

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 983

H.P. 727

House of Representatives, March 8, 2011

An Act To Amend the Maine Limited Liability Company Act

(EMERGENCY)

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative PRIEST of Brunswick.
Cosponsored by Senator GERZOFSKY of Cumberland and
Representatives: BEAULIEU of Auburn, CORNELL du HOUX of Brunswick, MALONEY of
Augusta, MITCHELL of the Penobscot Nation, NASS of Acton, ROCHELO of Biddeford,
Senators: BLISS of Cumberland, HASTINGS of Oxford.

1 **23. Secretary of State.** "Secretary of State" means the Secretary of State for ~~the~~ this
2 State.

3 **Sec. A-5. 31 MRSA §1503, sub-§4, ¶A**, as enacted by PL 2009, c. 629, Pt. A, §2
4 and affected by §3, is amended to read:

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

7 **Sec. A-6. 31 MRSA §1522, sub-§1, ¶D**, as enacted by PL 2009, c. 629, Pt. A, §2
8 and affected by §3, is amended to read:

9 D. Except as otherwise provided in section ~~1523~~ 1524, subsection 2, restrict the
10 rights under this chapter of a person other than a member or transferee;

11 **Sec. A-7. 31 MRSA §1522, sub-§2**, as enacted by PL 2009, c. 629, Pt. A, §2 and
12 affected by §3, is amended to read:

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

17 **Sec. A-8. 31 MRSA §1531, sub-§3**, as enacted by PL 2009, c. 629, Pt. A, §2 and
18 affected by §3, is amended to read:

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

23 **Sec. A-9. 31 MRSA §1533, sub-§1, ¶C**, as enacted by PL 2009, c. 629, Pt. A, §2
24 and affected by §3, is amended to read:

25 C. Upon the filing of a certificate of merger or consolidation if the limited liability
26 company is not the surviving or resulting entity in a merger or consolidation, or upon
27 the future effective date or time of a certificate of merger or consolidation if the
28 limited liability company is not the surviving or resulting ~~entity~~ converted
29 organization in a merger or consolidation; or

30 **Sec. A-10. 31 MRSA §1551, sub-§2, ¶B**, as enacted by PL 2009, c. 629, Pt. A,
31 §2 and affected by §3, is amended to read:

32 B. As the result of a transaction effective under subchapter ~~10~~ 12;

33 **Sec. A-11. 31 MRSA §1591**, as enacted by PL 2009, c. 629, Pt. A, §2 and
34 affected by §3, is amended to read:

1 **§1591. Grounds for administrative dissolution of limited liability company**

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

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

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

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

11 **4. Failure to maintain registered agent.** The ~~domestic~~ limited liability company is
12 without a registered agent in this State as required by section 1661 and Title 5, section
13 105, subsection 1;

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

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

23 **Sec. A-12. 31 MRSA §1592**, as enacted by PL 2009, c. 629, Pt. A, §2 and
24 affected by §3, is amended to read:

25 **§1592. Procedure for and effect of administrative dissolution of limited liability**
26 **company**

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

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

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

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

- 7 A. The validity of any contract or act of the ~~domestic~~ limited liability company;
- 8 B. The right of any other party to the contract to maintain any action, suit or
9 proceeding on the contract; or
- 10 C. The right of the ~~domestic~~ limited liability company to defend any action, suit or
11 proceeding in any court of this State.

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

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

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

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

31 **Sec. A-13. 31 MRS §1593**, as enacted by PL 2009, c. 629, Pt. A, §2 and
32 affected by §3, is amended to read:

33 **§1593. Reinstatement following administrative dissolution of limited liability**
34 **company**

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

- 1 A. State the name of the ~~domestic~~ limited liability company and the effective date of
2 its administrative dissolution;
- 3 B. State that the ground or grounds for dissolution of the ~~domestic~~ limited liability
4 company either did not exist or have been eliminated; and
- 5 C. State that the ~~domestic~~ limited liability company's name satisfies the requirements
6 of section 1508.

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

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

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

24 **Sec. A-14. 31 MRSA §1594**, as enacted by PL 2009, c. 629, Pt. A, §2 and
25 affected by §3, is amended to read:

26 **§1594. Appeal from denial of reinstatement of limited liability company**

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

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

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

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

6 **Sec. A-15. 31 MRSA §1604**, as enacted by PL 2009, c. 629, Pt. A, §2 and
7 affected by §3, is amended to read:

8 **§1604. Revival of limited liability company after dissolution**

9 **1. Determination of need to revive company.** If the Secretary of State finds that a
10 ~~domestic~~ limited liability company has dissolved in any manner under this chapter, that
11 the certificate of formation for that ~~domestic~~ limited liability company has been cancelled
12 pursuant to section 1533 and that the ~~domestic~~ limited liability company should be
13 revived for any specified purpose or purposes for a specific period of time, the Secretary
14 of State may upon application by an interested party accompanied by the payment of the
15 fee required by section 1680 file a certificate of revival in a form or format prescribed by
16 the Secretary of State for reviving the ~~domestic~~ limited liability company.

17 **2. Certificate of revival.** The certificate of revival must include:

- 18 A. The name of the limited liability company prior to revival;
- 19 B. The name of the limited liability company following revival, which limited
20 liability company name must comply with section 1508;
- 21 C. The date of formation of the limited liability company;
- 22 D. The date of dissolution of the limited liability company, if known, together with
23 the date the certificate of cancellation was filed by the Secretary of State;
- 24 E. The name and address of the registered agent of the limited liability company
25 prior to revival. If the registered agent has resigned or no longer can be located by
26 the limited liability company, the limited liability company shall deliver for filing a
27 form appointing a registered agent as required by Title 5, chapter 6-A, which form
28 must accompany the certificate under this section;
- 29 F. The name and address of the party or parties requesting the revival;
- 30 G. The purpose or purposes for which revival is requested; and
- 31 H. The time period needed to complete the purpose or purposes specified under
32 paragraph G.

33 **3. Notice of revival.** The Secretary of State shall issue a notice to the ~~domestic~~
34 limited liability company to the address provided in subsection 2, paragraph F stating that
35 the revival has been granted for the purpose or purposes and for the time period specified
36 pursuant to the certificate of revival filed under this section.

37 **4. Amendment to certificate of formation.** Once the revival has been granted in
38 accordance with subsection 3, the certificate of revival is deemed to be an amendment to

1 the certificate of formation of the limited liability company, and the limited liability
2 company may not be required to take any further action to amend its certificate of
3 formation under this chapter with respect to the matters set forth in the certificate of
4 revival.

5 **5. Termination of revival.** When the time period specified in subsection 2,
6 paragraph H has expired, the Secretary of State shall issue a notice to the ~~domestic~~
7 limited liability company at the address provided in subsection 2, paragraph F that the
8 status of the limited liability company has returned to the status prior to filing the
9 certificate of revival under this section.

10 **Sec. A-16. 31 MRSA §1621, sub-§4**, as enacted by PL 2009, c. 629, Pt. A, §2
11 and affected by §3, is repealed and the following enacted in its place:

12 **4. Rights; privileges; duties; restrictions; penalties; liabilities.** A foreign limited
13 liability company that has filed a statement of foreign qualification:

14 A. Has in this State the same but no greater rights of a limited liability company of
15 like character;

16 B. Has in this State the same but no greater privileges as a limited liability company
17 of like character; and

18 C. Except as otherwise provided by this chapter, is in this State subject to the same
19 duties, restrictions, penalties and liabilities now or later imposed on a limited liability
20 company of like character.

21 **Sec. A-17. 31 MRSA §1625, sub-§5**, as enacted by PL 2009, c. 629, Pt. A, §2
22 and affected by §3, is amended to read:

23 **5. Failure to notify of change of registered agent or address.** The foreign limited
24 liability company does not notify the Secretary of State that its registered agent has
25 changed as required by Title 5, section 108, subsection 1 or the address of its registered
26 agent has been changed as required by Title 5, section 109 or 110 or ~~that fails to appoint a~~
27 replacement registered agent after its registered agent has resigned ~~as required by~~ under
28 Title 5, section 111;

29 **Sec. A-18. 31 MRSA §1626, sub-§2**, as enacted by PL 2009, c. 629, Pt. A, §2
30 and affected by §3, is amended to read:

31 **2. Revocation.** The statement of foreign qualification is revoked if ~~within 60 days~~
32 ~~after the notice under subsection 1 was issued~~ the Secretary of State determines that the
33 foreign limited liability company has failed to correct the ground or grounds for
34 revocation within 60 days after the notice under subsection 1 was issued. The Secretary
35 of State shall send notice to the foreign limited liability company as required by
36 subsection 7 that recites the ground or grounds for revocation and the effective date of
37 revocation.

38 **Sec. A-19. 31 MRSA §1631, sub-§1**, as enacted by PL 2009, c. 629, Pt. A, §2
39 and affected by §3, is amended to read:

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

6 **Sec. A-20. 31 MRSA §1632, sub-§1,** as enacted by PL 2009, c. 629, Pt. A, §2
7 and affected by §3, is amended to read:

8 **1. Demand.** The member first makes a demand on the limited liability company to
9 take suitable action, and the limited liability company does not take suitable action within
10 a reasonable time; or

11 **Sec. A-21. 31 MRSA §1637, sub-§1, ¶B,** as enacted by PL 2009, c. 629, Pt. A,
12 §2 and affected by §3, is amended to read:

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

16 **Sec. A-22. 31 MRSA §1643, sub-§2, ¶E,** as enacted by PL 2009, c. 629, Pt. A,
17 §2 and affected by §3, is repealed and the following enacted in its place:

18 E. If the surviving organization exists before the merger:

19 (1) Any amendments provided for in the plan of merger for the organizational
20 document that created the surviving organization that are in a public record; or

21 (2) A statement that the organizational documents remain unchanged;

22 **Sec. A-23. 31 MRSA §1644, sub-§1, ¶H,** as enacted by PL 2009, c. 629, Pt. A,
23 §2 and affected by §3, is amended to read:

24 H. Except as otherwise agreed, if a constituent limited liability company ceases to
25 exist, the merger does not dissolve the limited liability company for the purposes of
26 subchapter 7 §;

27 **Sec. A-24. 31 MRSA §1648, sub-§2, ¶F,** as enacted by PL 2009, c. 629, Pt. A,
28 §2 and affected by §3, is amended to read:

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

37 **Sec. A-25. 31 MRSA §1661,** as enacted by PL 2009, c. 629, Pt. A, §2 and
38 affected by §3, is amended to read:

1 **§1661. Registered agent for limited liability company**

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

4 **Sec. A-26. 31 MRSA §1662**, as enacted by PL 2009, c. 629, Pt. A, §2 and
5 affected by §3, is amended to read:

6 **§1662. Service of process**

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

9 **Sec. A-27. 31 MRSA §1679, sub-§1**, as enacted by PL 2009, c. 629, Pt. A, §2
10 and affected by §3, is amended to read:

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

13 **Sec. A-28. 31 MRSA §1679, sub-§2**, as enacted by PL 2009, c. 629, Pt. A, §2
14 and affected by §3, is amended to read:

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

17 **Sec. A-29. 31 MRSA §1680, sub-§17**, as enacted by PL 2009, c. 629, Pt. A, §2
18 and affected by §3, is amended to read:

19 **17. Reinstatement fee after administrative dissolution.** For failure to file an
20 annual report, a fee of \$150, to a maximum fee of \$600, regardless of the number of
21 delinquent reports or the period of delinquency; for failure to pay the annual report late
22 filing penalty, a fee of \$150; for failure to appoint or maintain a registered agent, a fee of
23 \$150; for failure to notify the Secretary of State that the registered agent or the address of
24 the registered agent has been changed or ~~that failure to appoint a replacement registered~~
25 agent after the registered agent has resigned, a fee of \$150; and for filing false
26 information, a fee of \$150;

27 **Sec. A-30. 31 MRSA §1693, sub-§2, ¶B**, as enacted by PL 2009, c. 629, Pt. A,
28 §2 and affected by §3, is amended to read:

29 B. Solely for purposes of applying section 1541, ~~language in~~ the limited liability
30 company's articles of organization ~~designating the limited liability company's~~
31 ~~management structure operates as if that language were in the limited liability~~
32 ~~company agreement~~ operate as a statement of authority filed pursuant to section
33 1542. For this purpose, the designation of the company's management structure in
34 the articles of organization must be treated as a statement described in section 1542,
35 subsection 1, paragraph C and the statement of the name of the limited liability
36 company must be treated as satisfying the requirement under section 1542, subsection
37 1, paragraph A.

1 foreign qualification in this State may transact its business in this State under one or more
2 assumed or fictitious names.

3 **Sec. B-6. 31 MRSA §1511, sub-§5**, as enacted by PL 2009, c. 629, Pt. A, §2 and
4 affected by §3, is amended to read:

5 **5. Qualify as foreign limited liability company.** A foreign limited liability
6 company whose registration under this section is effective may, after the registration is
7 effective, file a statement of foreign qualification as a foreign limited liability company
8 under the registered name or may consent in writing to the use of that name by a limited
9 liability company organized under this chapter or by another foreign limited liability
10 company authorized to transact business in this State. The registration terminates when
11 the ~~domestic~~ limited liability company is organized or the foreign limited liability
12 company files a statement of foreign qualification or consents to the qualification of
13 another foreign limited liability company under the registered name.

14 **Sec. B-7. 31 MRSA §1664, sub-§1**, as enacted by PL 2009, c. 629, Pt. A, §2 and
15 affected by §3, is amended to read:

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

- 23 A. The limited liability company's name;
- 24 B. That, if a ~~domestic~~ limited liability company, the limited liability company is
25 duly formed under the laws of this State and the date of formation;
- 26 C. That, if a foreign limited liability company, the foreign limited liability company
27 is authorized to transact business in this State, the date on which the limited liability
28 company was authorized to transact business in this State and its jurisdiction of
29 organization;
- 30 D. That all fees and penalties owed to the State have been paid in full, if:
- 31 (1) Payment is reflected in the records of the office of the Secretary of State; and
32 (2) Nonpayment affects the existence or authorization of the ~~domestic~~ limited
33 liability company or foreign limited liability company;
- 34 E. That the limited liability company's most recent annual report required by section
35 1519 has been filed by the Secretary of State;
- 36 F. Whether the limited liability company has delivered to the office of the Secretary
37 of State for filing a certificate of cancellation by a ~~domestic~~ limited liability company
38 or a statement of cancellation of foreign qualification; and
- 39 G. Other facts of record in the office of the Secretary of State that are specified by
40 the person requesting the certificate.

1 **Sec. B-8. 31 MRSA §1665, sub-§1**, as enacted by PL 2009, c. 629, Pt. A, §2 and
2 affected by §3, is amended to read:

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

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

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

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

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

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

15 **Sec. B-9. 31 MRSA §1665, sub-§5**, as enacted by PL 2009, c. 629, Pt. A, §2 and
16 affected by §3, is amended to read:

17 **5. Certificate of excuse.** The Secretary of State, upon application by a ~~domestic~~
18 limited liability company and satisfactory proof that it has ceased to transact business and
19 that it is not indebted to this State for failure to file an annual report and to pay any fees
20 or penalties accrued, shall file a certificate of the fact and shall give a duplicate certificate
21 to the limited liability company, after which the limited liability company is excused from
22 filing annual reports with the office of the Secretary of State, as long as the limited
23 liability company in fact transacts no business. The name of a limited liability company
24 remains in the office of the Secretary of State's records of entity names and is protected
25 for a period of 5 years following excuse.

26 **Sec. B-10. 31 MRSA §1665, sub-§6**, as enacted by PL 2009, c. 629, Pt. A, §2
27 and affected by §3, is amended to read:

28 **6. Resumption of business.** A ~~domestic~~ limited liability company that has been
29 excused from filing annual reports pursuant to subsection 5 may elect to resume
30 transacting business. A certificate executed and filed as provided in section 1673 setting
31 forth that an election was made to resume the transaction of business authorizes the
32 ~~domestic~~ limited liability company to resume transaction of business. After that
33 certificate is filed, the ~~domestic~~ limited liability company is required to file annual reports
34 beginning with the next reporting deadline following resumption.

35 **Sec. B-11. 31 MRSA §1666**, as enacted by PL 2009, c. 629, Pt. A, §2 and
36 affected by §3, is amended to read:

1 **§1666. Amended annual report of limited liability company or foreign limited**
2 **liability company**

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

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

8 A. The name of the ~~domestic~~ limited liability company or foreign limited liability
9 company and the jurisdiction of its organization;

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

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

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

15 **Sec. B-12. 31 MRSA §1667**, as enacted by PL 2009, c. 629, Pt. A, §2 and
16 affected by §3, is amended to read:

17 **§1667. Failure to file annual report; incorrect report; penalties**

18 **1. Failure to file; penalty.** A ~~domestic~~ limited liability company or foreign limited
19 liability company that is required to deliver an annual report for filing as provided by
20 section 1665 that fails to deliver its properly completed annual report to the Secretary of
21 State shall pay, in addition to the regular annual report fee, the late filing penalty set forth
22 in section 1680, subsection 10 as long as the report is received by the Secretary of State
23 prior to revocation or administrative dissolution. Upon a limited liability company's
24 failure to file the annual report and to pay the annual report fee or the penalty, the
25 Secretary of State, notwithstanding Title 4, chapter 5 and Title 5, chapter 375, shall
26 revoke a foreign limited liability company's authority to do business in this State and
27 administratively dissolve a ~~domestic~~ limited liability company. The Secretary of State
28 shall use the procedures set forth in section 1592 to administratively dissolve a ~~domestic~~
29 limited liability company and the procedures set forth in section 1626 to revoke a foreign
30 limited liability company's authority to transact business in this State. A ~~domestic~~ limited
31 liability company that has been administratively dissolved under section 1592 must
32 follow the requirements set forth in section 1603 to reinstate.

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

36 **3. Excused from liability.** If the annual report of a ~~domestic~~ limited liability
37 company or foreign limited liability company is not delivered for filing within the time
38 specified in section 1665, the limited liability company is excused from the liability
39 provided in this section and from any other penalty for failure to file timely the report if it
40 establishes to the satisfaction of the Secretary of State that failure to file was the result of

1 excusable neglect and it furnishes the Secretary of State a copy of the report within 30
2 days after it learns that the Secretary of State failed to receive the original report.

3 **Sec. B-13. 31 MRSA §1672, sub-§2**, as enacted by PL 2009, c. 629, Pt. A, §2
4 and affected by §3, is amended to read:

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

11 **Sec. B-14. 31 MRSA §1672, sub-§3**, as enacted by PL 2009, c. 629, Pt. A, §2
12 and affected by §3, is amended to read:

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

17 **Sec. B-15. 31 MRSA §1675, sub-§1**, as enacted by PL 2009, c. 629, Pt. A, §2
18 and affected by §3, is amended to read:

19 **1. Statement of correction.** A ~~domestic~~ limited liability company or foreign limited
20 liability company may deliver to the office of the Secretary of State for filing a statement
21 of correction to correct a record previously delivered by the ~~domestic~~ limited liability
22 company or foreign limited liability company to the office of the Secretary of State and
23 filed by the Secretary of State if at the time of filing the record contained incorrect
24 information or was defectively signed or if the information subsequently becomes
25 inaccurate.

26 **Sec. B-16. 31 MRSA §1677, sub-§2**, as enacted by PL 2009, c. 629, Pt. A, §2
27 and affected by §3, is amended to read:

28 **2. Party to action.** If a petitioner under subsection 1 is not the ~~domestic~~ limited
29 liability company or foreign limited liability company to whom the record pertains, the
30 petitioner shall make the domestic limited liability company or foreign limited liability
31 company a party to the action. A person aggrieved under subsection 1 may seek the
32 remedies provided in subsection 1 in a separate action against the person required to sign
33 the record or as a part of any other action concerning the limited liability company in
34 which the person required to sign the record is made a party.

35 **Sec. B-17. 31 MRSA §1680, sub-§6**, as enacted by PL 2009, c. 629, Pt. A, §2
36 and affected by §3, is amended to read:

37 **6. Annual report.** For filing of an annual report under section 1665, a fee of \$85 for
38 a ~~domestic~~ limited liability company or a fee of \$150 for a foreign limited liability
39 company;

1 company or a manager-run limited liability company. This designation establishes
2 apparent authority for the limited liability company. If the limited liability company is a
3 member-run entity, each of the members has authority to bind the limited liability
4 company; if the limited liability company is manager-run, each manager has the authority
5 to bind the limited liability company. The Maine Limited Liability Company Act, which
6 takes effect July 1, 2011, abandons authority by designation. The certificate of formation
7 under the Maine Limited Liability Company Act generally will not contain any
8 information about authority. Further, the new provisions concerning apparent authority
9 do not acknowledge or give any effect to designations in articles of organization filed
10 under the current law. As a consequence, once the Maine Limited Liability Company Act
11 takes effect, the designations in articles of organization filed under the existing law will
12 have no significance, yet many practitioners will continue to rely on designations in filed
13 articles of organization as though the designations mattered. To accommodate this
14 likelihood, Title 31, section 1693, subsection 2, paragraph B provides that the
15 designations will be treated as being included in the limited liability company's limited
16 liability company agreement. This bill strikes language that treats the designation as part
17 of the limited liability company agreement. In its place, the bill adds provisions that treat
18 the designation as a statement of authority. The change significantly alters apparent
19 authority for limited liability companies formed under the existing law that have not
20 actually filed a statement of authority pursuant to section 1542. In the absence of a
21 statement of authority, every member, manager, president and treasurer has authority to
22 bind the limited liability company with 3rd parties. By treating the designation as a
23 statement of authority, the change to section 1693, subsection 2, paragraph B limits the
24 scope of persons having apparent authority to those designated in the filed articles. As a
25 consequence, the bill gives meaning to the designation that closely conforms to the
26 meaning intended by the designation under the existing law, at least for purposes of
27 apparent authority.