

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

SECOND REGULAR SESSION-1992

Legislative Document

No. 2158

H.P. 1529

House of Representatives, January 14, 1992

Submitted by the Department of the Secretary of State pursuant to Joint Rule 24.
Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative JOSEPH of Waterville.

Cosponsored by Representative DAGGETT of Augusta and Representative NORTON of Winthrop.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-TWO

An Act to Amend the Corporation Laws.



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

2
4 **Sec. 1. 5 MRSA §86, 2nd ¶**, as amended by PL 1989, c. 501, Pt. L, §2, is further amended to read:

6 For a certificate under the seal of the State, \$5 for a
8 short form and \$10 for a special detailed certificate; and for
10 all copies at the rate of 75¢ a page if such copies are prepared
12 by the office of the Secretary of State ~~and at the rate of \$1 a~~
14 ~~page for proofreading such copies submitted to the office of the~~
~~Secretary of State for certification.~~ There shall be is no
charge for certificates or copies requested by any department of
the State. The Secretary of State may also reduce the fee for
other governmental bodies.

16 **Sec. 2. 11 MRSA §9-413** is enacted to read:

18 **§9-413. Powers of the Secretary of State**

20 The Secretary of State has the power and authority necessary
22 to administer this Part and perform the duties imposed. These
powers include, without limitation, the power to:

24 (1) Make rules consistent with this Part;

26 (2) Prescribe forms for all documents required or permitted
28 to be filed with the Secretary of State and to refuse to file
documents not utilizing the prescribed forms to the extent
30 possible; and

32 (3) Refuse to file any document that is not clearly legible
or may not be clearly reproducible photographically.

34 **Sec. 3. 13 MRSA §901**, as amended by PL 1977, c. 592, §1, is
36 further amended to read:

38 **§901. Organization**

40 When 3 or more persons desire to be incorporated for any
42 literary, scientific, musical, charitable, educational, social,
44 agricultural, environmental, moral, religious, civic or other
46 lawful and similarly benevolent or ~~nonprofit-making~~ nonprofit
purpose or for the purpose of fostering, encouraging and
48 assisting the physical location, settlement or resettlement of
50 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. An association of 2 or more municipalities,
including a council of government and a regional planning
commission, shall must be incorporated by a majority of the

2 municipal officers of each of its charter member municipalities.
3 The formation of local development corporations by a municipality
4 for purposes of carrying out Title 10 5, chapter 102 383,
5 subchapter 3, article 2 relating to community industrial
6 buildings shall must be by a majority of the municipal officers.
7 This section shall does not apply to corporations which must that
8 are required to be organized under Title 13-B or which that elect
to be organized under Title 13-B.

10 **Sec. 4. 13-A MRSA §402, sub-§2**, as enacted by PL 1971, c. 439,
11 §1, is amended to read:

12
13 2. The incorporator or incorporators may be natural
14 persons, or domestic or foreign corporations, whether or not
15 authorized to do business or carry on activities in this State,
16 or any combination thereof of natural persons or domestic or
17 foreign corporations. If a corporation acts as an incorporator,
18 the articles of incorporation shall must be accompanied by a
19 certificate of an appropriate officer of such that corporation,
20 certifying that the person executing the articles on its behalf
21 is authorized to do so.

22
23 **Sec. 5. 13-A MRSA §1302, sub-§1**, as amended by PL 1989, c.
24 501, Pt. L, §26, is further amended to read:

25 1. Any A corporation required to file deliver an annual
26 report for filing as provided by section 1301 which that fails to
27 deliver its properly completed annual report ~~for filing by the~~
28 ~~date specified in the provisions of section 1301 to the Secretary~~
29 ~~of State~~ shall pay ~~to the Secretary of State~~, in addition to the
30 regular annual report fee, the sum of \$25 ~~for each month, or~~
31 ~~portion thereof following the month required for delivery, the~~
32 ~~report is not filed~~, providing the report is received by the
33 Secretary of State prior to revocation or suspension. ~~In no case~~
34 ~~may this penalty exceed \$300, regardless of the number of~~
35 ~~delinquent reports or the period of delinquency~~. Upon failure to
36 file an the annual report and to pay the annual report fee or the
37 penalty, the Secretary of State, notwithstanding Title 4, chapter
38 25, and Title 5, chapter 375, shall revoke a foreign
39 corporation's authority to do business in this State and suspend
40 a domestic corporation from doing business. The Secretary of
41 State shall use the procedures set forth in section 1210,
42 relative to revoking the right of foreign corporations to do
43 business in this State, for suspending domestic corporations. A
44 foreign corporation whose authority to do business in this State
45 has been revoked under this subsection ~~and which that~~ wishes to
46 do business again in this State must be authorized as provided in
47 section 1202. A domestic corporation which that has been
48 suspended under this subsection may be reinstated by filing the
49 current annual report, together with the current annual filing
50 fee, and by paying the penalty accrued sum of \$125 for each year
51 the corporation failed to file an annual report.

2 **Sec. 6. 13-A MRSA §1401, sub-§35**, as amended by PL 1989, c.
501, Pt. L, §27, is further amended to read:

4 **35.** Any other documents not herein specifically provided
6 for in this section, \$20; and

8 **Sec. 7. 13-A MRSA §1401, sub-§36**, as enacted by PL 1989, c.
501, Pt. L, §27, is amended to read:

10 **36.** Report of name search as provided by section 301,
12 subsection 6, \$10; and

14 **Sec. 8. 13-A MRSA §1401, sub-§37** is enacted to read:

16 **37.** Preclearance of any document for filing, \$100.

18 **Sec. 9. 13-B MRSA §102, sub-§5-A**, as enacted by PL 1991, c.
20 465, §26, is repealed.

22 **Sec. 10. 13-B MRSA §305, sub-§3**, as enacted by PL 1977, c.
525, §13, is amended to read:

24 **3. Agent's change of name or address.** If a registered
26 agent changes ~~his--or~~ its business--address name or registered
office from the registered office that appearing on the record in
the office of the Secretary of State, ~~he--or--it--may--change--such~~
28 ~~address--and--the--address--of--the--registered--office--of--any~~
~~corporations--of--which--he--or--it--is--registered--agent--by--filing--a~~
30 statement the registered agent shall file a statement of the
change for all corporations affected as required above by
32 subsection 1 except that ~~it~~ the statement need be signed only by
the registered agent and need not be responsive to subsection 1,
34 paragraph E or G, and shall must recite that a copy of the
statement has been mailed to each such corporation.

36 **Sec. 11. 13-B MRSA §401, sub-§1**, as enacted by PL 1977, c.
38 525, §13, is amended to read:

40 **1. Incorporate.** One or more persons ~~may--incorporate--a~~
~~corporation--by--executing--and--filing~~ acting as incorporators shall
42 execute and file, in accordance with sections 403 and 404,
articles of incorporations for such a corporation.

44 **Sec. 12. 13-B MRSA §401, sub-§3** is enacted to read:

46 **3. Incorporators.** The incorporator or incorporators may be
48 natural persons or domestic or foreign corporations, whether or
not authorized to do business or carry on activities in this
50 State, or any combination of natural persons or domestic or
foreign corporations. If a corporation acts as an incorporator,

2 the articles of incorporation must be accompanied by a
3 certificate of an appropriate officer of that corporation,
4 certifying that the person executing the articles on its behalf
5 is authorized to do so.

6 **Sec. 13. 13-B MRSA c. 13, first 3 lines** are repealed and the
7 following enacted in their place:
8

10 **CHAPTER 13**

12 **ANNUAL REPORTS; POWERS OF SECRETARY OF**
13 **STATE; EXCUSE; MISCELLANEOUS**

14 **Sec. 14. 13-B MRSA §1301, as amended by PL 1991, c. 465, §30,**
15 **is further amended to read:**

18 **§1301. Annual report of domestic and foreign corporations; excuse**

20 **1. Annual report.** Each domestic corporation, unless
21 excused as provided in subsection 5, ~~or condominium corporation~~
22 ~~required to file annual reports under section 1301-A,~~ and each
23 foreign corporation authorized to carry on activities in this
24 State shall deliver for filing, within the time prescribed by
25 this Act, ~~a biennial~~ an annual report to the Secretary of State
26 setting forth:

28 A. The name of the corporation and the jurisdiction of its
29 incorporation;

30 B. The address of the registered office of the corporation
31 in this State and the name of its agent for service of
32 process if a domestic corporation, or its registered agent
33 if a foreign corporation, in this State at such address,
34 including the street or rural route number, town or city,
35 and state; and, ~~in the case of~~ if a foreign corporation, the
36 address of its registered or principal office in its
37 jurisdiction of incorporation; and

40 C. The names and business or residence addresses of the
41 president, the treasurer, the registered agent and the
42 secretary or clerk of the corporation, including the street
43 or rural route number, town or city, and state.

44 **2. Information contained in annual report.** ~~The information~~
45 ~~contained in the biennial report shall be given as of the close~~
46 ~~of business on the last day of the 2nd calendar year of the~~
47 ~~biennium--for--which--the--report--is--filed,--including,--where~~
48 ~~applicable,--the--calendar--year--in--which--the--corporation--is~~
49 ~~organized.--If,--between--such--date--and--the--date--of--execution--of~~
50 ~~the--report,--any--material--change--has--occurred--with--respect--to--any~~
51 ~~fact--required--to--be--set--forth--in--the--report,--such--change--shall~~

2 also-be-stated. The Secretary of State shall specify by rule the
3 period of time to which the annual report applies as provided in
4 subsection 4. The information contained in the annual report
5 must be current as of the date the report is signed.

6 **3. Execution.** The biennial annual report shall must be
7 executed as provided by section 104, except that signing by any
8 one of the president, a vice-president, the secretary, the
9 treasurer, an assistant secretary or any other duly authorized
10 individual, without a 2nd signature, shall-be is deemed valid
11 under section 104, subsection 1, paragraph B, subparagraph (2).

12 **4. Filing.** Subject to rules adopted under section 1302-A,
13 subsection 4, the biennial annual report shall must be delivered
14 for filing ~~between the first day of January and the first day of~~
15 ~~June of the year next succeeding the 2nd calendar year of the~~
16 ~~biennium for which the report is to be made~~ to the Secretary of
17 State or a designee. The annual reports may be delivered to the
18 Secretary of State on a staggered basis as defined by the
19 Secretary of State by rule in accordance with the Maine
20 Administrative Procedure Act. The report must apply to the
21 12-month period specified by the Secretary of State. Proof to
22 the satisfaction of the Secretary of State that the report was
23 deposited in the United States mail in a sealed envelope,
24 properly addressed, with postage prepaid, prior to the date that
25 penalties become effective for late delivery of annual reports,
26 as established by the Secretary of State by rule, is considered
27 compliance with this subsection. One copy of the report,
28 together with the filing fee required by this Act, shall must be
29 delivered for filing to the Secretary of State, who shall file
30 the report if he the Secretary of State finds that it conforms to
31 the requirements of this Act. If the Secretary of State finds
32 that the report does not conform, the Secretary of State shall
33 promptly mail or otherwise return the report to the corporation
34 for any necessary corrections, in which event the penalties
35 prescribed by this Act for failure to file the report within the
36 time provided in this section do not apply if the report is
37 corrected to conform to the requirements of this Act and returned
38 to the Secretary of State within 30 days from the date on which
39 it was so mailed or otherwise returned to the corporation by the
40 Secretary of State.

41 ~~The Secretary of State shall promulgate rules and regulations to~~
42 ~~provide that approximately 1/2 of the biennial reports shall be~~
43 ~~filed in each calendar year.~~

44 **5. Certificate of fact.** The Secretary of State, upon
45 application by any a corporation and satisfactory proof that it
46 has ceased to carry on activities, shall file a certificate of
47 the fact and shall give a duplicate certificate to the
48 corporation. Thereupon, ~~such~~ The corporation shall-be is then

2 excused from filing ~~biennial~~ annual reports with the Secretary of
3 State so as long as the corporation, in fact, carries on no
4 activities.

6 **6. Vote to carry on activities.** The members entitled to
7 vote or, if none, the directors of a corporation which that has
8 been excused pursuant to subsection 5 may vote to resume carrying
9 on activities at a meeting duly called and held for such that
10 purpose. A certificate, executed and filed, as provided in
11 sections 104 and 106, setting forth that a members' or directors'
12 meeting was held, the date and location of the meeting and that a
13 majority of the members or directors voted to resume carrying on
14 activities, ~~shall authorize such~~ authorizes that corporation to
15 carry on activities; and after such that certificate is filed, it
16 ~~shall be~~ the corporation is required to file ~~biennial~~ annual
17 reports.

18 **Sec. 15. 13-B MRSA §1301-A,** as amended by PL 1991, c. 465,
19 §31, is repealed.

20 **Sec. 16. 13-B MRSA §1301-B,** as enacted by PL 1989, c. 875,
21 Pt. E, §12, is repealed.

22 **Sec. 17. 13-B MRSA §1302,** as amended by PL 1977, c. 694,
23 §290, is further amended to read:

24 **§1302. Failure to file annual report; incorrect report; penalties**
25

26 **1. Failure to file annual report.** Any corporation which
27 that is required to deliver a ~~biennial~~ an annual report for
28 filing, as provided by section 1301, and which fails to deliver
29 its properly completed ~~biennial~~ annual report to the Secretary of
30 State, shall pay, ~~after January 1, 1981,~~ the sum of \$10 for each
31 failure to so file on time. Upon failure to file a ~~biennial~~ the
32 annual report and to pay the annual report fee or the penalty,
33 the Secretary of State, notwithstanding Title 4, ~~Chapter~~ chapter
34 25, and Title 5, ~~Chapter~~ chapter 375, shall, ~~after January 1,~~
35 ~~1981,~~ revoke a foreign corporation's authority to carry on
36 activities in this State and suspend a domestic corporation from
37 carrying on activities. ~~He~~ The Secretary of State shall use
38 the procedures set forth in section 1210, relative to revoking
39 the right of foreign corporations to carry on activities in this
40 State, for suspending domestic corporations. A foreign
41 corporation whose authority to carry on activities in this State
42 has been revoked under this subsection ~~and which~~ that wishes to
43 carry on activities again in this State must be authorized as
44 provided in section 1202. A domestic corporation which that has
45 been suspended under this subsection may be reinstated by filing
46 the current ~~biennial~~ annual report and by paying the penalty ~~for~~
47 ~~the current biennium and for each biennium that it has failed to~~
48 ~~file a biennial report~~ accrued.
49
50

2 **2. Nonconformity.** If the Secretary of State finds that any
4 ~~biennial~~ an annual report delivered for filing does not conform
6 with the requirements of section 1301, ~~he~~ the Secretary of State
8 may return the report for correction.

10 **3. Time limit specified.** If the ~~biennial~~ annual report of a
12 corporation is not received by the Secretary of State within the
14 time specified in section 1301, the corporation ~~shall--be~~ is
16 excused from the liability provided in this section and from any
18 other penalty for failure to timely file the report if it
20 establishes, to the satisfaction of the Secretary of State, that
22 its failure to file was the result of excusable neglect and it
24 furnishes the Secretary of State with a copy of ~~such~~ that report
26 within 30 days after it learns of the nondelivery of the original
28 report.

30 **Sec. 18. 13-B MRSA §1302-A, sub-§4,** as amended by PL 1989, c.
32 875, Pt. E, §13, is further amended to read:

34 **4. Report dates.** The power, through the rule-making
36 process, to provide alternative dates for filing annual ~~or~~
38 ~~biennial~~ reports and for determining the dates covered by those
40 reports.

42 **Sec. 19. 13-B MRSA §1401, sub-§30,** as amended by PL 1989, c.
44 875, Pt. E, §15, is further amended to read:

46 **30. Report of name search.** Report of name search as
48 provided by section 301, subsection 5, \$10; and

50 **Sec. 20. 13-B MRSA §1401, sub-§31,** as enacted by PL 1989, c.
52 875, Pt. E, §16, is amended to read:

54 **31. Annual report.** Annual report of a ~~condominium~~ domestic
56 ~~or foreign~~ corporation as provided by section ~~1301-A~~ 1301, ~~\$45-~~
58 ~~\$10;~~ and

60 **Sec. 21. 13-B MRSA §1401, sub-§32** is enacted to read:

62 **32. Document preclearance.** Preclearance of any document
64 for filing, \$100.

66 **Sec. 22. 31 MRSA §§415 and 416** are enacted to read:

68 §415. Access to data base

70 The Secretary of State may provide public access to the
72 Secretary of State's data base through a dial-in modem, public
74 terminals and electronic duplicates of the data base. If access
76 to the data base is provided to the public, the Secretary of

2 State may adopt rules in accordance with the Maine Administrative
4 Procedure Act to establish a fee schedule and governing
6 procedures.

8 **§416. Publications**

10 **1. Informational publications.** The Secretary of State may
12 establish by rule in accordance with the Maine Administrative
14 Procedure Act a fee schedule to cover the cost of printing and
16 distribution of publications and to set the procedures for the
18 sale of these publications.

20 **2. Funds; fees deposited.** All fees collected pursuant to
22 this section must be deposited in a fund for use by the Secretary
24 of State for the purpose of replacing and updating publications
26 offered in accordance with this chapter and for funding new
28 publications.

30 **STATEMENT OF FACT**

32 This bill gives the Secretary of State the same powers for
34 administering the statutes regarding secured transactions under
36 the Uniform Commercial Code that the Secretary of State has for
38 administering the statutes regarding business and nonprofit
40 corporations, marks and limited partnership.

42 This bill allows a registered agent of a nonprofit
44 corporation to properly record a change of name of the agent with
46 the office of the Secretary of State.

48 This bill clarifies that the law allows a nonprofit
50 corporation to act as an incorporator for a business
52 corporation. The bill also changes language to provide that a
54 nonprofit corporation file an annual report and that the
information contained in the report be current as of the date
signed. The bill allows the Secretary of State to specify by
rule the period of time to which the report applies and the date
the report must be filed. The bill amends the law to provide
that a United States postmark is evidence of timely filing and to
provide a 30-day period to refile the report if corrections must
be made. The statutory provision for special annual report
filing for condominium nonprofit corporations is repealed. These
corporations will file annual reports as nonprofit corporations.

This bill allows the Secretary of State the authority to
charge a fee for preclearance of documents that must be filed.

This bill allows the Secretary of State to provide public
access to the Department of the Secretary of State's data base
and permits the Secretary of State to adopt rules to establish
fees to distribute publications providing information on
nonprofit corporations.