

# MAINE STATE LEGISLATURE

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L.D. 1767

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(Filing No. H-771)

MAJORITY  
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14 STATE OF MAINE  
16 HOUSE OF REPRESENTATIVES  
18 121ST LEGISLATURE  
20 SECOND SPECIAL SESSION

22 COMMITTEE AMENDMENT "A" to H.P. 1289, L.D. 1767, Bill, "An  
24 Act To Amend the Laws Relating to Corporations, Limited  
26 Partnerships, Limited Liability Companies and Limited Liability  
28 Partnerships"

30 Amend the bill in section 3 in the first line (page 2, line  
32 28 in L.D.) by striking out the following: "13-B" and inserting  
34 in its place the following: '13-B MRSA'

36 Further amend the bill in section 3 in that part designated  
38 "§1113." by inserting after subsection 5 the following:

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

46 Further amend the bill in section 7 in that part designated  
48 "§1302." by striking out all of subsection 4 and inserting in its  
50 place the following:

~~'4.-- Notice to Attorney General in case of public benefit  
corporation.-- In the case of a public benefit corporation, the  
Secretary of State shall notify the Attorney General of the  
suspension of the corporation's authority to carry on activities  
under subsection 1.'~~

Further amend the bill by inserting after section 15 the  
following:

'Sec. 16. 13-C MRSA §651, sub-§7, as enacted by PL 2001, c.  
640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

**COMMITTEE AMENDMENT**

2           **7. Indebtedness issued as a distribution.** Indebtedness of  
4 a corporation, including indebtedness issued as a distribution,  
6 is not considered a liability for purposes of determinations  
8 under subsection 3 if the terms of the indebtedness provide that  
10 payment of principal and interest are made only if and to the  
12 extent that payment of a distribution to shareholders could then  
14 be made under this section. If the indebtedness on those terms  
16 is issued as a distribution, each payment of principal or  
18 interest is treated as a distribution, the effect of which is  
20 measured on the date the payment is actually made.

22           **Sec. 17. 13-C MRSA §826**, as enacted by PL 2001, c. 640, Pt.  
24 A, §2 and affected by Pt. B, §7, is amended to read:

26           **§826. Committees**

28           **1. Create committees.** Unless this Act, the articles of  
30 incorporation or the bylaws provide otherwise, a corporation's  
32 board of directors may create one or more committees and appoint  
34 one or more members of the corporation's board of directors to  
36 serve on them each of those committees. ~~Each committee must have~~  
38 ~~2 or more members, who serve at the pleasure of the corporation's~~  
40 ~~board of directors.~~

42           **2. Approval of committee.** The Unless this Act otherwise  
44 provides, the creation of a committee and appointment of members  
46 to a committee must be approved by the greater of:

48           A. A majority of all the directors in office when the  
          action is taken; ~~or~~ and

          B. The number of directors required by the corporation's  
          articles of incorporation or bylaws to take action under  
          section 825.

**3. Requirements apply to committees.** Sections 821 to 825  
          apply both to committees of the board and ~~their~~ to the members of  
          such committees.

**4. Authority.** To the extent specified by the corporation's  
          board of directors or in the corporation's articles of  
          incorporation or bylaws, except as provided in subsection 5, each  
          committee may exercise the authority of the corporation's board  
          of directors under section 801.

**5. Limits on authority.** A committee may not:

COMMITTEE AMENDMENT "A" to H.P. 1289, L.D. 1767

- 2           A. Authorize or approve distributions except according to a  
3           formula or method or within limits that the corporation's  
4           board of directors prescribes;
- 6           B. Approve or propose to shareholders action that this Act  
7           requires be approved by shareholders;
- 8           C. Fill vacancies on the corporation's board of directors  
9           or, subject to subsection 7, on any of its committees; or
- 10           D. ~~Amend a corporation's articles of incorporation pursuant~~  
11           ~~to section 1005;~~
- 14           E. Adopt, amend or repeal a the corporation's bylaws;
- 16           F. ~~Approve a plan of merger not requiring shareholder~~  
17           ~~approval;~~
- 18           G. ~~Authorize or approve reacquisition of shares, except~~  
19           ~~according to a formula or method prescribed by the~~  
20           ~~corporation's board of directors; or~~
- 22           H. ~~Authorize or approve the issuance or sale or contract~~  
23           ~~for sale of shares or determine the designation and relative~~  
24           ~~rights, preferences and limitations of a class or series of~~  
25           ~~shares, except that the board of directors may authorize a~~  
26           ~~committee or a senior executive officer of the corporation~~  
27           ~~to do so within limits specifically prescribed by the~~  
28           ~~corporation's board of directors.~~

30           6. **Standards of conduct.** The creation of, delegation of  
31           authority to or action by a committee does not alone constitute  
32           compliance by a director with the standards of conduct described  
33           in section 831.

36           7. Committee member alternates. A corporation's board of  
37           directors may appoint one or more directors as alternate members  
38           of any committee to replace any absent or disqualified members  
39           during the absence or disqualification. Unless the corporation's  
40           articles of incorporation or the bylaws or the resolution  
41           creating the committee provides otherwise, in the event of the  
42           absence or disqualification of a member of a committee, the  
43           member or members present at any meeting and not disqualified  
44           from voting may appoint by unanimous vote another director to act  
45           in place of the absent or disqualified member.

46           Sec. 18. 13-C MRSA §833, as enacted by PL 2001, c. 640, Pt.  
47           A, §2 and affected by Pt. B, §7, is amended to read:

50           §833. Director's liability for unlawful distributions

2           **1. Personal liability.** A director who votes for or assents  
3 to a distribution in excess of what may be authorized and made  
4 pursuant to section 651, subsection 1 or section 1410, subsection  
5 1 is personally liable to the corporation for the amount of the  
6 distribution that exceeds what could have been distributed  
7 without violating section 651, subsection 1 or section 1410,  
8 subsection 1 if the party asserting liability establishes that  
9 when taking the action the director did not comply with section  
10 831.

12           **2. Contribution; recoupment.** A director held liable under  
13 subsection 1 for an unlawful distribution is entitled to:

14           A. A contribution from every other director who could be  
15 held liable under subsection 1 for the unlawful  
16 distribution; and

17           B. Recoupment from each shareholder of the pro rata portion  
18 of the amount of the unlawful distribution the shareholder  
19 accepted, knowing the distribution was made in violation of  
20 section 651, subsection 1 or section 1410, subsection 1.

22           **3. Proceeding to enforce liability; 2-year period.** A  
23 proceeding to enforce the liability of a director under  
24 subsection 1 is barred unless it is commenced within 2 years  
25 after the date ~~on which the effect of the distribution was~~  
26 ~~measured under section 651, subsection 5 or 7 or as of which the~~  
27 ~~violation of section 651, subsection 1 occurred as the~~  
28 ~~consequence of disregard of a restriction in the corporation's~~  
29 ~~articles of incorporation;~~

30           A. On which the effect of the distribution was measured  
31 under section 651, subsection 5 or 7;

32           B. As of which the violation of section 651, subsection 1  
33 occurred as the consequence of disregard of a restriction in  
34 the corporation's articles of incorporation; or

35           C. On which the distribution of assets to shareholders  
36 under section 1410, subsection 1 was made.

37           **4. Proceeding to enforce contribution or recoupment;**  
38 **one-year period.** A proceeding to enforce a contribution or  
39 recoupment under subsection 2 is barred unless it is commenced  
40 within one year after the liability of the claimant has been  
41 finally adjudicated under subsection 1.

42           **Sec. 19. 13-C MRSA §841,** as enacted by PL 2001, c. 640, Pt.  
43 A, §2 and affected by Pt. B, §7, is amended to read:

2       **§841. Offices**

4           1. **Offices.** A corporation ~~must--have~~ has the ~~offieers~~ offices described in its bylaws or ~~appeinted~~ designated by the  
6 corporation's board of directors in accordance with the bylaws.

8           2. **Appointment of officers.** ~~A-duly-appointed~~ The board of  
10 directors may elect individuals to fill one or more offices of  
12 the corporation. An officer may appoint one or more officers or  
assistant officers if authorized by the bylaws or the  
corporation's board of directors.

14           3. **Responsibility for minutes and shareholder records.** The  
16 bylaws or the corporation's board of directors shall ~~delegate~~  
18 assign to one of the officers responsibility for preparing  
minutes of the directors' and shareholders' meetings and for  
20 maintaining and authenticating the records of the corporation  
that section 1601, subsections 1 and 3 require to be kept.

22           4. **Multiple positions.** The same individual may  
simultaneously hold more than one office in a corporation.

24           **Sec. 20. 13-C MRSA §843, sub-§2,** as enacted by PL 2001, c.  
26 640, Pt. A, §2 and affected by Pt. B, §7, is repealed.

28           **Sec. 21. 13-C MRSA §843, sub-§2-A** is enacted to read:

30           **2-A. Basis for reliance.** In discharging the duties under  
32 section 842, an officer who does not have knowledge that makes  
reliance unwarranted is entitled to rely on:

34           **A. The performance of properly delegated responsibilities**  
**by one or more employees of the corporation whom the officer**  
**reasonably believes to be reliable and competent in**  
**performing the responsibilities delegated; and**

38           **B. Information, opinions, reports or statements, including**  
**financial statements and other financial data, prepared or**  
**presented by:**

42           **(1) One or more employees of the corporation whom the**  
**officer reasonably believes to be reliable and**  
**competent in the matters presented; or**

46           **(2) Legal counsel, public accountants or other persons**  
**retained by the corporation as to matters involving**  
**skills or expertise the officer reasonably believes are**  
48 **matters within the particular person's professional or**

2 expert competence or as to which the particular person  
3 merits confidence.

4 **Sec. 22. 13-C MRSA §1104, sub-§4**, as amended by PL 2003, c.  
5 344, Pt. B, §98, is further amended to read:

6  
7 **4. Notice of meeting.** If the plan of merger or share  
8 exchange ~~under--this--chapter~~ is required by ~~the--corporation's~~  
9 ~~articles-of-incorporation~~ to be approved by the shareholders and  
10 if the approval is to be given at a meeting of shareholders, the  
11 corporation shall notify each shareholder, whether or not  
12 entitled to vote, of the meeting of shareholders at which the  
13 plan is to be submitted for approval. The notice must state that  
14 the purpose or one of the purposes of the meeting is to consider  
15 the plan and must contain or be accompanied by a copy or summary  
16 of the plan. If the corporation is to be merged into an existing  
17 corporation or eligible entity, the notice also must include or  
18 be accompanied by a copy or summary of the articles of  
19 incorporation or organizational documents of that corporation or  
20 eligible entity. If the corporation is to be merged into a  
21 corporation or eligible entity that is to be created pursuant to  
22 the merger, the notice also must include or be accompanied by a  
23 copy or a summary of the articles of incorporation or  
24 organizational documents of the new corporation or eligible  
25 entity;

26  
27 **Sec. 23. 13-C MRSA §1408, sub-§3, ¶C**, as enacted by PL 2001,  
28 c. 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

29 C. A claimant whose claim is contingent on or is based on  
30 an event occurring after the effective date of dissolution.'

31  
32 Further amend the bill by inserting after section 18 the  
33 following:

34  
35 **'Sec. 19. 13-C MRSA §1421, sub-§7** is enacted to read:

36  
37 **7. Notice to Superintendent of Financial Institutions in**  
38 **case of financial institution or credit union. In the case of a**  
39 **financial institution authorized to do business in this State or**  
40 **a credit union authorized to do business in this State, as**  
41 **defined in Title 9-B, the Secretary of State shall notify the**  
42 **Superintendent of Financial Institutions within a reasonable time**  
43 **prior to administratively dissolving the financial institution or**  
44 **credit union under this section.'**

45  
46 Further amend the bill in section 27 in that part designated  
47 "~~§408-B.~~" by inserting after subsection 7 the following:

2 '8. Notice to Superintendent of Financial Institutions in  
3 case of financial institution or credit union. In the case of a  
4 financial institution authorized to do business in this State or  
5 a credit union authorized to do business in this State, as  
6 defined in Title 9-B, the Secretary of State shall notify the  
7 Superintendent of Financial Institutions within a reasonable time  
8 prior to administratively dissolving the financial institution or  
9 credit union under this section.'

10 Further amend the bill in section 44 in that part designated  
11 "~~§529-A.~~" in subsection 1 in the 3rd line (page 25, line 15 in  
12 L.D.) by striking out the following: "~~of foreign~~" and inserting  
13 in its place the following: 'or foreign'

14 Further amend the bill in section 47 in that part designated  
15 "~~§608-A.~~" in subsection 5 in the last line (page 27, line 31 in  
16 L.D.) by striking out the following "~~607.~~" and inserting in its  
17 place the following: '607; or'

18 Further amend the bill in section 47 in that part designated  
19 "~~§608-B.~~" by inserting after subsection 6 the following:

20 '7. Notice to Superintendent of Financial Institutions in  
21 case of financial institution or credit union. In the case of a  
22 financial institution authorized to do business in this State or  
23 a credit union authorized to do business in this State, as  
24 defined in Title 9-B, the Secretary of State shall notify the  
25 Superintendent of Financial Institutions within a reasonable time  
26 prior to administratively dissolving the financial institution or  
27 credit union under this section.'

28 Further amend the bill in section 51 in that part designated  
29 "~~§719-A.~~" in subsection 6 in the last line (page 32, line 31 in  
30 L.D.) by striking out the following: "~~filing.~~" and inserting in  
31 its place the following: 'filing;'

32 Further amend the bill in section 65 in that part designated  
33 "~~§808-B.~~" by striking out all of subsection 6 and inserting in  
34 its place the following:

35 '6. Protecting limited liability partnership name after  
36 revocation. The name of a limited liability partnership remains  
37 in the Secretary of State's record of limited liability  
38 partnership names and is protected for a period of 3 years  
39 following revocation.

40 7. Notice to Superintendent of Financial Institutions in  
41 case of financial institution or credit union. In the case of a  
42 financial institution authorized to do business in this State or  
43 a credit union authorized to do business in this State, as  
44 defined



2 in Title 9-B, the Secretary of State shall notify the  
3 Superintendent of Financial Institutions within a reasonable time  
4 prior to revoking the status of a financial institution or credit  
5 union as a registered limited liability partnership under this  
6 section.'

7 Further amend the bill by inserting after section 78 the  
8 following:

9 'Sec. 79. 36 MRSA §612, sub-§4, as repealed and replaced by PL  
10 2003, c. 355, §2 and affected by §§9 and 10, is amended to read:

11 **4. Notice of lien.** Each notice of lien, which may be in the  
12 form of a financing statement, must:

13 A. Name the owner of the property upon which the lien is  
14 claimed, if the owner is not the taxpayer and is known to  
15 the municipality;

16 B. Provide the residence or business address of the owner,  
17 if known to the municipality;

18 C. Provide the taxpayer's name and the taxpayer's residence  
19 or business address, if known to the municipality, and if  
20 not otherwise known, the address where the property that is  
21 being taxed was located on the date the status of such  
22 taxable property was fixed pursuant to section 502 or 611;

23 D. Describe the property claimed to be subject to the lien  
24 in a manner that meets the requirements of Title 11, section  
25 9-1504;

26 E. State the amount of tax, accrued interest and costs, as  
27 of the date on which the municipality sends the notice for  
28 filing, claimed due the municipality and secured by the lien;

29 F. State the tax year or years for which the lien is  
30 claimed;

31 G. Name the municipality claiming the lien;

32 H. Set forth the phrase "NOTICE OF PERSONAL PROPERTY TAX  
33 LIEN" in that part of the financing statement otherwise used  
34 to describe the collateral;

35 I. Indicate that the notice is filed as a non-UCC filing;  
36 and

2 J. Indicate that the taxpayer or owner, if an organization,  
has no organizational identification number, regardless of  
whether such a number may exist for that entity.

4  
6 The Except as provided in this subsection, the notice of lien  
need not contain the information required by Title 11, section  
9-1516, subsection (2), paragraph (e), subparagraph (iii) and  
8 must be accepted for filing without that information  
notwithstanding the provisions of Title 11, section 9-1520,  
10 subsection (1). A copy of the notice of lien must be given by  
certified mail, return receipt requested, at the last known  
12 address, to the taxpayer, to the owner, if the owner is not the  
taxpayer, and to any party who has asserted that it holds an  
14 interest in any of the property that is subject to the lien in an  
authenticated notification received by the municipality within 5  
16 years prior to the date on which the municipality sends the  
notice of lien for filing, or who has filed a financing statement  
18 with the office identified in Title 11, section 9-1501,  
subsection (1), paragraph (b) that remains effective as of the  
20 date on which the municipality sends the notice of lien for  
filing. Failure to give notice to any secured party who has a  
22 perfected security interest prevents the lien from taking  
priority over that security interest, but does not otherwise  
24 affect the validity of the lien.'

26 Further amend the bill by relettering or renumbering any  
nonconsecutive Part letter or section number to read  
28 consecutively.

30

### SUMMARY

32

34 This amendment relocates language governing notification of  
the Attorney General by the Secretary of State when a public  
benefit corporation is being administratively dissolved. It also  
36 corrects a reference to the revocation of a limited liability  
partnership rather than the suspension of a limited liability  
38 partnership.

40 This amendment corrects typographical errors in the bill.

42 This amendment requires the Secretary of State to notify the  
Superintendent of Financial Institutions within a reasonable time  
44 prior to administratively dissolving a financial institution or  
credit union. The notification requirement is added to the laws  
46 governing business corporations, limited partnerships, limited  
liability companies and limited liability partnerships.

48

COMMITTEE AMENDMENT "A" to H.P. 1289, L.D. 1767

2 This amendment makes the following changes to the Maine  
Business Corporation Act, which is codified in the Maine Revised  
Statutes, Title 13-C.

4  
6 It clarifies that the indebtedness referred to in the 2nd  
sentence of the Maine Revised Statutes, Title 13-C, section 651,  
subsection 7 is indebtedness that, by its terms, provides that  
8 payment of principal and interest are made only if and to the  
extent that payment of a distribution to shareholders could then  
10 be made under this section. Existing section 651, subsection 5  
refers to "other indebtedness," meaning indebtedness other than  
12 that dealt with under section 651, subsection 7. This  
clarification is consistent with the Official Comment that  
14 accompanies the corresponding subsections of the Model Business  
Corporation Act, which was prepared by the American Bar  
16 Association.

18 The Maine Business Corporation Act, when adopted, did not  
include certain recent changes made to the model act upon which  
20 it was based.

22 1. This amendment allows the corporation additional  
flexibility in filling board committee positions and allows  
24 boards of directors greater leeway to delegate decisions to  
committees when appropriate.

26 2. This amendment inserts references to Title 13-C, section  
28 1410, subsection 1 in order to make the Maine provisions  
internally consistent and consistent with the model act, as  
30 amended. It has the effect of applying to distributions on  
dissolution of a corporation the same tests for liability of  
32 directors as are applied to other distributions, such as  
dividends.

34 3. This amendment clarifies who may elect or appoint  
36 officers and clarifies that one officer will have responsibility  
for records required under sections 1601, subsections 1 and 3.

38 This amendment clarifies that an officer is entitled to rely  
40 on work product or advice of legal counsel, public accountants  
and other professionals. This revision is consistent with the  
42 corresponding section of the model act.

44 This amendment clarifies that notice to shareholders is  
required for approval of a plan of merger or share exchange  
46 whether or not the corporation's articles of incorporation  
address the subject.

48 This amendment deletes superfluous language included in the  
50 Maine Business Corporation Act when it was adopted.

COMMITTEE AMENDMENT "A" to H.P. 1289, L.D. 1767

2 This amendment deletes the word "on" to make Title 13-C,  
section 1408, subsection 3, paragraph C consistent with related  
4 section 1409 with respect to contingent claims. The word "on"  
does not appear in the Model Business Corporation Act section  
upon which this section was based.

6  
8 This amendment clarifies the requirements for filing notices  
of personal property tax liens. Title 36, section 612,  
10 subsection 4 lists specific information that must be part of the  
notice but does not require the notice to include information  
12 mandated by specific provisions of the Uniform Commercial Code.  
This amendment provides that the listed information must be  
14 included in the notice, even if the Uniform Commercial Code  
section that the law states does not apply covers the same  
information.