

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

SECOND REGULAR SESSION-1998

Legislative Document

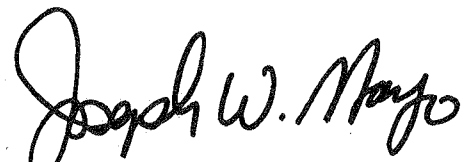
No. 2097

H.P. 1498

House of Representatives, January 20, 1998

An Act to Simplify Corporate Filings.

Submitted by the Secretary of State pursuant to Joint Rule 204.
Reference to the Committee on Judiciary suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative THOMPSON of Naples.

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

Sec. 1. 10 MRSA §1522, sub-§1, ¶¶H and I, as enacted by PL 1993, c. 616, §2, are amended to read:

H. Consists of or comprises language that is obscene, contemptuous, profane or prejudicial; or

I. Inappropriately promotes abusive or unlawful activity; or

Sec. 2. 10 MRSA §1522, sub-§1, ¶J is enacted to read:

J. Notwithstanding paragraph G, is identical to a corporate, limited liability company, limited liability partnership or limited partnership name, unless the corporation, limited liability company, limited liability partnership or limited partnership is the same entity as the applicant that is seeking to register the mark and files proof of ownership with the Secretary of State.

Sec. 3. 10 MRSA §1525, sub-§1, as amended by PL 1997, c. 376, §3, is further amended to read:

1. **Recording.** Any mark and its registration are assignable with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark, except that a corporation, limited liability company, limited liability partnership or limited partnership that is the registered owner or holder of a mark that is the same as its true entity name or assumed name may not assign the mark to a different owner. Assignment must be by an instrument in writing duly executed and may be recorded with the Secretary of State upon the payment of a fee of \$40 payable to the Treasurer of State. The Secretary of State, upon recording of an assignment, shall issue an attested copy in the name of the assignee. The assignment is valid for the remainder of the term of the registration or of the last renewal. An assignment of any registration under this chapter is void as against any subsequent purchaser for valuable consideration without notice, unless it is recorded with the Secretary of State within 3 months after the date thereof or prior to the subsequent purchase.

Sec. 4. 13-A MRSA §301, sub-§1, ¶C, as repealed and replaced by PL 1993, c. 316, §13, is amended to read:

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

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

12 (2) A foreign corporation seeking to file under a
14 similar or identical name executes and files with the
16 Secretary of State, as provided in sections 104 and
18 106, proof of a resolution of its board of directors
that it will not do business under that similar or
assumed name, but instead will do business under an
assumed name, as provided for in section 307; and or

20 (3) The registered owner or holder of the mark is the
22 same person or entity as the corporation seeking to use
24 the same or similar name and files proof of ownership
26 with the Secretary of State;

28 **Sec. 5. 13-B MRSA §301, sub-§1, ¶C,** as repealed and replaced
30 by PL 1993, c. 316, §32, is amended to read:

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

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

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

52 (3) The registered owner or holder of the mark is the
54 same person or entity as the corporation seeking to use
56 the same or similar name and files proof of ownership
58 with the Secretary of State;

60 **Sec. 6. 31 MRSA §403, sub-§2, ¶B,** as corrected by RR 1995, c.
2, §74, is amended to read:

62 B. If a foreign limited partnership seeking to file under
64 the same or deceptively similar name executes and files with

2 the Secretary of State proof that it will not do business in
3 this State under that same or deceptively similar name but
4 instead will do business under an assumed name as provided
5 in section 405; ~~or~~

6 **Sec. 7. 31 MRSA §403, sub-§2, ¶C**, as enacted by PL 1991, c.
7 552, §2 and affected by §4, is amended to read:

8
9 C. If the limited partnership was organized under the laws
10 of this State prior to January 1, 1992 or the foreign
11 limited partnership was authorized to do business in this
12 State prior to January 1, 1992 and had the right to use the
13 name as its legal name prior to January 1, 1992; ~~or~~

14 **Sec. 8. 31 MRSA §403, sub-§2, ¶D** is enacted to read:

15
16 D. If the registered owner or holder of the mark is the
17 same person or entity as the limited partnership seeking to
18 use the same or similar name and files proof of ownership
19 with the Secretary of State.

20
21 **Sec. 9. 31 MRSA §603, sub-§2, ¶¶B and C**, as enacted by PL 1993,
22 c. 718, Pt. A, §1, are amended to read:

23
24 B. If a foreign limited liability company seeking to file
25 under the same or deceptively similar name executes and
26 files with the Secretary of State proof that it will not do
27 business in this State under that same or deceptively
28 similar name but instead will do business under an assumed
29 name, as provided for in section 605; ~~or~~

30
31 C. If the foreign limited liability company was authorized
32 to do business in this State before January 1, 1995 and had
33 the right to use the name as its legal name before that
34 date; ~~or~~

35 **Sec. 10. 31 MRSA §603, sub-§2, ¶D** is enacted to read:

36
37 D. If the registered owner or holder of the mark is the
38 same person or entity as the limited liability company
39 seeking to use the same or similar name and files proof of
40 ownership with the Secretary of State.

41
42 **Sec. 11. 31 MRSA §621**, as enacted by PL 1993, c. 718, Pt. A,
43 §1, is amended to read:

44
45 **§621. Formation**

46
47 One or more persons may form a limited liability company by
48 signing and filing articles of organization with the Secretary of
49 State.

State. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. The minimum number of members for a limited liability company created under this Act is one.

Sec. 12. 31 MRSA §626, as amended by PL 1997, c. 376, §50, is repealed.

Sec. 13. 31 MRSA §641, sub-§§1 and 2, as enacted by PL 1993, c. 718, Pt. A, §1, are amended to read:

1. Actions of members. Except as provided in subsection 2 ~~or in a limited liability company statement of authority as described in section 626~~, each member is an agent of a limited liability company for the purpose of its business or affairs, and the act of a member, including, but not limited to, the execution in the name of a limited liability company of an instrument, for carrying on the business or affairs of that limited liability company of which that person is a member, binds a limited liability company, unless the acting member has no authority to act for the limited liability company in a particular matter, and the person with whom that member is dealing has knowledge of the fact that the member has no such authority.

2. Management vested in one or more managers. ~~Subject to a limited liability company statement of authority as described in section 626, if~~ If the articles of organization provide that management of a limited liability company is vested in a manager or managers:

A. A member, acting solely in the capacity as a member, is not an agent of a limited liability company; and

B. Each manager is an agent of a limited liability company for the purpose of its business or affairs, and the act of a manager, including, but not limited to, the execution in the name of that limited liability company of an instrument, for carrying on in the usual way the business or affairs of that limited liability company of which that person is the manager, binds that limited liability company, unless the acting manager has no authority to act for the limited liability company in a particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

Sec. 14. 31 MRSA §642, sub-§§1 and 2, as enacted by PL 1993, c. 718, Pt. A, §1, are amended to read:

1. Admission or representation by member. Except as provided in subsection 2 ~~or in a limited liability company~~

statement-of-authority-as-described-in-section-626, an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of a member's authority as provided for by this chapter is evidence against that limited liability company.

2. Admission or representation by manager. Subject-to-a limited-liability-company-statement-of-authority-as-described-in section-626,--if If the articles of organization provide that management of a limited liability company is vested in a manager or managers:

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

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

Sec. 15. 31 MRSA §643, sub-§§1 and 2, as enacted by PL 1993, c. 718, Pt. A, §1, are amended to read:

1. Notice to and knowledge of members. Except as provided in subsection 2 or-in-a-limited-liability-company-statement-of authority-as-described-in-section-626, notice to a member of a matter relating to the business or affairs of a limited liability company, and the knowledge of the member acting in the particular matter acquired while a member or of which the person had knowledge at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

2. Notice to and knowledge of managers. Subject-to-a limited-liability-company-statement-of-authority-as-described-in section-626,--if If the articles of organization provide that management of a limited liability company is vested in a manager or managers:

A. Notice to a manager of a matter relating to the business or affairs of the limited liability company, and the knowledge of the manager acting in the particular matter, acquired while a manager or of which the person had knowledge at the time of becoming a manager and the

2 knowledge of any other manager who reasonably could and
4 should have communicated it to the acting manager, operate
6 as notice to or knowledge of the limited liability company
except in the case of a fraud on the limited liability
company committed by or with the consent of that manager; and

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

12 **Sec. 16. 31 MRSA §652, sub-§2, ¶¶A and B,** as enacted by PL
14 1993, c. 718, Pt. A, §1, are amended to read:

16 A. If a manager, more than one half by number of the
18 disinterested managers or more than one half by number of
the disinterested members, or such other number as is
20 provided in the operating agreement or articles of
organization, but in no event less than a majority in
interest; or

22 B. If a member, more than one half by number of the
24 disinterested members, or such other number as is provided
in the operating agreement or articles of organization, but
26 in no event less than a majority in interest.

28 **Sec. 17. 31 MRSA §652, sub-§3,** as enacted by PL 1993, c. 718,
Pt. A, §1, is amended to read:

30 **3. No waiver or modification of standard.** The Except as
32 provided in subsection 2, the provisions of this section may not
be modified or waived in an operating agreement, the articles of
organization or otherwise.

34 **Sec. 18. 31 MRSA §701, sub-§3,** as enacted by PL 1993, c. 718,
36 Pt. A, §1, is repealed.

38 **Sec. 19. 31 MRSA §751, sub-§10,** as enacted by PL 1993, c. 718,
40 Pt. A, §1, is repealed.

42 **Sec. 20. 31 MRSA §803, sub-§2, ¶¶B and C,** as enacted by PL
1995, c. 633, Pt. B, §1, are amended to read:

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

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

Sec. 21. 31 MRSA §803, sub-§2, ¶D is enacted to read:

D. If the registered owner or holder of the mark is the same person or entity as the limited liability partnership seeking to use the same or similar name and files proof of ownership with the Secretary of State.

Sec. 22. 31 MRSA §871, sub-§8, as enacted by PL 1995, c. 633, Pt. B, §1, is amended to read:

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. For filing a certificate of amendment under section 823 to change the name or address of the contact partner, the fee is \$20;

Sec. 23. 31 MRSA §871, sub-§10, as amended by PL 1997, c. 376, §71, is further amended to read:

10. Foreign limited liability partnerships. For filing an application for authority to do business as a foreign limited liability partnership under section 852, a certificate of amendment under section 855, except as provided in subsection 12, or a certificate of cancellation under section 857, a fee of \$250. For filing a certificate of amendment under section 855 to change the address of the registered or principal office or to change the name or address of the contact partner, the fee is \$30;

SUMMARY

This bill allows a corporation, limited partnership, limited liability company or limited liability partnership to be the owner of a mark that is identical to that entity's own true name or assumed name.

The bill clarifies that a change in the name or address of a contact partner of a limited liability partnership may be filed upon payment of a \$20 fee for domestic limited liability partnerships or a \$30 fee for foreign limited liability partnerships, rather than the fee of \$250 required for other amendments.

2 The bill also clarifies the minimum number of members that
is required to create a limited liability company. The bill also
4 adds language that will repeal the required filing of a statement
of authority by a limited liability company. Current law allows
6 no variance when a manager or member has a conflict of interest.
This bill amends that by making the language more comparable to
8 the parallel provision in the Maine Business Corporation Act.
The bill also repeals the Maine Revised Statutes, Title 31,
10 section 701, subsection 3 and section 751, subsection 10.