

# MAINE STATE LEGISLATURE

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L.D. 1580  
(Filing No. H-819)

**JUDICIARY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
124TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1118, L.D. 1580, Bill, "An Act To Replace the Maine Limited Liability Company Act"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'PART A**

**Sec. A-1. 31 MRSA c. 13**, as amended, is repealed.

**Sec. A-2. 31 MRSA c. 21** is enacted to read:

**CHAPTER 21**

**LIMITED LIABILITY COMPANIES**

**SUBCHAPTER 1**

**GENERAL PROVISIONS**

**§1501. Short title**

This chapter may be known and cited as "the Maine Limited Liability Company Act."

**§1502. Definitions**

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

**1. Articles of organization.** "Articles of organization" means the articles described in former chapter 13, section 622.

**2. Certificate of formation.** "Certificate of formation" means the certificate described in section 1541, and the certificate as amended or restated.

1 **3. Constituent limited liability company.** "Constituent limited liability company"  
2 means a constituent organization that is a limited liability company.

3 **4. Constituent organization.** "Constituent organization" means an organization that  
4 is party to a merger.

5 **5. Converted organization.** "Converted organization" means the organization into  
6 which a converting organization converts pursuant to sections 1645 to 1648.

7 **6. Converting limited liability company.** "Converting limited liability company"  
8 means a converting organization that is a limited liability company.

9 **7. Converting organization.** "Converting organization" means an organization that  
10 converts into a converted organization pursuant to section 1645.

11 **8. Debtor in bankruptcy.** "Debtor in bankruptcy" means a person that is the subject  
12 of:

13 A. An order for relief under Title 11 of the United States Code or a successor statute  
14 of general application; or

15 B. A comparable order under federal, state or foreign law governing insolvency.

16 **9. Distribution.** "Distribution," except as otherwise provided in section 1555,  
17 subsection 4, means a transfer of money or other property from a limited liability  
18 company to another person on account of a transferable interest.

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

22 **11. Foreign limited liability company.** "Foreign limited liability company" means  
23 an organization that is:

24 A. An unincorporated association or entity;

25 B. Organized under laws of a state other than the laws of this State, or under the laws  
26 of any foreign country;

27 C. Organized under a statute pursuant to which an association or an entity may be  
28 formed that affords to each of its members limited liability with respect to the  
29 liabilities of the association or entity; and

30 D. Not required to be registered or organized under any statute of this State other  
31 than this chapter.

32 **12. Foreign organization.** "Foreign organization" means an organization that is  
33 formed under the laws of a jurisdiction other than this State.

34 **13. Governing statute.** "Governing statute" means the statute that governs an  
35 organization's internal affairs.

36 **14. Limited liability company.** "Limited liability company," except in the phrase  
37 "foreign limited liability company," means an entity formed under this chapter or under  
38 former chapter 13 and having one or more members and a limited liability company  
39 agreement. The fact that the limited liability company has a certificate of formation filed

with the office of the Secretary of State and has one or more members is conclusive evidence that a limited liability company agreement exists.

**15. Limited liability company agreement.** "Limited liability company agreement" means any agreement, whether referred to as a limited liability company agreement, operating agreement or otherwise, written, oral or implied, of the member or members as to the affairs of a limited liability company and the conduct of its activities. A limited liability company agreement of a limited liability company having only one member is not unenforceable by reason of there being only one person who is a party to the limited liability company agreement. A limited liability company agreement includes any amendments to the limited liability company agreement.

**16. Low-profit limited liability company.** "Low-profit limited liability company" means a domestic for-profit limited liability company that satisfies the requirements of section 1611 or a foreign for-profit limited liability company that satisfies the requirements of the laws of the jurisdiction where it was formed and that, in either case, does not have as a significant purpose the production of income or the appreciation of property.

**17. Majority of the members.** Unless otherwise provided in the limited liability company agreement, "majority of the members" means a majority of members who own more than 50% of the then current percentage or other interest in the profits of the limited liability company owned by all of the members or by the members in each class or group, as appropriate.

**18. Member.** "Member" means a person that has been admitted as a member of a limited liability company under section 1551.

**19. Organization.** "Organization" means, whether domestic or foreign: a partnership, whether general or limited; a limited liability company; a business trust; an association; a corporation; a professional corporation; a professional association; a nonprofit corporation; a government, including a state, county or any other governmental subdivision, agency or instrumentality; or other entity.

**20. Organizational documents.** "Organizational documents" means:

A. For a domestic or foreign general partnership, its partnership agreement;

B. For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

C. For a domestic or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable records as provided in its governing statute;

D. For a domestic or foreign business trust, its agreement of trust and declaration of trust, or comparable records as provided in its governing statute;

E. For a domestic or foreign corporation for profit, its articles of incorporation, bylaws and other agreements among its shareholders that are authorized by its governing statute, or comparable records as provided in its governing statute;

1 F. For a domestic or foreign nonprofit corporation, its articles of incorporation,  
2 bylaws and other agreements that are authorized by its governing statute, or  
3 comparable records as provided in its governing statute;

4 G. For a domestic or foreign professional corporation for profit, its articles of  
5 incorporation, bylaws and other agreements among its shareholders that are  
6 authorized by its governing statute, or comparable records as provided in its  
7 governing statute; and

8 H. For any other organization, the basic records that create the organization,  
9 determine its internal governance and determine the relations among the persons that  
10 own it, have an interest in it or are members of it.

11 **21. Person.** "Person" means, whether domestic or foreign: an individual; a  
12 partnership, whether general or limited; a limited liability company; a trust; a business  
13 trust; an estate; an association; a corporation; a professional corporation; a professional  
14 association; a nonprofit corporation; a government, including a country, state, county or  
15 any other governmental subdivision, agency or instrumentality; a custodian; a nominee; a  
16 trustee; a personal representative; a fiduciary; or any other individual or entity, or series  
17 thereof, in its own or any representative capacity.

18 **22. Record.** "Record" means information that is inscribed on a tangible medium or  
19 that is stored in an electronic or other medium and is retrievable in written or paper form.

20 **23. Secretary of State.** "Secretary of State" means the Secretary of State for the  
21 State.

22 **24. Sign.** "Sign" means, with the present intent to authenticate or adopt a record:

23 A. To execute or adopt a tangible symbol; or

24 B. To attach to or logically associate with the record an electronic symbol, sound or  
25 process.

26 **25. State.** "State" means a state of the United States, the District of Columbia, the  
27 Commonwealth of Puerto Rico, the United States Virgin Islands or any territory or  
28 insular possession subject to the jurisdiction of the United States.

29 **26. Statement of authority.** "Statement of authority" means a statement described  
30 in section 1542, subsection 1.

31 **27. Surviving organization.** "Surviving organization" means an organization into  
32 which one or more other organizations are merged whether the organization preexisted  
33 the merger or was created by the merger.

34 **28. Transfer.** "Transfer" includes an assignment, conveyance, deed, bill of sale,  
35 lease, mortgage, security interest, encumbrance, gift and transfer by operation of law.

36 **29. Transferable interest.** "Transferable interest" means the right, as originally  
37 associated with a person's capacity as a member, to receive distributions from a limited  
38 liability company in accordance with the limited liability company agreement, whether or  
39 not the person remains a member or continues to own any part of the right.

40 **30. Transferee.** "Transferee" means a person to which all or part of a transferable  
41 interest has been transferred, whether or not the transferor is a member.

**§1503. Knowledge; notice**

**1. Knows.** A person knows a fact when the person:

A. Has actual knowledge of it; or

B. Is deemed to know it under law other than this chapter.

**2. Notice.** A person has notice of a fact when the person:

A. Knows of it;

B. Receives notification of it;

C. Has reason to know the fact from all of the facts known to the person at the time in question; or

D. Is deemed to have notice of the fact under subsection 4.

**3. Notifies.** A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

**4. Nonmember; notice.** A person that is not a member is deemed to have notice of a limited liability company's:

A. Matters included in the certificate of formation under section 1531, subsection 1, paragraphs A and B, upon filing;

B. Termination, 90 days after a certificate of cancellation under section 1533 becomes effective;

C. Merger or conversion, 90 days after a statement of merger or statement of conversion under subchapter 12 becomes effective; and

D. Revival, 90 days after a certificate of revival under section 1604 becomes effective.

**5. Member; knowledge, notice or receipt of notification.** A member's knowledge, notice or receipt of a notification of a fact relating to the limited liability company is not knowledge, notice or receipt of a notification of a fact by the limited liability company solely by reason of the member's capacity as a member.

**§1504. Nature, purpose and duration of limited liability company**

**1. Distinct entity.** A limited liability company is an entity distinct from its members.

**2. Any lawful purpose.** A limited liability company may have any lawful purpose, regardless of whether for profit.

**3. Duration.** A limited liability company has perpetual duration.

**§1505. Capacities and powers**

**1. To sue, be sued.** A limited liability company has the capacity to sue and be sued in its own name.

1 **2. To hold property.** A limited liability company has the capacity to hold property  
2 in its own name.

3 **3. Power to carry out activities.** A limited liability company has the power to do  
4 all things necessary or convenient to carry on its activities.

5 **§1506. Governing law**

6 The law of this State governs:

7 **1. Internal affairs.** The internal affairs of a limited liability company; and

8 **2. Liability.** The liability of a member as a member for the debts, obligations or  
9 other liabilities of a limited liability company.

10 **§1507. Rules of construction**

11 **1. Freedom of contract.** It is the policy of this chapter and this State to give  
12 maximum effect to the principles of freedom of contract and to the enforceability of  
13 limited liability company agreements.

14 **2. Principles of law and equity.** Unless displaced by particular provisions of this  
15 chapter, the principles of law and equity supplement this chapter.

16 **3. No application.** Rules that statutes in derogation of the common law are to be  
17 strictly construed do not apply to this chapter.

18 **4. Subject to amendment or repeal.** A limited liability company and a foreign  
19 limited liability company are subject to any amendment or repeal of this chapter.

20 **5. Assignments.** Title 11, sections 9-1406 and 9-1408 do not apply to any interest in  
21 a limited liability company, including all rights, powers and interests arising under a  
22 limited liability company agreement or this chapter. This subsection prevails over Title  
23 11, sections 9-1406 and 9-1408 and is intended to permit the enforcement of the  
24 provisions of a limited liability company agreement that would otherwise be ineffective  
25 under Title 11, sections 9-1406 and 9-1408.

26 **§1508. Limited liability company name**

27 **1. Requirements.** A limited liability company name must contain the words  
28 "limited liability company" or "limited company" or the abbreviation "L.L.C.," "LLC,"  
29 "L.C." or "LC" or, in the case of a low-profit limited liability company, "L3C" or "l3c."  
30 The word "limited" may be abbreviated as "Ltd.," and "company" may be abbreviated as  
31 "Co." unless the limited liability company is filing an assumed name under section 1510  
32 or a registration of a name of a foreign limited liability company under section 1511. If  
33 the words "Limited Liability Company," "Limited Liability Company, Chartered,"  
34 "Limited Liability Company, Professional Association," "Limited Liability Company,  
35 P.A." or any of the designations without commas are used, a limited liability company  
36 may also use the abbreviation "L.L.C." or the designation "LLC" without filing an  
37 assumed name under section 1510. In the case of a low-profit limited liability company,  
38 if the words "Low-profit Limited Liability Company" are used, a limited liability  
39 company may also use the abbreviation "L3C" or the designation "l3c" without filing an  
40 assumed name under section 1510.

**2. Distinguishable name.** Except as authorized by subsections 4 and 5, a limited liability company name must be distinguishable on the records of the office of the Secretary of State from:

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

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

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

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

A. Consists of or comprises language that is obscene;

B. Inappropriately promotes abusive or unlawful activity;

C. Falsely suggests an association with public institutions; or

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

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

A. The entity in possession of the name consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable on the records of the office of the Secretary of State from the name of the applicant; or

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

**5. Use of another limited liability company's name.** A limited liability company may use the name, including the assumed or fictitious name, of another domestic or foreign limited liability company that is used in this State if the other limited liability company is organized or authorized to transact business in this State and the limited liability company proposing to use the name:

A. Has merged with the other limited liability company;

B. Has been formed by reorganization of the other limited liability company; or

C. Has acquired all or substantially all of the assets, including the limited liability company name, of the other limited liability company.

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



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A. Words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited company," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" and "professional corporation";

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

C. Differences in the use of punctuation, capitalization or special characters.

**7. Change of limited liability company name by foreign limited liability company.** If a foreign limited liability company that has filed a statement of foreign qualification in this State changes its name to one that does not satisfy the requirements of this section, it may not transact business in this State under the proposed new name until it adopts a name satisfying the requirements of this section and files an amended statement of foreign qualification under section 1622, subsection 3 that is accompanied by a statement of use of a fictitious name under section 1510.

**8. Exception.** Notwithstanding subsection 2, a foreign limited liability company may use a name that is not distinguishable on the records of the office of the Secretary of State if the foreign limited liability company was authorized to do business in this State before January 1, 1995 and had the right to use that name as its legal name before that date.

**§1509. Reservation of name**

**1. Reserve use of name.** A person may reserve the exclusive use of a limited liability company name, including an assumed or fictitious name, by executing and delivering for filing an application to the office of the Secretary of State. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the limited liability company name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable period of 120 days.

**2. Transfer of reservation.** The owner of a reserved limited liability company name under subsection 1 may transfer the reservation to another person by executing and delivering for filing to the office of the Secretary of State a notice of the transfer, signed by the transferor, that states the name and address of the transferee.

**§1510. Assumed or fictitious name of limited liability company**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Assumed name" means a trade name or any name other than the real name of a limited liability company except a fictitious name.

B. "Fictitious name" means a name adopted by a foreign limited liability company that has filed a statement of foreign qualification in this State because its real name is unavailable pursuant to section 1508.

1        **2. Authorized to transact business.** Upon complying with this section, a domestic  
2        or foreign limited liability company that has filed a statement of foreign qualification in  
3        this State may transact its business in this State under one or more assumed or fictitious  
4        names.

5        **3. File statement indicating use of assumed or fictitious name.** Prior to  
6        transacting business in this State under an assumed or fictitious name, a limited liability  
7        company shall execute and deliver to the office of the Secretary of State for filing a  
8        statement setting forth:

9            A. The limited liability company name;

10          B. That the limited liability company intends to transact business under an assumed  
11          or fictitious name;

12          C. The assumed or fictitious name that the limited liability company proposes to use;

13          D. If the assumed name is not to be used at all of the limited liability company's  
14          places of business in this State, the locations where that name will be used; and

15          E. If the company is a foreign limited liability company:

16            (1) The jurisdiction of organization; and

17            (2) The date on which it was authorized to transact business in this State.

18        A separate statement must be executed and delivered to the office of the Secretary of  
19        State for filing with respect to each assumed or fictitious name that the limited liability  
20        company proposes to use.

21        **4. Compliance required.** An assumed or fictitious name must comply with the  
22        requirements of section 1508.

23        **5. Enjoin use of assumed or fictitious name.** If a limited liability company uses an  
24        assumed or fictitious name without complying with the requirements of this section, the  
25        continued use of the assumed or fictitious name may be enjoined upon suit by the  
26        Attorney General or by any person adversely affected by the use of the assumed or  
27        fictitious name.

28        **6. Enjoin use despite compliance.** Notwithstanding its compliance with the  
29        requirements of this section, the use of an assumed or fictitious name may be enjoined  
30        upon suit by the Attorney General or by any person adversely affected by such use if:

31            A. The assumed or fictitious name did not, at the time the statement required by  
32            subsection 3 was filed, comply with the requirements of section 1508; or

33            B. The assumed or fictitious name is not distinguishable on the records of the office  
34            of the Secretary of State from a name in which the plaintiff has prior rights by virtue  
35            of the common law or statutory law of unfair competition, unfair trade practices and  
36            common law copyright or similar law.

37        The mere filing of a statement pursuant to subsection 3 does not constitute actual use of  
38        the assumed or fictitious name set out in that statement for the purpose of determining  
39        priority of rights.

1 7. Terminate use of assumed or fictitious name. A limited liability company may  
2 terminate an assumed or fictitious name by executing and delivering to the office of the  
3 Secretary of State a statement setting forth:

4 A. The name of the limited liability company;

5 B. That the limited liability company no longer intends to transact business under the  
6 assumed or fictitious name; and

7 C. The assumed or fictitious name the limited liability company intends to terminate.

8 **§1511. Registered name of foreign limited liability company**

9 1. Register limited liability company name. A foreign limited liability company  
10 may register its limited liability company name if the name is distinguishable on the  
11 records of the office of the Secretary of State pursuant to section 1508.

12 2. Application. To register its limited liability company name, a foreign limited  
13 liability company must execute and deliver to the office of the Secretary of State for  
14 filing an application that:

15 A. Sets forth its limited liability company name, the state or other jurisdiction of its  
16 organization, the date of its organization in its jurisdiction of organization, the  
17 address of its principal office wherever located and a brief description of the nature of  
18 the business in which it is engaged; and

19 B. Is accompanied by a certificate of existence or a document of similar import duly  
20 authenticated by the secretary of state or other official having custody of limited  
21 liability company records in the state or other jurisdiction under whose law the  
22 foreign limited liability company is organized. The certificate of existence must have  
23 been made not more than 90 days prior to the delivery of the application for filing.

24 3. Applicant's exclusive use. A limited liability company name is registered for a  
25 foreign limited liability company's exclusive use upon the effective date of the application  
26 under subsection 2 until the end of the calendar year in which the application was filed.

27 4. Renewal of registered name. A foreign limited liability company whose  
28 registration under this section is effective may renew it for a successive year by  
29 delivering for filing to the office of the Secretary of State between October 1st and  
30 December 31st a renewal application that complies with the requirements of subsection 2.  
31 The renewal application, when filed, renews the registration for the following calendar  
32 year.

33 5. Qualify as foreign limited liability company. A foreign limited liability  
34 company whose registration under this section is effective may, after the registration is  
35 effective, file a statement of foreign qualification as a foreign limited liability company  
36 under the registered name or may consent in writing to the use of that name by a limited  
37 liability company organized under this chapter or by another foreign limited liability  
38 company authorized to transact business in this State. The registration terminates when  
39 the domestic limited liability company is organized or the foreign limited liability  
40 company files a statement of foreign qualification or consents to the qualification of  
41 another foreign limited liability company under the registered name.

**SUBCHAPTER 2**

**LIMITED LIABILITY COMPANY AGREEMENT; PROVISIONS OF CHAPTER  
THAT MAY NOT BE MODIFIED BY THE LIMITED LIABILITY COMPANY  
AGREEMENT**

**§1521. Limited liability company agreement; scope, function and limitations**

**1. Agreement governs.** Except as otherwise provided in subsection 3 and section 1522, the limited liability company agreement governs relations among the members as members and between the members and the limited liability company.

**2. When agreement does not otherwise provide.** To the extent the limited liability company agreement does not otherwise provide for a matter described in subsection 1, this chapter governs the matter.

**3. Expansion, restriction or elimination of duties.** Except as provided in section 1611, a member's or other person's duties may be expanded, restricted or eliminated as provided in this subsection.

**A.** To the extent that, at law or in equity, a member or other person has duties, including fiduciary duties, to the limited liability company or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement, the member's or other person's duties may be expanded or restricted or eliminated by provisions in a written limited liability company agreement; except that the implied contractual covenant of good faith and fair dealing may not be eliminated.

**B.** A written limited liability company agreement may provide for the limitation or elimination of any liabilities for breach of contract and breach of duties, including fiduciary duties, of a member or other person to a limited liability company or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement.

**4. No liability for good faith reliance on agreement.** Unless otherwise provided in a limited liability company agreement, a member or other person is not liable to a limited liability company or to another member or to another person that is a party to or is otherwise bound by a limited liability company agreement for breach of fiduciary duty for the member's or other person's good faith reliance on the provisions of the limited liability company agreement.

**§1522. Provisions of the chapter that may not be modified by the limited liability company agreement**

**1. Prohibited contents.** A limited liability company agreement may not:

**A.** Vary the distinction between the limited liability company as an entity and its members under section 1504, subsection 1;

**B.** Vary a limited liability company's capacity under section 1505 to sue and be sued in its own name;

**C.** Vary the law applicable under section 1506;

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D. Except as otherwise provided in section 1523, subsection 2, restrict the rights under this chapter of a person other than a member or transferee;

E. Vary the power of the court under section 1677;

F. Eliminate or limit a member's liability to the limited liability company and members for money damages for a bad faith violation of the implied contractual covenant of good faith and fair dealing;

G. Waive the requirement of section 1553, subsection 1 that a contribution obligation be in writing; or

H. Vary the requirement to wind up the limited liability company's business as specified in section 1597.

**2. Good faith and fair dealing.** Notwithstanding any contrary provision of law, there exists an implied contractual covenant of good faith and fair dealing in every limited liability company agreement, which may not be eliminated by the terms of the limited liability company agreement.

**§1523. Limited liability company agreement; effect on limited liability company and persons admitted as members; preformation agreement**

**1. Agreement binding and enforceable.** A limited liability company is bound by and may enforce the limited liability company agreement, whether or not the limited liability company has itself manifested assent to the limited liability company agreement.

**2. Member a party.** A person that is admitted as a member of a limited liability company becomes a party to and assents to the limited liability company agreement except as provided in section 1553, subsection 1.

**3. Initial members agreement.** Two or more persons intending to be the initial members of a limited liability company may make an agreement providing that upon the formation of the limited liability company the agreement becomes the limited liability company agreement. One person intending to be the initial member of a limited liability company may assent to terms providing that upon the formation of the limited liability company the terms will become the limited liability company agreement.

**§1524. Limited liability company agreement; effect on 3rd parties and relationship to records effective on behalf of limited liability company**

**1. Manner of amendment.** If a limited liability company agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the limited liability company agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law. The approval of the person may be waived by the person and any conditions may be waived by all persons for whose benefit those conditions were intended.

**2. Rights provided.** A limited liability company agreement may provide rights to any person, including a person who is not a party to the limited liability company agreement, to the extent set forth in the agreement.

**3. Obligations to transferee or dissociated member.** The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or

dissociated member are governed by the limited liability company agreement. An amendment to the limited liability company agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

### **SUBCHAPTER 3**

## **FORMATION, CERTIFICATE OF FORMATION AND OTHER FILINGS**

### **§1531. Formation of limited liability company; certificate of formation**

#### **1. Formation requirements. In order to form a limited liability company:**

A. One or more authorized persons must execute a certificate of formation. The certificate of formation must be filed in the office of the Secretary of State and set forth:

(1) The name of the limited liability company;

(2) The information required by Title 5, section 105, subsection 1; and

(3) Any other matters the members determine to include. The certificate of formation may include the information required for a statement of authority as provided in section 1542, subsection 1;

B. A limited liability company agreement must be entered into or otherwise existing. The limited liability company agreement may be entered into either before, after or at the time of the filing of a certificate of formation. Whether entered into or otherwise existing before, after or at the time of the filing of a certificate of formation, a limited liability company agreement may be made effective as of the formation of the limited liability company or at another time or date as provided in or reflected by the limited liability company agreement; and

C. The limited liability company must have one or more members.

2. Time formed. A limited liability company is formed at the time of the filing of the initial certificate of formation in the office of the Secretary of State or at any later date or time specified in the certificate of formation if, in either case, there has been substantial compliance with the requirements of this section. A limited liability company formed under this chapter is a separate legal entity.

3. Notice. The fact that a certificate of formation is on file in the office of the Secretary of State is notice of the matters required to be included by subsection 1, paragraphs A and B and matters that may be included pursuant to section 1611, subsection 2, but is not notice of any other fact.

### **§1532. Amendment or restatement of certificate of formation**

1. Time of amendment or restatement. A certificate of formation may be amended or restated at any time.

2. Restatement with or without amendment. A certificate of formation may be restated with or without amendment at any time.

**3. Contents of amendment.** To amend its certificate of formation, a limited liability company must deliver to the office of the Secretary of State for filing an amendment stating:

A. The name of the limited liability company;

B. The date of filing of the limited liability company's certificate of formation; and

C. The changes the amendment makes to the certificate of formation as most recently amended or restated.

**4. Restated certificate of formation.** A restated certificate of formation may be delivered to the office of the Secretary of State for filing in the same manner as an amendment. Any amendment or change effected in connection with the restatement of the certificate of formation is subject to any other provision of this chapter, not inconsistent with this section, that would apply if a separate certificate of amendment were filed to effect such amendment or change.

**5. Superseded.** The original certificate of formation, as amended or supplemented, is superseded by the restated certificate of formation, and from that time forward the restated certificate of formation, including any further amendment or changes made thereby, is the certificate of formation of the limited liability company, but the original effective date of formation remains unchanged.

**§1533. Cancellation of certificate of formation**

**1. Cancellation.** A certificate of formation is cancelled upon each of the following:

A. The dissolution and the completion of winding up and liquidation of the activities and affairs of a limited liability company;

B. As provided in section 1593, subsection 4;

C. Upon the filing of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation, or upon the future effective date or time of a certificate of merger or consolidation if the limited liability company is not the surviving or resulting entity in a merger or consolidation; or

D. Upon the filing of a certificate of conversion to a foreign organization or upon the future effective date or time of a certificate of conversion to a foreign organization.

**2. Certificate of cancellation.** A certificate of cancellation must be delivered for filing in the office of the Secretary of State to accomplish the cancellation of a certificate of formation upon the dissolution and the completion of winding up of a limited liability company and must set forth:

A. The name of the limited liability company;

B. The date of filing of the limited liability company's certificate of formation;

C. A statement that the limited liability company is dissolved and the date of dissolution, if known;

D. The future effective date or time, which must be a date or time certain, of cancellation if it is not to be effective upon the filing of the certificate of cancellation; and

E. Any other information the person filing the certificate of cancellation determines necessary.

3. Certificate of good standing. The Secretary of State may not issue a certificate of good standing with respect to a limited liability company if its certificate of formation is cancelled.

4. Application of section 1544. The filing of a certificate of cancellation by the Secretary of State does not abate, suspend or otherwise alter the application of section 1544.

#### SUBCHAPTER 4

### RELATIONS OF MEMBERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

#### §1541. Power to bind limited liability company

A person may not bind a limited liability company except:

1. Under or pursuant to agreement. To the extent the person is authorized to act as the limited liability company's agent under or pursuant to the limited liability company agreement;

2. By members. To the extent the person is authorized by the members to act as the limited liability company's agent pursuant to section 1556;

3. Pursuant to statement of authority. To the extent provided in section 1542;

4. No statement of authority. If there is no statement of authority in effect, any manager, member, president or treasurer of a limited liability company has the authority to bind the limited liability company; or

5. As provided by law. To the extent otherwise provided by law.

#### §1542. Statement of authority

1. Statement delivered for filing. A limited liability company may deliver to the office of the Secretary of State for filing a statement of authority. The statement:

A. Must include the name of the limited liability company;

B. May state the authority, or limitations on the authority, of a specific person or persons to enter into transactions on behalf of, or otherwise act for or bind, the limited liability company; and

C. With respect to any position that exists in or with respect to the limited liability company, may state the authority, or limitations on the authority, of all persons holding the position to enter into transactions on behalf of, or otherwise act for or bind, the limited liability company.



**2. Amendment or cancellation delivered for filing.** To amend or cancel a statement of authority filed with the office of the Secretary of State, a limited liability company must deliver to the office of the Secretary of State for filing an amendment or cancellation stating:

A. The name of the limited liability company;

B. The date the statement of authority was filed; and

C. The contents of the amendment or a declaration that the statement of authority being affected is cancelled.

**3. Effective statement of authority conclusive.** An effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value the person has knowledge to the contrary.

**4. Certificate of cancellation.** Upon filing, a certificate of cancellation filed pursuant to section 1533 operates as a cancellation under subsection 2 of each statement of authority.

**5. Statement of denial.** Upon filing, a statement of denial filed pursuant to section 1543 operates as an amendment under subsection 2 of the statement of authority to which the statement of denial pertains.

**§1543. Statement of denial**

A person named in a filed statement of authority may deliver to the office of the Secretary of State for filing a statement of denial that:

**1. Name and date.** States the name of the limited liability company and the date of filing of the statement of authority to which the statement of denial pertains;

**2. Denial of authority.** Denies the person's authority; and

**3. Notice to limited liability company.** States that the person has furnished the limited liability company with a copy of the statement of denial.

**§1544. Liability of members to 3rd parties**

A person who is a member of a limited liability company is not liable, solely by reason of being a member, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the limited liability company, whether arising in contract, tort or otherwise or for the acts or omissions of any other member, agent or employee of the limited liability company.

**SUBCHAPTER 5**

**RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY**

**§1551. Admission of a member**

**1. In connection with formation.** In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later of:

1        A. The formation of the limited liability company; and

2        B. The time provided in and upon compliance with the limited liability company  
3        agreement or, if the limited liability company agreement does not so provide, when  
4        the person's admission is reflected in the records of the limited liability company.

5        **2. After formation.** After formation of a limited liability company, a person is  
6        admitted as a member of the limited liability company:

7        A. As provided in the limited liability company agreement;

8        B. As the result of a transaction effective under subchapter 10;

9        C. With the consent of all the members; or

10       D. If, within 90 consecutive days after the limited liability company ceases to have  
11       any members:

12           (1) All holders of the transferable interest last transferred by the last person to  
13           have been a member consent to the designation of a person to be admitted as a  
14           member; and

15           (2) The designated person consents to be admitted as a member effective as of  
16           the date the last person to have been a member ceased to be a member.

17        **3. Admission without transferable interest or contribution.** A person may be  
18        admitted as a member without acquiring a transferable interest and without making or  
19        being obligated to make a contribution to the limited liability company.

20        **§1552. Form of contribution**

21           A contribution may consist of cash, property or services rendered or a promissory  
22           note or other obligation to contribute cash or property or to perform services.

23        **§1553. Liability for contributions**

24           **1. Promise in writing.** A promise by a member to make a contribution to a limited  
25           liability company is not enforceable unless set forth in a writing signed by the member.

26           **2. Obligation not excused.** A member's obligation to make a contribution to a  
27           limited liability company is not excused by the member's death, disability or other  
28           inability to perform personally. If a member does not make a contribution required by an  
29           enforceable promise, the member or the member's estate is obligated, at the option of the  
30           limited liability company, to contribute money equal to the value of the portion of the  
31           contribution that has not been made. The limited liability company's option is in addition  
32           to, and not in lieu of, any other rights, including the right to specific performance, that the  
33           limited liability company may have under the limited liability company agreement or  
34           applicable law.

35           **3. Obligation compromised.** The obligation of a member may be compromised  
36           only by consent of all the members. Notwithstanding the compromise, a creditor of a  
37           limited liability company who extends credit after the entering into of a limited liability  
38           company agreement or an amendment to the agreement that, in either case, reflects the  
39           obligation and before an amendment to the agreement that reflects the compromise may  
40           enforce the original obligation to the extent that, in extending credit, the creditor

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1 reasonably relied on the obligation of a member to make a contribution. A conditional  
2 obligation of a member to make a contribution to a limited liability company may not be  
3 enforced unless the conditions of the obligation have been satisfied or waived as to or by  
4 such member. Conditional obligations include contributions payable upon a discretionary  
5 call of a limited liability company prior to the time the call occurs.

6 **§1554. Sharing of and right to distributions**

7 1. Agreed value. Distributions by a limited liability company before its dissolution  
8 and winding up must be made on the basis of the agreed value, as stated in any written  
9 records of the limited liability company, of the contributions made by each person or the  
10 person's predecessor in interest to the extent contributions have been received by the  
11 limited liability company and not returned.

12 2. Interim distribution. A person has a right to a distribution before the dissolution  
13 and winding up of a limited liability company only if the limited liability company  
14 decides to make an interim distribution. A member's dissociation does not entitle the  
15 dissociated member to a distribution.

16 3. Form of distribution. A person does not have a right to demand and receive a  
17 distribution from a limited liability company in any form other than money. Except as  
18 otherwise provided in section 1601, subsection 3, a limited liability company may  
19 distribute an asset in kind if each person receives a percentage of the asset equal in value  
20 to the member's share of distributions.

21 4. Status of creditor. If a member or transferee becomes entitled to receive a  
22 distribution, the member or transferee has the status of, and is entitled to all remedies  
23 available to, a creditor of the limited liability company with respect to the distribution.

24 **§1555. Limitations on distribution and liability for improper distributions**

25 1. Improper distribution. A limited liability company may not make a distribution  
26 to the extent that at the time of the distribution, after giving effect to the distribution, all  
27 liabilities of the limited liability company, other than liabilities to members on account of  
28 their limited liability company interests and liabilities for which the recourse of creditors  
29 is limited to specific property of the limited liability company, exceed the fair value of the  
30 assets of the limited liability company, except that the fair value of the property that is  
31 subject to a liability for which recourse of creditors is limited must be included in the  
32 assets of the limited liability company only to the extent that the fair value of the property  
33 exceeds that liability.

34 2. Liability for improper distribution. A person who receives a distribution in  
35 violation of subsection 1, and who knew at the time of the distribution that the  
36 distribution violated subsection 1, is liable to the limited liability company for the amount  
37 of the distribution. A person who receives a distribution in violation of subsection 1, and  
38 who did not know at the time of the distribution that the distribution violated subsection  
39 1, is not liable for the amount of the distribution. Subject to subsection 4, this subsection  
40 does not affect any obligation or liability of a person under an agreement or other  
41 applicable law for the amount of a distribution.

42 3. Action barred after 2 years. An action under this section is barred if not  
43 commenced within 2 years after the distribution.

1 4. Distribution exclusions. For purposes of this section, "distribution" does not  
2 include amounts constituting reasonable compensation for present or past services or  
3 reasonable payments made in the ordinary course of business under a bona fide  
4 retirement plan or other benefits program.

5 5. Distribution made in accordance with section 1601. This section does not  
6 apply to distributions made in accordance with section 1601.

7 **§1556. Activities and affairs of limited liability company**

8 1. Direction; oversight of members. The activities and affairs of a limited liability  
9 company are under the direction, and subject to the oversight, of its members.

10 2. Majority of members. A matter in the ordinary course of activities of a limited  
11 liability company may be decided by a majority of the members.

12 3. All members. The consent of all members of a limited liability company is  
13 required to:

14 A. Approve a merger or conversion under subchapter 12;

15 B. Amend the limited liability company agreement;

16 C. Undertake any other act outside the ordinary course of the limited liability  
17 company's activities; or

18 D. Undertake, authorize or approve any other act or matter for which this chapter  
19 requires the consent of all members.

20 4. Without meeting; agent. Any matter requiring the consent of the members of a  
21 limited liability company may be decided without a meeting, and a member may appoint  
22 a proxy or other agent to consent or otherwise act for the member by signing an  
23 appointing record, personally or by the member's agent.

24 5. After dissolution, majority of members. After dissolution, a matter in the  
25 ordinary course of winding up the activities of a limited liability company may be  
26 decided by a majority of the members.

27 6. No entitlement to remuneration. This chapter does not entitle a member to  
28 remuneration for services performed for a limited liability company.

29 **§1557. Indemnification, advancement, reimbursement and insurance**

30 A limited liability company may indemnify and hold harmless a member or other  
31 person, pay in advance or reimburse expenses incurred by a member or other person and  
32 purchase and maintain insurance on behalf of a member or other person.

33 **§1558. Right of members and dissociated members to information**

34 1. Member; inspect and copy record. On 10 days' notice made in a record  
35 received by a limited liability company, a member may inspect and copy during regular  
36 business hours, at a reasonable location specified by the limited liability company, any  
37 record maintained by the limited liability company, to the extent the information is  
38 material to the member's rights and duties under the limited liability company agreement  
39 or this chapter.

**2. Dissociated member; inspect and copy.** On 30 days' notice made in a record received by a limited liability company, a dissociated member may inspect and copy, during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company, to the extent the information pertains to the period during which the person was a member, the information was material to the person's rights and duties under the limited liability company agreement or this chapter when the person was a member and the person seeks the information in good faith.

**3. Reasonable costs.** A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

**4. Agent or representative.** A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the limited liability company agreement or under subsection 6 applies both to the agent or legal representative and the member or dissociated member.

**5. Transferee.** The rights under this section do not extend to a transferee.

**6. Additional restrictions.** In addition to any restriction or condition stated in its limited liability company agreement, a limited liability company, as a matter within the ordinary course of its activities, may:

A. Impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient; and

B. Keep confidential from the members and any other persons, for a period of time the limited liability company considers reasonable, any information that the limited liability company reasonably believes to be in the nature of trade secrets or other information the disclosure of which the limited liability company in good faith believes is not in the best interest of the limited liability company or could damage the limited liability company or its activities or that the limited liability company is required by law or by agreement with a 3rd party to keep confidential.

# **§1559. Duties of members and other persons**

Except as may be set forth in the limited liability company agreement in accordance with sections 1521 and 1522, the following provisions apply.

**1. Good faith; diligence; care; skill.** Persons shall discharge their duties under this chapter in good faith with a view to the interests of the limited liability company and of the members and with the degree of diligence, care and skill that ordinarily prudent persons would exercise under similar circumstances in like positions. For purposes of this section, the interests of each low-profit limited liability company and its members include furthering the purposes set forth in its certificate of formation consistent with statements required to be made in its certificate of formation pursuant to section 1611, subsection 2.

**2. Personal liability.** A member or other person may not be held personally liable for monetary damages for failure to discharge any duty unless the member or other

person is found not to have acted honestly or in the reasonable belief that the action was in or not opposed to the best interests of the limited liability company or its members.

**3. Fiduciary duty.** Subject to the terms of section 1521, subsection 3, paragraph A, a member not involved in the management of a limited liability company does not have a fiduciary duty to the limited liability company, or to any other member, or to another person that is a party to or is otherwise bound by a limited liability company agreement, solely by reason of being a member. A member may not be considered to be involved in the management of a limited liability company as a result of the following:

A. Having the right to vote or elect those persons that will manage the business of a limited liability company; or

B. Having the power to vote on, approve or veto certain material transactions or actions involving the limited liability company, including the sale, merger, conversion or dissolution of a limited liability company, the amendment of the limited liability company agreement or its certificate of formation, the issuance of additional interests or admission of new members, the incurrence of indebtedness or granting of liens, the acquisition of another business or any portion of another business, however effected, the timing and amount of distributions or the undertaking of any other action outside the ordinary course of the limited liability company's activities. The actions and transactions described in this paragraph are not intended to be exclusive and no inference may be made from the absence of a particular action or transaction from the list of actions and transactions in this paragraph.

#### **§1560. Nature of professional limited liability company business**

A professional limited liability company, as defined in Title 13, section 723, subsection 5, is subject to the Maine Professional Service Corporation Act except as follows.

**1. No application.** Title 13, sections 722, 733, 736, 751, 762 and 763, Title 13, section 771, subsection 2, paragraph A and Title 13, section 772 do not apply.

**2. Application.** All references to:

A. Shareholders are deemed to be references to members and transferees;

B. Corporations or corporations organized or incorporated under the Maine Professional Service Corporation Act are deemed to be references to professional limited liability companies;

C. Stock are deemed to be references to transferable interests; and

D. Officers and directors are deemed to be references to the officers and directors of the limited liability company, if any, and otherwise to any individuals having comparable management authority in respect of the limited liability company. References to clerk, treasurer and secretary are deemed to be references to such persons having comparable authority in respect of the limited liability company.

#### **SUBCHAPTER 6**

#### **TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS**

**§1571. Member's transferable interest**

The only interest of a member that is transferable is the member's transferable interest. A transferable interest in a limited liability company is personal property.

**§1572. Transfer of transferable interest**

**1. Transferable interest.** A transfer, in whole or in part, of a transferable interest:

A. Is permissible;

B. Does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

C. Subject to section 1574, does not entitle the transferee to:

(1) Participate in the management or conduct of the limited liability company's activities; or

(2) Have access to records or other information concerning the limited liability company's activities.

**2. Distributions.** A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

**3. Evidence.** A transferable interest may be evidenced by a certificate of transferable interest issued by a limited liability company. A limited liability company agreement may provide for the transfer of the transferable interest represented by the certificate and make other provisions with respect to the certificate. A limited liability company does not have the power to issue a certificate of transferable interest in bearer form.

**4. Written notice of transfer required.** A limited liability company need not give effect to a transferee's rights under this section until the limited liability company has written notice of the transfer.

**5. Rights and duties of member after transfer.** Except as otherwise provided in section 1582, subsection 4, paragraph B and section 1582, subsection 11, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

**6. Transferee an admitted member.** When a member transfers a transferable interest to a person that is admitted as a member with respect to the transferred interest, the transferee is liable for the member's obligations under section 1553 and section 1555, subsection 2 known to the transferee when the transferee voluntarily accepts admission as a member.

**7. Account of transactions.** In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the limited liability company's transactions only from the date of dissolution.

**§1573. Charging order**

**1. Transferable interest of judgment debtor.** On application to a court of competent jurisdiction by any judgment creditor of a member or transferee, the court may

charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged and after the limited liability company has been served with the charging order and its terms, the judgment creditor has only the right to receive any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of such transferable interest.

**2. Payment to clerk of court.** A limited liability company, after being served with the charging order and its terms, is entitled to pay or deposit any distribution or distributions to which the judgment debtor would otherwise be entitled in respect of the charged transferable interest into the hands of the clerk of the court issuing the charging order, and the payment or deposit has the effect of discharging the limited liability company and the judgment debtor from liability for the amount so paid and any interest that might accrue thereon. Upon receipt of the payment, the clerk of the court shall notify the judgment creditor of the receipt of the payment. The judgment creditor shall, after the payment or deposit into the court, petition the court for payment of so much of the amount paid or deposited as is held by the court as may be necessary to pay the judgment creditor's judgment. To the extent the court has excess amounts paid or deposited on hand after the payment to the judgment creditor, the excess amounts paid or deposited must be distributed to the judgment debtor and the charging order must be extinguished. The court may in its discretion order the clerk to deposit, pending the judgment creditor's petition, any money paid or deposited with the clerk in an interest-bearing account at a bank authorized to receive deposits of public funds.

**3. Lien.** A charging order constitutes a lien on the judgment debtor's transferable interest. The charging order lien may not be foreclosed upon under this chapter or any other law.

**4. Judgment debtor.** Subject to subsection 3:

A. A judgment debtor that is a member retains the rights of a member and remains subject to all duties and obligations of a member; and

B. A judgment debtor that is a transferee retains the rights of a transferee and remains subject to all duties and obligations of a transferee.

**5. Exemptions apply.** This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

**6. No right to property.** Subject to the laws against fraudulent conveyances, a judgment creditor of a judgment debtor who is a member or transferee has no right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of a limited liability company.

**7. Exclusive remedy.** This section provides the exclusive remedy by which a judgment creditor of a member or transferee may satisfy a judgment out of the judgment debtor's transferable interest, and the judgment creditor may not foreclose upon the charging order or the judgment debtor's transferable interest. Court orders for actions or requests for accounts and inquiries that the judgment debtor might have made are not available under this chapter to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's transferable interest and may not be ordered by a court.



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**§1574. Power of personal representative of deceased member**

If a member dies, the deceased member's personal representative or other legal representative may, for purposes of settling the estate, exercise the rights of a current member under section 1558.

**SUBCHAPTER 7**

**MEMBER'S DISSOCIATION**

**§1581. Member's power to dissociate; wrongful dissociation**

**1. Power to dissociate.** A person has the power to dissociate as a member.

**2. Wrongful dissociation.** A person's dissociation from a limited liability company is wrongful only if:

**A.** It is in breach of an express provision of the limited liability company agreement; or

**B.** It occurs before the termination of the limited liability company and:

**(1)** The person dissociates as a member by express will;

**(2)** The person is expelled as a member by judicial determination under section 1582, subsection 5;

**(3)** The person is dissociated by becoming a debtor in bankruptcy or making a general assignment for the benefit of creditors; or

**(4)** In the case of a person that is not an individual, a trust other than a business trust or an estate, the person is expelled or otherwise dissociated as a member because the person willfully dissolved or terminated.

**3. Liability.** A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 1631, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation or liability of the member to the limited liability company or the other members.

**§1582. Events causing dissociation**

A person is dissociated as a member from a limited liability company when:

**1. Notice.** The limited liability company has notice from the person of the person's express will to dissociate as a member, except if the person specifies in the notice a dissociation date later than the date the limited liability company had notice the person is dissociated as a member, on that later date;

**2. Event.** An event stated in the limited liability company agreement as causing the person's dissociation occurs;

**3. Expulsion pursuant to agreement.** The person is expelled as a member pursuant to the limited liability company agreement;

**4. Expulsion upon unanimous consent.** The person is expelled as a member by the unanimous consent of the other members. A person is expelled under this subsection if:

1 A. It is unlawful to carry on the limited liability company's activities with the person  
2 as a member;

3 B. There has been a transfer of all of the person's transferable interest in the limited  
4 liability company other than a transfer for security purposes;

5 C. The person is an organization and, within 90 days after the limited liability  
6 company notifies the person that it will be expelled as a member because the person  
7 has filed a statement of dissolution or the equivalent, its charter has been revoked or  
8 its right to conduct activities has been suspended by its jurisdiction of formation, the  
9 statement of dissolution or the equivalent has not been revoked or its charter or right  
10 to conduct activities has not been reinstated; or

11 D. The person is an organization that has been dissolved and whose activities are  
12 being wound up;

13 **5. Expulsion by judicial order.** On application by the limited liability company, the  
14 person is expelled as a member by judicial order because the person:

15 A. Has engaged, or is engaging, in wrongful conduct that has adversely and  
16 materially affected, or will adversely and materially affect, the limited liability  
17 company's activities;

18 B. Has willfully and persistently committed, or is willfully and persistently  
19 committing, a material breach of the limited liability company agreement or the  
20 person's duty or obligation under this chapter or other applicable law; or

21 C. Has engaged, or is engaging, in conduct relating to the limited liability company's  
22 activities that makes it not reasonably practicable to carry on the activities with the  
23 person as a member;

24 **6. Death; appointment of guardian or conservator; determination.** In the case of  
25 a person who is an individual, the person dies, there is appointed a guardian or general  
26 conservator for the person or there is a judicial determination that the person has  
27 otherwise become incapable of performing the person's duties as a member under this  
28 chapter or the limited liability company agreement;

29 **7. Bankruptcy; assignment; appointment of trustee, receiver or liquidator.** The  
30 person becomes a debtor in bankruptcy, executes an assignment for the benefit of  
31 creditors or seeks, consents or acquiesces to the appointment of a trustee, receiver or  
32 liquidator of the person or of all or substantially all of the person's property. This  
33 subsection does not apply to a person who is the sole remaining member of a limited  
34 liability company;

35 **8. Successor trustee.** In the case of a person that is a trust or is acting as a member  
36 by virtue of being a trustee of a trust, the trust's entire transferable interest in the limited  
37 liability company is distributed, but not solely by reason of the substitution of a successor  
38 trustee;

39 **9. Estate; personal representative of estate.** In the case of a person that is an estate  
40 or is acting as a member by virtue of being a personal representative of an estate, the  
41 estate's entire transferable interest in the limited liability company is distributed, but not  
42 solely by reason of the substitution of a successor personal representative;

**10. Termination of legal existence.** In the case of a member that is not an individual, the legal existence of the person otherwise terminates; or

**11. Transfer of remaining interest.** A person who is a member transfers the person's entire remaining transferable interest but not until the later of:

A. The transferee's becoming a member; and

B. The time the transfer is completed.

**§1583. Effect of person's dissociation as a member**

**1. No right to participate.** A person who has dissociated as a member has no right to participate in the activities and affairs of the limited liability company and is entitled only to receive the distributions to which that member would have been entitled if the member had not dissociated.

**2. No discharge from dissociation.** A person's dissociation as a member does not of itself discharge the person from any debt, obligation or liability to a limited liability company or the other members that the person incurred while a member.

**3. No right to payment.** If a person is dissociated as a member under section 1582 and the limited liability company is not dissolved due to that dissociation, that person has no right on account of that dissociation to any payment from the limited liability company for that person's interest in the limited liability company.

**SUBCHAPTER 8**

**DISSOLUTION, WINDING UP, REINSTATEMENT AND REVIVAL**

**§1591. Grounds for administrative dissolution of domestic limited liability company**

Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under section 1592 to administratively dissolve a domestic limited liability company if:

**1. Nonpayment of fees or penalties.** The domestic limited liability company does not pay when due any fees or penalties imposed by this chapter or other law;

**2. Failure to file annual report.** The domestic limited liability company does not deliver its annual report to the Secretary of State as required by section 1665;

**3. Failure to pay late filing penalty.** The domestic limited liability company does not pay the annual report late filing penalty as required by section 1667;

**4. Failure to maintain registered agent.** The domestic limited liability company is without a registered agent in this State as required by section 1661 and Title 5, section 105, subsection 1;

**5. Failure to notify of change of registered agent or address.** The domestic limited liability company does not notify the Secretary of State that its registered agent has changed as required by Title 5, section 108, subsection 1 or the address of its registered agent has been changed as required by Title 5, section 109 or 110 or that its registered agent has resigned as required by Title 5, section 111; or

**6. Filing of false information.** A member, manager or agent of the domestic limited liability company signed a document with the knowledge that the document was false in a material respect and with the intent that the document be delivered to the office of the Secretary of State for filing.

**§1592. Procedure for and effect of administrative dissolution of domestic limited liability company**

**1. Notice of determination to administratively dissolve domestic limited liability company.** If the Secretary of State determines that one or more grounds exist under section 1591 for dissolving a domestic limited liability company, the Secretary of State shall serve the limited liability company with written notice of that determination as required by subsection 8.

**2. Administrative dissolution.** The domestic limited liability company is administratively dissolved if, within 60 days after the notice under subsection 1 is issued and is perfected under subsection 8, the Secretary of State determines that the limited liability company has failed to correct the ground or grounds for the dissolution. The Secretary of State shall send notice to the limited liability company as required by subsection 8 that recites the ground or grounds for dissolution and the effective date of dissolution.

**3. Effect of administrative dissolution; prohibition.** A domestic limited liability company administratively dissolved continues its existence but may not transact any business in this State except as necessary to wind up the affairs of the limited liability company.

**4. Validity of contracts; right to be sued; right to defend suit.** The administrative dissolution of a domestic limited liability company under this section does not impair:

A. The validity of any contract or act of the domestic limited liability company;

B. The right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

C. The right of the domestic limited liability company to defend any action, suit or proceeding in any court of this State.

**5. Authority of registered agent.** The administrative dissolution of a domestic limited liability company does not terminate the authority of its registered agent.

**6. Protecting domestic limited liability company name after administrative dissolution.** The name of a domestic limited liability company remains in the office of the Secretary of State's record of limited liability company names and is protected for a period of 3 years following administrative dissolution.

**7. Notice to Superintendent of Financial Institutions in case of financial institution or credit union.** In the case of a financial institution authorized to do business in this State or a credit union authorized to do business in this State, as defined in Title 9-B, section 131, the Secretary of State shall notify the Superintendent of Financial Institutions within a reasonable time prior to administratively dissolving the financial institution or credit union under this section.

8. **Delivery of notice.** The Secretary of State shall send notice of its determination under subsection 1 by regular mail or other medium as defined by rule by the Secretary of State and the service upon the domestic limited liability company is perfected 5 days after the Secretary of State deposits its determination in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed or delivered by a medium authorized by the Secretary of State to the registered agent of the limited liability company.

**§1593. Reinstatement following administrative dissolution of domestic limited liability company**

1. **Application for reinstatement.** A domestic limited liability company administratively dissolved under section 1592 may apply to the Secretary of State for reinstatement within 6 years after the effective date of administrative dissolution. The application must:

A. State the name of the domestic limited liability company and the effective date of its administrative dissolution;

B. State that the ground or grounds for dissolution of the domestic limited liability company either did not exist or have been eliminated; and

C. State that the domestic limited liability company's name satisfies the requirements of section 1508.

2. **Reinstatement after administrative dissolution.** If the Secretary of State determines that the application contains the information required under subsection 1 and is accompanied by the reinstatement fee set forth in section 1680, subsection 17 and that the information is correct, the Secretary of State shall cancel the administrative dissolution and prepare a notice of reinstatement that recites that determination and the effective date of reinstatement. The Secretary of State shall use the procedures set forth in section 1592, subsection 8 to deliver the notice to the domestic limited liability company.

3. **Effect of reinstatement.** When the reinstatement is effective under subsection 2, the reinstatement relates back to and takes effect as of the effective date of the administrative dissolution, and the domestic limited liability company resumes business as if the administrative dissolution had not occurred.

4. **Cancellation of certificate of formation.** In the event a domestic limited liability company that is administratively dissolved under section 1592 fails to be reinstated in accordance with the terms of this section within 6 years after the effective date of administrative dissolution, the certificate of formation of the limited liability company must be cancelled, effective on the 6th anniversary of the effective date of administrative dissolution.

**§1594. Appeal from denial of reinstatement of domestic limited liability company**

1. **Denial of reinstatement.** If the Secretary of State denies a domestic limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the domestic limited liability company under section 1592, subsection 8 with a written notice that explains the reason or reasons for denial.

1        **2. Appeal.** A domestic limited liability company may appeal a denial of  
2 reinstatement under subsection 1 to the Superior Court of the county where the limited  
3 liability company's principal office is located or, if there is no principal office in this  
4 State, in Kennebec County within 30 days after the date of the notice of denial. The  
5 limited liability company appeals by petitioning the court to set aside the dissolution and  
6 attaching to the petition copies of the Secretary of State's notice of administrative  
7 dissolution, the limited liability company's application for reinstatement and the Secretary  
8 of State's notice of denial.

9        **3. Court action.** The court may summarily order the Secretary of State to reinstate  
10 an administratively dissolved domestic limited liability company or may take other action  
11 the court considers appropriate.

12        **4. Final decision.** The court's final decision in an appeal under this section may be  
13 appealed as in other civil proceedings.

14        **§1595. Events causing dissolution**

15        **1. Events causing dissolution.** A limited liability company is dissolved, and its  
16 activities must be wound up, upon the occurrence of any of the following:

17            A. An event or circumstance that the limited liability company agreement states  
18 causes dissolution;

19            B. The consent of all the members;

20            C. The passage of 90 consecutive days during which the limited liability company  
21 has no members;

22            D. On application by a member, the entry by the Superior Court of an order  
23 dissolving the limited liability company on the grounds that it is not reasonably  
24 practicable to carry on the limited liability company's activities in conformity with  
25 the limited liability company agreement;

26            E. On application by a member, the entry by the Superior Court of an order  
27 dissolving the limited liability company on the grounds that the members in control  
28 of the limited liability company have acted, are acting or will act in a manner that is  
29 illegal or fraudulent; or

30            F. On application by a holder of a transferable interest, the entry by the Superior  
31 Court of an order dissolving the limited liability company on the grounds that the  
32 limited liability company has no members.

33        **2. Other remedy.** In a proceeding brought under subsection 1, paragraph E, the  
34 court may order a remedy other than dissolution.

35        **§1596. Effect of dissolution**

36        **1. Existence; activities.** Until the filing of a certificate of cancellation as provided  
37 in section 1533, a dissolved limited liability company continues its existence as a limited  
38 liability company but may not carry on any activities except as is appropriate to wind up  
39 and liquidate its activities and affairs, including:

40            A. Collecting the dissolved limited liability company's assets;

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1 B. Disposing of the dissolved limited liability company's properties that will not be  
2 distributed in kind to persons owning transferable interests;

3 C. Discharging or making provisions for discharging the dissolved limited liability  
4 company's liabilities;

5 D. Distributing the dissolved limited liability company's remaining property in  
6 accordance with section 1601; and

7 E. Doing every other act necessary to wind up and liquidate the dissolved limited  
8 liability company's business and affairs.

9 **2. No change upon dissolution.** The dissolution of a limited liability company does  
10 not:

11 A. Transfer title to the limited liability company's property;

12 B. Prevent the commencement of a proceeding by or against the limited liability  
13 company in its limited liability company name;

14 C. Abate or suspend a proceeding pending by or against the limited liability  
15 company on the effective date of dissolution; or

16 D. Terminate the authority of the limited liability company's registered agent.

17 **§1597. Right to wind up business and activities**

18 **1. Wind up activities.** After dissolution, the remaining members, if any, and if  
19 none, a person appointed by all holders of the transferable interest last transferred by the  
20 last person to have been a member, may wind up the limited liability company's  
21 activities.

22 **2. Judicial supervision.** The Superior Court may order judicial supervision of the  
23 winding up of a dissolved limited liability company, including the appointment of a  
24 person to wind up the limited liability company's activities:

25 A. On application of a member, if the applicant establishes good cause;

26 B. On the application of a transferee, if:

27 (1) The limited liability company does not have any members; and

28 (2) Within a reasonable time following the dissolution, a person has not been  
29 appointed pursuant to subsection 1; or

30 C. In connection with a proceeding under section 1595, subsection 1, paragraph E or  
31 F.

32 **§1598. Power to bind limited liability company after dissolution**

33 After dissolution, a limited liability company is bound by:

34 **1. Act of authorized person if appropriate.** The act of a person authorized to wind  
35 up the affairs if the act is appropriate for winding up the limited liability company's  
36 activities; or

1 2. Act of authorized person if binding before dissolution. The act of a person  
2 authorized to act on behalf of the limited liability company before dissolution if the act  
3 would have bound the limited liability company before dissolution, if the other party to  
4 the transaction did not have notice of the dissolution.

5 **§1599. Known claims against dissolved limited liability company**

6 1. Disposal of claims. A dissolved limited liability company may dispose of any  
7 known claims against it by following the procedures described in subsection 2 at any time  
8 after the effective date of the dissolution of the limited liability company.

9 2. Notice. A dissolved limited liability company may give written notice of the  
10 dissolution in a record to the holder of any known claim. The notice must:

11 A. Describe the information required to be included in a claim;

12 B. Provide a mailing address to which the claim is to be sent;

13 C. State the deadline, which may not be fewer than 120 days from the effective date  
14 of the notice, by which the dissolved limited liability company must receive the  
15 claim; and

16 D. State that, if not sooner barred, the claim will be barred pursuant to subsection 3 if  
17 not received by the deadline.

18 3. Claims barred. Unless sooner barred by any other statute limiting actions, a  
19 claim against a dissolved limited liability company is barred:

20 A. If a claimant who was given notice under subsection 2 does not deliver the claim  
21 to the dissolved limited liability company by the deadline; or

22 B. If a claimant whose claim was rejected by the dissolved limited liability company  
23 does not commence a proceeding to enforce the claim within 90 days from the  
24 effective date of the rejection notice.

25 4. Claims. For purposes of this section, "known claim" or "claim" includes  
26 unliquidated claims but not does include a contingent liability that has not matured so that  
27 there is no immediate right to bring suit or a claim based on an event occurring after the  
28 effective date of dissolution.

29 5. No extension of statute of limitations. Nothing in this section may be deemed to  
30 extend any otherwise applicable statute of limitations.

31 **§1600. Other claims against dissolved limited liability company**

32 1. Newspaper notice. In addition to the written notice under section 1599,  
33 subsection 2, a dissolved limited liability company may publish notice of its dissolution  
34 and request that persons with claims against the dissolved limited liability company  
35 present them in accordance with the notice.

36 2. Notice. The notice authorized by subsection 1 must:

37 A. Be published at least one time in a newspaper of general circulation in the county  
38 in which the dissolved limited liability company's principal office is located or, if it  
39 has none in this State, in Kennebec County;



1 B. Describe the information that must be included in a claim and provide a mailing  
2 address to which the claim is to be sent; and

3 C. State that, if not sooner barred, a claim against the dissolved limited liability  
4 company will be barred unless a proceeding to enforce the claim is commenced  
5 within 3 years after the publication of the notice.

6 **3. Three-year statute of limitations.** If a dissolved limited liability company  
7 publishes a newspaper notice in accordance with subsection 2, unless sooner barred by  
8 any other statute limiting actions, the claim of each of the following claimants is barred  
9 unless the claimant commences a proceeding to enforce the claim against the dissolved  
10 limited liability company within 3 years after the publication date of the newspaper  
11 notice:

12 A. A claimant who was not given written notice under section 1599, subsection 2;

13 B. A claimant whose claim was timely sent to the dissolved limited liability  
14 company but not acted on by the dissolved limited liability company; and

15 C. A claimant whose claim is contingent at the effective date of the dissolution of the  
16 limited liability company or is based on an event occurring after the effective date of  
17 the dissolution of the limited liability company.

18 **4. Enforcement of claim.** A claim that is not barred under this section, any other  
19 statute limiting actions or section 1599 may be enforced:

20 A. Against a dissolved limited liability company, to the extent of its undistributed  
21 assets; and

22 B. Except as provided in subsection 8, if the assets of a dissolved limited liability  
23 company have been distributed after dissolution, against a member or transferee to  
24 the extent of that person's proportionate share of the claim or of the assets distributed  
25 to the member or transferee after dissolution, whichever is less. A person's total  
26 liability for all claims under this subsection may not exceed the total amount of assets  
27 distributed to the person after dissolution of the limited liability company.

28 **5. Determination of amount and form of security.** A dissolved limited liability  
29 company that published a notice under this section may file an application with the  
30 Superior Court of the county where the dissolved limited liability company's principal  
31 office is located or, if it has none in this State, in Kennebec County, for a determination  
32 of the amount and form of security to be provided for payment of claims that are  
33 contingent or have not been made known to the dissolved limited liability company or  
34 that are based on an event occurring after the effective date of the dissolution of the  
35 limited liability company but that, based on the facts known to the dissolved limited  
36 liability company, are reasonably estimated to arise after the effective date of the  
37 dissolution of the limited liability company. Provision need not be made for any claim  
38 that is or is reasonably anticipated to be barred under subsection 3.

39 **6. Notice to potential claimants.** Within 10 days after the filing of the application  
40 under subsection 5, notice of the proceeding must be given by the dissolved limited  
41 liability company to each potential claimant as described in subsection 5.

**7. Guardian ad litem.** The Superior Court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this section. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.

**8. Satisfaction of obligation; claims not enforceable.** Provision by the dissolved limited liability company for security in the amount and the form ordered by the Superior Court under subsection 5 satisfies the dissolved limited liability company's obligation with respect to claims that are contingent, have not been made known to the dissolved limited liability company or are based on an event occurring after the effective date of the dissolution of the limited liability company, and such claims may not be enforced against a person owning a transferable interest to whom assets have been distributed by the dissolved limited liability company after the effective date of the dissolution of the limited liability company.

**9. No extension of statutes of limitations.** Nothing in this section may be considered to extend any otherwise applicable statute of limitations.

**§1601. Application of assets in winding up limited liability company's activities**

Upon the winding up of a limited liability company, the assets must be applied as follows.

**1. Payment to creditors.** Payment, or adequate provision for payment, must be made to creditors, including, to the extent permitted by law, members who are creditors, in satisfaction of liabilities of the limited liability company.

**2. Surplus.** After a limited liability company complies with subsection 1, any surplus must be distributed:

A. To each person owning a transferable interest that reflects contributions made on account of such transferable interest and not previously returned, in an amount equal to the value of the unreturned contributions; and

B. After the distribution under paragraph A, to each person owning a transferable interest in the proportions in which the owners of transferable interests share in distributions prior to dissolution.

**3. Distribution in proportion to value.** If the limited liability company does not have sufficient surplus to comply with subsection 2, paragraph A, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

**§1602. Revocation of dissolution**

**1. Continued; conditions.** Notwithstanding the occurrence of an event set forth in section 1595, subsection 1, paragraph A, B or C, a limited liability company may not be dissolved and its affairs may not be wound up if, prior to the filing of a certificate of cancellation in the office of the Secretary of State, the limited liability company is continued, effective as of the occurrence of such event, pursuant to the following conditions:

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1 A. The affirmative vote or consent has been obtained from the members or other  
2 persons entitled to vote or consent at the time that is:

3 (1) Required to prevent or revoke dissolution under its limited liability company  
4 agreement; or

5 (2) If its limited liability company agreement does not state the vote or consent  
6 required to prevent or revoke dissolution, sufficient for dissolution under this  
7 chapter, or such greater or lesser vote or consent as is required for dissolution  
8 under its limited liability company agreement; and

9 B. The members and other persons having authority under this chapter and under its  
10 limited liability company agreement to bring about or prevent dissolution of the  
11 limited liability company have not, before or at the time of the vote or consent  
12 required by paragraph A, voted against revocation of dissolution or delivered to the  
13 limited liability company their written objection to revocation of dissolution.

14 2. Agreement; vote; consent; objection. To the extent that a limited liability  
15 company's limited liability company agreement provides for the voting rights of members  
16 or other persons, for the calling of meetings, for notices of meetings, for consents and  
17 actions of members and other persons without a meeting, for establishing a record date  
18 for meetings or for other matters concerning the voting or consent of members and other  
19 persons, such provisions govern the vote or consent required by subsection 1, paragraph  
20 A with respect to the limited liability company and the vote or objection of members and  
21 other persons under subsection 1, paragraph B with respect to the limited liability  
22 company.

23 **§1603. Effect of revocation of dissolution**

24 1. Continuation of activities. Subject to subsection 2, upon the revocation of  
25 dissolution, the limited liability company is deemed for all purposes to have continued its  
26 activities as if dissolution had never occurred. Each right inuring to, and each debt,  
27 obligation and liability incurred by, the limited liability company after the dissolution  
28 must be determined as if the dissolution had never occurred.

29 2. Reliance on dissolution. The rights of members and other persons arising by  
30 reason of reliance on the dissolution before those persons had notice of the revocation of  
31 dissolution are not adversely affected by the revocation of dissolution.

32 **§1604. Revival of domestic limited liability company after dissolution**

33 1. Determination of need to revive company. If the Secretary of State finds that a  
34 domestic limited liability company has dissolved in any manner under this chapter, that  
35 the certificate of formation for that domestic limited liability company has been cancelled  
36 pursuant to section 1533 and that the domestic limited liability company should be  
37 revived for any specified purpose or purposes for a specific period of time, the Secretary  
38 of State may upon application by an interested party accompanied by the payment of the  
39 fee required by section 1680 file a certificate of revival in a form or format prescribed by  
40 the Secretary of State for reviving the domestic limited liability company.

41 2. Certificate of revival. The certificate of revival must include:

- A. The name of the limited liability company prior to revival;
  - B. The name of the limited liability company following revival, which limited liability company name must comply with section 1508;
  - C. The date of formation of the limited liability company;
  - D. The date of dissolution of the limited liability company, if known, together with the date the certificate of cancellation was filed by the Secretary of State;
  - E. The name and address of the registered agent of the limited liability company prior to revival. If the registered agent has resigned or no longer can be located by the limited liability company, the limited liability company shall deliver for filing a form appointing a registered agent as required by Title 5, chapter 6-A, which form must accompany the certificate under this section;
  - F. The name and address of the party or parties requesting the revival;
  - G. The purpose or purposes for which revival is requested; and
  - H. The time period needed to complete the purpose or purposes specified under paragraph G.
- 3. Notice of revival.** The Secretary of State shall issue a notice to the domestic limited liability company to the address provided in subsection 2, paragraph F stating that the revival has been granted for the purpose or purposes and for the time period specified pursuant to the certificate of revival filed under this section.
- 4. Amendment to certificate of formation.** Once the revival has been granted in accordance with subsection 3, the certificate of revival is deemed to be an amendment to the certificate of formation of the limited liability company, and the limited liability company may not be required to take any further action to amend its certificate of formation under this chapter with respect to the matters set forth in the certificate of revival.
- 5. Termination of revival.** When the time period specified in subsection 2, paragraph H has expired, the Secretary of State shall issue a notice to the domestic limited liability company at the address provided in subsection 2, paragraph F that the status of the limited liability company has returned to the status prior to filing the certificate of revival under this section.

## **SUBCHAPTER 9**

### **LOW-PROFIT LIMITED LIABILITY COMPANIES**

#### **§1611. Low-profit limited liability company**

**1. Purpose.** A low-profit limited liability company must at all times significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue Code of 1986, as it may be amended, revised or succeeded, and will not qualify as a low-profit limited liability company but for the relationship to the accomplishment of those charitable or educational purposes.

1 **2. Qualifications of low-profit limited liability company to be set forth in**  
2 **certificate of formation.** In order to qualify as a low-profit limited liability company  
3 pursuant to this section, the limited liability company's certificate of formation must state  
4 that:

5 A. The company intends to qualify as a low-profit limited liability company;

6 B. The company must at all times significantly further the accomplishment of one or  
7 more of the charitable or educational purposes within the meaning of Section  
8 170(c)(2)(B) of the Internal Revenue Code of 1986, as it may be amended, revised or  
9 succeeded, and must list the specific charitable or educational purposes the company  
10 will further;

11 C. No significant purpose of the company is the production of income or the  
12 appreciation of property. The fact that a person produces significant income or  
13 capital appreciation is not, in the absence of other factors, conclusive evidence of a  
14 significant purpose involving the production of income or the appreciation of  
15 property; and

16 D. No purpose of the company is to accomplish one or more political or legislative  
17 purposes within the meaning of Section 170(c)(2)(D) of the Internal Revenue Code of  
18 1986, or its successor.

19 The limited liability company agreement of a low-profit limited liability company must  
20 include each statement made in the limited liability company's certification of formation  
21 required by this subsection. The fact that the low-profit limited liability company has a  
22 certificate of formation filed with the office of the Secretary of State meeting the  
23 requirements of this subsection is conclusive evidence that statements set forth in the  
24 certificate of formation are included in the low-profit limited liability company's limited  
25 liability company agreement.

26 **3. Change of status.** A company that no longer satisfies the requirements of this  
27 section continues to exist as a limited liability company and shall promptly amend its  
28 certificate of formation so that its name and purpose no longer identify it as a low-profit  
29 limited liability company, L3C or 13C.

30 **4. Duties of members and other persons.** Notwithstanding section 1521,  
31 subsection 3, any company formed as a low-profit limited liability company under this  
32 chapter is bound by section 1559 and no member or person may, through the limited  
33 liability company agreement or otherwise, restrict or eliminate the duties, including  
34 fiduciary duties, set forth in section 1559.

35 **5. No limitation.** Nothing in this section prevents a limited liability company that is  
36 not organized under this section from electing a charitable or educational purpose in  
37 whole or in part for doing business under this chapter.

38 **SUBCHAPTER 10**

39 **FOREIGN LIMITED LIABILITY COMPANIES**

**§1621. Governing law**

**1. Jurisdiction where formed.** The laws of the State or other jurisdiction under which a foreign limited liability company is formed govern its formation and internal affairs and the liability and authority of its members and agents.

**2. Statement of foreign qualification.** A foreign limited liability company's statement of foreign qualification may not be denied by reason of any difference between the laws of the jurisdiction under which the foreign limited liability company is formed and the laws of this State.

**3. Forbidden activities.** A foreign limited liability company, including a foreign limited liability company that has filed a statement of foreign qualification, may not engage in any activities in this State that a limited liability company is forbidden to engage in by the laws of this State.

**4. Rights; privileges; duties; restrictions; penalties; liabilities.** A foreign limited liability company that has filed a statement of foreign qualification has in this State the same but no greater rights of, has in this State the same but no greater privileges as and, except as otherwise provided by this chapter, is in this State subject to the same duties, restrictions, penalties and liabilities now or later imposed on a limited liability company of like character.

**5. Organization; formation; existence; internal affairs.** Nothing in this subchapter authorizes this State to regulate the organization, formation, existence or internal affairs of a foreign limited liability company authorized to conduct activities in this State.

**§1622. Statement of foreign qualification to conduct activities required**

**1. Conduct of activities.** A foreign limited liability company may not conduct activities in this State except in compliance with this subchapter and not until its statement of foreign qualification is filed in the records of the Secretary of State.

**2. Contents.** A statement of foreign qualification must include:

**A.** The name of the foreign limited liability company and, if the name does not comply with section 1508, the fictitious name adopted pursuant to section 1624, subsection 1;

**B.** The name of the state or other jurisdiction under whose law the foreign limited liability company is formed and the date the foreign limited liability company was formed;

**C.** The street and mailing address of the foreign limited liability company's principal office;

**D.** The information required by Title 5, section 105, subsection 1;

**E.** A statement that the foreign limited liability company is a foreign limited liability company as defined in section 1502, subsection 11;

**F.** The nature of the business or purposes to be conducted or promoted in this State;

1 G. The name and business, residence and mailing address of each of its managers, if  
2 any;

3 H. A certificate of existence or such other document that the Secretary of State  
4 determines to be suitable for purposes of proving the valid existence of the foreign  
5 limited liability company under the law of the State or other jurisdiction referenced in  
6 paragraph B, as long as the certificate or other document was issued not more than 90  
7 days before the delivery of the statement to the office of the Secretary of State;

8 I. The date the foreign limited liability company commenced or expects to  
9 commence conducting activities in this State; and

10 J. If the foreign limited liability company is governed by an agreement that  
11 establishes or provides for the establishment of designated series having separate  
12 rights, powers or duties with respect to specified property or obligations of the  
13 foreign limited liability company or profits and losses associated with specified  
14 property or obligations, a statement to that effect. In addition, the statement must  
15 declare whether the debts, liabilities and obligations incurred, contracted for or  
16 otherwise existing with respect to a particular series, if any, are enforceable against  
17 the assets of such series only, and not against the assets of the foreign limited liability  
18 company generally or any other series thereof, and whether any of the debts,  
19 liabilities, obligations and expenses incurred, contracted for or otherwise existing  
20 with respect to the foreign limited liability company generally or any other series  
21 thereof are enforceable against the assets of such series.

22 **3. Statement of change.** Upon any change in circumstances that makes any  
23 statement contained in its filed statement of foreign qualification no longer true, a foreign  
24 limited liability company authorized to conduct activities in this State shall promptly  
25 deliver to the office of the Secretary of State, for filing, an appropriate statement of  
26 change so that its statement of foreign qualification is in all respects true.

27 **4. Period to conduct activities.** A foreign limited liability company is authorized to  
28 conduct activities in this State from the effective date of its statement of foreign  
29 qualification until the earlier of the effective date of its statement of foreign qualification  
30 cancellation and the effective date of the Secretary of State's revocation of the statement  
31 of foreign qualification in accordance with section 1625.

32 **§1623. Actions not constituting transacting business or conducting activities**

33 **1. Actions.** A foreign limited liability company may not be considered to be  
34 conducting activities in this State within the meaning of this subchapter by reason of  
35 carrying on in this State any one or more of the following actions:

36 A. Maintaining, defending or settling in its own behalf any proceeding or dispute;

37 B. Holding meetings or carrying on any other activities concerning its internal  
38 affairs;

39 C. Maintaining accounts in financial institutions;

40 D. Maintaining offices or agencies for the transfer, exchange and registration of the  
41 foreign limited liability company's own securities or interests or maintaining trustees  
42 or depositories with respect to those securities or interests;

1 E. Selling through independent contractors;

2 F. Soliciting or obtaining orders, whether by mail or electronic means or through  
 3 employees or agents or otherwise, if the orders require acceptance outside this State  
 4 before they become contracts;

5 G. Creating, as borrower or lender, or acquiring indebtedness, mortgages or security  
 6 interests in real or personal property;

7 H. Securing or collecting debts in its own behalf or enforcing mortgages or other  
 8 security interests in real or personal property securing such debts and holding,  
 9 protecting and maintaining property so acquired;

10 I. Owning, without more, real or personal property;

11 J. Conducting an isolated transaction that is completed within 30 days and that is not  
 12 one in the course of similar or repeated transactions of a like nature; or

13 K. Conducting activities in interstate commerce.

14 **2. Status.** A foreign limited liability company may not be considered to be  
 15 conducting activities in this State solely because it:

16 A. Owns a controlling interest in an organization that is conducting activities in this  
 17 State;

18 B. Is a limited partner of a limited partnership or foreign limited partnership that is  
 19 conducting activities in this State; or

20 C. Is a member of a limited liability company or foreign limited liability company  
 21 that is conducting activities in this State.

22 **3. Service of process; taxation; regulation.** This section does not apply in  
 23 determining the contacts or activities that may subject a foreign limited liability company  
 24 to service of process, taxation or regulation under laws of this State other than this  
 25 chapter.

26 **4. Jurisdiction; process, notice or demand.** Nothing in this section limits or affects  
 27 the right to subject a foreign limited liability company that does not, or is not required to,  
 28 have authority to conduct activities in this State to the jurisdiction of the courts of this  
 29 State or to serve upon any foreign limited liability company any process, notice or  
 30 demand required or permitted by law to be served upon a foreign limited liability  
 31 company pursuant to any other provision of law or pursuant to the applicable rules of  
 32 civil procedure.

33 **§1624. Noncomplying name of foreign limited liability company**

34 **1. Fictitious name.** A foreign limited liability company whose name does not  
 35 comply with section 1508 may not file a statement of foreign qualification until it adopts,  
 36 for the purpose of conducting activities in this State, a fictitious name that complies with  
 37 section 1508.

38 **2. Name change.** If a foreign limited liability company to which a statement of  
 39 foreign qualification has been filed changes its name to one that does not comply with



section 1508, it may not thereafter conduct activities in this State until it complies with subsection 1 by filing an amended statement of foreign qualification.

**§1625. Grounds for revocation of statement of foreign qualification**

Notwithstanding Title 4, chapter 5 and Title 5, chapter 375, the Secretary of State may commence a proceeding under section 1626 to revoke a statement of foreign qualification if:

**1. Nonpayment of fees or penalties.** The foreign limited liability company does not pay when due any fees or penalties imposed by this chapter or other law;

**2. Failure to file annual report.** The foreign limited liability company does not deliver its annual report to the Secretary of State as required by section 1665;

**3. Failure to pay late filing penalty.** The foreign limited liability company does not pay the annual report late filing penalty as required by section 1680;

**4. Failure to maintain registered agent.** The foreign limited liability company is without a registered agent in this State as required by Title 5, section 105, subsection 1;

**5. Failure to notify of change of registered agent or address.** The foreign limited liability company does not notify the Secretary of State that its registered agent has changed as required by Title 5, section 108, subsection 1 or the address of its registered agent has been changed as required by Title 5, section 109 or 110 or that its registered agent has resigned as required by Title 5, section 111;

**6. Filing of false information.** A member, manager or agent of the foreign limited liability company signed a document with the knowledge that the document was false in a material respect and with the intent that the document be delivered to the Secretary of State for filing;

**7. Amended application.** The foreign limited liability company fails to file with the Secretary of State an amended application for authority required by section 1622, subsection 3; or

**8. Authenticated certificate of cancellation or merger.** The Secretary of State receives a duly authenticated certificate from the secretary of state or other official having custody of limited liability company records in the state or other jurisdiction under whose law the foreign limited liability company is formed stating that the foreign limited liability company has been cancelled or has disappeared as the result of a merger.

**§1626. Procedure for and effect of revocation**

**1. Notice of determination.** If the Secretary of State determines that one or more grounds exist under section 1625 for the revocation of a statement of foreign qualification, the Secretary of State shall serve the foreign limited liability company with a written notice of the Secretary of State's determination as required by subsection 7.

**2. Revocation.** The statement of foreign qualification is revoked if within 60 days after the notice under subsection 1 was issued the Secretary of State determines that the foreign limited liability company has failed to correct the ground or grounds for revocation. The Secretary of State shall send notice to the foreign limited liability

1 company as required by subsection 7 that recites the ground or grounds for revocation  
2 and the effective date of revocation.

3 **3. Authority to transact business ceases.** The authority of a foreign limited  
4 liability company to transact business in this State ceases on the date of revocation of its  
5 authority.

6 **4. Secretary of State appointed as agent for service of process.** The Secretary of  
7 State's revocation of a statement of foreign qualification appoints the Secretary of State as  
8 the foreign limited liability company's agent for service of process in any proceeding  
9 based on a cause of action that arose during the time the foreign limited liability company  
10 was authorized to transact business in this State. Service of process on the Secretary of  
11 State under this subsection is service on the foreign limited liability company. Upon  
12 receipt of process, the Secretary of State shall mail a copy of the process to the foreign  
13 limited liability company at its principal office shown in its most recent annual report or  
14 in any subsequent communication received from the foreign limited liability company  
15 stating the current mailing address of its principal office or, if no other address is on file,  
16 in its statement of foreign qualification.

17 **5. Registered agent; not terminated.** Revocation of a statement of foreign  
18 qualification in this State does not terminate the authority of the registered agent of the  
19 foreign limited liability company.

20 **6. Authorization after revocation.** A foreign limited liability company whose  
21 statement of foreign qualification in this State has been revoked under this section and  
22 that wishes to transact business again in this State must be authorized as provided in this  
23 chapter.

24 **7. Delivery of notice.** The Secretary of State shall send notice of its determination  
25 under subsection 1 by regular mail and the service upon the foreign limited liability  
26 company is perfected 5 days after the Secretary of State deposits its determination in the  
27 United States mail, as evidenced by the postmark, if mailed postpaid and correctly  
28 addressed to the registered agent in this State and the registered or principal office,  
29 wherever located, on file for the foreign limited liability company.

30 **§1627. Appeal from revocation**

31 **1. Petition to appeal revocation.** A foreign limited liability company may appeal  
32 the Secretary of State's revocation of its statement of foreign qualification to the  
33 Kennebec County Superior Court within 30 days after the notice of revocation. The  
34 foreign limited liability company may appeal by petitioning the court to set aside the  
35 revocation and attaching to the petition copies of its statement of foreign qualification and  
36 the Secretary of State's notice of revocation.

37 **2. Court order.** The court may summarily order the Secretary of State to reinstate  
38 the statement of foreign qualification or may take any other action the court considers  
39 appropriate.

40 **3. Appeal of court's decision.** The court's final decision may be appealed as in  
41 other civil proceedings.

**§1628. Statement of cancellation of foreign qualification**

**1. Statement of cancellation.** A foreign limited liability company that has filed a statement of foreign qualification with the Secretary of State may cancel its statement of foreign qualification by filing a statement of cancellation of foreign qualification with the Secretary of State.

**2. Contents.** A statement of cancellation of foreign qualification must set forth:

**A.** The name of the foreign limited liability company, any fictitious name adopted for use in this State, the name of the jurisdiction under whose law the foreign limited liability company is organized and the date of organization in the foreign limited liability company's jurisdiction of organization;

**B.** The street and mailing address of the foreign limited liability company's principal office;

**C.** The information required by Title 5, section 105, subsection 1 or, if a registered agent is no longer to be maintained, a statement that the foreign limited liability company will not maintain a registered agent, and the mailing address to which service of process may be mailed pursuant to section 1662;

**D.** That the foreign limited liability company will no longer conduct business in this State and that it relinquishes its authority to conduct business in this State;

**E.** That the foreign limited liability company is cancelling its statement of foreign qualification; and

**F.** That any statement of adopting for use any assumed name with respect to the foreign limited liability company is withdrawn upon the effective date of the statement of cancellation of foreign qualification.

**3. Cancellation effective.** The statement of cancellation of foreign qualification is effective upon filing by the Secretary of State, whereupon the statement of foreign qualification is cancelled and the foreign limited liability company is without authority to conduct activities in this State.

**4. Relieved of annual report or filing fee.** If a foreign limited liability company causes a statement of cancellation of foreign qualification to be delivered to the Secretary of State for filing before the date on which an annual report is due under section 1665, the foreign limited liability company is relieved of its obligation to file its annual report or pay the filing fee.

**§1629. Effect of failure to have statement of foreign qualification**

**1. Conducting activities; maintaining proceeding.** A foreign limited liability company conducting activities in this State, or anyone on its behalf, may not maintain a proceeding in any court in this State for the collection of its debts unless an effective statement of foreign qualification for the foreign limited liability company is in the records of the office of the Secretary of State.

**2. Stay proceeding.** A court may stay a proceeding commenced by a foreign limited liability company until it determines whether the foreign limited liability company should have a statement of foreign qualification on file with the office of the Secretary of State.

If the court determines that the foreign limited liability company should have a statement of foreign qualification on file with the office of the Secretary of State, the court may further stay the proceeding until there is an effective statement of foreign qualification on file with the office of the Secretary of State with respect to the foreign limited liability company. If a court determines that a foreign limited liability company is required to have a statement of foreign qualification on file with the office of the Secretary of State, and the foreign limited liability company subsequently delivers for filing to the office of the Secretary of State a statement of foreign qualification, a proceeding in any court in this State to which the foreign limited liability company is a party may not, after the effective date of the statement of foreign qualification, be dismissed by reason of the foreign limited liability company's prior noncompliance with section 1622.

**3. Civil penalty.** A foreign limited liability company is liable for a civil penalty of \$500 for each year, or portion thereof, it transacts business in this State without first complying with the requirements of section 1622.

**4. Recovery of civil penalty.** The civil penalty set forth in subsection 3 may be recovered in an action brought by the Attorney General. Upon a finding by the court that a foreign limited liability company has conducted activities in this State in violation of this subchapter, the court may issue, in addition to or in lieu of the imposition of a civil penalty, an injunction restraining the further conducting of activities by the foreign limited liability company and its agents and the further exercise of any rights and privileges of a foreign limited liability company in this State until all amounts plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has otherwise complied with this subchapter.

**5. Validity of acts; defending proceeding.** Notwithstanding subsections 1 and 2, the conducting of activities in this State by a foreign limited liability company without having a statement of foreign qualification on file in the records of the office of the Secretary of State does not impair the validity of the acts of the foreign limited liability company or prevent the foreign limited liability company from defending any proceeding in this State.

**6. Debts; obligations; liabilities.** A member or agent of a foreign limited liability company is not liable for the debts, obligations or other liabilities of the foreign limited liability company solely because the foreign limited liability company conducted activities in this State without a statement of foreign qualification being on file with the office of the Secretary of State.

## **SUBCHAPTER 11**

### **ACTIONS BY MEMBERS**

#### **§1631. Direct action by member**

**1. Direct action against member.** Subject to subsection 2, a member may maintain a direct action against another member, a manager or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

1 **2. Actual or threatened injury.** A member maintaining a direct action under this  
2 section must plead and prove an actual or threatened injury that is not solely the result of  
3 an injury suffered or threatened to be suffered by the limited liability company.

4 **§1632. Derivative action**

5 A member may maintain a derivative action to enforce a right of a limited liability  
6 company if:

7 **1. Demand.** The member first makes a demand on the limited liability company to  
8 take suitable action, and the limited liability company does take suitable action within a  
9 reasonable time; or

10 **2. Futility of demand.** A demand under subsection 1 would be futile.

11 **§1633. Proper plaintiff**

12 **1. Plaintiff must be a member.** Except as otherwise provided in subsection 2, a  
13 derivative action under section 1632 may be maintained only by a person that is a  
14 member at the time the action is commenced and remains a member while the action  
15 continues.

16 **2. Death of plaintiff.** If the sole plaintiff in a derivative action dies while the action  
17 is pending, the court may permit another member of the limited liability company to be  
18 substituted as plaintiff.

19 **§1634. Pleading**

20 In a derivative action under section 1632 the complaint must state with particularity:

21 **1. Demand and response.** The date and content of the plaintiff's demand and the  
22 response to the demand by the limited liability company; or

23 **2. Futility of demand.** If a demand has not been made, the reasons a demand under  
24 section 1632, subsection 1 would be futile.

25 **§1635. Special litigation committee**

26 **1. Stay of court proceeding upon appointment of special litigation committee.** If  
27 a limited liability company is named as or made a party in a derivative proceeding, the  
28 limited liability company may appoint a special litigation committee to investigate the  
29 claims asserted in the proceeding and determine whether pursuing the action is in the best  
30 interests of the limited liability company. If the limited liability company appoints a  
31 special litigation committee, on motion by the special litigation committee made in the  
32 name of the limited liability company, except for good cause shown, the court shall stay  
33 discovery for the time reasonably necessary to permit the special litigation committee to  
34 make its investigation. This subsection does not prevent the court from enforcing a  
35 person's right to information under section 1558 or, for good cause shown, granting  
36 extraordinary relief in the form of a temporary restraining order or preliminary injunction.

37 **2. Composition of special litigation committee.** A special litigation committee  
38 may be composed of one or more disinterested and independent individuals, who may be  
39 members.

1 **3. Appointment of special litigation committee.** A special litigation committee  
2 may be appointed:

3 A. By the consent of a majority of the members not named as defendants or plaintiffs  
4 in the proceeding; and

5 B. If all members are named as defendants or plaintiffs in the proceeding, by a  
6 majority of the members named as defendants.

7 **4. Determination by special litigation committee.** After appropriate investigation,  
8 a special litigation committee may determine that it is in the best interests of the limited  
9 liability company that the proceeding:

10 A. Continue under the control of the plaintiff;

11 B. Continue under the control of the special litigation committee;

12 C. Be settled on terms approved by the special litigation committee; or

13 D. Be dismissed.

14 **5. Filing of determination with court.** After making a determination under  
15 subsection 4, a special litigation committee shall file with the court a statement of its  
16 determination and its report supporting its determination, giving notice to the plaintiff.  
17 The court shall determine whether the members of the special litigation committee were  
18 disinterested and independent and whether the special litigation committee conducted its  
19 investigation and made its recommendation in good faith, independently and with  
20 reasonable care, with the special litigation committee having the burden of proof. If the  
21 court finds that the members of the special litigation committee were disinterested and  
22 independent and that the special litigation committee acted in good faith, independently  
23 and with reasonable care, the court shall enforce the determination of the special litigation  
24 committee. Otherwise, the court shall dissolve the stay of discovery entered under  
25 subsection 1 and allow the action to proceed under the direction of the plaintiff.

26 **§1636. Proceeds and expenses**

27 **1. Proceeds.** Except as otherwise provided in subsection 2:

28 A. Any proceeds or other benefits of a derivative action under section 1632, whether  
29 by judgment, compromise or settlement, belong to the limited liability company and  
30 not to the plaintiff; and

31 B. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to  
32 the limited liability company.

33 **2. Expenses.** If a derivative action under section 1632 is successful in whole or in  
34 part, the court may award the plaintiff reasonable expenses, including reasonable  
35 attorney's fees and costs, from the recovery of the limited liability company.

36 **§1637. Closely held limited liability company**

37 **1. Definition.** As used in this section, "closely held limited liability company"  
38 means a limited liability company that has:

39 A. Fewer than 35 members; and

B. No membership interests listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national securities association.

2. Limitation on derivative actions. Except to the extent ordered by the court in an action under subsection 3, paragraph A, sections 1632 to 1636 do not apply to a closely held limited liability company.

3. Exception to limitation on derivative actions. If justice requires:

A. A derivative action commenced by a member of a closely held limited liability company may be treated by a court as a direct action brought by the member for the member's own benefit; and

B. Recovery in a direct or derivative action by a member of a closely held limited liability company may be paid directly to the plaintiff or to the closely held limited liability company if necessary to protect the interests of creditors or of other members.

## SUBCHAPTER 12

### MERGER AND CONVERSION

#### §1641. Merger

1. Merger requirements. A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 1642 to 1644 and a plan of merger, if:

A. The governing statute of each of the other organizations authorizes the merger;

B. The merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

C. Each of the other organizations complies with its governing statute in effecting the merger.

2. Plan of merger. A plan of merger must be in a record and must include:

A. The name, current jurisdiction and form of each constituent organization;

B. The name, jurisdiction and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

C. The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization and other consideration as allowed in subsection 3;

D. If the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

E. If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record or a statement that the organizing documents remain unchanged.

1        **3. Exchange or conversion.** In connection with a merger, rights or securities of or  
2        interests in the constituent organization may be exchanged for or converted into cash,  
3        property or rights or securities of or interests in the surviving organization or, in addition  
4        to or in lieu thereof, may be exchanged for or converted into cash, property or rights or  
5        securities of or interests in another organization or may be cancelled.

6        **§1642. Action on plan of merger by constituent limited liability company**

7        **1. Consent by constituent members.** A plan of merger must be consented to by all  
8        the members of a constituent limited liability company.

9        **2. Amend plan; abandon merger.** After the plan of merger is approved, and at any  
10       time before a statement of merger is delivered to the office of the Secretary of State for  
11       filing under section 1643, a constituent limited liability company may amend the plan or  
12       abandon the merger:

13        A. As provided in the plan; or

14        B. Except as otherwise prohibited in the plan, with the same consent as was required  
15        to approve the plan.

16       **§1643. Filings required for merger; effective date**

17       **1. Signature on statement of merger.** After each constituent organization has  
18       approved the plan of merger, a statement of merger must be signed on behalf of:

19        A. Each constituent limited liability company, as provided in section 1676,  
20        subsection 1; and

21        B. Each other constituent organization, as provided in its governing statute.

22       **2. Contents.** A statement of merger under this section must include:

23        A. The name and form of each constituent organization and the jurisdiction of its  
24        governing statute and the date of organization of each constituent organization;

25        B. The name and form of the surviving organization, the jurisdiction of its governing  
26        statute, the date of its organization, the address of its principal office and, if the  
27        surviving organization is created by the merger, a statement to that effect;

28        C. The date the merger is effective under the governing statute of the surviving  
29        organization;

30        D. If the surviving organization is to be created by the merger:

31            (1) If the surviving organization will be a limited liability company, the limited  
32            liability company's certificate of formation; or

33            (2) If the surviving organization will be an organization other than a limited  
34            liability company, the organizational document that creates the organization that  
35            is in a public record;

36        E. If the surviving organization exists before the merger, any amendments provided  
37        for in the plan of merger for the organizational document that created the surviving  
38        organization that are in a public record or a statement that the organizational  
39        documents remain unchanged;



F. A statement as to each constituent organization that the merger was approved as required by the constituent organization's governing statute and as required by the organizational documents of each constituent organization;

G. If the surviving organization is a foreign organization not authorized to conduct business in this State, an acknowledgment that it may be served with process in this State by certified mail and the address of its principal office for the purposes of section 1644, subsection 2; and

H. Any additional information required by the governing statute of any constituent organization.

**3. Filing of statement of merger.** The surviving organization shall deliver the statement of merger signed by each constituent organization for filing with the office of the Secretary of State.

**4. Effective date of merger.** A merger becomes effective under this subchapter:

A. If the surviving organization is a limited liability company, upon the later of:

(1) Compliance with subsection 3; and

(2) As specified in the statement of merger; or

B. If the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

**§1644. Effect of merger**

**1. Effect of merger.** When a merger becomes effective:

A. The surviving organization continues or comes into existence;

B. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

C. All property owned by each constituent organization that ceases to exist vests in the surviving organization;

D. All debts, obligations or other liabilities of each constituent organization that ceases to exist continue as debts, obligations or other liabilities of the surviving organization;

E. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred, and the surviving organization may be, but need not be, substituted in the action;

F. Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of each constituent organization that ceases to exist vest in the surviving organization;

G. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

1 H. Except as otherwise agreed, if a constituent limited liability company ceases to  
2 exist, the merger does not dissolve the limited liability company for the purposes of  
3 subchapter 7;

4 I. If the surviving organization is created by the merger:

5 (1) If the surviving organization is a limited liability company, the certificate of  
6 formation becomes effective; or

7 (2) If the surviving organization is an organization other than a limited liability  
8 company, the organizational document that creates the organization becomes  
9 effective; and

10 J. If the surviving organization existed before the merger, any amendments provided  
11 for in the statement of merger for the organizational document that created the  
12 surviving organization become effective.

13 **2. Jurisdiction.** A surviving organization that is a foreign organization consents to  
14 the jurisdiction of the courts of this State to enforce any debt, obligation or other liability  
15 owed by a constituent organization if before the merger the constituent organization was  
16 subject to suit in this State on the debt, obligation or other liability. Service of process on  
17 a surviving organization that is a foreign organization and not authorized to conduct  
18 business in this State for the purposes of enforcing a debt, obligation or other liability  
19 may be made in the same manner and has the same consequences as provided in Title 5,  
20 chapter 6-A as if the surviving organization were a foreign limited liability company.

21 **§1645. Conversion**

22 **1. Conversion.** An organization other than a limited liability company, including  
23 but not limited to a foreign organization, may convert to a limited liability company, and  
24 a limited liability company may convert to an organization other than a limited liability  
25 company pursuant to this section, sections 1646 to 1648 and a plan of conversion, if:

26 A. The governing statute of the organization that is not a limited liability company  
27 authorizes the conversion;

28 B. The law of the jurisdiction governing the converting organization and the  
29 converted organization does not prohibit the conversion; and

30 C. The converting organization and the converted organization each complies with  
31 its respective governing statute in effecting the conversion.

32 **2. Plan of conversion.** A plan of conversion must be in a record and must include:

33 A. The name, date of organization, jurisdiction and form of the converting  
34 organization before conversion;

35 B. The name, jurisdiction and form of the converted organization after conversion;

36 C. The terms and conditions of the conversion, including the manner and basis for  
37 converting interests in the converting organization into any combination of money,  
38 interests in the converted organization and other consideration as allowed in  
39 subsection 3; and

1        D. The organizational documents of the converted organization that are, or are  
2        proposed to be, in a record.

3        **3. Exchange or conversion.** In connection with a conversion, rights or securities of  
4        or interests in the converting organization may be exchanged for or converted into cash,  
5        property or rights or securities of or interests in the converted organization or, in addition  
6        to or in lieu thereof, may be exchanged for or converted into cash, property or rights or  
7        securities of or interests in another organization or may be cancelled.

8        **§1646. Action on plan of conversion by converting limited liability company**

9        **1. Consent.** A plan of conversion must be consented to by all the members of a  
10       converting limited liability company.

11       **2. Amend or abandon.** After a conversion is approved, and at any time before the  
12       statement of conversion is delivered to the office of the Secretary of State for filing under  
13       section 1647, a converting limited liability company may amend the plan or abandon the  
14       conversion:

15       A. As provided in the plan; or

16       B. Except as otherwise prohibited in the plan, by the same consent as was required to  
17       approve the plan.

18       **§1647. Filings required for conversion; effective date**

19       **1. After conversion approved.** After a plan of conversion is approved:

20       A. A converting limited liability company shall deliver to the office of the Secretary  
21       of State for filing a statement of conversion, which must be signed as provided in  
22       section 1676, subsection 1 and must include:

23       (1) A statement that the converting limited liability company has been converted  
24       into the converted organization;

25       (2) The name and form of the converted organization, the jurisdiction of its  
26       governing statute, the date of its organization and the address of its principal  
27       office;

28       (3) The date the conversion is effective under the governing statute of the  
29       converted organization;

30       (4) A statement that the conversion was approved as required by this chapter and  
31       the limited liability company agreement;

32       (5) A statement that the conversion was approved as required by the governing  
33       statute of the converted organization; and

34       (6) If the converted organization is a foreign organization not authorized to  
35       conduct business in this State, an acknowledgment that it may be served with  
36       process in this State by certified mail and the address of its principal office for  
37       the purposes of section 1648, subsection 3; and

1 B. If the converted organization is a limited liability company, the converting  
2 organization shall deliver to the office of the Secretary of State for filing a certificate  
3 of formation, which must include, in addition to the information required by section  
4 1531, subsection 1:

5 (1) A statement that the converted organization was converted from the  
6 converting organization;

7 (2) The name and form of the converting organization, the jurisdiction of the  
8 converting organization's governing statute and the date of its organization; and

9 (3) A statement that the conversion was approved as required by the governing  
10 statute of the converting organization.

11 **2. Effective date.** A conversion becomes effective:

12 A. If the converted organization is a limited liability company, when the certificate  
13 of formation takes effect; and

14 B. If the converted organization is not a limited liability company, as provided by the  
15 governing statute of the converted organization.

16 **§1648. Effect of conversion**

17 **1. Same organization.** An organization that has been converted pursuant to this  
18 subchapter is for all purposes the same entity that existed before the conversion.

19 **2. Effect of conversion.** When a conversion takes effect:

20 A. All property owned by the converting organization remains vested in the  
21 converted organization;

22 B. All debts, obligations or other liabilities of the converting organization continue  
23 as debts, obligations or other liabilities of the converted organization;

24 C. An action or proceeding pending by or against the converting organization may be  
25 continued as if the conversion had not occurred, or the converted organization may  
26 be, but need not be, substituted in the action;

27 D. Except as prohibited by other law, all of the rights, privileges, immunities, powers  
28 and purposes of the converting organization remain vested in the converted  
29 organization;

30 E. Except as otherwise provided in the plan of conversion, the terms and conditions  
31 of the plan of conversion take effect;

32 F. Except as otherwise agreed, the converting organization is not required to wind up  
33 its affairs or pay its liabilities and distribute its assets, and the conversion may not be  
34 deemed to constitute a dissolution of that converting organization. When a  
35 converting organization has been converted to a limited liability company pursuant to  
36 this section, the limited liability company is deemed to be the same organization as  
37 the converting organization, and the conversion constitutes a continuation of the  
38 existence of the converting organization in the form of a limited liability company;

G. The rights, privileges, powers and interests in property of the converting organization, as well as the debts, liabilities and duties of the converting organization, are not deemed, as a consequence of the conversion, to have been transferred to the converted organization; and

H. If the converted organization is a limited liability company, the existence of the limited liability company is deemed to have commenced on the date the converting organization commenced its existence in the jurisdiction in which the converting organization was first created, formed, organized, incorporated or otherwise came into being.

**3. Jurisdiction.** A converted organization that is a foreign organization consents to the jurisdiction of the courts of this State to enforce any debt, obligation or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this State on the debt, obligation or other liability. Service of process on a converted organization that is a foreign organization and not authorized to conduct business in this State for purposes of enforcing a debt, obligation or other liability under this subsection may be made in the same manner and has the same consequences as provided in Title 5, chapter 6-A as if the converted organization were a foreign limited liability company.

**§1649. Restrictions on approval of mergers and conversions**

**1. Written consent.** If a member of a converting or constituent limited liability company will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or plan of merger are ineffective without that member's written consent to that plan.

**2. Consent to agreement.** A member does not give the consent required by subsection 1 merely by consenting to a provision of the limited liability company agreement that permits the limited liability company agreement to be amended with the consent of fewer than all the members.

**§1650. Subchapter not exclusive**

This subchapter does not preclude an entity from being merged or converted under law other than this chapter.

**SUBCHAPTER 13**

**ADMINISTRATIVE PROVISIONS**

**§1661. Registered agent for domestic limited liability company**

A domestic limited liability company must have and continuously maintain a registered agent in this State as defined by Title 5, section 102, subsection 27.

**§1662. Service of process**

Service of process, notice or demand required or permitted by law on a domestic limited liability company is governed by Title 5, section 113.

**§1663. Principal office**

The principal office of a limited liability company or foreign limited liability company need not be located in this State.

**§1664. Certificate of existence; certificate of qualification; certificate of fact**

**1. Certificate of existence; certificate of qualification.** The Secretary of State, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a domestic limited liability company or certificate of qualification for a foreign limited liability company if the records filed in the office of the Secretary of State show that the limited liability company has been formed under the laws of this State or authorized to transact business in this State. A certificate of existence or certificate of qualification must state:

A. The limited liability company's name;

B. That, if a domestic limited liability company, the limited liability company is duly formed under the laws of this State and the date of formation;

C. That, if a foreign limited liability company, the foreign limited liability company is authorized to transact business in this State, the date on which the limited liability company was authorized to transact business in this State and its jurisdiction of organization;

D. That all fees and penalties owed to the State have been paid in full, if:

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

(2) Nonpayment affects the existence or authorization of the domestic or foreign limited liability company;

E. That the limited liability company's most recent annual report required by section 1519 has been filed by the Secretary of State;

F. Whether the limited liability company has delivered to the office of the Secretary of State for filing a certificate of cancellation by a domestic limited liability company or a statement of cancellation of foreign qualification; and

G. Other facts of record in the office of the Secretary of State that are specified by the person requesting the certificate.

**2. Conclusive evidence.** Subject to any condition stated in the certificate, a certificate of existence or certificate of qualification issued by the Secretary of State is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business or conduct activities in this State.

**3. Certificate of fact.** In addition to the certificate authorized under subsection 1, the Secretary of State may issue a certificate of fact attesting to any fact of record in the office of the Secretary of State that may be requested.

1 **§1665. Annual report for Secretary of State**

2 **1. Annual report.** Each year, each domestic limited liability company or each  
3 foreign limited liability company authorized to conduct business in this State shall deliver  
4 to the office of the Secretary of State for filing an annual report setting forth:

5 A. The name of the limited liability company or the foreign limited liability  
6 company;

7 B. The information required by Title 5, section 105, subsection 1;

8 C. The address of the limited liability company's or foreign limited liability  
9 company's principal office;

10 D. A brief statement of the character of the business in which the limited liability  
11 company is actually engaged in this State; and

12 E. The name and address of one or more individuals designated as a contact person  
13 for the limited liability company.

14 **2. Current information.** Information in an annual report under this section must be  
15 current as of the date the report is delivered to the office of the Secretary of State for  
16 filing.

17 **3. First annual report; subsequent reports.** The first annual report under this  
18 section must be delivered to the office of the Secretary of State between January 1st and  
19 June 1st of the year following the calendar year in which a limited liability company was  
20 formed or a foreign limited liability company delivered its statement of foreign  
21 qualification to the office of the Secretary of State for filing. For subsequent years,  
22 annual reports must be delivered to the office of the Secretary of State between January  
23 1st and June 1st of the following calendar year.

24 **4. Filing.** The report, together with the filing fee required by this chapter, must be  
25 delivered for filing to the office of the Secretary of State, who shall file the report if the  
26 Secretary of State finds that it conforms to the requirements of subsection 1. If the  
27 Secretary of State finds that the report does not conform to the requirements of subsection  
28 1, the Secretary of State shall promptly mail or otherwise return the report to the reporting  
29 limited liability company for any necessary correction. If the report is corrected to  
30 contain the information required in subsection 1 and delivered to the office of the  
31 Secretary of State within 30 days after the effective date of the notice, it is timely  
32 delivered. Proof to the satisfaction of the Secretary of State that, prior to the date that  
33 penalties become effective for late delivery of an annual report as established by the  
34 Secretary of State by rule, the report was deposited in the United States mail in a sealed  
35 envelope, properly addressed, with postage prepaid or was delivered in a medium  
36 authorized by the Secretary of State is deemed in compliance with this requirement. The  
37 penalties prescribed by this chapter for failure to file the report by the date required by  
38 rule by the Secretary of State do not apply if the report is corrected to conform to the  
39 requirements of this chapter and returned to the Secretary of State within 30 days from  
40 the date on which the report was mailed or otherwise returned to the limited liability  
41 company by the Secretary of State.

42 **5. Certificate of excuse.** The Secretary of State, upon application by a domestic  
43 limited liability company and satisfactory proof that it has ceased to transact business and

1 that it is not indebted to this State for failure to file an annual report and to pay any fees  
2 or penalties accrued, shall file a certificate of the fact and shall give a duplicate certificate  
3 to the limited liability company, after which the limited liability company is excused from  
4 filing annual reports with the office of the Secretary of State, as long as the limited  
5 liability company in fact transacts no business. The name of a limited liability company  
6 remains in the office of the Secretary of State's records of entity names and is protected  
7 for a period of 5 years following excuse.

8 **6. Resumption of business.** A domestic limited liability company that has been  
9 excused from filing annual reports pursuant to subsection 5 may elect to resume  
10 transacting business. A certificate executed and filed as provided in section 1673 setting  
11 forth that an election was made to resume the transaction of business authorizes the  
12 domestic limited liability company to resume transaction of business. After that  
13 certificate is filed, the domestic limited liability company is required to file annual reports  
14 beginning with the next reporting deadline following resumption.

15 **§1666. Amended annual report of domestic or foreign limited liability company**

16 **1. Amended annual report.** If the information contained in an annual report filed  
17 under section 1519 has changed, a limited liability company may, if it determines it to be  
18 necessary, deliver to the office of the Secretary of State for filing an amended annual  
19 report to change the information on file.

20 **2. Contents.** The amended annual report under subsection 1 must set forth:

21 A. The name of the domestic or foreign limited liability company and the jurisdiction  
22 of its organization;

23 B. The date on which the original annual report was filed; and

24 C. The information that has changed and the date on which it changed.

25 **3. Filing date.** An amended annual report under subsection 1 may be filed by the  
26 limited liability company after the date of the original filing and until December 31st of  
27 that filing year.

28 **§1667. Failure to file annual report; incorrect report; penalties**

29 **1. Failure to file; penalty.** A domestic or foreign limited liability company that is  
30 required to deliver an annual report for filing as provided by section 1665 that fails to  
31 deliver its properly completed annual report to the Secretary of State shall pay, in  
32 addition to the regular annual report fee, the late filing penalty set forth in section 1680,  
33 subsection 10 as long as the report is received by the Secretary of State prior to  
34 revocation or administrative dissolution. Upon a limited liability company's failure to file  
35 the annual report and to pay the annual report fee or the penalty, the Secretary of State,  
36 notwithstanding Title 4, chapter 5 and Title 5, chapter 375, shall revoke a foreign limited  
37 liability company's authority to do business in this State and administratively dissolve a  
38 domestic limited liability company. The Secretary of State shall use the procedures set  
39 forth in section 1592 to administratively dissolve a domestic limited liability company  
40 and the procedures set forth in section 1626 to revoke a foreign limited liability  
41 company's authority to transact business in this State. A domestic limited liability



1 company that has been administratively dissolved under section 1592 must follow the  
2 requirements set forth in section 1603 to reinstate.

3 **2. Return for correction.** If the Secretary of State finds that an annual report  
4 delivered for filing does not conform with the requirements of section 1665, the report  
5 must be returned for correction.

6 **3. Excused from liability.** If the annual report of a domestic or foreign limited  
7 liability company is not delivered for filing within the time specified in section 1665, the  
8 limited liability company is excused from the liability provided in this section and from  
9 any other penalty for failure to file timely the report if it establishes to the satisfaction of  
10 the Secretary of State that failure to file was the result of excusable neglect and it  
11 furnishes the Secretary of State a copy of the report within 30 days after it learns that the  
12 Secretary of State failed to receive the original report.

13 **§1668. Powers of the Secretary of State; rules**

14 The Secretary of State has the power reasonably necessary to perform the duties  
15 required of the Secretary of State by this chapter, including the power to adopt rules not  
16 inconsistent with this chapter. Rules adopted pursuant to this chapter are routine technical  
17 rules as defined in Title 5, chapter 375, subchapter 2-A.

18 **§1669. Expedited service**

19 The Secretary of State may provide an expedited service for the processing of  
20 documents in accordance with this chapter. If the service is provided, the Secretary of  
21 State shall establish by rule a fee schedule and governing procedures in accordance with  
22 the Maine Administrative Procedure Act. Fees collected for expedited service must be  
23 deposited into a fund for use by the Secretary of State in providing an improved filing  
24 service.

25 **§1670. Access to database**

26 The Secretary of State may provide public access to the database through a medium  
27 approved by the Secretary of State, through public terminals and through electronic  
28 duplicates of the database. If access to the database is provided to the public, the  
29 Secretary of State may adopt rules in accordance with the Maine Administrative  
30 Procedure Act to establish a fee schedule and governing procedures.

31 **§1671. Publications**

32 **1. Fee for publications.** The Secretary of State may establish by rule in accordance  
33 with the Maine Administrative Procedure Act a fee schedule to cover the cost of printing  
34 and distribution of publications and to set forth the procedures for the sale of these  
35 publications.

36 **2. Use of fees.** Fees collected pursuant to this section must be deposited in a fund for  
37 use by the Secretary of State to replace and update publications offered in accordance  
38 with this chapter and to fund new publications.

**§1672. Filing duty of Secretary of State**

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

**2. Recording as filed; acknowledgment.** The Secretary of State files a document pursuant to subsection 1 by recording it as filed on the date of receipt. After filing a document, the Secretary of State shall deliver to the domestic or foreign limited liability company or its representative a copy of the document with an acknowledgement of the date of filing. If the person delivering the document for filing so requests, the acknowledgment must further include the hour and minute of filing.

**3. Refusal to file; written explanation.** If the Secretary of State refuses to file a document, the Secretary of State shall return it to the domestic or foreign limited liability company or its representative within 5 days after the document was delivered, together with a brief written explanation of the reason for the refusal.

**4. Ministerial.** The Secretary of State's duty to file a document under this chapter is ministerial, and the filing or refusal to file a document does not:

A. Affect the validity or invalidity of the document in whole or in part;

B. Relate to the correctness or incorrectness of information contained in the document; or

C. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**§1673. Requirements for documents filed with the Secretary of State**

Each document authorized or required to be delivered to the Secretary of State for filing under this chapter must satisfy the following requirements and the requirements of any other section of this chapter.

**1. Information.** The document must contain all information required by the laws of this State to be contained in the document but, unless otherwise provided by law, may not contain other information.

**2. Form; format.** The document must be legibly typewritten or printed in ink or, if electronically transmitted, it must be in a format that can be retrieved or reproduced in typewritten or printed form.

**3. Prescribed form.** The Secretary of State may prescribe and furnish on request forms for any documents required or permitted to be filed by this chapter. If the Secretary of State so requires, use of these forms is mandatory.

**4. English language.** A person's name set forth in the document need not be in English if expressed in English letters or Arabic or Roman numerals. Documents of a foreign person need not be in English if accompanied by a reasonably authenticated English translation.

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1       **5. Delivery.** The document must be delivered to office of the Secretary of State for  
2 filing. Delivery may be made by electronic transmission if and to the extent permitted by  
3 the Secretary of State.

4       **6. Fee.** At the time of delivery of the document, the correct filing fee and any  
5 reinstatement fee or penalty must be paid or provision for payment made in a manner  
6 permitted by the Secretary of State.

7       **§1674. Effective time, delayed effective date**

8       Except as otherwise provided in section 1675 and Title 5, section 111, a record  
9 delivered to the office of the Secretary of State for filing under this chapter may specify  
10 an effective time and a delayed effective date. Subject to section 1675 and Title 5,  
11 section 111, a record filed by the Secretary of State is effective:

12       **1. No specified time or delayed effective date.** If the record does not specify an  
13 effective time and does not specify a delayed effective date, on the date and at the time  
14 the record is filed as evidenced by the Secretary of State's endorsement of the date and  
15 time on the record;

16       **2. Effective time but not delayed date.** If the record specifies an effective time but  
17 not a delayed effective date, on the date the record is filed at the time specified in the  
18 record;

19       **3. Delayed effective date but no time.** If the record specifies a delayed effective  
20 date but not an effective time, at 12:01 a.m. on the earlier of:

21       A. The specified date; or

22       B. The 90th day after the record is filed; or

23       **4. Specified time and delayed effective date.** If the record specifies an effective  
24 time and a delayed effective date, at the specified time on the earlier of:

25       A. The specified date; or

26       B. The 90th day after the record is filed.

27       **§1675. Correcting filed record; effective time and date**

28       **1. Statement of correction.** A domestic limited liability company or foreign limited  
29 liability company may deliver to the office of the Secretary of State for filing a statement  
30 of correction to correct a record previously delivered by the domestic limited liability  
31 company or foreign limited liability company to the office of the Secretary of State and  
32 filed by the Secretary of State if at the time of filing the record contained incorrect  
33 information or was defectively signed or if the information subsequently becomes  
34 inaccurate.

35       **2. Contents.** A statement of correction under subsection 1 may not state a delayed  
36 effective date and must:

37       A. Describe the record to be corrected, including its filing date, or attach a copy of  
38 the record as filed;

1 B. Specify the incorrect or inaccurate information and the reason it is incorrect or  
2 inaccurate or the manner in which the signing was defective; and

3 C. Correct the incorrect or inaccurate information or the manner in which the signing  
4 was defective.

5 **3. Effective retroactively; effective when filed.** When filed by the Secretary of  
6 State, a statement of correction is effective retroactively as of the effective date of the  
7 record the statement corrects, but the statement is effective when filed as to persons that  
8 previously relied on the uncorrected record and would be adversely affected by the  
9 retroactive effect.

10 **4. Erroneously filed record.** A statement of correction may be used to render  
11 ineffective an erroneously filed record.

12 **§1676. Signing of records to be delivered for filing to office of the Secretary of State**

13 **1. Record signed.** A record delivered to the office of the Secretary of State for filing  
14 pursuant to this chapter must be signed as follows.

15 A. A limited liability company's initial certificate of formation must be signed by at  
16 least one authorized person.

17 B. A record signed on behalf of a limited liability company must be signed by a  
18 person authorized by the limited liability company.

19 C. A record filed on behalf of a dissolved limited liability company that has no  
20 members must be signed by the person winding up the limited liability company's  
21 activities under section 1597, subsection 1 or a person appointed under section 1598,  
22 subsection 2 to wind up those activities.

23 D. A statement of denial by a person under section 1543 must be signed by that  
24 person.

25 E. Any other record must be signed by the person on whose behalf the record is  
26 delivered to the office of the Secretary of State.

27 **2. Agent; attorney-in-fact.** Any record to be filed under this chapter may be signed  
28 by an agent, including an attorney-in-fact. Powers of attorney relating to the signing of  
29 the record need not be provided to or filed with the office of the Secretary of State.

30 **§1677. Signing and filing pursuant to judicial order**

31 **1. Petition.** If a person required by this chapter to sign a record or deliver a record to  
32 the office of the Secretary of State for filing under this chapter does not do so, any other  
33 person that is aggrieved by such failure to sign may petition the Kennebec County  
34 Superior Court to order:

35 A. The person to sign the record;

36 B. The person to deliver the record to the office of the Secretary of State for filing; or

37 C. The Secretary of State to file the record unsigned.

38 **2. Party to action.** If a petitioner under subsection 1 is not the domestic limited  
39 liability company or foreign limited liability company to whom the record pertains, the

petitioner shall make the domestic limited liability company or foreign limited liability company a party to the action. A person aggrieved under subsection 1 may seek the remedies provided in subsection 1 in a separate action against the person required to sign the record or as a part of any other action concerning the limited liability company in which the person required to sign the record is made a party.

**3. Reasonable expenses.** A court may award reasonable expenses, including reasonable attorney's fees, to the party or parties who prevail, in whole or in part, with respect to any claim made under subsection 1.

#### **§1678. Liability for incorrect or inaccurate information in filed record**

**1. Incorrect or inaccurate information.** If a record delivered to the office of the Secretary of State for filing under this chapter and filed by the Secretary of State contains incorrect or inaccurate information, a person that suffers a loss by reasonable reliance on the information may recover damages for the loss from a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be incorrect or inaccurate at the time the record was signed.

**2. Affirmation that facts are true.** A person who signs a record authorized or required to be filed under this chapter thereby affirms under the penalties of perjury that the facts stated in the record are true to the best of the signer's knowledge in all material respects at the time of the signing.

#### **§1679. Address**

Whenever a provision of this subchapter requires that a document for filing state an address, the document must state:

**1. Street or rural route.** An actual street address or rural route box number in this State; and

**2. Mailing address.** A mailing address in this State, if different from the address under subsection 1.

#### **§1680. Filing and copying fees; penalties**

A document filed under this chapter is not effective until the applicable fee required in this section is paid. The following fees or penalties must be paid to the office of the Secretary of State:

**1. Reservation.** For filing of an application for reservation of name or a notice of transfer of reservation pursuant to section 1509, a fee of \$20 for each limited liability company affected;

**2. Assumed or fictitious name.** For filing of a statement for use of an assumed name under section 1510, a fee of \$125, and for filing a statement for use of a fictitious name under section 1510, a fee of \$40;

**3. Termination of assumed or fictitious name.** For filing of a termination of an assumed or fictitious name under section 1510, a fee of \$20;

**4. Registered name.** For filing of an application for a registered name of a foreign limited liability company under section 1511, a fee of \$20 per month for the number of

1 months or fraction of a month remaining in the calendar year when first filing. For filing  
2 an application to renew the registration of a registered name, a fee of \$200;

3 5. Issuing certificate. For issuing a certificate of existence, certificate of authority  
4 or certificate of fact as provided by section 1664, a fee in the amount of \$30;

5 6. Annual report. For filing of an annual report under section 1665, a fee of \$85 for  
6 a domestic limited liability company or a fee of \$150 for a foreign limited liability  
7 company;

8 7. Application for excuse. For filing a statement for excuse under section 1665,  
9 subsection 5, a fee of \$40;

10 8. Certificate of resumption. For filing a statement of resumption under section  
11 1665, subsection 6, a fee of \$100;

12 9. Amended annual report. For filing of an amended annual report under section  
13 1666, a fee of \$85 for a domestic limited liability company or a fee of \$150 for a foreign  
14 limited liability company;

15 10. Late filing penalty. For failing to deliver an annual report by its due date, in  
16 addition to the annual report filing fee, a fee of \$50;

17 11. Statement of correction. For filing of a statement of correction under section  
18 1675, a fee of \$50;

19 12. Certificate of cancellation. For filing a certificate of cancellation under section  
20 1533, a fee of \$75;

21 13. Certificate of formation. For filing of a certificate of formation under section  
22 1531, a fee of \$175;

23 14. Amendment or restatement of certificate of formation. For filing an amended  
24 certificate of formation under section 1532, a fee of \$50; and for filing a restatement of  
25 certificate of formation under section 1532, subsection 4, a fee of \$80;

26 15. Statement of authority; amendment or cancellation. For filing a statement of  
27 authority under section 1542, a fee of \$50; for filing an amended statement of authority  
28 under section 1542, subsection 2, a fee of \$50; and for filing a cancellation of a statement  
29 of authority under section 1542, subsection 2, a fee of \$50;

30 16. Statement of denial. For filing a statement of denial under section 1543, a fee  
31 of \$50;

32 17. Reinstatement fee after administrative dissolution. For failure to file an  
33 annual report, a fee of \$150, to a maximum fee of \$600, regardless of the number of  
34 delinquent reports or the period of delinquency; for failure to pay the annual report late  
35 filing penalty, a fee of \$150; for failure to appoint or maintain a registered agent, a fee of  
36 \$150; for failure to notify the Secretary of State that the registered agent or the address of  
37 the registered agent has been changed or that the registered agent has resigned, a fee of  
38 \$150; and for filing false information, a fee of \$150;

39 18. Certificate of revival after dissolution. Certificate of revival after dissolution  
40 for a domestic limited liability company under section 1604, a fee of \$150;

1 **19. Statement of foreign qualification.** For filing of a statement of foreign  
2 qualification under section 1622, a fee of \$250;

3 **20. Statement of change of foreign qualification.** For filing a statement of change  
4 under section 1622, subsection 3, except to change the address of the principal office, a  
5 fee of \$90. For filing a statement of change to change the address of the principal office,  
6 a fee of \$35;

7 **21. Statement of cancellation of foreign qualification.** For filing a statement of  
8 cancellation of foreign qualification under section 1628, a fee of \$90;

9 **22. Statement of merger.** For filing a statement of merger under section 1643, a fee  
10 of \$150;

11 **23. Statement of conversion.** For filing a statement of conversion under section  
12 1647 to convert to a business corporation governed by Title 13-C, a fee of \$145; for filing  
13 a statement of conversion under section 1647 to convert to a nonprofit corporation  
14 governed by Title 13-B, a fee of \$40; for filing a statement of conversion under section  
15 1647 to convert to a limited partnership governed by chapter 19, a fee of \$175; for filing a  
16 statement of conversion under section 1647 to convert to a limited liability partnership  
17 governed by chapter 15, a fee of \$175; and for filing a statement of conversion under  
18 section 1647 to convert to a partnership governed by chapter 17, a fee of \$175;

19 **24. All other filings.** For filing of a certificate, statement, affidavit, agreement or  
20 any other paper provided for by this chapter, for which a fee is not specifically  
21 prescribed, a fee of \$35;

22 **25. Copies of filed documents.** For all copies, whether certified or not, a fee of \$2  
23 per page. For purposes of this chapter, a filed document is any filing provided for by this  
24 chapter and filed by the Secretary of State;

25 **26. Certified copies.** For certification of copies of filed documents under this  
26 chapter, a fee of \$5 for each certification in addition to any fee due under subsection 25;

27 **27. Preclearance of document.** For the preclearance of a document for filing, a fee  
28 of \$100; and

29 **28. Service of process on Secretary of State as agent.** For accepting service of  
30 process under section 1626, subsection 4, a fee of \$20.

31 All fees collected as provided by this chapter must be remitted to the Treasurer of  
32 State for the use of the State with the exception of those fees established by rule and  
33 collected for expedited service. Fees for expedited service are deposited into a fund for  
34 use by the Secretary of State in providing an improved filing service.

35 **SUBCHAPTER 14**

36 **MISCELLANEOUS PROVISIONS**

37 **§1691. Relation to electronic signatures in Global and National Commerce Act**

38 This chapter modifies, limits and supersedes the federal Electronic Signatures in  
39 Global and National Commerce Act, 15 United States Code, Section 7001 et seq., but  
40 does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code,

1 Section 7001(c), or authorize electronic delivery of any of the notices described in  
2 Section 103(b) of that Act, 15 United States Code, Section 7003(b).

3 **§1692. Savings clause**

4 **1. Repeal does not affect.** Except as provided in subsection 2, the repeal of former  
5 chapter 13 does not affect:

6 A. The operation of former chapter 13 or any action taken under it before its repeal;

7 B. Any ratification, right, remedy, privilege, obligation or liability acquired, accrued  
8 or incurred under former chapter 13 before its repeal;

9 C. Any violation of former chapter 13, or any penalty, forfeiture or punishment  
10 incurred because of the violation, before its repeal; and

11 D. Any proceeding, reorganization or dissolution commenced under former chapter  
12 13 before its repeal, and the proceeding, reorganization or dissolution may be  
13 completed in accordance with former chapter 13 as if it had not been repealed.

14 **2. Penalty or punishment.** If a penalty or punishment imposed for violation of  
15 former chapter 13 is reduced by this chapter, the penalty or punishment if not already  
16 imposed must be imposed in accordance with this chapter.

17 **§1693. Application to existing relationships**

18 **1. Existing on effective date.** This chapter applies to all limited liability companies  
19 in existence on July 1, 2011, except as provided in subsections 2 and 3.

20 **2. Formed before effective date.** For purposes of applying this chapter to a limited  
21 liability company formed before July 1, 2011:

22 A. The limited liability company's articles of organization are deemed to be the  
23 limited liability company's certificate of formation; and

24 B. Solely for purposes of applying section 1541, language in the limited liability  
25 company's articles of organization designating the limited liability company's  
26 management structure operates as if that language were in the limited liability  
27 company agreement.

28 **3. Foreign limited liability company.** This chapter applies to each foreign limited  
29 liability company that does not have a certificate of authority in effect on July 1, 2011.  
30 Former chapter 13 applies to each foreign limited liability company with a valid  
31 application of authority to do business in this State in effect on July 1, 2011 until the due  
32 date of the first annual report required to be filed by that foreign limited liability company  
33 on or after July 1, 2011, after which due date this chapter applies to that foreign limited  
34 liability company, and such application for authority to do business in this State, for  
35 purposes of this chapter, constitutes a statement of foreign qualification.

36 **4. Certain assignments.** The provisions of section 1507, subsection 5 do not apply  
37 to a security interest with an effective date before July 1, 2011.

38 **5. Administrative dissolution prior to effective date.** A domestic limited liability  
39 company administratively dissolved under former chapter 13 is deemed to have been



1 administratively dissolved under section 1592 for purposes of reinstatement following  
2 administrative dissolution under section 1593.

3 **Sec. A-3. Effective date.** This Act takes effect July 1, 2011.

4 **PART B**

5 **Sec. B-1. 9-B MRSA §311,** as amended by PL 2005, c. 543, Pt. D, §1 and  
6 affected by §18, is further amended to read:

7 **§311. Applicability of chapter**

8 The provisions of this chapter govern the organization and management of financial  
9 institutions operating as corporations, limited liability companies, limited partnerships  
10 and limited liability partnerships. Unless otherwise indicated in this Title, the provisions  
11 of Title 13-C apply to financial institutions operating as corporations; Title 31, chapter 19  
12 applies to financial institutions operating as limited partnerships; Title 31, chapter 13 ~~21~~  
13 applies to financial institutions operating as limited liability companies; and Title 31,  
14 chapter 15 applies to financial institutions operating as limited liability partnerships.

15 **Sec. B-2. 9-B MRSA §316-A, first ¶,** as amended by PL 2005, c. 543, Pt. D, §2  
16 and affected by §18, is further amended to read:

17 Except as provided in this section, the management and operations of a financial  
18 institution organized under this chapter are governed by Title 13-C; Title 31, chapter 19;  
19 Title 31, chapter 13 ~~21~~; or Title 31, chapter 15, as appropriate, depending upon the  
20 organizational form of the financial institution operating under this chapter. The  
21 institution's organizational documents must address the powers and duties of the  
22 governing body.

23 **Sec. B-3. 9-B MRSA §317-A, first ¶,** as amended by PL 2005, c. 543, Pt. D, §3  
24 and affected by §18, is further amended to read:

25 Except as provided in this section, the powers and duties of officers of a financial  
26 institution organized under this chapter are governed by Title 13-C; Title 31, chapter 19;  
27 Title 31, chapter 13 ~~21~~; or Title 31, chapter 15, as appropriate, depending upon the  
28 organizational form of the financial institution operating under this chapter. The  
29 institution's organizational documents must address the powers and duties of officers.

30 **Sec. B-4. 9-B MRSA §352, sub-§5,** as amended by PL 2005, c. 543, Pt. D, §4  
31 and affected by §18, is further amended to read:

32 **5. Rights of dissenting investors.** The rights of investors dissenting to the merger  
33 or consolidation are those specified in Title 13-C or Title 31, chapter 13, 15 ~~or~~, 19 or 21,  
34 depending upon the organizational form of the institution. To the extent that dissenters'  
35 rights are not addressed in Title 31 or these rights are less beneficial to the dissenting  
36 investors than those rights listed in the institution's organizational documents, the  
37 organizational documents govern.

38 **Sec. B-5. 9-B MRSA §1222, sub-§1,** as amended by PL 2005, c. 543, Pt. D, §5  
39 and affected by §18, is further amended to read:

1       **1. Organization.** A merchant bank must be organized pursuant to chapter 31 and  
 2 must be managed and governed pursuant to this Title and the applicable provisions of  
 3 Title 13-C and Title 31, chapters ~~13~~, 15 and, 19 and 21, depending upon the  
 4 organizational form selected.

5       **Sec. B-6. 10 MRSA §1521, sub-§2-B**, as amended by PL 2003, c. 344, Pt. A, §4,  
 6 is further amended to read:

7       **2-B. Limited liability company name.** "Limited liability company name" includes  
 8 a limited liability company name, reserved name, assumed name or registered name as  
 9 those terms are used in Title 31, sections ~~603-A 1508~~ to ~~606-A 1511~~.

10       **Sec. B-7. 31 MRSA §7**, as amended by PL 2007, c. 535, Pt. A, §3 and affected by  
 11 §7, is further amended to read:

12       **§7. Inapplicable to corporations, limited partnerships or limited liability companies**

13       Sections 1 and 2 do not apply to corporations, limited partnerships or limited liability  
 14 companies. A corporation desiring to do business under an assumed name shall file a  
 15 statement as provided in Title 13-C, section 404. A limited partnership desiring to do  
 16 business under an assumed name shall file a statement as provided in section 1308,  
 17 subsection 2. A limited liability company desiring to do business under an assumed name  
 18 shall file a statement as provided in section ~~605-A 1510~~.

19       **Sec. B-8. 31 MRSA §876**, as amended by PL 2005, c. 543, Pt. D, §17 and affected  
 20 by §18, is further amended to read:

21       **§876. Application to existing foreign limited liability partnerships; definition**

22       All foreign limited liability partnerships qualified as foreign corporations or limited  
 23 partnerships or limited liability companies before September 1, 1996 are governed by this  
 24 Act on and after September 1, 1996. By December 1, 1996 a partner of each foreign  
 25 limited liability partnership shall file with the Secretary of State an application for  
 26 authority to do business in this State under this Act and shall cancel the partnership's  
 27 authority to do business in this State under chapter 19, former chapter 13 or former Title  
 28 13-A. If the foreign limited liability partnership fails to file the new application for  
 29 authority to do business in this State by December 1, 1996, it must be treated as a general  
 30 partnership without the status of a limited liability partnership with respect to any  
 31 business conducted in this State between December 1, 1996 and the date on which it files  
 32 that application.

33       **Sec. B-9. 36 MRSA §5180, sub-§1**, as enacted by PL 1999, c. 414, §41, is  
 34 amended to read:

35       **1. Classified as partnership.** For purposes of taxation pursuant to this Part, a  
 36 limited liability company formed under Title 31, former chapter 13 or chapter 21 or  
 37 qualified to do business in this State as a foreign limited liability company is classified as  
 38 a partnership, unless classified otherwise for federal income tax purposes, in which case  
 39 the limited liability company is classified in the same manner as it is classified for federal  
 40 income tax purposes.

**Sec. B-10. 36 MRSA §5180, sub-§2**, as enacted by PL 1999, c. 414, §41, is repealed.'

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## SUMMARY

This amendment replaces the bill. It repeals the existing Maine Limited Liability Company Act, currently the Maine Revised Statutes, Title 31, chapter 13, and replaces it with a new Maine Limited Liability Company Act. This summary contains a detailed explanation of the new limited liability company act and how it differs from the provisions of the predecessor Act. Information contained in this summary is consistent with information that would be provided in comments that are part of a uniform act.

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## GENERAL COMMENTS

The new Maine Limited Liability Company Act fundamentally differs from its predecessor. Its predecessor diminished the role of the operating agreement. Under the predecessor Act, a limited liability company could be formed even without an operating agreement. Further, the predecessor Act limited the ability of the members to tailor the operating agreement to deal terms.

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This Act elevates the status of the operating agreement, known as the limited liability company agreement, giving it a central role in the existence and operation of a limited liability company, LLC. A limited liability company cannot be formed without an operating agreement. Further, under this Act, with few limited exceptions, the limited liability company agreement governs the relations among members and between the members and the company.

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Because the operating agreement plays such a key role, subchapter 2 is of central importance. Subchapter 2 concerns the operating agreement, and it is the heart of the Act. It establishes that the operating agreement determines the rights and obligations of members and transferees. It also permits members to shape duties, define liability for breach of duty and establish whether and to what degree persons will be indemnified against liability.

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The emphasis on the operating agreement reflects the view that the limited liability company is a contractual entity and that the Act permits and facilitates the molding of provisions to the contours of a particular deal and the interests of the members. Ordinary contract principles and equitable doctrines check the ability of one party to unfairly disadvantage another by contract. In this sense, the operating agreement is like any other contract.

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While this Act fundamentally differs from its predecessor in significant ways, many of its provisions perfectly or nearly perfectly continue provisions of its predecessor. For example, most of the administrative provisions, subchapter 13, are drawn from the Act's predecessor. Practitioners will know many provisions of this Act by reference to provisions of the Act's predecessor.

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## SUBCHAPTER COMMENTS

## SUBCHAPTER 1 - GENERAL PROVISIONS

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## SECTION 1502. DEFINITIONS

Certificate of formation - The term "articles of organization" used in the American Bar Association Revised Limited Liability Company Prototype Act, the prototype, has been replaced with "certificate of formation." The certificate of formation is reflective of the contract nature of the limited liability company and thus the terms of the member's contract are expected to be included in the limited liability company agreement and not in the certificate of formation. This follows the pattern set forth in Delaware's LLC Act, the Maine Uniform Limited Partnership Act and the Uniform Act.

Foreign limited liability company - This term is derived from the DEL. CODE ANN., TIT. 6, § 18-101(4).

Limited liability company - This definition reflects the move to a Delaware-style limited liability company in that it requires a limited liability company agreement to be present. In addition, by definition, the fact that a limited liability company has a certificate of formation on file with the Secretary of State and has one or more members is conclusive evidence that a limited liability agreement exists. This conclusion results from the understanding that a limited liability company cannot operate without an agreement by the members regarding the limited liability company's operations.

The Uniform Act's proposal to allow for an entity called a shelf LLC is not adopted in this Act. The shelf LLC can exist without any members or an agreement. Under the Uniform Act, the shelf LLC automatically terminates if the limited liability company does not have any members within the 90-day period beginning on the date its certificate of organization, the articles of organization equivalent under the Uniform Act, is filed with the Secretary of State.

Permitting a limited liability company to exist without members or an agreement arguably changes the nature of the limited liability company from a creature of contract to a more corporate-type entity. The drafting committee members were persuaded that this argument could be used as a basis for rulings that disregard or give reduced weight to the doctrine that permits limited liability company members to choose those with whom they co-venture. This is the doctrine of *delectus personae*, and it is a fundamental doctrine in partnership-derived entities such as the limited liability company. The ruling of In re Ashley Albright, 2003 Bankr. Lexis 291 (Bank. D.Colo. April 4, 2003) deserves attention.

In addition, because of the ability to file a certificate of formation within 24 hours or less, the Act does not provide for shelf entities.

Limited liability company agreement - Using this term, as opposed to operating agreement, reflects a combination of Colorado and Delaware law and conforms the agreement name to that of other unincorporated entities, for example, partnership agreement and limited partnership agreement. The parties may refer to the agreement as an operating agreement, however.

This Act states no rule as to whether the statute of frauds applies to an oral operating agreement. Case law suggests that an oral agreement to form a partnership or joint

venture with a term exceeding one year is within the statute. E.g. Abbott v. Hurst, 643 So.2d 589, 592 (Ala. 1994), "Partnership agreements, like other contracts, are subject to the Statute of Frauds. A contract of partnership for a term exceeding one year is within the Statute of Frauds and is void unless it is in writing; however, a contract establishing a partnership terminable at the will of any partner is generally held to be capable of performance by its terms within one year of its making and, therefore, to be outside the Statute of Frauds." (citations omitted); Pemberton v. Ladue Realty & Const. Co., 362 Mo. 768, 770-71, 244 S.W.2d 62, 64 (Mo. 1951), rejecting plaintiff's contention that mere part performance sufficed to take the oral agreement outside the statute and holding that partnership was therefore at will; Ebker v. Tan Jay Int'l, Ltd., 739 F.2d 812, 827-28 (2d Cir.1984), the same analysis with regard to a joint venture. However, it is not possible to form an LLC without someone signing and delivering to the filing officer a certificate of formation in record form, section 1541, and the Act itself then establishes the LLC's duration. Subject to the operating agreement, that duration is perpetual, section 1504, subsection 3. An oral provision of an operating agreement calling for performance that extends beyond a year might be within the one-year provision, for example an oral agreement that a particular member will serve and be permitted to serve as manager for 3 years.

An oral provision of an operating agreement that involves the transfer of land, whether by or to the LLC, might come within the land provision of the statute of frauds. Froiseth v. Nowlin, 156 Wash. 314, 316, 287 P. 55. 56 (Wash. 1930), "[The land provision] applies to an oral contract to transfer or convey partnership real property, and the interest of the other partners therein, to one partner as an individual, as well as to a parole contract by one of the parties to convey certain land owned by him individually to the partnership, or to another partner, or to put it into the partnership stock." (quoting 27 Corpus Juris 220)

In contrast, the fact that a limited liability company owns or deals in real property does not bring within the land provision agreements pertaining to the LLC's membership interests. Interests in a limited liability company are personal property and reflect no direct interest in the entity's assets. Thus, the real property issues pertaining to the LLC's ownership of land do not flow through to the members and membership interests. See, e.g., Wooten v. Marshall, 153 F. Supp. 759, 763-764 (S.D. N.Y. 1957), involving an "oral agreement for a joint venture concerning the purchase, exploitation and eventual disposition of this 160 acre tract" and stating "[t]he real property acquired and dealt with by the venturers takes on the character of personal property as between the partners in the enterprise, and hence is not covered by [the Statute of Frauds]."

Member - This definition was modified to reflect the Delaware definition in an effort to avoid confusion over the undefined phrase "dissociated member."

Person - This definition reflects Delaware's more expansive definition, DEL. CODE ANN., TIT. 6, section 18-101(12); however, the drafting committee determined not to include groups, boards, councils or committees in the definition of "person."

#### SECTION 1503. KNOWLEDGE; NOTICE

Subsection 2 reflects the broader view of notice as captured by the RESTATEMENT (THIRD) OF AGENCY § 5.01, Title 31, section 1002 of the Uniform Partnership Act and Title 31, section 1303 of the Uniform Limited Partnership Act of 2007.

1 Subsection 5 clarifies that a member's knowledge, notice or receipt of a notification  
2 of a fact in such member's sole capacity as a member would not be imputed to the LLC. If  
3 the member is an agent of the company, i.e., an officer or other agent, then such notice  
4 may be imputed to the LLC via the law of agency.

5 SECTION 1504. NATURE, PURPOSE AND DURATION OF LIMITED LIABILITY  
6 COMPANY

7 The use of LLCs for nonprofit activities is authorized by this Act; however, as with  
8 all LLC acts, careful attention to drafting of the LLC agreement is required to meet the  
9 tax requirements of the various taxing authorities.

10 SECTION 1505. CAPACITIES AND POWERS

11 Subsection 2 reflects the view of the prototype that the capacity to hold property in  
12 the LLC's own name is one of the tests of an entity.

13 SECTION 1506. GOVERNING LAW

14 Section 1506 is reflective of the internal affairs doctrine, which is universally applied  
15 in business entity statutes.

16 SECTION 1507. RULES OF CONSTRUCTION

17 Subsection 5 is derived from DEL. CODE ANN., TIT. 6, §18-1101 (g) and VA.  
18 CODE ANN. §13.1-1001.1(B).

19 SECTION 1508. NAME

20 To the extent that other law requires professionals, banks or other entities or  
21 individuals to utilize certain names in the name of the LLC to conduct activities in an  
22 LLC, such other law should be followed in determining the name; however, the name  
23 must nevertheless contain the words "limited liability company" or "limited company" or  
24 the abbreviation L.L.C., LLC, L.C. or LC. "Limited" may be abbreviated as "Ltd.," and  
25 "company" may be abbreviated as "Co."

26 Subsection 4 is derived from COLO. REV. STAT. ANN. § 7-90-601.6.

27 Subsections 5 and 6 are derived from COLO. REV. STAT. ANN. § 7-90-601.

28 **SUBCHAPTER 2 - LIMITED LIABILITY COMPANY AGREEMENT**  
29  
30

31 Subchapter 2 is the heart of the Act. Subject to certain exceptions, the limited  
32 liability company agreement governs relations among the members and between the  
33 members and the limited liability company. The applicable default rules apply only to  
34 the extent that the limited liability company agreement does not otherwise provide for  
35 such a matter.

36 SECTION 1521. LIMITED LIABILITY COMPANY AGREEMENT; SCOPE,  
37 FUNCTION AND CERTAIN LIMITATIONS

38 The provisions of section 1521 establish that the agreement of the members as  
39 expressed in the limited liability company agreement controls; the default rules of the Act  
40 merely backstop the agreement to the extent the agreement does not address a matter.

1 Section 1521 is derived from DEL. CODE ANN., TIT. 6, § 18-1101(b), (d) and (e).

2 Section 1521 qualifies the power of members to make a binding agreement.  
3 Subsection 3 provides that the members may not agree to eliminate the implied  
4 contractual covenant of good faith and fair dealing.

5 Additional limitations with regard to low-profit limited liability companies are  
6 included in section 1611.

7 SECTION 1522. PROVISIONS OF THE CHAPTER THAT MAY NOT BE  
8 MODIFIED BY THE LIMITED LIABILITY COMPANY AGREEMENT

9 Section 1522 provides that the limited liability company agreement will not govern as  
10 to certain discrete matters; rather the matters listed in this section will be governed by the  
11 applicable provisions of this chapter.

12 Subsection 2 clarifies that the members may not agree to eliminate liability for a bad  
13 faith violation of the implied covenant of good faith and fair dealing.

14 SECTION 1523. LIMITED LIABILITY COMPANY AGREEMENT; EFFECT ON  
15 LIMITED LIABILITY COMPANY AND PERSONS ADMITTED AS MEMBERS;  
16 PREFORMATION AGREEMENT

17 The language specifying that a person becomes a party to the limited liability  
18 company agreement upon admission as a member is intended to make clear that the  
19 member is bound by and may enforce the agreement.

20 SECTION 1524. LIMITED LIABILITY COMPANY AGREEMENT; EFFECT ON 3RD  
21 PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF  
22 LIMITED LIABILITY COMPANY

23 Subsection 1 is derived from DEL. CODE ANN., TIT. 6, § 18-302(e). Subsection 2 is  
24 derived from DEL. CODE ANN., TIT. 6, § 18-101(7).

25 **SUBCHAPTER 3 - FORMATION; CERTIFICATE OF FORMATION AND**  
26 **OTHER FILINGS**  
27  
28

29 SECTION 1531. FORMATION OF LIMITED LIABILITY COMPANY;  
30 CERTIFICATE OF FORMATION

31 Subsection 3 sets forth the notice effect of the certificate of formation and follows the  
32 approach of DEL. CODE ANN., TIT. 6, § 18-207.

33 SECTION 1532. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF  
34 FORMATION

35 The last sentence of subsection 4 is derived from DEL. CODE ANN., TIT. 6, § 18-  
36 208(d). Subsection 5 is derived from DEL. CODE ANN., TIT. 6, § 18-208(e).

37 **SUBCHAPTER 4 - RELATIONS OF MEMBERS TO PERSONS DEALING WITH**  
38 **LIMITED LIABILITY COMPANY**  
39  
40

R. of S.

SECTION 1541. POWER TO BIND LIMITED LIABILITY COMPANY

Most states' LLC acts, including the predecessor Act, force LLC members to designate either members or managers as those having apparent authority to bind the LLC. In addition, the Maine Limited Liability Company Act forces members into a management structure based upon their apparent authority designation: if the members designate the members as persons having power to bind the LLC, the LLC is, by default, member-run; if the members designate managers as persons having power to bind the LLC, the LLC is a manager-run entity. See Title 31, sections 622 and 651. In this way, apparent authority and actual authority are, by default, linked.

The Uniform Act and the prototype reflect the consensus among academics and commentators that apparent authority and actual authority in LLCs should be delinked. Accordingly, the certificate of formation does not require a designation of persons with apparent authority. Further, the management structure of the LLC is not governed by a designation by the LLC of a person with apparent authority.

Section 1541 sets forth the ways in which a person has authority to bind the LLC. Subsection 1 provides guidance to 3rd parties who wish to determine who has the authority to bind the LLC. Section 1541 generally follows the prototype, with one significant addition. Subsection 4 provides that, in the absence of an effective statement of authority, any member, manager, president or treasurer has authority to bind the LLC. The purpose of such a broad provision is to facilitate commercial transactions. It is fully expected that neither LLCs, their members nor 3rd parties will rely on this provision as a matter of practice. It is expected that most LLCs will file statements of authority designating those persons or officers with apparent authority.

SECTION 1542. STATEMENT OF AUTHORITY

This section is derived from the Revised Uniform Partnership Act, § 303. Subsection 1 describes the elements of the statement. Subsection 3 allows an LLC to describe limitations on authority.

**SUBCHAPTER 5 - RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY**

SECTION 1551. ADMISSION OF A MEMBER

Subsection 1 is derived from DEL. CODE ANN., TIT. 6, §18-301.

SECTION 1552. FORM OF CONTRIBUTION

This section is derived from DEL. CODE ANN., TIT. 6, §18-501.

SECTION 1553. LIABILITY FOR CONTRIBUTIONS

Subsection 3 is derived from DEL. CODE ANN., TIT. 6, §18-502(b).

SECTION 1554. SHARING OF AND RIGHT TO DISTRIBUTIONS

Distributions made pursuant to this section are subject to outstanding charging orders under section 1573.



R. of S.

SECTION 1555. LIMITATIONS ON DISTRIBUTION AND LIABILITY FOR IMPROPER DISTRIBUTIONS

This section is similar to DEL. CODE ANN., TIT. 6, §18-607 and provisions in other states. It avoids imposing liability based on authorization or consent to distribution.

The exception in subsection 4 applies only for the purposes of this section. The exception is derived from existing statutory provisions. See, e.g., DEL. CODE ANN., TIT. 6, § 18-607(a) (2006) and VA. CODE ANN., § 13.1-1035(E) (West 2006). See also In re Tri-River Trading, LLC, 329 B.R. 252, 266, (8th Cir. BAP 2005), *aff'd*, 452 F.3d 756 (8th Cir. 2006), "We know of no principle of law which suggests that a manager of a company is required to give up agreed upon salary to pay creditors when business turns bad."

Subsection 5 is derived from the Maine Business Corporation Act, Title 13-C, section 651, subsection 8.

SECTION 1556. ACTIVITIES AND AFFAIRS OF LIMITED LIABILITY COMPANY

Decision making is the focus of this section rather than agency power. Agency power will result from action of the decision makers. Language from the partnership context that arguably implies each member is an agent with authority to act in the absence of reason to know of a disagreement has been avoided.

SECTION 1557. INDEMNIFICATION, ADVANCEMENT, REIMBURSEMENT AND INSURANCE

This section is derived from Texas indemnity language from the TEXAS BUS. & COM. §101.402.

SECTION 1558. RIGHT OF MEMBERS AND DISSOCIATED MEMBERS TO INFORMATION

Although the rights and duties stated in this section are extensive, they may not necessarily be exhaustive. In some situations, some courts have seen owners' information rights as reflecting a fiduciary duty of those with management power.

Subsection 2 does not control the rights of the estate of a member who dissociates by dying. In that circumstance, section 1574 controls.

In subsection 6, the phrase "as a matter within the ordinary course of its activities" means that a mere majority consent is needed to impose a restriction or condition. This approach is necessary, lest a requesting member have the power to block imposition of a reasonable restriction or condition needed to prevent the requestor from abusing the LLC.

SECTION 1559. DUTIES OF MEMBERS AND OTHER PERSONS

This section is derived from the Maine Limited Liability Company Act, Title 31, section 652. This section is intended to overrule Rosenthal v. Rosenthal, 543 A.2d 348, 355 (Me. 1988) to the extent Rosenthal applies to duties in LLCs.

**SUBCHAPTER 6 - TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS**

## SECTION 1571. MEMBER'S TRANSFERABLE INTEREST

Section 1571 is derived from section 501 of RULLCA.

This Act does not provide that "[p]roperty transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members individually." This language, found in earlier model LLC Acts, was found to be no longer necessary in this Act based on the general state of the law of limited liability companies in which it is the common understanding that a limited liability company is an entity and its properties are not owned by its members.

The member's transferable interest is defined in section 1502, subsection 29 to include the member's financial rights, that is, the member's right to receive distributions. The member's transferable interest differs from the member's broader rights in the limited liability company. A member has both governance rights to participate in management and control and financial rights to receive distributions. In order to clarify the rights of members, transferees, creditors and heirs, this section defines what a member conveys by transfer in the absence of a contrary agreement. The most important differences between members' rights and their transferable interests are that the latter do not include the rights to participate in management and control and to inspect the books and records of the limited liability company.

Whether the Maine Uniform Commercial Code, Article 8-A, Article 9-A or both govern a transferable interest pledged as security depends on the facts and the rules stated in those Articles. However, section 1507, subsection 5 clearly provides that sections 9-1406 and 9-1408 of Title 11 do not apply to an interest in a limited liability company, including all rights, powers and interests assigned under a limited liability company agreement.

## SECTION 1572. TRANSFER OF TRANSFERABLE INTEREST

Section 1572 is derived from section 502 of the Uniform Act.

Subsection 1. Unlike a corporate shareholder, as a default rule, an LLC member can freely transfer only financial rights. Because transfer of a transferable interest transfers only financial rights, it follows that a transfer does not constitute a change in membership and therefore does not dissolve the LLC. Paragraph C of this subsection is intended to deny transferees of transferable interests not only voting and management rights, but also rights to information. Some limited liability companies may want to give transferees a right to compel winding up to prevent them from being completely frozen in and a right to information they need for federal and state income tax purposes and to protect them from unfair dealing by the members.

Subsection 2. The Act does not specifically define the distributions to which transferees have a right. A transferee would probably expect to receive, in the absence of contrary agreement, a financial interest equal to that of the transferor, including the transferor's capital contribution, if any, and residual claim to the assets of the limited liability company after all fixed claims, including debts to members, have been paid. It does not include rights the member has other than on account of the member's capital investment, such as repayment of loans, indemnification and accrued salaries.

1 Subsection 3. This section is a combination of DEL. CODE ANN., TIT. 6, §18-  
2 702(c) and the earlier version of the prototype, §704(B). Even without such a provision,  
3 there is arguably no statutory impediment to issuing certificates. Issuing certificates may  
4 facilitate the transfer of transferable interests and thus, certification may be a desirable  
5 feature for many limited liability companies; however, the use of certificates can raise  
6 issues relating to Title 11, Article 8-A.

7 Under subsection 5, the transferor retains management and information rights  
8 notwithstanding the transfer. Subsection 6 clarifies that a transferee of a transferable  
9 interest does not have any of the obligations of a member until the transferee is admitted  
10 as a member voluntarily, at which point the transferee acquires obligations as well as  
11 rights of membership known to the transferee at the time the transferee voluntarily  
12 became a member. Subsection 6 protects the transferee from liabilities that might  
13 otherwise be imposed upon it should it become a member involuntarily.

#### 14 SECTION 1573. CHARGING ORDER

15 This section is derived from section 503 of the Uniform Act.

16 This section provides that unsecured creditors can obtain from a court a charging  
17 order, which is similar to an attachment or garnishment, against the member's transferable  
18 interest. Under this section, the charging order is available only to judgment creditors of  
19 members or transferees. Under the predecessor Act, only judgment creditors of members  
20 may seek a charging order, section 686 of the predecessor Act. A charging order under  
21 this Act is not available to others with rights against members or transferees other than  
22 those of judgment creditors. The phrase "judgment debtor" encompasses both members  
23 and transferees. This section attempts to balance the needs of the judgment creditor, the  
24 judgment debtor and the limited liability company. The section achieves that balance by  
25 allowing the judgment creditor to collect on the judgment through the transferable interest  
26 of the judgment debtor while prohibiting interference in the management and activities of  
27 the limited liability company.

28 Subsection 1. This subsection provides the judgment creditor with the right to receive  
29 any distribution that the judgment debtor would have received, but only after the limited  
30 liability company has been served with the charging order. This subsection attempts to  
31 balance the interests of the judgment creditor and the LLC by defining what the judgment  
32 creditor was entitled to receive from the limited liability company while protecting the  
33 limited liability company from unknown charging orders.

34 Subsection 2. This provision provides a method for the limited liability company to  
35 pay a distribution pursuant to a charging order and discharge the limited liability  
36 company and the judgment debtor to the extent of the payment. This provision also  
37 anticipates that the judgment creditor may have a number of sources for the payment of  
38 its judgment and thus provides a mechanism to protect the limited liability company, the  
39 judgment debtor and the judgment creditor in the event a distribution exceeds the amount  
40 then owed to the judgment creditor. The judgment creditor has no say in the timing or  
41 amount of the distributions. The charging order does not entitle the judgment creditor to  
42 accelerate any distributions or to otherwise interfere with the management and activities  
43 of the limited liability company.

Subsection 3. This provision provides the judgment creditor with a lien for purposes of the Uniform Commercial Code, the Federal Bankruptcy Act and general creditor rights laws. This lien is also important in the context of a merger, conversion, reorganization or other transfers of transferable interests. In the proper circumstances, such an organic change might trigger an order by the court to enforce its charging order or might give rise to a separate cause of action against the LLC, the judgment debtor or the other holders of transferable interests.

The priority of the lien as to other creditors is determined under applicable law and is not addressed in this Act. The lien cannot be foreclosed upon as other liens. This removes a significant amount of issues presented by other statutes that attempt to provide rights of redemption and other preforeclosure and postforeclosure remedies. These rights were seen as clumsy and not effective in assisting in the collection of the debt while maintaining the integrity of the LLC and avoiding the intrusiveness of some statutes regarding creditor's rights to obtain overly broad court orders that have the effect of interfering with the day-to-day activities of the LLC. This lack of right to foreclose is reinforced in subsection 6 of this section.

Subsection 4. This provision clarifies that a judgment debtor that has a charging order against its transferable interest does not lose any of its rights, other than the right to receive distributions from the limited liability company to the extent of the charging order.

Subsection 5. This provision gives the judgment debtor the benefit of any exemptions applicable under Maine law with respect to the transferable interests; however, the extent of such exemptions varies from state to state.

Subsection 6. This provision is based upon DEL. CODE ANN., TIT. 6, §18-1705(3) and TEXAS BUS. & COM., §101.112(f).

Subsection 7. This provision simply limits the remedies of a judgment creditor as to the transferable interest of a judgment debtor. This provision was not intended, nor should it be interpreted, to prevent a court from enforcing its charging order in the event of a violation of the charging order by the judgment debtor or the limited liability company.

#### SECTION 1574. POWER OF PERSONAL REPRESENTATIVE OF DECEASED MEMBER

This section is derived from section 504 of the Uniform Act.

#### SUBCHAPTER 7 - MEMBER'S DISSOCIATION

#### SECTION 1581. MEMBER'S POWER TO DISSOCIATE; WRONGFUL DISSOCIATION

This section is derived from the Maine Uniform Limited Partnership Act, Title 31, section 1374, which is based on the Maine Uniform Partnership Act, Title 31, section 1062.

#### SECTION 1582. EVENTS CAUSING DISSOCIATION

1 Subsection 11 was added to clarify that the transfer of a member's entire transferable  
2 interest causes a dissociation, but only at the later of the transferee becoming a member  
3 and the transfer being completed. Subsection 4, paragraph B is intended to deal with the  
4 issue of a transfer of a member's entire transferable interest to a current member, as  
5 opposed to a transfer to a person who is then not a member.

6 **SECTION 1583. EFFECT OF PERSON'S DISSOCIATION AS A MEMBER**

7 Subsection 1 is derived from COLO. REV. STAT., § 7-80-603. The Maine Uniform  
8 Limited Partnership Act, Title 31, section 1372 and the Maine Uniform Partnership Act,  
9 Title 31, section 1063, subsection 2, paragraph C make express references to the effect of  
10 dissociation on the partner's duties.

11 Subsection 3 accords with section 1554, subsection 2; dissociation does not entitle a  
12 person to any distribution or rights to force the limited liability company or its members  
13 to acquire the dissociated person's transferable interest.

14 **SUBCHAPTER 8 - DISSOLUTION, WINDING UP, REINSTATEMENT AND**  
15 **REVIVAL**

16  
17  
18 **SECTION 1591. GROUNDS FOR ADMINISTRATIVE DISSOLUTION OF**  
19 **DOMESTIC LIMITED LIABILITY COMPANY**

20 This section was derived from the Maine Uniform Limited Partnership Act, Title 31,  
21 section 1399.

22 **SECTION 1592. PROCEDURE FOR AND EFFECT OF ADMINISTRATIVE**  
23 **DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANY**

24 This section was derived from the Maine Uniform Limited Partnership Act, Title 31,  
25 section 1399.

26 **SECTION 1593. REINSTATEMENT FOLLOWING ADMINISTRATIVE**  
27 **DISSOLUTION OF DOMESTIC LIMITED LIABILITY COMPANY**

28 This section was derived from the Maine Uniform Limited Partnership Act, Title 31,  
29 section 1400.

30 **SECTION 1594. APPEAL FROM DENIAL OF REINSTATEMENT OF DOMESTIC**  
31 **LIMITED LIABILITY COMPANY**

32 This section was derived from the Maine Uniform Limited Partnership Act, Title 31,  
33 section 1401.

34 **SECTION 1595. EVENTS CAUSING DISSOLUTION**

35 Subsection 2. In the close corporation context, many courts have reached this  
36 position without express statutory authority, most often with regard to court-ordered  
37 buyouts of oppressed shareholders. This subsection saves courts and litigants the trouble  
38 of reinventing that wheel in the LLC context. Paragraphs D and E of subsection 1 control  
39 even if the limited liability company provides otherwise. On the other hand, subsection 2  
40 controls only if the limited liability company agreement does not provide otherwise.  
41 Thus, the members may agree to restrict or eliminate a court's power to craft a lesser

1 remedy, even to the extent of confining the court and themselves to the all-or-nothing  
2 remedy of dissolution.

3 SECTION 1596. EFFECT OF DISSOLUTION

4 This section is derived from the Maine Business Corporation Act, Title 13-C, section  
5 1405.

6 SECTION 1597. RIGHT TO WIND UP BUSINESS AND ACTIVITIES

7 It is important to remember that the designation of the person with authority to wind  
8 up the limited liability company may be determined in the limited liability company  
9 agreement. For example, the parties may determine to have a liquidating trustee take  
10 control on dissolution.

11 SECTION 1598. POWER TO BIND LIMITED LIABILITY COMPANY AFTER  
12 DISSOLUTION

13 The extent of the apparent authority of the person designated to wind up the affairs of  
14 the LLC and the person who had authority before dissolution is probably unaffected by  
15 the limited liability company agreement, that is, that person will have the power to bind  
16 the LLC to transactions inconsistent with winding up notwithstanding dissolution to a  
17 person dealing with the LLC without notice of the dissolution.

18 SECTION 1599. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY  
19 COMPANY

20 This section is derived from the Maine Business Corporation Act, Title 13-C, section  
21 1406.

22 Subsection 4 was modified to add clarification regarding certain unliquidated claims  
23 and contingent liabilities.

24 SECTION 1600. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY  
25 COMPANY

26 This section is derived from the Maine Business Corporation Act, Title 13-C,  
27 sections 1407 and 1408.

28 SECTION 1601. APPLICATION OF ASSETS IN WINDING UP LIMITED  
29 LIABILITY COMPANY'S ACTIVITIES

30 This Act does not require that distributions in liquidation be made in cash.

31 Distributions made pursuant to this section are subject to outstanding charging orders  
32 under section 1573.

33 SECTION 1604. REVIVAL OF DOMESTIC LIMITED LIABILITY COMPANY  
34 AFTER DISSOLUTION

35 This section was derived from the Maine Uniform Limited Partnership Act, Title 31,  
36 section 1401-A.

37 SUBCHAPTER 9 - LOW-PROFIT LIMITED LIABILITY COMPANIES  
38  
39

Subchapter 9 is this State's first legislation addressing low-profit limited liability companies, L3Cs. L3Cs are a new form of entity merging a for-profit business model with charitable and educational objectives. Each L3C functions as a limited liability company with certain exceptions, such exceptions primarily stemming from the purpose of an L3C.

#### SECTION 1611. LOW-PROFIT LIMITED LIABILITY COMPANY

Section 1611, subsection 1 mandates that, in order to qualify as an L3C, each L3C must at all times significantly further the accomplishment of one or more of the charitable or educational purposes within Section 170(c)(2)(B) of the Internal Revenue Code of 1986. Additionally, no significant purpose of an L3C can be the production of income or the appreciation of property and no purpose of the L3C can be the accomplishment of political or legislative purposes, as defined by Section 170(c)(2)(D) of the Internal Revenue Code of 1986. Section 1611, subsection 2 requires that statements to the effect of the foregoing must be included in the certificate of formation and limited liability company act of each L3C, together with the specific Section 170(c)(2)(B) purposes it intends to further.

Under section 1611, subsection 3, if a company ceases to satisfy the requirements for an L3C, it continues to exist as an LLC, as long as it promptly amends its certificate of formation so that its purpose no longer identifies it as an L3C and its name no longer includes "L3C" or "low-profit limited liability company."

Another difference between an L3C and an LLC are the duties ascribed to the respective members and other managers of each. Section 1559 describes those duties, and section 1559, subsection 1 contains an accommodation for L3C members and managers by expressly expanding such historical fiduciary duties by allowing that the interests of each L3C and its members includes furthering the required L3C purposes as described in section 1611, subsection 2. Section 1611, subsection 4 establishes that each L3C is bound by the expanded section 1559.

Section 1611, subsection 5 provides that subchapter 9 does not prevent an LLC other than an L3C from electing a Section 170(c)(2)(B) purpose, in whole or part, for doing business.

#### SUBCHAPTER 10 - FOREIGN LIMITED LIABILITY COMPANIES

#### SECTION 1621. GOVERNING LAW

This section was derived from the Maine Uniform Limited Partnership Act, Title 31, section 1411.

#### SECTION 1622. STATEMENT OF FOREIGN QUALIFICATION TO CONDUCT ACTIVITIES REQUIRED

This section was derived from the Maine Uniform Limited Partnership Act, Title 31, sections 1412 and 1412-A.

#### SECTION 1623. ACTIONS NOT CONSTITUTING TRANSACTING BUSINESS OR CONDUCTING ACTIVITIES

1 This section was derived from the Maine Uniform Limited Partnership Act, Title 31,  
2 section 1413.

3 SECTION 1625. GROUNDS FOR REVOCATION OF STATEMENT OF FOREIGN  
4 QUALIFICATION

5 This section was derived from the Maine Uniform Limited Partnership Act, Title 31,  
6 section 1416.

7 SECTION 1626. PROCEDURE FOR AND EFFECT OF REVOCATION

8 This section was derived from the Maine Uniform Limited Partnership Act, Title 31,  
9 section 1416.

10 **SUBCHAPTER 11 - ACTIONS BY MEMBERS**

11  
12  
13 SECTION 1631. DIRECT ACTION BY MEMBER

14 Subsection 1 is derived from the Maine Uniform Limited Partnership Act, Title 31,  
15 section 1421, subsection 1, which was based on the Maine Uniform Partnership Act, Title  
16 31, section 1045, subsection 2. The subsection has been somewhat restyled from the  
17 Maine Uniform Limited Partnership Act version, and the phrase "for legal or equitable  
18 relief" has been deleted as unnecessary. The Maine Uniform Limited Partnership Act's  
19 reference to "with or without an accounting" has been deleted because the reference was  
20 to the partnership remedy of accounting, which reflected the aggregate nature of a  
21 partnership and is inapposite for an entity such as an LLC and generated some confusion  
22 with the equitable claim for an accounting in the nature of a constructive trust. The entity  
23 analog to the partnership-as-aggregate notion of an accounting is the distinction between  
24 a direct and derivative claim.

25 The last phrase of this subsection, which comes from the Maine Uniform Partnership  
26 Act, Title 31, section 1045, subsection 2, paragraph C, does not create any new rights,  
27 obligations or remedies, and is included merely to emphasize that a person's membership  
28 in an LLC does not preclude the person from enforcing rights existing independently of  
29 the membership relationship.

30 Subsection 2 is derived from the Maine Uniform Limited Partnership Act, Title 31,  
31 section 1421, subsection 2. The Maine Uniform Limited Partnership Act Comment to  
32 that subsection explains:

33 In ordinary contractual situations it is axiomatic that each party to a contract has  
34 standing to sue for breach of that contract. Within a limited partnership, however,  
35 different circumstances may exist. A partner does not have a direct claim against  
36 another partner merely because the other partner has breached the operating  
37 agreement. Likewise a partner's violation of this Act does not automatically create a  
38 direct claim for every other partner. To have standing in his, her, or its own right, a  
39 partner plaintiff must be able to show a harm that occurs independently of the harm  
40 caused or threatened to be caused to the limited partnership.

41 SECTION 1632. DERIVATIVE ACTION



1 This section is derived from the Maine Uniform Limited Partnership Act, Title 31,  
2 section 1422.

### 3 SECTION 1633. PROPER PLAINTIFF

4 This section abandons the traditional contemporaneous ownership rule, on the theory  
5 that the protections of that rule are unnecessary given the closely held nature of most  
6 limited liability companies and the built-in, statutory restrictions on persons becoming  
7 members.

8 Subsection 2 is inapposite if the limited liability company has only 2 members, one of  
9 whom is the derivative plaintiff. In that limited circumstance, the plaintiff's death causes  
10 the derivative action to abate. The pick your partner principal in section 1572 prevents the  
11 decedent's heirs from succeeding to plaintiff status in the derivative action. This Act does  
12 not take a position on whether the death of a member abates a direct claim against the  
13 LLC or a fellow member.

### 14 SECTION 1634. PLEADING

15 This section is derived from the Maine Uniform Limited Partnership Act, Title 31,  
16 section 1424.

### 17 SECTION 1635. SPECIAL LITIGATION COMMITTEE

18 Although special litigation committees are best known in the corporate field, they are  
19 no more inherently corporate than derivative litigation or the notion that an organization  
20 is a person distinct from its owners. A special litigation committee can serve as an  
21 alternative dispute resolution mechanism, help protect an agreed-upon arrangement from  
22 strike suits, protect the interests of members who are neither plaintiffs nor defendants, if  
23 any, and bring to any judicial decision the benefits of a specially tailored business  
24 judgment.

25 This section's approach corresponds to established law in most jurisdictions, modified  
26 to fit the typical governance structures of a limited liability company.

27 Subsection 1. On the availability of section 1558 remedies pending the special  
28 litigation committee's investigation, compare Kaufman v. Computer Assoc. Int'l., Inc.,  
29 No. Civ.A. 699-N, 2005 WL 3470589 at \*1 (Del.Ch. Dec. 21, 2005, as revised),  
30 presenting "the question of whether to stay a books and records action under 8 Del. C. §  
31 220 at the request of a special litigation committee when a derivative action  
32 encompassing substantially the same allegations of wrongdoing filed by different  
33 plaintiffs is pending in another jurisdiction;" concluding "[f]or reasons that have much to  
34 do with the light burden imposed by the plaintiff's demand in this case . . . that the special  
35 litigation committee's motion to stay the books and records action should be denied."

36 Subsection 4. The standard stated for judicial review of the special litigation  
37 committee determination follows Auerbach v. Bennett, 47 N.Y.2d 619, 419 N.Y.S.2d 920  
38 (N.Y. 1979) rather than Zapata Corp. v. Maldonado, 430 A.2d 779 (Del. 1981), because  
39 the latter's reference to a court's business judgment has generally not been followed in  
40 other states.

Houle v. Low, 407 Mass. 810, 822, 556 N.E.2d 51, 58 (Mass. 1990) contains an excellent explanation of the court's role in reviewing a special litigation committee decision:

The value of a special litigation committee is coextensive with the extent to which that committee truly exercises business judgment. In order to ensure that special litigation committees do act for the [entity]'s best interest, a good deal of judicial oversight is necessary in each case. At the same time, however, courts must be careful not to usurp the committee's valuable role in exercising business judgment.

[A] special litigation committee must be independent, unbiased, and act in good faith. Moreover, such a committee must conduct a thorough and careful analysis regarding the plaintiff's derivative suit, ... The burden of proving that these procedural requirements have been met must rest, in all fairness, on the party capable of making that proof--the [entity].

For a discussion of how a court should approach the question of independence, see Einhorn v. Culea, 612 N.W.2d 78, 91 (Wis. 2000).

#### SECTION 1636. PROCEEDS AND EXPENSES

This section is derived from the Maine Uniform Limited Partnership Act, Title 31, section 1425.

#### SECTION 1637. CLOSELY HELD LIMITED LIABILITY COMPANY

This section is derived from TEXAS BUS. & COM. § 101.463.

### SUBCHAPTER 12 - MERGER AND CONVERSION

#### SECTION 1645. CONVERSION

This section permits a foreign organization, including a foreign limited liability company, to convert to a Maine limited liability company. Thus, a foreign limited liability domesticates in Maine through the conversion process.

### SUBCHAPTER 13 - ADMINISTRATIVE PROVISIONS

This subchapter contains filing, fees and other administrative provisions that are based on similar provisions in the predecessor Act.

### SUBCHAPTER 14 - MISCELLANEOUS PROVISIONS

#### SECTION 1693. APPLICATION TO EXISTING RELATIONSHIPS

Subsection 2. When a preexisting limited liability company becomes subject to this Act, the company ceases to be governed by the predecessor Act, including whatever requirements that Act might have imposed for the contents of the articles of organization. However, as articles of organization will still be on file after the effective date of this Act,

COMMITTEE AMENDMENT "A" to H.P. 1118, L.D. 1580

1 and as some may rely on the filings as a matter of habit, paragraph B provides that, solely  
2 for purposes of establishing apparent authority, the designation in the articles of  
3 organization is treated as incorporated into the limited liability company agreement. The  
4 limited liability company that wishes to eliminate the authority provided under paragraph  
5 B may file an amendment or restatement under section 1542.

6 Part B of this amendment corrects cross-references.

7 This Act takes effect July 1, 2011.

FISCAL NOTE REQUIRED  
(See Attached)



# 124th MAINE LEGISLATURE

LD 1580

LR 2448(02)

**An Act To Replace the Maine Limited Liability Company Act**

**Fiscal Note for Bill as Amended by Committee Amendment "A"**

**Committee: Judiciary**

**Fiscal Note Required: Yes**

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## Fiscal Note

Minor revenue impact - General Fund

### Fiscal Detail and Notes

This bill creates a new filling fee, resulting in a minor increase in General Fund revenue and removes an existing filling fee, resulting in a minor decrease in General Fund revenue. Any net change to revenue is not expected to be significant.