

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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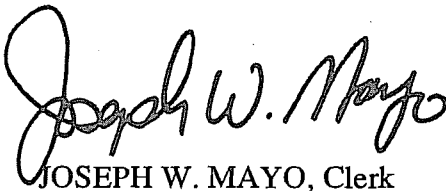
House of Representatives, May 17, 1993

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**An Act to Establish Limited Liability Corporations and Set Their Tax  
Rate as Other Corporations.**

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Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative DORE of Auburn.  
Cosponsored by Senator CONLEY of Cumberland and  
Representatives: COTE of Auburn, GWADOSKY of Fairfield, KERR of Old Orchard Beach,  
KUTASI of Bridgton, LARRIVEE of Gorham, MARTIN of Eagle Lake, NADEAU of Saco,  
O'GARA of Westbrook, PINEAU of Jay, SIMONEAU of Thomaston, Senators: CAHILL of  
Sagadahoc, CIANCHETTE of Somerset, DUTREMBLE of York, ESTY of Cumberland,  
SUMMERS of Cumberland.

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

4 **PART A**

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

8 **CHAPTER 13**

10 **LIMITED LIABILITY COMPANIES**

12 **SUBCHAPTER I**

14 **GENERAL PROVISIONS**

16 **§601. Short title**

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

20 **§602. Definitions**

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

24 **1. Certificate of organization.** "Certificate of organization" means the certificate filed under section 622 and that same certificate as amended or restated.

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

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

30 **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.

32 **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.

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

36 **A. An unincorporated association;**

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

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

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

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

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

28 9. Limited liability company interest or interest in the  
30 limited liability company. "Limited liability company interest"  
32 or "interest in the limited liability company" means the interest  
34 that may be assigned under section 685 and charged under section  
36 686.

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

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

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

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

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

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

80 **§603. Limited liability company name**

2 1. Requirements. The limited liability company name:

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

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

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

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

26 (3) A name that is registered under section 606; Title  
28 13-A, section 303; Title 13-B, section 303; or Title  
30 31, section 406;

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

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

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

46 A. If the registered owner or holder of the name or mark  
48 executes and files with the Secretary of State proof of  
50 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 limited liability company was organized under the  
laws of this State before January 1, 1994 or the foreign  
limited liability company was authorized to do business in  
this State before to January 1, 1994 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

2 liability company whose certificate is suspended for at least 3  
3 years.

4 **§604. Reservation of name**

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

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

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

13 C. A foreign limited liability company intending to apply  
14 for authority to transact business in this State and to  
15 adopt that name;

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

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

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

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

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

33 C. The right to the exclusive use of a reserved name may be  
34 transferred to another person by filing with the Secretary  
35 of State a notice of the transfer, executed by the applicant  
36 for whom the name was reserved, specifying the name to be  
37 transferred and the name and address of the transferee.

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

2       **§605. Assumed name**

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

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

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

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

22           B. That it intends to transact business under an assumed  
24       name;

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

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

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

36          **4. Requirements for name.** Each assumed name must comply  
38       with the requirements of section 603, subsection 1, except for  
      the case of similarity with the true name of the limited  
      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  
      delivering for filing a statement setting forth:

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

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

50           C. The assumed name that it intends to terminate.

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

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

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

18  
19 §606. Registered name and renewal for foreign limited liability  
20 company; termination

21  
22  
23 1. Name registered. A foreign limited liability company  
24 may register its name under this chapter provided that the name  
25 meets the requirements of section 603, subsection 1.

26  
27 2. Application. The registration must be made by  
28 delivering for filing an application for registration setting  
29 forth:

30  
31 A. The name of the limited liability company;

32  
33 B. The state or territory under whose laws it is organized;

34  
35 C. The date of its organization;

36  
37 D. A statement that it is actually engaged in business  
38 activities;

39  
40 E. A brief description of the activities in which it is  
41 engaged; and

42  
43 F. A certificate of good standing or its equivalent from  
44 the proper officer of its jurisdiction of organization. The  
45 certificate of good standing must have been made not more  
46 than 90 days before the delivery of the application for  
47 filing.

48  
49 3. Registration effective. The registration is effective  
50 until the close of the calendar year in which the application is  
51 filed.

52



2       4. Renewal of registration. A limited liability company  
4       that has registered its name under this section may renew the  
6       registration annually by filing an application for renewal. That  
8       application must set forth the information required in subsection  
10       2 and may be filed between October 1st and December 31st.

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

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

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

26       C. The date of its organization; and

28       D. That the registration of name is terminated.

30       §607. Registered office; registered agent

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

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

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

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

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

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

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

2 A. Filing a certificate of amendment under section 623; or

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

6 (1) For the change of address of the registered office  
8 of one or more limited liability companies for whom the  
agent is the registered agent to another address in  
10 this State:

12 (a) The names of all limited liability companies;

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

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

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

22 (a) The new name of the registered agent;

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

28 (c) The names of the limited liability companies;  
and

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

34 Upon filing a certificate under this paragraph, any  
36 registered agent shall mail promptly or otherwise deliver a  
38 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.

40 4. Effective date of change or new appointment. The change  
42 of address of the registered office or registered agent is  
44 effective upon delivery of the certificate to the Secretary of  
46 State. The appointment of a new registered agent is effective  
upon receipt by the Secretary of State of evidence that the new  
registered agent has accepted appointment pursuant to subsection  
3, paragraph B.

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

2                    A. When the registered agent appoints a successor:

4                    (1) A statement of resignation;

6                    (2) The names of the limited liability companies;

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

10                   (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

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

14                   (1) A statement of resignation;

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

18                   (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.

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

22                   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.

24                   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 3, paragraph B, 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.

26                   §608. Suspension by Secretary of State

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

2           A. Shall suspend a domestic limited liability company when:

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

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

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

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

22           B. May suspend a domestic limited liability company when  
24           that company fails to file a list of the names and addresses  
                  of the members under section 646.

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

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

36                   A. Filing the current annual report;

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

40                   C. Correcting a misrepresentation; or

42                   D. Providing a list of members.

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

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

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

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

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

10       **§609. Service of process upon domestic limited liability company**

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

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

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

20           C. a liquidating trustee of the limited liability company.

22           2. Service on Secretary of State. If a domestic limited  
24           liability company fails to appoint or maintain a registered agent  
26           in this State or its registered agent can not with reasonable  
28           diligence be found at the registered office, then the Secretary  
30           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.

32           3. Other means of service. Nothing in this section limits  
34           or impairs the right to serve process, notice or demand required  
36           or permitted by law to be served upon a domestic limited  
          liability company in any other manner permitted by law or rule of  
          court.

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

40           1. Secretary of State; agent to receive service. Each  
42           manager, or if there is no manager, each member of a domestic  
44           limited liability company who is a nonresident of this State or  
46           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.

48           2. Method of serving process. Service of process upon the  
50           Secretary of State must be made in the same manner as provided by  
          the Maine Rules of Civil Procedure, Rule 4(d)(8), as amended, in

2 the case of service upon the Secretary of State as an agent of a  
foreign limited liability company.

4 A. A copy of the process must be mailed to the nonresident  
6 manager or member at the business, residence or mailing  
8 address of the manager or member shown on the limited  
liability company's certificate of organization or most  
recent annual report.

10 3. Service on nonresident manager or member. Service under  
12 this section also may be made by delivery of a copy of the  
14 process to the nonresident manager or member at the manager's or  
16 member's address outside the State. Proof of that delivery must  
be made by affidavit of the person making delivery and the  
affidavit must be filed with the clerk of the court in which the  
action or proceeding is pending.

18 **§611. Nature of business**

20 A limited liability company may be organized under this  
22 chapter for any lawful purpose. If the purpose for which a  
24 limited liability company is organized or its form makes it  
subject to a special provision of law, the limited liability  
company shall also comply with that provision.

26 **§612. Rules**

28 The Secretary of State may adopt rules consistent with this  
30 chapter pertaining to the filing of documents with the Secretary  
of State. These may include, but are not limited to:

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

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

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

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

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

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

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

8 **§613. Expedited service**

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

16 **§614. Access to database**

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

23 **§615. Publications**

24 1. Fee for publications. The Secretary of State may  
25 establish by rule in accordance with the Maine Administrative  
26 Procedure Act a fee schedule to cover the cost of printing and  
27 distribution of publications and to set forth the procedures for  
28 the sale of these publications.

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

33 **SUBCHAPTER II**

34 **FORMATION**

35 **§621. Formation**

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

2  
3 **§622. Certificate of organization**

4 **1. Certificate of organization.** In order to form a limited  
5 liability company, a certificate of organization must be filed  
6 with the Secretary of State. The certificate must set forth:

7 **A. The name of the limited liability company;**

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

11 **C. Either:**

12 (1) **The number of managers permitted and the name and**  
13 **business, residence or mailing address of each manager;**  
14 **or**

15 (2) **The following statement, in haec verbae: "There**  
16 **may be no managers initially; the business of the**  
17 **limited liability company will be managed by the**  
18 **members.";** and

19 **D. Other matters the members include in the certificate of**  
20 **organization.**

21 **2. Date of organization.** A limited liability company is  
22 **formed at the time of the filing of the initial certificate of**  
23 **organization with the Secretary of State if there has been**  
24 **substantial compliance with the requirements of this section. A**  
25 **limited liability company formed under this chapter is a separate**  
26 **legal entity whose existence as a separate legal entity continues**  
27 **until cancellation of the limited liability company's certificate**  
28 **of organization.**

29 **§623. Amendment to certificate**

30 **1. Certificate of amendment.** The certificate of  
31 **organization is amended by filing a certificate of amendment with**  
32 **the Secretary of State. The certificate of amendment must set**  
33 **forth:**

34 **A. The name of the limited liability company; and**

35 **B. The amendment or amendments to the certificate.**

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



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

6           A. The addition of a new manager;

8           B. The removal of a manager; or

10           C. A change in the name of the limited liability company  
11 or, except as provided in section 607, subsections 3 and 4,  
12 a change in the address of the registered office or a change  
13 in the name or address of the registered agent of the  
14 limited liability company.

16           4. Right to amend at any time. The certificate of  
17 organization may be amended at any time for any other purpose the  
18 managers or, if there are no managers, the members may determine  
19 necessary.

20           5. Between dissolution and cancellation. If, after the  
21 dissolution of a limited liability company but before the filing  
22 of a certificate of cancellation as provided in section 625, a  
23 person other than an individual shown on the certificate of  
24 organization as a manager is winding up the limited liability  
25 company's affairs, then the certificate of organization must be  
26 amended to set forth the name and the business, and residence or  
27 mailing address of each person winding up the limited liability  
28 company's affairs. Each person winding up the affairs shall  
29 execute and file a certificate of amendment. That person is not  
30 subject to liability by reason of such an amendment. A manager  
31 who is not winding up a limited liability company's affairs need  
32 not execute a certificate of amendment under this subsection.

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

44           A. That it is a restatement;

46           B. The limited liability company's present name;

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

50           D. The date of filing of the initial certificate of  
51 organization.

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

10 **§624. Certificate of correction**

12 A manager or, if there is no manager, a member who becomes  
14 aware that any statement in a certificate of organization or a  
16 certificate filed under this section was inaccurate when made,  
18 shall file a certificate of correction with the Secretary of  
20 State. The certificate of correction must specify the inaccuracy  
22 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.

24 **§625. Certificate of cancellation**

26 1. Cancellation upon dissolution. The certificate of  
28 organization of a limited liability company is canceled upon the  
30 dissolution and the completion of winding up of the limited  
32 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:

- 34 A. The name of the limited liability company;  
36 B. The date of filing of its certificate of organization;  
38 C. The reason for filing the certificate of cancellation;  
40 D. The future effective date or time of cancellation, which  
must be a date or time certain, if it is not to be effective  
42 upon the filing of the certificate; and  
44 E. Any other information the person filing the certificate  
of cancellation determines necessary.

46 **§626. Execution**

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

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

2           A. In the case of the initial certificate of organization,  
4           by the person or persons forming the limited liability  
          company;

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

10                 (1) By at least one manager; or

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

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

20                 (1) By all of the managers;

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

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

30           2. Signature by agent. Unless otherwise provided in a  
32           limited liability company operating agreement, a person may sign  
34           a certificate or amendment to a certificate or enter into an  
36           operating agreement or amendment to an operating agreement by an  
38           agent, including an attorney-in-fact. An authorization,  
40           including a power of attorney, to sign a certificate or amendment  
          to a certificate 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.

42           3. Oath; unsworn falsification. The execution of a  
44           certificate constitutes an oath or affirmation, under the  
46           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 are true.

48           §627. Execution, amendment or cancellation by judicial order

50           If a person required to execute a limited liability company  
52           operating agreement or amendment to the operating agreement or  
          required by section 626 to execute a certificate fails or refuses  
          to do so, then a person who is adversely affected by the failure

2 or refusal may petition the Superior Court to direct the  
3 execution of the operating agreement, amendment or certificate as  
4 follows.

5 1. Operating agreement or amendment. If the court finds  
6 that a limited liability company operating agreement or amendment  
7 to the operating agreement needs to be executed and that the  
8 person designated to execute that agreement or amendment has  
9 failed or refused to do so, it shall enter an order granting  
10 appropriate relief.

11 2. Certificate. If the court finds that the certificate  
12 should be executed and that the person or persons designated to  
13 execute the certificate have failed or refused to do so, it shall  
14 order the Secretary of State to record an appropriate certificate.

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

20 **§628. Filing**

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

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

28 B. Unless the Secretary of State finds that the certificate  
29 or other document on its face does not conform to law, upon  
30 receipt of all filing fees required by law, the Secretary of  
31 State shall attest that the document has been filed with the  
32 Secretary of State by endorsing thereon the word "filed" and  
33 the day, month and year of the filing and by signing or  
34 initialing that endorsement in person or by agent. If the  
35 person delivering the document for filing so requests, the  
36 endorsement must further include the hour and minute of the  
37 filing of the document.

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

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

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

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

6 2. Attested copy. The Secretary of State shall promptly  
8 make a copy of the original and shall attest that copy by marking  
10 upon it the same endorsement that is required to appear upon the  
12 original, together with a further endorsement that the copy is a  
14 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.

16 **§629. Materially inaccurate statement**

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

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

28 B. A manager or member who thereafter knows that an  
30 arrangement or other fact described in the certificate is  
32 inaccurate in any material respect or has changed, making  
34 the statement inaccurate in any material respect, if that  
manager or member had sufficient time to amend or cancel the  
certificate or to file a petition for its amendment or  
cancellation before the statement was reasonably relied upon.

36 2. Exception. Notwithstanding subsection 1, a manager or  
38 member has no liability for failing to cause the amendment or  
40 cancellation of a certificate to be filed or failing to file a  
42 petition for amendment or cancellation pursuant to subsection 1  
if the certificate 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 was inaccurate  
in any material respect.

44 **§630. Notice**

46 The fact that a certificate of organization of a limited  
48 liability company is on file with the Secretary of State  
50 constitutes notice of facts set forth in the certificate that are  
required by section 622, subsection 1, paragraphs A and B and by  
section 623, subsection 6.

52 **SUBCHAPTER III**

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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, 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. If the certificate of organization provides 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 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

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

8 2. Admission or representation by manager. If the  
9 certificate of organization provides that management of a limited  
10 liability company is vested in a manager or managers:

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

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

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

24 1. Notice to and knowledge of members. Except as provided  
25 in subsection 2, notice to a member of a matter relating to the  
26 business or affairs of a limited liability company, and the  
27 knowledge of the member acting in the particular matter acquired  
28 while a member or of which the person had knowledge at the time  
29 of becoming a member, and the knowledge of any other member who  
30 reasonably could and should have communicated the knowledge to  
31 the acting member, operate as notice to or knowledge of the  
32 limited liability company, except in the case of a fraud on the  
33 limited liability company committed by or with the consent of  
34 that member.

36 2. Notice to and knowledge of managers. If the certificate  
37 of organization provides that management of a limited liability  
38 company is vested in a manager or managers:

40 A. Notice to a manager of a matter relating to the business  
41 or affairs of the limited liability company, and the  
42 knowledge of the manager acting in the particular matter,  
43 acquired while a manager or of which the person had  
44 knowledge at the time of becoming a manager and the  
45 knowledge of any other manager who reasonably could and  
46 should have communicated it to the acting manager, operate  
47 as notice to or knowledge of the limited liability company  
48 except in the case of a fraud on the limited liability  
49 company committed by or with the consent of that manager; and  
50

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

6  
8 **§644. Liability of members to 3rd parties**

8  
10 1. Member's liability limited. A person who is a member of  
12 a limited liability company is not liable, solely by reason of  
14 being a member, under a judgment, decree or order of a court or  
16 in any other manner for a debt, obligation or liability of that  
18 limited liability company, whether arising in contract, tort or  
20 otherwise or for the acts or omissions of any other member,  
22 manager, agent or employee of that limited liability company.

16  
18 2. Exceptions. The exceptions under the common law to a  
20 limited liability of shareholders of a business corporation  
22 organized under the Maine Business Corporation Act and  
24 shareholders of a professional corporation organized under The  
26 Professional Service Corporation Act apply to a limited liability  
28 of members of a limited liability company.

24 **§645. Parties to actions**

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

30  
32 1. Member's right or liability. If the object of the  
34 proceeding is to enforce a member's right against or liability to  
36 that limited liability company; or

34  
36 2. Derivative action. In a derivative action brought  
38 pursuant to the operating agreement.

38 **§646. Disclosure of members**

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

46  
48 2. Use of information; oath. The list of the names and  
50 addresses filed under subsection 1 may not be used for commercial  
52 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.



2 3. Penalty. If a limited liability company fails to file  
the list under subsection 1 within 10 working days after  
4 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  
6 filed. The penalty may not exceed \$500 in any case. The  
Secretary of State may, at any time, suspend a limited liability  
8 company under section 608, subsection 1, paragraph B for  
noncompliance with this section.

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

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

#### 18 SUBCHAPTER IV

#### 20 RIGHTS AND DUTIES OF MEMBERS AND MANAGERS

#### 22 §651. Management

24 1. Management authority of members. Unless the certificate  
of organization provides that management of a limited liability  
26 company vests in a manager or managers, management of the  
business or affairs of that limited liability company is vested  
28 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  
30 have the right and authority to manage the affairs of a limited  
liability company and to make all decisions with respect to that  
32 limited liability company.

34 2. Management authority of managers. If the certification  
of organization provides that management of a limited liability  
36 company vests in one or more managers, then these persons have  
the power to manage the business and affairs of that limited  
38 liability company as is provided in the certificate of  
organization. These persons:

40 A. Must be designated, appointed, elected, removed or  
42 replaced by a vote, approval or consent of more than 1/2 of  
the members;

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

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

#### 52 §652. Duties of managers and members

2           1. Good faith; best interests; reasonable belief. The  
4 managers and members of a limited liability company shall  
6 exercise their powers and discharge their duties in good faith  
8 with a view to the interests of that limited liability company  
and of the members and with that degree of diligence, care and  
skill which ordinarily prudent persons would exercise under  
similar circumstances in like positions.

10           A. In discharging their duties, managers and members may in  
12 all cases rely upon financial statements of a limited  
14 liability company that were either certified in writing by  
16 an independent public or certified public accountant or firm  
18 of such accountants fairly to reflect a limited liability  
company's financial condition or reported to the managers or  
members to be correct by the manager or member of that  
limited liability company having charge of its books of  
accounts.

20           B. In discharging their duties, the managers and members  
22 may, in considering the best interests of a limited  
24 liability company and of its members, consider the effects  
26 of an action upon employees, suppliers and customers of that  
limited liability company, communities in which offices or  
other establishments of that limited liability company are  
located and all other pertinent factors.

28           C. A manager or member may not be held personally liable  
30 for monetary damages for failure to discharge a duty as a  
32 manager or member unless that manager or member is found not  
34 to have acted honestly or in the reasonable belief that the  
action was in or not opposed to the best interests of that  
limited liability company or its members.

36           2. Acting in capacity as member. Unless otherwise provided  
38 in an operating agreement, one who is a member of a limited  
40 liability company in which management is vested in managers under  
section 651 and who is not a manager has no duties to that  
limited liability company or to the other members solely by  
reason of acting in that member's capacity as a member.

42           §653. Voting

44           1. Affirmative vote, approval or consent of majority  
46 required. Except as provided in the operating agreement or this  
48 chapter and subject to subsection 2, the affirmative vote,  
approval or consent of more than 1/2 of the members, if  
50 management of a limited liability company is vested in the  
members or 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

2 managers or persons, is required to decide any matter connected  
3 with that limited liability company's business.

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

8 A. Amend an operating agreement; or

10 B. Authorize a manager, member or other person to act on  
11 behalf of the limited liability company in a manner that  
12 contravenes a written operating agreement, including any  
13 provision that expressly limits the purpose, business,  
14 conduct or affairs of that limited liability company.

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

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

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

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

48 The termination of an action, suit or proceeding by judgment,  
49 order or conviction adverse to that person, or by settlement or  
50 plea of nolo contendere or its equivalent, does not of itself  
51 create a presumption that that person did not act honestly or in  
52 the best interests of the limited liability company.

2 the reasonable belief that that person's action was in or not  
4 opposed to the best interests of a limited liability company or  
6 its members or, in the case of a person serving as a fiduciary of  
8 an employee benefit plan or trust, in or not opposed to the best  
10 interests of that plan or trust or its participants or  
12 beneficiaries and, with respect to a criminal action or  
14 proceeding, had reasonable cause to believe that that person's  
16 conduct was unlawful.

18 **2. Indemnification prohibited if party liable to limited**  
20 **liability company; exception.** Notwithstanding any provision of  
22 subsection 1, a limited liability company does not have the power  
24 to indemnify a person with respect to a claim, issue or matter  
26 asserted by or in the right of that limited liability company for  
28 which that person is finally adjudicated to be liable to that  
30 limited liability company unless the court in which the action,  
32 suit or proceeding was brought determines that, in view of all  
34 the circumstances of the case, that person is fairly and  
36 reasonably entitled to indemnity for such amounts as the court  
38 determines reasonable.

40 **3. Indemnification for expenses of successful party.** Any  
42 provision of subsection 1, 2 or 4 to the contrary  
44 notwithstanding, to the extent that a manager, member, employee  
46 or agent of a limited liability company has been successful on  
48 the merits or otherwise in defense of a action, suit or  
50 proceeding referred to in subsection 1 or 2, or in defense of a  
52 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.

40 **4. Indemnification proper and in the best interests of the**  
42 **limited liability company.** Any indemnification under subsection  
44 1, unless ordered by a court or required by the certificate or  
46 organization or operating agreement, may be made by the limited  
48 liability company only as authorized in the specific case upon a  
50 determination that indemnification of the manager, member,  
52 employee or agent is proper in the circumstances and in the best  
interests of the limited liability company. If the certificate  
of organization vests 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

2 disinterested managers so directs, by independent legal council  
3 in a written opinion or by the members. If the certificate of  
4 organization does not vest management in a manager or managers,  
5 the members shall make that determination by majority vote of a  
6 quorum consisting of members who were not parties to that action,  
7 suit or proceeding. Such a determination once made may not be  
8 revoked and upon the making of that determination the manager,  
9 member, employee or agent may enforce the indemnification against  
10 the limited liability company by a separate action  
11 notwithstanding any attempted or actual subsequent action by the  
12 manager, managers or members.

13  
14 5. Payment of expenses in advance. Expenses incurred in  
15 defending a civil, criminal, administrative or investigative  
16 action, suit or proceeding may be authorized and paid by a  
17 limited liability company in advance of the final disposition of  
18 that action, suit or proceeding upon a determination made in  
19 accordance with the procedure established in subsection 4 that,  
20 based solely on the facts then known to those making the  
21 determination and without further investigation, the person  
22 seeking indemnification satisfied the standard of conduct  
23 prescribed by subsection 1, or if so provided in the certificate  
24 of organization or an operating agreement, these expenses must in  
25 all cases be authorized and paid by that limited liability  
26 company in advance of the final disposition of that action, suit  
27 or proceeding upon receipt by that limited liability company of:

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

31  
32 (1) Not to have acted honestly or in the reasonable  
33 belief that that person's action was in or not opposed  
34 to the best interests of a limited liability company or  
35 its members or, in the case of a person serving as a  
36 fiduciary of an employee benefit a plan or trust, in or  
37 not opposed to the best interests of such a plan or  
38 trust or its participants or beneficiaries;

39  
40 (2) With respect to a criminal action or proceeding,  
41 to have had reasonable cause to believe that the  
42 person's conduct was unlawful; or

43  
44 (3) With respect to a claim, issue or matter asserted  
45 in an action, suit or proceeding brought by or in the  
46 right of a limited liability company, to be liable to  
47 that limited liability company, unless the court in  
48 which that action, suit or proceeding was brought  
49 permits indemnification in accordance with subsection  
50 3; and

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

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

10  
11 6. Indemnification and advances not exclusive. The  
12 indemnification and entitlement to advances of expenses provided  
13 by this section is not exclusive of other rights to which those  
14 indemnified may be entitled under an operating agreement, other  
15 agreement, vote of members or otherwise, both as to action in  
16 that person's official capacity and as to action in another  
17 capacity while holding such an office, and continues for a person  
18 who has ceased to be a manager, member, employee, agent, trustee,  
19 partner or fiduciary and inures to the benefit of the heirs,  
20 executors and administrators of that person. A right to  
21 indemnification required by the certificate or organization or an  
22 operating agreement may be enforced by a separate action against  
23 a limited liability company if an order for indemnification has  
24 not been entered by a court in an action, suit or proceeding for  
25 which indemnification is sought.

26  
27 7. Insurance. A limited liability company may purchase and  
28 maintain insurance on behalf of a person who is or was a manager,  
29 member, employee or agent of that limited liability company, or  
30 is or was serving at the request of that limited liability  
31 company as a director, officer, trustee, partner, fiduciary,  
32 employee or agent of a corporation, partnership, joint venture,  
33 trust, pension or other employee benefit plan or other enterprise  
34 against any liability asserted against that person and incurred  
35 by that person in such a capacity, or arising out of that  
36 person's status as such, whether or not that limited liability  
37 company would have the power to indemnify that person against  
38 such a liability under this section.

39  
40 8. Application to mergers and consolidations. For purposes  
41 of this section, references to a "limited liability company"  
42 include, in addition to a surviving limited liability company or  
43 new limited liability company, a participating limited liability  
44 company in a consolidation or merger.

45  
46 **§655. Records and information**

47  
48 1. Records to be kept at principal place of business.  
49 Unless otherwise provided in an operating agreement, a limited  
50 liability company shall keep at its principal place of business  
51 the following:  
52

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

6           B. A copy of the certificate of organization and all  
8           amendments to it, together with executed copies of powers of  
              attorney pursuant to which certificates have been executed;

10           C. Copies of the limited liability company's federal, state  
12           and local income tax returns and financial statements, if  
14           any, for the 3 most recent years or, if the returns and  
16           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;

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

22           E. Unless provided in an operating agreement, a writing  
              setting out:

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

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

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

38           2. Inspection by member. A member may, at the member's own  
40           expense, inspect and copy a limited liability company record,  
              wherever the record is located, upon reasonable request during  
              ordinary business hours.

42           3. Provision of true and full information to a member or  
44           legal representative. Members, if the management of a limited  
46           liability company is vested in the members, or managers, if  
48           management of that limited liability company is vested in  
50           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.

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

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

4 SUBCHAPTER V

6 FINANCE

8 §661. Contributions to capital

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

14 §662. Liability for contributions

16 1. Enforceable promise. A promise by a member to  
17 contribute to the limited liability company is not enforceable  
18 unless set out in a writing signed by the member.

20 2. Obligation to perform enforceable promise. Except as  
21 provided in the operating agreement, a member is obligated to the  
22 limited liability company to perform any enforceable promise to  
23 contribute cash or property or to perform services, even if the  
24 member is unable to perform because of death, disability or other  
25 reason.

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

38 4. Compromise of promise. Unless otherwise provided in the  
39 operating agreement, the obligation of a member to make a  
40 contribution may be compromised only with the unanimous consent  
41 of the members.

42 5. Creditor's rights. Notwithstanding the compromise, a  
43 creditor of a limited liability company who extends credit or  
44 otherwise acts in reliance on that obligation after the member  
45 signs a writing that reflects the obligation and before the  
46 compromise may enforce the original obligation.

48 6. Conditional obligation. A conditional obligation of a  
49 member to make a contribution or return money or other property  
50 to a limited liability company may not be enforced unless the  
51 conditions to the obligation have been satisfied or waived for or  
52



2 by that member. Conditional obligations include contributions  
3 payable upon a discretionary call of a limited liability company  
4 before the time the call occurs.

6 **§663. Allocation of profits and losses**

8 The profits and losses of a limited liability company must  
9 be allocated among the members in the manner provided in the  
10 operating agreement. If the operating agreement does not so  
11 provide, the profits and losses must be allocated on the basis of  
12 the agreed value, as stated in the records of that limited  
13 liability company, of the contributions made by each member to  
14 the extent they have been received by that limited liability  
15 company and have not been returned.

16 **SUBCHAPTER VI**

18 **DISTRIBUTIONS AND WITHDRAWAL**

20 **§671. Sharing of interim distributions**

22 Except as provided in sections 672 and 705, distributions of  
23 cash or other assets of a limited liability company must be  
24 shared among the members and among classes of members in the  
25 manner provided in an operating agreement. If the operating  
26 agreement does not so provide, each member shares equally in any  
27 distribution. A member is entitled to receive distributions  
28 described in this section from a limited liability company to the  
29 extent and at the times or upon the happening of the events  
30 specified in an operating agreement or at the times determined by  
31 the members or managers pursuant to section 653.

32 **§672. Distributions on withdrawal**

34 Upon a withdrawal under section 692 that does not cause  
35 dissolution, a withdrawing member is entitled to receive any  
36 distribution to which the member is entitled under the operating  
37 agreement; and, if not otherwise provided in the operating  
38 agreement, the member is entitled to receive within a reasonable  
39 time after withdrawal, the fair value of the member's interest in  
40 a limited liability company as of the date of withdrawal based  
41 upon the member's right to share in distributions from that  
42 limited liability company.

44 Payment of the amount to which the withdrawing member is  
45 entitled under this section may be deferred without interest  
46 until a limited liability company has sufficient liquid assets to  
47 enable it to make such a payment without impairing its ability to  
48 conduct its business, provided that until such a payment is made  
49 in full, distributions may not be made to a member on account of  
50 that member's interest in the profits or capital of that limited  
51 liability company. The claim of a withdrawing member to payment  
52

2 under this section are subordinate to the claims of all creditors  
3 of that limited liability company other than the claims of  
4 members and former members on account of their interests in that  
5 limited liability company.

6 **§673. Distribution**

8 Except as provided in the operating agreement:

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

14 2. Distribution in kind. A member may not be compelled to  
15 accept from a limited liability company a distribution of an  
16 asset in kind to the extent that the percentage of that asset  
17 distributed to the member exceeds a percentage of that asset that  
18 is equal to the percentage in which the member shares in  
19 distributions from that limited liability company.

22 **§674. Right to distribution**

24 At the time a member becomes entitled to receive a  
25 distribution, the member has the status of and is entitled to all  
26 remedies available to a creditor of a limited liability company  
27 with respect to the distribution.

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

30 1. Distribution prohibited. A distribution may not be made  
31 if after giving effect to the distribution:

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

36 B. The limited liability company's total assets are less  
37 than the sum of its total liabilities plus, unless the  
38 operating agreement provides otherwise, the amount that is  
39 needed, if that limited liability company were to be  
40 dissolved at the time of the distribution, to satisfy the  
41 preferential rights of other members upon dissolution that  
42 are superior to the rights of the member receiving the  
43 distribution.

44 2. Distribution not prohibited. A limited liability  
45 company may base a determination that a distribution is not  
46 prohibited under subsection 1 on either:

47 A. Financial statements prepared on the basis of accounting  
48 practices and principles that are reasonable under the  
49 circumstances; or  
50 B. Financial statements prepared on the basis of accounting  
51 practices and principles that are reasonable under the  
52 circumstances; or

2           B. A fair valuation or other method that is reasonable  
3           under the circumstances.

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

8  
9           A. The date the distribution is authorized if payment  
10           occurs within 120 days after the date of authorization; or

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

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

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

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

33  
34           §676. Liability upon wrongful distribution

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

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

48  
49           A. From each other member or manager who could be held  
50           liable under subsection 1 for the unlawful distribution; and

51  
52

2 B. From each member for the amount that member received  
4 knowing that the distribution was made in violation of  
6 section 675 or the operating agreement.

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

## 16 SUBCHAPTER VII

### 18 OWNERSHIP AND TRANSFER OF PROPERTY

#### 20 §681. Ownership of limited liability company property

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

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

#### 44 §682. Rules for determining when property is owned by a limited

46 liability company

48 1. Acquired in name of limited liability company. Subject  
50 to subsection 4, property is presumed owned by a limited  
52 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.

4. Property held of public record. Real property and other  
property held of public record other than in the name of a

2 limited liability company, the ownership of which is customarily  
3 publicly recorded, is not deemed owned by that limited liability  
4 company to the prejudice of a person who is not a member and who  
5 did not have actual knowledge to the contrary.

6 **§683. Transfer of property**

8 **1. Transfer by member.** Except as provided in subsection 5,  
9 title to property of a limited liability company that is held in  
10 the name of that limited liability company may be transferred by  
11 an instrument of transfer executed by a member in the name of  
12 that limited liability company.

14 **2. Transfer by persons named in title.** Title to property  
15 of a limited liability company that is held in the name of one or  
16 more members or managers with an indication in the instrument  
17 transferring title to the property to them in their capacity as  
18 members or managers of that limited liability company or of the  
19 existence of a limited liability company, even if the name of  
20 that limited liability company is not indicated, may be  
21 transferred by an instrument of transfer executed by the persons  
22 in whose name title is held.

24 **3. Recovery of transferred property.** Property transferred  
25 under subsections 1 and 2 may be recovered by a limited liability  
26 company if it proves that the act of the person executing the  
27 instrument of transfer did not bind that limited liability  
28 company under section 641. Unless the property has been  
29 transferred by the initial transferee or a person claiming  
30 through the initial transferee to a subsequent transferee who  
31 gives value without having notice that the person who executed  
32 the instrument of initial transfer lacked authority to bind that  
33 limited liability company.

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

44 **5. Transfer by managers.** If the certificate of  
45 organization provides that management of a limited liability  
46 company is vested in a manager or managers:

47 **A.** Title to property of the limited liability company that  
48 is held in the name of that limited liability company may be  
49 transferred by an instrument of transfer executed by the manager  
50 or managers.

2 transferred by an instrument of transfer executed by a  
manager in the name of that limited liability company; and

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

10 **§684. Nature of membership interest**

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

16 **§685. Assignment of membership interest**

18 1. Assignment of membership interest. Except as provided  
20 in an operating agreement:

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

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

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

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

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

46 F. The assignor of a membership interest is not released  
from liability as a member solely as a result of the  
48 assignment.

50 2. Membership evidenced by certificate. An operating  
agreement may provide that a member's interest in a limited  
52 liability company may be evidenced by a certificate of membership  
interest issued by a limited liability company and may also  
provide for the assignment or transfer of a membership interest

2 represented by such a certificate and make other provisions with  
3 respect to the certificates.

4 3. Encumbered membership interest. Unless otherwise  
5 provided in an operating agreement, the pledge of or granting of  
6 a security interest, lien or other encumbrance in or against any  
7 or all of the membership interest of a member is not an  
8 assignment and does not cause the member to cease to be a member  
9 or to cease to have the power to exercise a rights or powers of a  
10 member.

12 **§686. Rights of judgment creditor**

14 On application to a court of competent jurisdiction by a  
15 judgment creditor of a member, the court may charge the  
16 membership interest of the member with payment of the unsatisfied  
17 amount of judgment with interest. To the extent so charged, the  
18 judgment creditor has only the rights of an assignee of the  
19 membership interest. This Act does not deprive a member of the  
20 benefit of any exemption laws applicable to that member's  
21 membership interest.

22 **§687. Right of assignee to become a member**

24 1. Right to become member. An assignee of a membership  
25 interest may become a member if:

26 A. The operating agreement so provides; or

27 B. All other members and the assignee consent.

28 2. Rights, powers and liabilities of assignee as a member.  
29 An assignee who becomes a member has to the extent assigned the  
30 rights and powers and is subject to the restrictions and  
31 liabilities of a member under the certificate of organization, an  
32 operating agreement and this Act. An assignee who becomes a  
33 member also is liable for any obligations of the assignor to make  
34 contributions and to return distributions under section 662. The  
35 assignee is not obligated for liabilities of which the assignee  
36 had no knowledge at the time the assignee became a member and  
37 that could not be ascertained from an operating agreement.

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

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

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**§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, if the operating agreement does not 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

B. The time provided in the operating agreement or, if no such time is provided in the operating agreement, when the person's admission is recorded in the records of a limited liability company.

**§692. Events of withdrawal**

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

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

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

C. The member is removed as a member:



- 2                   (1) In accordance with an operating agreement; or  
4                   (2) Subject to a contrary provision in the operating  
6                   agreement, when the member assigns all of that member's  
8                   interest in a limited liability company, by an  
                    affirmative vote of a majority of the members who have  
                    not assigned their interest;

10           D. Subject to a contrary provision in the operating  
12           agreement or written consent of all members at the time, the  
              member:

- 14                   (1) Makes an assignment for the benefit of creditors;  
16                   (2) Files a voluntary petition in bankruptcy;  
18                   (3) Is adjudicated a bankrupt or an insolvent;  
20                   (4) Files a petition or answer seeking for that member  
22                   any reorganization, arrangement, composition,  
                    readjustment, liquidation, dissolution or similar  
24                   relief under any law or regulation;  
26                   (5) Files an answer or other pleading admitting or  
                    failing to contest the material allegations of a  
28                   petition filed against that member in a proceeding of  
                    that nature; or  
30                   (6) Seeks, consents to, or acquiesces in the  
32                   appointment of a trustee, receiver or liquidator of  
                    that member or of all or a substantial part of that  
34                   member's properties;

36           E. Subject to a contrary provision in the operating  
38           agreement, or written consent of all members at the time,  
40           120 days after the commencement of a proceeding against the  
42           member seeking reorganization, arrangement, composition,  
44           readjustment, liquidation, dissolution or similar relief  
46           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;

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

- 52                   (1) Dies; or

2                   (2) Is adjudicated incompetent to manage the member's  
3                   person or estate by a court of competent jurisdiction;  
4  
5                   G. Subject to a contrary provision in the operating  
6                   agreement or written consent of all members at the time,  
7                   when a member is a trust or is acting as a member because  
8                   that member is a trustee of a trust, the termination of the  
9                   trust, but not solely the substitution of a new trustee;  
10  
11                   H. Subject to a contrary provision in the operating  
12                   agreement or written consent of all members at the time,  
13                   when a member is a separate limited liability company, the  
14                   dissolution and commencement of winding up of the separate  
15                   limited liability company;  
16  
17                   I. Subject to a contrary provision in the operating  
18                   agreement or written consent of all members at the time,  
19                   when a member is a corporation, the filing of a certificate  
20                   of its dissolution or the equivalent for the corporation or  
21                   the suspension of its charter and the expiration of 90 days  
22                   after the date of notice to the corporation of suspension  
23                   without a reinstatement of its charter; or  
24  
25                   J. Subject to a contrary provision in the operating  
26                   agreement or written consent of all members at the time,  
27                   when a member is an estate, the distribution by the  
28                   fiduciary of the estate's entire interest in a limited  
29                   liability company.  
30  
31                   2. Other events. The members may provide in the operating  
32                   agreement for other events the occurrence of which result in a  
33                   person ceasing to be a member of a limited liability company.  
34  
35                   3. Voluntary withdrawal; damages. Unless the operating  
36                   agreement provides that a member has no power to withdraw by  
37                   voluntary act from a limited liability company, the member may do  
38                   so at any time by giving a 30-day written notice to the other  
39                   members or such other notice as provided in the operating  
40                   agreement. If the member has the power to withdraw but the  
41                   withdrawal is a breach of an operating agreement or the  
42                   withdrawal occurs as a result of otherwise wrongful conduct of  
43                   the member, a limited liability company may recover from the  
44                   withdrawing member damages for breach of the operating agreement  
45                   including the reasonable costs of obtaining replacement of the  
46                   services the withdrawn member was obligated to perform and may  
47                   offset the damages against the amount otherwise distributable to  
48                   that member, in addition to pursuing any remedies provided for in  
49                   an operating agreement or otherwise available under applicable  
50                   law. Unless otherwise provided in the operating agreement, in  
                    the case of a limited liability company for a definite term or

2 particular undertaking, a withdrawal by a member before the  
3 expiration of that term is a breach of the operating agreement.

4 **SUBCHAPTER IX**

6 **DISSOLUTION**

8 **§701. Nonjudicial dissolution**

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

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

15 2. Consent. Written consent of all members;

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

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

21 B. As otherwise provided in the certificate of organization  
22 or operating agreement; or

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

25 **§702. Judicial dissolution**

26 On application by or for a member, the Superior Court may  
27 decree dissolution of a limited liability company whenever it is  
28 not reasonably practicable to carry on the business in conformity  
29 with the certificate of organization or operating agreement.

30 **§703. Winding up**

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

40 2. Liquidation process. Upon dissolution of a limited  
41 liability company and until the filing of a certificate of

2 cancellation as provided in section 625, the persons winding up  
3 a limited liability company's affairs in the name of and for and  
4 on behalf of the limited liability company may prosecute and  
5 defend suits whether civil, criminal or administrative, settle  
6 and close a limited liability company's business, dispose of and  
7 convey a limited liability company's property, discharge or make  
8 reasonable provision for a limited liability company's  
9 liabilities and distribute to the members any remaining assets of  
10 a limited liability company, all without affecting the liability  
11 of members and without imposing liability on the liquidating  
12 trustee.

13 **§704. Agency power of managers or members after dissolution**

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

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

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

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

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

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

37 **5. Authority of manager.** If the certificate of  
38 organization provides that management of a limited liability  
39 company vests in managers, a manager has the authority of a  
40 member provided for in subsection 1 and that member does not have  
41 that authority if acting solely in the capacity of a member.

42 **§705. Distribution of assets**

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

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

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

16 C. Unless otherwise provided in the operating agreement, to  
17 members:

18 (1) For the return of their contributions; and

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

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

44 §706. Known claims against dissolved limited liability company

46 1. Disposal of known claims. A dissolved limited liability  
47 company may dispose of the known claims against it by filing a  
48 certificate of cancellation pursuant to section 625 and following  
49 the procedure described in this section.

50 2. Notice to known claimants. The dissolved limited  
52 liability company shall notify its known claimants in writing of

2 the dissolution at any time after the effective date of the  
3 dissolution. The written notice must:

4 A. Describe information that must be included in a claim;

6 B. Provide a mailing address where a claim may be sent;

8 C. State the deadline, which may not be fewer than 120 days  
10 from the later of the effective date of the written notice  
12 or the filing of a certificate of cancellation pursuant to  
13 section 625, by which the dissolved limited liability  
14 company must receive the claim; and

16 D. State that the claim will be barred if not received by  
17 the deadline.

18 **3. Claims barred.** A claim against the dissolved limited  
19 liability company is barred:

20 A. If a claimant who was given written notice under  
22 subsection 2 does not deliver the claim to the dissolved  
23 limited liability company by the deadline; or

24 B. If a claimant whose claim was rejected by the dissolved  
26 limited liability company does not commence a proceeding to  
27 enforce the claim within 90 days from the effective date of  
28 the rejection notice.

30 **4. Claim.** For purposes of this section, "claim" does not  
31 include a contingent liability or a claim based on an event  
32 occurring after the effective date of dissolution.

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

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

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

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

50 B. Describe the information that must be included in a  
51 claim and provide a mailing address where the claim may be  
52 sent; and

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

6 3. Claims barred. If the dissolved limited liability  
7 company publishes a newspaper notice in accordance with  
8 subsection 2 and files a certificate of cancellation pursuant to  
9 section 625, the claim of each of the following claimants is  
10 barred unless the claimant commences a proceeding to enforce the  
11 claim against the dissolved limited liability company within 5  
12 years after the later of publication date of the newspaper notice  
13 or the filing of the certificate of cancellation:

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

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

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

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

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

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

#### 31 SUBCHAPTER X

#### 32 FOREIGN LIMITED LIABILITY COMPANIES

#### 33 §711. Laws governing foreign limited liability companies

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

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

40 B. A foreign limited liability company may not be denied  
41 the authority to do business by reason of a difference

2           between the laws referred to in this subsection and the laws  
3           of this State.

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

8           §712. Authority to do business required; application

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

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

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

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

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

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

40                   E. Effecting sales through independent contractors;

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

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

52



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

4 I. Effecting transactions in interstate or foreign commerce;

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

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

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

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

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

24 2. Execution. The foreign limited liability company shall  
submit an application for authority to do business to the  
26 Secretary of State, executed by a manager or, if none, by a  
member on a form prescribed by or furnished by the Secretary of  
28 State.

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

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

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

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

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

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

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

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

6  
7 H. A certificate of good standing or its equivalent from  
8 the proper officer of its jurisdiction of organization. The  
9 certificate of good standing or its equivalent must have  
10 been made not more than 90 days prior to the delivery of the  
11 application for filing; and

12  
13 I. The address of the registered or principal office of a  
14 limited liability company in the jurisdiction of its  
15 organization.

16 **§713. Evidence of authority to do business**

17  
18 If the Secretary of State finds that an application for the  
19 authority to do business conforms to the requirements of this  
20 chapter and all requisite fees have been paid, the Secretary of  
21 State shall:

22  
23 **1. Attest application.** Attest that the application has  
24 been filed by:

25  
26 A. Endorsing upon the original application the word "filed"  
27 and the day, month and year of the filing. The person  
28 delivering the application for filing may have the  
29 endorsement include the hour and minute of the filing of the  
30 application. This endorsement is conclusive of the date and  
31 time, if included in the endorsement, and of its filing in  
32 the absence of actual fraud; and

33  
34 B. Signing, initialing or placing an identifying mark on  
35 the endorsement in paragraph A in person or by agent;

36  
37 **2. File the application.** File and index the endorsed  
38 application; and

39  
40 **3. Copy to limited liability company.** Furnish to the  
41 person submitting the document for filing, or that person's  
42 representative, an attested copy of the application.

43  
44 **§714. Name; registered office; registered agent**

45  
46 **1. Name.** A foreign limited liability company may apply to  
47 the Secretary of State to do business in this State under a name  
48 that conforms with the requirements of section 603, subsection  
49 1. The name does not need to be the same as the name under which  
50 it is authorized to do business in the jurisdiction of its  
51 organization.

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

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

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

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

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

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

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

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

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

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

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

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

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

34                           (a) The new name of the registered agent;

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

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(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.

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

6 6. Resignation of agent; appointment by limited liability  
7 company; service of process. After receipt of the notice of the  
8 resignation of its registered agent under subsection 3, paragraph  
10 B, the limited liability company shall file a certificate of  
11 amendment designating a new registered agent. If the limited  
12 liability company fails to appoint a new registered agent within  
13 30 days after the filing of the certificate of resignation, the  
14 authority of that foreign limited liability company to carry on  
15 business in this State is canceled and the foreign limited  
16 liability company may not carry on business in this State.

17 **§715. Amendments to application**

18  
19 If a statement in the application for authority to do  
20 business of a foreign limited liability company becomes  
21 inaccurate as a result of subsequent events, the foreign limited  
22 liability company shall promptly file with the Secretary of State  
23 a certificate executed by a manager or, if there is no manager,  
24 by a member correcting the statement.

25 **§716. Certificate of correction**

26  
27 If a statement in the application for authority to do  
28 business of a foreign limited liability company was materially  
29 inaccurate when made, the foreign limited liability company shall  
30 promptly file with the Secretary of State a certificate, executed  
31 by a manager or, if there is no manager, by a member correcting  
32 the statement. The certificate of correction must specify the  
33 inaccuracy or defect to be corrected and must set forth the  
34 portion of the instrument in corrected form. The corrected  
35 instrument is effective as of the date the original instrument  
36 was filed, except as to those persons who are substantially and  
37 adversely affected by the correction and for those persons the  
38 corrected instrument is effective from the filing date.

39 **§717. Cancellation of authority to do business**

40  
41 A foreign limited liability company may cancel its authority  
42 to do business by filing with the Secretary of State a  
43 certificate of cancellation. A cancellation does not terminate  
44 the authority of the Secretary of State to accept service of  
45 process on the foreign limited liability company with respect to  
46 causes of action arising out of the doing of business in this  
47 State.

48  
49 **§718. Doing business without authority; right to sue and be**  
50 **sued; liability of members; penalties**

2           **1. Prohibition against bringing an action, suit or**  
4           **proceeding.** A foreign limited liability company doing business  
6           **in this State may not maintain any action, suit or proceeding in**  
8           **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.**

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

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

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

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

26           **3. Liability of members.** A member of a foreign limited  
28           **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.**

30           **4. Penalty.** The Secretary of State may fine a foreign  
32           **limited liability company doing business in this State without**  
34           **first having been granted the authority to do business in this**  
36           **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.**

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

40           **1. Enjoin from doing business.** The Superior Court has  
42           **jurisdiction to enjoin a foreign limited liability company or any**  
44           **agent of the foreign limited liability company from doing**  
46           **business in this State if the foreign limited liability company**  
48           **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.**

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

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

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

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

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

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

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

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

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

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

44 C. After the expiration of the 30-day notice period, if a  
45 foreign limited liability company has not corrected the  
46 specified default or convinced the Secretary of State, by  
47 affidavit or otherwise, that there was no misrepresentation  
48 relative to paragraph A, subparagraph (5), the Secretary of  
49 State shall issue and file a certificate revoking the  
50 foreign limited liability company's authority to do business  
51 in this State and mail copies of the certificate of  
52 revocation to the foreign limited liability company's last

2 registered office in this State and to its last registered  
3 or principal office in its jurisdiction of organization as  
4 filed with the Secretary of State.

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

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

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

17 **§720. Action by Attorney General**

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

21 **§721. Execution of documents; liability for false statements**

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

24 **2. False swearing; false statements.** Section 626,  
25 subsection 3 governing false swearing and section 629 on  
26 liability for false statements apply to foreign limited  
27 liability companies as if the application for authority to do  
28 business were the certificate of organization of a limited  
29 liability company.

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

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

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

36 **3. Service on Secretary of State.** If a foreign limited  
37 liability company authorized to do business in this State fails  
38 to appoint or maintain a registered agent in this State, any such  
39 registered agent can not with reasonable diligence be found at  
40 the registered office or the authority of a foreign limited  
41 liability company is revoked, the Secretary of State is an agent  
42



2 of that foreign limited liability company upon whom any such  
3 process, notice or demand may be served. Service on the Secretary  
4 of State of any such process, notice or demand must be made as  
5 provided in section 724.

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

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

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

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

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

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

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

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

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

39 B. Its last registered or principal office in the  
40 jurisdiction of its organization on file in the office of  
41 the Secretary of State, if any; or if no such office has  
42 been listed in the office of the Secretary of State, at the  
43 last known address of the foreign limited liability company.

2 last address of the foreign limited liability company known  
3 to the person serving the process; and

4 **3. Proof of service.** Proof of service must be by return of  
5 service on the Secretary of State and by an affidavit of the  
6 person serving the process or that person's attorney setting  
7 forth compliance with subsection 2. The affidavit must be  
8 appended by the return receipt signed by the foreign limited  
9 liability company or other official proof of delivery or, if  
10 acceptance was refused or the addressee was not found at the  
11 address given, the original envelope bearing the notation of the  
12 postal authorities showing the reason for nondelivery. Service  
13 is complete when there has been compliance with subsections 1 and  
14 2.

16 **SUBCHAPTER XI**

18 **SUITS BY AND AGAINST THE LIMITED LIABILITY COMPANY**

20 **§731. Suits by and against a limited liability company**

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

24 **§732. Authority to sue on behalf of limited liability company**

26 Except as otherwise provided in the operating agreement,  
27 suit on behalf of the limited liability company may be brought in  
28 the name of a limited liability company by:

30 **1. Member or members.** A member or members of a limited  
31 liability company, whether or not the certificate of organization  
32 provides that management of the limited liability company vests  
33 in one or more managers, who are authorized to sue by the vote of  
34 more than 1/2 of the members, unless the vote of all members is  
35 required pursuant to section 653, subsection 2, except that in  
36 determining the vote required under section 653, the vote of a  
37 member who has an interest in the outcome of the suit that is  
38 adverse to the interest of the limited liability company is  
39 excluded; or

42 **2. Manager or managers.** A manager or managers of a limited  
43 liability company, if the certificate of organization provides  
44 that management of the limited liability company vests in one or  
45 more managers, who are authorized to bring suit by the vote  
46 required pursuant to section 653, except that in determining the  
47 vote required under section 653, the vote of a manager who has an  
48 interest in the outcome of the suit that is adverse to the  
49 interest of the limited liability company is excluded.

50 **§733. Effect of lack of authority to sue**

2       The lack of authority of a member or manager to sue on  
4       behalf of the limited liability company may not be asserted as a  
6       defense to an action by the limited liability company or by the  
8       limited liability company as a basis for bringing a subsequent  
10       suit on the same cause of action.

## 12                               SUBCHAPTER XII

### 14                               MERGER AND CONSOLIDATION

#### 16       §741. Merger or consolidation

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

24       2. Exchange or conversion of rights, securities or  
26       interests. Rights or securities of or interests in a limited  
28       liability company that is a party to the merger or consolidation  
30       may be exchanged for or converted into cash, property,  
32       obligations, rights or securities of or interests in the  
34       surviving or resulting limited liability company.

#### 36       §742. Approval of merger or consolidation

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

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

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

#### 62       §743. Plan of merger or consolidation

64       1. Written plan. Each constituent limited liability  
66       company shall enter into a written plan of merger or  
68       consolidation, which must be approved in accordance with section  
70       742.

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

76       A. The name of each limited liability company that is a  
78       party to the merger or consolidation and the name of the

2 surviving limited liability company into which each other  
3 party proposes to merge or the new limited liability company  
4 into which each party proposes to consolidate;

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

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

14 D. In the case of a merger, such amendments to the  
15 certificate of organization of the surviving limited  
16 liability company as desired to be effected by the merger or  
17 that those amendments are not desired;

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

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

24 **§744. Certificate of merger or consolidation**

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

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

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

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

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

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

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

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

10           (1) Agrees that it may be served with process in this  
11           State in a proceeding for enforcement of an obligation  
12           of a party to the merger or consolidation that was  
13           organized under the laws of this State, as well as for  
14           enforcement of an obligation of the surviving or new  
15           limited liability company arising from the merger or  
16           consolidation; and

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

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

26           3. Execution of certificate. The certificate of merger or  
27           consolidation must be executed by a limited liability company  
28           that is a party to the merger or consolidation in the manner  
29           provided for in section 626 and must be filed with the Secretary  
30           of State in the manner provided for in section 628.

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

36           5. Operating agreement of surviving limited liability  
37           company. An agreement of merger or consolidation approved in  
38           accordance with section 742 may effect an amendment to the  
39           operating agreement or effect the adoption of a new operating  
40           agreement for a limited liability company if it is the surviving  
41           or resulting limited liability company in the merger or  
42           consolidation. An amendment to an operating agreement or  
43           adoption of a new operating agreement made pursuant to this  
44           subsection is effective at the effective time or date of the  
45           merger or consolidation. This subsection may not be construed to  
46             
47             
48             
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52

2 limit the accomplishment of a merger or of any of the matters  
4 referred to in this subsection, by any other means provided for  
6 in an operating agreement or other agreement or as otherwise  
8 permitted by law, including that the operating agreement of a  
10 constituent limited liability company to the merger or  
12 consolidation including a limited liability company formed for  
14 the purpose of consummating a merger or consolidation, must be  
16 the operating agreement of the surviving or resulting limited  
18 liability company.

20 **§745. Effects of merger or consolidation**

22 A merger or consolidation has the following effects:

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

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

42 **3. Rights and restrictions on surviving limited liability**  
44 **company.** The surviving or new limited liability company  
46 possesses all the rights, privileges, immunities and powers of  
48 each constituent limited liability company and is subject to all  
50 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

2 consolidation had not taken place or the surviving or new limited  
3 liability company may be substituted in the action.

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

8  
9 8. Membership or other interests. The membership or other  
10 interests in a limited liability company that are to be converted  
11 or exchanged into interests, cash, obligations or other property  
12 under the terms of the merger or consolidation agreement are so  
13 converted and the former holders of the membership or other  
14 interests are entitled only to the rights provided in the merger  
15 or consolidation agreement or the rights otherwise provided by  
16 law.

18 **SUBCHAPTER XIII**

20 **MISCELLANEOUS**

22 **§751. Fees; penalties**

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

28  
29 1. Reservation. For filing of an application for  
30 reservation of name, an application for renewal of reservation or  
31 a notice of transfer or cancellation of reservation pursuant to  
32 section 604, a fee of \$20 for each limited liability company  
33 affected;

34  
35 2. Assumed name. For filing of an application for an  
36 assumed name under section 605, a fee of \$105;

37  
38 3. Termination of assumed name. For filing of a  
39 termination of an assumed name under section 605, a fee of \$20;

40  
41 4. Registered name. For filing of an application for a  
42 registered name of a foreign limited liability company under  
43 section 606, a fee of \$20 per month for the number of months or  
44 fraction of a month remaining in the calendar year when first  
45 filing. For filing an application to renew the registration of a  
46 registered name, a fee of \$155;

47  
48 5. Termination of registered name. For filing of a  
49 termination of registered name under section 606, subsection 5, a  
50 fee of \$20;

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

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

11      8. Certificate of organization, amendment, cancellation,  
12      merger or consolidation. For filing of a certificate of  
13      organization under section 622, a certificate of amendment under  
14      section 623, except as provided in subsection 6 or a certificate  
15      of cancellation under section 625 or a certificate of merger or  
16      consolidation under section 744, a fee of \$250;

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

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

24      11. Certificate of correction for foreign limited liability  
25      companies. For filing of a certificate of correction under  
26      section 716, a fee of \$30;

27      12. Change of registered agent or registered office for  
28      foreign limited liability companies. For filing of a certificate  
29      by a registered agent under section 714 or a certificate of  
30      amendment under section 715 changing the registered agent or  
31      address of the registered office or the resignation of the  
32      registered agent, a fee of \$30;

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

36      14. Certified copies. For providing certified copies of  
37      any paper on file as provided for by this chapter, a fee of \$5  
38      for each copy certified in addition to any fee due under  
39      subsection 13;

40      15. Issuing certificate. For issuing a short form  
41      certificate of change of name, a fee of \$25. For issuing a short  
42      form certificate of limited liability company condition, a fee of  
43      \$25. For issuing a long form certificate of limited liability  
44      company condition, listing amendments, a fee of \$35. For issuing



2 a certificate of diligent search, a fee of \$45. For issuing a  
3 specially worded certificate, a fee of \$45;

4 16. Preclearance of document. For preclearance of a  
5 document for filing, a fee of \$100;

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

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

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

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

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

### 23 §752. Knowledge

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

### 28 §753. Rules of construction

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

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

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

39 4. Obligations of contract. Neither this Act nor any  
40 amendment of this Act may be construed to impair the obligations  
41

2 of any contract existing when this Act or amendment goes into  
3 effect or to affect a action or proceeding begun or right accrued  
4 before this Act or any amendment takes effect.

6 **§754. Jurisdiction of the Superior Court**

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

10 **§755. Interstate application**

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

16 **§756. Duty of Secretary of State**

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

20  
21 1. Validity of documents. Affect the validity or  
22 invalidity of the document in whole or in part;

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

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

28  
29 **§757. Annual report of domestic and foreign limited liability**  
30 **companies**

31  
32 1. Annual report. Each domestic limited liability company  
33 and each foreign limited liability company authorized to do  
34 business in this State shall file, within the time prescribed by  
35 this chapter, an annual report setting forth:

36 A. The name of the limited liability company;

37 B. The name of its registered agent and the address of its  
38 registered office in this State, including the street or  
39 rural route number, town or city and state, and, in the case  
40 of a foreign limited liability company, the address of its  
41 registered or principal office in its jurisdiction of  
42 organization;

43 C. A brief statement of the character of the business in  
44 which the limited liability company is actually engaged in  
45 this State, if any; and  
46  
47  
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2 D. The name and business or residence address of each  
3 manager or, if there are no managers, each member, including  
4 the street or rural route number, town or city and state.

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

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

40 **§758. Failure to file annual report; incorrect report; penalties**

42 1. Failure to file annual report. A limited liability  
43 company required to deliver an annual report for filing as  
44 provided by section 757 that fails to deliver its properly  
45 completed annual report to the Secretary of State shall pay, in  
46 addition to the regular annual report fee, the sum of \$25, if the  
47 report is received by the Secretary of State prior to revocation  
48 or suspension of the limited liability company. Upon failure to  
49 file the annual report and to pay the annual report fee or the  
50 penalty, the Secretary of State, notwithstanding Title 4, chapter  
51 25 and Title 5, chapter 375, shall revoke a foreign limited  
52 liability company's authority to do business in this State and

2 suspend a domestic limited liability company from doing  
3 business. The Secretary of State shall use the procedures set  
4 forth in section 719, subsection 2, related to revoking the right  
5 of foreign limited liability companies to do business in this  
6 State, for suspending domestic limited liability companies. A  
7 foreign limited liability company whose authority to do business  
8 in this State has been revoked under this subsection that wishes  
9 to do business again in this State must be authorized as provided  
10 in section 712. A domestic limited liability company that has  
11 been suspended under this subsection may be reinstated by filing  
12 the current annual report together with the current annual filing  
13 fee and by paying the sum of \$125 for each year the limited  
14 liability company failed to file an annual report.

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

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

21 **4. Time limit specified.** If the annual report of a limited  
22 liability company is not delivered for filing within the time  
23 specified in section 757, the limited liability company is  
24 excused from the liability provided in this section and from any  
25 other penalty for failure to file timely the report, if it  
26 establishes to the satisfaction of the Secretary of State, that  
27 failure to file was the result of excusable neglect and it  
28 furnishes the Secretary of State with a copy of the report within  
29 30 days after learning that the Secretary of State failed to  
30 receive the original report.

31 **§759. Effective date**

32 This Act takes effect January 1, 1994. All limited  
33 liability companies formed on or after that date and all foreign  
34 limited liability companies applying for authority to transact  
35 business within this State on or after that date are governed by  
36 this Act.

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

39 All foreign limited liability companies qualified as foreign  
40 corporations or limited partnerships before January 1, 1994 are  
41 governed by this Act on and after January 1, 1994. By April 1,  
42 1994 a manager or, if there is no manager, a member of each  
43 foreign limited liability company shall file with the Secretary  
44 of State an application for authority to do business in this  
45 State under this Act and cancel their authority to do business in  
46 this State under chapter 11 and Title 13-A. If the foreign  
47 liability company fails to file an application for authority to do  
48 business in this State under this Act and cancel their authority to  
49 do business in this State under this Act, the Secretary of State  
50 shall suspend the authority of the company to do business in this  
51 State under this Act and cancel the authority of the company to do  
52 business in this State under this Act.

2 limited liability company fails to file the new application for  
3 authority to do business in this State by April 1, 1994, the  
4 Secretary of State may revoke the authority of the limited  
5 liability company to do business in this State under section 719.

6 **§761. Conflict of laws**

8 **1. Determination of liability.** The liability of members,  
9 managers, employees and agents of a limited liability company  
10 organized and existing under this chapter is determined  
11 exclusively by this chapter and the laws of this State.

12 **2. Exclusive determination.** If a conflict arises between  
13 the laws of this State and the laws of any other jurisdiction  
14 with regard to the liability of a member, manager, employee or  
15 agent of a limited liability company organized and existing under  
16 this chapter for the debts, obligations and liabilities of the  
17 limited liability company or for the acts or omissions of another  
18 member, manager, employee or agent of the limited liability  
19 company, this chapter and the laws of this State govern in  
20 determining that liability.

22  
23  
24 **PART B**

25  
26 **Sec. B-1. 10 MRSA §1521, sub-§§2-A and 2-B** are enacted to read:

27 **2-A. Limited liability company name.** "Limited liability  
28 company name" includes a limited liability company name, reserved  
29 name, assumed name or registered name as those terms are used in  
30 Title 31, sections 603 to 606.

31 **2-B. Limited partnership name.** "Limited partnership name"  
32 includes a limited partnership name, reserved name, assumed name  
33 or registered name as those terms are used in Title 31, sections  
34 403 to 406.

35  
36  
37 **Sec. B-2. 10 MRSA §1522, sub-§1, ¶G,** as enacted by PL 1979, c.  
38 572, §2, is amended to read:

39 **G.** Consists of or comprises a corporate, limited liability  
40 company or limited partnership name, unless the corporation,  
41 limited liability company or limited partnership executes  
42 and files with the Secretary of State proof of authorization  
43 of the use of a mark similar to the corporation, limited  
44 liability company or a limited partnership name by the  
45 applicant seeking to use the mark.

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47  
48 **Sec. B-3. 10 MRSA §1525, sub-§2,** as enacted by PL 1979, c.  
49 572, §2, is amended to read:

2           **2. Corporate, limited liability company or limited**  
3 **partnership name.** Any holder of a certificate of registration  
4 issued pursuant to section 1523 may grant to any domestic or  
5 foreign corporation, limited liability company or limited  
6 partnership authorized to do business in this State the exclusive  
7 right to the use of a name similar to the mark shown on the  
8 certificate.

9           **Sec. B-4. 13-A MRSA §301, sub-§1, ¶B,** as amended by PL 1983,  
10 c. 86, §1, is further amended to read:

11           B. Shall ~~May~~ not be the same as, or deceptively similar to,  
12 the name of any domestic corporation existing under the laws  
13 of this State or any foreign corporation authorized to  
14 transact business or to carry on activities in this State,  
15 or a name the exclusive right to which is, at the time,  
16 reserved in the manner provided in this Act, or in Title  
17 13-B, section 302, or the name of a corporation which ~~that~~  
18 has in effect a registration of its corporate name as  
19 provided in this Act, or in Title 13-B, section 303, or the  
20 assumed name of a corporation as provided for in section  
21 307, or in Title 13-B, section 308, unless the other  
22 corporation executes and files with the Secretary of State  
23 as provided in sections 104 and 106 proof of a resolution of  
24 its board of directors authorizing the use of a similar name  
25 by the corporation seeking to use the similar name, or  
26 unless the corporation seeking to file under a similar or  
27 identical name executes and files with the Secretary of  
28 State, as provided in sections 104 and 106, proof of a  
29 resolution of its board of directors that it will not do  
30 business under that similar or identical name, but instead  
31 will do business under an assumed name, as provided for in  
32 section 307, which is not identical or similar to any  
33 corporate name or any reserved name, registered name or  
34 assumed name, or any mark registered under Title 10, chapter  
35 301-A; and

36           **Sec. B-5. 13-A MRSA §301, sub-§1, ¶C,** as enacted by PL 1979,  
37 c. 572, §8, is repealed and the following enacted in its place:

38           C. May not be the same as, or deceptively similar to, a  
39 mark registered under Title 10, chapter 301-A, unless:

40           (1) The owner or holder of the mark executes and files  
41 with the Secretary of State as provided in Title 10,  
42 section 1525, subsection 2 proof of authorization of  
43 the use of a similar name by the corporation seeking to  
44 use the similar name; or

45           (2) A foreign corporation seeking to file under a  
46 similar or identical name executes and files with the

2                   Secretary of State as provided in sections 104 and 106  
3                   proof of a resolution of its board of directors that  
4                   the foreign corporation will not do business under that  
5                   similar or identical name but will do business under an  
6                   assumed name as provided in section 307;

7                   **Sec. B-6. 13-A MRSA §301, sub-§1, ¶¶D and E** are enacted to  
8                   read:

10                   D. May not be the same as, or deceptively similar to, the  
11                   name of a domestic limited partnership existing under the  
12                   laws of this State or a foreign limited partnership  
13                   authorized to transact business in this State or a name the  
14                   exclusive right to which at the time is reserved in the  
15                   manner provided in Title 31, section 404 or the name of a  
16                   limited partnership that has in effect a registration of its  
17                   limited partnership name as provided in Title 31, section  
18                   406 or the assumed name of a limited partnership as provided  
19                   for in Title 31, section 405, unless:

20                                   (1) The limited partnership executes and files with  
21                                   the Secretary of State as provided in Title 31, section  
22                                   403 proof of authorization of the use of a similar name  
23                                   by the corporation seeking to use the similar name; or

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

31                   E. May not be the same as, or deceptively similar to, the  
32                   name of a domestic limited liability company existing under  
33                   the laws of this State or a foreign limited liability  
34                   company authorized to transact business in this State or a  
35                   name the exclusive right to which is at the time reserved in  
36                   the manner provided in Title 31, section 604 or the name of  
37                   a limited liability company that has in effect a  
38                   registration of its limited liability company name as  
39                   provided in Title 31, section 606 or the assumed name of a  
40                   limited liability company as provided in Title 31, section  
41                   605, unless:

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

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

9                   **Sec. B-7. 13-B MRSA §301, sub-§1, ¶C,** as amended by PL 1983,  
10                   c. 50, §2, is further amended to read:

11                   C. ~~Shall~~ May not be the same as, or deceptively similar to,  
12                   any mark registered under Title 10, chapter 301-A; and

13                   **Sec. B-8. 13-B MRSA §301, sub-§1, ¶D,** as enacted by PL 1983,  
14                   c. 50, §2, is amended to read:

15                   D. ~~Shall~~ May not be the same as, or deceptively similar to,  
16                   the name of a department, bureau or other agency of the  
17                   State.

18                   **Sec. B-9. 13-B MRSA §301, sub-§1, ¶¶E and F** are enacted to  
19                   read:

20                   E. May not be the same as, or deceptively similar to, the  
21                   name of any domestic limited partnership existing under the  
22                   laws of this State or any foreign limited partnership  
23                   authorized to transact business in this State or a name the  
24                   exclusive right to which is at the time reserved in the  
25                   manner provided in Title 31, section 404 or the name of a  
26                   limited partnership that has in effect a registration of its  
27                   limited partnership name as provided in Title 31, section  
28                   406 or the assumed name of a limited partnership as provided  
29                   in Title 31, section 405, unless:

30                   (1) The limited partnership executes and files with  
31                   the Secretary of State as provided in Title 31, section  
32                   403 proof of authorization of the use of a similar name  
33                   by the corporation seeking to use the similar name; or

34                   (2) A foreign corporation seeking to file under a  
35                   similar or identical name executes and files with the  
36                   Secretary of State as provided in sections 104 and 106  
37                   proof of a resolution of its board of directors that  
38                   the foreign corporation will not carry on activities  
39                   under that similar or identical name but will carry on  
40                   activities under an assumed name as provided in section  
41                   308; and

42                   F. May not be the same as, or deceptively similar to, the  
43                   name of any domestic limited liability company existing  
44                   under the laws of this State or any foreign limited



2 liability company authorized to transact business in this  
4 State or a name the exclusive right to which is at the time  
6 reserved in the manner provided in Title 31, section 604 or  
8 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:

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

16 (2) A foreign corporation seeking to file under a  
18 similar or identical name executes and files with the  
20 Secretary of State as provided in sections 104 and 106  
22 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.

24 **Sec. B-10. 31 MRSA §403, sub-§1, ¶C,** as enacted by PL 1991, c.  
26 552, §2 and affected by §4, is amended to read:

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

30 (1) The name of any domestic corporation or limited  
32 partnership or limited liability company organized  
34 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  
36 carry on activities in this State;

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

42 (3) A name that is registered under section 406 or  
606; Title 13-A, section 303; or Title 13-B, section  
44 303;

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

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

2           **Sec. B-11. 31 MRSA §403, sub-§2, ¶¶A and B**, as enacted by PL  
1991, c. 552, §2 and affected by §4, are amended to read:

4           A. If the registered owner or holder of the name or mark  
executes and files with the Secretary of State proof of  
6           authorization of the use of ~~the--same--or~~ a deceptively  
similar name by the limited partnership seeking to use the  
8           name;

10          B. If the foreign limited partnership seeking to file under  
the same or deceptively similar name executes and files  
12          with the Secretary of State proof that it will not do  
business in this State under that same or deceptively  
14          similar name but instead will do business under an assumed  
name that is not the same or similar to any corporate or  
16          limited liability company name, reserved name, registered  
name or assumed name under this chapter ~~or~~, chapter 13,  
18          Title 13-A or Title 13-B or any/mark under Title 10; or

20          **Sec. B-12. 36 MRSA §4641-C, first ¶**, as enacted by PL 1975, c.  
572, §1, is amended to read:

22           The following deeds shall ~~be~~ are exempt from the tax imposed  
24           by this chapter:

26          **Sec. B-13. 36 MRSA §4641-C, sub-§§3 and 9**, as enacted by PL  
1977, c. 318, §1, are amended to read:

28           **3. Deeds affecting a previous deed.** Deeds which that,  
30           without additional consideration, confirm, correct, modify or  
supplement a deed previously recorded;

32           **9. Deeds prior to October 1, 1975.** Deeds dated or  
34           acknowledged prior to October 1, 1975, and offered for recording  
subsequent to that date;

36          **Sec. B-14. 36 MRSA §4641-C, sub-§10**, as amended by PL 1981, c.  
38          148, §2, is further amended to read:

40           **10. Deeds by parent corporation.** Deeds made by a parent  
corporation to its subsidiary corporation for no consideration  
42           other than shares of stock of the subsidiary corporation; and

44          **Sec. B-15. 36 MRSA §4641-C, sub-§11**, as enacted by PL 1981, c.  
148, §3, is amended to read:

46           **11. Deeds of distribution.** Deeds of distribution made  
48           pursuant to Title 18-A; and

50          **Sec. B-16. 36 MRSA §4641-C, sub-§12** is enacted to read:

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

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## STATEMENT OF FACT

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13        This bill establishes statutory language allowing the  
14        formation of limited liability companies. Part A creates a new  
15        chapter in the Maine Revised Statutes, Title 31. Part B provides  
16        conforming amendments to other chapters of the statutes and  
17        clarifies that the transfer of real property within a limited  
18        liability company is not a taxable event.