

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

3  
H.S.

DATE: 3-29-00

(Filing No. H-965)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
119TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1639, L.D. 2290, Bill, "An Act to Improve Business Entity Filings and Authorize Mergers, Consolidations and Conversions of Various Business Entities"

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 13-A MRSA §908, sub-§1, ¶A, as enacted by PL 1971, c. 439, §1, is amended to read:

A. Any plan of merger or consolidation in which the corporation is participating, including a merger or consolidation pursuant to section 911, and any conversion of a corporation under section 912; or

Sec. 2. 13-A MRSA §908, sub-§3, ¶A, as enacted by PL 1971, c. 439, §1, is amended to read:

A. If such corporation is, on the date of filing of the articles of merger, the owner of all the outstanding shares of the other corporations or all of the ownership interest in the other business entities, domestic or foreign, which that are parties to the merger, or'

Further amend the bill in section 1 in that part designated "§911." by striking out all of subsection 1 and inserting in its place the following:

1. Definitions. For purposes of this section, "other business entity" means any association or legal entity, other than a domestic or foreign corporation, organized to conduct business, including, without limitation, a limited partnership,

COMMITTEE AMENDMENT

2 general partnership, limited liability partnership, limited  
3 liability company, joint venture, joint stock company and  
4 business trust authorized by applicable statutes to merge or  
5 consolidate with a corporation.'

6 Further amend the bill in section 1 in that part designated  
7 "**§911.**" in subsection 3 in the first line (page 1, line 22 in  
8 L.D.) by inserting after the following: "merger" the following:  
9 'or consolidation'

10 Further amend the bill in section 1 in that part designated  
11 "**§911.**" in subsection 3 by striking out all of paragraph D (page  
12 1, lines 38 to 50 and page 2, lines 1 to 3 in L.D.) and inserting  
13 in its place the following:

14  
15 'D. The manner of converting the shares of stock of each  
16 corporation and the ownership interests of each other  
17 business entity into shares or other ownership interests of  
18 the entity surviving or resulting from the merger or  
19 consolidation. If any shares of any corporation or any  
20 ownership interests of any other business entity are not to  
21 be converted solely into shares, ownership interests or  
22 other securities of the entity surviving or resulting from  
23 the merger or consolidation, the agreement or plan must  
24 state the cash, property, rights or securities of any  
25 corporation or other business entity that the holders of the  
26 shares or ownership interests are to receive in connection  
27 with the merger or consolidation; and'

28  
29 Further amend the bill in section 1 in that part designated  
30 "**§911.**" in subsection 4 by inserting at the end the following:  
31 'If, as a result of the merger or consolidation, one or more  
32 shareholders of a domestic corporation would become subject to  
33 personal liability for the obligations or liabilities of any  
34 other person or entity, approval of the plan of merger or  
35 consolidation must require the execution by each such shareholder  
36 of a separate written consent to become subject to such personal  
37 liability.'

38  
39 Further amend the bill in section 1 in that part designated  
40 "**§911.**" in subsection 5 in paragraph A in the first line (page 2,  
41 line 35 in L.D.) by inserting after the following: "each" the  
42 following: 'corporation or other'

43  
44 Further amend the bill in section 1 in that part designated  
45 "**§911.**" in subsection 5 in paragraph B in the 2nd line (page 2,  
46 line 39 in L.D.) by inserting after the following: "each" the  
47 following: 'corporation or other'

R & S

COMMITTEE AMENDMENT "A" to H.P. 1639, L.D. 2290

2 Further amend the bill in section 1 in that part designated  
"§911." in subsection 5 in paragraph D in the first line (page 2,  
4 line 45 in L.D.) by inserting after the following: "If a" the  
following: 'domestic'

6 Further amend the bill in section 1 in that part designated  
"§911." in subsection 5 by striking out all of paragraphs E to I  
8 and inserting in their place the following:

10 'E. If the surviving or resulting corporation or other  
12 business entity is not organized under the laws of this  
State, a statement that the surviving corporation or other  
14 business entity:

16 (1) Agrees that it may be served with process in this  
State in a proceeding for enforcement of an obligation  
18 of a party to the merger or consolidation that was  
organized under the laws of this State, as well as for  
20 enforcement of an obligation of the surviving or  
resulting corporation or other business entity arising  
22 from the merger or consolidation; and

24 (2) Appoints the Secretary of State as its agent for  
service of process in any such proceeding, and the  
26 surviving or resulting corporation or other business  
entity shall specify the address to which a copy of the  
28 process must be mailed by the Secretary of State;

30 F. If shareholder approval of any corporation party to the  
written agreement or plan of merger or consolidation was not  
32 required, a statement to that effect;

34 G. If approval of the shareholders of one or more  
corporations party to the merger or consolidation was  
36 required;

38 (1) The designation, number of outstanding shares and  
number of shares entitled to vote on the written  
40 agreement or plan of merger or consolidation as to each  
corporation; the number of shares voted for and against  
42 the agreement or plan; and a statement that the number  
of votes cast for the agreement or plan was sufficient  
44 for approval by the shareholders; and

46 (2) If the shares of any class were entitled to vote  
as a class, the designation and number of outstanding  
48 shares of each such class, the number of shares of each  
such class voted for and against the written agreement  
or plan and a statement that the number of votes cast

# COMMITTEE AMENDMENT

208

COMMITTEE AMENDMENT "A" to H.P. 1639, L.D. 2290

2 for the agreement or plan by each class was sufficient  
for approval by that class;

4 H. In the case of a merger, a statement of any changes in  
or a restatement of the organizing documents of the  
6 surviving corporation or other business entity, a statement  
that the organizing documents of the surviving corporation  
8 or other business entity remain unchanged or, in the case of  
a consolidation, with respect to the resulting corporation  
10 or other business entity, all of the statements required to  
be set forth in the organizing documents for that type of  
12 business entity;

14 I. If the surviving entity is not a domestic corporation, a  
statement that the executed agreement or plan of merger or  
16 consolidation is on file at the principal place of business  
of the surviving corporation or other business entity and  
18 the address of such place of business and that a copy of the  
agreement or plan of merger or consolidation will be  
20 furnished by the surviving entity, on request and without  
cost, to any shareholder of any constituent corporation and  
22 any record owner of interests in any other business entity  
that participated in the merger or consolidation;  
24

26 J. The date when the merger or consolidation is to take  
effect, not to exceed 60 days subsequent to the filing date  
of the articles of merger or consolidation;  
28

30 K. A statement to the effect that the merger or  
consolidation was effected in compliance with the laws  
32 applicable to mergers or consolidations of all parties to  
the merger or consolidation; and

34 L. An agreement that the surviving or resulting corporation  
or other business entity shall continue to comply with all  
36 provisions of all laws applicable to mergers or  
consolidations of all parties to the merger or  
38 consolidation, including, without limitation, provisions on  
payment of amounts to which dissenting shareholders are  
40 entitled.'

42 Further amend the bill in section 1 in that part designated  
44 "§912." by striking out all of subsection 1 and inserting in its  
place the following:

46 '1. Definitions. For purposes of this section, "business  
entity" means any association or legal entity organized to  
48 conduct business, including, without limitation, a domestic or  
foreign corporation, limited partnership, general partnership,

# COMMITTEE AMENDMENT

R. 618

COMMITTEE AMENDMENT "A" to H.P. 1639, L.D. 2290

2 limited liability partnership, limited liability company, joint  
3 venture, joint stock company and business trust.'

4 Further amend the bill in section 1 in that part designated  
5 "§912." by striking out all of subsection 4 (page 5, lines 43 to  
6 49 in L.D.) and inserting in its place the following:

8 '4. Plan of conversion. A plan of conversion must set  
9 forth the terms and conditions of the conversion of the shares of  
10 stock of a corporation or ownership interests in the converting  
11 business entity, into interests in the resulting business entity,  
12 cash or other consideration to be paid or delivered as a result  
13 of the conversion.'

14 Further amend the bill in section 1 in that part designated  
15 "§912." in subsection 5 in the 2nd line (page 6, line 2 in L.D.)  
16 by inserting after the following: "entity" the following:  
17 'pursuant to this section'

18 Further amend the bill in section 1 in that part designated  
19 "§912." in subsection 6 in paragraph D by striking out all of  
20 subparagraphs (1) and (2) and inserting in their place the  
21 following:

22 '(1) The designation, number of outstanding shares and  
23 number of shares entitled to vote on the plan; the  
24 number of shares voted for and against the plan; and a  
25 statement that the number of votes cast for the plan  
26 was sufficient for approval of the plan by the  
27 shareholders; and

28 (2) If the shares of any class were entitled to vote  
29 as a class, the designation and number of outstanding  
30 shares of each such class, the number of shares of each  
31 such class voted for and against the plan and a  
32 statement that the number of votes cast for the plan by  
33 each class was sufficient for approval by that class;'

34 Further amend the bill in section 1 in that part designated  
35 "§912." in subsection 7 in the last line (page 7, line 6 in L.D.)  
36 by striking out the following: "formation documents" and  
37 inserting in its place the following: 'certificate of conversion'

38 Further amend the bill in section 1 in that part designated  
39 "§912." in subsection 8 in first paragraph in the 3rd line (page  
40 7, line 10 in L.D.) by inserting after the following:  
41 "provisions" the following: 'of law'

42 Further amend the bill in section 1 in that part designated  
43 "§912." in subsection 8 in paragraph A in the 2nd line (page 7,  
44

**COMMITTEE AMENDMENT**

A.C.S.

COMMITTEE AMENDMENT "A" to H.P. 1639, L.D. 2290

line 15 in L.D.) by striking out the following: "immunities and powers" and inserting in its place the following: 'immunities, powers and franchises'

Further amend the bill in section 1 in that part designated "§912." in subsection 8 by striking out all of paragraph B and inserting in its place the following:

'B. All property, real, personal and mixed; all debts due, including promises to make capital contributions and subscriptions for shares or interests; all other choses in action; and all other interests of or belonging to or due to the converting business entity vest in the resulting business entity without further act or deed.'

Further amend the bill in section 1 in that part designated "§912." in subsection 8 in paragraph C in the 2nd line (page 7, line 29 in L.D.) by striking out the following: "may" and inserting in its place the following: 'does'

Further amend the bill in section 1 in that part designated "§912." in subsection 8 in paragraph C in the last line (page 7, line 30 in L.D.) by striking out the following: "or be" and inserting in its place the following: 'and is not'

Further amend the bill in section 1 in that part designated "§913." in the first paragraph by inserting at the end the following: 'If, as a result of the conversion, one or more shareholders of a domestic corporation would become subject to personal liability for the obligations or liabilities of any other person or entity, approval of the plan of conversion must require the execution by each such shareholder of a separate written consent to become subject to such personal liability.'

Further amend the bill by striking out all of sections 2 and 3 and inserting in their place the following:

**'Sec. 2. 13-A MRSA §1401, sub-§12,** as amended by PL 1987, c. 561, §4, is further amended to read:

**12.** Articles of incorporation, as provided by section 402, ~~§75~~ **§95,** plus the fee based on the capital stock specified in section 1403;

**Sec. 3. 13-A MRSA §1401, sub-§§24, 26, 27, 28 and 29,** as amended by PL 1989, c. 501, Pt. L, §27, are further amended to read:

**24.** Application of a foreign corporation for authority to do business in the State, as provided by section 1202, ~~§180~~ **§250;**

R.S.

COMMITTEE AMENDMENT "A" to H.P. 1639, L.D. 2290

2 26. Articles of merger of a foreign corporation, as  
provided by section 1206, ~~§35~~ §70;

4  
6 27. An amendment to a foreign corporation's application for  
authority to do business in this State, as provided by section  
1207, ~~§35~~ §70;

8  
10 28. An application of a foreign corporation for surrender  
of its authority, as provided by section 1208, ~~§35~~ §70;

12 29. Statement of a foreign corporation's termination of  
existence, as provided by section 1209, ~~§35~~ §70;'

14  
16 Further amend the bill in section 11 in that part designated  
"~~§417.~~" by striking out all of subsection 1 and inserting in its  
place the following:

18  
20 '1. Definitions. For purposes of this section, "other  
business entity" means any association or legal entity, other  
than a domestic or foreign limited partnership, organized to  
conduct business, including, without limitation, a corporation,  
general partnership, limited liability partnership, limited  
liability company, joint venture, joint stock company and  
business trust authorized by applicable statutes to merge or  
consolidate with a limited partnership.'

28 Further amend the bill in section 11 in that part designated  
"~~§417.~~" in subsection 3 in the first paragraph in the first line  
30 (page 10, line 43 in L.D.) by inserting after the following:  
"~~merger~~" the following: 'or consolidation'

32  
34 Further amend the bill in section 11 in that part designated  
"~~§417.~~" in subsection 3 by striking out all of paragraph D and  
inserting in its place the following:

36  
38 'D. The manner of converting the partnership interests of  
each limited partnership and the shares or the ownership  
interests of each other business entity into shares or other  
ownership interests of the entity surviving or resulting  
from the merger or consolidation. If any partnership  
interests of any limited partnership or any shares or other  
ownership interests of any other business entity are not to  
be converted solely into shares, ownership interests or  
other securities of the entity surviving or resulting from  
the merger or consolidation, the agreement or plan must  
state the cash, property, rights or securities of any other  
business entity that the holders of the shares or ownership  
interests are to receive in connection with the merger or  
consolidation; and'



2 Further amend the bill in section 11 in that part designated  
3 "§417." in subsection 4 by inserting at the end the following:  
4 'If, as a result of the merger or consolidation, one or more  
5 partners of a domestic limited partnership would become subject  
6 to personal liability for the obligations or liabilities of any  
7 other person or entity, approval of the plan of merger or  
8 consolidation must require the execution by each such partner of  
9 a separate written consent to become subject to such personal  
10 liability.'

12 Further amend the bill in section 11 in that part designated  
13 "§417." in subsection 5 in paragraph C in the first line (page  
14 12, line 37 in L.D.) by inserting after the following:  
15 "resulting" the following: 'limited partnership or other  
16 business'

18 Further amend the bill in section 11 in that part designated  
19 "§417." in subsection 5 by striking out all of paragraphs D to L  
20 and inserting in their place the following:

22 'D. If the surviving or resulting limited partnership or  
23 other business entity is not organized under the laws of  
24 this State, a statement that the surviving or resulting  
25 limited partnership or other business entity;

26 (1) Agrees that it may be served with process in this  
27 State in a proceeding for enforcement of an obligation  
28 of a party to the merger or consolidation that was  
29 organized under the laws of this State, as well as for  
30 enforcement of an obligation of the surviving or  
31 resulting limited partnership or other business entity  
32 arising from the merger or consolidation; and

34 (2) Appoints the Secretary of State as its agent for  
35 service of process in any such proceeding, and the  
36 surviving or resulting limited partnership or other  
37 business entity shall specify the address to which a  
38 copy of the process must be mailed by the Secretary of  
39 State;

42 E. If shareholder approval of any corporation party to the  
43 merger or consolidation was not required, a statement to  
44 that effect;

46 F. If approval of the shareholders of one or more  
47 corporations party to the merger or consolidation was  
48 required;

2 (1) The designation, number of outstanding shares and  
3 number of shares entitled to vote on the written  
4 agreement or plan of merger or consolidation as to each  
5 corporation; the number of shares voted for and against  
6 the agreement or plan; and a statement that the number  
7 of votes cast for the agreement or plan was sufficient  
8 for approval by the shareholders; and

9 (2) If the shares of any class were entitled to vote  
10 as a class, the designation and number of outstanding  
11 shares of each such class, the number of shares of each  
12 such class voted for and against the written agreement  
13 or plan and a statement that the number of votes cast  
14 for the agreement or plan by each class was sufficient  
15 for approval by that class;

16 G. In the case of a merger, a statement of any changes in  
17 or a restatement of the organizing documents of the  
18 surviving limited partnership or other business entity, a  
19 statement that the organizing documents of the surviving  
20 limited partnership or other business entity remain  
21 unchanged or, in the case of a consolidation, with respect  
22 to the resulting limited partnership or other business  
23 entity, all of the statements required to be set forth in  
24 the organizing documents for that type of business entity;

25 H. That the executed agreement or plan of merger or  
26 consolidation is on file at a place of business of the  
27 surviving or resulting limited partnership or other business  
28 entity and stating the address of such place of business and  
29 that a copy of the agreement of merger or consolidation will  
30 be furnished by the surviving or resulting limited  
31 partnership or other business entity, on request and without  
32 cost, to a person holding an interest in a limited  
33 partnership or other business entity that is to merge or  
34 consolidate;

35 I. The date when the merger or consolidation is to take  
36 effect, not to exceed 60 days subsequent to the filing date  
37 of the articles of merger or consolidation;

38 J. A statement to the effect that the merger or  
39 consolidation was effected in compliance with the laws  
40 applicable to mergers or consolidations of all parties to  
41 the merger or consolidation; and

42 K. An agreement that the surviving or resulting limited  
43 partnership or other business entity shall continue to  
44 comply with all provisions of all laws applicable to mergers  
45 or consolidations of all parties to the merger or  
46 consolidations of all parties to the merger or

2 consolidation, including, without limitation, provisions on  
3 payment of amounts to which dissenting shareholders are  
4 entitled.'

5 Further amend the bill in section 11 in that part designated  
6 "§417." by striking out all of subsection 7.

7 Further amend the bill in section 11 in that part designated  
8 "§417." in subsection 9 in the first 2 lines (page 14, lines 35  
9 and 36 in L.D.) by striking out the following: "Notwithstanding  
10 anything to the contrary contained in a partnership agreement, a"  
11 and inserting in its place the following: 'A'

12 Further amend the bill in section 11 in that part designated  
13 "§417." in subsection 9 in the 9th line (page 14, line 43 in  
14 L.D.) by inserting after the following: "consolidation" the  
15 following: 'and such a provision is binding on the partnership  
16 even though the partnership agreement may contain contrary  
17 provisions relative to the general amendment of the partnership  
18 agreement'

19 Further amend the bill in section 11 in that part designated  
20 "§417." by renumbering the subsections to read consecutively.

21 Further amend the bill in section 11 in that part designated  
22 "§418." by striking out all of subsection 1 and inserting in its  
23 place the following:

24 '1. Definitions. For purposes of this section, "business  
25 entity" means any association or legal entity organized to  
26 conduct business, including a domestic or foreign corporation,  
27 limited liability company, limited partnership, general  
28 partnership, limited liability partnership, joint venture, joint  
29 stock company and business trust.'

30 Further amend the bill in section 11 in that part designated  
31 "§419." in the first paragraph by inserting at the end the  
32 following: 'If, as a result of the conversion, one or more  
33 partners of a domestic limited partnership would become subject  
34 to personal liability for the obligations or liabilities of any  
35 other person or entity, approval of the plan of conversion must  
36 require the execution by each such partner of a separate written  
37 consent to become subject to such personal liability.'

38 Further amend the bill by inserting after section 12 the  
39 following:

40 'Sec. 13. 31 MRSA §521, sub-§3 is enacted to read:

2 3. Applicability of other laws. If the purpose for which a  
3 limited partnership is organized or its form makes it subject to  
4 a special provision of law, the limited partnership shall also  
5 comply with that provision. This chapter does not apply to any  
6 class of limited partnerships to the extent that any provision of  
7 any other public law is specifically applicable to that class and  
8 is inconsistent with any provision of this chapter, in which case  
9 such other provision prevails.'

10 Further amend the bill in section 13 in subsection 7 in the  
11 3rd line (page 18, line 16 in L.D.) by striking out the  
12 following: "\$105" and inserting in its place the following:  
13 '\$125'

14 Further amend the bill in section 13 in subsection 7 in the  
15 3rd line from the end (page 18, line 19 in L.D.) by striking out  
16 the following: "\$60" and inserting in its place the following:  
17 '\$35'

18 Further amend the bill in section 13 in subsection 7 in the  
19 last line (page 18, line 21 in L.D.) by inserting after the  
20 following: "\$20" the following: 'and for filing a restated  
21 certificate of limited partnership under section 422, subsection  
22 6, a fee of \$80'

23 Further amend the bill in section 14 in subsection 8 in the  
24 3rd line (page 18, line 28 in L.D.) by striking out the  
25 following: "\$180" and inserting in its place the following:  
26 '\$250'

27 Further amend the bill in section 14 in subsection 8 in the  
28 6th line (page 18, line 31 in L.D.) by striking out the  
29 following: "\$60" and inserting in its place the following: '\$70'

30 Further amend the bill in section 26 in that part designated  
31 "~~\$741-A.~~" by striking out all of subsection 1 and inserting in  
32 its place the following:

33 '1. Definitions. For purposes of this section, "other  
34 business entity" means any association or legal entity other than  
35 a limited liability company, organized to conduct business,  
36 including a domestic or foreign corporation, limited partnership,  
37 general partnership, limited liability partnership, joint  
38 venture, joint stock company and business trust authorized by  
39 applicable statutes to merge or consolidate with a limited  
40 liability company.'

41 Further amend the bill in section 27 in that part designated  
42 "~~\$742.~~" in subsection 1 by inserting at the end the following:  
43 'If, as a result of the merger or consolidation, one or more  
44 of the following conditions exist:

RMS

COMMITTEE AMENDMENT "A" to H.P. 1639, L.D. 2290

2 members of a domestic limited liability company would become  
3 subject to personal liability for the obligations or liabilities  
4 of any other person or entity, approval of the plan of merger or  
5 consolidation must require the execution by each such member of a  
6 separate written consent to become subject to such personal  
7 liability.'

8 Further amend the bill in section 27 in that part designated  
9 "**§742.**" in subsection 3 in the first line (page 21, line 44 in  
10 L.D.) by inserting after the following: "Each" the following:  
11 'limited liability company or other'

12 Further amend the bill in section 27 in that part designated  
13 "**§743.**" in subsection 2 in paragraph A in the next to the last  
14 line (page 22, line 17 in L.D.) by inserting after the  
15 following: "resulting" the following: 'limited liability  
16 company or other'

17 Further amend the bill in section 27 in that part designated  
18 "**§743.**" in subsection 2 in paragraph C in the 3rd line (page 22,  
19 line 26 in L.D.) by inserting after the following: "each" the  
20 following: 'limited liability company or'

21 Further amend the bill in section 27 in that part designated  
22 "**§743.**" in subsection 2 by striking out all of paragraph D-1 and  
23 inserting in its place the following:

24 'D-1. In the case of a merger, a statement of any changes  
25 in or a restatement of the organizing documents of the  
26 surviving limited liability company or other business entity  
27 or a statement that the organizing documents of the  
28 surviving limited liability company or other business entity  
29 remain unchanged; or, in the case of a consolidation, with  
30 respect to the resulting limited liability company or other  
31 business entity, all of the statements required to be set  
32 forth in the organizing documents for that type of business  
33 entity; and'

34 Further amend the bill by striking out all of section 28 and  
35 inserting in its place the following:

36 '**Sec. 28. 31 MRSA §744, sub-§1,** as enacted by PL 1993, c. 718,  
37 Pt. A, §1, is amended to read:

38  
39 **1. Certificate of merger or consolidation.** The limited  
40 liability company or other business entity surviving or resulting  
41 from the merger or consolidation shall deliver to the Secretary  
42 of State a certificate of merger or consolidation executed by  
43 each constituent limited liability company or other business  
44 entity setting forth:

# COMMITTEE AMENDMENT

2 A. The name and current jurisdiction of--organization of  
4 each limited liability company or other business entity that  
is to merge or consolidate;

6 B. That an agreement of merger or consolidation has been  
8 approved and executed by each limited liability entity  
company or other business entity that is a party to the  
merger or consolidation;

10 C. The name of the surviving or resulting limited liability  
12 company or other business entity;

14 ~~D. The date when the merger or consolidation is to take~~  
16 ~~effect, if the effective date is postponed to a date, not to~~  
~~exceed 60 days, subsequent to the filing date of the~~  
18 ~~certificate of merger or consolidation;~~

20 ~~E. That the agreement of merger or consolidation is on file~~  
~~at a place of business of the surviving or resulting limited~~  
22 ~~liability company and shall state the address thereof;~~

24 ~~F. That a copy of the agreement of merger or consolidation~~  
~~will be furnished by the surviving or resulting limited~~  
26 ~~liability company on request and without cost, to a person~~  
~~holding an interest in a limited liability company that is~~  
28 ~~to merge or consolidate; and~~

30 G. If the surviving or resulting limited liability company  
or other business entity is not organized under the laws of  
32 this State, a statement that the surviving or resulting  
limited liability company or other business entity:

34 (1) Agrees that it may be served with process in this  
36 State in a proceeding for enforcement of an obligation  
of a party to the merger or consolidation that was  
38 organized under the laws of this State, as well as for  
enforcement of an obligation of the surviving or new  
40 resulting limited liability company or other business  
entity arising from the merger or consolidation; and

42 (2) Appoints the Secretary of State as its agent for  
44 service of process in any such proceeding and the  
surviving or new resulting limited liability company or  
46 other business entity shall specify the address to  
which a copy of the process must be mailed by the  
48 Secretary of State.

Ads

COMMITTEE AMENDMENT "A" to H.P. 1639, L.D. 2290

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50

H. If shareholder approval of any corporation party to the merger or consolidation was not required, a statement to that effect;

I. If approval of the shareholders of one or more corporations party to the merger or consolidation was required;

(1) The designation, number of outstanding shares and number of shares entitled to vote on the written agreement or plan of merger or consolidation as to each corporation; the number of shares voted for and against the agreement or plan; and a statement that the number of votes cast for the agreement or plan was sufficient for approval by the shareholders; and

(2) If the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each such class, the number of shares of each such class voted for and against the written agreement or plan and a statement that the number of votes cast for the agreement or plan by each class was sufficient for approval by that class;

J. In the case of a merger, a statement of any changes in or a restatement of the organizing documents of the surviving limited liability company or other business entity or a statement that the organizing documents of the surviving limited liability company or other business entity remain unchanged; or, in the case of a consolidation, with respect to the resulting limited liability company or other business entity, all of the statements required to be set forth in the organizing documents for that type of business entity;

K. That the executed agreement or plan of merger or consolidation is on file at a place of business of the surviving or resulting limited liability company or other business entity and stating the address of such place of business and that a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting limited liability company or other business entity, on request and without cost, to a person holding an interest in a limited liability company or other business entity that is to merge or consolidate;

L. The date when the merger or consolidation is to take effect, not to exceed 60 days subsequent to the filing date of the certificate of merger or consolidation;

2 M. A statement to the effect that the merger or  
4 consolidation was effected in compliance with the laws  
applicable to mergers or consolidations of all parties to  
the merger or consolidation; and

6 N. An agreement that the surviving or resulting limited  
8 liability company or other business entity shall continue to  
10 comply with all provisions of all laws applicable to mergers  
12 or consolidations of all parties to the merger or  
consolidation, including, without limitation, provisions on  
payment of amounts to which dissenting shareholders are  
entitled.'

14 Further amend the bill in section 31 in that part designated  
16 "\$746." by striking out all of subsection 1 and inserting in its  
place the following:

18 '1. Definitions. For purposes of this section, "business  
20 entity" means any association or legal entity organized to  
22 conduct business, including a domestic or foreign corporation,  
limited liability company, limited partnership, general  
24 partnership, limited liability partnership, joint venture, joint  
stock company and business trust.'

26 Further amend the bill in section 31 in that part designated  
28 "\$747." in the first paragraph by inserting at the end the  
30 following: 'If, as a result of the conversion, one or more  
32 members of a domestic limited liability company would become  
subject to personal liability for the obligations or liabilities  
of any other person or entity, approval of the plan of conversion  
must require the execution by each such member of a separate  
written consent to become subject to such personal liability.'

34 Further amend the bill in section 32 in subsection 8 in the  
36 3rd line (page 28, line 6 in L.D.) by striking out the  
following: "\$105" and inserting in its place the following:  
38 '\$125'

40 Further amend the bill in section 32 in subsection 8 in the  
42 6th line (page 28, line 9 in L.D.) by striking out the  
following: "\$60" and inserting in its place the following:  
44 '\$35; restated articles of organization under section 623,  
subsection 6, a fee of \$80'

46 Further amend the bill in section 33 in subsection 12 in the  
48 3rd line (page 28, line 17 in L.D.) by striking out the  
following: "\$180" and inserting in its place the following:  
'\$250'



2 Further amend the bill in section 33 in subsection 12 in the  
3rd line from the end (page 28, line 20 in L.D.) by striking out  
the following: "\$60" and inserting in its place the following:  
4 '\$70'

6 Further amend the bill by inserting after section 36 the  
following:

8  
9 **'Sec. 37. 31 MRSA §753, sub-§5 is enacted to read:**

10  
11 **5. Applicability of other laws. If the purpose for which a**  
12 **limited liability company is organized or its form makes it**  
13 **subject to a special provision of law, the limited liability**  
14 **company shall also comply with that provision. This chapter does**  
15 **not apply to any class of limited liability companies to the**  
16 **extent that any provision of any other public law is specifically**  
17 **applicable to that class and is inconsistent with any provision**  
18 **of this chapter, in which case such other provision prevails.'**

20 Further amend the bill in section 38 in subsection 8 in the  
3rd line (page 29, line 18 in L.D.) by striking out the  
22 following: "\$105" and inserting in its place the following:  
'\$125'

24 Further amend the bill in section 38 in subsection 8 in the  
26 next to the last line (page 29, line 21 in L.D.) by striking out  
the following: "\$60" and inserting in its place the following:  
28 '\$35'

30 Further amend the bill in section 38 in subsection 8 in the  
last line (page 29, line 22 in L.D.) by inserting after the  
32 following: "\$20" the following: 'and for filing a restated  
33 certificate of limited liability partnership under section 823,  
34 subsection 6, the fee is \$80'

36 Further amend the bill in section 39 in subsection 10 in the  
3rd line (page 29, line 29 in L.D.) by striking out the  
38 following: "\$180" and inserting in its place the following:  
'\$250'

40 Further amend the bill in section 39 in subsection 10 in the  
42 6th line (page 29, line 32 in L.D.) by striking out the  
following: "\$60" and inserting in its place the following: '\$70'

44 Further amend the bill by inserting after section 39 the  
46 following:

48 **'Sec. 40. 36 MRSA §4641-C, sub-§7, as amended by PL 1993, c.**  
398, §4, is further amended to read:

7. **Deeds pursuant to mergers or consolidations.** Deeds made pursuant to mergers or consolidations of corporations business entities, as defined in Title 13-A, section 912, from which no gain or loss is recognized under the Internal Revenue Code;

Further amend the bill in section 41 in subsection 18 in the last line (page 30, line 6 in L.D.) by inserting after the following: ";" the following: 'and'

Further amend the bill by striking out all of section 42 and inserting in its place the following:

'**Sec. 42. 36 MRSA §4641-C, sub-§19** is enacted to read:

**19. Change in identity or form of ownership.** Any transfer of real property, whether accomplished by deed, conversion, merger, consolidation or otherwise, if it consists of a mere change in identity or form of ownership of an entity. This exemption is limited to those transfers where no change in beneficial ownership is made and may include transfers involving corporations, partnerships, limited liability companies, trusts, estates, associations and other entities.'

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

Further amend the bill by inserting at the end before the summary the following:

**FISCAL NOTE**

**2000-01**

**REVENUES**

General Fund \$5,875

This bill makes adjustments to the fee structure of several business entity filings administered by the Department of the Secretary of State. These changes will result in an estimated net increase of General Fund revenue collected by the Department of the Secretary of State of \$5,875 in fiscal year 2000-01. The estimated increases in General Fund revenue in fiscal years 2001-02 and 2002-03 will be \$33,190 and \$61,297, respectively.

This bill also establishes new fees for different entity types to merge, consolidate or convert to another entity type. The increases in General Fund revenue collected by the Department

of the Secretary of State from these filing fees can not be determined at this time.'

### SUMMARY

This amendment broadens the definition of "other business entity" so that the law allowing business entities to convert to other forms and to merge or consolidate will apply to all types of business entities in existence now or created in the future. It clarifies that the shareholder of a corporation participating in a conversion, merger or consolidation retains the right to dissent and be bought out to the same extent as if the transaction were a merger between 2 corporations. It requires that a transaction be approved specifically by any owner whose limited liability would be converted to personal liability by the transaction. The amendment makes technical changes to remove any reference to voting groups, which do not exist in Maine law.

The amendment clarifies that the general law relating to transactions involving limited liability companies and limited partnerships does not supersede laws relating to specific types of business entities, such as banking and insurance companies. It provides for exemption from the real estate transfer tax for deeds made pursuant to mergers or consolidations of business entities, provided no loss or gain is recognized under federal tax law. It also exempts transfers of real property that consist merely of a change in identity or form of ownership of the entity that owns the property, provided no change in beneficial ownership is made.

Finally, the amendment changes the fee structure in the bill. As in the bill, the new fee structure lowers the fees for noncorporate entities to make them equal to the comparable corporate fees. To compensate for the loss of revenue from the decrease in noncorporate entity filings, the amendment increases the one-time incorporating fee for domestic corporations from \$105 to \$125, and provides that fees for foreign business entity filings are double that of the comparable fees for domestic entities. Fees for filing amendments for domestic corporations remain at the same level as in current law. The amendment also adds a fiscal note to the bill.