

MAINE STATE LEGISLATURE

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



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

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE

AS PUBLIC LAWS AND CONSTITUTIONAL RESOLUTIONS

at the

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 1988

AND

AS PRIVATE AND SPECIAL LAWS AND RESOLVES

at the

FIRST REGULAR SESSION

December 3, 1986 to June 30, 1987

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987

SECOND REGULAR SESSION

January 6, 1988 to May 5, 1988

THIRD SPECIAL SESSION

September 15, 1988 to September 16, 1988

and the

FOURTH SPECIAL SESSION

November 28, 1988

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Twin City Printery
Lewiston, Maine
1989

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
THIRD SPECIAL SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

CHAPTER 879

S.P. 1022 — L.D. 2678

AN ACT to Stagger the Filing Dates of Annual Corporation Reports with the Secretary of State.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the current delivery schedule for annual corporation reports to the Secretary of State creates a paperwork burden that is costly to both the Secretary of State's Office and Maine corporations; and

Whereas, this burden could be significantly reduced by staggering the delivery of annual corporation reports throughout the calendar year; and

Whereas, the staggering of deliveries of annual corporation reports will make the process much more efficient for the Secretary of State and the private sector; and

Whereas, it is necessary to implement a staggered delivery schedule for annual corporation reports as soon as possible following development of the process; and

Whereas, the Secretary of State will be required to begin to develop the process prior to December 1, 1989, in order to implement the new schedule; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 13-A MRSA §301, sub-§3, as amended by PL 1973, c. 483, §3, is further amended to read:

3. Subsection 1, paragraph B shall not apply to the name or assumed name, as provided for in section 307 of any corporation which has been excused from filing annual returns, on and after the 5th anniversary of such excuse, nor to the name of any domestic or foreign corporation the charter of which is suspended, on and after the 3rd anniversary of such suspension. When an excused or suspended corporation votes to resume business, it shall change its corporate name is if another corporation has adopted its old name or if the old name, if proposed for a new corporation, would otherwise violate subsection 1, paragraph B.

Any foreign corporation excused under this chapter which seeks to resume business under its corporate name shall follow the procedure as required in section 1301,

subsections 4 and 5.

Sec. 2. 13-A MRSA §308, 2nd paragraph, as enacted by PL 1975, c. 439, §4, is amended to read:

The Secretary of State shall use the procedures set forth in section 1210 relative to revoking suspending the right of foreign corporations to do business in this State for suspending domestic corporations. A corporation which has been suspended under this section may be reinstated by filing the proper notification of change of clerk or registered office or both with the Secretary of State and paying a penalty of \$25.

Sec. 3. 13-A MRSA §1203, sub-§2, as enacted by PL 1971, c. 439, §1, is amended to read:

2. Such authority shall continue so long as the corporation retains its authority to do such business in its jurisdiction of incorporation, and so long as its authority to do business in this State has not been revoked suspended or otherwise terminated as provided in this chapter.

Sec. 4. 13-A MRSA §1204, as enacted by PL 1971, c. 439, §1, is amended to read:

§1204. Powers of foreign corporation

A foreign corporation authorized to do business in this State, shall, until such authority is revoked suspended or otherwise terminated, have the same, but no greater, powers, rights and privileges as a domestic corporation organized under or otherwise pursuant to this Act; and, except as otherwise provided in this Act, shall be subject to the same duties, restrictions, liabilities and penalties now or hereafter imposed upon a domestic corporation of like character.

Sec. 5. 13-A MRSA §1210, as amended by PL 1977, c. 694, §287, is further amended to read:

§1210. Suspension of foreign corporation's authority to do business in State

1. Notwithstanding Title 4, chapter 25, and Title 5, chapter 375, the authority of a foreign corporation to do business in this State may be revoked suspended by the Secretary of State, as provided by subsections 2 and 3 when:

A. The corporation has failed to file its annual report within the time specified by this Act or has failed to pay any fees, franchise taxes or penalties prescribed by this Act when they have become due and payable; or

B. The corporation has failed to appoint and maintain a registered agent in this State as required by section 1212; or

C. The corporation has failed, after change of its registered office or registered agent, to file in the office

of the Secretary of State a statement of such change as required by section 1212; or

D. The corporation has failed to file in the office of the Secretary of State within the required time any articles of merger as required by section 1206 or amended application for authority as required by section 1207; or

E. A misrepresentation has been made of a material fact in any application, report, affidavit or other document required by this Act.

2. The authority of a foreign corporation shall be ~~revoked~~ suspended only after the Secretary of State shall have mailed to the corporation's last registered office in this State and to its last registered or principal office in its jurisdiction of incorporation at least 60 days' notice of impending ~~revocation~~ suspension of its authority to do business in this State, including a specification of the default, and the corporation shall fail, prior to ~~revocation~~ suspension, to remove the ground of default specified in such notice.

3. After the expiration of the 60-day period, if the foreign corporation has not cured the default or, as to the ground for ~~revocation~~ suspension specified in subsection 1, paragraph E, convinced the Secretary of State, by affidavit or otherwise, that there was no such misrepresentation, the Secretary of State shall issue and file his certificate ~~revoking~~ suspending the foreign corporation's authority to do business in this State, and shall mail copies thereof to the corporation's last registered office in this State and to its last registered or principal office in its jurisdiction of incorporation.

4. Such action of the Secretary of State in ~~revoking~~ suspending the authority of a foreign corporation is appealable to the Superior Court in Kennebec County; such appeals shall be governed by Rule 80B of the Rules of Civil Procedure, or by such amendment or replacement therefor as may from time to time be adopted.

5. The authority of the corporation to do business in this State shall cease as of the date of filing of the certificate of ~~revocation~~ suspension, unless on appeal such effective date is stayed by the court.

Sec. 6. 13-A MRSA §1212, sub-§7, as enacted by PL 1971, c. 439, §1, is amended to read:

7. Whenever a foreign corporation authorized to do business in this State shall fail to appoint or maintain a registered agent in this State, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be ~~revoked~~ suspended, then the Secretary of State shall be an agent of such corporation upon whom any such process, notice or demand may be served. Service of the Secretary of State of any such process, notice or demand shall be made as provided in section 1217.

Sec. 7. 13-A MRSA §1301, sub-§2, as enacted by PL 1971, c. 439, §1, is repealed and the following enacted in its place:

2. The Secretary of State shall specify by rule the period of time to which the annual report applies as provided in section 1301, subsection 3. The information contained in the annual report must be current as of the date the report is signed and delivered to the Secretary of State in accordance with this chapter.

Sec. 8. 13-A MRSA §1301, sub-§3, as amended by PL 1987, c. 402, Pt. C, §1, is repealed and the following enacted in its place:

3. The annual report must be executed as provided by section 104, except that signing by any one of the president, a vice-president, the secretary, the treasurer or an assistant secretary, without a 2nd signature, shall be deemed valid under section 104, subsection 1, paragraph B, subparagraph (2). Subject to rules adopted under section 1303, subsection 4, the report shall be delivered to the Secretary of State for filing. The annual reports shall be delivered to the Secretary of State on a staggered basis as defined by the Secretary of State by rule in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. The report shall apply to the 12-month period specified by the Secretary of State. Proof to the satisfaction of the Secretary of State that, prior to the date that penalties become effective for late delivery of annual reports as established by the Secretary of State by rule, the report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. One copy of the report, together with the filing fee required by this Act, shall be delivered for filing to the Secretary of State who shall file the report, if the Secretary of State finds that it conforms to the requirements of this Act. If the Secretary of State finds that it does not so conform, the Secretary of State shall promptly mail or otherwise return the same to the corporation for any necessary corrections, in which event the penalties prescribed by this Act for failure to file such report within the time herein provided shall not apply, if such report is corrected to conform to the requirements of this Act and returned to the Secretary of State within 30 days from the date on which it was so mailed or otherwise returned to the corporation by the Secretary of State.

Sec. 9. 13-A MRSA §1301, sub-§4, as amended by PL 1977, c. 522, §11, is further amended to read:

4. The Secretary of State, upon application by any domestic or foreign corporation and satisfactory proof that it has ceased to transact business and that it is not indebted to the State on account of franchise taxes, shall file a certificate of the fact in his office and shall give a duplicate certificate to the corporation. Thereupon such corporation shall be excused from filing annual reports with the Secretary of State, so long as the corporation in fact transacts no business.

Sec. 10. 13-A MRSA §1301, sub-§5, as amended by PL 1975, c. 439, §11, is further amended to read:

5. The shareholders of a domestic or foreign corporation which has been excused pursuant to subsection 4 may vote to resume transacting business at a meeting duly called and held for such purpose. A certificate executed and filed as provided in sections 104 and 106 setting forth that a shareholders' meeting was held, the date and location of same, and that a majority of the shareholders voted to resume transacting business shall authorize such corporation to transact business; and after such certificate is filed, it shall be required to file annual reports.

Sec. 11. 13-A MRSA §1302, sub-§1, as amended by PL 1987, c. 32, is further amended to read:

1. Any corporation required to file an annual report as provided by section 1301 which fails to deliver its annual report for filing ~~on or before June 1st of each year~~ by the date specified in the provisions of section 1301 shall pay to the Secretary of State, in addition to the regular annual report fee, the sum of \$25 for each ~~30-day period month, or portion thereof following the month required for delivery,~~ the report is not filed. In no case may this penalty exceed \$300, regardless of the number of delinquent reports or the period of delinquency. Upon failure to file an annual report and to pay the annual report fee or the penalty, the Secretary of State, notwithstanding Title 4, chapter 25, and Title 5, chapter 375, shall ~~revoke~~ suspend a foreign corporation's authority to do business in this State and suspend a domestic corporation from doing business. ~~He~~ The Secretary of State shall use the procedures set forth in section 1210, relative to ~~revoking~~ suspending the right of foreign corporations to do business in this State, for suspending domestic corporations. A foreign corporation whose authority to do business in this State has been revoked suspended from doing business under this subsection and which wishes to do business again in this State ~~must be authorized as provided in section 1202.~~ A domestic corporation which has been suspended under this subsection may be reinstated by filing the current annual report and by paying the penalty accrued.

Sec. 12. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1988-89

SECRETARY OF STATE, DEPARTMENT OF

Administration — Secretary of State

All Other \$50,000

Provides funds for computer programming related to staggering the filing dates of corporation reports.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective September 23, 1988.

CHAPTER 880

H.P. 1991 — L.D. 2693

AN ACT to Clarify the Maine Jobs and Investment Tax Credit Law.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine jobs and investment tax credit law was enacted by Public Law 1978, chapter 722 to allow a credit against income taxes for businesses making an investment of at least \$5,000,000 in Maine and creating at least 200 new jobs as a result of that investment; and

Whereas, the jobs and investment tax credit law contains certain technical deficiencies; and

Whereas, these deficiencies are defeating the original intent of the law; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 36 MRSA §5215, sub-§2, ¶B, as enacted by PL 1977, c. 722, is amended to read:

B. The term "new jobs credit base" means the excess of Maine Employment Security Commission wages for the taxable year of the qualified investment or the next calendar year over the Maine Employment Security Commission wages for the highest of the 3 preceding taxable calendar years preceding the year of the qualified investment. In computing its new jobs credit base, a successor-taxpayer shall add to its own Maine Employment Security Commission wages the Maine Employment Security Commission wages of its predecessor.

Sec. 2. 36 MRSA §5215, sub-§3, ¶B, as amended by PL 1985, c. 535, §17, is further amended to read:

B. With a payroll records and reports substantiating that at least 200 new jobs, attributable to the operation of property considered to be a qualified investment, were created in the 12-month period following the date the property was placed in service. To assess the continuing nature of the jobs, the taxpayer shall demonstrate that the new jobs credit base which increases by is at least \$1,400,000 for the taxable year of the qualified federal credit and is attributable to the operation of property considered to be a qualified investment or the next calendar year. The \$1,400,000 is