

MAINE STATE LEGISLATURE

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L.D. 1545

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DATE: June 19, 1995

(Filing No. S-295)

JUDICIARY

Reported by: Senator MILLS of Somerset for the Committee.

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

COMMITTEE AMENDMENT "A" to S.P. 571, L.D. 1545, Bill, "An Act to Update and Clarify the Corporate Laws"

Amend the bill in section 2 in subsection 5 by striking out all of the last paragraph (page 2, lines 7 to 14 in L.D.) and inserting in its place the following:

'If proof of a resolution is not appropriate, then the Secretary of State may accept without a filing fee a letter from the entity controlling use of the corporation name or mark in this State. The letter must state that a franchise relationship exists and must be dated and signed by an officer. If no franchise relationship exists, then the letter must demonstrate how the corporation attempting to file is affiliated with the controlling entity.'

Further amend the bill by striking out all of section 8 and inserting in its place the following:

'Sec. 8. 13-B MRSA §801-A is enacted to read:

§801-A. Amendment before organizational meeting

The articles of incorporation may be amended before the organizational meeting by the following procedures.

1. Timing. The articles of incorporation may be amended:

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A. If the initial directors were not named in the articles of incorporation, before the election of the initial directors; or

B. If the initial directors were named in the articles of incorporation, before the organizational meeting of the board of directors required by section 406.

2. Authority to amend. The articles of incorporation may be amended by:

A. The incorporator; or

B. If there is more than one incorporator, by 2/3 of the incorporators.

3. Accepted signature. If the incorporators do not sign the document, the Secretary of State shall accept the signature of either the clerk or secretary of the corporation.'

Further amend the bill by striking out all of section 21 and inserting in its place the following:

'Sec. 21. 31 MRSA §645, sub-§4 is enacted to read:

4. Choosing personal liability. All or specified members of a limited liability company may be liable in their capacity as members for all or specified debts, obligations or liabilities of the company if:

A. A statement to that effect is contained in the articles of organization; and

B. Any member so liable has either voted for the adoption of the provision or has consented in writing to be bound by the provision.

A member of a limited liability company may act as guarantor or surety, may provide collateral or may otherwise assume responsibility for the debts, obligations or liabilities of the limited liability company whether or not a statement under paragraph A exists or a vote or consent under paragraph B has occurred.'

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

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FISCAL NOTE

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The changes to the corporate and Uniform Commercial Code filing requirements will have no net effect on General Fund revenues from the collection of these filing fees.'

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STATEMENT OF FACT

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This amendment clarifies language contained in the original bill.

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The Secretary of State may accept for filing a letter explaining the franchise relationship between the entity controlling the corporation mark or name and the corporation attempting to file to use that name or mark to transact business in the State. The Secretary of State will not charge a fee for filing the letter. This is consistent with the bill and with current law. This amendment also deletes a reference to a franchise relationship existing "per se."

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This amendment clarifies when and how the articles of a nonprofit corporation may be amended before it is actually incorporated.

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This amendment revises the language allowing a limited liability company to choose to not limit the liability of its members. This may be preferable based on the tax consequences of other organizational choices of the limited liability company. The procedure allowing this choice does not preclude a member of the limited liability company from voluntarily acting as guarantor or surety, providing collateral or otherwise assuming responsibility for debts, obligations and liabilities of the limited liability company.

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