

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1545

S.P. 571

In Senate, May 23, 1995

An Act to Update and Clarify the Corporate Laws.

Submitted by the Department of the Secretary of State pursuant to Joint Rule 24.
Reference to the Committee on Judiciary suggested and ordered printed.

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

MAY M. ROSS
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2 **Sec. 1. 11 MRSA §9-407, sub-§2**, as amended by PL 1993, c. 616,
4 §3, is further amended to read:

6 (2) Upon the written request of any person, the filing
7 officer shall issue ~~a-certificate-of-information~~ an information
8 request report, in such form as the Secretary of State may
9 approve, showing whether there is on file on the date and hour
10 stated therein any presently effective financing statement naming
11 a particular debtor and any statement of assignment thereof and
12 if there is, giving the date and hour of filing of each such
13 statement and the names and addresses of each secured party
14 therein. The uniform fee for ~~certification~~ an information
15 request report is ~~\$10~~ \$5, plus 50¢ for each page of the
16 ~~certificate-after-the-first-page~~ report. Upon request the filing
17 officer shall furnish a copy of any filed financing statement,
18 continuation statement, termination statement, statement of
19 assignment or statement of release for a fee of \$2, plus 50¢ for
20 each page of the copy after the first page.

22 Notwithstanding this subsection, if the filing officer is a
23 municipal clerk or a register of deeds, issuance of the
24 certificate of information is discretionary.

26 Upon reasonable request and within the existing ability of the
27 office of the Secretary of State to respond, the filing officer
28 shall furnish to any municipal clerk, without charge and for
29 municipal purposes only, a copy of any filed financing statement,
30 continuation statement, termination statement, statement of
31 assignment or statement of release.

32 The uniform fee for certification is \$5 for a short-form
34 certificate and \$10 for a specially worded certificate.

36 **Sec. 2. 13-A MRSA §301, sub-§5**, as amended by PL 1981, c. 544,
37 §2, is further amended to read:

38 5. Any corporation may grant to any domestic corporation or
39 any foreign corporation authorized to transact business in this
40 State, or to any person, by executing and filing with the
41 Secretary of State, as provided in sections 104 and 106, proof of
42 a resolution of its board of directors making such grant, the
43 exclusive right thereafter to authorize the use of a name similar
44 to that of the granting corporation by any other corporation or
45 corporations, or person for use as a name or as a trade mark or
46 service mark as defined in Title 10, chapter 301-A. Any such
47 resolution ~~shall-be~~ is revocable unless by its terms it is
48 irrevocable. ~~No-proof~~ Proof of a subsequent resolution by the
49 board of directors of the granting corporation ~~shall~~ may not
50

2 thereafter be required under subsection 1, paragraph B, until and
unless the granting corporation shall, in the case of a revocable
4 resolution, ~~revoke~~ revokes the grant by executing and filing in
the manner provided under this section proof of a further
6 resolution of its board of directors revoking the grant.

8 If proof of a resolution is not appropriate, then the Secretary
of State may accept a letter from the entity controlling use of
10 the corporation name or mark in this State. The letter must
state that a franchise relationship exists, must be dated and
12 signed by an officer and has no filing fee. If no franchise
relationship exists per se, then the letter must demonstrate how
14 the corporation attempting to file is affiliated with the
controlling entity.

16 **Sec. 3. 13-A MRSA §303, sub-§2**, as amended by PL 1993, c. 316,
§17, is further amended to read:

18 2. Such registration is made by delivering for filing, in
20 accordance with section 106, an application for registration
executed in accordance with section 104, setting forth the name
22 of the corporation, the current principal or registered office,
the state or territory under the laws of which it is
24 incorporated, the date of its incorporation, a statement that it
is actually doing business, and a brief statement of the business
26 in which it is engaged, and a certificate setting forth that such
corporation is in good standing under the laws of the state or
28 territory wherein it is organized, executed by the secretary of
state of such state or territory or by such other official as may
30 have custody of the records pertaining to corporations.

32 **Sec. 4. 13-A MRSA §803, sub-§1**, as enacted by PL 1971, c. 439,
§1, is amended to read:

34 1. Prior to the election of the initial directors, if they
36 were not named in the articles of incorporation, or prior to the
organizational meeting of the board of directors required by
38 section 407, if the initial directors were named in the articles,
the articles of incorporation may be amended by the incorporator
40 or, if there is more than one incorporator, then by 2/3 of the
incorporators. If the incorporators do not sign the document,
42 the Secretary of State shall accept the signature of the clerk.

44 **Sec. 5. 13-A MRSA §1302, sub-§1**, as amended by PL 1993, c.
46 616, §5, is further amended to read:

48 1. A corporation required to deliver an annual report for
filing as provided by section 1301 that fails to deliver its
properly completed annual report to the Secretary of State shall
50 pay, in addition to the regular annual report fee, the sum of

2 \$25, providing the report is received by the Secretary of State
3 prior to revocation or suspension. Upon failure to file the
4 annual report and to pay the annual report fee or the penalty,
5 the Secretary of State, notwithstanding Title 4, chapter 25 and
6 Title 5, chapter 375, shall revoke a foreign corporation's
7 authority to do business in this State and suspend a domestic
8 corporation from doing business. The Secretary of State shall
9 use the procedures set forth in section 1210, relative to
10 revoking the right of foreign corporations to do business in this
11 State, for suspending domestic corporations. A foreign
12 corporation whose authority to do business in this State has been
13 revoked under this subsection that wishes to do business again in
14 this State must be authorized as provided in section 1202. A
15 domestic corporation that has been suspended under this
16 subsection may be reinstated by filing the current annual report,
17 together with the current annual filing fee, and by paying the
18 sum reinstatement fee of \$125 for each year the corporation
19 failed to file an annual report. The maximum fee--fer
20 reinstatement fee may not exceed \$500, regardless of the number
of delinquent reports or the period of delinquency.

22 **Sec. 6. 13-B MRSA §303, sub-§2**, as amended by PL 1993, c. 316,
23 §37, is further amended to read:

24 **2. Application.** The registration must be made by delivering
25 for filing, in accordance with section 106, an application for
26 registration executed in accordance with section 104 setting
27 forth the name of the corporation, the current principal or
28 registered office, the state or territory under the laws of which
29 it is incorporated, the date of its incorporation, a statement
30 that it is actually engaged in corporate activities, a brief
31 statement of the activities in which it is engaged and a
32 certificate setting forth that such corporation is in good
33 standing under the laws of the state or territory wherein it is
34 organized, executed by the Secretary of State of such state or
35 territory or by such other official as may have custody of the
36 records pertaining to corporations.

38 **Sec. 7. 13-B MRSA §308, sub-§7, ¶B**, as enacted by PL 1993, c.
39 316, §41, is amended to read:

42 B. That it no longer intends to ~~transact business~~ carry on
43 activities under the assumed name; and

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

46 **§801-A. Amendment before organizational meeting**

48 Prior to the election of the initial directors, if they were
50 not named in the articles of incorporation, or prior to the

2 organizational meeting of the board of directors required by
3 section 406, if the initial directors were named in the articles,
4 the articles of incorporation may be amended by the incorporator
5 or, if there is more than one incorporator, by 2/3 of the
6 incorporators. If the incorporators do not sign the document,
7 the Secretary of State shall accept the signature of either the
8 clerk or secretary.

9 **Sec. 9. 13-B MRSA §1101-A** is enacted to read:

10 **§1101-A. Voluntary dissolution by incorporators**

11 A corporation that has not carried on activities may be
12 voluntarily dissolved by its incorporator or incorporators at any
13 time after the filing date of its articles of incorporation in
14 the following manner.

15 **1. Articles of dissolution.** Articles of dissolution must
16 be executed by a majority of the incorporators and delivered for
17 filing, as provided by sections 104 and 106, and must set forth:

18 A. The name of the corporation;

19 B. The filing date of its articles of incorporation;

20 C. That the corporation has not carried on activities;

21 D. That no debts of the corporation remain unpaid; and

22 E. That a majority of the incorporators consent to the
23 dissolution of the corporation.

24 **2. Corporation's existence ceases.** On the filing date of
25 the articles of dissolution, the existence of the corporation
26 ceases.

27 **3. No vote or action of directors.** Dissolution pursuant to
28 this section does not require any vote or action of the directors.

29 **Sec. 10. 13-B MRSA §1301, sub-§1, ¶C,** as repealed and replaced
30 by PL 1993, c. 680, Pt. A, §23, is amended to read:

31 C. The names and business or residence addresses, of the
32 president, the treasurer, the registered agent and, the
33 secretary or clerk, and directors of the corporation,
34 including the street or rural route number, town or city and
35 state.

2 **Sec. 11. 31 MRSA §6**, as amended by PL 1981, c. 698, §153, is
further amended to read:

4 **§6. Prohibition of certain names**

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

14 **Sec. 12. 31 MRSA §403, sub-§1, ¶A**, as enacted by PL 1991, c.
16 552, §2 and affected by §4, is amended to read:

18 A. Must contain the words "~~Limited-Partnership~~" "Limited
Partnership," unless filing a registration of name under
20 section 406;

22 **Sec. 13. 31 MRSA §406, sub-§2, ¶B**, as enacted by PL 1991, c.
24 552, §2 and affected by §4, is amended to read:

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

28 **Sec. 14. 31 MRSA §422, sub-§7** is enacted to read:

30 7. Change in address of general partners. If there is a
change in the address of one or more of the general partners from
32 that appearing on the record of the office of the Secretary of
State, the certificate of limited partnership must be amended to
34 set forth the new business, residence or mailing address of each
general partner.

36 **Sec. 15. 31 MRSA §495**, as amended by PL 1993, c. 316, §61, is
38 further amended to read:

40 **§495. Amendments to application**

42 If any statement in the application for authority to do
business of a foreign limited partnership ~~becomes--inaccurate~~
44 requires change as a result of subsequent events, the foreign
limited partnership shall promptly file with the Secretary of
46 State a certificate, executed by a general partner, ~~correcting~~
amending the statement.

48 If there is a change in the address of one or more of the
50 general partners from that appearing on the record of the office
of the Secretary of State, the application must be amended to set
52 forth the new business, residence or mailing address of each

2 partner. A general partner must also file an amendment to the
4 application if the address of the registered or principal office
6 of the limited partnership changes in the jurisdiction of its
8 organization.

6 **Sec. 16. 31 MRSA §526, sub-§7**, as amended by PL 1993, c. 316,
8 §67, is further amended to read:

10 **7. Certificate of limited partnership, amendment or**
12 **cancellation.** For filing of a certificate of limited partnership
14 under section 421, a certificate of amendment under section 422,
16 except as provided in subsection 5, or a certificate of
18 cancellation under section 423, a fee in the amount of \$250. For
20 filing of a certificate of amendment under section 422,
22 subsection 7, a fee in the amount of \$20;

16 **Sec. 17. 31 MRSA §526, sub-§8**, as amended by PL 1993, c. 316,
18 §69, is further amended to read:

20 **8. Foreign limited partnerships.** For filing of an
22 application for authority to do business as a foreign limited
24 partnership under section 492, a certificate of amendment under
26 section 495, except as provided in subsection 9, or a certificate
28 of cancellation under section 496, a fee in the amount of \$250.
30 For filing a certificate of amendment under section 495 to change
32 the address of a general partner or to change the address of the
34 registered or principal office in the jurisdiction of its
36 organization, a fee in the amount of \$30;

30 **Sec. 18. 31 MRSA §530, sub-§1**, as enacted by PL 1991, c. 780,
32 Pt. U, §33, is amended to read:

34 **1. Failure to file annual report.** A limited partnership
36 required to deliver an annual report for filing as provided by
38 section 529 that fails to deliver its properly completed annual
40 report to the Secretary of State shall pay, in addition to the
42 regular annual report fee, the sum of \$25, providing the report
44 is received by the Secretary of State prior to revocation or
46 suspension of the limited partnership. Upon failure to file the
48 annual report and to pay the annual report fee or the penalty,
50 the Secretary of State, notwithstanding Title 4, chapter 25 and
Title 5, chapter 375, shall revoke a foreign limited
partnership's authority to do business in this State and suspend
a domestic limited partnership from doing business. The
Secretary of State shall use the procedures set forth in section
498, subsection 2, relative to revoking the right of foreign
limited partnerships to do business in this State, for suspending
domestic limited partnerships. A foreign limited partnership
whose authority to do business in this State has been revoked
under this subsection that wishes to do business again in this

2 State must be authorized as provided in section 492. A domestic
3 limited partnership that has been suspended under this subsection
4 may be reinstated by filing the current annual report together
5 with the current annual filing fee and by paying the sum
6 reinstatement fee of \$125 for each year the limited partnership
7 failed to file an annual report. The maximum reinstatement fee
8 may not exceed \$500, regardless of the number of delinquent
reports or the period of delinquency.

10 **Sec. 19. 31 MRSA §603, sub-§1, ¶A**, as enacted by PL 1993, c.
11 718, Pt. A, §1, is amended to read:

12 A. Must contain the words "~~Limited--Liability--Company~~"
13 "Limited Liability Company," unless filing a registration of
14 name under section 606;

15 **Sec. 20. 31 MRSA §606, sub-§2, ¶¶B and E**, as enacted by PL
16 1993, c. 718, Pt. A, §1, are amended to read:

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

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

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

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

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

28 B. Any member so liable has either voted for the adoption
29 of the provision or consented in writing:

30 (1) To the adoption of the provision; or

31 (2) To be bound by the provision.

32 The absence of either statement in the articles of organization
33 or the consent or vote in no way affects or impairs the ability
34 of a member to act as a guarantor or a surety for, provide
35 collateral for or otherwise be liable for the debts, obligations
36 or liabilities of a limited liability company.

37 **Sec. 22. 31 MRSA §715**, as enacted by PL 1993, c. 718, Pt. A,
38 §1, is amended to read:

2 **§715. Amendments to application**

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

10 **Sec. 23. 31 MRSA §751, sub-§12**, as enacted by PL 1993, c. 718,
12 Pt. A, §1, is amended to read:

14 **12. Foreign limited liability companies.** For filing of an
16 application for authority to do business as a foreign limited
liability company under section 712, a certificate of amendment
18 under section 715, except as provided in subsection 13 or a
certificate of cancellation under section 717, a fee of \$250.
20 For filing a certificate of amendment under section 715 to change
the address of the registered or principal office in the
jurisdiction of its organization, a fee in the amount of \$30;

22 **Sec. 24. 31 MRSA §758, sub-§1**, as enacted by PL 1993, c. 718,
24 Pt. A, §1, is amended to read:

26 **1. Failure to file annual report.** A limited liability
company required to deliver an annual report for filing as
28 provided by section 757 that fails to deliver its properly
completed annual report to the Secretary of State shall pay, in
30 addition to the regular annual report fee, the sum of \$25, if the
report is received by the Secretary of State prior to revocation
32 or suspension of the limited liability company. Upon failure to
file the annual report and to pay the annual report fee or the
34 penalty, the Secretary of State, notwithstanding Title 4, chapter
25 and Title 5, chapter 375, shall revoke a foreign limited
36 liability company's authority to do business in this State and
suspend a domestic limited liability company from doing
38 business. The Secretary of State shall use the procedures set
forth in section 719, subsection 2, ~~related~~ relative to revoking
40 the right of foreign limited liability companies to do business
in this State, for suspending domestic limited liability
42 companies. A foreign limited liability company whose authority
to do business in this State has been revoked under this
44 subsection that wishes to do business again in this State must be
authorized as provided in section 712. A domestic limited
46 liability company that has been suspended under this subsection
may be reinstated by filing the current annual report together
48 with the current annual filing fee and by paying the sum
reinstatement fee of \$125 for each year the limited liability
50 company failed to file an annual report. The maximum
reinstatement fee may not exceed \$500, regardless of the number
52 of delinquent reports or the period of delinquency.

STATEMENT OF FACT

2

4 This bill amends the laws governing business entities in the following ways.

6

8 Section 1 provides for a uniform fee for a request for information on file. Currently, requests for such information that do not reflect any presently effective financing statements are processed at no charge. These requests can be lengthy and time-consuming for staff to provide at no cost. It also alters language to provide for a uniform fee for certification similar to the fee in the business, nonprofit, limited partnership and limited liability company laws.

14

16 Section 2 allows the Secretary of State the formal authority to accept consent for the use of a corporation name or mark by means other than a corporate resolution.

18

20 Section 3 alters language to require the current principal or registered office on the application for registration of name. The law already requires this information on the application for termination of a registered name.

22

24 Section 4 allows the clerk of a corporation to sign an amendment prior to an organizational meeting.

26

28 Section 5 clarifies the law that the maximum reinstatement fee of \$500 is in addition to the current annual report fee.

30

32 Section 6 alters language to require the current principal of a registered office on the application for a registration of a name. The law already requires this information on the application for a termination of a registered name.

34

36 Section 7 alters the language to reflect the appropriate wording used for a nonprofit corporation.

38

40 Section 8 allows a nonprofit corporation to file an amendment prior to an organizational meeting.

42

44 Section 9 allows dissolution of a nonprofit corporation by its incorporators prior to carrying on activities.

46

48 Section 10 alters the language to require that the names and business or residence addresses of directors be listed on the annual report. Currently the law requires that nonprofit corporations maintain at least 3 directors.

50

Section 11 alters language governing the use of the term "limited liability company" as part of a limited liability company's name.

2 Section 12 allows for a registered name to omit the words
"limited partnership."

4 Section 13 alters language to require the current principal
or registered office to be included on the application for a
6 registration of name. The law already requires this information
on the application for termination of a registered name.

8 Section 14 sets the change of address of a general partner
10 apart from the usual amendment that is required of a domestic
limited partnership.

12 Section 15 alters the language to correct word usage for
14 amendments and sets change of address of a general partner or
change of address of the registered or principal office in the
16 jurisdiction of organization apart from the usual amendment that
is required of a foreign limited partnership.

18 Section 16 allows a fee of \$20 to be assessed for address
20 changes for a domestic limited partnership instead of the
customary \$250 charged for other changes.

22 Section 17 allows a fee of \$30 to be assessed for address
24 changes for a foreign limited partnership instead of the
customary \$250 charged for other changes.

26 Section 18 alters language to cap the reinstatement fee at a
28 maximum fee of \$500 in addition to the current annual filing
fee. This maximum fee currently exists in the Maine Business
30 Corporation Act.

32 Section 19 governs the use of the term "limited liability
34 company" as part of the name of a foreign limited liability
company. Foreign entities file registrations in Maine for name
36 protection only and are not allowed to do business. The names
filed with the Secretary of State must agree exactly with the
38 name taken from the good standing of the jurisdiction and
currently there is no mechanism to allow otherwise.

40 Section 20 alters language to conform with the limited
partnership law and to require the current principal or
42 registered office to be included on the application for
registration of name. The law already requires this information
44 on the application for termination of registered name.

46 Section 21 allows limited liability companies some
flexibility in qualifying for treatment as a partnership with the
48 Internal Revenue Service.

50 Section 22 alters language to correct word usage for
amendments.

2 Section 23 allows a fee of \$30 to be assessed for a change
of address of the registered or principal office in the
4 jurisdiction of organization instead of the customary \$250
charged for other changes for foreign limited liability companies.

6 Section 24 alters language to cap the reinstatement fee at a
maximum fee of \$500 in addition to the current annual filing
8 fee. This maximum fee currently exists in the Maine Business
Corporation Act.