

MAINE STATE LEGISLATURE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
116TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1123, L.D. 1522, Bill, "An Act to Establish Limited Liability Corporations and Set Their Tax Rate as Other Corporations"

Amend the bill by striking out the title and substituting the following:

'An Act to Establish Limited Liability Companies'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

PART A

Sec. A-1. 31 MRSA c. 13 is enacted to read:

CHAPTER 13

LIMITED LIABILITY COMPANIES

SUBCHAPTER I

GENERAL PROVISIONS

§601. Short title

This Act may be known and cited as the "Maine Limited Liability Company Act."

§602. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Articles of organization. "Articles of organization" means the articles filed under section 622 and the same articles as amended or restated.

2. Corporation. "Corporation" means a corporation formed under the laws of a state or foreign country.

3. Court. "Court" includes every court having jurisdiction in a case.

4. Event of withdrawal. "Event of withdrawal" means an event that causes a person to cease to be a member as provided in section 692.

5. Foreign corporation. "Foreign corporation" means a corporation that is organized under the laws of a state other than the laws of this State or under the laws of a foreign country.

6. Foreign limited liability company. "Foreign limited liability company" means an organization that is:

A. An unincorporated association;

B. Organized under laws of a state other than the laws of this State or under the laws of a foreign country;

C. Organized under a law by which an association may be formed that affords every member limited liability with respect to the liabilities of the entity; and

D. Is not required to be registered or organized under any law of this State other than this chapter.

7. Foreign limited partnership. "Foreign limited partnership" means a limited partnership formed under the laws of state other than this State or under the laws of a foreign country.

8. Limited liability company or domestic limited liability company. "Limited liability company" or "domestic limited liability company" means an organization formed under this chapter.

9. Limited liability company interest or interest in the limited liability company. "Limited liability company interest" or "interest in the limited liability company" means the interest

that may be assigned under section 685 and charged under section 686.

10. Limited partnership. "Limited partnership" means a limited partnership formed under the laws of a state or foreign country.

11. Manager or managers. "Manager" or "managers" means a person or persons designated in accordance with section 651, with respect to a limited liability company that has set forth in its articles of organization that it is managed by managers.

12. Member or members. "Member" or "members" means a person or persons admitted to membership in a limited liability company as provided in section 691 who have not ceased to be members as provided in section 692.

13. Operating agreement. "Operating agreement" means an agreement among all of the members of a limited liability company governing the conduct of its business and affairs.

14. Person. "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation or any other legal entity.

15. State. "State" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

§603. Limited liability company name

1. Requirements. The limited liability company name:

A. Must contain the words "Limited Liability Company"; and

B. May not be the same as or deceptively similar to:

(1) The name of any domestic corporation, limited partnership or limited liability company organized under the laws of this State or any foreign corporation, foreign limited partnership or foreign limited liability company authorized to transact business or to carry on activities in this State;

(2) A name the exclusive right to which is, at the time, reserved under sections 404 and 604; Title 13-A, section 302; and Title 13-B, section 302;

(3) A name that is registered under section 606; Title 13-A, section 303; Title 13-B, section 303; or Title 31, section 406;

(4) The assumed name of a corporation, limited partnership or limited liability company as provided in section 605; Title 13-A, section 307; Title 13-B, section 308; or Title 31, section 405; or

(5) A mark registered under Title 10, chapter 301-A.

2. Exceptions. The name may be the same or deceptively similar:

A. If the registered owner or holder of the name or mark executes and files with the Secretary of State proof of authorization of the use of a deceptively similar name by the limited liability company seeking to use the name;

B. If a foreign limited liability company seeking to file under the same or deceptively similar name executes and files with the Secretary of State proof that it will not do business in this State under that same or deceptively similar name but instead will do business under an assumed name, as provided for in section 605; or

C. If the foreign limited liability company was authorized to do business in this State before January 1, 1995 and had the right to use the name as its legal name before that date.

3. Names of limited liability companies suspended. Subsection 2, paragraph C does not apply to the name of a limited liability company whose certificate is suspended for at least 3 years.

§604. Reservation of name

1. Right to reserve a name. The exclusive right to the use of a name may be reserved by:

A. A person intending to organize a limited liability company under this chapter and to adopt that name;

B. A domestic limited liability company or a foreign limited liability company authorized to do business in this State and intending to change its name;

2 C. A foreign limited liability company intending to apply
4 for authority to transact business in this State and to
6 adopt that name;

8 D. A domestic limited liability company or a foreign
10 limited liability company authorized to do business in this
12 State intending to utilize the name as an assumed name; or

14 E. A person intending to organize a foreign limited
16 liability company and intending to have that limited
18 liability company apply for authority to transact business
20 in this State and adopt that name.

22 2. Reservation procedure. The reservation of a name is
24 made by filing with the Secretary of State an application,
26 executed by the applicant, specifying the name to be reserved and
28 the name and address of the applicant.

30 A. If the Secretary of State finds that the name is
32 available for use by a domestic or foreign limited liability
34 company, the Secretary of State shall reserve the name for
36 the exclusive use of the applicant for a period of 120 days.

38 B. Once having reserved a name, the same applicant may
40 reserve the same name for successive 120-day periods.

42 C. The right to the exclusive use of a reserved name may be
44 transferred to another person by filing with the Secretary
46 of State a notice of the transfer, executed by the applicant
48 for whom the name was reserved, specifying the name to be
50 transferred and the name and address of the transferee.

D. The reservation of a specified name may be canceled by
filing with the Secretary of State a notice of cancellation,
executed by the applicant or transferee, specifying the name
reservation to be canceled and the name and address of the
applicant or transferee.

§605. Assumed name

1. Definition. As used in this section, "assumed name"
includes a trade name or a name other than the true name of a
limited liability company.

2. Right to transact business under assumed name. Upon
complying with this section, a domestic limited liability company
or foreign limited liability company authorized to do business in
this State may transact its business in this State under one or
more assumed names.

2 3. Procedure to use assumed name. Before transacting
4 business in this State under an assumed name, the domestic or
6 foreign limited liability company shall execute and deliver for
8 filing a statement setting forth:

10 A. The name of the limited liability company and the
12 address of its registered office;

14 B. That it intends to transact business under an assumed
16 name;

18 C. The assumed name that it proposes to use; and

20 D. Whether the assumed name will be used at fewer than all
22 of the limited liability company's places of business in
24 this State, and if so, where it will be used.

26 A separate statement must be executed and delivered for filing
28 for each assumed name that the limited liability company proposes
30 to use.

32 4. Requirements for name. Each assumed name must comply
34 with the requirements of section 603, subsection 1, except for
36 the case of similarity with the true name of the limited
38 liability company proposing to use the assumed name.

40 5. Termination of name. A domestic or foreign limited
42 liability company may terminate an assumed name by executing and
44 delivering for filing a statement setting forth:

46 A. The name of the limited liability company and the
48 address of its registered office;

50 B. That it no longer intends to transact business under the
assumed name; and

C. The assumed name that it intends to terminate.

6. Noncompliance; injunction. If a domestic or foreign
limited liability company uses an assumed name without complying
with the requirements of this section, the continued use of the
name may be enjoined upon suit by the Attorney General or by a
person adversely affected by the use.

7. Deceptively similar names; injunction. Notwithstanding
compliance with the requirements of this section, the use of an
assumed name may be enjoined upon suit by the Attorney General or
by a person adversely affected by such use if the assumed name is
deceptively similar to a name in which a person has prior rights
by virtue of the common law or statutory law of unfair

competition, unfair trade practices, common law copyright or similar law.

For purposes of determining priority of rights, the mere filing of a statement pursuant to subsection 3 does not constitute actual use of the assumed name set out in the statement.

§606. Registered name and renewal for foreign limited liability company; termination

1. Name registered. A foreign limited liability company may register its name under this chapter provided that the name meets the requirements of section 603, subsection 1.

2. Application. The registration must be made by delivering for filing an application for registration setting forth:

A. The name of the limited liability company;

B. The state or territory under whose laws it is organized;

C. The date of its organization;

D. A statement that it is actually engaged in business activities;

E. A brief description of the activities in which it is engaged; and

F. A certificate of good standing or its equivalent from the proper officer of its jurisdiction of organization. The certificate of good standing must have been made not more than 90 days before the delivery of the application for filing.

3. Registration effective. The registration is effective until the close of the calendar year in which the application is filed.

4. Renewal of registration. A limited liability company that has registered its name under this section may renew the registration annually by filing an application for renewal. That application must set forth the information required in subsection 2 and may be filed between October 1st and December 31st.

5. Termination of name. A foreign limited liability company may terminate a registered name by executing and delivering for filing a statement setting forth:

A. The name of the foreign limited liability company and the address of its principal or registered office;

B. The state or territory under the laws of which it is organized;

C. The date of its organization; and

D. That the registration of name is terminated.

§607. Registered office; registered agent

1. Requirements of registered office and registered agent.
Each limited liability company shall have and maintain:

A. A registered office in this State, which may be the same as its place of business; and

B. A registered agent for service of process on a limited liability company. The agent may be either:

(1) An individual resident of this State whose business office or residential address is identical with the limited liability company's registered office; or

(2) A domestic or foreign corporation, whether business or nonprofit, authorized to do business or carry on activities in this State whose registered office also serves as the registered office of the limited liability company.

2. Acceptance of designation of agent. Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a written statement accepting the appointment to the Secretary of State.

3. Change in registered office or registered agent. The registered office or registered agent may be changed by:

A. Filing articles of amendment under section 623; or

B. Executing and filing a certificate by the registered agent. The certificate must include:

(1) For the change of address of the registered office of one or more limited liability companies for whom the

agent is the registered agent to another address in this State:

(a) The names of all limited liability companies represented by the agent;

(b) The address at which the registered agent has maintained the registered office for each of those limited liability companies; and

(c) The new address of the registered office; or

(2) For a change in the name or identity of a person acting as the registered agent:

(a) The new name or identity of the registered agent;

(b) The name of the registered agent before it was changed;

(c) The names of the limited liability companies represented by the agent; and

(d) The address at which the registered agent has maintained the registered office for each of these limited liability companies.

Upon filing a certificate under this paragraph, any registered agent shall mail promptly or otherwise deliver a copy of the certificate to a manager or, if there is no manager, to a member of each limited liability company affected by the change.

4. Effective date of change or new appointment. The change of address of the registered office or registered agent is effective upon delivery of the certificate to the Secretary of State. The appointment of a new registered agent is effective upon delivery of the certificate to the Secretary of State and upon receipt by the Secretary of State of evidence that the new registered agent has accepted appointment pursuant to subsection 2.

5. Resignation of registered agent. A registered agent may resign by filing a certificate with the Secretary of State. The certificate must include:

A. When the registered agent appoints a successor:

(1) A statement of resignation;

(2) The names of the limited liability companies;

(3) The name and address of the successor registered agent; and

(4) An attached statement, ratifying and approving the change of registered agent, executed by each affected limited liability company and signed by a manager or, if there is no manager, by a member; or

B. When the registered agent does not appoint a successor:

(1) A statement of resignation;

(2) The names of all the limited liability companies; and

(3) An attached affidavit stating that on or about the date of the filing of certificate of resignation, notices were sent by certified or registered mail to a manager or, if there is no manager, to a member of each limited liability company from which the registered agent is resigning at the address of the manager or member, as shown on the most recent annual report of a limited liability company.

A resignation takes effect under this paragraph upon filing a certificate with the Secretary of State.

6. Secretary of State. The Secretary of State shall furnish to the person submitting the document for filing or to that person's representative, an attested copy of a certificate filed under this section.

7. Resignation of agent; appointment by limited liability company; service of process. After receipt of the notice of the resignation of its registered agent under subsection 5, a limited liability company shall file a certificate of amendment designating a new registered agent. Until a limited liability company duly files a certificate appointing a new registered agent, legal process against that limited liability company may be served upon the Secretary of State in accordance with section 609.

§608. Suspension by Secretary of State

1. Secretary of State's authority to suspend. The Secretary of State:

A. Shall suspend a domestic limited liability company when:

(1) The limited liability company fails to deliver its annual report for filing within the time specified by this chapter or fails to pay fees or penalties as prescribed by this chapter when they become due and payable;

(2) The limited liability company fails to appoint or name a registered agent in this State;

(3) The limited liability company, after change of its registered office or registered agent, fails to file with the Secretary of State a notification of such a change; or

(4) A misrepresentation is made of a material fact in an application, report, affidavit or other document required by this chapter; or

B. May suspend a domestic limited liability company when that company fails to file a list of the names and addresses of the members under section 647.

2. Procedures. The Secretary of State shall use the procedures set forth in section 719, subsection 2 relative to the revoking of the right of a foreign limited liability company to do business in this State for suspending domestic limited liability companies.

3. Reinstatement. A domestic limited liability company that has been suspended under this section may be reinstated by:

A. Filing the current annual report;

B. Filing proper notification of change of registered agent or registered office, or both;

C. Correcting a misrepresentation; or

D. Providing a list of members.

All delinquent fees and the penalty as set forth in section 751, subsection 7 or section 758, subsection 1 must be paid.

4. Validity of contracts; right to be sued; right to defend suit. The suspension of a domestic limited liability company under this section does not impair:

A. The validity of a contract or act of the domestic limited liability company;

B. The right of another party to the contract to maintain an action, suit or proceeding on the contract; or

C. The right of the domestic limited liability company to defend an action, suit or proceeding in a court of this State.

§609. Service of process upon domestic limited liability company

1. Serving process; general provisions. Legal process on a domestic limited liability company may be served upon:

A. A manager or, if there is no manager, a member of the limited liability company in this State;

B. The registered agent of the limited liability company; or

C. a liquidating trustee of the limited liability company.

2. Service on Secretary of State. If a domestic limited liability company fails to appoint or maintain a registered agent in this State or its registered agent can not with reasonable diligence be found at the registered office, then the Secretary of State is an agent of that limited liability company upon whom process, notice or demand may be served. Service on the Secretary of State of such a process, notice or demand must be made as provided by the Maine Rules of Civil Procedure, Rule 4(d)(8), as amended.

3. Other means of service. This section does not limit or impair the right to serve process, notice or demand required or permitted by law to be served upon a domestic limited liability company in any other manner permitted by law or rule of court.

§610. Service of nonresident managers or members of domestic limited liability companies

1. Secretary of State; agent to receive service. Each manager, or if there is no manager, each member of a domestic limited liability company who is a nonresident of this State or who becomes a nonresident is deemed to have appointed the Secretary of State as an agent to receive service of process upon that manager or member in an action or proceeding relating to actions of a limited liability company and arising while that manager or member was serving in that capacity.

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1. Forms. Prescribing forms for documents required or permitted to be delivered for filing under this chapter and refusing to file documents not utilizing these prescribed forms;

2. Disapproved filing. Disapproving the filing of a document that is not clearly legible or one that may not be clearly reproducible photographically;

3. Appointed designee. Appointing a designee or other agent to receive documents for filing and to file documents on behalf of the Secretary of State;

4. Electronic filing; facsimile signatures. Permitting the filing of documents by electronic transmission and permitting facsimile signatures on documents to be filed;

5. Definition of deceptively similar. Setting forth criteria to define the term "deceptively similar";

6. Effective dates of filings. Unless specifically stated in this chapter, setting forth the effective dates of filings required by this chapter; and

7. Annual report filing date. Providing alternative dates for filing annual reports and for determining the dates covered by those reports.

§613. Expedited service

The Secretary of State may provide an expedited service for the processing of documents in accordance with this chapter. If the service is provided, the Secretary of State shall establish by rule a fee schedule and governing procedures in accordance with the Maine Administrative Procedure Act. Fees collected for expedited service must be deposited into a fund for use by the Secretary of State in providing an improved filing service.

§614. Access to database

The Secretary of State may provide public access to the database through a dial-in modem, through public terminals and through electronic duplicates of the database. If access to the database is provided to the public, the Secretary of State may adopt rules in accordance with the Maine Administrative Procedure Act to establish a fee schedule and governing procedures.

§615. Publications

1. Fee for 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.

2. Use of fees. Fees collected pursuant to this section must be deposited in a fund for use by the Secretary of State to replace and update publications offered in accordance with this chapter and to fund new publications.

SUBCHAPTER II

FORMATION

§621. Formation

One or more persons may form a limited liability company by signing and filing articles of organization with the Secretary of State. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred.

§622. Articles of organization

1. Articles of organization. In order to form a limited liability company, articles of organization must be filed with the Secretary of State. The articles must set forth:

A. The name of the limited liability company;

B. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 607;

C. If management of the limited liability company is vested in a manager or managers:

(1) A statement to that effect;

(2) The number of managers permitted; and

(3) If the initial managers have been selected, the name and the business, residence or mailing address of each initial manager.

D. Other matters the members include in the articles of organization.

2. Date of organization. A limited liability company is formed at the time of the filing of the initial articles of organization with the Secretary of State if there has been

substantial compliance with the requirements of this section. A limited liability company formed under this chapter is a separate legal entity whose existence as a separate legal entity continues until cancellation of the limited liability company's articles of organization.

§623. Amendment to articles

1. Articles of amendment. The articles of organization are amended by filing articles of amendment with the Secretary of State. The articles of amendment must set forth:

A. The name of the limited liability company; and

B. The amendment or amendments to the articles.

2. Inaccuracies. A manager or, if there is no manager, a member who becomes aware that a statement in the articles of organization or articles filed under this section has become inaccurate in any material respect as a result of subsequent events shall promptly amend the articles.

3. Amendment required. No later than 90 days after the following event or events occur, an amendment to the articles of organization reflecting the event or events must be filed by a manager or, if there is no manager, by a member:

A. A change in the name of the limited liability company;

B. Except as provided in section 607, subsections 3 and 4, a change in the address of the registered office or a change in the name, identity or address of the registered agent of the limited liability company;

C. A change in whether the management of the limited liability company is vested in managers or members; or

D. A manager or, if there is no manager, a member becomes aware that the articles of organization contain a false or erroneous statement.

4. Right to amend at any time. Except as otherwise provided in the articles of organization, articles of organization may be amended at any time for any other purpose a majority of the members may determine necessary.

5. Between dissolution and cancellation. If, after the dissolution of a limited liability company but before the filing of a certificate of cancellation as provided in section 625, a person other than an individual shown on the articles of

organization as a manager is winding up the limited liability company's affairs, then the articles of organization must be amended to set forth the name and the business, and residence or mailing address of each person winding up the limited liability company's affairs. Each person winding up the affairs shall execute and file articles of amendment. That person is not subject to liability by reason of such an amendment. A manager who is not winding up a limited liability company's affairs need not execute articles of amendment under this subsection.

6. Restated articles of organization. A limited liability company may at any time file a restatement of its articles of organization that integrates into a single document the provisions of its articles of organization giving effect to all amendments previously adopted and, if authorized, further amendments. The restated articles of organization, either in the heading or in an introductory paragraph, must set forth:

A. That it is a restatement;

B. The limited liability company's present name;

C. If the name has been changed, the name under which it was originally filed; and

D. The date of filing of the initial articles of organization.

The restated articles of organization must be executed and filed in the manner provided for any other amendment to the articles of organization. Upon filing of the restated articles of organization by the Secretary of State, the restatement, including further amendments made as a result of the restatement, constitutes the articles of organization of the limited liability company pursuant to section 622.

§624. Certificate of correction

A manager or, if there is no manager, a member who becomes aware that any statement in articles of organization or a certificate filed under this section was inaccurate when made, shall file a certificate of correction with the Secretary of State. The certificate of correction must specify the inaccuracy or defect to be corrected and must set forth the portion of the instrument in corrected form. The corrected instrument is effective as of the date the original instrument was filed, except for those persons who are substantially and adversely affected by the correction. For those persons, the corrected instrument is effective from the filing date.

§625. Certificate of cancellation

1. Cancellation upon dissolution. The articles of organization of a limited liability company are canceled upon the dissolution and the completion of winding up of the limited liability company or at any other time that there are no members. A certificate of cancellation must be filed with the Secretary of State and must set forth:

A. The name of the limited liability company;

B. The date of filing of its articles of organization;

C. The reason for filing the certificate of cancellation;

D. The future effective date or time of cancellation, which must be a date or time certain, if it is not to be effective upon the filing of the certificate; and

E. Any other information the person filing the certificate of cancellation determines necessary.

§626. Statement of limited liability company authority

1. Statement of authority. A limited liability company may file a statement of limited liability company authority that:

A. Must include:

(1) The name of the limited liability company;

(2) The street address of its principal place of business and of an office in this State, if there is one; and

(3) A statement specifying the names of the members or, if management is vested in a manager or managers, the names of the managers, authorized to execute an instrument transferring real property held in the name of the limited liability company or a statement specifying the name of an agent, if any, who shall maintain a list pursuant to subsection 2; and

B. May state the authority, or limitations on the authority, of some or all of the members or managers to enter into other transactions on behalf of the limited liability company and any other matter.

2. Agent to maintain list of members or managers. If a statement of limited liability company authority names an agent,

the agent shall maintain a list of the names and mailing addresses of all of the members or, if management is vested in a manager or managers, the names of the managers, and make it available to any person on request for good cause shown.

3. Incomplete statement effective. If a filed statement of limited liability company authority is executed under subsection 10 and states the name of the limited liability company but does not contain all of the other information required by subsection 1, the statement nevertheless operates with respect to a person not a member as provided in subsections 4 and 5.

4. Statement supplements authority. Except as provided in subsections 5, 6 and 7, a filed statement of limited liability company authority supplements the authority of a member or manager to enter into transactions on behalf of the limited liability company as follows:

A. Except for transfers of real property, a grant of authority contained in a filed statement of limited liability company authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

B. A grant of authority to transfer real property held in the name of the limited liability company contained in a certified copy of a filed statement of limited liability company authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

5. Effect of recorded statement; transfer of real property. A person not a member or manager is deemed to know of a limitation on the authority of a member or manager to transfer real property held in the name of the limited liability company if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

2 6. Effect of filed statement. Except as provided in
4 subsubsection 5 and Sections 625 and 694, a person not a member or
6 manager is not deemed to know of a limitation on the authority of
8 a member or manager merely because the limitation is contained in
10 a filed statement.

12 7. Duration of statement. Unless earlier canceled, a filed
14 statement of authority is canceled by operation of law 5 years
16 after the date on which the statement, or the most recent
18 amendment, was filed with the office of the Secretary of State.

20 8. Statement filed in office of the Secretary of State. A
22 statement of limited liability company authority may be filed in
24 the office of the Secretary of State. A certified copy of a
26 statement of authority that is filed in an office in another
28 state may be filed in the office of the Secretary of State.
30 Either filing has the effect provided in this Act with respect to
32 limited liability company property located in or transactions
34 that occur in this State.

36 9. Certified copy of filed statement. A certified copy of
38 a statement of authority that has been filed in the office of the
40 Secretary of State that is recorded in the office for recording
42 transfers of real property shall have the effect provided for
44 recorded statements of authority in this Act. A recorded
46 statement of authority that is not a certified copy of a
48 statement of authority filed in the office of the Secretary of
State does not have the effect provided for recorded statements
of authority in this Act.

10 10. Statement executed by 2 or more members. A statement
12 of authority filed by a limited liability company must be
14 executed by at least 2 members. An individual who executes a
16 statement as, or on behalf of, a member or other person named as
18 a member in a statement of authority shall personally declare
20 under penalty of perjury that the contents of the statement of
22 authority are accurate.

24 11. Amendment or cancellation of statement. A person
26 authorized by this Act to file a statement of authority may amend
28 or cancel the statement by filing an amendment or cancellation
30 that names the limited liability company, identifies the
32 statement and states the substance of the amendment or
34 cancellation.

36 12. Copies to members. A person who files a statement of
38 authority pursuant to this section shall promptly send a copy of
the statement to every nonfiling member, and to any other person
named as a member in the statement. Failure to send a copy of a

statement of authority to a member or other person does not limit the effectiveness of the statement as to a person not a member.

13. Fee. The Secretary of State may collect a fee for filing or providing a certified copy of a statement of authority. The register of deeds may collect a fee for recording a statement of authority.

§627. Execution

Each document delivered to the Secretary of State for filing pursuant to this chapter must be executed in the following manner.

1. Signatures. The documents must be signed as follows:

A. In the case of the initial articles of organization, by the person or persons forming the limited liability company:

B. In the case of articles of amendment, restatement, certificate of correction or any other document filed under this chapter not otherwise provided for:

(1) By at least one manager; or

(2) By at least one member if the limited liability company is managed by the members; and

C. In the case of a certificate of cancellation or other document filed after the dissolution of a limited liability company:

(1) By all of the managers;

(2) If neither the manager nor the members are winding up the limited liability company's affairs, then by all liquidating trustees; or

(3) If the members are winding up the limited liability company's affairs, then by a majority in interest of the members.

2. Signature by agent. Unless otherwise provided in a limited liability company operating agreement, a person may sign a certificate or articles or amendment to a certificate or articles or enter into an operating agreement or amendment to an operating agreement by an agent, including an attorney-in-fact. An authorization, including a power of attorney, to sign a certificate or articles or amendment to a certificate or articles or to enter into an operating agreement or amendment to an operating agreement need not be in writing, sworn to, verified or

acknowledged and need not be filed with the Secretary of State, but if in writing, it must be retained by a manager or, if there is no manager, a member.

3. Oath; unsworn falsification. The execution of a certificate or articles constitutes an oath or affirmation, under the penalties of false swearing under Title 17-A, section 453, that to the best of the signer's knowledge and belief the facts stated in the certificate or articles are true.

§628. Execution, amendment or cancellation by judicial order

If a person required by section 627 to execute articles or a certificate fails or refuses to do so, then a person who is adversely affected by the failure or refusal may petition the Superior Court to direct the execution of the articles or certificate as follows.

1. Certificate. If the court finds that the certificate or articles should be executed and that the person or persons designated to execute the certificate or articles have failed or refused to do so, the court shall order the Secretary of State to record the appropriate certificate or articles.

2. Venue. Venue for an action under this section lies in the county in this State in which the registered office of the limited liability company is located or, if there is no registered office in this State, then in Kennebec County Superior Court.

§629. Filing

1. Original filing. An original signed copy of a certificate or articles or other document authorized to be filed under a provision of this chapter must be delivered to the Secretary of State.

A. A person who executes a document as an agent or fiduciary need not exhibit evidence of authority as a prerequisite to filing.

B. Unless the Secretary of State finds that the certificate or articles or other document on its face do not conform to law, upon receipt of all filing fees required by law, the Secretary of State shall attest that the document has been filed with the Secretary of State by endorsing thereon the word "filed" and the day, month and year of the filing and by signing or initialing that endorsement in person or by agent. If the person delivering the document for filing so

requests, the endorsement must further include the hour and minute of the filing of the document.

C. The endorsement is known as the "filing date" of the document and is conclusive of the date and the time, if included in the endorsement, of filing in the absence of actual fraud.

D. The Secretary of State may use an identifying mark in lieu of signing or initialing.

E. The filing date is the date first received unless otherwise specified by law or rule.

F. The Secretary of State shall file and index the original copy.

2. **Attested copy.** The Secretary of State shall promptly make a copy of the original and shall attest that copy by marking upon it the same endorsement that is required to appear upon the original, together with a further endorsement that the copy is a true copy of the original document. The attested copy must be returned to the person submitting the document for filing or to that person's representative.

§630. Materially inaccurate statement

1. **Liability.** If the certificate of cancellation, articles of organization or articles of amendment contain a materially inaccurate statement, a person who suffers loss by reasonable reliance on the statement may recover damages for the loss from:

A. A manager or member who executes the certificate or articles and knew or should have known the statement was inaccurate in a material respect at the time the certificate or articles were executed; and

B. A manager or, if none, any member who thereafter knows that an arrangement or other fact described in the certificate or articles is inaccurate in any material respect or has changed, making the statement inaccurate in any material respect, if that manager or member had sufficient time to amend or cancel the certificate or articles or to file a petition for the amendment or cancellation before the statement was reasonably relied upon.

2. **Exception.** Notwithstanding subsection 1, a manager or member has no liability for failing to cause the amendment or cancellation of a certificate or articles to be filed or failing to file a petition for amendment or cancellation pursuant to

subsection 1 if the articles of amendment, certificate of cancellation or petition is filed within 90 days of the date that manager or member knew or should have known the certificate or articles were inaccurate in any material respect.

§631. Notice

The fact that articles of organization of a limited liability company are on file with the Secretary of State constitutes notice of facts set forth in the articles that are required by section 622, subsection 1 and by section 623, subsection 6.

SUBCHAPTER III

RELATIONS OF MEMBERS AND MANAGERS TO PERSONS

DEALING WITH A LIMITED LIABILITY COMPANY

§641. Agency power of members and managers

1. **Actions of members.** Except as provided in subsection 2 or in a limited liability company statement of authority as described in section 626, each member is an agent of a limited liability company for the purpose of its business or affairs, and the act of a member, including, but not limited to, the execution in the name of a limited liability company of an instrument, for carrying on the business or affairs of that limited liability company of which that person is a member, binds a limited liability company, unless the acting member has no authority to act for the limited liability company in a particular matter, and the person with whom that member is dealing has knowledge of the fact that the member has no such authority.

2. **Management vested in one or more managers.** Subject to a limited liability company statement of authority as described in section 626, if the articles of organization provide that management of a limited liability company is vested in a manager or managers:

A. **A member, acting solely in the capacity as a member, is not an agent of a limited liability company; and**

B. **Each manager is an agent of a limited liability company for the purpose of its business or affairs, and the act of a manager, including, but not limited to, the execution in the name of that limited liability company of an instrument, for carrying on in the usual way the business or affairs of that limited liability company of which that person is the manager, binds that limited liability company, unless the**

acting manager has no authority to act for the limited liability company in a particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

3. Action not apparently in usual way of carrying on business. An act of a manager or a member that is not apparently for carrying on in the usual way the business or affairs of a limited liability company does not bind that limited liability company unless authorized in accordance with an operating agreement or articles of organization at the time of the transaction or at any other time.

4. Act in contravention of restriction on authority. An act of a manager or member in contravention of a restriction on authority does not bind a limited liability company to persons having knowledge of the restriction.

§642. Admissions of members and managers

1. Admission or representation by member. Except as provided in subsection 2 or in a limited liability company statement of authority as described in section 626, an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of a member's authority as provided for by this chapter is evidence against that limited liability company.

2. Admission or representation by manager. Subject to a limited liability company statement of authority as described in section 626, if the articles of organization provide that management of a limited liability company is vested in a manager or managers:

A. An admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority as provided for by this chapter is evidence against that limited liability company; and

B. An admission or representation of a member, acting solely in that member's capacity as a member, does not constitute evidence against a limited liability company.

§643. Limited liability company charged with knowledge of or notice to member or manager

1. Notice to and knowledge of members. Except as provided in subsection 2 or in a limited liability company statement of authority as described in section 626, notice to a member of a matter relating to the business or affairs of a limited liability

company, and the knowledge of the member acting in the particular matter acquired while a member or of which the person had knowledge at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

2. Notice to and knowledge of managers. Subject to a limited liability company statement of authority as described in section 626, if the articles of organization provide that management of a limited liability company is vested in a manager or managers:

A. Notice to a manager of a matter relating to the business or affairs of the limited liability company, and the knowledge of the manager acting in the particular matter, acquired while a manager or of which the person had knowledge at the time of becoming a manager and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager, operate as notice to or knowledge of the limited liability company except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

B. Notice to or knowledge of a member of a limited liability company, while that member is acting solely in that member's capacity as a member, is not notice to or knowledge of a limited liability company.

§644. Limited liability company liable for member's or manager's actionable conduct; misapplication

1. Actionable conduct. A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the limited liability company or with the authority of the limited liability company.

2. Misapplication of money or property. If, in the course of its business, a limited liability company receives money or property of a person not a member that is misapplied by a member or a manager while it is in the custody of the limited liability company, the limited liability company is liable for the loss.

§645. Liability to 3rd parties

1. Personal liability. Except as otherwise provided in this Act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the debts, obligations and liabilities of the limited liability company. A member or manager of a limited liability company is not obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of a limited liability company.

2. Failure to follow formalities or requirements. Except as provided in subsection 3, the failure of a limited liability company to observe the usual limited liability company formalities or requirements relating to the exercise of its limited liability company powers or management of its business and affairs is not a ground for imposing personal liability on the members for liabilities of the limited liability company.

3. Exceptions. The exceptions under the common law to a limited liability of shareholders of a business corporation organized under the Maine Business Corporation Act and shareholders of a professional corporation organized under the Professional Service Corporation Act apply to the limited liability of members of a limited liability company.

§646. Parties to actions

A member of a limited liability company is not a proper party to a proceeding by or against that limited liability company, solely by reason of being a member of that limited liability company, except:

1. Member's right or liability. If the object of the proceeding is to enforce a member's right against or liability to that limited liability company; or

2. Derivative action. In a derivative action brought pursuant to section 732.

§647. Disclosure of members

1. Required by Secretary of State. A limited liability company shall file with the Secretary of State a written list of the names and addresses of its members upon request by the Secretary of State. The Secretary of State shall request the list if the Secretary of State is requested in writing to do so by a 3rd party who must state the purpose for the request.

2. Use of information; oath. The list of the names and addresses filed under subsection 1 may not be used for commercial solicitation purposes. The Secretary of State may require

persons requesting the list under subsection 1 to state under oath that the list will not be used for those purposes.

3. Penalty. If a limited liability company fails to file the list under subsection 1 within 10 working days after requested by the Secretary of State, the Secretary of State may assess a fine of \$10 a day for each day the information is not filed. The penalty may not exceed \$500 in any case. The Secretary of State may, at any time, suspend a limited liability company under section 608, subsection 1, paragraph B for noncompliance with this section.

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

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

SUBCHAPTER IV

RIGHTS AND DUTIES OF MEMBERS AND MANAGERS

§651. Management; voting; classes

1. Management authority of members. Unless the articles of organization provide that management of a limited liability company vests in a manager or managers, management of the business or affairs of that limited liability company is vested in the members. Subject to provisions in the operating agreement or this chapter restricting or enlarging the management rights and duties of a person or group or class of persons, the members have the right and authority to manage the affairs of a limited liability company and to make all decisions with respect to that limited liability company.

2. Classes of members; voting. An operating agreement or the articles of organization may provide for classes or groups of members having such relative rights, powers and duties as the operating agreement or the articles of organization may provide, and may make provision for the future creation in the manner provided in the operating agreement or the articles of organization of additional classes or groups of members having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of members. An operating agreement or articles of organization may provide for the taking of an action, including the amendment of the operating agreement or articles of organization, without the vote or approval of any member or class or group of members, including an action to

create under the provisions of the operating agreement or articles of organization a class or group of limited liability company interests that was not previously outstanding.

An operating agreement or articles of organization may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers on any matter.

An operating agreement or articles of organization that grant a right to vote may set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on by any members, waiver of this notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy or any other matter with respect to the exercise of any right to vote.

3. Management authority of managers. If the articles of organization provide that management of a limited liability company vests in one or more managers, then these persons have the power to manage the business and affairs of that limited liability company as is provided in the operating agreement or the articles of organization. Unless otherwise provided in an operating agreement or the articles of organization, these persons:

A. Must be designated, appointed, elected, removed or replaced by a vote, approval or consent of a majority of members on a per capita basis;

B. Need not be members of that limited liability company or natural persons; and

C. Unless they have been earlier removed or have earlier resigned, shall hold office until their successors have been elected and qualified.

4. Classes of managers; voting. An operating agreement or the articles of organization may provide for classes or groups of managers having such relative rights, powers and duties as the operating agreement or the articles of organization may provide, and may make provision for the future creation in the manner provided in the operating agreement or the articles of organization of additional classes or groups of managers having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior to existing classes and groups of managers. An operating agreement or the articles of organization may provide for the taking of an action, including the amendment of the operating agreement or the articles of organization, without the vote or approval of any

2 manager or class or group of managers, including an action to
3 create under the provisions of the operating agreement or the
4 articles of organization a class or group of limited liability
5 company interests that was not previously outstanding.

6 An operating agreement or the articles of organization may grant
7 to all or certain identified managers or a specified class or
8 group of the managers the right to vote, separately or with all
9 or any class or group of managers or members, on any matters.
10 Unless otherwise provided in the operating agreement or the
11 articles of organization, voting by managers is on a per capita
12 basis.

13 An operating agreement or articles of organization that grants a
14 right to vote may set forth provisions relating to notice of the
15 time, place or purpose of any meeting at which any matter is to
16 be voted on by any manager or class or group of managers, waiver
17 of the notice, action by consent without a meeting, the
18 establishment of a record date, quorum requirements, voting in
19 person or by proxy or any other matter with respect to the
20 exercise of any right to vote.

21 **§652. Duties of managers and members**

22
23 **1. Good faith; best interests; reasonable belief.** The
24 managers and members of a limited liability company shall
25 exercise their powers and discharge their duties in good faith
26 with a view to the interests of the limited liability company and
27 of the members and with that degree of diligence, care and skill
28 that ordinarily prudent persons would exercise under similar
29 circumstances in like positions.

30
31 In discharging their duties, managers and members may in all
32 cases, if acting reasonably and in good faith, rely upon
33 financial statements of the limited liability company that were
34 either certified in writing by an independent or certified public
35 accountant or firm of such accountants fairly to reflect the
36 limited liability company's financial condition, or reported to
37 such manager or member to be correct by the manager or member
38 having charge of the books of accounts of the limited liability
39 company.

40
41 A manager or member may not be held personally liable for
42 monetary damages for failure to discharge any duty as a manager
43 or member unless the manager or member is found not to have acted
44 honestly or in the reasonable belief that the action was in or
45 not opposed to the best interests of the limited liability
46 company or its members.

2. Accountability. Every member and manager must account to the limited liability company and hold as trustee for it any profit or benefit derived by that person from any transaction connected with the conduct or winding up of the limited liability company, or any use by the manager or member of its property, including, but not limited to, confidential or proprietary information of the limited liability company entrusted to the person as a result of that person's status as manager or member, unless that person has obtained the consent of:

A. If a manager, more than one half by number of the disinterested managers or more than one half by number of the disinterested members; or

B. If a member, more than one half by number of the disinterested members.

3. No waiver or modification. The provisions of this section may not be modified or waived in an operating agreement, the articles of organization or otherwise.

§653. Voting

1. Affirmative vote, approval or consent of majority required. Except as provided in the operating agreement, the articles of organization or this chapter and subject to subsection 2, the affirmative vote, approval or consent of more than half by number of the members on a per capita basis, if management of a limited liability company is vested in the members, or of more than 1/2 of the managers or other persons vested with management authority of that limited liability company, if the management of that limited liability company is vested in such managers or persons, is required to decide any matter connected with that limited liability company's business.

2. Amend or contravene operating agreement. Except as provided in the operating agreement or the certificate of organization, the affirmative vote, approval or consent of all members is required to:

A. Amend an operating agreement; or

B. Authorize a manager, member or other person to act on behalf of the limited liability company in a manner that contravenes an operating agreement.

§654. Indemnification of managers, members, employees and agents; insurance

1. Indemnification of parties. A limited liability company may indemnify or, if provided in the articles of organization or an operating agreement, shall in all cases indemnify a person who was or is a party or is threatened to be made a party to a threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, because that person is or was a manager, member, employee or agent of that limited liability company or is or was serving at the request of that limited liability company as a director, officer, trustee, partner, fiduciary, employee or agent of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by that person in connection with such an action, suit or proceeding; provided that no indemnification may be provided for a person with respect to a matter for which that person is finally adjudicated:

A. Not to have acted honestly or in the reasonable belief that that person's action was in or not opposed to the best interests of a limited liability company or its members or, in the case of a person serving as a fiduciary of an employee benefit plan or trust, in or not opposed to the best interests of that plan or trust or its participants or beneficiaries; or

B. With respect to a criminal action or proceeding, to have had reasonable cause to believe that that person's conduct was unlawful.

The termination of an action, suit or proceeding by judgment, order or conviction adverse to that person, or by settlement or plea of nolo contendere or its equivalent, does not of itself create a presumption that that person did not act honestly or in the reasonable belief that that person's action was in or not opposed to the best interests of a limited liability company or its members or, in the case of a person serving as a fiduciary of an employee benefit plan or trust, in or not opposed to the best interests of that plan or trust or its participants or beneficiaries and, with respect to a criminal action or proceeding, had reasonable cause to believe that that person's conduct was unlawful.

2. Indemnification prohibited if party liable to limited liability company; exception. Notwithstanding any provision of subsection 1, a limited liability company does not have the power to indemnify a person with respect to a claim, issue or matter asserted by or in the right of that limited liability company for which that person is finally adjudicated to be liable to that limited liability company unless the court in which the action,

suit or proceeding was brought determines that, in view of all the circumstances of the case, that person is fairly and reasonably entitled to indemnity for such amounts as the court determines reasonable.

3. Indemnification for expenses of successful party. Any provision of subsection 1, 2 or 4 to the contrary notwithstanding, to the extent that a manager, member, employee or agent of a limited liability company has been successful on the merits or otherwise in defense of a action, suit or proceeding referred to in subsection 1 or 2, or in defense of a claim, issue or matter referred to in subsection 1 or 2, that limited liability company shall indemnify that manager, member, employee or agent against expenses, including attorney's fees, actually and reasonably incurred by that manager, member, employee or agent in connection with the action, suit or proceeding. The right to indemnification granted by this subsection may be enforced by a separate action against that limited liability company if an order for indemnification is not entered by a court in the action, suit or proceeding in which that manager, member, employee or agent was successful on the merits or otherwise.

4. Indemnification proper and in the best interests of the limited liability company. Any indemnification under subsection 1, unless ordered by a court or required by the articles of organization or operating agreement, may be made by the limited liability company only as authorized in the specific case upon a determination that indemnification of the manager, member, employee or agent is proper in the circumstances and in the best interests of the limited liability company. If the articles of organization vest management in a manager or managers, that determination must be made by the manager or managers by a majority vote of a quorum consisting of managers who were not parties to that action, suit or proceeding, or if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested managers so directs, by independent legal counsel in a written opinion or by the members. If the articles of organization do not vest management in a manager or managers, the members shall make that determination by majority vote of a quorum consisting of members who were not parties to that action, suit or proceeding. Such a determination once made may not be revoked and upon the making of that determination the manager, member, employee or agent may enforce the indemnification against the limited liability company by a separate action notwithstanding any attempted or actual subsequent action by the manager, managers or members.

5. Payment of expenses in advance. Expenses incurred in defending a civil, criminal, administrative or investigative

2 action, suit or proceeding may be authorized and paid by a
4 limited liability company in advance of the final disposition of
6 that action, suit or proceeding upon a determination made in
8 accordance with the procedure established in subsection 4 that,
10 based solely on the facts then known to those making the
12 determination and without further investigation, the person
14 seeking indemnification satisfied the standard of conduct
16 prescribed by subsection 1, or if so provided in the articles of
18 organization or an operating agreement, these expenses must in
20 all cases be authorized and paid by that limited liability
22 company in advance of the final disposition of that action, suit
24 or proceeding upon receipt by that limited liability company of:

14 A. A written undertaking by or on behalf of the manager,
16 member, employee or agent to repay that amount if that
18 person is finally adjudicated:

18 (1) Not to have acted honestly or in the reasonable
20 belief that that person's action was in or not opposed
22 to the best interests of a limited liability company or
24 its members or, in the case of a person serving as a
26 fiduciary of an employee benefit a plan or trust, in or
28 not opposed to the best interests of such a plan or
30 trust or its participants or beneficiaries;

26 (2) With respect to a criminal action or proceeding,
28 to have had reasonable cause to believe that the
30 person's conduct was unlawful; or

30 (3) With respect to a claim, issue or matter asserted
32 in an action, suit or proceeding brought by or in the
34 right of a limited liability company, to be liable to
36 that limited liability company, unless the court in
38 which that action, suit or proceeding was brought
40 permits indemnification in accordance with subsection
42 3; and

38 B. A written affirmation by the manager, member, employee
40 or agent that the person has met the standard of conduct
42 necessary for indemnification by a limited liability company
44 as authorized in this section.

42 The undertaking required by paragraph A must be an unlimited
44 general obligation of the person seeking the advance but need not
46 be secured and may be accepted without reference to financial
48 ability to make the repayment.

48 6. Indemnification and advances not exclusive. The
50 indemnification and entitlement to advances of expenses provided
52 by this section is not exclusive of other rights to which those

indemnified may be entitled under an operating agreement, other agreement, vote of members or otherwise, both as to action in that person's official capacity and as to action in another capacity while holding such an office, and continues for a person who has ceased to be a manager, member, employee, agent, trustee, partner or fiduciary and inures to the benefit of the heirs, executors and administrators of that person. A right to indemnification required by the articles of organization or an operating agreement may be enforced by a separate action against a limited liability company if an order for indemnification has not been entered by a court in an action, suit or proceeding for which indemnification is sought.

7. Insurance. A limited liability company may purchase and maintain insurance on behalf of a person who is or was a manager, member, employee or agent of that limited liability company, or is or was serving at the request of that limited liability company as a director, officer, trustee, partner, fiduciary, employee or agent of a corporation, partnership, joint venture, trust, pension or other employee benefit plan or other enterprise against any liability asserted against that person and incurred by that person in such a capacity, or arising out of that person's status as such, whether or not that limited liability company would have the power to indemnify that person against such a liability under this section.

8. Application to mergers and consolidations. For purposes of this section, references to a "limited liability company" include, in addition to a surviving limited liability company or new limited liability company, a participating limited liability company in a consolidation or merger.

§655. Records and information

1. Records to be kept at principal place of business. A limited liability company shall keep at its principal place of business the following:

A. A current list and a past list, with the full names and last known mailing addresses of each member and manager in alphabetical order;

B. A copy of the articles of organization and all amendments to them, together with executed copies of powers of attorney pursuant to which articles or certificates have been executed;

C. Copies of the limited liability company's federal, state and local income tax returns and financial statements, if any, for the 6 most recent years or, if the returns and statements were not prepared, copies of the information and

statements provided to the members to enable them to prepare their federal, state and local tax returns for that period;

D. Copies of effective operating agreements and all amendments and copies of operating agreements no longer in effect; and

E. Unless provided in an operating agreement or articles of organization, a writing setting out:

(1) The amount of cash and the agreed value of other property or services contributed by each member and the times at which or events upon the happening of which when additional contributions agreed upon by each member are to be made;

(2) Events, if any, upon the happening of which a limited liability company is to be dissolved and its affairs wound up; and

(3) Other writings prepared pursuant to a requirement in an operating agreement.

2. Access to and confidentiality of information; records.

A member's access to records of the limited liability company is governed as follows.

A. Each member of a limited liability company has the right, subject to reasonable standards, including standards governing what information and documents are to be furnished at which time and location and at whose expense, as may be set forth in an operating agreement or articles of organization or otherwise established by the manager or, if there is no manager, then by the requisite vote of members, to obtain from the limited liability company from time to time upon reasonable demand for any purpose reasonably related to the member's interest as a member of the limited liability company:

(1) True and full information regarding the status of the business and financial condition of the limited liability company;

(2) Promptly after becoming available, a copy of the limited liability company's federal, state and local income tax returns for each year;

(3) A current list of the name and last known business, residence or mailing address of each member and manager;

(4) A copy of any operating agreement and articles of organization and all amendments, together with executed copies of any written powers of attorney pursuant to which the operating agreement and any articles and all amendments have been executed;

(5) True and full information regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(6) Other information regarding the affairs of the limited liability company as is just and reasonable.

B. Each manager has the right to examine all of the information described in paragraph A for a purpose reasonably related to that person's position as a manager.

C. The manager of a limited liability company has the right to keep confidential from the members, for a period of time the manager considers reasonable, any information that the manager reasonably believes to be in the nature of trade secrets or other information the disclosure of which the manager in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its business or that the limited liability company is required by law or by agreement with a 3rd party to keep confidential.

D. Any demand by a member under this section must be in writing and must state the purpose of the demand.

3. Machine-readable form. A limited liability company may maintain its records in other than a written form if the form is capable of conversion into written form within a reasonable time.

4. Provision of true and full information to a member or legal representative. Members, if the management of a limited liability company is vested in the members, or managers, if management of that limited liability company is vested in managers, shall render, to the extent the circumstances render it just and reasonable, true and full information about all things affecting the members to a member or to the legal representative of a deceased member or of a member under legal disability.

5. Failure to keep records. Failure of a limited liability company to keep or maintain records or information required by

this section is not grounds for imposing liability on a person for the debts and obligations of that limited liability company.

§656. Remedies for breach of operating agreement by manager

An operating agreement may provide that:

1. Breach of operating agreement. A manager who fails to perform in accordance with, or to comply with the terms and conditions of, the operating agreement is subject to specified penalties or specified consequences; and

2. Happening of specified events. At the time or upon the happening of events specified in the operating agreement, a manager is subject to specified penalties or specified consequences.

§657. Reliance on reports and information by member or manager

A member or manager of a limited liability company is fully protected in relying in good faith upon the records of the limited liability company and upon the information, opinions, reports or statements presented to the limited liability company by any of its other managers, members, officers, employees or committees of the limited liability company, or by any other person, as to matters the member or manager reasonably believes are within that other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

SUBCHAPTER V

FINANCE

§661. Contributions to capital

The contribution of a member may be in cash, tangible or intangible property, services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

§662. Liability for contributions

1. Obligation to perform enforceable promise. Except as provided in the operating agreement or the articles of

organization, a member, the personal representative of the member's estate or the member's successors or assigns is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability or other reason.

2. Conditions to obligation. A conditional obligation of a member to make a contribution or pay money or other property to a limited liability company may not be enforced unless the conditions to the obligation have been satisfied or waived for or by that member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company before the time the call occurs.

3. Contribution of property, services or cash. If a member does not make the required contribution of property or services, that member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that has not been made. The option of the limited liability company is in addition to, and not in lieu of, other rights, including the right to specific performance, that that limited liability company may have against that member under the operating agreement or applicable law.

4. Compromise of promise. Unless otherwise provided in section 672, the operating agreement or the articles of organization, the obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.

5. Creditors' rights. Notwithstanding the compromise or the availability or exercise of any other remedy including any remedy created pursuant to subsection 6, a creditor of a limited liability company who extends credit or otherwise acts in reliance on that obligation after the member signs a writing that reflects the obligation and before the compromise or exercise of the remedy may enforce the original obligation.

6. Remedies. An operating agreement or articles of organization may provide that the interest of a member who fails to make any contribution or other payment that the member is required to make is subject to specified remedies for, or specified consequences of, the failure. The remedy or consequence may take the form of reducing the defaulting member's interest in the limited liability company, subordinating the defaulting member's interest in the limited liability company to that of the nondefaulting members, a forced sale of the interest in the limited liability company, forfeiture of the interest in the limited liability company, the lending by the nondefaulting members of the amount necessary to meet the commitment, a fixing

of the value of the member's interest in the limited liability company by appraisal or by formula and redemption and sale of the member's interest in the limited liability company at that value or other remedy or consequences. Except as provided in subsection 3, the availability or exercise of any of these remedies does not preclude the exercise by any creditor of the limited liability company of the rights conferred by subsection 5.

§663. Allocation of profits and losses

The profits and losses of a limited liability company must be allocated among the members and among classes or groups of members in the manner provided in the operating agreement or the articles of organization. If the operating agreement or articles of organization do not so provide, the profits and losses must be allocated on a per capita basis.

SUBCHAPTER VI

DISTRIBUTIONS AND WITHDRAWAL

§671. Sharing of interim distributions

Except as provided in section 705, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in an operating agreement or the articles of organization. If the operating agreement or articles of organization do not so provide, each member or other person entitled to the interest of a member shares in any distribution equally. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in an operating agreement or articles of organization or at the times determined by the members or managers pursuant to section 653.

§672. Distributions on withdrawal

Upon a withdrawal under section 692 that does not cause dissolution, a withdrawing member is entitled to receive any distribution to which the member is entitled under the operating agreement. If not otherwise provided in the operating agreement, the member is not entitled to receive any distribution.

§673. Distribution

Except as provided in the operating agreement or articles of organization:

2 1. Distributions in cash. A member, regardless of the
3 nature of that member's contribution, has no right to demand and
4 receive a distribution from a limited liability company in any
5 form other than cash; and

6
7 2. Distribution in kind. A member may not be compelled to
8 accept from a limited liability company a distribution of an
9 asset in kind to the extent that the percentage of that asset
10 distributed to the member exceeds a percentage of that asset that
11 is equal to the percentage in which the member shares in
12 distributions from that limited liability company.

13 **§674. Right to distribution**

14
15 At the time a member becomes entitled to receive a
16 distribution, the member has the status of and is entitled to all
17 remedies available to a creditor of a limited liability company
18 with respect to the distribution.

19 **§675. Restrictions on distributions and wrongful distributions**

20
21 1. Distribution prohibited. A distribution may not be made
22 if after giving effect to the distribution:

23 A. The limited liability company is not able to pay its
24 debts as they become due in the usual course of business; or

25 B. All liabilities of the limited liability company, other
26 than liabilities to members on account of their limited
27 liability company interests and liabilities for which the
28 recourse of creditors is limited to specified property of
29 the limited liability company, exceed the fair value of the
30 assets of the limited liability company, except that the
31 fair value of property that is subject to a liability for
32 which the recourse of creditors is limited is included in
33 the assets of the limited liability company only to the
34 extent that the fair value of that property exceeds that
35 liability.

36 2. Distribution not prohibited. A limited liability
37 company may base a determination that a distribution is not
38 prohibited under subsection 1 on either:

39 A. Financial statements prepared on the basis of accounting
40 practices and principles that are reasonable under the
41 circumstances; or

42 B. A fair valuation or other method that is reasonable
43 under the circumstances.

2 3. Effect of distribution. Except as provided in
3 subsection 5, the effect of a distribution under subsection 1 is
4 measured as of:

6 A. The date the distribution is authorized if payment
7 occurs within 120 days after the date of authorization; or

8 B. The date payment is made if it occurs more than 120 days
9 after the date of authorization.

12 4. Indebtedness to member. A limited liability company's
13 indebtedness to a member incurred by reason of a distribution
14 made in accordance with this section is at parity with that
15 limited liability company's indebtedness to its general unsecured
16 creditors, except to the extent subordinated by agreement.

18 5. Indebtedness not a liability. If terms of the
19 indebtedness provide that payment of principal and interest is to
20 be made only if, and to the extent that, payment of a
21 distribution to members could then be made under this section,
22 indebtedness of a limited liability company, including
23 indebtedness issued as a distribution, is not a liability for
24 purposes of determinations made under subsection 2.

26 6. Indebtedness issued as a distribution. If the
27 indebtedness is issued as a distribution, each payment of
28 principal or interest on the indebtedness is treated as a
29 distribution, the effect of which is measured on the date the
30 payment is actually made.

32 **§676. Liability upon wrongful distribution**

34 1. Personal liability for wrongful distribution. A member
35 or manager who votes for or assents to a distribution in
36 violation of the operating agreement, articles of organization or
37 section 675 is personally liable to a limited liability company
38 for the amount of the distribution that exceeds what could have
39 been distributed without violating section 675, articles of
40 organization or the operating agreement if it is established that
41 the member or manager did not act in compliance with section 675.

42 2. Contribution for personal liability. Each member or
43 manager held liable under subsection 1 for a wrongful
44 distribution is entitled to contribution:

46 A. From each other member or manager who could be held
47 liable under subsection 1 for the unlawful distribution; and

B. From each member for the amount that member received knowing that the distribution was made in violation of section 675, articles of organization or the operating agreement.

3. Limitation on actions for wrongful distribution. A proceeding under this section is barred unless it is commenced within 2 years after the date on which the effect of the distribution is measured under section 675.

SUBCHAPTER VII

OWNERSHIP AND TRANSFER OF PROPERTY

§681. Ownership of limited liability company property

1. Property of limited liability company. Property transferred to or otherwise acquired by a limited liability company becomes property of that limited liability company. A member has no interest in specific limited liability company property.

2. Property in the name of limited liability company. Property may be acquired, held and conveyed in the name of a limited liability company. An estate in real property may be acquired in the name of that limited liability company and title to an estate so acquired vests in that limited liability company rather than in the members individually.

§682. Rules for determining when property is owned by a limited liability company

1. Acquired in name of limited liability company. Subject to subsection 4, property is presumed owned by a limited liability company if it is acquired in the name of that limited liability company.

2. Purchased with funds of limited liability company. Subject to subsection 4, property is presumed owned by a limited liability company if it is purchased with funds of that limited liability company even if it is acquired in the name of a member or other person.

3. Separate property of members. Subject to subsection 4, property is presumed separate property of one or more members or other persons if it is acquired in the name or names of that person or those persons without use of funds of a limited liability company even though the property is used for purposes of the business of that limited liability company.

2 4. Property held of public record. Real property and other
4 property held of public record other than in the name of a
6 limited liability company, the ownership of which is customarily
8 publicly recorded, is not deemed owned by that limited liability
10 company to the prejudice of a person who is not a member and who
12 did not have actual knowledge to the contrary.

14 §683. Transfer of property

16 1. Transfer by member. Except as provided in subsection 5,
18 title to property of a limited liability company that is held in
20 the name of that limited liability company may be transferred by
22 an instrument of transfer executed by a member in the name of
24 that limited liability company.

26 2. Transfer by persons named in title. Title to property
28 of a limited liability company that is held in the name of one or
30 more members or managers with an indication in the instrument
32 transferring title to the property to them in their capacity as
34 members or managers of that limited liability company or of the
36 existence of a limited liability company, even if the name of
that limited liability company is not indicated, may be
transferred by an instrument of transfer executed by the persons
in whose name title is held.

38 3. Recovery of transferred property. Property transferred
40 under subsections 1 and 2 may be recovered by a limited liability
42 company if it proves that the act of the person executing the
44 instrument of transfer did not bind that limited liability
46 company under section 641. Unless the property has been
transferred by the initial transferee or a person claiming
through the initial transferee to a subsequent transferee who
gives value without having notice that the person who executed
the instrument of initial transfer lacked authority to bind that
limited liability company.

48 4. Transfer to a transferee without notice. Title to
property of a limited liability company that is held in the name
of one or more persons other than that limited liability company
without an indication in the instrument transferring title to the
property to them in their capacity as members or managers of that
limited liability company or of the existence of a limited
liability company may be transferred free of claims of that
limited liability company or the members by the person in whose
name title is held to a transferee who gives value without having
notice that it is property of that limited liability company.

5. Transfer by managers. If the articles of organization provide that management of a limited liability company is vested in a manager or managers:

A. Title to property of the limited liability company that is held in the name of that limited liability company may be transferred by an instrument of transfer executed by a manager in the name of that limited liability company; and

B. A member, acting solely in the capacity as a member, does not have authority to transfer title to property of a limited liability company that is held in the name of a limited liability company.

§684. Nature of membership interest

A membership interest in a limited liability company is personal property.

§685. Assignment of membership interest

1. Assignment of membership interest. Except as provided in an operating agreement or articles of organization:

A. A membership interest is assignable in whole or in part;

B. An assignment entitles the assignee to share in profits and losses, to receive the distribution or distributions and to receive the allocation of income, gain, loss, deduction or credit or similar item to which the assignor was entitled, to the extent assigned;

C. An assignment of a membership interest does not of itself dissolve a limited liability company or entitle the assignee to participate in the management and affairs of a limited liability company or to become or exercise any rights of a member;

D. Until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the member's right pursuant to section 692, subsection 1, paragraph C, subparagraph (2);

E. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

2 F. The assignor of a membership interest is not released
3 from liability as a member solely as a result of the
4 assignment.

6 2. Membership evidenced by certificate. An operating
7 agreement or articles of organization may provide that a member's
8 interest in a limited liability company may be evidenced by a
9 certificate of membership interest issued by a limited liability
10 company and may also provide for the assignment or transfer of a
11 membership interest represented by such a certificate and make
12 other provisions with respect to the certificates.

14 3. Encumbered membership interest. Unless otherwise
15 provided in an operating agreement, the pledge of or granting of
16 a security interest, lien or other encumbrance in or against any
17 or all of the membership interest of a member is not an
18 assignment and does not cause the member to cease to be a member
19 or to cease to have the power to exercise a rights or powers of a
20 member.

22 §686. Rights of judgment creditor

24 On application to a court of competent jurisdiction by a
25 judgment creditor of a member, the court may charge the
26 membership interest of the member with payment of the unsatisfied
27 amount of judgment with interest. To the extent so charged, the
28 judgment creditor has only the rights of an assignee of the
29 membership interest. This Act does not deprive a member of the
30 benefit of any exemption laws applicable to that member's
31 membership interest.

32 §687. Right of assignee to become a member

34 1. Right to become member. An assignee of a membership
35 interest may become a member if:

36 A. The operating agreement or articles of organization so
37 provide; or

38 B. All other members and the assignee consent.

40 2. Rights, powers and liabilities of assignee as a member.
41 An assignee who becomes a member has to the extent assigned the
42 rights and powers and is subject to the restrictions and
43 liabilities of a member under the articles of organization, an
44 operating agreement and this Act. An assignee who becomes a
45 member also is liable for any obligations of the assignor to make
46 contributions and to return distributions under section 662. The
47 assignee is not obligated for liabilities of which the assignee
48 had no knowledge at the time the assignee became a member and
49
50

that could not be ascertained from an operating agreement or articles of organization.

3. Assignor not released. Whether or not an assignee of a membership interest becomes a member, the assignor is not released from liability to a limited liability company under section 662.

4. Assignment ceases membership. Except as otherwise provided in the operating agreement or articles of organization, a member who assigns that member's entire interest in a limited liability company ceases to be a member or to have the power to exercise any rights of a member when an assignee of that member's interest becomes a member with respect to the assigned interest.

§688. Powers of estate of a deceased or incompetent member

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator or other legal representative has all of the rights of an assignee of the member's interest.

SUBCHAPTER VIII

ADMISSION AND WITHDRAWAL OF MEMBERS

§691. Admission of members

1. Becoming a member. Subject to subsection 2, a person may become a member in a limited liability company:

A. When the person acquires a limited liability company interest directly from a limited liability company, upon compliance with the operating agreement or articles of organization or, if neither the operating agreement nor the articles of organization so provide, upon the written consent of all members; and

B. When the person is an assignee of a limited liability company interest as provided in section 685.

2. Effective time of admission. The effective time of admission of a member to a limited liability company is the later of:

A. The date a limited liability company is formed; or

2 B. The time provided in the operating agreement or articles
3 of organization or, if no such time is provided in the
4 operating agreement or articles of organization, when the
5 person's admission is recorded in the records of a limited
6 liability company.

7 §692. Events of withdrawal

8 1. Withdrawing as a member. A person ceases to be a member
9 of a limited liability company upon the occurrence of any of the
10 following events:

11 A. The member withdraws by voluntary act from a limited
12 liability company as provided in subsection 3;

13 B. The member ceases to be a member of a limited liability
14 company as provided in section 687;

15 C. The member is removed as a member:

16 (1) In accordance with an operating agreement or
17 articles of organization; or

18 (2) Subject to a contrary provision in the operating
19 agreement or articles of organization, when the member
20 assigns all of that member's interest in a limited
21 liability company, by an affirmative vote of a majority
22 in interest of the members who have not assigned their
23 interests;

24 D. Subject to a contrary provision in the operating
25 agreement or articles of organization or written consent of
26 a majority in interest of all members at the time, the
27 member:

28 (1) Makes an assignment for the benefit of creditors;

29 (2) Files a voluntary petition in bankruptcy;

30 (3) Is adjudicated a bankrupt or an insolvent;

31 (4) Files a petition or answer seeking for that member
32 any reorganization, arrangement, composition,
33 readjustment, liquidation, dissolution or similar
34 relief under any law or regulation;

35 (5) Files an answer or other pleading admitting or
36 failing to contest the material allegations of a
37 petition filed against that member in a proceeding of
38 that nature; or

(6) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver or liquidator of that member or of all or a substantial part of that member's properties;

E. Subject to a contrary provision in the operating agreement or articles of organization, or written consent of a majority in interest of all members at the time, 120 days after the commencement of a proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law or regulation, the proceeding has not been dismissed, or if within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver or liquidator of the member or of all or a substantial part of the member's properties, the appointment is not vacated or stayed, or if within 90 days after the expiration of a stay, the appointment is not vacated;

F. Subject to a contrary provision in the operating agreement or articles of organization or written consent of a majority in interest of all members at the time, when a member who is an individual:

(1) Dies; or

(2) Is adjudicated incompetent to manage the member's person or estate by a court of competent jurisdiction;

G. Subject to a contrary provision in the operating agreement or articles of organization or written consent of a majority in interest of all members at the time, when a member is a trust or is acting as a member because that member is a trustee of a trust, the termination of the trust, but not solely the substitution of a new trustee;

H. Subject to a contrary provision in the operating agreement or articles of organization or written consent of a majority in interest of all members at the time, when a member is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;

I. Subject to a contrary provision in the operating agreement or articles of organization or written consent of a majority in interest of all members at the time, when a member is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the suspension of its charter and the expiration of 90 days

after the date of notice to the corporation of suspension without a reinstatement of its charter; or

J. Subject to a contrary provision in the operating agreement or articles of organization or written consent of a majority in interest of all members at the time, when a member is an estate, the distribution by the fiduciary of the estate's entire interest in a limited liability company.

2. Other events. The members may provide in the operating agreement or articles of organization for other events the occurrence of which result in a person ceasing to be a member of a limited liability company.

3. Voluntary withdrawal; damages. Unless the operating agreement or articles of organization provide that a member has no power to withdraw by voluntary act from a limited liability company, the member may do so at any time by giving a 30-day written notice to the other members or such other notice as provided in the operating agreement or articles of organization. If the member has the power to withdraw but the withdrawal is a breach of an operating agreement or articles of organization or the withdrawal occurs as a result of otherwise wrongful conduct of the member, a limited liability company may recover from the withdrawing member damages for breach of the operating agreement or articles of organization including the reasonable costs of obtaining replacement of the services the withdrawn member was obligated to perform and may offset the damages against the amount otherwise distributable to that member, in addition to pursuing any remedies provided for in an operating agreement or otherwise available under applicable law. Unless otherwise provided in the operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term is a breach of the operating agreement.

§693. Power of member who has withdrawn to bind limited liability company

For 2 years after a member withdraws without resulting in a dissolution and winding up of the limited liability company business, the limited liability company, including a surviving limited liability company under subchapter XII, is bound by an act of the member who withdrew that would have bound the limited liability company under section 641 before dissociation only if at the time of entering into the transaction the other party:

1. Reasonable belief. Reasonably believed that the member who withdrew was a member at that time;

2. No notice. Did not have notice of the member's withdrawal; and

3. Not deemed to have notice. Is not deemed to have had notice under section 694.

§694. Statement of withdrawal

1. Statement of withdrawal. A member who has withdrawn or the limited liability company may file a statement of withdrawal stating the name of the limited liability company and that the member has withdrawn from the limited liability company.

2. Deemed to have notice. For the purposes of sections 641 and 693, a person not a member is deemed to have notice of the withdrawal 90 days after the statement of withdrawal is filed.

SUBCHAPTER IX

DISSOLUTION

§701. Nonjudicial dissolution

A limited liability company is dissolved and its affairs are wound up upon the first to occur of the following:

1. Specified time or event. At the time or upon the happening of events specified in a limited liability company operating agreement or articles of organization;

2. Consent. Written consent of all members;

3. Withdrawal of a member. An event of withdrawal of a member, unless the business of a limited liability company is continued:

A. By the consent of all the remaining members within 90 days following the occurrence of such an event; or

B. As otherwise provided in the articles of organization or operating agreement; or

4. Judicial dissolution. Entry of decree of judicial dissolution under section 702.

§702. Dissolution pursuant to court order

The Superior Court of this State may decree the dissolution of, and liquidate the assets and business of, a limited liability company:

1. Action filed by member. In an action filed by a member in which it is established that:

A. The managers of the limited liability company are so divided respecting the management of the limited liability company's business and affairs that the votes required for action by the managers cannot be obtained and the members are unable to terminate the division, with the consequence that the limited liability company is suffering or will suffer irreparable injury, or the business and affairs of the limited liability company can no longer be conducted to the advantage of the members generally;

B. The members are so divided respecting the management of the business and affairs of the limited liability company that the limited liability company is suffering or will suffer irreparable injury, or the business and affairs of the limited liability company can no longer be conducted to the advantage of the members;

C. The acts of the managers or those in control of the limited liability company are illegal or fraudulent;

D. The assets of the limited liability company are being misapplied or wasted;

E. The petitioning member has a right, under a provision of the articles of organization, the operating agreement or section 701, to dissolution of the limited liability company at will or upon the occurrence of any specified event or contingency and has made a conforming demand upon the managers or members in control, who have failed to proceed with dissolution as required by section 701; or

F. The limited liability company has abandoned its business and has failed, within a reasonable time, to take steps to dissolve and liquidate its affairs and distribute its assets.

In determining whether to order dissolution under this subsection, the court may not deny dissolution solely because it is found that the business of the limited liability company has been or could be conducted at a profit;

2. Action filed by creditor. In an action filed by a creditor of the limited liability company when it is established

that the limited liability company is insolvent or that its debts exceed its assets;

3. Application by a limited liability company, intent to dissolve. Upon application by a limited liability company that has filed a statement of intent to dissolve, as provided in this Act, to have its liquidation continued under the supervision of the court;

4. Action by member or creditor, intent to dissolve. In an action filed by a member or creditor of a limited liability company that has filed a statement of intent to dissolve, as provided in this Act, when it is established that there is serious danger that the persons in control of the limited liability company and its assets will fail to make proper provision for the payment of its debts or will fail to make proper distribution of the remaining property and assets of the limited liability company to the members in accordance with their respective rights and interests; or

5. Action by the Attorney General. When an action has been filed by the Attorney General to dissolve a limited liability company and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

Proceedings under subsection 1, 2, 3 or 4 must be brought in the county in which the registered office or the principal place of business of the limited liability company in this State is located.

§703. Winding up

1. Persons authorized to wind up a limited liability company. Unless otherwise provided in the operating agreement or articles of organization, the managers or, if there is no manager, a majority in interest of the members or one or more liquidating trustees approved by the members may wind up a limited liability company's affairs. The Superior Court, upon cause shown, may wind up a limited liability company's affairs upon application of a member or a member's legal representative or assignee and in connection with the winding up may appoint a liquidating trustee.

2. Liquidation process. Upon dissolution of a limited liability company and until the filing of a certificate of cancellation as provided in section 625, the persons winding up a limited liability company's affairs in the name of and for and on behalf of the limited liability company may prosecute and defend suits whether civil, criminal or administrative, settle and close a limited liability company's business, dispose of and

convey a limited liability company's property, discharge or make reasonable provision for a limited liability company's liabilities and distribute to the members any remaining assets of a limited liability company, all without affecting the liability of members and without imposing liability on the liquidating trustee.

§704. Agency power of managers or members after dissolution

1. Binding after dissolution. Except as provided in subsections 3, 4 and 5, after an event causing dissolution of a limited liability company a member may bind a limited liability company:

A. By an act appropriate for winding up a limited liability company's affairs or completing transactions unfinished at dissolution; and

B. By a transaction that would have bound a limited liability company if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

2. Notice of dissolution. The filing of the certificate of cancellation is presumed to constitute notice of dissolution for purposes of subsection 1, paragraph B.

3. Binding if authorized. An act of a member that is not binding on a limited liability company pursuant to subsection 1 is binding if it is otherwise authorized by a limited liability company.

4. Not binding if notice of restriction. An act of a member that is binding under subsection 1 or otherwise authorized but is in contravention of a restriction on authority does not bind a limited liability company to persons having knowledge of the restriction.

5. Authority of manager. If the articles of organization provide that management of a limited liability company vests in managers, a manager has the authority of a member provided for in subsection 1 and that member does not have that authority if acting solely in the capacity of a member.

§705. Distribution of assets

1. Priority. Upon the winding up of a limited liability company, the assets must be distributed as follows:

A. To the creditors, including members who are creditors, in satisfaction of liabilities of a limited liability company whether by payment or the making of reasonable provision for payment, other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under section 671 or 672;

B. Unless otherwise provided in the operating agreement or articles of organization, to members and former members in satisfaction of liabilities for distributions under section 671 or 672; and

C. Unless otherwise provided in the operating agreement or articles of organization, to members:

(1) For the return of their contributions; and

(2) Respecting their membership interests, in the proportions in which the members share in distributions.

2. Payment or provisions for payment for liabilities. A limited liability company that has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to that limited liability company and all claims and obligations that are known to that limited liability company but for which the identity of the claimant is unknown. If there are sufficient assets, the claims and obligations must be paid in full and any such provision for payment made must be made in full. If there are insufficient assets, the claims and obligations must be paid or provided for according to priority and among claims and obligations of equal priority ratably to the extent of assets available. Unless otherwise provided in an operating agreement or the articles of organization, any remaining assets must be distributed as provided in this chapter. Any liquidating trustee winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of that person's actions in winding up a limited liability company.

§706. Known claims against dissolved limited liability company

1. Filing of claims. In proceedings to liquidate the assets and business of a limited liability company, the court may require all creditors of the limited liability company to file with the clerk of the court or with the receiver, in a form the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall set

2 a date, which is less than 4 months from the date of the order,
as the last day for the filing of claims, and shall prescribe the
4 written notice that must be given to creditors and claimants of
the date set. Prior to the date set, the court may extend the
6 time set for the filing of claims. Creditors and claimants
failing to file proofs of claim on or before the date set may be
8 barred, or may be permitted, by the court as it considers
appropriate, to participate in the distribution of the assets of
the limited liability company.

10
12 **2. Priorities in case of insolvency.** If it is determined
in the course of the proceedings that the assets of the limited
14 liability company, after subtracting the expenses of liquidating
them and the expenses of the proceeding, are less than the debts
of the limited liability company, all attachments made within 4
16 months before the commencement of the action are dissolved.

18 **§707. Unknown claims against dissolved limited liability company**

20 **1. Publication of notice for unknown claims.** A dissolved
limited liability company may publish notice of its dissolution
22 pursuant to this section that requests that persons with claims
against a limited liability company present them in accordance
24 with the notice set forth in subsection 2.

26 **2. Notice requirements.** The notice must:

28 **A.** Be published one time in a newspaper of general
circulation in the county where the dissolved limited
30 liability company's principal office is located or, if none
in this State, where its registered office is or was last
32 located;

34 **B.** Describe the information that must be included in a
claim and provide a mailing address where the claim may be
36 sent; and

38 **C.** State that a claim against a limited liability company
will be barred unless a proceeding to enforce the claim is
40 commenced within 5 years after the publication of the notice.

42 **3. Claims barred.** If the dissolved limited liability
company publishes a newspaper notice in accordance with
44 subsection 2 and files a certificate of cancellation pursuant to
section 625, the claim of each of the following claimants is
46 barred unless the claimant commences a proceeding to enforce the
claim against the dissolved limited liability company within 5
48 years after the later of publication date of the newspaper notice
or the filing of the certificate of cancellation:

A. A claimant who did not receive written notice under section 706;

B. A claimant whose claim was timely sent to the dissolved limited liability company but not acted on; and

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

4. Enforcement of claim. A claim may be enforced under this section:

A. Against the dissolved limited liability company, to the extent of its undistributed assets; or

B. If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of that member's pro rata share of the claim or the assets of a limited liability company distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to that member.

SUBCHAPTER X

FOREIGN LIMITED LIABILITY COMPANIES

§711. Laws governing foreign limited liability companies

1. Laws governing. Unless otherwise provided by the Constitution of Maine:

A. The laws of the State or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members; and

B. A foreign limited liability company may not be denied the authority to do business by reason of a difference between the laws referred to in this subsection and the laws of this State.

2. Type of business. A foreign limited liability company may transact any business in this State that may be transacted by a domestic limited liability company.

§712. Authority to do business required; application

Before doing business in this State, a foreign limited liability company must obtain authority to do business from the Secretary of State.

1. Definitions. As used in this subchapter, "doing business," "the doing of business" or "business done in this State," by a foreign limited liability company means the course or practice of carrying on any business activities in this State. Without excluding other activities that may not constitute transacting business in this State, a foreign limited liability company is not considered to be transacting business in this State, exclusively for the purpose of qualification under this subchapter, solely by reason of carrying on in this State one or more of the following activities:

A. Maintaining or defending any action or administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

B. Holding meetings of its managers or members or carrying on other activities concerning its internal affairs;

C. Maintaining bank accounts, share accounts in savings and loan associations, custodial or agency arrangements with a bank or trust company or stock or bond brokerage accounts;

D. Maintaining offices or agencies for the transfer, exchange and registration of its interests or appointing and maintaining trustees or depositaries with relation to its interests;

E. Effecting sales through independent contractors;

F. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, when the orders require acceptance outside this State before becoming binding contracts and when the contracts do not involve any local performance other than delivery and installation;

G. Making loans or creating or acquiring evidences of debt, mortgages or liens on real or personal property or recording the same;

H. Securing or collecting debts or enforcing any rights in property securing the same;

I. Effecting transactions in interstate or foreign commerce;

J. Owning or controlling a subsidiary corporation incorporated in or transacting business within this State;

K. Owning or controlling a general or limited partnership or a limited liability company organized or transacting business within this State;

L. Conducting an isolated transaction not in the course of a number of repeated similar transactions;

M. Serving as trustee, executor, administrator or guardian or in like fiduciary capacity as permitted by the laws of this State; or

N. Being a partner in a domestic limited partnership or a member in a domestic limited liability company.

2. Execution. The foreign limited liability company shall submit an application for authority to do business to the Secretary of State, executed by a person with authority to do so under the laws of the state or other jurisdiction of its formation on a form prescribed by or furnished by the Secretary of State.

3. Contents of the application. The application must include:

A. The name of the foreign limited liability company and, if different, the name under which that company proposes to apply for authority to do business in this State;

B. The state or country where organized, the date of its organization and a statement that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its organization;

C. The nature of the business or purposes to be conducted or promoted in this State;

D. The address of the registered office and the name and address of the registered agent for service of process required to be maintained under section 714, subsection 2;

E. A statement that the Secretary of State is appointed the agent of the foreign limited liability company for service of process;

F. The name and business, residence or mailing address of each of the managers, if any;

G. The date on which the foreign limited liability company first did, or intends to do, business in this State;

H. A certificate of good standing or its equivalent from the proper officer of its jurisdiction of organization. The certificate of good standing or its equivalent must have been made not more than 90 days prior to the delivery of the application for filing; and

I. The address of the registered or principal office of a limited liability company in the jurisdiction of its organization.

§713. Evidence of authority to do business

If the Secretary of State finds that an application for the authority to do business conforms to the requirements of this chapter and all requisite fees have been paid, the Secretary of State shall:

1. Attest application. Attest that the application has been filed by:

A. Endorsing upon the original application the word "filed" and the day, month and year of the filing. The person delivering the application for filing may have the endorsement include the hour and minute of the filing of the application. This endorsement is conclusive of the date and time, if included in the endorsement, and of its filing in the absence of actual fraud; and

B. Signing, initialing or placing an identifying mark on the endorsement in paragraph A in person or by agent;

2. File the application. File and index the endorsed application; and

3. Copy to limited liability company. Furnish to the person submitting the document for filing, or that person's representative, an attested copy of the application.

§714. Name; registered office; registered agent

1. Name. A foreign limited liability company may apply to the Secretary of State to do business in this State under a name that conforms with the requirements of section 603, subsection 1. The name does not need to be the same as the name under which it is authorized to do business in the jurisdiction of its organization.

2. Registered office and registered agent. Each foreign limited liability company must have and maintain in this State:

A. A registered office, which may or may not be a place of its business in this State; and

B. A registered agent for service of process on a limited liability company. The agent may be either:

(1) An individual resident of this State whose business office or residential address is identical with a limited liability company's registered office; or

(2) A domestic or foreign corporation, whether business or nonprofit, authorized to do business or carry on activities in this State whose registered office must also serve as the registered office of a limited liability company.

3. Change in registered office or registered agent. The registered office and registered agent may be changed by:

A. Filing a certificate of amendment under section 715; or

B. Executing and filing a certificate by the registered agent. The certificate must include:

(1) For the change of address of the registered office of the limited liability companies for which the agent is the registered agent to another address in this State:

(a) A list of the names of all limited liability companies represented by that registered agent;

(b) The address at which the registered agent has maintained the registered office for each of the limited liability companies; and

(c) The new address to which the registered office will be changed; or

(2) For a change in the name of a person acting as the registered agent:

(a) The new name of the registered agent;

(b) The name of the registered agent before it was changed;

(c) A list of the names of all limited liability companies represented by the agent; and

(d) The address at which the registered agent has maintained the registered office for each of the limited liability companies.

Any registered agent filing a certificate under this paragraph upon filing shall promptly mail or otherwise deliver a copy of the certificate to a manager or, if none, a member of each limited liability company affected by the change.

4. Resignation of registered agent. A registered agent may resign by filing a certificate with the Secretary of State. The certificate must include:

A. When the registered agent appoints a successor:

(1) A statement of resignation;

(2) A list of the names of all the limited liability companies represented by the agent for which the agent is resigning as agent;

(3) The name and address of the successor registered agent; and

(4) An attached statement executed by each affected limited liability company signed by a manager or, if none, by a member ratifying and approving the change of registered agent; or

B. When the registered agent does not appoint a successor:

(1) A statement of resignation;

(2) A list of the names of all limited liability companies represented by the agent for which the agent is resigning as agent; and

(3) An attached affidavit stating that on or about the date of the filing of certificate of resignation, notices that the registered agent is resigning as registered agent were sent by certified or registered mail to the registered or principal office of each limited liability company in the jurisdiction of its organization, as filed with the Secretary of State.

The resignation takes effect under this paragraph upon filing with the Secretary of State.

5. Secretary of State. The Secretary of State shall furnish to the person submitting the document for filing, or that person's representative, an attested copy of a certificate filed under this section.

6. Resignation of agent; appointment by limited liability company; service of process. After receipt of the notice of the resignation of its registered agent under subsection 3, paragraph B, the limited liability company shall file a certificate of amendment designating a new registered agent. If the limited liability company fails to appoint a new registered agent within 30 days after the filing of the certificate of resignation, the authority of that foreign limited liability company to carry on business in this State is canceled and the foreign limited liability company may not carry on business in this State.

§715. Amendments to application

If a statement in the application for authority to do business of a foreign limited liability company becomes inaccurate as a result of subsequent events, the foreign limited liability company shall promptly file with the Secretary of State a certificate executed by a manager or, if there is no manager, by a member correcting the statement.

§716. Certificate of correction

If a statement in the application for authority to do business of a foreign limited liability company was materially inaccurate when made, the foreign limited liability company shall promptly file with the Secretary of State a certificate, executed by a manager or, if there is no manager, by a member correcting the statement. The certificate of correction must specify the inaccuracy or defect to be corrected and must set forth the portion of the instrument in corrected form. The corrected instrument is effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and for those persons the corrected instrument is effective from the filing date.

§717. Cancellation of authority to do business

A foreign limited liability company may cancel its authority to do business by filing with the Secretary of State a certificate of cancellation. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited liability company with respect to

causes of action arising out of the doing of business in this State.

§718. Doing business without authority; right to sue and be sued; liability of members; penalties

1. Prohibition against bringing an action, suit or proceeding. A foreign limited liability company doing business in this State may not maintain any action, suit or proceeding in this State until it is granted authority to do business in this State and pays to the State all fees and penalties for the years or parts of years during which it did business in this State without having been granted the authority to do business.

2. Validity of contracts; right to be sued; right to defend suit. The failure of a foreign limited liability company to obtain authority to do business in this State in accordance with this chapter does not impair:

A. The validity of any contract or act of the foreign limited liability company;

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

C. The right of the foreign limited liability company to defend any action, suit or proceeding in a court of this State.

3. Liability of members. A member of a foreign limited liability company is not liable solely by reason of the limited liability company having done business in this State without being granted the authority to do business in this State.

4. Penalty. The Secretary of State may fine a foreign limited liability company doing business in this State without first having been granted the authority to do business in this State \$750 for each year or part of a year during which the foreign limited liability company failed to obtain authority to do business in this State.

§719. Doing business without authority; court injunction; revocation by Secretary of State

1. Enjoin from doing business. The Superior Court has jurisdiction to enjoin a foreign limited liability company or any agent of the foreign limited liability company from doing business in this State if the foreign limited liability company has not been granted the authority to do business under this subchapter. The Attorney General may file a complaint in any

county in which the foreign limited liability company is doing or has done business for the purpose of obtaining an injunction under this subsection.

2. Revocation by Secretary of State. The Secretary of State may revoke a foreign limited liability company's authority to do business in the State in accordance with this subsection.

A. Notwithstanding Title 4, chapter 25 and Title 5, chapter 375, the authority of a foreign limited liability company to do business in this State may be revoked by the Secretary of State as provided in paragraphs C and D when:

(1) The foreign limited liability company fails to deliver its annual report for filing within the time specified by this chapter or fails to pay any fees or penalties as prescribed by this chapter when they become due and payable;

(2) The foreign limited liability company fails to appoint and maintain a registered agent in this State as required by section 714;

(3) The foreign limited liability company fails, after change of its registered office or registered agent, to file with the Secretary of State a statement of the change required by section 714;

(4) The foreign limited liability company has failed to file with the Secretary of State an amended application for authority required by section 715; or

(5) A misrepresentation of a material fact is made in any application, report, affidavit or other document required by this chapter.

B. The authority of a foreign limited liability company may be revoked only after:

(1) The Secretary of State has mailed to the foreign limited liability company's last registered office in this State and to its last registered or principal office in its jurisdiction of organization as filed with the Secretary of State, a 30-day notice of pending revocation of its authority to do business in this State. The notice must specify the default; and

(2) The foreign limited liability company has not, prior to revocation, removed the ground of default specified in the notice.

C. After the expiration of the 30-day notice period, if a foreign limited liability company has not corrected the specified default or convinced the Secretary of State, by affidavit or otherwise, that there was no misrepresentation relative to paragraph A, subparagraph (5), the Secretary of State shall issue and file a certificate revoking the foreign limited liability company's authority to do business in this State and mail copies of the certificate of revocation to the foreign limited liability company's last registered office in this State and to its last registered or principal office in its jurisdiction of organization as filed with the Secretary of State.

D. The foreign limited liability company may appeal the action of the Secretary of State in revoking its authority to do business to the Superior Court in Kennebec County. The appeal is governed by the Maine Rules of Civil Procedure, Rule 80B, as amended.

E. The authority of the foreign limited liability company to do business in this State ceases as of the date of filing of the certificate of revocation unless stayed by the court.

F. A foreign limited liability company that has its authority to do business in this State revoked may be requalified by applying for authority to do business under this subchapter.

§720. Action by Attorney General

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this State in violation of this chapter.

§721. Execution of documents; liability for false statements

1. Signature. Documents must be signed by a manager or, if there is no manager, by a member except as otherwise provided.

2. False swearing; false statements. Section 627, subsection 3 governing false swearing and section 630 on liability for false statements apply to foreign limited liability companies as if the application for authority to do business were the articles of organization of a limited liability company.

§722. Service of process on foreign limited liability companies authorized to do business in State

1. Manager. Process may be served on a manager or, if none, on a member that is present or found in this State.

2. Registered agent. Process may be served on the registered agent of the foreign limited liability company.

3. Service on Secretary of State. If a foreign limited liability company authorized to do business in this State fails to appoint or maintain a registered agent in this State, any such registered agent can not with reasonable diligence be found at the registered office or the authority of a foreign limited liability company is revoked, the Secretary of State is an agent of that foreign limited liability company upon whom any such process, notice or demand may be served. Service on the Secretary of State of any such process, notice or demand must be made as provided in section 724.

4. Other means of service. Nothing in this section limits or affects the right to serve a process, notice or demand required or permitted by law to be served upon a foreign limited liability company in any other manner permitted by law or rule of court.

§723. Service of process on foreign limited liability company not authorized to do business in State

1. Service on Secretary of State. Every foreign limited liability company that does business in this State without having been authorized to do business in this State submits itself to the jurisdiction of the courts of this State, and designates the Secretary of State as its agent upon whom a process, notice or demand upon it may be served in any action or proceeding arising out of or in connection with the doing of business in this State.

2. Method of serving process. In addition to other methods of service that may be authorized by law or by rule, service of process may be made as provided in section 724.

§724. Service of process on Secretary of State for foreign limited liability company

When a process, notice or demand is to be served on the Secretary of State as the agent of a foreign limited liability company pursuant to a provision of this chapter:

1. Delivery to Secretary of State. The process, notice or demand must be served by delivering it to the Secretary of State or to a person designated by the Secretary of State to receive such service;

2. Copy; foreign limited liability company. The party serving the process shall promptly send a duplicate copy of the process, notice or demand via registered or certified mail, return receipt requested, marked "deliver to addressee only," to the foreign limited liability company at:

A. Its last registered office in this State on file in the office of the Secretary of State, if any; and

B. Its last registered or principal office in the jurisdiction of its organization on file in the office of the Secretary of State, if any; or if no such office has been listed in the office of the Secretary of State, at the last address of the foreign limited liability company known to the person serving the process; and

3. Proof of service. Proof of service must be by return of service on the Secretary of State and by an affidavit of the person serving the process or that person's attorney setting forth compliance with subsection 2. The affidavit must be appended by the return receipt signed by the foreign limited liability company or other official proof of delivery or, if acceptance was refused or the addressee was not found at the address given, the original envelope bearing the notation of the postal authorities showing the reason for nondelivery. Service is complete when there has been compliance with subsections 1 and 2.

SUBCHAPTER XI

SUITS BY AND AGAINST THE LIMITED LIABILITY COMPANY

§731. Suits by and against a limited liability company

Suit may be brought by or against a limited liability company in its own name.

§732. Right to bring action

A member may bring an action in Superior Court in the right of a limited liability company to recover a judgment in its favor if the managers or, if no managers, the members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.

§733. Proper plaintiff

In a derivative action, the plaintiff must:

1. At time of action. Be a member at the time the action is brought; and

2. At time of transaction. Either:

A. Have been a member at the time of the transaction to which the action relates; or

B. Have acquired the status of member by operation of law or pursuant to the terms of the operating agreement or the articles of organization from a person who was a member at the time of the transaction.

§734. Complaint

In a derivative action, the complaint must set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by a manager, or, if none, the members, or the reasons for not making the effort.

§735. Expenses

If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees. The court shall order that any such award be paid out of the proceeds received by the plaintiff, if any, in which case the plaintiff shall remit to the limited liability company the remainder. If those proceeds are insufficient to reimburse the plaintiff's reasonable expenses, the court may direct that any such award of the plaintiff's expenses or a portion of the expenses be paid by the limited liability company.

SUBCHAPTER XII

MERGER AND CONSOLIDATION

§741. Merger or consolidation

1. Merger or consolidation; surviving entity. Unless otherwise provided in the operating agreement or articles of organization, one or more limited liability companies may merge or consolidate.

2. Exchange or conversion of rights, securities or interests. Rights or securities of or interests in a limited liability company that is a party to the merger or consolidation

may be exchanged for or converted into cash, property, obligations, rights or securities of or interests in the surviving or resulting limited liability company.

§742. Approval of merger or consolidation

1. Majority approval required. Unless otherwise provided in the operating agreement or articles of organization, a limited liability company that is a party to a proposed merger or consolidation must approve the merger or consolidation agreement by the consent of more than 1/2 by number of the members.

2. Manner of approval. A foreign limited liability company that is a party to a proposed merger or consolidation shall approve the merger or consolidation in the manner and by the vote required by the laws applicable to such a business entity.

3. Rights to abandon merger. A party to the merger or consolidation has those rights to abandon the merger provided for in the merger or consolidation agreement.

§743. Plan of merger or consolidation

1. Written plan. Each constituent limited liability company shall enter into a written plan of merger or consolidation, which must be approved in accordance with section 742.

2. Plan requirements. The plan of merger or consolidation must set forth:

A. The name of each limited liability company that is a party to the merger or consolidation and the name of the surviving limited liability company into which each other party proposes to merge or the new limited liability company into which each party proposes to consolidate;

B. The terms and conditions of the proposed merger or consolidation;

C. The manner and basis of converting the interests in each limited liability company that is a party to the merger or consolidation into interests, shares, or other securities or obligations, as the case may be, of the surviving or new limited liability company or, in whole or in part, into cash or other property;

D. In the case of a merger, such amendments to the articles of the surviving limited liability company as desired to be

effected by the merger or that those amendments are not desired;

E. In the case of a consolidation, all of the statements required to be set forth in the articles of organization of the new limited liability company; and

F. Other provisions relating to the proposed merger or consolidation determined necessary or desirable.

§744. Certificate of merger or consolidation

1. Certificate of merger or consolidation. The limited liability company surviving or resulting from the merger or consolidation shall deliver to the Secretary of State a certificate of merger or consolidation executed by each constituent limited liability company setting forth:

A. The name and jurisdiction of organization of each limited liability company that is to merge or consolidate;

B. That an agreement of merger or consolidation has been approved and executed by each limited liability entity that is a party to the merger or consolidation;

C. The name of the surviving or resulting limited liability company;

D. The date when the merger or consolidation is to take effect, if the effective date is postponed to a date, not to exceed 60 days, subsequent to the filing date of the certificate of merger or consolidation;

E. That the agreement of merger or consolidation is on file at a place of business of the surviving or resulting limited liability company and shall state the address thereof;

F. That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting limited liability company on request and without cost, to a person holding an interest in a limited liability company that is to merge or consolidate; and

G. If the surviving or resulting limited liability company is not organized under the laws of this State, a statement that the surviving or resulting limited liability company:

(1) Agrees that it may be served with process in this State in a proceeding for enforcement of an obligation of a party to the merger or consolidation that was

organized under the laws of this State, as well as for enforcement of an obligation of the surviving or new limited liability company arising from the merger or consolidation; and

(2) Appoints the Secretary of State as its agent for service of process in any such proceeding and the surviving or new limited liability company shall specify the address to which a copy of the process must be mailed by the Secretary of State.

2. Effective date. A merger or consolidation takes effect upon the later of the effective date of the filing of the certificate of merger or consolidation or the date set forth in the certificate of merger or consolidation.

3. Execution of certificate. The certificate of merger or consolidation must be executed by a limited liability company that is a party to the merger or consolidation in the manner provided for in section 627 and must be filed with the Secretary of State in the manner provided for in section 629.

4. Certificate of cancellation of limited liability company. The certificate of merger or consolidation acts as a certificate of cancellation for a limited liability company that is not the surviving or resulting entity in the merger or consolidation.

5. Operating agreement of surviving limited liability company. An agreement of merger or consolidation approved in accordance with section 742 may effect an amendment to the operating agreement or effect the adoption of a new operating agreement for a limited liability company if it is the surviving or resulting limited liability company in the merger or consolidation. An amendment to an operating agreement or adoption of a new operating agreement made pursuant to this subsection is effective at the effective time or date of the merger or consolidation. This subsection may not be construed to limit the accomplishment of a merger or of any of the matters referred to in this subsection, by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law, including that the operating agreement of a constituent limited liability company to the merger or consolidation including a limited liability company formed for the purpose of consummating a merger or consolidation, must be the operating agreement of the surviving or resulting limited liability company.

§745. Effects of merger or consolidation

A merger or consolidation has the following effects.

1. Single entity. The limited liability companies that are parties to the merger or consolidation agreement become a single entity, which in the case of a merger is the limited liability company designated in the plan of merger as the survivor, and in the case of a consolidation is the new limited liability company provided for in the plan of consolidation.

2. Separate existence ceases. The separate existence of each party to the merger or consolidation agreement, except the surviving or new limited liability company, ceases.

3. Rights and restrictions on surviving limited liability company. The surviving or new limited liability company possesses all the rights, privileges, immunities and powers of each constituent limited liability company and is subject to all the restrictions, disabilities and duties of each of the parties to the extent that those rights, privileges, immunities, powers, franchises, restrictions, disabilities and duties are applicable.

4. Interests of constituent limited liability companies. All property, real, personal and mixed and all debts due, including promises to make capital contributions and all other choses in action and all other interests of or belonging to or due to each of the constituent entities vest in the surviving or new limited liability company without further act or deed.

5. Real estate titles do not revert. The title to all real estate and any interest in real estate vested in a constituent limited liability company do not revert and are not in any way impaired by reason of the merger or consolidation.

6. Liabilities and obligations. The surviving or new limited liability company is liable for all liabilities and obligations of each of the constituent limited liability companies so merged or consolidated and any claim existing or action or proceeding pending by or against a constituent limited liability company may be prosecuted as if the merger or consolidation had not taken place or the surviving or new limited liability company may be substituted in the action.

7. Impairment of creditor's rights or liens. Neither the rights of creditors nor any liens on the property of a constituent limited liability company are impaired by the merger or consolidation.

8. Membership or other interests. The membership or other interests in a limited liability company that are to be converted or exchanged into interests, cash, obligations or other property

under the terms of the merger or consolidation agreement are so converted and the former holders of the membership or other interests are entitled only to the rights provided in the merger or consolidation agreement or the rights otherwise provided by law.

SUBCHAPTER XIII

MISCELLANEOUS

§751. Fees; penalties

A document filed under this chapter is not effective until the applicable fee required in this section is paid. The following fees or penalties must be paid to the Secretary of State:

1. Reservation. For filing of an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to section 604, a fee of \$20 for each limited liability company affected;

2. Assumed name. For filing of an application for an assumed name under section 605, a fee of \$105;

3. Termination of assumed name. For filing of a termination of an assumed name under section 605, a fee of \$20;

4. Registered name. For filing of an application for a registered name of a foreign limited liability company under section 606, a fee of \$20 per month for the number of months or fraction of a month remaining in the calendar year when first filing. For filing an application to renew the registration of a registered name, a fee of \$155;

5. Termination of registered name. For filing of a termination of registered name under section 606, subsection 5, a fee of \$20;

6. Change of registered agent or registered office for domestic limited liability companies. For filing of a certificate by a registered agent under section 607 or a certificate of amendment under section 623 changing the registered agent or address of the registered office or the resignation of the registered agent, a fee of \$20;

2 7. Penalty. Except as provided for in section 758, as a
4 penalty prior to being reinstated as a domestic limited liability
company under section 608, a fee of \$100;

6 8. Articles of organization or amendment, certificate of
8 cancellation, merger or consolidation. For filing of articles of
10 organization under section 622, articles of amendment under
section 623, except as provided in subsection 6 or a certificate
of cancellation under section 625 or a certificate of merger or
consolidation under section 744, a fee of \$250;

12 9. Certificate of correction. For filing of a certificate
14 of correction under section 624, a fee of \$20;

16 10. Statement of limited liability company authority. For
18 filing a statement of limited liability authority under section
626, a fee of \$20;

20 11. Statement of withdrawal. For filing a statement of
withdrawal under section 694, a fee of \$20;

22 12. Foreign limited liability companies. For filing of an
24 application for authority to do business as a foreign limited
liability company under section 712, a certificate of amendment
26 under section 715, except as provided in subsection 13 or a
certificate of cancellation under section 717, a fee of \$250;

28 13. Certificate of correction for foreign limited liability
30 companies. For filing of a certificate of correction under
section 716, a fee of \$30;

32 14. Change of registered agent or registered office for
34 foreign limited liability companies. For filing of a certificate
36 by a registered agent under section 714 or a certificate of
amendment under section 715 changing the registered agent or
38 address of the registered office or the resignation of the
registered agent, a fee of \$30;

40 15. Photocopies. For all photocopies, whether certified or
42 not, a fee of \$2 per page. The Secretary of State may issue
photocopies of instruments on file as well as other copies;

44 16. Certified copies. For providing certified copies of
46 any paper on file as provided for by this chapter, a fee of \$5
for each copy certified in addition to any fee due under
subsection 14;

48 17. Issuing certificate. For issuing a short form
50 certificate of change of name, a fee of \$25. For issuing a short
form certificate of limited liability company condition, a fee of

\$25. For issuing a long form certificate of limited liability company condition, listing amendments, a fee of \$35. For issuing a certificate of diligent search, a fee of \$45. For issuing a specially worded certificate, a fee of \$45;

18. Preclearance of document. For preclearance of a document for filing, a fee of \$100;

19. All other filings. For receiving and filing of a certificate, affidavit, agreement or any other paper provided for by this chapter, for which no different fee is specifically prescribed, a fee of \$20;

20. Annual report. For filing of an annual report under section 757, a fee of \$60;

21. Information request. For written response to a request for information on file, a fee of \$5; and

22. Service of process on Secretary of State as agent. For accepting service of process under section 609, 610, 722 or 723, a fee of \$20.

All fees collected as provided by this chapter must be remitted to the Treasurer of State for the use of the State with the exception of those fees established by rule and collected for expedited service. Fees for expedited service are deposited into a fund for use by the Secretary of State in providing an improved filing service.

§752. Knowledge

A person has "knowledge" of a fact within the meaning of this Act not only when the person has actual knowledge of that fact, but also when the person has knowledge of such other facts as in the circumstances shows bad faith.

§753. Rules of construction

1. Freedom of contract; enforceability. It is the policy of this chapter to give maximum effect to the principle of freedom of contract and to the enforceability of operating agreements.

2. Law and equity. Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

3. Statutes in derogation of the common law. Rules that statutes in derogation of the common law are to be strictly construed do not apply to this chapter.

4. Obligations of contract. Neither this Act nor any amendment of this Act may be construed to impair the obligations of any contract existing when this Act or amendment goes into effect or to affect a action or proceeding begun or right accrued before this Act or any amendment takes effect.

§754. Jurisdiction of the Superior Court

The Superior Court has jurisdiction to enforce the provisions of this Act.

§755. Interstate application

A limited liability company organized and existing under this Act may conduct its business, carry on its operations and have and exercise the powers granted by this Act in any state or in any foreign country.

§756. Duty of Secretary of State

The duty of the Secretary of State duty to file documents under this chapter is ministerial. The filing or refusal to file a document does not:

1. Validity of documents. Affect the validity or invalidity of the document in whole or in part;

2. Correctness of information. Relate to the correctness or incorrectness of information contained in the document; or

3. Presumption of validity or correctness. Create a presumption that the document is valid or invalid or that the information in the document is correct or incorrect.

§757. Annual report of domestic and foreign limited liability companies

1. Annual report. Each domestic limited liability company and each foreign limited liability company authorized to do business in this State shall file, within the time prescribed by this chapter, an annual report setting forth:

A. The name of the limited liability company;

B. The name of its registered agent and the address of its registered office in this State, including the street or

2 rural route number, town or city and state, and, in the case
3 of a foreign limited liability company, the address of its
4 registered or principal office in its jurisdiction of
5 organization;

6 C. A brief statement of the character of the business in
7 which the limited liability company is actually engaged in
8 this State, if any; and

10 D. The name and business or residence address of each
11 manager or, if there are no managers, each member, including
12 the street or rural route number, town or city and state.

14 2. Reporting period. The Secretary of State shall specify
15 by rule the period of time to which the annual report applies as
16 provided in subsection 3. The information contained in the
17 annual report must be current as of the date the report is signed.

18 3. Execution. The annual report must be executed and
19 signed by a manager, a member or any other duly authorized
20 individual. Subject to rules adopted under section 612, the
21 report must be delivered to the Secretary of State or a designee
22 for filing. The annual report may be delivered to the Secretary
23 of State on a staggered basis as defined by the Secretary of
24 State by rule in accordance with the Maine Administrative
25 Procedure Act. The report must apply to the 12-month period
26 specified by the Secretary of State. Proof to the satisfaction
27 of the Secretary of State that, prior to the date that penalties
28 become effective for late delivery of an annual report as
29 established by the Secretary of State by rule, the report was
30 deposited in the United States mail in a sealed envelope,
31 properly addressed, with postage prepaid is deemed a compliance
32 with this requirement. One copy of the report, together with the
33 filing fee required by this chapter, must be delivered for filing
34 to the Secretary of State who shall file the report, if the
35 Secretary of State finds that it conforms to the requirements of
36 this chapter. If the Secretary of State finds that it does not
37 so conform, the Secretary of State shall promptly mail or
38 otherwise return the report to the limited liability company for
39 any necessary correction. The penalties prescribed by this
40 chapter for failure to file the report within the time provided
41 in this section do not apply if the report is corrected to
42 conform to the requirements of this chapter and returned to the
43 Secretary of State within 30 days from the date on which the
44 report was mailed or otherwise returned to the limited liability
45 company by the Secretary of State.

46 §758. Failure to file annual report; incorrect report; penalties

1. Failure to file annual report. A limited liability company required to deliver an annual report for filing as provided by section 757 that fails to deliver its properly completed annual report to the Secretary of State shall pay, in addition to the regular annual report fee, the sum of \$25, if the report is received by the Secretary of State prior to revocation or suspension of the limited liability company. Upon failure to file the annual report and to pay the annual report fee or the penalty, the Secretary of State, notwithstanding Title 4, chapter 25 and Title 5, chapter 375, shall revoke a foreign limited liability company's authority to do business in this State and suspend a domestic limited liability company from doing business. The Secretary of State shall use the procedures set forth in section 719, subsection 2, related to revoking the right of foreign limited liability companies to do business in this State, for suspending domestic limited liability companies. A foreign limited liability company whose authority to do business in this State has been revoked under this subsection that wishes to do business again in this State must be authorized as provided in section 712. A domestic limited liability company that has been suspended under this subsection may be reinstated by filing the current annual report together with the current annual filing fee and by paying the sum of \$125 for each year the limited liability company failed to file an annual report.

2. Nonconformity. If the Secretary of State finds that an annual report delivered for filing does not conform with the requirements of section 757, the report must be returned for correction.

3. Suspension. A limited liability company while suspended may not engage in business.

4. Time limit specified. If the annual report of a limited liability company is not delivered for filing within the time specified in section 757, the limited liability company is excused from the liability provided in this section and from any other penalty for failure to file timely the report, if it establishes to the satisfaction of the Secretary of State, that failure to file was the result of excusable neglect and it furnishes the Secretary of State with a copy of the report within 30 days after learning that the Secretary of State failed to receive the original report.

§759. Effective date

This Act takes effect January 1, 1995. All limited liability companies formed on or after that date and all foreign limited liability companies applying for authority to transact

business within this State on or after that date are governed by this Act.

§760. Application to existing foreign limited liability companies; definition

All foreign limited liability companies qualified as foreign corporations or limited partnerships before January 1, 1995 are governed by this Act on and after January 1, 1995. By April 1, 1995 a manager or, if there is no manager, a member of each foreign limited liability company shall file with the Secretary of State an application for authority to do business in this State under this Act and cancel their authority to do business in this State under chapter 11 and Title 13-A. If the foreign limited liability company fails to file the new application for authority to do business in this State by April 1, 1995, the Secretary of State may revoke the authority of the limited liability company to do business in this State under section 719.

§761. Taxation of limited liability companies

1. **Classified as partnership.** For purposes of taxation under Title 36, a limited liability company formed under this chapter or qualified to do business in this State as a foreign limited liability company is classified as a partnership, unless classified otherwise for federal income tax purposes, in which case the limited liability company is classified in the same manner as it is classified for federal income tax purposes.

2. **No loss from limited liability company before April 1, 1996.** Until April 1, 1996, for purposes of computing and making payment of estimated tax under Title 36, section 5228, there may not be deducted from a member's income any loss, or estimated loss, if any, from a limited liability company.

§762. References to limited partnerships

Unless the context indicates otherwise, all references to limited partnerships in any other statute in effect on the effective date of this chapter in this State are deemed to include limited liability companies. This section does not apply to the Maine Revised Uniform Limited Partnership Act, it being the intent of this section only to include limited liability companies as entities when other entities are referenced for purposes other than those covered in this chapter.

PART B

2 **Sec. B-1. 10 MRSA §1521, sub-§2-B** is enacted to read:

4 **2-B. Limited liability company name.** "Limited liability
6 company name" includes a limited liability company name, reserved
8 name, assumed name or registered name as those terms are used in
10 Title 31, sections 603 to 606.

12 **Sec. B-2. 10 MRSA §1522, sub-§1, ¶G**, as amended by PL 1993, c.
14 316, §4, is further amended to read:

16 G. Consists of or comprises any a corporate, limited
18 liability company or limited partnership name, unless the
20 corporation, limited liability company or limited
22 partnership executes and files with the Secretary of State
24 proof of authorization of the use of a mark similar to the
26 corporation, limited liability company or limited
28 partnership's partnership name by the applicant seeking to
30 use the mark.

32 **Sec. B-3. 10 MRSA §1525, sub-§2**, as amended by PL 1993, c.
34 316, §6, is further amended to read:

36 **2. Corporate or limited partnership name.** Any holder of a
38 certificate of registration issued pursuant to section 1523 may
40 grant to any domestic or foreign corporation, limited liability
42 company or limited partnership authorized to do business in this
44 State the exclusive right to the use of a name similar to the
46 mark shown on the certificate.

48 **Sec. B-4. 13-A MRSA §301, sub-§1, ¶D**, as amended by PL 1993,
50 c. 316, §12 to 16, is further amended to read:

52 D. May not be the same as, or deceptively similar to, the
54 name of any domestic limited partnership existing under the
56 laws of this State or any foreign limited partnership
58 authorized to transact business in this State, or a name the
60 exclusive right to which is, at the time, reserved in the
62 manner provided in Title 31, section 404, or the name of a
64 limited partnership that has in effect a registration of its
66 limited partnership name as provided in Title 31, section
68 406, or the assumed name of a limited partnership as
70 provided for in Title 31, section 405, unless:

72 (1) The limited partnership executes and files with
74 the Secretary of State, as provided in Title 31,
76 section 403, proof of authorization of the use of a
78 similar name by the corporation seeking to use the
80 similar name; or

(2) A foreign corporation seeking to file under a similar or identical name executes and files with the Secretary of State, as provided in sections 104 and 106 of this Act, proof of a resolution of its board of directors that it will not do business under that similar or identical name, but instead will do business under an assumed name, as provided for in section 307-; and

Sec. B-5. 13-A MRSA §301, sub-§1, ¶E is enacted to read:

E. May not be the same as, or deceptively similar to, the name of a domestic limited liability company existing under the laws of this State or a foreign limited liability company authorized to transact business in this State or a name the exclusive right to which is at the time reserved in the manner provided in Title 31, section 604 or the name of a limited liability company that has in effect a registration of its limited liability company name as provided in Title 31, section 606 or the assumed name of a limited liability company as provided in Title 31, section 605, unless:

(1) The limited liability company executes and files with the Secretary of State as provided in Title 31, section 603 proof of authorization of the use of a similar name by the corporation seeking to use the similar name; or

(2) A foreign corporation seeking to file under a similar or identical name executes and file with the Secretary of State as provided in sections 104 and 106 proof of a resolution of its board of directors that the foreign corporation will not do business under that similar or identical name but will do business under an assumed name as provided in section 307.

Sec. B-6. 13-B MRSA §301, sub-§1, ¶D, as amended by PL 1993, c. 316, §33, is further amended to read:

D. May not be the same as, or deceptively similar to, the name of any department, bureau or other agency of the State; and

Sec. B-7. 13-B MRSA §301, sub-§1, ¶E, as enacted by PL 1993, c. 316, §34, is further amended to read:

E. May not be the same as, or deceptively similar to, the name of any domestic limited partnership existing under the laws of this State or any foreign limited partnership

authorized to transact business in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in Title 31, section 404, or the name of a limited partnership that has in effect a registration of its limited partnership name as provided in Title 31, section 406, or the assumed name of a limited partnership as provided for in Title 31, section 405, unless:

(1) The limited partnership executes and files with the Secretary of State, as provided in Title 31, section 403, proof of authorization of the use of a similar name by the corporation seeking to use the similar name; or

(2) A foreign corporation seeking to file under a similar or identical name executes and files with the Secretary of State, as provided in sections 104 and 106, proof of a resolution of its board of directors that it will not carry on activities under that similar or identical name, but instead will carry on activities under an assumed name, as provided for in section 308. ; and

Sec. B-8. 13-B MRSA §301, sub-§1, ¶F is enacted to read:

F. May not be the same as, or deceptively similar to, the name of any domestic limited liability company existing under the laws of this State or any foreign limited liability company authorized to transact business in this State or a name the exclusive right to which is at the time reserved in the manner provided in Title 31, section 604 or the name of a limited liability company that has in effect a registration of its limited liability company name as provided in Title 31, section 606 or the assumed name of a limited liability company as provided in Title 31, section 605, unless:

(1) The limited liability company executes and files with the Secretary of State as provided in Title 31, section 603 proof of authorization of the use of a similar name by the corporation seeking to use the similar name; or

(2) A foreign corporation seeking to file under a similar or identical name executes and files with the Secretary of State as provided in sections 104 and 106 proof of a resolution of its board of directors that the foreign corporation will not carry on activities under that similar or identical name but will carry on activities under an assumed name as provided in section 308.

2 **Sec. B-9. 31 MRSA §403, sub-§1, ¶C**, as enacted by PL 1991, c.
4 552, §2 and affected by §4, is amended to read:

6 C. May not be the same as, or deceptively similar to:

8 (1) The name of any domestic corporation or limited
10 partnership or limited liability company organized
12 under the laws of this State or any foreign corporation
 or foreign limited partnership or foreign limited
 liability company authorized to transact business or to
 carry on activities in this State;

14 (2) A name the exclusive right to which is, at the
16 time, reserved under section 404 or 604; Title 13-A,
 section 302; or Title 13-B, section 302;

18 (3) A name that is registered under section 406 or
20 606; Title 13-A, section 303; or Title 13-B, section
 303;

22 (4) The assumed name of a corporation or limited
24 partnership or limited liability company as provided in
 section 405 or 605; Title 13-A, section 307; or Title
26 13-B, section 308; or

28 (5) A mark registered under Title 10, chapter 301-A.

30 **Sec. B-10. 36 MRSA §4641-C, sub-§15, ¶C**, as enacted by PL
 1993, c. 398, §4, is amended to read:

32 C. From a trustee, nominee or straw party to the beneficial
34 owner; and

36 **Sec. B-11. 36 MRSA §4641-C, sub-§16**, as enacted by PL 1993, c.
 398, §4, is amended to read:

38 **16. Certain corporate, partnership and limited liability**
40 **company deeds.** Deeds between a family corporation, partnership
 ~~or~~, limited partnership or limited liability company and its
42 stockholders ~~or~~, partners or members for the purpose of
 transferring real property in the organization, dissolution or
44 liquidation of the corporation, partnership ~~or~~, limited
 partnership or limited liability company under the laws of this
46 State, ~~provided--that if~~ the deeds are given for no actual
 consideration other than shares, interests or debt securities of
48 the corporation, partnership ~~or~~, limited partnership or limited
 liability company. For purposes of this subsection a family
50 corporation, partnership ~~or~~, limited partnership or limited
 liability company is a corporation, partnership ~~or~~, limited

partnership or limited liability company in which the majority of the voting stock of the corporation, or of the interests in the partnership ~~or~~, limited partnership or limited liability company is held by and the majority of the stockholders ~~or~~, partners or members are persons related to each other, including by adoption, as descendants or as spouses of descendants of a common ancestor who was also a transferor of the real property involved, or persons acting in a fiduciary capacity for persons so related, and

Sec. B-12. 36 MRSA §4641-C, sub-§17 is enacted to read:

17. Limited liability company deeds. Deeds to a limited liability company from a corporation, a general or limited partnership or another limited liability company, when the grantor or grantee owns an interest in the limited liability company in the same proportion as the grantor's or grantee's interest in or ownership of the real estate being conveyed.

Sec. B-13. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1994-95

SECRETARY OF STATE, DEPARTMENT OF THE
Bureau of Administrative Services and Corporations

All Other \$7,500

Provides funds for ongoing printing, postage and one-time software design costs to implement the establishment of limited liability corporations.'

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

FISCAL NOTE

1994-95

APPROPRIATIONS/ALLOCATIONS

General Fund \$7,500

REVENUES

General Fund \$12,500

The establishment of limited liability corporations will decrease General Fund revenue from individual and corporate income taxes by approximately \$94,900 in fiscal year 1995-96. The corresponding decrease in state-municipal revenue sharing will be approximately \$5,100. Revenues from the Maine Real Estate Transfer Tax will not be significantly affected by this change.

The Department of the Secretary of State will require an additional General Fund appropriation of \$7,500 in fiscal year 1994-95 for ongoing printing, postage costs and one-time software design costs to implement these changes. The department will realize a one-time increase of General Fund revenue of \$12,500 in fiscal year 1994-95 from fees for limited liability corporations based on the reorganization of approximately 50 corporations in fiscal year 1994-95.'

STATEMENT OF FACT

This amendment makes several technical and substantive amendments to the original bill. It corrects the title to appropriately state the name of the new entities as "limited liability companies."

The amendment clarifies that the intent of the bill as amended allows the State to tax limited liability companies as the Federal Government does. That is, if the Federal Government treats a limited liability company as a partnership for tax purposes, the State will also.

The amendment allows professionals currently covered by the Professional Services Corporation Act to form limited liability companies. The joint and several liability of that Act still applies to professionals organizing as limited liability companies.

The amendment states that the common law liability applied to corporations also applies to limited liability companies.

The amendment provides that voting by and distribution to the members of the limited liability company must be per capita, unless otherwise stated in the articles of organization or the operating agreement.

The amendment allows oral operating agreements.

The amendment provides for notices of authority or limitations on authority. It allows the limited liability

COMMITTEE AMENDMENT "A" to H.P. 1123, L.D. 1522

company to file a notice on which others may rely in determining which members or managers of the limited liability company may transact business on behalf of the limited liability company.

The bill required payment of fair market value of a member's interest when the member withdraws. The amendment requires no payment unless otherwise agreed upon by the members. The withdrawing member should have no residual liability, especially if a statement of withdrawal is filed.

The amendment allows all members to have access to all records. This amendment allows the limited liability company to keep confidential trade secrets and other proprietary information.

The amendment changes the term "certificate of organization" to "articles of organization" to more closely follow the draft uniform act being developed by the National Conference of Commissioners on Uniform State Laws.

The amendment makes the effective date of the limited liability company enabling legislation January 1, 1995. This will allow the Secretary of State an opportunity to prepare to administer the law.

The amendment provides that members may not report tax losses from a limited liability company before April 1, 1996.

The amendment also adds an appropriation section and a fiscal note to the bill.

COMMITTEE AMENDMENT