

# MAINE STATE LEGISLATURE

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DATE: March 6, 1996

(Filing No. S-450 )

**JUDICIARY**

Reported by: Senator MILLS of Somerset for the Committee

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**STATE OF MAINE  
SENATE  
117TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 499, L.D. 1358, Bill, "An Act to Authorize the Formation of Limited Liability Partnerships"

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

**'An Act to Establish Limited Liability Partnerships'**

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

**'PART A**

Sec. A-1. 31 MRSA §282, sub-§§4-A, 5-A and 7 are enacted to read:

4-A. Foreign limited liability partnership. "Foreign limited liability partnership" means a limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction and registered under the laws of that jurisdiction.

5-A. Professional limited liability partnership. "Professional limited liability partnership" means a registered limited liability partnership that, by virtue of the business conducted by it, would be subject to the Professional Service Corporation Act if that partnership were a corporation.

7. Registered limited liability partnership. "Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by this Act and registered under the Maine Limited Liability Partnership Act.

**COMMITTEE AMENDMENT**

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2           Sec. A-2. 31 MRSA §286, first ¶, as amended by PL 1977, c. 322,  
3 §2, is further amended to read:

4

5           A partnership shall-mean means an association of 2 or more  
6 persons, including an association of a husband and wife, to carry  
7 on as ~~co-owners~~ coowners a business for profit and includes a  
8 registered limited liability partnership pursuant to the laws of  
9 this State.

10

11           Sec. A-3. 31 MRSA §295, as enacted by PL 1973, c. 377, §1, is  
12 repealed.

13

14           Sec. A-4. 31 MRSA §295-A is enacted to read:

15

16           §295-A. Nature of partner's liability

17

18           1. Partnership liability. Except as provided in subsection  
19 2, all partners are liable:

20

21           A. Jointly and severally for everything chargeable to the  
22 partnership under sections 293 and 294; and

23

24           B. Jointly for all other debts and obligations of the  
25 partnership. Any partner may enter into a separate  
26 obligation to perform a partnership contract.

27

28           2. Registered limited liability partnership. Except as  
29 provided in subsection 3, a partner in a registered limited  
30 liability partnership is not liable directly or indirectly,  
31 including by way of indemnification, contribution, assessment or  
32 otherwise for debts, obligations and liabilities however  
33 chargeable to the partnership or to another partner or partners,  
34 whether in tort, contract or otherwise, arising from omissions,  
35 negligence, wrongful acts, misconduct or malpractice committed by  
36 another partner, employee, agent or representative of the  
37 partnership in the course of the partnership business while the  
38 partnership is a registered limited liability partnership.

39

40           3. Supervision and control. Notwithstanding subsection 2:

41

42           A. A partner in a registered limited liability partnership,  
43 other than a professional limited liability partnership, is  
44 liable for the partner's own omission, negligence, wrongful  
45 act, misconduct or malpractice, or that of any person under  
46 the partner's direct supervision and control; and

47

48           B. A partner in a professional limited liability  
49 partnership is liable as set forth in Title 13, section  
50 708-A of the Professional Service Corporation Act.

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2           4. Liability of partner. A partner in a registered limited  
4           liability partnership is not a proper party to a proceeding by or  
6           against a registered limited liability partnership, the object of  
8           which is to recover damages or to enforce the obligations arising  
              out of the acts, omissions, malpractice or misconduct of the type  
              described in subsection 2, unless the partner is personally  
              liable under subsection 3 or section 811.

10           Sec. A-5. 31 MRSA §298, sub-§1, as enacted by PL 1973, c. 377,  
12           §1, is amended to read:

14           1. **Contributions.** Each partner shall must be repaid his  
16           that partner's contributions, whether by way of capital or  
18           advances to the partnership property and share equally in the  
20           profits and surplus remaining after all liabilities, including  
              those to partners, are satisfied; and, except as provided in  
              section 295-A, subsection 2, each partner must contribute toward  
              the losses, whether of capital or otherwise, sustained by the  
              partnership according to his that partner's share in the profits.

22           Sec. A-6. 31 MRSA §314, sub-§§1 and 2, as enacted by PL 1973,  
24           c. 377, §1, are amended to read:

26           1. **Knowledge of dissolution.** The dissolution being by act  
28           of any partner, the partner acting for the partnership had  
              knowledge of the dissolution; er

30           2. **Knowledge of death or bankruptcy.** The dissolution being  
32           by the death or bankruptcy of a partner, the partner acting for  
              the partnership had knowledge or notice of the death or  
              bankruptcy; or

34           Sec. A-7. 31 MRSA §314, sub-§3 is enacted to read:

36           3. Partner not liable for the liability. The liability is  
38           for a debt, obligation or other liability for which the partner  
              is not liable as provided in section 295-A, subsection 2.

40           Sec. A-8. 31 MRSA §316, as enacted by PL 1973, c. 377, §1, is  
42           amended to read:

44           **§316. Effect of dissolution on partner's existing liability**

46           The dissolution of the partnership does not of itself  
              discharge the existing liability of any partner.

48           A partner is discharged from any existing liability upon  
50           dissolution of the partnership by an agreement to that effect  
              between himself that partner, the partnership creditor and the

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2 person or partnership continuing the business; and such the  
agreement may be inferred from the course of dealing between the  
4 creditor having knowledge of the dissolution and the person or  
partnership continuing the business.

6 Where When a person agrees to assume the existing  
obligations of a dissolved partnership, the partners whose  
8 obligations have been assumed ~~shall-be~~ are discharged from any  
liability to any creditor of the partnership who, knowing of the  
10 agreement, consents to a material alteration in the nature or  
time of payment of such those obligations.

12 The individual property of a deceased partner ~~shall-be~~ is  
14 liable for all those obligations of the partnership incurred  
while he that person was a partner and for which that partner was  
16 liable under section 295-A but subject to the prior payment of  
his that partner's separate debts.

18 Sec. A-9. 31 MRSA §320, sub-§1, ¶B, as enacted by PL 1973, c.  
20 377, §1, is amended to read:

22 B. The contributions of the partners ~~necessary--for--the~~  
24 ~~payment-of-all-the-liabilities~~ specified in subsection 2 4.

26 Sec. A-10. 31 MRSA §320, sub-§4, as enacted by PL 1973, c.  
377, §1, is repealed and the following enacted in its place:

28 4. Contribution of partners. Except as provided in section  
295-A, subsection 2:

30 A. The partners shall contribute, as provided by section  
32 298, subsection 1, the amount necessary to satisfy the  
34 liabilities; and

36 B. If any, but not all, of the partners are insolvent or,  
not being subject to process, refuse to contribute, the  
38 other partners shall contribute their share of the  
liabilities and, in the relative proportions in which the  
40 partners share the profits, the additional amount necessary  
to pay the liabilities.

PART B

44 Sec. B-1. 31 MRSA c. 15 is enacted to read:

46 CHAPTER 15

48 LIMITED LIABILITY PARTNERSHIPS

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SUBCHAPTER I

GENERAL PROVISIONS

2  
4  
6 §801. Short title

8 This Act is known and may be cited as the "Maine Limited Liability Partnership Act."

10 §802. Definitions

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

14  
16 1. Foreign limited liability partnership. "Foreign limited liability partnership" means a limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction and registered under the laws of that jurisdiction.

18  
20 2. Registered limited liability partnership. "Registered limited liability partnership" means a partnership formed pursuant to an agreement governed by the Uniform Partnership Act and registered under this Act.

22  
24  
26 §803. Registered limited liability partnership name

28 1. Requirements. The name of a registered limited liability partnership:

30 A. Must contain the words "Limited Liability Partnership" or the abbreviation "L.L.P.," or the designation "LLP," unless filing a registration of name under section 806. If the words "Limited Liability Partnership" or "Limited Liability Partnership, Chartered" or "Limited Liability Partnership, Professional Association" or "Limited Liability Partnership, P.A.," or any of the designations used in this paragraph without commas, are used, a limited liability partnership may also use the abbreviation "L.L.P." or the designation "LLP" without filing an assumed name under section 805; and

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

44 (1) The name of any domestic corporation, limited partnership, limited liability company or registered limited liability partnership organized under the laws of this State or any foreign corporation, foreign limited partnership, foreign limited liability company or foreign limited liability partnership authorized to

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- 2 transact business or to carry on activities in this  
State;
- 4 (2) A name the exclusive right to which is, at the  
time, reserved under sections 404, 604 and 804; Title  
6 13-A, section 302; and Title 13-B, section 302;
- 8 (3) A name that is registered under sections 406, 606  
and 806; Title 13-A, section 303; or Title 13-B,  
10 section 303;
- 12 (4) The assumed name of a corporation, limited  
partnership, limited liability company or limited  
14 liability partnership as provided in sections 405, 605  
and 805; Title 13-A, section 307; or Title 13-B,  
16 section 308; or
- 18 (5) A mark registered under Title 10, chapter 301-A.

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

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

28 B. If a foreign limited liability partnership seeking to  
file under the same or deceptively similar name executes and  
30 files with the Secretary of State proof that it will not do  
business in this State under that same or deceptively  
32 similar name but instead will do business under an assumed  
name, as provided in section 805; or

34 C. If the foreign limited liability partnership was  
36 authorized to do business in this State before January 1,  
1996 and had the right to use the name as its legal name  
38 before that date.

40 3. Names of limited liability partnerships revoked.  
42 Subsection 2, paragraph C does not apply to the name of a  
partnership whose status as a limited liability partnership has  
44 been revoked for at least 3 years.

46 4. Final determination of availability. The Secretary of  
State shall make the final determination regarding the  
48 availability of a name for filing.

50 5. Refuse filing. The Secretary of State, in the Secretary  
of State's discretion, may refuse to file a name that:

- 2           A. Consists of or comprises language that is obscene,  
          contemptuous, profane or prejudicial;
- 4           B. Inappropriately promotes abusive or unlawful activity; or
- 6           C. Falsely suggests an association with public institutions.

8  
9           §804. Reservation of name

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

14           A. A person intending to organize a registered limited  
16           liability partnership under this chapter and to adopt that  
          name;

18           B. A registered limited liability partnership or a foreign  
20           limited liability partnership authorized to do business in  
          this State and intending to change its name;

22           C. A foreign limited liability partnership intending to  
24           apply for authority to transact business in this State and  
          to adopt that name;

26           D. A registered limited liability partnership or a foreign  
28           limited liability partnership authorized to do business in  
          this State intending to utilize the name as an assumed name;  
          or

30           E. A person intending to organize a foreign limited  
32           liability partnership and intending to have that limited  
34           liability partnership apply for authority to transact  
          business in this State and adopt that name.

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

40           A. If the Secretary of State finds that the name is  
42           available for use by a registered limited liability  
44           partnership or foreign limited liability partnership, the  
          Secretary of State shall reserve the name for the exclusive  
          use of the applicant for a period of 120 days.

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



2        C. The right to the exclusive use of a reserved name may be  
 4        transferred to another person by filing with the Secretary  
 6        of State a notice of the transfer, executed by the applicant  
 8        for whom the name was reserved, specifying the name to be  
 10       transferred and the name and address of the transferee.

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

22       **§805. Assumed name**

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

30       2. Right to transact business under assumed name. Upon  
 32       complying with this section, a registered limited liability  
 34       partnership or foreign limited liability partnership authorized  
 36       to do business in this State may transact its business in this  
 38       State under one or more assumed names.

40       3. Procedure to use assumed name. Before transacting  
 42       business in this State under an assumed name, the registered  
 44       limited liability partnership or foreign limited liability  
 46       partnership shall execute and deliver for filing a statement  
 48       setting forth:

50       A. The name of the limited liability partnership and the  
 52       address of its registered office;

54       B. That it intends to transact business under an assumed  
 56       name;

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

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

66       A separate statement must be executed and delivered for filing  
 68       for each assumed name that the limited liability partnership  
 70       proposes to use.

72       4. Requirements for name. Each assumed name must comply  
 74       with the requirements of section 803, subsection 1, except when  
 76       the true name of the limited liability partnership proposing to  
 78       use the assumed name is similar.

2           5. Termination of name. A registered limited liability  
3           partnership or foreign limited liability partnership may  
4           terminate an assumed name by executing and delivering for filing  
5           a statement setting forth:

6                   A. The name of the limited liability partnership and the  
7                   address of its registered office;

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

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

11           6. Noncompliance; injunction. If a registered limited  
12           liability partnership or foreign limited liability partnership  
13           uses an assumed name without complying with the requirements of  
14           this section, the continued use of the name may be enjoined upon  
15           suit by the Attorney General or by a person adversely affected by  
16           the use.

17           7. Deceptively similar names; injunction. Notwithstanding  
18           compliance with the requirements of this section, the use of an  
19           assumed name may be enjoined upon suit by the Attorney General or  
20           by a person adversely affected by that use if the assumed name is  
21           deceptively similar to a name in which a person has prior rights  
22           by virtue of the common law or statutory law of unfair  
23           competition, unfair trade practices, common law copyright or  
24           similar law.

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

28           §806. Registered name and renewal for foreign limited liability  
29           partnership; termination

30           1. Name registered. A foreign limited liability  
31           partnership may register its name under this chapter if the name  
32           meets the requirements of section 803, subsection 1.

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

35                   A. The name of the limited liability partnership;

36                   B. The state or territory under the laws of which it is  
37                   organized and the current principal or registered office;

38                   C. The date of its organization;

- 2           D. A statement that it is actually engaged in business  
3           activities;
- 4
- 5           E. A brief statement of the activities in which it is  
6           engaged; and
- 7
- 8           F. A certificate of good standing or its equivalent from  
9           the proper officer of its jurisdiction of organization. The  
10           certificate of good standing must have been made not more  
11           than 90 days prior to application for filing.
- 12
- 13           3. Registration effective. The registration is effective  
14           until the close of the calendar year in which the application is  
15           filed.
- 16
- 17           4. Renewal of registration. A foreign limited liability  
18           partnership that has registered its name under this section may  
19           renew the registration annually by filing an application for  
20           renewal. The application must set forth the information required  
21           in subsection 2 and may be filed between October 1st and December  
22           31st.
- 23
- 24           5. Termination of name. A foreign limited liability  
25           partnership may terminate a registered name by executing and  
26           delivering for filing a statement setting forth:
- 27
- 28           A. The name of the foreign limited liability partnership  
29           and the address of its principal or registered office;
- 30
- 31           B. The state or territory under the laws of which it is  
32           organized;
- 33
- 34           C. The date of its organization; and
- 35
- 36           D. The termination of the registered name.
- 37
- 38           §807. Registered office; registered agent
- 39
- 40           1. Requirements of registered office and registered agent.  
41           Each registered limited liability partnership must have and  
42           maintain:
- 43
- 44           A. A registered office in this State, which may be the same  
45           as its place of business; and
- 46
- 47           B. A registered agent for service of process on a limited  
48           liability partnership. The agent may be either:

2           (1) An individual resident of this State whose  
3           business office or residential address is identical to  
4           the registered limited liability partnership's  
5           registered office; or

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

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

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

19           A. Filing a certificate of amendment under section 823; or

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

22                   (1) For the change of address of the registered office  
23                   of one or more limited liability partnerships for whom  
24                   the agent is the registered agent to another address in  
25                   this State:

26                           (a) The names of all limited liability  
27                           partnerships represented by the agent;

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

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

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

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

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

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

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

8                   Upon filing a certificate under this paragraph, any  
registered agent shall promptly mail or otherwise deliver a  
10                   copy of the certificate to a partner of each limited  
liability partnership affected by the change.

12                   4. Effective date of change or new appointment. The change  
14                   of address of the registered office or registered agent is  
effective upon delivery of the certificate to the Secretary of  
16                   State. The appointment of a new registered agent is effective  
upon delivery of the certificate to the Secretary of State and  
18                   upon receipt by the Secretary of State of evidence that the new  
registered agent has accepted appointment pursuant to subsection  
20                   2.

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

26                   A. When the registered agent appoints a successor:

28                   (1) A statement of resignation;

30                   (2) The names of the limited liability partnerships;

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

34                   (4) An attached statement, ratifying and approving the  
36                   change of registered agent, executed by each affected  
limited liability partnership and signed by a partner;  
38                   or

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

42                   (1) A statement of resignation;

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

46                   (3) An attached affidavit stating that on or about the  
48                   date of the filing of the certificate of resignation,  
notices were sent by certified or registered mail to a  
50                   partner of each registered limited liability

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2 partnership from which the registered agent is  
3 resigning at the address of the partner, as shown on  
4 the most recent annual report of a limited liability  
5 partnership.

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

8  
9 6. Secretary of State. The Secretary of State shall  
10 furnish to the person submitting the document for filing or to  
11 that person's representative, an attested copy of a certificate  
12 filed under this section.

13  
14 7. Resignation of agent; appointment by registered limited  
15 liability partnership; service of process. After receipt of the  
16 notice of the resignation of its registered agent under  
17 subsection 5, a registered limited liability partnership shall  
18 file a certificate of amendment designating a new registered  
19 agent. Until a registered limited liability partnership duly  
20 files a certificate appointing a new registered agent, legal  
21 process against that registered limited liability partnership may  
22 be served upon the Secretary of State in accordance with section  
23 809.

24 §808. Revocation of registered limited liability partnership  
25 status by Secretary of State

26  
27 1. Secretary of State's authority to revoke. The Secretary  
28 of State:

29  
30 A. Shall revoke the status of a partnership as a registered  
31 limited liability partnership when:

32  
33 (1) The registered limited liability partnership fails  
34 to deliver its annual report for filing within the time  
35 specified by this chapter or fails to pay fees or  
36 penalties as prescribed by this chapter when they  
37 become due and payable;

38  
39 (2) The registered limited liability partnership fails  
40 to appoint or name a registered agent in this State;

41  
42 (3) The registered limited liability partnership,  
43 after change of its registered office or registered  
44 agent, fails to file with the Secretary of State a  
45 notification of such a change; or

46  
47 (4) A misrepresentation is made of a material fact in  
48 an application, report, affidavit or other document  
49 required by this chapter; or  
50

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2           B. May revoke the status of a partnership as a registered  
3           limited liability partnership when that partnership fails to  
4           file a list of the names and addresses of the partners  
5           under section 873.

6           2. Procedures. The Secretary of State shall use the  
7           procedures set forth in section 859, subsection 1 relative to the  
8           revoking of the right of a foreign limited liability partnership  
9           to do business in this State for revoking the status of a  
10           partnership as a registered limited liability partnership.

11           3. Reinstatement. A partnership whose status as a  
12           registered limited liability partnership has been revoked under  
13           this section may have that status reinstated by:

14           A. Filing the current annual report;

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

17           C. Correcting a misrepresentation; or

18           D. Providing a list of partners.

19           All delinquent fees and the penalty as set forth in section 871,  
20           subsection 7 or section 874, subsection 1 must be paid.

21           4. Validity of contracts; right to be sued; right to defend  
22           suit. The revocation of the status of a partnership as a  
23           registered limited liability partnership under this section does  
24           not impair:

25           A. The existence of the partnership;

26           B. The validity of a contract or act of the registered  
27           limited liability partnership;

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

30           D. The right of the registered limited liability  
31           partnership to defend an action, suit or proceeding in a  
32           court of this State; or

33           E. The liabilities of the partners with regard to events,  
34           acts or omissions occurring before the date of revocation.

35           §809. Service of process upon registered limited liability  
36           partnership

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

A. A partner of the limited liability partnership in this State;

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

C. A liquidating trustee of the limited liability partnership.

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

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

§810. Service of nonresident partners of registered limited liability partnerships

1. Secretary of State; agent to receive service. Each partner of a registered limited liability partnership who is a nonresident of this State or who becomes a nonresident is deemed to have appointed the Secretary of State as an agent to receive service of process upon that partner in an action or proceeding relating to actions of a registered limited liability partnership that arises while that partner was serving in that capacity.

2. Method of serving process. Service of process upon the 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 the case of service upon the Secretary of State as an agent of a foreign limited liability partnership.

A copy of the process must be mailed to the nonresident partner at the business, residence or mailing address of the partner shown on the limited liability partnership's certificate or most recent annual report.



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2 3. Service on nonresident partner. Service under this  
3 section also may be made by delivery of a copy of the process to  
4 the nonresident partner at the partner's address outside the  
5 State. Proof of that delivery must be made by affidavit of the  
6 person making delivery and the affidavit must be filed with the  
7 clerk of the court in which the action or proceeding is pending.

8 **§811. Nature of professional limited liability partnership**  
9 **business**

10 A limited liability partnership may be registered under this  
11 Act for any lawful purpose. A professional limited liability  
12 partnership, as defined in section 282, subsection 5-A, is  
13 subject to the Professional Service Corporation Act except as  
14 follows.

15 1. Not applicable. Sections 701, 702, 704 to 706 and 713  
16 to 715 do not apply.

17 2. Application. All references to:

18 A. Shareholders are deemed to be references to partners;

19 B. Corporations or corporations organized or incorporated  
20 under the Professional Service Corporation Act are deemed to  
21 be references to professional limited liability  
22 partnerships; and

23 C. Stock are deemed to be references to partnership  
24 interests.

25 3. Revocation. Any provision for the forfeiture of  
26 articles of incorporation or dissolution is deemed to provide for  
27 revocation of the status of the partnership as a limited  
28 liability partnership.

29 **§812. Rules**

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

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

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

39

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

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

8  
10 5. Definition of deceptively similar. Setting forth  
criteria to define the term "deceptively similar";

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

14  
16 7. Annual report filing date. Providing alternative dates  
for filing annual reports and for determining the dates covered  
by those reports.

18  
20 §813. Expedited service

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

30 §814. Access to database

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

40 §815. Publications

42 1. Fee for publications. The Secretary of State may  
establish by rule in accordance with the Maine Administrative  
44 Procedure Act a fee schedule to cover the cost of printing and  
distribution of publications and to set forth the procedures for  
46 the sale of those publications.

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

2     §816. Routine technical rules

4             Rules adopted pursuant to this chapter, unless expressly  
6     designated otherwise, are routine technical rules as defined in  
   Title 5, chapter 375, subchapter II-A.

8                             SUBCHAPTER II10                            REGISTRATION12     §821. Registration

14             A partnership formed under the Uniform Partnership Act may  
16     be registered as a registered limited liability partnership by  
   signing and filing a certificate of limited liability partnership  
18     with the Secretary of State.

20     §822. Certificate of limited liability partnership

22             1. Certificate of limited liability partnership. In order  
   to register a limited liability partnership, a certificate of  
24     limited liability partnership must be filed with the Secretary of  
   State. The certificate must set forth:

26             A. The name of the registered limited liability partnership;

28             B. The address of the registered office and the name and  
30     address of the registered agent for service of process  
   required to be maintained by section 807;

32             C. The name and the business, residence or mailing address  
   of the contact partner; and

34             D. Any other matters the partners determine to include in  
36     the certificate.

38             2. Effective date. A partnership becomes a registered  
40     limited liability partnership at the time of the filing of the  
   initial certificate of limited liability partnership with the  
42     Secretary of State if there has been substantial compliance with  
   the requirements of this section.

44     §823. Amendment to certificate

46             1. Certificate of amendment. The certificate of limited  
   liability partnership is amended by filing a certificate of  
48     amendment with the Secretary of State. The certificate of  
   amendment must set forth:

- 2           A. The name of the registered limited liability  
3           partnership; and
- 4
- 5           B. The amendment or amendments to the certificate.
- 6
- 7           2. Inaccuracies. A partner who becomes aware that a  
8           statement in the certificate of limited liability partnership or  
9           any certificate filed under this section has become inaccurate in  
10           any material respect as a result of subsequent events shall  
11           promptly amend the certificate.
- 12
- 13           3. Amendment required. An amendment to the certificate of  
14           limited liability partnership reflecting the event or events must  
15           be filed by a partner no later than 90 days after the following  
16           event or events occur:
- 17           A. A change in the name of the registered limited liability  
18           partnership;
- 19
- 20           B. Except as provided in section 807, subsections 3 and 5,  
21           a change in the address of the registered office or a change  
22           in the name, identity or address of the registered agent of  
23           the registered limited liability partnership;
- 24
- 25           C. A partner becomes aware that the certificate of limited  
26           liability partnership contains a false or an erroneous  
27           statement; or
- 28
- 29           D. A change in the name or the address of the contact  
30           partner.
- 31
- 32           4. Amendment not required. An amendment to the certificate  
33           of limited liability partnership is not required as a result of a  
34           change in the number of partners of the registered limited  
35           liability partnership or in the business in which the registered  
36           limited liability partnership engages. To the extent that any  
37           partnership is terminated by any such change and a successor  
38           partnership comes into existence, that successor partnership is  
39           covered by the prior partnership's certificate of limited  
40           liability partnership and succeeds to the status of the prior  
41           partnership as a registered limited liability partnership.
- 42
- 43           5. Right to amend at any time. Except as otherwise  
44           provided in the certificate of limited liability partnership, a  
45           certificate of limited liability partnership may be amended at  
46           any time for any other purpose.
- 47
- 48           6. Restated certificate of limited liability partnership.  
49           A registered limited liability partnership may at any time file a  
50

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2 restatement of its certificate of limited liability partnership  
 4 that integrates into a single document the provisions of its  
 6 certificate of limited liability partnership giving effect to all  
 8 amendments previously adopted and, if authorized, further  
 10 amendments. The restated certificate of limited liability  
 12 partnership, either in the heading or in an introductory  
 14 paragraph, must set forth:

8 A. That it is a restatement;

10 B. The registered limited liability partnership's present  
 12 name;

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

18 D. The date of filing of the initial certificate of limited  
 20 liability partnership.

20 The restated certificate of limited liability partnership must be  
 22 executed and filed in the manner provided for any other amendment  
 24 to the certificate of limited liability partnership. Upon filing  
 26 of the restated certificate of limited liability partnership by  
 28 the Secretary of State, the restatement, including further  
 30 amendments made as a result of the restatement, constitutes the  
 32 certificate of the limited liability partnership pursuant to  
 34 section 822.

30 §824. Certificate of correction

32 A partner who becomes aware that any statement in a  
 34 certificate of limited liability partnership or any certificate  
 36 filed under this chapter was inaccurate when made shall file a  
 38 certificate of correction with the Secretary of State. The  
 40 certificate of correction must specify the inaccuracy or defect  
 42 to be corrected and set forth the portion of the instrument in  
 44 corrected form. The corrected instrument is effective as of the  
 46 date the original instrument was filed, except for those persons  
 48 who are substantially and adversely affected by the correction.  
 50 For those persons, the corrected instrument is effective from the  
filing date.

44 §825. Certificate of renunciation

46 1. Renunciation of status. A partnership may renounce its  
 48 status as a registered limited liability partnership by filing a  
 50 certificate of renunciation with the Secretary of State, setting  
forth:

50 A. The name of the registered limited liability partnership;

2           B. The date of filing of its certificate of limited  
3           liability partnership;

4           C. The reason for filing the certificate of renunciation;

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

10           E. Any other information the person filing the certificate  
11           of renunciation determines necessary.

14           2. Effect of renunciation. Renunciation of the status of a  
15           registered limited liability partnership does not affect the  
16           existence of that partnership or the liability of the partners of  
17           the partnership with regard to events, acts or omissions  
18           occurring before the date of renunciation.

20           §826. Execution

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

24           1. Signatures. Except as provided in subsection 2, the  
25           documents must be signed as follows:

28           A. In the case of the initial certificate of limited  
29           liability partnership, by one or more partners who are  
30           authorized;

32           B. In the case of a certificate of amendment, restatement,  
33           certificate of correction or any other document filed under  
34           this chapter not otherwise provided for, by at least one  
35           partner; or

36           C. In the case of a certificate of renunciation or other  
37           document filed after the dissolution of a registered limited  
38           liability partnership:

40                   (1) If the partners are winding up the registered  
41                   limited liability partnership's affairs, then by the  
42                   contact partner or by a majority in interest of the  
43                   partners; or

46                   (2) If the partners are not winding up the registered  
47                   limited liability partnership's affairs, then by all  
48                   liquidating trustees.

2        2. Signature by agent. Any person may sign any certificate  
3        or amendment to a certificate, including an attorney-in-fact. An  
4        authorization, including a power of attorney, to sign any  
5        certificate or amendment to a certificate need not be in writing,  
6        sworn to, verified or acknowledged and need not be filed with the  
7        Secretary of State, but if in writing, it must be retained by a  
8        partner.

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

14       **§827. Execution or amendment by judicial order**

15       If a person required to execute a certificate under section  
16       826 fails or refuses to do so, then a person who is adversely  
17       affected by the failure or refusal may petition the Superior  
18       Court to direct the execution of the certificate as follows.

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

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

29       **§828. Filing**

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

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

37       B. Unless the Secretary of State finds that the certificate  
38       or other document on its face does not conform to law, upon  
39       receipt of all filing fees required by law, the Secretary of  
40       State shall attest that the document has been filed with the  
41       Secretary of State by endorsing on that document the word

2 "filed" and the day, month and year of the filing and by  
3 signing or initialing that endorsement in person or by  
4 agent. If the person delivering the document for filing so  
5 requests, the endorsement must include the hour and minute  
6 of the filing of the document.

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

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

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

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

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

25 **§829. Materially inaccurate statement**

26 1. Liability. If the certificate of renunciation,  
27 certificate of limited liability partnership or certificate of  
28 amendment contains a materially inaccurate statement, a person  
29 who suffers loss by reasonable reliance on the statement may  
30 recover damages for the loss from:

31 A. A partner who executes the certificate and knew or  
32 should have known that the statement was inaccurate in a  
33 material respect at the time the certificate was executed;  
34 and

35 B. A partner who thereafter knows that an arrangement or  
36 other fact described in the certificate is inaccurate in any  
37 material respect or has changed, making the statement  
38 inaccurate in any material respect, if that partner had  
39 sufficient time to amend or cancel the certificate or to  
40 file a petition for the amendment or cancellation before the  
41 statement was reasonably relied upon.



2. Exception. Notwithstanding subsection 1, a partner does not have liability for failing to cause the amendment or renunciation of a certificate to be filed or failing to file a petition for amendment or renunciation pursuant to subsection 1 if the certificate of amendment, certificate of renunciation or petition is filed within 90 days of the date that partner knew or should have known the certificate was inaccurate in any material respect.

§830. Notice

The fact that a certificate of limited liability partnership is on file with the Secretary of State constitutes notice of facts set forth in the certificate that are required by section 822, subsection 1 and by section 823, subsection 6.

SUBCHAPTER III

FOREIGN LIMITED LIABILITY PARTNERSHIPS

§851. Laws governing foreign limited liability partnerships

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

A. The laws of the state or country under which a foreign limited liability partnership is organized govern its organization and internal affairs and the liability of its partners, provided that each partner, employee or agent of a foreign limited liability partnership who performs professional services in this State on behalf of such a foreign limited liability partnership is personally and fully liable for any omission, negligence, wrongful act, misconduct or malpractice by that person or any person under that person's direct supervision and control arising out of those professional services performed in this State; and

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

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

§852. Authority to do business required; application

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

1. Definitions. As used in this subchapter, "doing business," "the doing of business" or "business done in this State" by a foreign limited liability partnership means the course or practice of carrying on any business activities in this State. For purposes of this subsection, a foreign limited liability partnership is not considered to be transacting business in this State solely for carrying on one or more of the following activities:

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

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

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

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

E. Effecting sales through independent contractors;

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

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

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

I. Effecting transactions in interstate or foreign commerce;

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

- 2       K. Owning or controlling a general or limited partnership  
3       or a limited liability company organized or transacting  
4       business within this State;
- 6       L. Conducting an isolated transaction not in the course of  
7       a number of repeated similar transactions;
- 8       M. Serving as trustee, executor, administrator or guardian  
9       or in like fiduciary capacity as permitted by the laws of  
10       this State; or
- 12       N. Being a partner in a registered limited partnership or a  
13       domestic general partnership or a member in a domestic  
14       limited liability company.

16       This subsection is not intended to exclude other activities that  
17       do not constitute transacting business in this State.

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

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

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

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

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

42               D. The address of the registered office and the name and  
43       address of the registered agent for service of process,  
44       which are required to be maintained under section 854,  
45       subsection 2;

46               E. A statement that the Secretary of State is appointed the  
47       agent of the foreign limited liability partnership for  
48       service of process;

50

2 F. The name and business, residence or mailing address of  
the contact partner;

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

8 H. A certificate of good standing or its equivalent from  
the proper officer of its jurisdiction of organization. For  
10 the purpose of this paragraph, a copy of the foreign limited  
liability partnership's registration certified or stamped by  
12 the Secretary of State or other proper officer in its  
domestic jurisdiction is a sufficient equivalent if such an  
14 officer does not produce any other type of certificate of  
existence. The certificate of good standing or its  
16 equivalent must have been made not more than 90 days prior  
to the delivery of the application for filing; and

18 I. The address of the registered or principal office of the  
20 limited liability partnership in the jurisdiction of its  
organization.

22 **§853. Evidence of authority to do business**

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

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

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

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

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

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

50

§854. Name; registered office; registered agent

2  
3  
4 1. Name. A foreign limited liability partnership may apply  
5 to the Secretary of State to do business in this State under a  
6 name that conforms with the requirements of section 803,  
7 subsection 1. The name need not be the same as the name under  
8 which it is authorized to do business in the jurisdiction of its  
9 organization.

10 2. Registered office and registered agent. Each foreign  
11 limited liability partnership must have and maintain in this  
12 State:

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

15 B. A registered agent for service of process on the limited  
16 liability partnership. The agent may be either:

17  
18  
19 (1) An individual resident of this State whose  
20 business office or residential address is identical  
21 with the limited liability partnership's registered  
22 office; or

23  
24 (2) A domestic or foreign corporation, whether  
25 business or nonprofit, authorized to do business or  
26 carry on activities in this State whose registered  
27 office must also serve as the registered office of the  
28 limited liability partnership.

29  
30  
31 3. Change in registered office or registered agent. The  
32 registered office and registered agent may be changed by:

33 A. Filing a certificate of amendment under section 855; or

34  
35 B. Executing and filing a certificate by the registered  
36 agent. The certificate must include:

37  
38 (1) For the change of address of the registered office  
39 of the limited liability partnerships for which the  
40 agent is the registered agent to another address in  
41 this State:

42  
43 (a) A list of the names of all limited liability  
44 partnerships represented by that registered agent;

45  
46 (b) The address at which the registered agent has  
47 maintained the registered office for each of the  
48 limited liability partnerships; and  
49  
50

- 2                   (c) The new address to which the registered  
                    office will be changed; or
- 4                   (2) For a change in the name of a person acting as the  
                    registered agent:
- 6                   (a) The new name of the registered agent;
- 8                   (b) The name of the registered agent before it  
10                  was changed;
- 12                  (c) A list of the names of all limited liability  
14                  partnerships represented by the agent; and
- 16                  (d) The address at which the registered agent has  
18                  maintained the registered office for each of the  
                    limited liability partnerships.

20                  Any registered agent filing a certificate under this  
22                  paragraph upon filing shall promptly mail or otherwise  
                    deliver a copy of the certificate to a partner of each  
                    limited liability partnership affected by the change.

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

28                  A. When the registered agent appoints a successor:

- 30                   (1) A statement of resignation;
- 32                   (2) A list of the names of all the limited liability  
34                   partnerships represented by the agent for which the  
                    agent is resigning as agent;
- 36                   (3) The name and address of the successor registered  
38                   agent; and
- 40                   (4) An attached statement executed by each affected  
42                   limited liability partnership signed by a partner  
                    ratifying and approving the change of registered agent;  
                    or

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

- 46                   (1) A statement of resignation;
- 48                   (2) A list of the names of all limited liability  
50                   partnerships represented by the agent for which the  
                    agent is resigning as agent; and

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(3) An attached affidavit stating that on or about the date of the filing of the 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 foreign limited liability partnership in the jurisdiction of its organization as filed with the Secretary of State.

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

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

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

**§855. Amendments to application**

If any statement in the application for authority to do business of a foreign limited liability partnership requires change as a result of subsequent events, the foreign limited liability partnership shall promptly file with the Secretary of State a certificate executed by a partner amending the statement.

**§856. Certificate of correction**

If a statement in the application for authority to do business of a foreign limited liability partnership was materially inaccurate when made, the foreign limited liability partnership shall promptly file with the Secretary of State a certificate executed by a partner correcting the statement. The certificate of correction must specify the inaccuracy or defect to be corrected and must set forth the portion of the instrument in corrected form. The corrected instrument is effective as of the date the original instrument was filed except that for persons who are substantially and adversely affected by the

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2 correction, the corrected instrument is effective from the filing  
date.

4 **§857. Cancellation of authority to do business**

6 A foreign limited liability partnership may cancel its  
8 authority to do business by filing with the Secretary of State a  
10 certificate of cancellation. A cancellation does not terminate  
12 the authority of the Secretary of State to accept service of  
process on the foreign limited liability partnership with respect  
to causes of action arising out of the doing of business in this  
State.

14 **§858. Doing business without authority; treatment as general**  
16 **partnership**

18 A foreign limited liability partnership doing business in  
20 this State must be treated as a general partnership without the  
22 status of a limited liability partnership with respect to any  
business conducted in this State during any period in which it  
lacked authority to do business in this State as a foreign  
limited liability partnership.

24 **§859. Doing business without authority; revocation by Secretary**  
26 **of State**

28 1. Revocation by Secretary of State. The Secretary of  
30 State may revoke the status of a foreign partnership as a limited  
liability partnership with respect to doing business in the State  
in accordance with this subsection.

32 A. Notwithstanding Title 4, chapter 25 and Title 5, chapter  
34 375, the status of a foreign partnership as a limited  
36 liability partnership with respect to doing business in this  
State may be revoked by the Secretary of State as provided  
in paragraphs C and D when:

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

44 (2) The foreign limited liability partnership fails to  
46 appoint and maintain a registered agent in this State  
as required by section 807;

48 (3) The foreign limited liability partnership fails,  
after change of its registered office or registered



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2 agent, to file with the Secretary of State a statement  
of the change required by section 807;

4 (4) The foreign limited liability partnership fails to  
file with the Secretary of State an amended application  
6 for authority required by section 855; or

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

12 B. A foreign partnership's status as a limited liability  
partnership in this State may be revoked only after:

14 (1) The Secretary of State has mailed to the foreign  
16 limited liability partnership's last registered office  
in this State and to its last registered or principal  
18 office in its jurisdiction of organization as filed  
with the Secretary of State a 30-day notice of pending  
20 revocation of its status as a foreign limited liability  
partnership in this State. The notice must specify the  
22 default; and

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

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

40 D. The foreign limited liability partnership may appeal the  
42 action of the Secretary of State in revoking its status to  
the Superior Court in Kennebec County. The appeal is  
44 governed by the Maine Rules of Civil Procedure, Rule 80B, as  
amended.

46 E. The status of the partnership as a foreign limited  
48 liability partnership in this State ceases as of the date of  
filing the certificate of revocation unless stayed by the  
50 court.

2 F. A foreign partnership that has its status as a limited  
3 liability partnership in this State revoked may be  
4 requalified by applying under this subchapter.

6 **§860. Execution of documents; liability for false statements**

8 1. Signature. Documents must be signed by a partner except  
9 as otherwise provided.

10 2. False swearing; false statements. Section 826,  
11 subsection 3 governing false swearing and section 829 on  
12 liability for false statements apply to foreign limited  
13 liability partnerships as if the application for authority to do  
14 business were the certificate of limited liability partnership of  
15 a registered limited liability partnership.

18 **§861. Service of process on foreign limited liability**  
19 **partnerships authorized to do business in State**

20 1. Partner. Process may be served on a partner who is  
21 present or found in this State.

24 2. Registered agent. Process may be served on the  
25 registered agent of the foreign limited liability partnership.

26 3. Service on Secretary of State. If a foreign limited  
27 liability partnership authorized to do business in this State  
28 fails to appoint or maintain a registered agent in this State, if  
29 any such registered agent can not with reasonable diligence be  
30 found at the registered office or if the authority of a foreign  
31 limited liability partnership is revoked, the Secretary of State  
32 is an agent of that foreign limited liability partnership upon  
33 whom any such process, notice or demand may be served. Service on  
34 the Secretary of State of any such process, notice or demand must  
35 be made as provided in section 863.

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

44 **§862. Service of process on foreign limited liability**  
45 **partnership not authorized to do business in State**

46 1. Service on Secretary of State. Every foreign limited  
47 liability partnership that does business in this State without  
48 having been authorized to do business in this State submits  
49 itself to the jurisdiction of the courts of this State and  
50 is subject to the jurisdiction of the courts of this State.

2 designates the Secretary of State as its agent upon whom process,  
3 notice or demand upon it may be served in any action or  
4 proceeding arising out of or in connection with the doing of  
5 business in this State.

6 2. Method of serving process. In addition to other methods  
7 of service that may be authorized by law or by rule, service of  
8 process may be made as provided in section 863.

10 §863. Service of process on Secretary of State for foreign  
11 limited liability partnership

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

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

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

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

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

32 3. Proof of service. Proof of service must be by return of  
33 service on the Secretary of State and by an affidavit of the  
34 person serving the process or that person's attorney setting  
35 forth compliance with subsection 2. The affidavit must be  
36 appended by the return receipt signed by the foreign limited  
37 liability partnership or other official proof of delivery or, if  
38 acceptance was refused or the addressee was not found at the  
39 address given, the original envelope bearing the notation of the  
40 postal authorities showing the reason for nondelivery. Service  
41 is complete when there has been compliance with subsections 1 and  
42 2.

SUBCHAPTER IV

MISCELLANEOUS

§871. Fees; penalties

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

1. Reservation. For filing an application for reservation of name, an application for renewal of reservation or a notice of transfer or cancellation of reservation pursuant to section 804, a fee of \$20 for each limited liability partnership affected;

2. Assumed name. For filing an application for an assumed name under section 805, a fee of \$105;

3. Termination of assumed name. For filing a termination of an assumed name under section 805 subsection 5, a fee of \$20;

4. Registered name. For filing an application for a registered name of a foreign limited liability partnership under section 806, a fee of \$20 per month for the number of months or fraction of a month remaining in the calendar year when first filing. For filing an application to renew the registration of a registered name, the fee is \$155;

5. Termination of registered name. For filing a termination of registered name under section 806, subsection 5, a fee of \$20;

6. Change of registered agent or registered office for registered limited liability partnerships. For filing a certificate by a registered agent under section 807 or a certificate of amendment under section 823 changing the registered agent or address of the registered office or containing the resignation of the registered agent, a fee of \$20;

7. Penalty. Except as provided in section 875, as a penalty prior to being reinstated as a registered limited liability partnership under section 808, a fee of \$100;

8. Certificate of limited liability partnership, amendment or renunciation. For filing a certificate of limited liability partnership under section 822, a certificate of amendment under section 823, except as provided in subsection 6, or a certificate of renunciation under section 825, a fee of \$250;

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- 2        9. Certificate of correction. For filing a certificate of  
correction under section 824, a fee of \$20;
- 4        10. Foreign limited liability partnerships. For filing an  
application for authority to do business as a foreign limited  
6        liability partnership under section 852, a certificate of  
amendment under section 855, except as provided in subsection 12,  
8        or a certificate of cancellation under section 857, a fee of  
\$250. For filing a certificate of amendment under section 855 to  
10       change the address of the registered or principal office in the  
jurisdiction of its organization, the fee is \$30.
- 12       11. Certificate of correction for foreign limited liability  
14       partnerships. For filing a certificate of correction under  
section 856, a fee of \$30;
- 16       12. Change of registered agent or registered office for  
18       foreign limited liability partnerships. For filing a certificate  
by a registered agent under section 854 or a certificate of  
20       amendment under section 855 changing the registered agent or  
address of the registered office or containing the resignation of  
22       the registered agent, a fee of \$30;
- 24       13. Photocopies. For all photocopies, whether certified or  
not, a fee of \$2 per page. The Secretary of State may issue  
26       photocopies of instruments on file, as well as other copies;
- 28       14. Certified copies. For providing certified copies of  
any paper on file as provided for by this chapter, a fee of \$5  
30       for each copy certified, in addition to any fee due under  
subsection 13;
- 32       15. Issuing certificate. For issuing a short form  
34       certificate of change of name, a fee of \$25. For issuing a short  
form certificate of limited liability partnership condition, the  
36       fee is \$25. For issuing a long form certificate of limited  
liability partnership condition listing amendments, the fee is  
38       \$35. For issuing a certificate of diligent search, the fee is  
\$45. For issuing a specially worded certificate, the fee is \$45;
- 40       16. Preclearance of document. For preclearance of a  
42       document for filing, a fee of \$100;
- 44       17. All other filings. For receiving and filing of a  
certificate, affidavit, agreement or any other paper provided for  
46       by this chapter for which a fee is not specifically prescribed, a  
fee of \$20;
- 48       18. Annual report. For filing of an annual report under  
50       section 874, a fee of \$60;

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

6           20. Service of process on Secretary of State as agent. For  
8           accepting service of process under section 809, 810, 861 or 862,  
10           a fee of \$20.

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

24           §872. Duty of Secretary of State

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

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

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

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

46           §873. Annual report of registered and foreign limited liability  
48           partnerships

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

9           A. The name of the limited liability partnership;

11           B. The name of its registered agent and the address of its  
13           registered office in this State, including the street or  
15           rural route number, town or city and state, and, in the case  
17           of a foreign limited liability partnership, the address of  
19           its registered or principal office in its jurisdiction of  
21           organization;

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2 C. A brief statement of the character of the business in  
which the limited liability partnership is actually engaged  
in this State, if any; and

4  
6 D. The name and business or residence address of each  
partner, including the street or rural route number, town or  
city and state.

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

14 3. Execution, delivery and penalties. This subsection  
governs execution, delivery and penalties.

16  
18 A. The annual report must be executed and signed by a  
partner or any other duly authorized individual.

20 B. Subject to rules adopted under section 812, the report  
must be delivered to the Secretary of State or a designee  
for filing. The annual report may be delivered to the  
22 Secretary of State on a staggered basis as defined by the  
24 Secretary of State by rule in accordance with the Maine  
Administrative Procedure Act. The report must apply to the  
26 12-month period specified by the Secretary of State. Proof  
to the satisfaction of the Secretary of State that, prior to  
28 the date that penalties become effective for late delivery  
of an annual report as established by the Secretary of State  
30 by rule, the report was deposited in the United States mail  
in a sealed envelope, properly addressed, with postage  
32 prepaid is considered a compliance with this requirement.

34 C. One copy of the report, together with the filing fee  
required by this chapter, must be delivered for filing to  
36 the Secretary of State, who shall file the report if the  
Secretary of State finds that it conforms to the  
38 requirements of this chapter. If the Secretary of State  
finds that it does not conform, the Secretary of State shall  
40 promptly mail or otherwise return the report to the limited  
liability partnership for any necessary correction.

42  
44 D. The penalties prescribed by this chapter for failure to  
file the report within the time provided in this section do  
46 not apply if the report is corrected to conform to the  
requirements of this chapter and returned to the Secretary  
48 of State within 30 days from the date on which the report  
was mailed or otherwise returned to the limited liability  
50 partnership by the Secretary of State.

§874. Failure to file annual report; incorrect report; penalties

2  
4 1. Failure to file annual report; revocation of status. A  
6 limited liability partnership required to deliver an annual  
8 report for filing, as provided by section 873, that fails to  
10 deliver its properly completed annual report to the Secretary of  
12 State shall pay, in addition to the regular annual report fee,  
14 the sum of \$25, provided that the report is received by the  
16 Secretary of State prior to revocation of its status as a limited  
18 liability partnership. Upon failure to file the annual report  
20 and to pay the annual report fee or the penalty, the Secretary of  
22 State, notwithstanding Title 4, chapter 25 and Title 5, chapter  
24 375, shall revoke the status of that partnership as a foreign  
26 limited liability partnership or a registered limited liability  
28 partnership. The Secretary of State shall use the procedures set  
30 forth in section 859, subsection 1 relative to revoking the  
32 status of a partnership as a foreign limited liability  
partnership for revoking the status of a partnership as a  
registered limited liability partnership. A foreign limited  
liability partnership whose limited liability partnership status  
has been revoked under this subsection that wishes to do business  
again as a limited liability partnership in this State must  
follow the procedures set forth in section 808, subsection 3  
relative to reinstatement of registered limited liability  
partnerships. A partnership whose status as a registered limited  
liability partnership has been revoked under this subsection may  
be reinstated by filing the current annual report together with  
the current annual filing fee and by paying the reinstatement fee  
of \$125 for each year the limited liability partnership failed to  
file an annual report. The maximum reinstatement fee may not  
exceed \$500, regardless of the number of delinquent reports or  
the period of delinquency.

34 2. Nonconformity. If the Secretary of State finds that an  
36 annual report delivered for filing does not conform with the  
38 requirements of section 873, the report must be returned for  
correction.

40 3. Revocation. During any period in which a partnership's  
42 status as a limited liability partnership has been revoked, it  
must be treated as a general partnership without that limited  
liability partnership status.

44 4. Time limit specified. If the annual report of a limited  
46 liability partnership is not delivered for filing within the time  
48 specified in section 873, the limited liability partnership is  
50 excused from the liability provided in this section and from any  
other penalty for failure to file timely the report if it  
establishes to the satisfaction of the Secretary of State that  
failure to file was the result of excusable neglect and it



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2 furnishes the Secretary of State with a copy of the report within  
 3 30 days after learning that the Secretary of State failed to  
 4 receive the original report.

5 5. Inadvertent errors. The status of a partnership as a  
 6 limited liability partnership and the liability of a partner of  
 7 that limited liability partnership is not adversely affected if  
 8 the name or address of a partner listed in an annual report is  
 9 erroneously stated or omitted, as long as that annual report was  
 10 filed in good faith.

12 §875. Effective date

14 This Act takes effect September 1, 1996. All partnerships  
 15 that register as registered limited liability partnerships on or  
 16 after that date and all foreign limited liability partnerships  
 17 that apply for authority to transact business within this State  
 18 on or after that date are governed by this Act.

20 §876. Application to existing foreign limited liability  
 21 partnerships; definition

22 All foreign limited liability partnerships qualified as  
 23 foreign corporations or limited partnerships or limited liability  
 24 companies before September 1, 1996 are governed by this Act on  
 25 and after September 1, 1996. By December 1, 1996 a partner of  
 26 each foreign limited liability partnership shall file with the  
 27 Secretary of State an application for authority to do business in  
 28 this State under this Act and shall cancel the partnership's  
 29 authority to do business in this State under chapter 11, chapter  
 30 13 or Title 13-A. If the foreign limited liability partnership  
 31 fails to file the new application for authority to do business in  
 32 this State by December 1, 1996, it must be treated as a general  
 33 partnership without the status of a limited liability partnership  
 34 with respect to any business conducted in this State between  
 35 December 1, 1996 and the date on which it files that application.

38 **PART C**

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

42 2-C. Limited liability partnership name. "Limited  
 43 liability partnership name" includes a limited liability  
 44 partnership name, reserved name, assumed name or registered name  
 45 as those terms are used in Title 31, sections 803 to 806.

48 **Sec. C-2. 10 MRSA §1522, sub-§1, ¶G, as repealed and replaced**  
 49 **by PL 1995, c. 462, Pt. A, §24, is amended to read:**

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2 G. Consists of or comprises a corporate, limited liability  
3 company, limited liability partnership or limited  
4 partnership name, unless the corporation, limited liability  
5 company, limited liability partnership or limited  
6 partnership executes and files with the Secretary of State  
7 proof of authorization of the use of a mark similar to the  
8 corporation, limited liability company, limited liability  
9 partnership or limited partnership name by the applicant  
10 seeking to use the mark;

11 Sec. C-3. 10 MRSA §1525, sub-§2, as amended by PL 1993, c.  
12 718, Pt. B, §3, is further amended to read:

13 2. Corporate, limited liability company or partnership  
14 name. Any holder of a certificate of registration issued  
15 pursuant to section 1523 may grant to any domestic or foreign  
16 corporation, limited liability company, limited liability  
17 partnership or limited partnership authorized to do business in  
18 this State the exclusive right to the use of a name similar to  
19 the mark shown on the certificate.  
20

21 Sec. C-4. 13-A MRSA §301, sub-§1, ¶D, as amended by PL 1993,  
22 c. 718, Pt. B, §4, is further amended to read:

23 D. May not be the same as, or deceptively similar to, the  
24 name of any domestic limited partnership existing under the  
25 laws of this State or any foreign limited partnership  
26 authorized to transact business in this State, or a name the  
27 exclusive right to which is, at the time, reserved in the  
28 manner provided in Title 31, section 404, or the name of a  
29 limited partnership that has in effect a registration of its  
30 limited partnership name as provided in Title 31, section  
31 406, or the assumed name of a limited partnership as  
32 provided for in Title 31, section 405, unless:  
33

34 (1) The limited partnership executes and files with  
35 the Secretary of State, as provided in Title 31,  
36 section 403, proof of authorization of the use of a  
37 similar name by the corporation seeking to use the  
38 similar name; or  
39

40 (2) A foreign corporation seeking to file under a  
41 similar or identical name executes and files with the  
42 Secretary of State, as provided in sections 104 and 106  
43 of this Act, proof of a resolution of its board of  
44 directors that it will not do business under that  
45 similar or identical name, but instead will do business  
46 under an assumed name, as provided for in section 307;  
47 and  
48  
49  
50

2           Sec. C-5. 13-A MRSA §301, sub-§1, ¶E, as enacted by PL 1993,  
c. 718, Pt. B, §5, is amended to read:

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

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

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

30           Sec. C-6. 13-A MRSA §301, sub-§1, ¶F is enacted to read:

32           F. May not be the same as, or deceptively similar to, the  
34           name of a registered limited liability partnership existing  
36           under the laws of this State or a foreign limited liability  
38           partnership authorized to transact business in this State or  
40           a name the exclusive right to which is at the time reserved  
42           in the manner provided in Title 31, section 804 or the name  
of a limited liability partnership that has in effect a  
44           registration of its limited liability partnership name as  
46           provided in Title 31, section 806 or the assumed name of a  
48           limited liability partnership as provided in Title 31,  
section 805, unless:

44               (1) The limited liability partnership executes and  
46               files with the Secretary of State as provided in Title  
48               31, section 803 proof of authorization of the use of a  
similar name by the corporation seeking to use the  
similar name; or

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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. C-7. 13-B MRSA §301, sub-§1, ¶E,** as amended by PL 1993,  
10 c. 718, Pt. B, §7, is further amended to read:

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

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

26 (2) A foreign corporation seeking to file under a  
27 similar or identical name executes and files with the  
28 Secretary of State, as provided in sections 104 and  
29 106, proof of a resolution of its board of directors  
30 that it will not carry on activities under that similar  
31 or identical name, but instead will carry on activities  
32 under an assumed name, as provided for in section 308;  
33 and

34 **Sec. C-8. 13-B MRSA §301, sub-§1, ¶F,** as enacted by PL 1993,  
35 c. 718, Pt. B, §8, is amended to read:

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

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

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

18 Sec. C-9. 13-B MRSA §301, sub-§1, ¶G is enacted to read:

20 G. May not be the same as, or deceptively similar to, the name of any registered limited liability partnership existing under the laws of this State or any foreign limited liability partnership authorized to transact business in this State or a name the exclusive right to which is at the time reserved in the manner provided in Title 31, section 804 or the name of a limited liability partnership that has in effect a registration of its limited liability partnership name as provided in Title 31, section 806 or the assumed name of a limited liability partnership as provided in Title 31, section 805, unless:

32 (1) The limited liability partnership executes and files with the Secretary of State as provided in Title 31, section 803 proof of authorization of the use of a similar name by the corporation seeking to use the similar name; or

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

48 Sec. C-10. 31 MRSA §6, as amended by PL 1995, c. 458, §11, is further amended to read:

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§6. Prohibition of certain names

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No person or persons, partnership or other entity engaged in any business, except a corporation, may adopt a name for such business that contains the words "corporation," "incorporated" or "limited," or any abbreviation of any such words. A limited partnership may use the term "limited partnership" as part of its name and, a limited liability company may use the term "limited liability company" as part of its name and a limited liability partnership may use the term "limited liability partnership" as part of its name.

Sec. C-11. 31 MRSA §403, sub-§1, ¶A, as amended by PL 1995, c. 458, §12, is repealed and the following enacted in its place:

A. Must contain the words "Limited Partnership," or the abbreviation "L.P.," or the designation "LP," unless filing a registration of name under section 406. If the words "Limited Partnership" are used, a limited partnership may also use the abbreviation "L.P." or the designation "LP" without filing an assumed name under section 405;

Sec. C-12. 31 MRSA §403, sub-§1, ¶C, as amended by PL 1993, c. 718, Pt. B, §9, is further amended to read:

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

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

(2) A name the exclusive right to which is, at the time, reserved under section 404 ~~or~~ 604 or 804; Title 13-A, section 302; or Title 13-B, section 302;

(3) A name that is registered under section 406 ~~or~~ 606 or 806; Title 13-A, section 303; or Title 13-B, section 303;

(4) The assumed name of a corporation or limited partnership or limited liability company or registered limited liability partnership as provided in section 405 ~~or~~ 605 or 805; Title 13-A, section 307; or Title 13-B, section 308; or

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

2

Sec. C-13. 31 MRSA §422-A, as enacted by PL 1993, c. 316, §54, is amended to read:

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§422-A. Certificate of correction

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A general partner who becomes aware that any statement in a certificate of limited partnership, or any certificate filed under this section chapter, was inaccurate when made shall file a certificate of correction with the Secretary of State. The certificate of correction must specify the inaccuracy or defect to be corrected and set forth that portion of the instrument in corrected form. The corrected instrument is effective as of the date the original instrument was filed, except as to those persons who are substantially and adversely affected by the correction and as to those persons the corrected instrument is effective from the filing date.

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Sec. C-14. 31 MRSA §603, sub-§1, ¶A, as amended by PL 1995, c. 458, §19, is repealed and the following enacted in its place:

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A. Must contain the words "Limited Liability Company," or the abbreviation "L.L.C.," or the designation "LLC," unless filing a registration of name under section 606. If the words "Limited Liability Company" or "Limited Liability Company, Chartered" or "Limited Liability Company, Professional Association" or "Limited Liability Company, P.A." or any of the designations used in the paragraph without commas are used, a limited liability company may also use the abbreviation "L.L.C." or the designation "LLC" without filing an assumed name under section 605;

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Sec. C-15. 31 MRSA §603, sub-§1, ¶B, as enacted by PL 1993, c. 718, Pt. A, §1, is amended to read:

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

38

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

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(2) A name the exclusive right to which is, at the time, reserved under sections 404 and 604 and 804; Title 13-A, section 302; and Title 13-B, section 302;

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- 2 (3) A name that is registered under section 606; Title
- 4 13-A, section 303; Title 13-B, section 303; or Title
- 6 31, section 406 or 806;
- 8 (4) The assumed name of a corporation, limited
- 10 partnership, limited liability partnership or limited
- 12 liability company as provided in section 605; Title
- 14 13-A, section 307; Title 13-B, section 308; or Title
- 16 31, section 405 or 805; or
- 18 (5) A mark registered under Title 10, chapter 301-A.

14 Sec. C-16. 31 MRSA §611, as enacted by PL 1993, c. 718, Pt.  
16 A, §1, is repealed and the following enacted in its place:

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  
26 subject to a special provision of law, the limited liability  
28 company shall also comply with that provision. This section is  
specifically intended to permit the formation of a professional  
limited liability company by a person or persons who may form a  
professional corporation under the Professional Service  
Corporation Act. The provisions of that Act are incorporated in  
this chapter by reference, except as follows.

30 1. Not applicable. Sections 701, 702, 704 to 706 and 713  
32 to 715 do not apply.

34 2. Application. All references to:

36 A. Shareholders are deemed to be references to members;

38 B. Corporations, or corporations organized or incorporated  
40 under the Professional Service Corporation Act, are deemed  
42 to be references to professional limited liability companies;

44 C. Stock are deemed to be references to membership  
46 interests; and

48 D. Officers are deemed to be references to managers.'

50 Sec. C-17. 31 MRSA §624, as enacted by PL 1993, c. 718, Pt.  
A, §1, is amended to read:

**§624. Certificate of correction**



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COMMITTEE AMENDMENT "A" to S.P. 499, L.D. 1358

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

13 **Sec. C-18. Appropriation.** The following funds are  
14 appropriated from the General Fund to carry out the purposes of  
15 this Act.

16 1996-97

17 **SECRETARY OF STATE, DEPARTMENT**  
18 **OF THE**

19 **Bureau of Administrative Services**  
20 **and Corporations**

21 All Other \$7,500

22 Provides additional funds for printing costs  
23 associated with the administration of  
24 limited liability partnerships and one-time  
25 software design costs to update the  
26 departmental data base.'

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

29 **FISCAL NOTE**

30 1996-97

31 **APPROPRIATIONS/ALLOCATIONS**

32 General Fund \$7,500

33 **REVENUES**

34 General Fund \$13,700

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2 The Department of the Secretary of State will require a  
3 General Fund appropriation of \$7,500 in fiscal year 1996-97 for  
4 one-time printing costs associated with the administration of  
5 limited liability partnerships and one-time software design costs  
6 to update the departmental data base. The additional costs  
7 associated with administering limited liability partnerships for  
8 each year of the next biennium can be absorbed by the Department  
9 of the Secretary of State.

10 The additional collection of new filing fees and annual  
11 report fees will increase General Fund revenue by \$13,700 in  
12 fiscal year 1996-97 and approximately \$4,500 annually beginning  
13 in fiscal year 1997-98.

14 The formation of limited liability partnerships will have a  
15 negligible impact on corporate income, individual income and real  
16 estate transfer tax receipts.

17 This bill may increase the number of civil suits filed in  
18 the court system. The additional workload and administrative  
19 costs associated with the minimal number of new cases filed can  
20 be absorbed within the budgeted resources of the Judicial  
21 Department. The collection of additional filing fees may also  
22 increase General Fund revenue by minor amounts.'

23

### STATEMENT OF FACT

24

25 This committee amendment is the result of a collaborative  
26 effort of many people. The Joint Standing Committee on Judiciary  
27 requested in 1995 that the Secretary of State convene a study  
28 group of interested persons to identify and try to resolve issues  
29 raised by the proposal to allow the formation or election of  
30 limited liability partnerships in Maine. This amendment is the  
31 study group's draft, with modifications made by that committee.

32

33 A limited liability partnership, or "LLP," is not a separate  
34 entity like a corporation or limited liability company, but  
35 rather an election made by a general partnership. The LLP  
36 election allows a general partnership to preserve its traditional  
37 structure and any preexisting agreements between the partners,  
38 while offering the partners some protection from vicarious  
39 liability for claims arising from the conduct of the  
40 partnership's business. Generally, the types of liability  
41 protected against are those arising from the omissions,  
42 negligence, wrongful acts, misconduct or malpractice of other  
43 partners or employees that are not under the direct supervision  
44 and control of a partner. No protection is given for a partner's  
45 own acts or omissions, etc., nor is any protection given for debt  
46 or liability under ordinary contracts, including loans.

47

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2           If a partnership fails to comply with certain filing  
3 requirements, it is the status of the partnership as an LLP, with  
4 all the associated protections from liability, that is revoked  
5 and not the partnership's ability to conduct business in this  
6 State. The partnership is also free to rescind its status as an  
7 LLP at any time.

8  
9           The internal governance of the LLP is subject to the State's  
10 general partnership law and any partnership agreement between the  
11 parties. Written partnership agreements are usually not required  
12 by law, and in the absence of such an agreement, or a provable  
13 oral agreement, the partnership relies on any default provisions  
14 provided by statute. This amendment allows the current default  
15 provisions as provided by Maine's Uniform Partnership Act to  
16 suffice until a new uniform partnership act is available to  
17 states for adoption.

18  
19           This amendment allows general partnerships formed for any  
20 legal purpose, whether by professionals or nonprofessionals, to  
21 make the LLP election. Under Maine law, professionals forming  
22 corporations are subject to the Maine Professional Service  
23 Corporation Act (PSCA). This amendment incorporates the  
24 liability provisions of PSCA that apply to professionals.

25  
26           This amendment also creates a floor for foreign  
27 professionals organized as partnerships and authorized to do  
28 business as LLPs in this State. This floor ensures that foreign  
29 professional LLPs are subject to at least the same level of  
30 liability as domestic professional LLPs.

31  
32           This amendment provides that a general partnership electing  
33 LLP status must indicate that status by using in its name either  
34 "Limited Liability Partnership," "L.L.P." or "LLP." Current law  
35 requires limited partnerships and limited liability companies to  
36 spell out the form of entity in that entity's name. This  
37 amendment revises the limited partnership law to allow the use of  
38 the abbreviation "L.P." or the designation of "LP" and revises  
39 the limited liability company law to allow the use of the  
40 abbreviation "L.L.C." or the designation "LLC." No name change  
41 filing is required for an existing LP or LLC to use the  
42 abbreviation or designation. In addition, the amendment provides  
43 that an LP, LLC or LLP also subject to the Professional Service  
44 Corporation Act is no longer required to include as part of its  
45 name "Professional Association," "P.A." or "Chartered."

46  
47           This amendment establishes how certain filings of the LLP  
48 are to be executed. The initial certificate of limited liability  
49 partnership must be signed by one or more authorized partners.  
50 Certificates of amendment, restatement, correction or any other

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2 document must be signed by at least one partner. A certificate  
of renunciation must be signed by the contact partner or majority  
4 in interest of the partners, if the partners are winding up the  
partnership's affairs. If the partners are not winding up the  
partnership's affairs, all the liquidating trustees must sign the  
6 certificate.

8 When an LLP fails to deliver its annual report or maintain a  
registered agent and office or otherwise fails to comply with the  
10 law, the Secretary of State may revoke its status as a limited  
liability partnership. The partnership may legally continue to  
12 conduct business, but it loses the umbrella of protection  
provided by the election of the LLP status. The revocation does  
14 not impair the liabilities of partners with regard to events,  
acts or omissions occurring before the effective date of the  
16 revocation. The penalty for a business corporation, limited  
partnership or limited liability company for similar compliance  
18 failures is suspension from the conduct of business. Because LLP  
status is an election of a general partnership, revocation of  
20 that status causes only the loss of the protection from  
liability, not a suspension from conducting business as a  
22 partnership.

24 Records on file with the Secretary of State for various  
business entities disclose information about the persons who  
26 manage the business of the entity. The business of a general  
partnership and, therefore, an LLP, is managed by the partners.  
28 This amendment requires that the contact partner be disclosed in  
the initial certificate of limited liability partnership and that  
30 it be kept current. In addition, the names and addresses of all  
the partners must be included in the annual report. An  
32 inaccurate listing in the annual report must be corrected and  
inadvertent errors do not affect the limited liability status of  
34 the partnership or any partner, provided the annual report was  
filed in good faith. Changes in the names, addresses or numbers  
36 of partners after the date of the annual report are not required  
to be reported. These reporting requirements apply to both  
38 foreign and domestic LLPs.

40 This amendment also adds an appropriation and a fiscal note  
to the bill.