

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
115TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "^A" to H.P. 1276, L.D. 1847, Bill, "An Act to Establish the Maine Revised Uniform Limited Partnership Act"

Amend the bill in section 2 in that part designated "§403." in subsection 1 by striking out paragraphs A and B (page 3, lines 6 to 9 in L.D.) and inserting in their place the following:

'A. Must contain the words "Limited Partnership";

B. May not contain the name of a limited partner unless:

(1) It is also the name of a general partner; or

(2) The business of the limited partnership had been carried on under that name before the admission of that limited partner.'

Further amend the bill in section 2 in that part designated "§403." in subsection 1 in paragraph C in subparagraph (1) in the 3rd line (page 3, line 15 in L.D.) by inserting after the following: "or" the following: 'foreign'

Further amend the bill in section 2 in that part designated "§403." in subsection 2 in paragraph B in the 3rd line (page 3, line 43 in L.D.) by inserting after the following: "business" the following: 'in this State'

Further amend the bill in section 2 in that part designated "§406." by striking out the first line and all of subsection 1 (page 6, lines 26 to 31 in L.D.) and inserting in their place the following:

'§406. Registered name and renewal for foreign limited partnership

2 1. Name registered. Any foreign limited partnership may
3 register its name under this chapter provided that the name meets
4 the requirements of section 403, subsection 1.'

6 Further amend the bill in section 2 in that part designated
7 "§408." in subsection 1 in paragraph A in subparagraph (3) in the
8 last line (page 9, line 43 in L.D.) by inserting at the end the
9 following: 'or'

10 Further amend the bill in section 2 in that part designated
11 "§408." in subsection 1 in paragraph A by striking out all of
12 subparagraph (5) (page 9, lines 49 and 50 in L.D.).

14 Further amend the bill in section 2 in that part designated
15 "§408." in subsection 1 in paragraph B in the 2nd line (page 10,
16 line 2 in L.D.) by striking out the following: "provide" and
17 inserting in its place the following: 'file' and by inserting
18 after the following: "names" the following: 'and addresses'

20 Further amend the bill in section 2 in that part designated
21 "§408." in subsection 3 in the last 2 lines (page 10, lines 14
22 and 15 in L.D.) by striking out everything after the following:
23 "Secretary of State," and inserting in its place the following:
24 'correcting any misrepresentation or providing a list of limited
25 partners and paying all delinquent fees and the penalty as set
26 forth in section 526, subsection 6.'

28 Further amend the bill in section 2 in that part designated
29 "§408." by inserting at the end a new subsection to read:

31 '5. Validity of contracts; right to be sued; right to
32 defend suit. The suspension of a domestic limited partnership
33 under this section does not impair:

35 A. The validity of any contract or act of the domestic
36 limited partnership;

38 B. The right of any other party to the contract to maintain
39 any action, suit or proceeding on the contract; or

41 C. The right of the domestic limited partnership to defend
42 any action, suit or proceeding in any court of this State.'

44 Further amend the bill in section 2 in that part designated
45 "§409." in subsection 2 in the first line (page 10, line 34 in
46 L.D.) by striking out the following: "or foreign"

48 Further amend the bill in section 2 in that part designated
49 "§412." in the 6th and 7th lines (page 11, lines 43 and 44 in
50 L.D.)

2 L.D.) by striking out the following: "partnership and, subject to
3 other applicable law," and inserting in its place the following:
4 'partnership. Subject to other applicable law, the partner'

6 Further amend the bill in section 2 by striking out all of
7 that part designated "§413." (page 11, lines 47 to 52 in L.D.).

8 Further amend the bill in section 2 in subchapter I by
9 renumbering the sections to read consecutively.

10 Further amend the bill in section 2 in that part designated
11 "§422." in subsection 1 in the 3rd line (page 13, line 27 in
12 L.D.) by striking out the following: "thereto"

13 Further amend the bill in section 2 in that part designated
14 "§422." in subsection 1 in paragraph B in the first line (page
15 13, line 32 in L.D.) by inserting after the following:
16 "amendment" the following: 'or amendments'

17 Further amend the bill in section 2 in that part designated
18 "§423." in subsection 1 in the 5th line (page 15, line 6 in L.D.)
19 by inserting after the following: "and" the following: 'must'

20 Further amend the bill in section 2 in that part designated
21 "§424." in subsection 1 in paragraph B in the last line (page 15,
22 line 43 in L.D.) by inserting at the end the following: 'or'

23 Further amend the bill in section 2 in that part designated
24 "§424." in subsection 1 in paragraph C in subparagraph (3) in the
25 last line (page 16, line 7 in L.D.) by striking out the
26 following: "; or" and inserting in its place the following: '.'

27 Further amend the bill in section 2 in that part designated
28 "§424." in subsection 1 by striking out all of paragraph D (page
29 16, lines 9 to 11 in L.D.).

30 Further amend the bill in section 2 in that part designated
31 "§433." in subsection 3 in paragraph H by striking out all of
32 subparagraph (9) (page 22, lines 50 and 51 in L.D.) and
33 renumbering the subparagraphs to read consecutively.

34 Further amend the bill in section 2 in that part designated
35 "§434." in subsection 1 in the 12th line (page 24, line 20 in
36 L.D.) by striking out the following "304" and inserting in its
37 place the following: '434'

38 Further amend the bill in section 2 by striking out all of
39 that part designated "§437." and inserting in its place the
40 following:

2 '§437. Disclosure of limited partners

4 1. Required by Secretary of State. A limited partnership
6 shall file with the Secretary of State a written list of the
8 names and addresses of its limited partners upon request by the
10 Secretary of State. The Secretary of State shall request the
12 list if the Secretary of State is requested in writing to do so
14 by a 3rd party. The request must state the purpose for the
16 request.

18 2. Use of information; oath. The list of the names and
20 addresses filed under subsection 1 may not be used for commercial
22 solicitation purposes. The Secretary of State may require
24 persons requesting the list under subsection 1 to state under
26 oath that the list will not be used for commercial solicitation
28 purposes.

30 3. Penalty. If the limited partnership fails to file the
32 list under subsection 1 within 10 working days after requested by
34 the Secretary of State, the Secretary of State may assess a fine
36 of \$10 a day for each day the information is not filed. In no
38 case may the penalty exceed \$500. The Secretary of State may, at
40 any time, suspend the limited partnership under section 408,
42 subsection 1, paragraph B for noncompliance with this section.

44 4. Rules. The Secretary of State may adopt rules in
46 accordance with the Maine Administrative Procedure Act that
48 establish procedures governing this section.

50 5. Fee. The Secretary of State may charge a fee to cover
52 the cost of processing requests under subsection 1.'

Further amend the bill in section 2 in that part designated
"§442." in subsection 1 in paragraph D by striking out all of
subparagraph (3) and inserting in its place the following:

'(3) Is adjudged bankrupt or insolvent or is a person
against whom an order of relief has been entered in any
bankruptcy or insolvency proceeding;'

Further amend the bill in section 2 in that part designated
"§467." in subsection 2 by striking out the 2nd sentence (page
35, lines 19 to 24 in L.D.).

Further amend the bill in section 2 in that part designated
"§467." in subsection 3 in the last line (page 35, line 34 in
L.D.) by striking out the following: "3" and inserting in its
place the following: '6'

Further amend the bill in section 2 in that part designated
"§492." in subsection 2 in the first line (page 41, line 34 in

2 L.D.) by inserting after the following: "The" the following:
'foreign'

4 Further amend the bill in section 2 in that part designated
"§492." in subsection 3 in paragraph H in the 3rd line (page 42,
6 line 21 in L.D.) by inserting after the following: "standing" the
following: 'or its equivalent'

8 Further amend the bill in section 2 in that part designated
10 "§494." in subsection 1 by striking out the first sentence and
inserting in its place the following: 'A foreign limited
12 partnership may apply to the Secretary of State to do business in
this State under any name that conforms with the requirements of
14 section 403.'

16 Further amend the bill in section 2 in that part designated
"§494." in subsection 2 in paragraph B in subparagraph (2) in the
18 first line (page 43, line 21 in L.D.) by striking out the
following: "a"

20 Further amend the bill in section 2 in that part designated
22 "§500." in subsection 2 in the last line (page 48, line 20 in
L.D.) by inserting after the following: "the" the following:
24 'foreign'

26 Further amend the bill in section 2 by striking out all of
that part designated "§524." and inserting in its place the
28 following:

30 '§524. Application to existing limited partnership; definition

32 1. Exemptions from requirements of chapter. Except as
provided in subsection 2, all limited partnerships formed before
34 January 1, 1992 and all foreign limited partnerships having
obtained the authority to do business in this State before
36 January 1, 1992 are governed by this Act on and after January 1,
1992, except that:

38 A. The provisions of law in former chapter 7 governing
40 distributions to a withdrawing partner, rather than the
provisions of section 464, and distribution of assets upon
42 the winding up of a limited partnership, rather than the
provisions of section 484, apply to a limited partnership
44 formed before January 1, 1992;

46 B. The provisions of section 403, subsection 1, paragraph A
48 requiring that the name of all limited partnerships contain
the words "Limited Partnership" do not apply to a limited
50 partnership formed before January 1, 1992 or a foreign
limited partnership having obtained the authority to do

2 business in this State before January 1, 1992 until such
3 time as the limited partnership has filed an amendment to
4 its certificate of limited partnership or application for
5 authority to do business as a foreign limited partnership
6 pursuant to subsection 2;

7 C. The provisions of section 407, subsection 1 and section
8 494, subsection 2 requiring that all limited partnerships
9 have and maintain in this State a registered office and a
10 registered agent for service of process apply to limited
11 partnerships formed before January 1, 1992 and foreign
12 limited partnerships that obtain authority to do business in
13 this State before January 1, 1992 as follows.

14 (1) By April 1, 1992 a general partner of each limited
15 partnership shall pay a fee of \$40 and file with the
16 Secretary of State:

17 (a) If the limited partnership does not have a
18 registered agent and registered office, a
19 certificate designating the registered agent and
20 registered office for the limited partnership; or

21 (b) If the limited partnership has a registered
22 agent and registered office, a certificate
23 confirming that the name and address of its
24 current registered agent and registered office are
25 correct.

26 A limited partnership that files a certificate of
27 limited partnership, an application for authority to do
28 business in this State or a restated certificate under
29 section 422, subsection 6 after January 1, 1992 but
30 before April 1, 1992 is not required to file a
31 certificate or pay the fee required under this
32 subparagraph.

33 (2) Until a registered agent and a registered office
34 are designated under subparagraph (1), the general
35 partner first named in the partnership's certificate of
36 limited partnership and having an address within this
37 State is deemed the partnership's registered agent and
38 that general partner's address as stated in the
39 certificate is deemed the partnership's registered
40 office.

41 (3) If the limited partnership has not filed a
42 certificate designating a registered agent and
43 registered office by April 1, 1992, the Secretary of
44 State may suspend the limited partnership under section
45 408 or revoke the authority of the limited partnership
46 to do business in this State under section 498; and

2 D. The provisions of law in former section 163
4 governing loans by and transactions with limited
6 partners continue to apply for the benefit of any
 creditors of any limited partnership whose claims arise
 before January 1, 1992.

8 2. Application of chapter to existing limited
9 partnerships. Any domestic limited partnership formed, and any
10 foreign limited partnership granted authority to do business in
11 this State, before January 1, 1992 may at any time, and must at
12 the first time after January 1, 1992 when such a limited
13 partnership files any amendment to its certificate of limited
14 partnership or any amendment to its application for authority to
15 do business in this State as a foreign limited partnership, file
16 with the Secretary of State a certificate of limited partnership
17 or an application for authority to do business as a foreign
18 limited partnership that complies with this chapter, or a
19 certificate of amendment or amendment to its application for
20 authority to do business that would cause its certificate of
21 limited partnership or application to comply with this chapter.'

22
23 Further amend the bill in section 2 in that part designated
24 "§526." in subsection 2 in the 3rd and 4th lines (page 53, lines
25 19 and 20 in L.D.) by striking out the following: "or the
26 abbreviation "L.P.""

27
28 Further amend the bill in section 2 in that part designated
29 "§526." subsection 6 in the last line (page 53, line 40 in L.D.)
30 by striking out the following: "\$20" and inserting in its place
31 the following: '\$100'

32
33 Further amend the bill in section 2 in that part designated
34 "§526." by striking out all of subsection 7 and inserting in its
35 place the following:

36
37 '7. Certificate of limited partnership, amendment or
38 cancellation. For filing of a certificate of limited partnership
39 under section 421, a certificate of amendment under section 422
40 or a certificate of cancellation under section 423, a fee in the
41 amount of \$250;'

42
43 Further amend the bill by inserting after section 2 the
44 following:

45
46 'Sec. 3. Appropriation. The following funds are appropriated
 from the General Fund to carry out the purposes of this Act.

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1991-92

**SECRETARY OF STATE,
DEPARTMENT OF THE**

Administration - Secretary of State

Personal Services	\$14,284
All Other	3,000

Provides funds for a limited-period position and printing and postage costs to comply with the provisions of this Act.

**DEPARTMENT OF THE SECRETARY OF STATE
TOTAL**

\$17,284'

Further amend the bill by renumbering the sections to read consecutively.

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

1991-92

APPROPRIATIONS/ALLOCATIONS

General Fund	\$17,284
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REVENUES

General Fund	\$28,000
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This bill establishes a new revised uniform limited partnership law and provides a General Fund appropriation of \$17,284 in fiscal year 1991-92 to the Department of the Secretary of State for a limited-period position and printing and postage costs to comply with the provisions of this law.

The collection of a one-time \$40 fee from each registered agent will increase General Fund revenue by \$28,000 in fiscal year 1991-92. In addition, there may be a minor increase in General Fund revenue from the collection of fees charged for processing requests for a written list of names and addresses of limited partners.

The additional work load and administrative costs associated with a minimal number of additional cases filed in Superior Court

will be absorbed within the budgeted resources of the Judicial Department. Given the high cost of jury trials, a General Fund appropriation may be necessary once the cumulative effect of all legislation affecting civil jury trials is known.'

STATEMENT OF FACT

This amendment:

1. Makes technical corrections;

2. Requires that limited partnerships include the words "Limited Partnership" in the partnership name. This is consistent with the Revised Uniform Limited Partnership Act of 1976 as amended by the National Conference of Commissioners on Uniform State Laws in 1985;

3. Prohibits the use of a limited partner's name in the name of the partnership with 2 exceptions:

(1) If a general partner has the same name; or

(2) If the limited partnership was conducting business under that name before that limited partner became a limited partner.

This is consistent with the Revised Uniform Limited Partnership Act of 1976 as amended by the National Conference of Commissioners on Uniform State Laws in 1985;

4. Clarifies that if the partnership agreement permits a partner to be a creditor of the partnership, that partner is on equal footing with all creditors who are not partners, subject to other applicable laws such as bankruptcy law;

5. Removes enabling language regarding ability of partners to enter into contracts regarding indemnification because ability already exists under contract law, subject to public policy considerations;

6. Removes erroneous provisions regarding mergers and consolidations;

7. Revises the provisions regarding disclosure of the names and addresses of limited partners. The limited partnership must provide a list of the limited partners to the Secretary of State if the Secretary of State requests. A person may receive a copy of the list by requesting it from the Secretary of State in specific circumstances. The list is not intended to be used for commercial solicitation purposes;

