements reached in mediation and recommending that the parties either resume bargaining as to all matters remaining in dispute for a period of time not to exceed 2 days or that the parties submit all matters remaining in dispute to arbitration. The parties shall proceed according to the mediator's recommendation. If the parties are to resume bargaining, that bargaining must commence on the day after the day on which the mediator makes the recommendation. Any matters remaining in dispute at the end of the specified bargaining period must be submitted to arbitration.

[ 2003, c. 329, §5 (AMD) . ]

**3. Different contract date.** Once a contract date has been established as provided in subsection 2, the parties may mutually agree to a different contract date, provided that they do so no less than 45 days prior to the contract date established as provided in subsection 4.

[ 1987, c. 155, §15 (NEW) . ]

**4. Definition.** The term "contract date" as used in subsection 2, shall have the following meaning.

A. Where, on the effective date of this section, there is no contract under this article in existence between the parties, the contract date shall be the date set by the board, in consultation with the parties, as the date by which a contract must be signed by both parties. After that date, as between those parties, the contract date shall be the anniversary of the date set by the board initially. [1987, c. 155, §15 (NEW).]

B. Where, on the effective date of this section, a contract under this article exists between the parties, the contract date shall be the anniversary of the date upon which that contract was signed by both parties. [1987, c. 155, §15 (NEW).]

[ 1987, c. 155, §15 (NEW) .]

**5. Arbitration.** The parties shall notify the board and the Commissioner of Agriculture, Food and Rural Resources at the commencement of required mediation and an arbitrator must be selected as provided in paragraph D. One day after the mediator recommends arbitration or one day after the conclusion of the period of further bargaining, as provided in subsection 2, each party shall submit to the arbitrator its final offer in which it shall identify all matters as to which the parties agree with contractual language setting forth these agreements, and all matters as to which the parties do not agree with contractual language setting forth the party's final offer for resolution of those disagreements.

A. For all matters submitted to arbitration, the arbitrator shall choose between the final offers of the parties. If the parties reach an agreement on the matters under arbitration before the arbitrator issues a decision, they may submit a joint final offer that the arbitrator shall accept and render as the decision. The arbitrator may hold hearings and administer oaths, examine witnesses and documents, take testimony and receive evidence, and issue subpoenas to compel the attendance of witnesses and the production of records. A person who fails to obey the subpoena of an arbitrator may be punished for contempt of court on application by the arbitrator to the Superior Court for the county in which the failure occurs. The arbitrator may utilize other information in addition to that provided by or elicited from the parties. The arbitrator shall issue a decision within 10 days of the commencement of arbitration and that decision shall be binding on the parties. If the parties reach an agreement on the matters in the arbitrator's decision prior to signing the contract, they may submit a joint final offer to the arbitrator. The arbitrator shall rescind the previous decision and accept and render the joint final offer as the decision. [1989, c. 703, §2 (RPR).]

B. Within 5 days of the arbitrator's decision, the board shall prepare a contract which must include all terms agreed to by the parties in bargaining or settled by voluntary or required mediation or by arbitration and must present the contract to the parties who shall sign the contract within 2 days of its presentation. [1989, c. 703, §2 (RPR).]

C. The commissioner, in consultation with the board, shall establish a panel of arbitrators, who must be qualified by education, training or experience to carry out the responsibilities of an arbitrator under this article. [1989, c. 703, §2 (RPR).]

D. Upon notification by the parties as provided in this subsection, the commissioner shall submit to the parties a list containing an odd number of names of members of the panel of arbitrators who are available for the specific pending arbitration and have expressed a willingness to serve. The parties shall alternately strike names from the list until a single name is left, who shall serve as the arbitrator. The order of striking names must be determined by chance. [2003, c. 329, §6 (AMD).]

E. All costs of arbitration must be borne equally by the parties. The arbitrator shall submit a statement of charges and expenses to the parties and to the board. Each party shall pay the arbitrator directly. [1989, c. 703, §2 (RPR).]

[ 2003, c. 329, §6 (AMD) .]

**5-A. Criteria for arbitrator decisions.** The arbitrator shall consider the following factors in making a decision pursuant to subsection 5:

- A. Prices or projected prices for the agricultural commodity paid by competing handlers in the market area or competing market areas; [1989, c. 703, §3 (NEW).]
- B. The quantity of the commodity produced or projections of production in the production area or competing market areas; [1989, c. 703, §3 (NEW).]
- C. The relationship between the quantity produced and the quantity handled by the handler; [1989, c. 703, §3 (NEW).]
- D. The producer's costs of production including the cost that would be involved in paying farm labor a fair wage rate; [1989, c. 703, §3 (NEW).]
- E. The average consumer prices for goods and services, commonly known as the cost of living; [1989, c. 703, §3 (NEW).]
- F. The impact of the award on the competitive position of the handler in the market area or competing market areas; [1989, c. 703, §3 (NEW).]
- G. The impact of the award on the competitive position of the agricultural commodity in relationship to competing commodities; [1989, c. 703, §3 (NEW).]
- H. A fair return on investment; [1989, c. 703, §3 (NEW).]
- I. The kind, quality or grade of the commodity involved; [1989, c. 703, §3 (NEW).]
- J. Prior agreements of the parties; and [1989, c. 703, §3 (NEW).]
- K. Other factors which are normally or traditionally taken into consideration in determining prices, quality, quantity and the costs of other services involved. [1989, c. 703, §3 (NEW).]

[ 1989, c. 703, §3 (NEW) .]

**6. Violation.** Failure by a party to comply with any of the requirements of this section is a violation of this article.

[ 1987, c. 155, §15 (NEW) .]

#### SECTION HISTORY

1987, c. 155, §15 (NEW). 1989, c. 201, §§1,2 (AMD). 1989, c. 703, §§2,3 (AMD). 1991, c. 622, §01 (AMD). 1991, c. 798, §1 (AMD). 2003, c. 329, §§5,6 (AMD).

### 13 §1959. Enforcement of orders and judicial review

**1. Complaint.** The board shall have power to complain to the Superior Court for the enforcement of its orders made under sections 1958 and 1965 and for appropriate temporary relief or restraining order, and shall file in the court the original or certified copy of the entire record in the proceeding, and shall cause notice of such complaint to be served upon such person, and said court shall thereupon have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a judgment enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the board. No objection that has not been urged before the board may be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the record. The board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file

such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

[ 1987, c. 155, §16 (AMD) .]

## **2. Appeal.**

[ 1977, c. 694, §284 (RP) .]

**3. Stay.** The provisions of Title 5, section 11004, shall govern with respect to any application for a stay of an order of the board.

[ 1987, c. 155, §17 (AMD) .]

## **4. Procedure.**

[ 1977, c. 694, §286 (RP) .]

**5. Penalties.** In an action to enforce an order or in a separate action, the board may seek civil penalties for violation of this article. In any such action, a violation shall be punishable by a civil penalty of not more than \$5,000. When the violation is a refusal to bargain under section 1958 or an unfair practice under section 1965, each day that such conduct occurred shall constitute a separate violation. If a qualified association is found to have committed a violation under sections 1958 and 1965, and if a civil penalty is imposed, and if the court finds that the association is unable to pay the civil penalty, the court shall instead issue an order suspending for one year the association's rights as a qualified association under this article.

[ 1987, c. 155, §18 (NEW) .]

### SECTION HISTORY

1973, c. 621, §1 (NEW). 1973, c. 788, §54 (AMD). 1977, c. 694, §§284-286 (AMD). 1987, c. 155, §§16-18 (AMD).

## **13 §1960. Copy evidence; oaths; subpoenas (REPEALED)**

### SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §19 (RP).

## **13 §1961. Contempt (REPEALED)**

### SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §20 (RP).

## **13 §1962. Service (REPEALED)**

### SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §21 (RP).

### 13 §1963. Subpoena

In any proceeding before the board under this article, the board may issue subpoenas for the attendance of witnesses, or for the production of documents and may examine witnesses under oath provided that: [1987, c. 155, §22 (AMD).]

1. Upon written application of a party to a proceeding, the board shall issue subpoenas for the attendance of witnesses or for the production of documents;

[ 1973, c. 621, §1 (NEW) .]

2. A person who fails to obey the subpoena of the board may be punished as for contempt of court on application by the board to the Superior Court for the county in which such failure occurs;

[ 1973, c. 621, §1 (NEW) .]

3. Witnesses who are summoned before the board or its agents shall be entitled to the same witness and mileage fees as are paid to witnesses subpoenaed in the District Courts of the State.

[ 1973, c. 621, §1 (NEW) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §22 (AMD).

### 13 §1964. Antitrust

The activities of qualified associations and handlers in bargaining with respect to the price, terms of sale, compensation for commodities produced under contract or other contract terms relative to agricultural commodities produced by the members of such qualified associations shall be deemed not to violate any antitrust law of this State. Nothing in this Article shall be construed to permit handler to contract, combine or conspire with one another in bargaining with qualified associations. [1973, c. 621, §1 (NEW).]

#### SECTION HISTORY

1973, c. 621, §1 (NEW).

### 13 §1965. Unfair practices

1. Producers of agricultural commodities are free to join together voluntarily in associations as authorized by law without interference by handlers. A handler shall not engage nor permit an employee or agent to engage in any of the following practices, defined as unfair practices:

A. To coerce a producer in the exercise of his right to join and belong to or to refrain from joining or belonging to an association or to refuse to deal with a producer because of the exercise of his right to join and belong to an association except as provided in section 1958, subsection 5; [1987, c. 155, §23 (AMD).]

B. To discriminate against a producer with respect to price, quantity, quality or other terms of purchase, acquisition or other handling of agricultural products because of his membership in or contract with an association; [1973, c. 621, §1 (NEW).]

C. To coerce or intimidate a producer to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a handler; [1973, c. 621, §1 (NEW).]

D. To pay or loan money, give anything of value or offer any other inducement or regard to a producer for refusing or ceasing to belong to an association; [1973, c. 621, §1 (NEW).]

E. To make or circulate unsubstantiated reports about the finances, management or activities of associations or handlers; [1973, c. 621, §1 (NEW).]

F. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act; [1973, c. 621, §1 (NEW).]

G. To refuse to bargain with an accredited association with whom the handler has had prior dealings or with an accredited association whose producers in the bargaining units have had substantial dealing with the handler prior to the accreditation of the association; or [1973, c. 621, §1 (NEW).]

H. To negotiate with a producer included in the bargaining unit after an association is accredited. [1973, c. 621, §1 (NEW).]

[ 1987, c. 155, §23 (AMD) .]

**2.** An association shall not engage or permit an employee or agent to engage in the following practices, defined as unfair practices:

A. To act in a manner contrary to the bylaws of the association; [1973, c. 621, §1 (NEW).]

B. To refuse to bargain with a handler with whom the accredited association has had prior dealing or with whom its producers have had substantial dealing prior to the accreditation of the association; [1973, c. 621, §1 (NEW).]

C. To coerce or intimidate a handler to breach, cancel or terminate a membership agreement or marketing contract with an association or a contract with a producer; [1973, c. 621, §1 (NEW).]

D. To make or circulate unsubstantiated reports about the finances, management or activities of other associations or handlers; [1973, c. 621, §1 (NEW).]

E. To conspire, combine, agree or arrange with any other person to do or aid or abet the doing of any practice which is in violation of this Act; [1973, c. 621, §1 (NEW).]

F. To hinder or prevent, by picketing, threats, intimidations, force or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance; [1973, c. 621, §1 (NEW).]

G. To exercise coercive pressure by picketing, patrolling or otherwise business establishments other than the premises owned or controlled by the handler in order to cause such parties to cease doing business with such handler. [1973, c. 621, §1 (NEW).]

[ 1973, c. 621, §1 (NEW) .]

**3. Notice; opportunity for hearing.** Whenever it is charged that a qualified association or a handler has committed an unfair practice under this section, the board shall provide that person with notice and opportunity to be heard, in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory hearings.

[ 1987, c. 155, §24 (NEW) .]

**4. Hearing.** Hearings held pursuant to subsection 3 shall be held in a manner consistent with the Maine Administrative Procedure Act, Title 5, chapter 375, as to adjudicatory hearings. The board shall request that the Attorney General or any attorney in his department designated by the Attorney General, be present at these hearings and shall advise the board on procedure and on the admissibility of any evidence.

[ 1987, c. 155, §24 (NEW) .]

**5. Findings.** If, upon a preponderance of the evidence, the board determines that the person complained of has committed an unfair practice, in violation of this article, it shall state its findings of fact and shall issue an order requiring the person to cease and desist from such conduct and shall order such further affirmative action, excluding an award of damages, as will effectuate the policies of this article. Failure to comply with such an order is a violation of this article. If the board determines that the person complained of has not committed an unfair practice, it shall state its findings of fact and shall issue an order dismissing the charges.

[ 1987, c. 155, §24 (NEW) .]

**6. Frivolous charges.** If the board determines that a charge of unfair practice is frivolous, it shall state its findings of fact and may issue a reprimand to the person making the charge. Where the board determines that a person who made a charge which was determined to be frivolous did so knowing the charge to be frivolous, it shall state its findings of fact and shall issue an order requiring that person to pay the reasonable attorneys fees and double the amount of other reasonable costs incurred by the person against whom the charge was made in defending against the charge before the board. Where it is disputed, reasonableness shall be determined by the board. The order shall also require that person to reimburse the State for the per diem payments made to board members for their attendance at the hearing on the charge. Failure to comply with such an order is a violation of this article.

[ 1987, c. 155, §24 (NEW) .]

#### SECTION HISTORY

1973, c. 621, §1 (NEW). 1987, c. 155, §§23,24 (AMD).

### Subchapter 3: EMPLOYEE COOPERATIVE CORPORATIONS

#### 13 §1971. Title

This subchapter shall be known and may be cited as the "Employee Cooperative Corporations Act."  
[1983, c. 136, (NEW) .]

#### SECTION HISTORY

1983, c. 136, (NEW) .

#### 13 §1972. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 136, (NEW) .]

**1. Employee cooperative.** "Employee cooperative" means a corporation which has duly elected to be governed by this subchapter.

[ 1983, c. 136, (NEW) .]

**2. Member.** "Member" means a natural person who has been accepted for membership in and owns a membership share issued by an employee cooperative.

[ 1983, c. 136, (NEW) .]

**3. Membership fee.** "Membership fee" means an initial payment made by a person to an employee cooperative as a condition to becoming a member.

[ 1983, c. 136, (NEW) .]

**4. Patronage.** "Patronage" means the amount of work performed as a member of an employee cooperative, measured in accordance with the articles of incorporation or bylaws.

[ 1983, c. 136, (NEW) .]

**5. Written notice of allocation.** "Written notice of allocation" means a written instrument which discloses to a member the stated dollar amount of that member's patronage allocation and the terms for payment of that amount by the employee cooperative.

[ 1983, c. 136, (NEW) .]

#### SECTION HISTORY

1983, c. 136, (NEW).

### 13 §1973. Application of other laws

Except as otherwise provided in this subchapter, employee cooperative corporations are governed by Title 13-C, the Maine Business Corporation Act. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §30 (COR).]

#### SECTION HISTORY

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B30 (COR).

### 13 §1974. Registration of securities

Employee cooperatives are subject to Title 32, chapter 13. The fee charged for registration or renewal shall be \$10. [1983, c. 136, (NEW).]

#### SECTION HISTORY

1983, c. 136, (NEW).

### 13 §1975. Formation of employee cooperative corporation; revocation

**1. Election.** Any corporation organized under former Title 13-A or Title 13-C may elect to be governed as an employee cooperative under this subchapter, by so stating in its articles of incorporation or articles of amendment filed in accordance with Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §31 (COR) .]

**2. Revocation.** An employee cooperative may revoke its election under this subchapter by a vote of 2/3 of the members and through articles of amendment duly filed in accordance with Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §31 (COR) .]

#### SECTION HISTORY

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B31 (COR).

### 13 §1976. Use of words "cooperative," "co-op"

No person, firm, corporation or association, domestic or foreign, hereafter commencing business in this State may use the word "cooperative" or "co-op" as a part of its corporate name, unless it has complied with this subchapter or some other statute of this State relating to cooperative associations. A foreign association



organized under and complying with the cooperative law of the state of its creation shall be entitled to use the term "cooperative" or "co-op" in this State if it has obtained the privilege of doing business in this State. [1983, c. 136, (NEW).]

#### SECTION HISTORY

1983, c. 136, (NEW).

### 13 §1977. Membership in employee cooperative corporation

The articles of incorporation or the bylaws shall establish qualifications and the methods of acceptance and termination of members. No person may be accepted as a member unless employed by the employee cooperative on a full-time or part-time basis. [1983, c. 136, (NEW).]

#### SECTION HISTORY

1983, c. 136, (NEW).

### 13 §1978. Membership shares; fees

**1. Issuance of shares.** An employee cooperative shall issue a class of voting stock designated as membership shares.

[ 1983, c. 136, (NEW) .]

**2. Payment.** Each member of an employee cooperative corporation must be issued a membership share upon payment of a membership fee, the amount of which must be determined from time to time by the directors. Title 13-C, section 621 does not apply to membership shares.

[ 2003, c. 344, Pt. D, §8 (AMD) .]

**3. Ownership limited.** Each member shall own only one membership share, and only members may own those shares.

[ 1983, c. 136, (NEW) .]

**4. Voting stock limited.** Unless otherwise provided in this subchapter or in the articles of incorporation of an employee cooperative, no other capital stock other than membership shares may have voting power. In the event that proposed amendments to the articles of incorporation would adversely affect any nonvoting class of shareholders, such action may not be taken without the vote of those shareholders, as provided in Title 13-C, sections 1003 and 1004.

[ 2003, c. 344, Pt. D, §8 (AMD) .]

#### SECTION HISTORY

1983, c. 136, (NEW). 2003, c. 344, §D8 (AMD).

### 13 §1979. Amendment of bylaws

The bylaws of an employee cooperative may only be amended by members, except as provided in Title 13-C, section 207. [2003, c. 344, Pt. D, §9 (AMD).]

#### SECTION HISTORY

1983, c. 136, (NEW). 2003, c. 344, §D9 (AMD).

## 13 §1980. Earnings or losses

**1. Apportionment.** The net earnings or losses of an employee cooperative shall be apportioned and distributed at such times and in such manner as the articles of organization or bylaws shall specify. Net earnings declared as patronage allocations with respect to a period of time, and paid or credited to members, shall be apportioned among the members in accordance with the ratio which each member's patronage during the period involved bears to total patronage by all members during that period.

[ 1983, c. 136, (NEW) .]

**2. Method.** The apportionment, distribution and payment of net earnings required by this section may be in cash, credits, written notices of allocation or capital stock issued by the employee cooperative.

[ 1983, c. 136, (NEW) .]

### SECTION HISTORY

1983, c. 136, (NEW).

## 13 §1981. Accounting for earnings or losses

**1. Internal accounts.** Any employee cooperative may establish in its articles of incorporation or bylaws a system of internal capital accounts to reflect the book value and to determine the redemption price of membership shares, capital stock and written notices of allocation.

[ 1983, c. 136, (NEW) .]

**2. Redemption.** The articles of incorporation or bylaws of an employee cooperative may permit the periodic redemption of written notices of allocation and capital stock, and must provide for recall and redemption of the membership share upon termination of membership in the cooperative. No redemption may be made if such redemption would result in the liability of any director or officer of the employee cooperative under Title 13-C.

[ 2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §32 (COR) .]

**3. Interest.** The articles of incorporation or bylaws may provide for the employee cooperative to pay or credit interest on the balance in each member's internal capital account.

[ 1983, c. 136, (NEW) .]

**4. Collective reserve account.** The articles of incorporation or bylaws may authorize assignment of a portion of retained net earnings and net losses to a collective reserve account. For purposes of this chapter, a collective reserve account means an unindividuated account on the corporate books representing the corporation's entire net book value minus balances in any other equity accounts. Earnings assigned to the collective reserve account may be used for any and all corporate purposes as determined by the board of directors.

[ 1983, c. 136, (NEW) .]

### SECTION HISTORY

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B32 (COR).

### 13 §1982. Internal capital account cooperatives

**1. Types of accounts permitted.** An internal capital account cooperative is an employee cooperative whose entire net book value is reflected in internal capital accounts, one for each member, and a collective reserve account, and in which no persons other than members own capital stock. In an internal capital account cooperative, each member shall have only one vote in any matter requiring voting by stockholders.

[ 1983, c. 136, (NEW) .]

**2. Allocation to accounts.** An internal capital account cooperative shall credit the paid-in membership fee and additional paid-in capital of a member to the member's internal capital account, and shall also record the apportionment of retained net earnings or net losses to the members in accordance with patronage by appropriately crediting or debiting the internal capital accounts of members. The collective reserve account in an internal capital account cooperative shall reflect any paid-in capital, net losses and retained earnings not allocated to individual members.

[ 1983, c. 136, (NEW) .]

**3. Adjustment of accounts.** In an internal capital account cooperative, the balances in all the internal capital accounts and collective reserve account, if any, shall be adjusted at the end of each accounting period so that the sum of the balances is equal to the net book value of the employee cooperative.

[ 1983, c. 136, (NEW) .]

**4. Exceptions.** Title 13-C, section 1302 does not apply to an internal capital account cooperative.

[ 2003, c. 344, Pt. D, §10 (AMD) .]

#### SECTION HISTORY

1983, c. 136, (NEW). 2003, c. 344, §D10 (AMD).

### 13 §1983. Revocation of election as employee cooperative corporation

When any employee cooperative revokes its election in accordance with section 1975, the articles of amendment must provide for conversion of membership shares and internal capital accounts or their conversions to securities or other property in a manner consistent with Title 13-C. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §33 (COR).]

#### SECTION HISTORY

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B33 (COR).

### 13 §1984. Mergers

An employee cooperative that has not revoked its election under this subchapter may not consolidate or merge with another corporation other than an employee cooperative. Two or more employee cooperatives may consolidate or merge in accordance with Title 13-C, chapter 11. [2001, c. 2, Pt. B, §58 (AFF); 2001, c. 2, Pt. B, §34 (COR).]

#### SECTION HISTORY

1983, c. 136, (NEW). RR 2001, c. 2, §B58 (AFF). RR 2001, c. 2, §B34 (COR).

## Chapter 87: FISH MARKETING ASSOCIATIONS

## Subchapter 1: GENERAL PROVISIONS

### 13 §2001. Short title

This chapter shall be known as the "Fish Marketing Act".

### 13 §2002. Purposes

This chapter is enacted in order to promote, foster and encourage the intelligent and orderly marketing of fish and fishery products through cooperation; to eliminate speculation and waste; to make the distribution of fish and fishery products between producer and consumer as direct as can be efficiently done; and to stabilize the marketing of fish and fishery products.

### 13 §2003. Definitions

As used in this chapter:

**1. Association.** "Association" means any corporation organized under this chapter.

**2. Fishery products.** "Fishery products" includes fish, crustaceans, mollusks and marine products for human consumption.

**3. Member.** "Member" includes members of associations without capital stock and holders of common stock in associations organized with shares of stock.

### 13 §2004. Nonprofit associations

Associations shall be deemed "nonprofit," inasmuch as they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers of fishery products.

### 13 §2005. General corporation law; applicability

The provisions of the general laws relating to business corporations and all powers and rights thereunder, apply to associations, except where such provisions are in conflict with or inconsistent with the express provisions of this chapter.

### 13 §2006. Registration as dealers in securities

Associations organized under this chapter shall be subject to Title 32, chapter 13. The fee charged for registration or renewal shall be \$10.

### 13 §2007. Anti-trust laws; exemption

An association shall be deemed not to be a conspiracy nor a combination in restraint of trade nor an illegal monopoly; nor an attempt to lessen competition or to fix prices arbitrarily or to create a combination or pool in violation of any law of this State; and the marketing contracts and agreements between the association and its members and any agreements authorized in this chapter shall be considered not to be illegal nor in restraint of trade nor contrary to any statute enacted against pooling or combinations.

### 13 §2008. Statutory construction

Any provisions of law which are in conflict with this chapter shall not be construed as applying to associations. Any exemptions under any laws applying to fishery products in the possession or under the control of the individual producer shall apply similarly and completely to such fishery products delivered by its members, in the possession or under the control of the association.

## **13 §2009. Merger or consolidation**

Any 2 or more associations may be merged into one such constituent association or consolidated into a new association. Such merger or consolidation shall be made in the manner prescribed for domestic business corporations.

### **Subchapter 2: ORGANIZATION**

## **13 §2051. Authority to form association**

Five or more persons, a majority of whom are residents of this State, engaged in the fishery business, may form an association, with or without shares of stock, under this chapter.

## **13 §2052. Articles of incorporation**

Articles of incorporation shall be signed, acknowledged and filed in the manner prescribed for domestic business corporations.

## **13 §2053. Contents**

The articles of incorporation shall state:

- 1. Name.** The name of the association;
- 2. Purposes.** The purposes for which it is formed;
- 3. Location.** The municipality and county where the principal office for the transaction of business of the corporation is to be located;
- 4. Directors.** The number of directors thereof, which shall be not less than 3 and may be any number in excess thereof; the term of office of such directors; and the names and residences of those who are to serve as directors for the first year, or until election and qualification of their successors.

## **13 §2054. Shares; number; par value**

If the association is organized with shares of stock, the articles shall state the number of shares which may be issued and if the shares are to have a par value, the par value of each share, and the aggregate par value of all shares; and if the shares are to be without par value, it shall be so stated.

## **13 §2055. Classes**

If the shares are to be classified, the articles shall contain a description of the classes of shares and a statement of the number of shares of each kind or class and the nature and extent of the preferences, rights, privileges and restrictions granted to or imposed upon the holders of the respective classes of stock.

## **13 §2056. Membership; voting power**

If the association is organized without shares of stock, the articles shall state whether the voting power and the property rights and interest of each member are equal or unequal; and if unequal the general rule or rules applicable to all members by which the voting power and the property rights and interests, respectively, of each member may be and are determined and fixed; and shall provide for the admission of new members who shall be entitled to vote and to share in the property of the association with the old members, in accordance with such general rule or rules.

## **13 §2057. Amendments**

The articles of incorporation of any association may be altered or amended in the manner and for the purposes prescribed for domestic corporations.

**13 §2058. Adoption, repeal and amendment; vote; delegation of authority**

Each association shall, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with this chapter. A majority vote of the members or shares of stock issued and outstanding and entitled to vote, or the written assent of a majority of the members or of stockholders representing a majority of all the shares of stock issued and outstanding and entitled to vote, is necessary to adopt such bylaws and is effectual to repeal or amend any bylaws, or to adopt additional bylaws. The power to repeal and amend the bylaws, and adopt new bylaws, may, by a similar vote, or similar written assent, be delegated to the board of directors, which authority may, by a similar vote, or similar written assent, be revoked.

**13 §2059. Prohibited transfers**

The bylaws shall prohibit the transfer of the common stock or membership certificates of the associations to persons not engaged in the fishery business.

**13 §2060. Quorum; voting; qualifications of directors; penalties**

The bylaws may provide:

**1. Quorum.** The number of members constituting a quorum;

**2. Voting.** The right of members to vote by proxy or by mail or both, and the conditions, manner, form and effects of such votes; the right of members to cumulate their votes and the prohibition, if desired, of cumulative voting;

**3. Quorum for directors.** The number of directors constituting a quorum;

**4. Duties, term, etc.** of directors. The qualifications, compensation and duties and term of office of directors and officers and the time of their election;

**5. Penalties.** Penalties for violations of the bylaws.

**13 §2061. Members; financial rights and obligations**

The bylaws may provide:

**1. Fees.** The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same; and the purposes for which they may be used;

**2. Members' payments.** The amount which each member shall be required to pay annually, or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members which every member may be required to sign;

**3. Dividends.** The amount of any dividends which may be declared on the stock or membership capital, which dividends shall not exceed 8% per annum and which dividends shall be in the nature of interest and shall not affect the nonprofit character of any association organized under this chapter.

**13 §2062. -- qualifications; withdrawals; transfers; suspension; valuation of interest**

The bylaws may provide:

**1. Membership.** The number and qualification of members of the association and the conditions precedent to membership or ownership of common stock;

**2. Withdrawal.** The method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock;

**3. Transfer of interest.** The manner of assignment and transfer of the interest of members and of the shares of common stock;

**4. Cessation of membership.** The conditions upon which and time when membership of any member shall cease;

**5. Suspension.** For the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association; and the mode, manner and effect of the expulsion of a member; and

**6. Valuation of interest.** The manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, the purchase at a price fixed by conclusive appraisal by the board of directors; and the conditions and terms for the repurchase by the corporation from its stockholders of their stock upon their disqualification as stockholders.

### **13 §2063. Meetings**

The bylaws may provide for the time, place and manner of calling and conducting meetings of the association.

### **13 §2064. Districting territory; directors from districts; redistricting**

The bylaws may provide that the territory in which the association has members shall be divided into districts and that directors shall be elected from the several districts. In such case, the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association.

### **13 §2065. Directors elected by district representatives; redistricting**

The bylaws may provide that the territory in which the association has members shall be divided into districts, and that the directors shall be elected by representatives or advisers, who themselves have been elected by the members from the several territorial districts. In such case, the bylaws shall specify the number of representatives or advisers to be elected by each district, the manner and method of reapportioning the representatives or advisers and of redistricting the territory covered by the association.

### **13 §2066. Directors; primary elections to nominate**

The bylaws may provide that primary elections shall be held to nominate directors. Where the bylaws provide that the territory in which the association has members shall be divided into districts, the bylaws may provide that the results of the primary elections in the various districts shall be final and shall be ratified at the annual meeting of the association.

### **13 §2067. -- staggered terms**

The bylaws may provide that directors shall be elected for terms of from one to 5 years, provided that at each annual election the same fraction of the total number of directors shall be elected as one year bears to the number of years of the term of office.

### **13 §2068. Executive committee**

The bylaws may provide for an executive committee and may allot to such committee all the functions and powers of the board of directors, subject to the general direction and control of the board.

## **Subchapter 3: OFFICERS**

### **13 §2101. Board of directors**

The affairs of the association shall be managed by a board of not less than 3 directors, elected by the members from their own number.

**13 §2102. -- meetings**

Meetings of the board of directors may be held at any place within or without the State fixed by a quorum thereof unless otherwise provided in the articles of incorporation or bylaws.

**13 §2103. -- vacancies**

When a vacancy on the board of directors occurs other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, provided that when the bylaws provide for an election of directors by districts, the vacancy shall be filled by the election of a director from the district in which the vacancy occurs; or the board of directors may call a special meeting of the members in that district to fill the vacancy.

**13 §2104. President; vice-presidents; secretary; treasurer**

The directors shall elect from their number a president and one or more vice-presidents. They shall elect a secretary and a treasurer, who need not be directors or members of the association, and they may combine the 2 latter offices and unite both functions and titles in one person. The treasurer may be a bank or any depository and, as such, shall not be considered as an officer, but as a function of the board of directors. In such case, the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as and where authorized by the board of directors. Any vacancy in any office, other than that of director, shall be filled by the board of directors.

**13 §2105. Compensation**

An association may provide a fair remuneration for the time actually spent by its officers and directors in its service and for the service of the members of its executive committee.

**13 §2106. Charges; petition**

Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 5% of the members, requesting the removal of the officer or director in question.

**13 §2107. -- notice; hearing**

The director or officer, against whom such charges have been brought, shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity.

**13 §2108. Vote; time; majority required**

Except as provided in section 2109, the removal shall be voted upon at the next regular or special meeting of the association and, by a vote of a majority of the members, the association may remove the officer or director.

**13 §2109. District directors; petition; vote of district membership**

If the bylaws provide for election of directors by districts with primary elections in each district, the petition for removal of a director shall be signed by 20% of the members residing in the district from which he was elected. The board of directors shall call a special meeting of the members residing in that district to consider the removal of the director; and by a vote of the majority of the members of that district, the director in question shall be removed from office.

**Subchapter 4: MEMBERS**



### **13 §2151. Qualifications**

Under the terms and conditions prescribed in the bylaws, an association may admit as members, or issue common stock to, only such persons as are engaged in the fishery business, including the lessees and tenants of boats and equipment used in such fishery business and any lessors and landlords who receive as rent all or part of the fish produced by such leased equipment.

If a member of a nonstock association is other than a natural person, such member may be represented by any individual duly authorized in writing.

One association may become a member or stockholder of any other association.

### **13 §2152. Certificate**

When a member of an association established without shares of stock has paid his membership fee in full, he shall receive a certificate of membership.

### **13 §2153. Liability for debts**

No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory note given in payment thereof.

### **13 §2154. Meetings; place**

Meetings of members shall be held at the place as provided in the bylaws; and if no provision is made, in the city where the principal place of business is located at a place designated by the board of directors.

### **13 §2155. Expulsion; payment for interest**

In case of the expulsion of a member, and where the bylaws do not provide any procedure or penalty, the board of directors shall equitably and conclusively appraise his property interest in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion.

## **Subchapter 5: STOCK**

### **13 §2191. Payment; common; ownership limitations**

No association shall issue a certificate for stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the member's right to vote. An association, in its bylaws, may limit the amount of common stock which one member may own.

### **13 §2192. Common; voting power**

One class of stock shall always be known as common stock and voting power may be restricted to holders of common stock.

### **13 §2193. Notation of restriction on transfer**

There shall be printed upon each common stock certificate a statement that the transfer thereof to any person not engaged in the fishery business is prohibited by the bylaws of the association.

### **13 §2194. Purchase by association**

An association may, at any time, as specified in the bylaws, except when the debts of the association exceed 50% of its assets, buy in or purchase its common stock at the book value thereof, as conclusively determined by the board of directors and pay for it in cash within one year thereafter.

**13 §2195. Distinction between classes of stock or holders**

Except as to the matters and things stated in the articles of incorporation no distinction shall exist between classes of stock or the holders thereof.

**13 §2196. Nonpar issuance**

If an association issues nonpar value stock the issue of such stock shall be governed by the laws regulating the issuance of nonpar value stock in domestic corporations.

**13 §2197. Preferred; issuance in payment for purchases by association**

Whenever an association, organized with preferred shares of stock, purchases the stock or any property or any interest in any property of any person, it may discharge the obligations so incurred wholly or in part, by exchanging for the acquired interest, shares of its preferred stock to an amount which at par value would equal the fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued.

**Subchapter 6: POWERS****13 §2231. Authorized activities**

An association may engage in any activity in connection with the marketing, selling, preserving, harvesting, drying, processing, manufacturing, canning, packing, grading, storing, handling or utilization of any fishery products produced or delivered to it by its members; or the manufacturing or marketing of the by-products thereof; or any activity in connection with the purchase, hiring or use by its members of supplies, machinery or equipment; or in the financing of any such activities.

**13 §2232. Borrowing; advances to members**

An association may borrow without limitation as to amount of corporate indebtedness or liability and may make advances to members.

**13 §2233. Agency**

An association may act as the agent or representative of any member or members in sections 2231 and 2232.

**13 §2234. Reserves; investments**

An association may establish reserves and invest the funds thereof in bonds or in such other property as may be provided in the bylaws.

**13 §2235. Stocks and bonds; acquisition and ownership**

An association may purchase or otherwise acquire, hold, own and exercise all rights of ownership in, sell, transfer or pledge the payments of dividends or interest on, or the retirement or redemption of, such shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the warehousing or handling or marketing or packing or manufacturing or processing or preparing for market of any of the fishery products handled by the association.

**13 §2236. Property ownership**

An association may buy, hold and exercise all privileges or ownership over such real or personal property as may be necessary or convenient for the conduct and operation of any of the business of the association, or incidental thereto.

**13 §2237. Assessments**

An association may levy assessments in the manner and in the amount provided in its bylaws.

**13 §2238. Acts necessary to accomplish purposes**

An association may do each and every thing necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects enumerated in this chapter; or conducive to or expedient for the interest or benefit of the association; and contract accordingly; and in addition exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and, in addition, any other rights, powers and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this chapter; and do any such thing anywhere.

**13 §2239. Facilities; use; proceeds**

An association may use or employ any of its facilities for any purpose; provided the proceeds arising from such use and employment go to reduce the cost of operation for its members; but the fishery products of nonmembers shall not be dealt in to an amount greater in value than such as are handled by it for its members.

**13 §2240. Interest in other corporations; warehousing corporations; warehouse receipts**

An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock and engaged in preserving, drying, processing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the fishery products handled by the association, or the byproducts thereof.

If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association against the commodities delivered by it, or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the usual and current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this State or the United States, its warehouse receipt delivered to the association on commodities of the association or its members, or delivered by the association or its members, shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association.

**13 §2241. Agreements with other associations; cooperation**

Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other cooperative or other corporation, association or associations, formed in this or in any other state, for the cooperative and more economical carrying on of its business or any part or parts thereof. Any 2 or more associations may, by agreements between them, unite in employing and using or may separately employ and use the same personnel, methods, means and agencies for carrying on and conducting their respective business.

**Subchapter 7: MARKETING CONTRACTS****13 §2281. Authority to contract; restrictions**

An association and its members may make and execute marketing contracts, requiring the members to sell, for any period of time, not over 15 years, all or any specified part of their fishery products or specified commodities exclusively to or through the association or any facilities to be created by the association.

**13 §2282. Title to products**

If the members contract a sale to the association, it shall be conclusively held that title to the products passes absolutely and unreservedly, except for recorded liens, to the association upon delivery or at any other time expressly and definitely specified in the contract.

**13 §2283. Sales and resales; payments to members; deductions**

The contract may provide that the association may sell or resell the fishery products delivered by its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding 8% per annum, and reserves for retiring the stock, if any; and other proper reserves; and interest not exceeding 8% per annum upon common stock.

**13 §2284. Breach of contract; liquidated damages; costs**

The marketing contract may fix, as liquidated damages, specific sums to be paid by the member to the association upon the breach by him of any provision of the marketing contract regarding the sale or delivery or withholding of fishery products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees, in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this State; and such clauses providing for liquidated damages shall be enforceable as such and shall not be regarded as penalties.

**13 §2285. Enforcement of contract; injunction; specific performance**

In the event of any such breach or threatened breach of such marketing contract by a member the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

**13 §2286. Landlord or lessor; presumptions; remedies against**

In any action upon such marketing agreements, it shall be conclusively presumed that a landlord or lessor is able to control the delivery of fishery products produced by his equipment by tenants, or others, whose tenancy or possession or work on such equipment or the terms of whose tenancy or possession or labor thereon were created or changed after execution by the landlord or lessor, of such a marketing agreement; and in such actions, the foregoing remedies for nondelivery or breach shall lie and be enforceable against such landlord or lessor.

**13 §2287. Specific performance**

A contract entered into by a member of an association, providing for the delivery to such association of products produced or acquired by the member, may be specifically enforced by the association to secure the delivery to it of such fishery products, any provisions of law to the contrary notwithstanding.

**Chapter 89: FRATERNAL BENEFIT SOCIETIES****13 §2341.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2342.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2343.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2344.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2345.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2346.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2347.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2348.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2349.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2350.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2391.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2392.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2431.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2432.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2433.**

*(REPEALED)*

SECTION HISTORY

1969, c. 433, §13 (AMD). 1969, c. 132, §11 (RP). 1969, c. 590, §17 (RP).

**13 §2434.**

*(REPEALED)*

**13 §2435.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2436.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2437.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2438.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2439.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2440.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2441.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2442.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2443.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2444.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2445.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2446.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2481.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2482.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2483.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2484.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2485.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2486.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2487.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2521.**

*(REPEALED)*

SECTION HISTORY

1969, c. 132, §11 (RP).



**13 §2522.*****(REPEALED)***

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2561.*****(REPEALED)***

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2562.*****(REPEALED)***

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2563.*****(REPEALED)***

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2564.*****(REPEALED)***

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2601.*****(REPEALED)***

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2602.*****(REPEALED)***

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2603.*****(REPEALED)***

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2604.*****(REPEALED)***

## SECTION HISTORY

1969, c. 433, §14 (AMD). 1969, c. 132, §11 (RP). 1969, c. 590, §18 (RP).

**13 §2605.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2606.**

*(REPEALED)*

## SECTION HISTORY

1967, c. 412, §1 (AMD). 1969, c. 132, §11 (RP).

**13 §2607.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2641.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2642.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**13 §2643.**

*(REPEALED)*

## SECTION HISTORY

1969, c. 132, §11 (RP).

**Chapter 91: PROPRIETORS OF LANDS AND WHARVES****Subchapter 1: MEETINGS AND ORGANIZATION****13 §2691. Warrant for calling meetings**

When any 5 or a majority of the proprietors of lands or wharves held in common desire a meeting of the proprietors for the purpose of forming a corporation or for any other purpose, they may make written application signed by them or their agents to any justice of the peace residing in the county in which the lands

or wharves are situated. The justice of the peace shall thereupon issue his warrant calling a meeting at the time and place and for the purposes distinctly stated in the application, directed to one of the proprietors, requiring him to give notice thereof. [1987, c. 736, §8 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A40 (AMD). 1987, c. 736, §8 (AMD).

### **13 §2692. Notice**

If the lands lie in one or more incorporated towns, a notice in writing shall be posted in some public place in each, and published in one of the newspapers of general circulation in the county where any part of them lies, 14 days before the meeting; or the meeting may be warned by posting written notifications in some public place in each town where any proprietor resides, 14 days before the time appointed therefor. [1987, c. 667, §7 (AMD).]

#### SECTION HISTORY

1987, c. 667, §7 (AMD).

### **13 §2693. Business specified in warrant; votes counted**

No business shall be acted upon at any meeting unless distinctly expressed in the warrant therefor. The proprietors' votes shall be counted according to the interest of each in the common lands, if known, and in that way the moderator shall make certain all doubtful votes. They may pass bylaws as to the management, improvement, division and disposal of their lands or wharves, subject to the approval of the county commissioners of the county where the lands lie, and may annex penalties to the breach of them, not exceeding \$3 for one offense, to be disposed of as they direct.

### **13 §2694. Raising and assessment of moneys; publication**

At any legal meeting, the proprietors may raise money for bringing forward, completing the settlement of, managing or improving said lands, or for their common good, and assess the same according to their interests in the lands. The treasurer, collector or committee shall publish such assessment in the same manner as a meeting of the proprietors is notified.

### **13 §2695. Management of property; proxies**

A majority of proprietors present at any legal meeting may order, manage, improve, divide or dispose of their lands as they choose; and may vote in person or by attorney appointed in writing.

## **Subchapter 2: OFFICERS**

### **13 §2731. Officers; future meetings**

At such meeting, such proprietors as assembled in person or by attorney may organize into a corporation, if not already so organized, choose a moderator, clerk, treasurer, assessors, collector of taxes, committees and other needful officers; and may by vote decide upon the manner of calling and notifying future meetings.

### **13 §2732. Officers sworn**

The clerk, treasurer, assessors and collector shall be sworn by the moderator or a dedimus justice, and the clerk shall record the votes passed at all meetings. [1987, c. 736, §9 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A41 (AMD). 1987, c. 736, §9 (AMD).

**13 §2733. Treasurer's powers and duties**

The treasurer may sue for and collect all debts due to the proprietors and shall render his account of all moneys received and paid; and he shall hold his office during their pleasure.

**Subchapter 3: RECORDS****13 §2771. Deposit with town clerk**

After a final division of their common property, the proprietors shall cause their records to be deposited in the office of the clerk of the town in which some part of such land lies. He may record votes and certify copies of such records as the proprietors' clerk might have done. The last clerk chosen shall continue in office until the records are so deposited.

**Subchapter 4: MISCELLANEOUS****13 §2811. Prosecution and defense of actions**

The proprietors may prosecute and defend civil actions by their agent, and the certificate of the proprietors' clerk is evidence of such agency.

**13 §2812. Assessment collected by forced sale**

If any proprietor neglects to pay his assessment to the treasurer, collector or committee for 6 months, if he resides in the State, otherwise for 12 months, then the committee may, from time to time, sell at auction so much of his right in the common lands as is sufficient to pay his tax and the reasonable charges of sale, after notice thereof posted as provided and published in 2 of the newspapers before named, 5 weeks successively next before the time of sale; and may give deeds thereof in fee to the purchaser.

**13 §2813. Right of redemption**

The proprietor of the right so sold may redeem it within a year by paying to the committee the sum for which it was sold, with \$12 for each hundred produced by such sale, and in that proportion for a greater or less sum.

**13 §2814. Continuation for 10 years after final division**

A final division shall not dissolve the corporation until 10 years thereafter; but the last proprietors in common and their heirs shall continue in their corporate capacity for the collection and payment of all debts due to or owing by the corporation; and may call and hold meetings, and vote assessments to pay their debts and all other charges necessary for closing their business.

**Chapter 93: RELIGIOUS SOCIETIES****Subchapter 1: PARISHES AND SOCIETIES****Article 1: Organization and Operation****13 §2861. Meeting to form parish**

Any person of age 18 or older, desirous of becoming an incorporated parish or religious society, may apply to a notary public, who shall issue his warrant to one of them, directing him to notify the other applicants to meet at some proper place expressed in the warrant. He shall give notice of the meeting 7 days at least before holding the same, by posting a notification thereof on the outer door of the meetinghouse or place of public worship of the society, if any, otherwise at such place as the notary appoints. [1981, c. 456, Pt. A, §42 (AMD).]

**SECTION HISTORY**

1969, c. 433, §15 (AMD). 1971, c. 598, §12 (AMD). 1981, c. 456, §A42 (AMD).

### **13 §2861-A. Bylaws; disposal of assets**

The bylaws of a corporation organized under this chapter after the effective date of this section must provide for the disposal of the corporation's assets. [1995, c. 300, §2 (NEW).]

#### SECTION HISTORY

1995, c. 300, §2 (NEW).

### **13 §2862. Organization; name**

Persons assembled under section 2861 may choose a clerk and other needful parish officers, and shall thereupon be a corporation, bear the name which they assume and have all the powers of parishes and religious societies.

### **13 §2863. Property and bylaws**

Every parish may take by gift or purchase any real or personal estate, until the clear annual income thereof amounts to \$3,000; convey the same and establish bylaws not repugnant to law.

### **13 §2864. Insurance; losses**

A parish in the actual occupancy of a church, meetinghouse or other building used for religious purposes may insure it against loss by fire. In case of such loss, the company insuring it shall not deny the occupancy of the parish, its legal existence or its right to maintain an action on the policy. The money so recovered shall be held by the parish in trust for repairing or restoring the building, and shall be so applied.

### **13 §2865. Admission to parish**

A person of either sex, of age 18 years or older, may become a member of a parish or religious society by vote thereof at a legal meeting. [1971, c. 598, §12 (AMD).]

#### SECTION HISTORY

1969, c. 433, §16 (AMD). 1971, c. 598, §13 (AMD).

### **13 §2866. Persons deemed members; dissolution**

Any person described in section 2865, residing in a local parish holding funds derived from this State or Massachusetts, shall be deemed a member of it until he dissolves the connection. Such person having resided in such parish one year, after he has arrived at majority, without either giving written notice to its clerk of his consent to be a member thereof, or paying a tax or subscription according to the mode that said parish has adopted to raise money, shall be deemed to have thereby dissolved his connection therewith. Said connection shall remain dissolved, and said person shall not be taxable until he renews the connection by giving written notice to its clerk of his consent to be a member of said parish. Any person residing in a local parish may become a member of such parish not deriving funds from the State, by giving written notice to its clerk of his intention to do so within one year after he is of age or removes thereto.

### **13 §2867. No compulsion; withdrawals**

No person described in section 2866 shall be a member of a parish or religious society without his consent. Any person may dissolve his connection therewith by leaving with its clerk a certificate of his intention to do so, and all his liability for future expenses shall thereby cease; but he may be taxed for money previously raised, except in case of removal from a local parish.

## **Article 2: Meetings**

**13 §2901. Call and notice; clerk**

The annual or other meetings of an incorporated parish may be called by its assessors or clerk to be held at the time when, and place in the town where, they are usually held. The members of such parish shall be notified of such meeting as prescribed in section 2861 or in the manner agreed on by its vote. At such meeting, they may choose a clerk who shall be sworn, 2 or more assessors, a collector, treasurer, standing committee and all other needful officers. The assessors shall manage the prudential concerns of the parish, when no other persons are appointed for that purpose, and shall be sworn.

**13 §2902. Moderator**

The moderator of any meeting shall preserve order, manage the business and administer the oath to the clerk and assessors.

**13 §2903. Request of members for meeting**

When 5 members of any parish in writing request the assessors to call a meeting, or to insert any particular article in the warrant therefor, they shall do so.

**13 §2904. Refusal of assessors**

If the assessors unreasonably refuse, any justice of the peace on like application may issue his warrant to one of the applicants, who shall notify such meeting as prescribed in section 2861 or as agreed on by parish vote. [1987, c. 736, §10 (AMD).]

## SECTION HISTORY

1981, c. 456, §A43 (AMD). 1987, c. 736, §10 (AMD).

**13 §2905. No meeting for 3 years**

When there has been no meeting of an incorporated parish or society for 3 years, a meeting may be called as provided in section 3110.

**13 §2906. Qualification of voters**

No person described in section 2866 shall vote in meetings of any territorial parish who is not a contributor to its support. [1977, c. 255, §2 (AMD).]

## SECTION HISTORY

1977, c. 255, §2 (AMD).

**Article 3: Finances****13 §2941. Authority to raise money**

Every parish, at a legal meeting, may raise money for the support of the public ministry of religion, for building, repairing or removing houses of public worship and for other necessary parish charges.

**13 §2942. Assessment on pews**

When a house of public worship belongs to a parish, or it and the fee of the land on which it stands is vested in trustees for the use of a parish, such parish may assess any money raised wholly or partly, on the pews or seats, whether owned by members of such parish or religious society or not; and the owners may be present and vote in raising such money.

**13 §2943. Payment of tax by sale of pews**

When taxes on pews and seats remain unpaid for 6 months after their assessment, the treasurer shall sell them at auction, first posting notice thereof at the principal outer door of such house of worship, 3 weeks before the time of sale, stating the numbers, if any, of the pews or seats and the amount of tax on each; and shall execute and deliver a deed thereof to the purchaser, and pay to the owner the overplus, after deducting the amount of tax and incidental charges.

**13 §2944. Notice of nonoccupancy by pew owner; rights**

Whenever a parish or church raises its current expenses by assessment on its pews, any pew owner who shall not occupy his pew, either by himself or family, or rent the same, may give a written notice to the clerk of the parish or church, or to the parish committee or assessors, of his intention not to occupy said pew for one year following the next annual meeting of said parish or church, in which case said pew owner shall not be liable for any tax assessed on said pew during said year, neither shall he act and vote at said annual meeting unless he retains a pew for the occupancy of himself and family, and the parish or church may let said pew during said year and appropriate the rent to the current expenses of the parish or church, and said parish or church shall not sell said pew for taxes assessed during that year.

**Article 4: Miscellaneous Provisions****13 §2981. Territorial parishes continued**

*(REPEALED)*

**SECTION HISTORY**

1977, c. 255, §3 (RP).

**13 §2982. Officers as corporations; organization and powers**

The church wardens of Episcopal churches, the stewards or trustees of the United Methodist church and the deacons of all other Protestant churches are so far corporations as to take, in succession, all grants and gifts of real and personal estate made to their churches or to them and their successors. If the ministers, elders or vestrymen are joined with them in such grants or gifts, the 2 classes of officers shall be corporations for that purpose. For the purpose of organizing any such corporation, one or more members of said corporation may call a meeting thereof by a notice posted upon the outer door of the meetinghouse or place of public worship of their parish or society at least 7 days before the time of holding such meeting; or, if there is no such meetinghouse or place of public worship, by a notice posted in 2 public and conspicuous places in the town wherein said parish or society is located. At such meeting the corporation may organize, adopt a corporate name and elect such officers as its bylaws shall prescribe. Said corporations are authorized to take by gift, purchase, bequest, demise or otherwise, real and personal property for religious purposes, and may make such contracts in relation to such estate, its improvements, disposal, investment or reinvestment, as they may be authorized under the rules of their church or instructed by the church for which they hold estate in trust to make, which contracts may be enforced by or against them as in other cases. No disposal of such estate shall be made, inconsistent with the terms of the grant by which it is held. Trustees of the local United Methodist churches are created a corporation with all the rights and privileges of corporations, subject to the restrictions contained in the book of discipline of the United Methodist church. [1975, c. 244, (AMD).]

**SECTION HISTORY**

1969, c. 20, §§1,2 (AMD). 1975, c. 244, (AMD).

**13 §2983. Ministers and officers of religious societies; powers**

The ministers of a parish or religious society and the deacons, elders, trustees, stewards and other presiding officers of a religious society or church, having by its usages no settled minister, may take, in succession, any estate granted to the minister and his successors, or for the use of the ministry or poor of the church; and may prosecute and defend all civil actions respecting it; but they shall not so take, while the clear annual income of prior grants is \$3,000.

**13 §2984. Conveyance of land**

No conveyance of an estate as set forth in section 2983 by a minister shall be valid longer than he is in the ministry; or by such deacons or other officers, longer than they are in office, if made by them without consent of the church or by church wardens without the consent of the vestry.

**13 §2985. Records open to inspection**

The records of a parish shall be open to the inspection of its members and to clerks of other parishes. Each clerk shall furnish attested copies thereof, on request, for a reasonable compensation.

**13 §2986. Trustees of Society of Friends to hold grants as corporations**

The trustees of each monthly meeting of the Religious Society of Friends, or Quakers, are so far corporations as to take and hold, in succession, all grants and gifts of real, personal or mixed estate made to said meetings or to them, for the use of their monthly meetings, the preparative meetings constituting them or the poor thereof; to take and hold all grants and gifts of real, personal and mixed estate made to said monthly meetings or the trustees thereof for the use of quarterly meetings of said Religious Society of Friends, or Quakers, for their use or the use of the poor thereof. Said trustees shall hold, manage and convey all such estate according to the terms and conditions on which it was granted or given. They may sue in their names as such trustees for any right, title or interest to which said meetings or their trustees are entitled.

The annual income therefrom, to any one meeting, for the uses specified shall not exceed \$5,000. These powers may be enlarged, restrained or repealed by the Legislature.

**Subchapter 2: INDEPENDENT LOCAL CHURCHES****13 §3021. Incorporation**

Any independent local church now existing, or that may hereafter be organized in the State, may be incorporated according to this section and sections 3022 to 3028.

**13 §3022. Notice of meeting**

When 3 or more members of the church who are voters according to section 3023 shall apply in writing to any notary public in the county for the purpose of incorporating the church, the notary shall issue his warrant addressed to one of the applicants, stating the time, place and purposes of the meeting and directing him to notify the members of the church by posting a certified copy of the warrant in a conspicuous place near the main entrance to the usual place of meeting of the church and in one other public and conspicuous place in the same town, for 7 days, at least, prior to the meeting. [1981, c. 456, Pt. A, §44 (AMD).]

**SECTION HISTORY**

1981, c. 456, §A44 (AMD).

**13 §3023. Qualification of voters; organization**

The resident members of such church 18 years of age and upward shall be voters at such meeting and in all meetings of the corporation. Such voters, assembled at the time and place notified, shall elect a moderator to preside over said meeting. They shall then, by ballot, proceed to vote upon the question whether the church will become incorporated. If 2/3 of the ballots cast shall be in favor of the church becoming incorporated, it shall thereupon become a body corporate with all the powers, rights and duties incident to corporations,



with the right to take by gift, purchase, devise or bequest such personal and real property as may be useful for carrying on its local work, and may dispose of the same at pleasure, have perpetual succession, a corporate seal and change the same at pleasure. [1971, c. 598, §14 (AMD).]

#### SECTION HISTORY

1969, c. 433, §17 (AMD). 1971, c. 598, §14 (AMD).

### 13 §3024. Election of officers

The resident members shall, by ballot, elect a clerk, treasurer, a board of trustees of not less than 3 members who are voters and such other officers as they may deem necessary. [1973, c. 49, §1 (AMD).]

#### SECTION HISTORY

1965, c. 159, (AMD). 1973, c. 49, §1 (AMD).

### 13 §3025. Filing of certificate; change of name; filing duty of the Secretary of State

**1. Certificate.** The clerk, treasurer and a majority of the board of trustees of every independent local church incorporated under sections 3021 to 3024 shall prepare, sign, date and deliver for filing with the Secretary of State a certificate of incorporation, in the format approved by the Secretary of State, setting forth the name of the church, the town or city where the church is located and the number and names of the members of its board of trustees. A filing fee of \$5 must accompany the certificate.

[ 2003, c. 523, §9 (NEW) .]

**2. Change of certificate.** The name of any incorporated church or any other provision in the certificate of incorporation filed under subsection 1 may be changed by vote in a legal meeting duly called for this purpose. The clerk or other duly authorized officer of the corporation shall prepare, sign, date and deliver for filing with the Secretary of State a certificate, in the format approved by the Secretary of State, setting forth the name of the church, the town or city where the church is located, the date and the nature of the change and a statement that a majority of the members or trustees authorized the change. A filing fee of \$5 must accompany the certificate.

[ 2003, c. 523, §9 (NEW) .]

**3. Filing certificate.** If a certificate delivered for filing with the Secretary of State pursuant to this section satisfies the requirements of this chapter, the Secretary of State shall file the certificate. The date of filing is the date of receipt by the Secretary of State. After filing any certificate under this chapter, the Secretary of State shall deliver to the corporation or its representative a copy of the document with an acknowledgement of the date of filing.

[ 2003, c. 523, §9 (NEW) .]

#### SECTION HISTORY

1973, c. 49, §2 (AMD). 1977, c. 696, §158 (AMD). 2003, c. 523, §9 (RPR).

### 13 §3026. Duties of officers; notice of meetings

An independent local church by its bylaws may prescribe the duties of the several officers and the manner of executing the same. When no provision is made by any vote or bylaw of the church for calling meetings, they shall be called by the board of trustees by posting notices of the time, place and purposes of

said meeting, in the same manner and for the same time as is prescribed in section 3022. Meetings shall in the same manner, be called by said board, upon the written request of at least 6 members of the church qualified to vote. [1973, c. 49, §3 (AMD).]

#### SECTION HISTORY

1973, c. 49, §3 (AMD).

### **13 §3027. Church supporters may participate**

An independent local church may by its bylaws extend to all persons not members of the church, who are 18 years of age and upward and who regularly contribute toward the expenses of the church, the right to attend and participate in the annual and special meetings of the church when action is to be taken relative to the use and appropriation of funds towards which they have contributed or toward which they have pledged contributions, and meetings called for the purpose of obtaining or dismissing a pastor. [1971, c. 598, §15 (AMD).]

#### SECTION HISTORY

1969, c. 433, §18 (AMD). 1971, c. 598, §15 (AMD).

### **13 §3028. Conveyance of trust property to church**

The deacons of such church or any other person or persons holding real or personal estate in trust for the use of such church may convey such property to such incorporated church, and said church shall hold the same subject to the uses and trust under which it was held by such deacons and other person or persons.

### **13 §3029. Parish may convey property to church**

Any parish or religious society connected with the church, which becomes incorporated, may at a meeting duly warned and called for such purpose by a 2/3 vote authorize one or more persons in its name and behalf to convey to such church any real or personal estate which it may hold for the use of such church, and such church shall thereafter hold such property to the same uses and trusts as when held by such parish or society.

## **Subchapter 3: PROTECTION OF PROPERTY**

### **13 §3061. Sale of property wasting for lack of custody**

Where any property in the State, dedicated and ordained for pious uses, has no proper or legal custodian, so that it is becoming wasted and the utility thereof is lost, upon the application of any person or patriotic or religious society interested in having such property preserved and applied to the uses for which it was originally intended, or for some public or patriotic purpose, the Attorney General shall file a complaint seeking equitable relief, in the nature of an information, against such property and all persons interested therein, praying for the appointment of trustees to care for such property and for the proper application and disposal thereof, and the court may order such notice as seems proper, and may appoint receivers or trustees therefor, and upon final decree, may order the care, custody, sale, application or disposal of such property as will best serve the purposes for which it was originally intended, or some public or patriotic purpose. The court may convey or transfer such property to any religious or patriotic body, to be held and applied for the purposes of such trust as the court may declare, and it shall have power to treat, care for and dispose of the same in furtherance of such pious, public or patriotic uses as may seem best suited to the case and situation.

### **13 §3062. Transfer of certain trust funds**

*(REPEALED)*

#### SECTION HISTORY

2001, c. 550, §C29 (AFF). 2001, c. 550, §C2 (RP).

## Subchapter 4: MEETINGHOUSES

### **13 §3101. Parish may become owner of pews; proceedings**

When it is deemed expedient by any organized parish or incorporated church to become the owner of the pews in any meetinghouse used by it as a place of regular worship, a meeting of the owners and occupants thereof may be called, as provided in section 2903, and a majority of such pew owners and occupants may vote to convey the pews by them owned or occupied to such parish or incorporated church. If the owners or occupants of any of the pews in such meetinghouse are unknown to the assessors they shall give notice, additional to that provided, by publishing the call for such meeting in some newspaper published in the county where such meetinghouse is located at least 7 days before the time appointed for such meeting.

### **13 §3102. Dissenting pew owners; proceedings**

Any owner or occupant of a pew in such meetinghouse who expresses his dissent from such vote in writing to the clerk of the parish or incorporated church within one month from the time of holding such meeting shall have his pew appraised, as provided in section 3105, and the appraised value shall be tendered to him in satisfaction of his claim for compensation and he shall then deliver a deed of such pew to the parish or incorporated church. If such dissent is not so expressed, such pew shall be forever forfeited to the parish or incorporated church.

### **13 §3103. Incorporation**

Any persons, for the purpose of erecting a meetinghouse, or the majority in interest of the owners of a meetinghouse, not a parish, may incorporate themselves as parishes may, and choose all officers and do all other acts that a parish may lawfully do.

### **13 §3104. Repairs; disposal; notice of meeting**

A majority of the pew owners or proprietors of a meetinghouse, present at a legal meeting called for that purpose, may repair, remodel or sell and convey their house or the land used with it, or remove or rebuild it. Any meeting relating thereto may be called as provided in section 3107, or by publishing the warrant in a newspaper printed in the county, at least 14 days before the meeting.

### **13 §3105. Conduct of alteration or sale**

Before such alteration or sale is made, an appraisal of the relative value of the pews shall be made by 3 discreet persons, under oath, to be elected by ballot at a legal meeting of said owners or proprietors. If a sale of said house and land is made, it may be private or public, as such meeting determines, and the proceeds shall be applied to pay the expenses of said sale and the debts and just claims against the property. The balance shall be paid to the pew owners or proprietors in proportion to their interests by the appraisal. If the meetinghouse is altered or rebuilt, the appraisers, after the work is completed, shall assign pews to the former pew holders to conform as nearly as practicable to those previously held by them. The other pews may be sold to defray the expenses of the repairs and alterations or be otherwise disposed of as the proprietors or pew owners determine. They may choose officers, raise and assess taxes on the pews, collect them for making such repairs and alterations, do all things that a parish may do, and appoint some suitable agent or agents to make such sale and conveyance or repairs and alterations, and a treasurer or trustees to receive and distribute the proceeds of sale in manner provided.

### **13 §3106. Dissenting proprietors; value of interest; limitation and forfeiture**

When it is decided to repair, remodel or rebuild a meetinghouse, any owner or proprietor dissenting from the action of the majority and declining to take an interest in the house as altered may demand and receive of such majority the appraised value of his interest after deducting his proportion of debts against the property, to be recovered in a civil action; which shall not be commenced until 30 days after such demand, nor after the lapse of a year after notice is posted for 3 successive weeks on the meetinghouse door and some other conspicuous place in its precinct, stating the persons to whom the money is to be paid, the amount payable to

each and the time limited for payment. If said sums are not demanded within said time, they are forfeited to the majority for parish uses. This section does not apply to any case where the repairs decided upon are only such as are necessary to keep such meetinghouse in a tenantable condition.

### **13 §3107. Owners may incorporate**

The owners of a meetinghouse or building for public worship and the pew owners may be incorporated, when any 3 or more of them apply therefor to a notary public, who shall issue his warrant to one of them, stating the time, place and purpose of the meeting, and directing him to notify the owners by posting a certified copy of it for 14 days on the principal outer door of the building and in one or more public places in the same town. [1981, c. 456, Pt. A, §45 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A45 (AMD).

### **13 §3108. -- proceedings**

When assembled as provided for in section 3107, the owners of the building and pew owners may choose a moderator and clerk, who shall perform the usual duties of such officers. Thereupon said owners shall be a corporation and be known by such name as they adopt, and they may agree on the mode of calling future meetings.

### **13 §3109. Corporate rights and powers**

Any meetinghouse corporation, by a major vote of its members, may use and control the meetinghouse or building for public worship partly or wholly owned by them, as they please. Nothing in this section and sections 3107 and 3108 shall affect the rights of owners of houses of worship, built by different religious denominations.

### **13 §3110. Meetings of owners**

When there has been no meeting of the incorporated pew owners, or proprietors or owners of a meetinghouse or building for public worship for 3 years, a meeting may be called on application of 3 or more members thereof to a notary public, who shall issue his warrant to one of them stating the time, place and purposes of the meeting, directing him to notify the meeting by posting a certified copy of the warrant, 3 weeks before the time of meeting, on the principal outer door of the building, and in one or more public places in the same town and publishing it in a newspaper published in the county, if any, otherwise in an adjoining county or in the state paper. [1981, c. 456, Pt. A, §46 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A46 (AMD).

### **13 §3111. Different denomination; division of time**

When a house of public worship is owned by persons of different denominations and when an organized society, or its members, own 5 pews therein, one or more of the minority owning not less than 5 pews may apply to a justice of the peace to obtain a division of the time of occupying the house. He shall call a meeting of the owners by posting a notice in a public place in or about the house, 30 days at least before the meeting, stating the time, place and object thereof. [1987, c. 736, §11 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A47 (AMD). 1987, c. 736, §11 (AMD).

### 13 §3112. Mode of proceeding

At a meeting called under section 3111, the owners, who are not applicants, or if they refuse or neglect, the notary who called the meeting may designate another notary, and the 2 may appoint a 3rd disinterested person, not an inhabitant of the town in which the house is located, or belonging to the denomination of either party interested. The 3 shall be a board, before which the owners may exhibit the amount that they own in the house. The minority, owning at least 5 pews, shall have their part allotted to them, as nearly as may be, in proportion to the amount that they own in the house. The board shall designate which weeks in each year the minority, if they please, may occupy the house; if they do not, the majority may occupy it. [1981, c. 456, Pt. A, §48 (AMD).]

#### SECTION HISTORY

1981, c. 456, §A48 (AMD).

### 13 §3113. Proportion of minority appraised

The board shall appraise the value of the minority's proportion of the house, make a record of their proceedings, and within 10 days cause it to be transcribed into the records of such town.

### 13 §3114. Expenses

All their reasonable expenses shall be paid by the persons who requested the division; but the above provisions shall not affect any agreement now in force as to the mode of occupying such house.

### 13 §3115. Minority may occupy their share of time unless majority purchases

The minority may occupy the house for their allotted time, unless the majority purchase their interest by paying the minority the sum at which it was appraised by the board; but if the minority decline so to sell, they shall not avail themselves of sections 3111 to 3114.

## Subchapter 5: MINISTERIAL AND SCHOOL LANDS

### 13 §3161. Fee in ministerial and school land in existing towns

Where lands have been granted or reserved for the use of the ministry or first settled minister, or for the use of schools, in any town incorporated and in existence on January 1, 1973, and the fee in these lands has not vested in some particular parish therein or in some individual, it shall vest in the inhabitants of such town and not in any particular parish therein for such uses. The inhabitants of any such town shall hold and enjoy said public reserved lands subject to the control of and subject to responsibilities imposed by the State. [1973, c. 628, §4 (AMD).]

#### SECTION HISTORY

1973, c. 628, §4 (AMD).

### 13 §3162. Trustees

The municipal officers, town clerk and treasurer of each town where no other trustees are lawfully appointed for that purpose shall be a corporation and trustees of such ministerial and school funds, with the usual powers granted to similar corporations.

### 13 §3163. Officers

The corporation shall annually elect a president, clerk and treasurer. The treasurer shall give bond with sureties sufficient in the opinion of the trustees for the faithful discharge of his duty. The clerk shall be sworn.

### 13 §3164. Powers

*(REPEALED)*

## SECTION HISTORY

1973, c. 628, §§4-A (RP).

**13 §3165. Investment of funds**

As soon as may be the corporation shall invest the proceeds of sale in the manner provided in Title 30-A, chapter 223, subchapter III-A. [1987, c. 737, Pt. C, §§26, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §8, 10 (AMD).]

## SECTION HISTORY

1987, c. 737, §§C26,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

**13 §3166. Trustees may hold for use of ministry and schools**

The corporation may, by gift, grant or otherwise, take and hold for the use of the ministry in their towns, real and personal estate, the annual income of which does not exceed \$1,000; and for the use of schools may take and hold estate, the annual income of which does not exceed the sum which their town is bound to raise for the same use.

**13 §3167. Income to support schools**

All income derived from the ministerial and school lands, and from the rents and profits of real and personal estate held under section 3166, shall be annually applied to the support of public schools in the town or the schooling of resident students and expended like other school money. [1987, c. 402, Pt. A, §100 (RPR).]

A municipality that has land that continues to generate an income may expend up to 20% of the ministerial fund every 5 years in accordance with this subchapter. [1997, c. 57, §1 (NEW).]

## SECTION HISTORY

1973, c. 628, §5 (AMD). 1985, c. 774, §2 (AMD). 1985, c. 797, §4 (AMD). 1987, c. 402, §A100 (RPR). 1997, c. 57, §1 (AMD).

**13 §3167-A. Expenditure of ministerial funds**

A municipality may expend funds held in its ministerial trust for school construction or renovation if the expenditure is approved by the voters of the municipality at an election. [1999, c. 731, Pt. YY, §1 (NEW); 1999, c. 789, §1 (NEW).]

## SECTION HISTORY

1999, c. 731, §YY1 (NEW). 1999, c. 789, §1 (NEW).

**13 §3168. Transfer of funds by trustees**

The trustees of any ministerial or school fund in this State, incorporated by the legislature of Massachusetts may, by the consent of the town for whose use the fund was established, transfer it to the municipal officers, clerk and treasurer thereof, who are made trustees of the same. The income shall be annually applied and expended as provided in section 3167.

**13 §3169. Administration of ministerial and school funds**

The ministerial and school funds now held in trust by any town or by a corporation existing under section 3162 may be turned over to the Treasurer of State to be administered in accordance with the terms and provisions of such trust and those funds must be invested by the Treasurer of State in the same manner as provided for investments in securities enumerated in Title 9-B, chapter 55-A. Such town or corporation

thereupon is relieved of any further duties or liabilities for such funds, provided such town, acting under an appropriate article in the warrant at any annual town meeting, votes to cause such funds to be entrusted to the Treasurer of State. [1991, c. 824, Pt. A, §22 (AMD).]

#### SECTION HISTORY

1967, c. 494, §15 (AMD). 1971, c. 544, §42 (AMD). 1977, c. 78, §109 (AMD). 1991, c. 824, §A22 (AMD).

### **13 §3170. Annual accounting**

At each annual meeting of their town, the trustees shall exhibit an account of their proceedings and a statement of the funds, receipts and expenditures and of the application thereof to said uses.

### **13 §3171. Trustees of parish lands**

When ministerial lands are vested in a parish, the assessors, clerk and treasurer, where no other trustees are appointed for that purpose, shall be a corporation and trustees of such ministerial fund with like powers and under like liabilities as the municipal officers, town clerk and treasurer; pay the annual income of such lands and of the proceeds of their sale according to the terms of the grants and reservations by which they were so vested; and at each annual meeting for choice of parish officers, exhibit an account of their proceedings and a statement of funds, receipts and expenditures.

### **13 §3172. First meeting of trustees**

The first meeting in any year of the trustees constituted by sections 3162 and 3171 may be called by 7 days' personal notice of the time and place thereof, given by one of them to all the others.

## **Chapter 95: EDUCATIONAL ORGANIZATIONS**

### **Subchapter 1: ENDOWMENT FUNDS**

### **13 §4001. Definitions**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 286, (NEW). 1977, c. 78, §110 (AMD). 1981, c. 698, §83 (AMD). 1985, c. 797, §5 (AMD). 1993, c. 371, §1 (RP).

### **13 §4002. Appropriation of appreciation**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 286, (NEW). 1993, c. 371, §1 (RP).

### **13 §4003. Rule of construction**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 286, (NEW). 1973, c. 788, §55 (AMD). 1993, c. 371, §1 (RP).

### **13 §4004. Delegation of authority**

*(REPEALED)*

#### SECTION HISTORY

1973, c. 286, (NEW). 1993, c. 371, §1 (RP).

**13 §4005. Care and prudence****(REPEALED)**

## SECTION HISTORY

1973, c. 286, (NEW). 1993, c. 371, §1 (RP).

**Chapter 97: UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT****13 §4100. Short title**

This chapter may be known and cited as the "Uniform Management of Institutional Funds Act."

[1993, c. 371, §2 (NEW).]

## SECTION HISTORY

1993, c. 371, §2 (NEW).

**13 §4101. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 371, §2 (NEW).]

**1. Endowment fund.** "Endowment fund" means an institutional fund, or any part of an institutional fund, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

[ 1993, c. 371, §2 (NEW) .]

**2. Gift instrument.** "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

[ 1993, c. 371, §2 (NEW) .]

**3. Governing board.** "Governing board" means the body responsible for the management of an institution or an institutional fund or a trustee or trustees of a charitable trust.

[ 2001, c. 550, Pt. C, §3 (AMD); 2001, c. 550, Pt. C, §29 (AFF) .]

**4. Historic dollar value.** "Historic dollar value" means the aggregate fair value in dollars of:

A. An endowment fund at the time it became an endowment fund; [1993, c. 371, §2 (NEW).]

B. Each subsequent donation to an endowment fund at the time it is made; and [1993, c. 371, §2 (NEW) .]

C. Each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to an endowment fund. [1993, c. 371, §2 (NEW) .]

The determination of historic dollar value made in good faith by the institution is conclusive.

[ 1993, c. 371, §2 (NEW) .]



**5. Institution.** "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, philanthropic or other charitable purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

[ 1993, c. 371, §2 (NEW) .]

**6. Institutional fund.** "Institutional fund" means a fund held for or by an institution for its exclusive use, benefit or purposes and includes a fund held by a trustee for one or more institutions or other charitable purposes in which no beneficiary that is not an institution or charitable beneficiary has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund. "Institutional fund" does not include a fund held or created by a town or other municipality.

A. [2001, c. 550, Pt. C, §29 (AFF); 2001, c. 550, Pt. C, §4 (RP).]

B. [2001, c. 550, Pt. C, §29 (AFF); 2001, c. 550, Pt. C, §4 (RP).]

[ 2001, c. 550, Pt. C, §29 (AFF); 2001, c. 550, Pt. C, §4 (RPR) .]

#### SECTION HISTORY

1993, c. 371, §2 (NEW). 2001, c. 550, §§C3,4 (AMD). 2001, c. 550, §C29 (AFF) .

### 13 §4102. Appropriation of appreciation

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established as much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 4106. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument or the charter of the institution. [1993, c. 371, §2 (NEW) .]

#### SECTION HISTORY

1993, c. 371, §2 (NEW) .

### 13 §4103. Rule of construction

Section 4102 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment or from a direction or authorization in the applicable gift instrument to use only income, interest, dividends or rents, issues or profits or to preserve the principal intact or a direction that contains other words of similar import. [1993, c. 371, §2 (NEW) .]

#### SECTION HISTORY

1993, c. 371, §2 (NEW) .

### 13 §4104. Investment authority

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than a law relating to investments by a fiduciary, may: [1993, c. 371, §2 (NEW) .]

**1. Investment of fund in property.** Invest and reinvest an institutional fund in any real or personal property considered advisable by the governing board, regardless of whether it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations; shares in or obligations of associations, partnerships or individuals; and obligations of any government or subdivision or instrumentality of that government;

[ 1993, c. 371, §2 (NEW) .]

**2. Retention of contributed property.** Retain property contributed by a donor to an institutional fund for as long as the governing board considers advisable;

[ 1993, c. 371, §2 (NEW) .]

**3. Inclusion of fund in another fund.** Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

[ 1993, c. 371, §2 (NEW) .]

**4. Investment of fund in another fund.** Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

[ 1993, c. 371, §2 (NEW) .]

#### SECTION HISTORY

1993, c. 371, §2 (NEW).

### 13 §4105. Delegation of investment management

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions or funds, the governing board may: [1993, c. 371, §2 (NEW) .]

**1. Delegation of authority.** Delegate to its committees; officers or employees of the institution or the fund; or agents, including investment counsel, the authority to act in place of the governing board in investment and reinvestment of institutional funds;

[ 1993, c. 371, §2 (NEW) .]

**2. Contracts.** Contract with independent investment advisors, investment counsel, investment managers, banks or trust companies to act in place of the governing board in investment or reinvestment of institutional funds; and

[ 1993, c. 371, §2 (NEW) .]

**3. Payment.** Authorize the payment of compensation for investment advisory or management services.

[ 1993, c. 371, §2 (NEW) .]

#### SECTION HISTORY

1993, c. 371, §2 (NEW).

### 13 §4106. Standard of conduct

In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. When exercising ordinary business care and prudence, they shall consider long-term and short-term needs of the institution in carrying out its educational, religious, philanthropic or other charitable purposes; its present and anticipated financial requirements; expected total return on its investments; price-level trends; and general economic conditions. Unless explicitly stated otherwise by the donor, appreciation on investments of endowment funds, until appropriated pursuant to proper governing board action, must be considered a donor restricted asset. [1997, c. 302, §1 (AMD).]

In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, trustees of charitable trusts are governed by the standards set forth in Title 18-B, sections 802 to 807 and chapter 9. [2003, c. 618, Pt. B, §3 (AMD); 2003, c. 618, Pt. B, §20 (AFF).]

#### SECTION HISTORY

1993, c. 371, §2 (NEW). 1997, c. 302, §1 (AMD). 2001, c. 550, §C5 (AMD). 2001, c. 550, §C29 (AFF). 2003, c. 618, §B3 (AMD). 2003, c. 618, §B20 (AFF).

### 13 §4107. Release of restrictions on use or investment

**1. Release of restriction with written consent.** With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

[ 1993, c. 371, §2 (NEW) .]

**2. Release of restriction without written consent.** If written consent of the donor can not be obtained by reason of the donor's death, disability or unavailability after a good faith effort to locate the donor or the impossibility of identification, the governing board may apply in the name of the institution to the appropriate court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. Unless the gift instrument specifically requires notice to other persons, only the Attorney General must be notified of the application and be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

[ 1993, c. 371, §2 (NEW) .]

**3. Purposes must remain charitable.** A release under this section may not allow an institutional fund to be used for purposes other than the educational, religious, philanthropic or charitable purposes of the institution affected.

[ 1993, c. 371, §2 (NEW) .]

**4. Cy pres doctrine unaffected.** This section does not limit the application of the doctrine of cy pres.

[ 1993, c. 371, §2 (NEW) .]

#### SECTION HISTORY

1993, c. 371, §2 (NEW).

**13 §4108. Uniformity of application and construction**

This Act must be applied and construed as to effectuate its general purpose to make uniform the laws with respect to the subject of this Act among those states that enact it. [1993, c. 371, §2 (NEW).]

## SECTION HISTORY

1993, c. 371, §2 (NEW).

**13 §4109. Application**

This Act applies to all institutional funds and endowment funds existing on or after the effective date of this Act. This Act applies to gift instruments executed or in effect on or after the effective date of this Act. [1993, c. 371, §2 (NEW).]

## SECTION HISTORY

1993, c. 371, §2 (NEW).

**13 §4110. Municipal library funds**

Notwithstanding Title 30-A, sections 5711 to 5719 and section 5724, this chapter applies to endowment funds or other funds held in trust by municipal public libraries. [1999, c. 135, §1 (NEW).]

## SECTION HISTORY

1999, c. 135, §1 (NEW).