

MAINE STATE LEGISLATURE

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(Emergency)
THIRD SPECIAL SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2678

S.P. 1022 In Senate, September 15, 1988
Approved for Introduction by a Majority of the Legislative
Council pursuant to Joint Rule 26.

Received by the Secretary of the Senate on September 9,
1988. Referred to the Committee on State and Local Government
and 1,650 ordered printed pursuant to Joint Rule 14.

JOY J. O'BRIEN, Secretary of the Senate
Presented by President PRAY of Penobscot.

Cosponsored by Speaker MARTIN of Eagle Lake, Senator
TUTTLE of York, Representative CARROLL of Gray.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 AN ACT to Stagger the Filing Dates of Annual
2 Corporation Reports with the Secretary of
3 State.
4

5 Emergency preamble. Whereas, Acts of the
6 Legislature do not become effective until 90 days
7 after adjournment unless enacted as emergencies; and

8 Whereas, the current delivery schedule for annual
9 corporation reports to the Secretary of State creates

1 a paperwork burden that is costly to both the
2 Secretary of State's Office and Maine corporations; and

3 Whereas, this burden could be significantly
4 reduced by staggering the delivery of annual
5 corporation reports throughout the calendar year; and

6 Whereas, the staggering of deliveries of annual
7 corporation reports will make the process much more
8 efficient for the Secretary of State and the private
9 sector; and

10 Whereas, it is necessary to implement a staggered
11 delivery schedule for annual corporation reports as
12 soon as possible following development of the process;
13 and

14 Whereas, the Secretary of State will be required
15 to begin to develop the process prior to December 1,
16 1989, in order to implement the new schedule; and

17 Whereas, in the judgment of the Legislature, these
18 facts create an emergency within the meaning of the
19 Constitution of Maine and require the following
20 legislation as immediately necessary for the
21 preservation of the public peace, health and safety;
22 now, therefore,

23 Be it enacted by the People of the State of Maine as
24 follows:

25 **Sec. 1. 13-A MRSA §301, sub-§3, as amended by**
26 **PL 1973, c. 483, §3, is further amended to read:**

27 3. Subsection 1, paragraph B shall not apply to
28 the name or assumed name, as provided for in section
29 307 of any corporation which has been excused from
30 filing annual returns, on and after the 5th
31 anniversary of such excuse, nor to the name of any
32 domestic or foreign corporation the charter of which
33 is suspended, on and after the 3rd anniversary of such
34 suspension. When an excused or suspended corporation
35 votes to resume business, it shall change its

1 corporate name ~~is~~ if another corporation has
2 adopted its old name or if the old name, if proposed
3 for a new corporation, would otherwise violate
4 subsection 1, paragraph B.

5 Any foreign corporation excused under this chapter
6 which seeks to resume business under its corporate
7 name shall follow the procedure as required in section
8 1301, subsections 4 and 5.

9 Sec. 2. 13-A MRSA §308, 2nd paragraph, as
10 enacted by PL 1975, c. 439, §4, is amended to read:

11 The Secretary of State shall use the procedures
12 set forth in section 1210 relative to ~~revoking~~
13 suspending the right of foreign corporations to do
14 business in this State for suspending domestic
15 corporations. A corporation which has been suspended
16 under this section may be reinstated by filing the
17 proper notification of change of clerk or registered
18 office or both with the Secretary of State and paying
19 a penalty of \$25.

20 Sec. 3. 13-A MRSA §1203, sub-§2, as enacted by
21 PL 1971, c. 439, §1, is amended to read:

22 2. Such authority shall continue so long as the
23 corporation retains its authority to do such business
24 in its jurisdiction of incorporation, and so long as
25 its authority to do business in this State has not
26 been ~~revoked~~ suspended or otherwise terminated as
27 provided in this chapter.

28 Sec. 4. 13-A MRSA §1204, as enacted by PL 1971,
29 c. 439, §1, is amended to read:

30 §1204. Powers of foreign corporation

31 A foreign corporation authorized to do business in
32 this State, shall, until such authority is ~~revoked~~
33 suspended or otherwise terminated, have the same, but
34 no greater, powers, rights and privileges as a
35 domestic corporation organized under or otherwise
36 pursuant to this Act; and, except as otherwise
37 provided in this Act, shall be subject to the same

1 duties, restrictions, liabilities and penalties now or
2 hereafter imposed upon a domestic corporation of like
3 character.

4 Sec. 5. 13-A MRSA §1210, as amended by PL 1977,
5 c. 694, §287, is further amended to read:

6 §1210. Suspension of foreign corporation's authority
7 to do business in State

8 1. Notwithstanding Title 4, chapter 25, and Title
9 5, chapter 375, the authority of a foreign corporation
10 to do business in this State may be ~~reoked~~
11 suspended by the Secretary of State, as provided by
12 subsections 2 and 3 when:

13 A. The corporation has failed to file its annual
14 report within the time specified by this Act or
15 has failed to pay any fees, franchise taxes or
16 penalties prescribed by this Act when they have
17 become due and payable; or

18 B. The corporation has failed to appoint and
19 maintain a registered agent in this State as
20 required by section 1212; or

21 C. The corporation has failed, after change of
22 its registered office or registered agent, to file
23 in the office of the Secretary of State a
24 statement of such change as required by section
25 1212; or

26 D. The corporation has failed to file in the
27 office of the Secretary of State within the
28 required time any articles of merger as required
29 by section 1206 or amended application for
30 authority as required by section 1207; or

31 E. A misrepresentation has been made of a
32 material fact in any application, report,
33 affidavit or other document required by this Act.

34 2. The authority of a foreign corporation shall
35 be ~~reoked~~ suspended only after the Secretary of
36 State shall have mailed to the corporation's last

1 registered office in this State and to its last
2 registered or principal office in its jurisdiction of
3 incorporation at least 60 days' notice of impending
4 revocation suspension of its authority to do business
5 in this State, including a specification of the
6 default, and the corporation shall fail, prior to
7 revocation suspension, to remove the ground of
8 default specified in such notice.

9 3. After the expiration of the 60-day period, if
10 the foreign corporation has not cured the default or,
11 as to the ground for revocation suspension
12 specified in subsection 1, paragraph E, convinced the
13 Secretary of State, by affidavit or otherwise, that
14 there was no such misrepresentation, the Secretary of
15 State shall issue and file his certificate revoking
16 suspending the foreign corporation's authority to do
17 business in this State, and shall mail copies thereof
18 to the corporation's last registered office in this
19 State and to its last registered or principal office
20 in its jurisdiction of incorporation.

21 4. Such action of the Secretary of State in
22 revoking suspending the authority of a foreign
23 corporation is appealable to the Superior Court in
24 Kennebec County; such appeals shall be governed by
25 Rule 80B of the Rules of Civil Procedure, or by such
26 amendment or replacement therefor as may from time to
27 time be adopted.

28 5. The authority of the corporation to do
29 business in this State shall cease as of the date of
30 filing of the certificate of revocation suspension,
31 unless on appeal such effective date is stayed by the
32 court.

33 Sec. 6. 13-A MRSA §1212, sub-§7, as enacted by
34 PL 1971, c. 439, §1, is amended to read:

35 7. Whenever a foreign corporation authorized to
36 do business in this State shall fail to appoint or
37 maintain a registered agent in this State, or whenever
38 any such registered agent cannot with reasonable
39 diligence be found at the registered office, or
40 whenever the certificate of authority of a foreign

1 corporation shall be ~~revoked~~ suspended, then the
2 Secretary of State shall be an agent of such
3 corporation upon whom any such process, notice or
4 demand may be served. Service of the Secretary of
5 State of any such process, notice or demand shall be
6 made as provided in section 1217.

7 **Sec. 7.** 13-A MRSA §1301, sub-§2, as enacted by
8 PL 1971, c. 439, §1, is repealed and the following
9 enacted in its place:

10 2. The Secretary of State shall specify by rule
11 the period of time to which the annual report applies
12 as provided in section 1301, subsection 3. The
13 information contained in the annual report must be
14 current as of the date the report is signed and
15 delivered to the Secretary of State in accordance with
16 this chapter.

17 **Sec. 8.** 13-A MRSA §1301, sub-§3, as amended by
18 PL 1987, c. 402, Pt. C, §1, is repealed and the
19 following enacted in its place:

20 3. The annual report must be executed as provided
21 by section 104, except that signing by any one of the
22 president, a vice-president, the secretary, the
23 treasurer or an assistant secretary, without a 2nd
24 signature, shall be deemed valid under section 104,
25 subsection 1, paragraph B, subparagraph (2). Subject
26 to rules adopted under section 1303, subsection 4, the
27 report shall be delivered to the Secretary of State
28 for filing. The annual reports shall be delivered to
29 the Secretary of State on a staggered basis as defined
30 by the Secretary of State by rule in accordance with
31 the Maine Administrative Procedure Act, Title 5,
32 chapter 375. The report shall apply to the 12-month
33 period specified by the Secretary of State. Proof to
34 the satisfaction of the Secretary of State that, prior
35 to the date that penalties become effective for late
36 delivery of annual reports as established by the
37 Secretary of State by rule, the report was deposited
38 in the United States mail in a sealed envelope,
39 properly addressed, with postage prepaid, shall be
40 deemed a compliance with this requirement. One copy
41 of the report, together with the filing fee required

1 by this Act, shall be delivered for filing to the
2 Secretary of State who shall file the report, if the
3 Secretary of State finds that it conforms to the
4 requirements of this Act. If the Secretary of State
5 finds that it does not so conform, the Secretary of
6 State shall promptly mail or otherwise return the same
7 to the corporation for any necessary corrections, in
8 which event the penalties prescribed by this Act for
9 failure to file such report within the time herein
10 provided shall not apply, if such report is corrected
11 to conform to the requirements of this Act and
12 returned to the Secretary of State within 30 days from
13 the date on which it was so mailed or otherwise
14 returned to the corporation by the Secretary of State.

15 Sec. 9. 13-A MRSA §1301, sub-§4, as amended by
16 PL 1977, c. 522, §11, is further amended to read:

17 4. The Secretary of State, upon application by
18 any domestic or foreign corporation and satisfactory
19 proof that it has ceased to transact business and that
20 it is not indebted to the State on account of
21 franchise taxes, shall file a certificate of the fact
22 in his office and shall give a duplicate certificate
23 to the corporation. Thereupon such corporation shall
24 be excused from filing annual reports with the
25 Secretary of State, so long as the corporation in fact
26 transacts no business.

27 Sec. 10. 13-A MRSA §1301, sub-§5, as amended
28 by PL 1975, c. 439, §11, is further amended to read:

29 5. The shareholders of a domestic or foreign
30 corporation which has been excused pursuant to
31 subsection 4 may vote to resume transacting business
32 at a meeting duly called and held for such purpose. A
33 certificate executed and filed as provided in sections
34 104 and 106 setting forth that a shareholders' meeting
35 was held, the date and location of same, and that a
36 majority of the shareholders voted to resume
37 transacting business shall authorize such corporation
38 to transact business; and after such certificate is
39 filed, it shall be required to file annual reports.

40 Sec. 11. 13-A MRSA §1302, sub-§1, as amended by

1 PL 1987, c. 32, is further amended to read:

2 1. Any corporation required to file an annual
3 report as provided by section 1301 which fails to
4 deliver its annual report for filing on or before
5 June 1st of each year by the date specified in the
6 provisions of section 1301 shall pay to the Secretary
7 of State, in addition to the regular annual report
8 fee, the sum of \$25 for each 30-day period month,
9 or portion thereof following the month required for
10 delivery, the report is not filed. In no case may
11 this penalty exceed \$300, regardless of the number of
12 delinquent reports or the period of delinquency. Upon
13 failure to file an annual report and to pay the annual
14 report fee or the penalty, the Secretary of State,
15 notwithstanding Title 4, chapter 25, and Title 5,
16 chapter 375, shall revoke suspend a foreign
17 corporation's authority to do business in this State
18 and suspend a domestic corporation from doing
19 business. He The Secretary of State shall use the
20 procedures set forth in section 1210, relative to
21 revoking suspending the right of foreign corporations
22 to do business in this State, for suspending domestic
23 corporations. A foreign corporation whose
24 authority to do business in this State has been
25 revoked suspended from doing business under this
26 subsection and which wishes to do business again in
27 this State must be authorized as provided in section
28 ~~1202~~. A domestic corporation which has been suspended
29 under this subsection may be reinstated by filing the
30 current annual report and by paying the penalty
31 accrued.

32 Sec. 12. Appropriation. The following funds
33 are appropriated from the General Fund to carry out
34 the purposes of this Act.

35 1988-89

36 SECRETARY OF STATE,
37 DEPARTMENT OF
38 Administration -
39 Secretary of State

1 All Other \$30,000

2 Provides funds for
3 computer programming
4 related to staggering
5 the filing dates of
6 corporation reports.

7 Emergency clause. In view of the emergency
8 cited in the preamble, this Act shall take effect when
9 approved.

10 STATEMENT OF FACT

11 This bill proposes to stagger the filing dates of
12 annual corporation reports in order to reduce the
13 logjam of reports and the resulting increased costs
14 incurred by the Secretary of State and corporations.

15 This bill also provides for the suspension of
16 corporate charters of foreign corporations which fail
17 to deliver annual reports to the Secretary of State.
18 Current law discriminates against foreign corporations
19 by revoking their charters and suspending the charters
20 of domestic corporations for the same violation. This
21 bill eliminates this discriminatory practice.

22 5860083088