

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1358

S.P. 499

Received by the Secretary, April 13, 1995

An Act to Authorize the Formation of Limited Liability Partnerships.

Referred to the Committee on Judiciary and ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator HARRIMAN of Cumberland.
Cosponsored by Representative DORE of Auburn and
Senators: ABROMSON of Cumberland, BENOIT of Franklin, CAREY of Kennebec,
CARPENTER of York, CIANCHETTE of Somerset, FERGUSON of Oxford, LORD of York,
O'DEA of Penobscot, RAND of Cumberland, Representatives: DUNN of Gray,
GWADOSKY of Fairfield, JACQUES of Waterville, KEANE of Old Town, MURPHY of
Berwick, NADEAU of Saco, PLOWMAN of Hampden, REED of Falmouth, TRIPP of
Topsham.

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

PART A

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

4-A. Foreign registered limited liability partnership.

"Foreign registered limited liability partnership" includes a registered limited liability partnership or limited liability partnership formed pursuant to an agreement governed by the laws of another jurisdiction that is registered under the laws of that jurisdiction.

7. Registered limited liability partnership.

"Registered limited liability partnership" means a partnership that is formed pursuant to an agreement governed by the laws of this State, registered under section 325.

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

A partnership shall-mean means an association of 2 or more persons, including an association of a husband and wife, to carry on as co-owners a business for profit and includes, for all purposes of the laws of this State, a registered limited liability partnership.

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 A-3. 31 MRSA §295, as enacted by PL 1973, c. 377, §1, is repealed.

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

§295-A. Nature of partner's liability

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

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

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

2. Registered limited liability partnership. Subject to subsection 3, a partner in a registered limited liability partnership is not liable directly or indirectly including by way of indemnification, contribution, assessment or otherwise for debts, obligations and liabilities of or chargeable to the

2 partnership or another partner or partners, whether in tort,
3 contract or otherwise, arising from omissions, negligence,
4 wrongful acts, misconduct or malpractice committed by another
5 partner or an employee, agent or representative of the
6 partnership in the course of the partnership business while the
7 partnership is a registered limited liability partnership.

8 **3. Supervision or control.** Subsection 2 does not affect
9 the liability of a partner in a registered limited liability
10 partnership for the partner's own omission, negligence, wrongful
11 act, misconduct or malpractice or that of any person under the
12 partner's direct supervision and control.

13 **4. Liability of partner.** A partner in a registered limited
14 liability partnership is not a proper party to a proceeding by or
15 against a registered limited liability partnership, the object of
16 which is to recover damages or to enforce the obligations arising
17 out of the omissions, negligence, wrongful act, misconduct or
18 malpractice of the type described in subsection 2, unless the
19 partner is personally liable under subsection 3.

20
21 **Sec. A-5. 31 MRS §298, sub-§1,** as enacted by PL 1973, c. 377,
22 §1, is amended to read:

23
24 **1. Contributions.** Each partner shall must be repaid his
25 that partner's contributions, whether by way of capital or
26 advances to the partnership property and share equally in the
27 profits and surplus remaining after all liabilities, including
28 those to partners, are satisfied; and, except as provided in
29 section 295-A, subsection 2, each partner must contribute toward
30 the losses, whether of capital or otherwise, sustained by the
31 partnership according to his that partner's share in the profits.

32
33 **Sec. A-6. 31 MRS §314, sub-§§1 and 2,** as enacted by PL 1973,
34 c. 377, §1, are amended to read:

35
36 **1. Knowledge of dissolution.** The dissolution being by act
37 of any partner, the partner acting for the partnership had
38 knowledge of the dissolution; or

39
40 **2. Knowledge of death or bankruptcy.** The dissolution being
41 by the death or bankruptcy of a partner, the partner acting for
42 the partnership had knowledge or notice of the death or
43 bankruptcy; or

44
45 **Sec. A-7. 31 MRS §314, sub-§3** is enacted to read:

46
47 **3. Partner not liable for the liability.** The liability is
48 for a debt, obligation or other liability for which the partner
49 is not liable as provided in section 295-A, subsection 2.
50

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

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

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

10 A partner is discharged from any existing liability upon
dissolution of the partnership by an agreement to that effect
12 between ~~himself~~ that partner, the partnership creditor and the
person or partnership continuing the business; and such agreement
14 may be inferred from the course of dealing between the creditor
having knowledge of the dissolution and the person or partnership
16 continuing the business.

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

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

30 **Sec. A-9. 31 MRSA §320, sub-§1, ¶B**, as enacted by PL 1973, c.
32 377, §1, is amended to read:

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

36 **Sec. A-10. 31 MRSA §320, sub-§4**, as enacted by PL 1973, c.
38 377, §1, is repealed and the following enacted in its place:

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

42 A. The partners shall contribute, as provided by section
44 298, subsection 1, the amount necessary to satisfy the
liabilities; and

46 B. If any, but not all, of the partners are insolvent or,
48 not being subject to process, refuse to contribute, the
other partners shall contribute their share of the
50 liabilities and, in the relative proportions in which they

2 share the profits, the additional amount necessary to pay
3 the liabilities.

4 **Sec. A-11. 31 MRS** §§324 to 331 are enacted to read:

6 **§324. Registered limited liability partnership name**

8 **1. Name.** The limited liability partnership name must
10 contain the words "Limited Liability Partnership" or the
11 abbreviation "L.L.P." or "LLP" as the last words or letters of
12 its name.

14 **2. Prohibited names.** The limited liability partnership
15 name may not be the same as or deceptively similar to:

16 A. The name of any domestic corporation, limited
17 partnership, limited liability company or limited liability
18 partnership organized under the laws of this State or any
19 foreign corporation, foreign limited partnership, foreign
20 limited liability company or foreign limited liability
21 partnership authorized to transact business or to carry on
22 activities in this State;

24 B. A name the exclusive right to which is, at the time,
25 reserved under section 325, 404 or 604; Title 13-A, section
26 302; or Title 13-B, section 302;

28 C. A name that is registered under section 329, 406 or 606;
29 Title 13-A, section 303; or Title 13-B, section 303;

30 D. The assumed name of a corporation, limited partnership,
31 limited liability company or limited liability partnership
32 as provided in section 325, 405 or 605; Title 13-A, section
33 307; or Title 13-B, section 308; or

36 E. A mark registered under Title 10, chapter 301-A.

38 **3. Exceptions.** The name may be the same or deceptively
39 similar:

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

46 B. If a foreign limited liability partnership seeking to
47 file under the same or deceptively similar name executes and
48 files with the Secretary of State proof that it will not do
49 business in this State under that same or deceptively

2 similar name but instead will do business under an assumed
3 name, as provided for in section 325; or

4 C. If the limited liability partnership was organized under
5 the laws of this State before January 1, 1996 or the foreign
6 limited liability partnership was authorized to do business
7 in this State before January 1, 1996 and had the right to
8 use the name as its legal name before that date.

10 **§325. Formation and registration of limited liability**
11 **partnerships**

12 To become and to continue as a registered limited liability
13 partnership, a partnership shall file with the Secretary of State
14 a registration stating the name of the partnership; the address
15 of its principal office; if the partnership's principal office is
16 not located in this State, the address of a registered office and
17 the name and address of a registered agent for service of process
18 in this State, which the partnership is required to maintain; a
19 brief statement of the business in which the partnership engages;
20 any other matters that the partnership determines to include; and
21 that the partnership is applying for status as a registered
22 limited liability partnership.

23 Sections 604 to 610, sections 623 to 625, sections 627 to
24 631 and sections 756 to 758 also apply to limited liability
25 partnerships. In applying the sections to limited liability
26 partnerships, all references to a "limited liability company" are
27 deemed to be references to a "limited liability partnership" and
28 all references to "member" or "manager" are deemed to be
29 references to "partner."

30 **§326. Nature of business of limited liability partnerships**

31 A limited liability partnership may be organized under this
32 chapter for any lawful purpose. If the purpose for which a
33 limited liability partnership is organized would make it subject
34 to the Professional Service Corporation Act if it were a limited
35 liability company, it is subject to section 708 of that Act. The
36 Professional Service Corporation Act, section 708 is incorporated
37 by reference, except that all references to shareholders are
38 deemed to be references to partners and all references to
39 professional corporations are deemed to be references to
40 registered limited liability partnerships. The abbreviation P.A.
41 need not be part of the limited liability partnership's name.

42 **§327. Adoption of rules for and provision of services to limited**
43 **liability partnerships by the Secretary of State**

44 Sections 612 to 615 also apply to limited liability
45 partnerships.

2 **§328. Fees and penalties applicable to limited liability**
4 **partnerships**

6 Section 751 also applies to limited liability partnerships.
7 In applying section 751 to limited liability partnerships, all
8 references to a "foreign limited liability company" are deemed to
9 be references to a "foreign limited liability partnership."

10 **§329. Foreign limited liability partnerships**

12 Chapter 13, subchapter X also applies to limited liability
13 partnerships.

14 In applying the sections to limited liability partnerships,
15 all references to a "foreign limited liability company" are
16 deemed to be references to a "foreign limited liability
17 partnership" and all references to a "limited liability company"
18 are deemed to be references to a "limited liability
19 partnership." All references to "member" or "manager" are deemed
20 to be references to "partner."

22 **§330. Suits by and against limited liability partnerships**

24 Suit may be brought by or against a limited liability
25 partnership in its own name.

28 **§331. Application to existing foreign limited liability**
29 **partnerships; definition**

30 All foreign limited liability partnerships qualified as
31 limited liability partnerships before September 1, 1995 are
32 governed by this Act on and after September 1, 1996. By January
33 1, 1996, a partner of each foreign limited liability partnership
34 shall file with the Secretary of State an application for
35 authority to do business in this State under this Act and cancel
36 its authority to do business in this State under section 496.
37 If the foreign limited liability partnership fails to file the
38 new application for authority to do business in this State by
39 January 1, 1996, the Secretary of State may revoke the authority
40 of the limited liability partnership to do business in this State
41 under section 498.

44 **Sec. A-12. Effective date; application.** This Act takes effect
45 September 1, 1995. All limited liability partnerships formed on
46 or after that time and all foreign limited liability partnerships
47 applying for authority to transact business within this State on
48 or after that date are governed by this Act.

50 **PART B**

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

4 **2-C. Limited liability partnership name.** "Limited liability
6 partnership name" includes a limited liability partnership name,
8 reserved name, assumed name or registered name as those terms are
10 used in Title 31, sections 324 to 326.

12 **Sec. B-2. 10 MRSA §1522, sub-§1, ¶G**, as amended by PL 1993, c.
14 616, §1 and c. 718, Pt. B, §2, is repealed and the following
16 enacted in its place:

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

36 **Sec. B-3. 10 MRSA §1525, sub-§2**, as amended by PL 1993, c.
38 718, Pt. B, §3, is further amended to read:

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

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

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

74 (1) The limited partnership executes and files with
76 the Secretary of State, as provided in Title 31,
78 section 403, proof of authorization of the use of a

2 similar name by the corporation seeking to use the
similar name; or

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

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

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

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

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

42 **Sec. B-6. 13-A MRSA §301, sub-§1, ¶F** is enacted to read:

44 F. May not be the same as, or deceptively similar to, the
46 name of a domestic limited liability partnership existing
under the laws of this State or a foreign limited liability
48 partnership authorized to transact business in this State or
a name the exclusive right to which is at the time reserved
50 in the manner provided in Title 31, section 325 or the name
of a limited liability partnership that has in effect a

2 registration of its limited liability partnership name as
3 provided in Title 31, section 325 or the assumed name of a
4 limited liability partnership as provided in Title 31,
5 section 325, unless:

6 (1) The limited liability partnership executes and
7 files with the Secretary of State as provided in Title
8 31, section 324 proof of authorization of the use of a
9 similar name by the corporation seeking to use the
10 similar name; or

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

18
19 **Sec. B-7. 13-B MRSA §301, sub-§1, ¶E,** as amended by PL 1993,
20 c. 718, Pt. B, §7, is further amended to read:

21
22 E. May not be the same as, or deceptively similar to, the
23 name of any domestic limited partnership existing under the
24 laws of this State or any foreign limited partnership
25 authorized to transact business in this State, or a name the
26 exclusive right to which is, at the time, reserved in the
27 manner provided in Title 31, section 404, or the name of a
28 limited partnership that has in effect a registration of its
29 limited partnership name as provided in Title 31, section
30 406, or the assumed name of a limited partnership as
31 provided for in Title 31, section 405, unless:

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

38
39 (2) A foreign corporation seeking to file under a
40 similar or identical name executes and files with the
41 Secretary of State, as provided in sections 104 and
42 106, proof of a resolution of its board of directors
43 that it will not carry on activities under that similar
44 or identical name, but instead will carry on activities
45 under an assumed name, as provided for in section 308;
46 and

47
48 **Sec. B-8. 13-B MRSA §301, sub-§1, ¶F,** as enacted by PL 1993, c.
49 718, Pt. B, §8, is amended to read:

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

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

20 (2) A foreign corporation seeking to file under a
22 similar or identical name executes and files with the
24 Secretary of State as provided in sections 104 and 106
26 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

28

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

30

32 G. May not be the same as, or deceptively similar to, the
34 name of a domestic 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
in the manner provided in Title 31, section 325 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 325 or the assumed name of a
limited liability partnership as provided in Title 31,
section 325, unless:

42

44 (1) The limited liability partnership executes and
files with the Secretary of State as provided in Title
31, section 324 proof of authorization of the use of a
similar name by the corporation seeking to use the
similar name; or

48

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

2 Secretary of State as provided in sections 104 and 106
3 proof of a resolution of its board of directors that
4 the foreign corporation will not do business under that
5 similar or identical name but will do business under an
6 assumed name as provided in section 308.

7 **Sec. B-10. 31 MRSA §403, sub-§1, ¶C**, as amended by PL 1993, c.
8 718, Pt. B, §9, is further amended to read:

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

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

17 (2) A name the exclusive right to which is, at the
18 time, reserved under section 325, 404 or 604; Title
19 13-A, section 302; or Title 13-B, section 302;

20 (3) A name that is registered under section 325, 406
21 or 606; Title 13-A, section 303; or Title 13-B, section
22 303;

23 (4) The assumed name of a corporation or limited
24 partnership or limited liability company or limited
25 liability partnership as provided in section 325, 405
26 or 605; Title 13-A, section 307; or Title 13-B, section
27 308; or

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

29 **Sec. B-11. 36 MRSA §4641-C, sub-§16**, as amended by PL 1993, c.
30 647, §3 and c. 718, Pt. B, §11, is repealed and the following
31 enacted in its place:

32 **16. Certain corporate, partnership, limited liability**
33 **company and limited liability partnership deeds.** Deeds between a
34 family corporation, partnership, limited partnership, limited
35 liability company or limited liability partnership and its
36 stockholders, partners or members for the purpose of transferring
37 real property in the organization or dissolution or liquidation
38 of the corporation, partnership, limited partnership, limited
39 liability company or limited liability partnership under the laws
40 of this State, if the deeds are given for no actual consideration
41 other than shares, interests or debt securities of the
42 corporation, partnership, limited partnership, limited liability

2 company or limited liability partnership. For purposes of this
3 subsection, a family corporation, partnership, limited
4 partnership, limited liability company or limited liability
5 partnership is a corporation, partnership, limited partnership,
6 limited liability company or limited liability partnership in
7 which the majority of the voting stock of the corporation, or of
8 the interests in the partnership, limited partnership, limited
9 liability company or limited liability partnership is held by and
10 the majority of the stockholders, partners or members are persons
11 related to each other, including by adoption, as descendants or
12 as spouses of descendants of a common ancestor who was also a
13 transferor of the real property involved, or persons acting in a
14 fiduciary capacity for persons so related;

15 **Sec. B-12. 36 MRSA §4641-C, sub-§17,** as enacted by PL 1993, c.
16 647, §4 and c. 718, Pt. B, §12, is repealed and the following
17 enacted in its place:

18 **17. Deeds to charitable conservation organizations.** Deeds
19 for gifts of land or interests in land granted to bona fide
20 nonprofit institutions, organizations or charitable trusts under
21 state law or charter, a similar law or charter of any other state
22 or the Federal Government that meet the conservation purpose
23 requirements of Title 33, section 476, subsection 2, paragraph B
24 without actual consideration for the deeds;

25 **Sec. B-13. 36 MRSA §4641-C, sub-§§18 and 19** are enacted to
26 read:

27 **18. Limited liability company deeds.** Deeds to a limited
28 liability company from a corporation, a general or limited
29 partnership, a limited liability partnership or another limited
30 liability company, when the grantor or grantee owns an interest
31 in the limited liability company in the same proportion as the
32 grantor's or grantee's interest in or ownership of the real
33 estate being conveyed; and

34 **19. Limited liability partnership deeds.** Deeds to a limited
35 liability partnership from a corporation, a general or limited
36 partnership, a limited liability company or another limited
37 liability partnership, when the grantor or grantee owns an
38 interest in the limited liability partnership in the same
39 proportion as the grantor's or grantee's interest in or ownership
40 of the real estate being conveyed.

41 STATEMENT OF FACT

42 This bill allows the formation of limited liability
43 partnerships under the Uniform Partnership Act. This bill also
44

2 conforms amendments to other chapters of the statutes and clarifies that the transfer of real property within a limited liability partnership is not a taxable event.