

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 508

S.P. 203

In Senate, February 12, 2009

An Act To Amend the Laws Relating to Corporations, 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 Representative PRIEST of Brunswick and
Senators: BLISS of Cumberland, COURTNEY of York, Representatives: BEAULIEU of
Auburn, BRYANT of Windham, DILL of Cape Elizabeth, HILL of York, NASS of Acton.

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

2 **Sec. 1. 5 MRSA §102, sub-§16, ¶A**, as enacted by PL 2007, c. 323, Pt. A, §1 and
3 affected by Pt. G, §4, is amended to read:

4 A. An individual ~~or a domestic or foreign entity~~ that serves in this State as the agent
5 for service of process of an entity; or

6 **Sec. 2. 5 MRSA §108, sub-§2**, as enacted by PL 2007, c. 323, Pt. A, §1 and
7 affected by Pt. G, §4, is amended to read:

8 **2. Approval not needed.** ~~The~~ Except for a corporation formed under Title 13-C, the
9 interest holders or governors of a domestic entity need not approve the filing of:

10 A. A statement of change under this section; or

11 B. A similar filing changing the clerk or registered agent or registered office of the
12 entity in any other jurisdiction.

13 **Sec. 3. 13 MRSA §43** is amended to read:

14 **§43. Certificate of organization**

15 Before commencing business, the president, treasurer and a majority of the directors
16 of any corporation chartered by a special act of the Legislature shall prepare a certificate
17 setting forth, sign, date and deliver for filing with the Secretary of State articles of
18 incorporation as required by Title 13-C, section 202. In addition to the provisions under
19 Title 13-C, section 202, the corporation must provide the date of approval of its charter,
20 the name and purposes of the corporation, the amount of capital stock, the amount already
21 paid in, the par value of the shares having par value and the number of shares without par
22 value, the names and residences of the owners, the name of the county where it is located,
23 the number and names of the directors and the name and residence of the clerk, and shall
24 sign and make oath to it. Such certificate shall be recorded in the registry of deeds in the
25 county where its principal office is to be located in a book kept for that purpose and a
26 copy thereof, certified by such register, shall be filed in the office of the Secretary of
27 State, who shall enter the date of filing thereon and on the original certificate to be kept
28 by the corporation and shall record said copy in a book kept for that purpose. From the
29 time of filing such certificate in the office of the Secretary of State, the stockholders of
30 said corporation, their successors and assigns shall be a corporation. If articles of
31 incorporation delivered for filing to the Secretary of State pursuant to this section satisfy
32 the requirements of this subchapter and Title 13-C, section 202, the Secretary of State
33 shall file the articles of incorporation. The date of filing is the date of receipt by the
34 Secretary of State. After filing the articles of incorporation under this subchapter, the
35 Secretary of State shall deliver to the corporation or its representative a copy of the
36 document with an acknowledgment of the date of filing.

37 **Sec. 4. 13 MRSA §44** is amended to read:

1 **§44. Fees**

2 The ~~certificate mentioned in~~ filing fee for the articles of incorporation filed under
3 ~~section 43 shall not be received and filed by the Secretary of State except upon the~~
4 ~~payment to him for the use of the State of: \$15 if the capital stock does not exceed~~
5 ~~\$5,000; \$25 if the capital stock exceeds \$5,000 and does not exceed \$10,000; \$75 if the~~
6 ~~capital stock exceeds \$10,000 and does not exceed \$50,000; \$125 if the capital stock~~
7 ~~exceeds \$50,000 and does not exceed \$100,000; \$60 upon every \$100,000 or fraction~~
8 ~~thereof in excess of \$100,000 if the capital stock exceeds \$100,000; also 1¢ per share and~~
9 ~~in no case less than \$10 on all shares authorized without par value. This section shall not~~
10 ~~apply to corporations chartered for charitable and benevolent purposes~~ is the same as for
11 a corporation filing articles of incorporation under Title 13-C.

12 **Sec. 5. 13 MRSA §903**, as repealed and replaced by PL 2003, c. 523, §1, is
13 amended to read:

14 **§903. Certificate of organization**

15 The incorporators shall prepare, sign, date and deliver for filing with the Secretary of
16 State a certificate of organization setting forth the name, location, officers and directors,
17 trustees or managing board, contact person and the contact person's mailing and physical
18 address, if different, in this State and purposes of the corporation. The certificate must
19 clearly state that the corporation is not organized for profit and that no property or profit
20 of the corporation inures to the benefit of any person, partnership or corporation except in
21 furtherance of the benevolent or nonprofit purposes of the corporation. Once the
22 Secretary of State has filed the certificate of organization, the corporation may carry on
23 activities pursuant to this chapter.

24 **Sec. 6. 13 MRSA §906**, as repealed and replaced by PL 1993, c. 349, §31, is
25 repealed.

26 **Sec. 7. 13 MRSA §909** is enacted to read:

27 **§909. Certificate of existence; certificate of fact**

28 **1. Application.** A person may apply to the Secretary of State for a certificate of
29 existence for a corporation formed under this subchapter.

30 **2. Contents.** A certificate of existence sets forth:

31 A. The corporation's name used in this State;

32 B. That the corporation is duly incorporated under the laws of this State and the date
33 of its incorporation;

34 C. That all fees and penalties owed to this State have been paid if:

35 (1) Payment is reflected in the records of the Secretary of State; and

36 (2) Nonpayment affects the existence of the corporation; and

1 D. Any facts of record in the office of the Secretary of State that may be requested
2 by the applicant under subsection 1.

3 **3. Evidence of existence.** Subject to any qualification stated in the certificate, a
4 certificate of existence issued by the Secretary of State may be relied upon as conclusive
5 evidence that the corporation is in existence in this State.

6 **4. Certificate of fact.** In addition to the certificate of existence authorized under
7 subsection 2, the Secretary of State may issue a certificate attesting to any fact of record
8 in the office of the Secretary of State that may be requested by the applicant under
9 subsection 1.

10 **Sec. 8. 13 MRSA §910** is enacted to read:

11 **§910. Contact person for corporation; changes**

12 **1. Corporation to keep name of contact person on file with Secretary of State.**
13 A corporation to which this chapter applies must continually keep and maintain the name
14 of a contact person, who is a natural person resident in this State, on file with the
15 Secretary of State.

16 **2. Change.** If a change in the contact person under subsection 1 occurs or the name
17 or address of the contact person changes:

18 A. The corporation must notify the Secretary of State by filing a certificate of change
19 of contact person if the contact person changes. Notice by the corporation must be
20 made within 10 business days after a change of contact person occurs; or

21 B. The contact person must notify the Secretary of State of a name or address change
22 by filing a certificate of change of name or address. Notice by the contact person
23 must be made within 10 business days after a change of name or address of the
24 contact person occurs.

25 **3. Application.** This section applies to:

26 A. A new corporation formed under this chapter on or after the effective date of this
27 section; and

28 B. An existing corporation formed under this chapter that files an amendment to its
29 articles of incorporation on or after the effective date of this section.

30 **Sec. 9. 13 MRSA §911** is enacted to read:

31 **§911. Corporate name**

32 **1. Prohibition.** A corporate name may not contain language stating or implying
33 that the corporation is organized for a purpose other than that permitted under this chapter
34 and the corporation's articles of incorporation.

35 **2. Distinguishable name.** Except as authorized by subsections 4 and 5, a corporate
36 name must be distinguishable on the records of the Secretary of State from:

1 A. The name of a corporation, limited liability company, limited liability partnership
2 or limited partnership that is incorporated, organized or authorized to transact
3 business or carry on activities in this State;

4 B. Assumed, fictitious, reserved and registered name filings for all entities; and

5 C. Marks registered under Title 10, chapter 301-A unless the registered owner or
6 holder of the mark is the same person or entity as the corporation seeking to use a
7 name that is not distinguishable on the records of the Secretary of State and files
8 proof of ownership with the Secretary of State.

9 **3. Refuse to file name.** The Secretary of State, in the Secretary of State's discretion,
10 may refuse to file a name that:

11 A. Consists of or comprises language that is obscene;

12 B. Inappropriately promotes abusive or unlawful activity;

13 C. Falsely suggests an association with public institutions; or

14 D. Violates any other provision of the laws of this State with respect to names.

15 **4. Authorization to use name.** A corporation may apply to the Secretary of State
16 for authorization to use a name that is not distinguishable on the records of the Secretary
17 of State from one or more of the names described in subsection 2. The Secretary of State
18 shall authorize use of the name applied for if:

19 A. The entity in possession of the name consents to the use in writing and submits an
20 undertaking in a form satisfactory to the Secretary of State as provided in this chapter
21 or as provided in the applicable law for that entity to change its name to a name that
22 is distinguishable on the records of the Secretary of State from the name of the
23 applicant; or

24 B. The applicant delivers to the Secretary of State a certified copy of the final
25 judgment of a court of competent jurisdiction establishing the applicant's right to use
26 the name applied for in this State.

27 **5. Use of another corporation's name.** A corporation may use the name, including
28 the assumed or fictitious name, of another domestic or foreign corporation that is used in
29 this State if the other corporation is incorporated or authorized to transact business in this
30 State and the corporation proposing to use the name:

31 A. Has merged with the other corporation;

32 B. Has been formed by reorganization of the other corporation; or

33 C. Has acquired all or substantially all of the assets, including the corporate name,
34 of the other corporation.

35 **6. Determining distinguishability.** In determining whether names are
36 distinguishable on the records, the Secretary of State shall disregard:

37 A. The words or abbreviations of words that describe the nature of the entity,
38 including "professional association," "corporation," "company," "incorporated,"
39 "chartered," "limited," "limited partnership," "limited liability company,"

1 "professional limited liability company," "limited liability partnership," "registered
2 limited liability partnership," "limited liability limited partnership," "service
3 corporation" and "professional corporation";

4 B. The presence or absence of the words or symbols of the words "and" and "the";
5 and

6 C. The differences in the use of punctuation, capitalization or special characters.

7 7. **Violations of this section.** If a corporation has in other respects complied with
8 this chapter and its articles of incorporation have been filed, subsequent discovery of a
9 violation of this section does not invalidate its corporate existence or authority, but the
10 courts of this State may, upon application of the State or of any interested or affected
11 person, enjoin such violation and grant any other appropriate relief.

12 **Sec. 10. 13 MRSA §1823, first ¶** is amended to read:

13 ~~Articles~~ The articles of incorporation shall be signed by each of the incorporators and
14 ~~acknowledged by at least 3 of them if natural persons, and by the president and secretary~~
15 ~~if associations, before an officer authorized to take acknowledgments, and shall state~~
16 ~~must set forth:~~

17 **Sec. 11. 13 MRSA §1823, sub-§4** is amended to read:

18 **4. Location of office.** ~~The location and post-office~~ mailing address and physical
19 address, if different, of its registered office in this State;

20 **Sec. 12. 13 MRSA §1823, sub-§5** is amended to read:

21 **5. Name and address of incorporators; number of shares.** The name and ~~post-~~
22 ~~office~~ mailing address and physical address, if different, of the incorporators, and if
23 organized with capital stock, a statement of the number of shares subscribed by each,
24 which ~~shall~~ may not be less than one, and the class of shares for which each subscribes;

25 **Sec. 13. 13 MRSA §1823, sub-§6** is amended to read:

26 **6. Names and addresses of first directors.** The names and mailing addresses and
27 physical addresses, if different, of the first directors ~~and their post-office addresses;~~

28 **Sec. 14. 13 MRSA §1824,** as amended by PL 2007, c. 231, §5, is further amended
29 to read:

30 **§1824. Filing and recording articles of incorporation**

31 Before commencing business, the ~~president, treasurer and a majority of the directors~~
32 ~~or trustees~~ incorporators of every corporation organized under this subchapter shall
33 prepare, sign, date and deliver for filing with the Secretary of State articles of
34 incorporation, in a format approved by the Secretary of State, setting forth the ~~names and~~
35 ~~addresses of the officers~~ information required under section 1823. The filing fee for a
36 corporation formed under this subchapter is the same as for a corporation organized under
37 Title 13-C. If articles of incorporation delivered for filing to the Secretary of State

1 pursuant to this section satisfy the requirements of this subchapter, the Secretary of State
2 shall file the articles of incorporation. The date of filing is the date of receipt by the
3 Secretary of State. After filing the articles of incorporation under this subchapter, the
4 Secretary of State shall deliver to the corporation or its representative a copy of the
5 document with an acknowledgement of the date of filing.

6 **Sec. 15. 13-C MRSA §202, sub-§5**, as enacted by PL 2001, c. 640, Pt. A, §2 and
7 affected by Pt. B, §7, is repealed.

8 **Sec. 16. 13-C MRSA §1503, sub-§3**, as enacted by PL 2001, c. 640, Pt. A, §2
9 and affected by Pt. B, §7, is repealed.

10 **Sec. 17. 24-A MRSA §3308**, as amended by PL 1973, c. 585, §12, is repealed.

11 **Sec. 18. 24-A MRSA §3308-A** is enacted to read:

12 **§3308-A. Filing by the Secretary of State**

13 **1. Duty to file.** If a document delivered to the office of the Secretary of State for
14 filing pursuant to this chapter satisfies the requirements of this chapter, the Secretary of
15 State shall file the document.

16 **2. Recording as filed; acknowledgment.** The Secretary of State files a document
17 pursuant to subsection 1 by recording it as filed on the date of receipt. After filing a
18 document, the Secretary of State shall deliver to the corporation or its representative a
19 copy of the document with an acknowledgment of the date of filing.

20 **3. Evidentiary effect of copy of filed document.** A certificate from the Secretary of
21 State delivered with a copy of a document filed by the Secretary of State is conclusive
22 evidence that the original document is on file with the Secretary of State.

23 **Sec. 19. 24-A MRSA §3309**, as amended by PL 1973, c. 585, §12, is further
24 amended to read:

25 **§3309. Completion of incorporation; general powers, duties**

26 The incorporation of an insurer ~~shall be~~ is effective as of the date of ~~issuance~~ filing of
27 the appropriate document by the Secretary of State ~~of his certificate~~ as provided for in
28 section 3308; 3308-A, and thereupon the corporation ~~shall be~~ is vested with all the
29 powers, rights and privileges; and ~~be~~ is subject to all the duties, liabilities and restrictions
30 applicable to insurer corporations; subject to qualification and application for, and
31 issuance to the corporation of, a certificate of authority as an insurer by the
32 superintendent under this Title.

33 **Sec. 20. 24-A MRSA §6717, sub-§4**, as enacted by PL 1997, c. 435, §1, is
34 amended to read:

35 **4. Effect of transfer.** Upon any transfer authorized pursuant to this section, the
36 captive insurance company ceases to be domiciled in this State, and its corporate or other

1 legal existence in this State ceases upon the ~~issuance of a certificate of discontinuance~~
2 filing of the notice under this section by the Secretary of State.

3 **Sec. 21. 31 MRSA §625, sub-§1, ¶D**, as enacted by PL 1993, c. 718, Pt. A, §1, is
4 amended to read:

5 D. The future effective date or time of cancellation, which must be a date or time
6 certain not more than 90 days after the filing of the certificate, if it is not to be
7 effective upon the filing of the certificate; and

8 **Sec. 22. 31 MRSA §825, sub-§1, ¶D**, as enacted by PL 1995, c. 633, Pt. B, §1, is
9 amended to read:

10 D. The future effective date or time of renunciation, which must be a date or time
11 certain not more than 90 days after the filing of the certificate, if it is not to be
12 effective upon the filing of the certificate; and

13 **Sec. 23. 31 MRSA §1009, sub-§1, ¶C**, as enacted by PL 2005, c. 543, Pt. A, §2,
14 is amended to read:

15 C. For filing a statement of conversion under section ~~1092~~ or 1093, the fee is \$150;

16 **Sec. 24. 31 MRSA §1092**, as enacted by PL 2005, c. 543, Pt. A, §2, is repealed.

17 SUMMARY

18 This bill makes the following changes to the laws governing corporations, limited
19 liability companies and limited liability partnerships.

20 1. It amends the definition of "noncommercial clerk" in the newly enacted Model
21 Registered Agents Act to clarify that the clerk cannot be a domestic or foreign entity.

22 2. It amends the Model Registered Agents Act to require that approval of the interest
23 holders or governors of a domestic corporation is required when appointing a clerk of the
24 corporation.

25 3. It amends the language for corporations created under special acts of the
26 Legislature to comply with the filing requirements and fees for corporations filed under
27 the Maine Revised Statutes, Title 13-C.

28 4. It amends and enacts provisions under Title 13, chapter 81 in regards to naming or
29 changing a contact person for a corporation, obtaining a certificate of existence or
30 certificate of fact from the Secretary of State and determining name availability.

31 5. It amends the language under Title 13, chapter 85 for cooperative corporations to
32 make consistent a signature requirement.

33 6. It repeals provisions in Title 13-C relating to acceptance of appointment by the
34 clerk or registered agent of the corporation.

- 1 7. It changes provisions in the Maine Insurance Code to bring these provisions in
2 line with the duty of the Secretary of State for corporations governed by Title 13-C.
- 3 8. It amends the provisions for dissolving a limited liability company to cap the
4 delayed effective date to not be more than 90 days after filing the certificate of
5 dissolution.
- 6 9. It amends the provisions for dissolving a limited liability partnership to cap the
7 delayed effective date to not be more than 90 days after filing the certificate of
8 dissolution.
- 9 10. It repeals a duplicative provision in Title 31, chapter 17, for partnerships to
10 convert to another type of business entity.
- 11 11. It corrects cross-references and updates a provision regarding when the
12 incorporation of an insurer is effective.