

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1210

S.P. 424

In Senate, March 10, 2005

An Act To Amend the Laws Relating to Corporations, Limited Partnerships, Limited Liability Companies and Limited Liability Partnerships

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.
Cosponsored by Speaker RICHARDSON of Brunswick and
Senators: COURTNEY of York, PERRY of Penobscot, Representatives: CARR of Lincoln,
DUNN of Bangor, FISHER of Brewer, GERZOSKY of Brunswick, JACKSON of Fort Kent,
PELLETIER-SIMPSON of Auburn.

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 13-B MRSA §102, sub-§§4-A, 5-C and 11-A** are enacted to
5 read:

6 **4-A. Deliver; delivery.** "Deliver" or "delivery" means any
7 method of delivery used in conventional commercial practice,
8 including delivery by hand, mail, commercial delivery and
9 electronic transmission.

10 **5-C. Electronic transmission.** "Electronic transmission"
11 means any process of communication that does not directly involve
12 the physical transfer of paper and that is suitable for the
13 retention, retrieval and reproduction of information by the
14 recipient.

15 **11-A. Sign; signature.** "Sign" or "signature" includes any
16 manual, facsimile, conformed or electronic signature.

17 **Sec. 2. 13-B MRSA §104, sub-§1, ¶B,** as amended by PL 1997, c.
18 376, §17, is further amended to read:

19 B. In the case of other documents:

20 (1) By the clerk or secretary;

21 (2) By the ~~president or a vice president and by the~~
22 ~~secretary or an assistant secretary, or such other~~
23 ~~officer as the bylaws may designate as a 2nd certifying~~
24 ~~officer~~ chair of the board of directors of a foreign
25 corporation or a domestic corporation, by its president
26 or by another of its officers; or

27 ~~(3) If there are no such officers, then by a majority~~
28 ~~of the directors or by such directors as may be~~
29 ~~designated by a majority of directors then in office,~~
30 ~~or~~

31 (4) If there are no such directors, then by the a
32 specific member or members ~~or such of them~~ as may be
33 designated by the members at a lawful meeting;

34 **Sec. 3. 13-C MRSA §1102, sub-§6,** as amended by PL 2003, c.
35 344, Pt. B, §97, is further amended to read:

36 **6. Amend plan prior to filing articles of merger.** The plan
37 of merger may also include a provision that the plan may be
38 amended prior to filing the articles of merger with the Secretary
39 of State under section 1106, subsection 2. ~~If the shareholders~~
40 ~~of a domestic corporation that is a party to the merger are~~

2 ~~required or permitted to vote on the plan, the plan must provide~~
3 ~~that subsequent to approval of the plan by the shareholders the~~
4 ~~plan may not~~ Subsequent to any approval of the plan by
5 shareholders of a domestic corporation that is a party to the
6 merger, the plan may not without further shareholder approval be
7 amended to:

8 A. Change the amount or kind of shares or other securities,
9 eligible interests, obligations, rights to acquire shares or
10 other securities, cash or other property to be received
11 under the plan by the shareholders or owners of eligible
12 interests in any party to the merger;

13 B. Change the articles of incorporation or the organic
14 documents of any eligible entity that will survive or be
15 created as a result of the merger, except for changes
16 permitted by section 1005 or by comparable provisions of the
17 organic laws of any such foreign corporation or domestic or
18 foreign eligible entity; or

19 C. Change any of the other terms or conditions of the plan
20 if the change would adversely affect the shareholders in any
21 material respect.

22
23 **Sec. 4. 13-C MRSA §1303, sub-§2, ¶A,** as enacted by PL 2001, c.
24 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

25 A. The record date fixed to determine the shareholders
26 entitled to receive notice of and to vote at the meeting of
27 shareholders to act upon a corporate action requiring
28 appraisal rights ~~pursuant to section 1302 to 1305~~; or

29
30 **Sec. 5. 13-C MRSA §1303, sub-§3,** as enacted by PL 2001, c.
31 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

32
33 **3. Exception.** Notwithstanding subsection 1, appraisal
34 rights are available pursuant to section 1302 ~~to 1305~~ for the
35 holders of any class or series of shares:

36 A. Who are required by the terms of a corporate action
37 requiring appraisal rights ~~pursuant to sections 1302 to 1305~~
38 to accept for such shares anything other than cash or shares
39 of any class or any series of shares of any corporation, or
40 any other proprietary interest of any other entity, that
41 satisfies the standards set forth in subsection 1 at the
42 time the corporate action becomes effective;

43 B. When any of the shares or assets of a corporation are
44 being acquired or converted, whether by merger, share
45 exchange or otherwise, pursuant to a corporate action

2 pursuant--to--sections--1302--to--1305 by a person, or by an
affiliate of a person, who:

4 (1) Is, or at any time in the one-year period
immediately preceding approval by the corporation's
6 board of directors of the corporate action requiring
appraisal rights was, the beneficial owner of 20% or
8 more of the voting power of the corporation, excluding
any shares acquired pursuant to an offer for all shares
10 having voting power if such offer was made within one
year prior to the corporate action requiring appraisal
12 rights for consideration of the same kind and of a
value equal to or less than that paid in connection
14 with the corporate action; or

16 (2) Directly or indirectly has, or at any time in the
one-year period immediately preceding approval by the
18 corporation's board of directors of the corporate
action requiring appraisal rights had, the power,
20 contractually or otherwise, to cause the appointment or
election of 25% or more of the directors to the
22 corporation's board of directors; or

24 C. When any of the shares or assets of a corporation are
being acquired or converted, whether by merger, share
26 exchange or otherwise, pursuant to a corporate action by a
person, or by an affiliate of a person, who is, or at any
28 time in the one-year period immediately preceding approval
by the corporation's board of directors of the corporate
30 action requiring appraisal rights pursuant to section 1302
was, a senior executive or director of the corporation or a
32 senior executive of any affiliate of the corporation, and
that senior executive or director, as a result of the
34 corporate action, receives a financial benefit not generally
available to other shareholders as such, other than:

36 (1) Employment, consulting, retirement or similar
38 benefits established separately and not as part of or
in contemplation of the corporate action;

40 (2) Employment, consulting, retirement or similar
42 benefits established in contemplation of, or as part
of, the corporate action that are not more favorable
44 than those existing before the corporate action or, if
more favorable, that have been approved on behalf of
46 the corporation in the same manner as is provided in
section 873; or

48 (3) In the case of a director of the corporation who
50 will, in the corporate action, become a director of the

2 acquiring entity in the corporate action or one of its
3 affiliates, rights and benefits as a director that are
4 provided on the same basis as those afforded by the
5 acquiring entity generally to other directors of such
6 entity or such affiliate.

7 For the purposes of this subsection, the term "beneficial owner"
8 means any person who, directly or indirectly, through any
9 contract, arrangement or understanding, other than a revocable
10 proxy, has or shares the power to vote or to direct the voting of
11 shares, except that a member of a national securities exchange
12 may not be considered to be a beneficial owner of securities held
13 directly or indirectly by the member on behalf of another person
14 solely because that member is the record holder of such
15 securities if the member is precluded by the rules of such
16 exchange from voting without instruction on contested matters or
17 matters that may affect substantially the rights or privileges of
18 the holders of the securities to be voted. When 2 or more
19 persons agree to act together for the purpose of voting their
20 shares of the corporation, each member of the group formed by
21 that agreement is considered to have acquired beneficial
22 ownership, as of the date of such agreement, of all voting shares
23 of the corporation beneficially owned by any member of the group.
24

25 **Sec. 6. 13-C MRSA §1306, sub-§2, ¶A,** as enacted by PL 2001, c.
26 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

27 A. Submits to the corporation the record shareholder's
28 written consent to the assertion of the rights no later than
29 the date referred to in section ~~1322~~ 1323, subsection 2,
30 paragraph B, subparagraph (2); and
31

32 **Sec. 7. 13-C MRSA §1434, sub-§3,** as enacted by PL 2001, c.
33 640, Pt. A, §2 and affected by Pt. B, §7, is amended to read:

34 **3. Protection of interests.** Pursuant to this section, the
35 court may grant relief other than dissolution as an alternative
36 to a decree of dissolution or whenever the circumstances of the
37 case are such that the other relief, but not dissolution, would
38 be appropriate, and the other relief should be granted when such
39 that relief would furnish greater protection of the interests of
40 creditors and shareholders than would dissolution.
41

42 **Sec. 8. 31 MRSA §402, sub-§§2-A, 3-A and 16** are enacted to read:

43 **2-A. Deliver; delivery.** "Deliver" or "delivery" means any
44 method of delivery used in conventional commercial practice,
45 including delivery by hand, mail, commercial delivery and
46 electronic transmission.
47
48

2 **3-A. Electronic transmission.** "Electronic transmission"
3 means any process of communication that does not directly involve
4 the physical transfer of paper and that is suitable for the
5 retention, retrieval and reproduction of information by the
6 recipient.

8 **16. Sign; signature.** "Sign" or "signature" includes any
9 manual, facsimile, conformed or electronic signature.

10 **Sec. 9. 31 MRSA §602, sub-§§3-A, 3-B and 14-A** are enacted to
11 read:

14 **3-A. Deliver; delivery.** "Deliver" or "delivery" means any
15 method of delivery used in conventional commercial practice,
16 including delivery by hand, mail, commercial delivery and
17 electronic transmission.

18 **3-B. Electronic transmission.** "Electronic transmission"
19 means any process of communication that does not directly involve
20 the physical transfer of paper and that is suitable for the
21 retention, retrieval and reproduction of information by the
22 recipient.

24 **14-A. Sign; signature.** "Sign" or "signature" includes any
25 manual, facsimile, conformed or electronic signature.

28 **Sec. 10. 31 MRSA §802.** as enacted by PL 1995, c. 633, Pt. B,
29 §1, is repealed.

30 **Sec. 11. 31 MRSA §802-A** is enacted to read:

32 **§802-A. Definitions**

34 As used in this chapter, unless the context otherwise
35 indicates, the following terms have the following meanings.

38 **1. Deliver; delivery.** "Deliver" or "delivery" means any
39 method of delivery used in conventional commercial practice,
40 including delivery by hand, mail, commercial delivery and
41 electronic transmission.

42 **2. Electronic transmission.** "Electronic transmission" means
43 any process of communication that does not directly involve the
44 physical transfer of paper and that is suitable for the
45 retention, retrieval and reproduction of information by the
46 recipient.

48 **3. Foreign limited liability partnership.** "Foreign limited
49 liability partnership" means a limited liability partnership

2 formed pursuant to an agreement governed by the laws of another
3 jurisdiction and registered under the laws of that jurisdiction.

4 **4. Registered limited liability partnership.** "Registered
5 limited liability partnership" means a partnership formed
6 pursuant to an agreement governed by the Uniform Partnership Act
7 and registered under this Act.

8
9
10 **5. Sign; signature.** "Sign" or "signature" includes any
11 manual, facsimile, conformed or electronic signature.

12

13 SUMMARY

14

15 This bill makes minor technical changes to the Maine Revised
16 Statutes, Title 13-B to make signature requirements consistent
17 with other entity laws and adds definitions for electronic filing.

18

19 The bill amends the Maine Business Corporation Act: to
20 clarify the law concerning amendments to a plan of merger; to
21 provide greater consistency with the model act; to remove
22 unnecessary language; to correct a cross-reference; and to
23 clarify how the court may grant relief.

24

25 This bill also adds necessary definitions to modernize the
26 laws relating to limited partnerships, limited liability
27 companies and limited liability partnerships for electronic
28 filing.