

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
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NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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Augusta, Maine
1997

or are proposed to be located within an area in which a written clearance has been issued under subsection 4-A, the system, in consultation with the underground facility operator, may modify or, if necessary, revoke a written clearance in order to ensure adequate safety in the area of the underground facility or proposed underground facility.

Sec. 3. 23 MRSA §3360-A, sub-§6, as repealed and replaced by PL 1991, c. 437, §7 and affected by §12, is amended to read:

6. Liability of excavator. If an excavator complies with subsection 3 and if information pursuant to subsections 3-A and 4 is not provided within the time specified or if the information provided fails to identify the location of the underground facilities in accordance with subsection 4, or if an excavator is excavating in an area for which written clearance has been issued pursuant to subsection 4-A, then an excavator damaging or injuring underground facilities is not liable for any damage or injury caused by the excavation, except on proof of negligence.

Sec. 4. 23 MRSA §3360-A, sub-§6-A, ¶A, as amended by PL 1997, c. 229, §1, is further amended to read:

A. An excavator who does not give notice of an excavation as required under subsection 3, except an excavation in an area for which written clearance has been issued pursuant to subsection 4-A, or who undertakes the excavation in a reckless or negligent manner that poses a threat to an underground facility commits a civil violation and is subject to a civil forfeiture of up to \$1,000 in addition to any other remedies or forfeitures provided by law or any liability for actual damages.

See title page for effective date.

CHAPTER 632

S.P. 787 - L.D. 2114

An Act Relating to the Qualifications of the Director of the Bureau of Human Resources

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

Sec. 1. 5 MRSA §7035, as amended by PL 1997, c. 498, §3, is further amended to read:

§7035. Director of Human Resources

The Director of Human Resources ~~shall~~ must be qualified by education ~~and~~ or experience in the

administration of personnel systems, public or private, and in human resource management. The commissioner, ~~following consultation with the Policy Review Board~~, shall appoint the Director of Human Resources who ~~shall serve~~ serves at the pleasure of the commissioner and ~~shall serve until his successor has been appointed and qualified~~. Specifically, the director shall meet the following qualifications:

1. Education and experience in personnel systems. An educational background and experience in personnel systems, public or private, to include, among other factors, the following:

A. Training, knowledge and experience in the design of job classification systems;

B. Knowledge, training and experience in the design of job performance evaluation systems;

C. Knowledge, training and experience in the design of job compensation systems; and

D. Knowledge, training and experience in the design of career training programs for employees and the design of management and supervisory training programs;

2. Restricted political activity. The provisions in ~~section 7056 A~~, as they relate to the political activities of employees in the classified service or employees from the executive branch in the unclassified service as defined in section 7032; and

3. Record of achievement. An outstanding record of achievement of at least 5 years in the administration of a personnel or human resource system.

See title page for effective date.

CHAPTER 633

H.P. 1498 - L.D. 2097

An Act to Simplify Corporate Filings

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

Sec. 1. 10 MRSA §1522, sub-§1, ¶¶H and I, as enacted by PL 1993, c. 616, §2, are amended to read:

H. Consists of or comprises language that is obscene, contemptuous, profane or prejudicial; ~~or~~

I. Inappropriately promotes abusive or unlawful activity; or

Sec. 2. 10 MRSA §1522, sub-§1, ¶J is enacted to read:

J. Notwithstanding paragraph G, is identical to a corporate, limited liability company, limited liability partnership or limited partnership name, unless the corporation, limited liability company, limited liability partnership or limited partnership is the same entity as the applicant that is seeking to register the mark and files proof of ownership with the Secretary of State.

Sec. 3. 13-A MRSA §301, sub-§1, ¶C, as repealed and replaced by PL 1993, c. 316, §13, is amended to read:

C. May not be the same as, or deceptively similar to, any mark registered under Title 10, chapter 301-A, unless:

(1) The owner or holder of the mark executes and files with the Secretary of State, as provided in Title 10, section 1525, subsection 2, proof of authorization of the use of a similar name by the corporation seeking to use the similar name; ~~or~~

(2) A foreign corporation seeking to file under a similar or identical name executes and files with the Secretary of State, as provided in sections 104 and 106, proof of a resolution of its board of directors that it will not do business under that similar or identical name, but instead will do business under an assumed name, as provided for in section 307; ~~and~~ or

(3) The registered owner or holder of the mark is the same person or entity as the corporation seeking to use the same or similar name and files proof of ownership with the Secretary of State;

Sec. 4. 13-B MRSA §301, sub-§1, ¶C, as repealed and replaced by PL 1993, c. 316, §32, is amended to read:

C. May not be the same as, or deceptively similar to, any mark registered under Title 10, chapter 301-A, unless:

(1) The owner or holder of the mark executes and files with the Secretary of State, as provided in Title 10, section 1525, subsection 2, proof of authorization of the use of a similar name by the corporation seeking to use the similar name; ~~or~~

(2) A foreign corporation seeking to file under a similar or identical name executes and files with the Secretary of State, as provided in sections 104 and 106, proof of a resolution of its board of directors that it will not carry on activities under that simi-

lar or identical name, but instead will carry on activities under an assumed name, as provided for in section 308; or

(3) The registered owner or holder of the mark is the same person or entity as the corporation seeking to use the same or similar name and files proof of ownership with the Secretary of State;

Sec. 5. 31 MRSA §403, sub-§2, ¶B, as corrected by RR 1995, c. 2, §74, is amended to read:

B. If a foreign limited partnership seeking to file under the same or deceptively similar name executes and files with the Secretary of State proof that it will not do business in this State under that same or deceptively similar name but instead will do business under an assumed name as provided in section 405; ~~or~~

Sec. 6. 31 MRSA §403, sub-§2, ¶C, as enacted by PL 1991, c. 552, §2 and affected by §4, is amended to read:

C. If the limited partnership was organized under the laws of this State prior to January 1, 1992 or the foreign limited partnership was authorized to do business in this State prior to January 1, 1992 and had the right to use the name as its legal name prior to January 1, 1992; ~~or~~

Sec. 7. 31 MRSA §403, sub-§2, ¶D is enacted to read:

D. If the registered owner or holder of the mark is the same person or entity as the limited partnership seeking to use the same or similar name and files proof of ownership with the Secretary of State.

Sec. 8. 31 MRSA §603, sub-§2, ¶¶B and C, as enacted by PL 1993, c. 718, Pt. A, §1, are amended to read:

B. If a foreign limited liability company seeking to file under the same or deceptively similar name executes and files with the Secretary of State proof that it will not do business in this State under that same or deceptively similar name but instead will do business under an assumed name, as provided for in section 605; ~~or~~

C. If the foreign limited liability company was authorized to do business in this State before January 1, 1995 and had the right to use the name as its legal name before that date; ~~or~~

Sec. 9. 31 MRSA §603, sub-§2, ¶D is enacted to read:

D. If the registered owner or holder of the mark is the same person or entity as the limited liability company seeking to use the same or similar name and files proof of ownership with the Secretary of State.

Sec. 10. 31 MRSA §621, as enacted by PL 1993, c. 718, Pt. A, §1, is amended to read:

§621. Formation

One or more persons may form a limited liability company by signing and filing articles of organization with the Secretary of State. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. The minimum number of members for a limited liability company created under this Act is one.

Sec. 11. 31 MRSA §626, as amended by PL 1997, c. 376, §50, is repealed.

Sec. 12. 31 MRSA §641, sub-§§1 and 2, as enacted by PL 1993, c. 718, Pt. A, §1, are amended to read:

1. Actions of members. Except as provided in subsection 2 ~~or in a limited liability company statement of authority as described in section 626~~, each member is an agent of a limited liability company for the purpose of its business or affairs, and the act of a member, including, but not limited to, the execution in the name of a limited liability company of an instrument, for carrying on the business or affairs of that limited liability company of which that person is a member, binds a limited liability company, unless the acting member has no authority to act for the limited liability company in a particular matter, and the person with whom that member is dealing has knowledge of the fact that the member has no such authority.

2. Management vested in one or more managers. ~~Subject to a limited liability company statement of authority as described in section 626, if~~ If the articles of organization provide that management of a limited liability company is vested in a manager or managers:

A. A member, acting solely in the capacity as a member, is not an agent of a limited liability company; and

B. Each manager is an agent of a limited liability company for the purpose of its business or affairs, and the act of a manager, including, but not limited to, the execution in the name of that limited liability company of an instrument, for carrying on in the usual way the business or affairs of that limited liability company of which

that person is the manager, binds that limited liability company, unless the acting manager has no authority to act for the limited liability company in a particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

Sec. 13. 31 MRSA §642, sub-§§1 and 2, as enacted by PL 1993, c. 718, Pt. A, §1, are amended to read:

1. Admission or representation by member. Except as provided in subsection 2 ~~or in a limited liability company statement of authority as described in section 626~~, an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of a member's authority as provided for by this chapter is evidence against that limited liability company.

2. Admission or representation by manager. ~~Subject to a limited liability company statement of authority as described in section 626, if~~ If the articles of organization provide that management of a limited liability company is vested in a manager or managers:

A. An admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority as provided for by this chapter is evidence against that limited liability company; and

B. An admission or representation of a member, acting solely in that member's capacity as a member, does not constitute evidence against a limited liability company.

Sec. 14. 31 MRSA §643, sub-§§1 and 2, as enacted by PL 1993, c. 718, Pt. A, §1, are amended to read:

1. Notice to and knowledge of members. Except as provided in subsection 2 ~~or in a limited liability company statement of authority as described in section 626~~, notice to a member of a matter relating to the business or affairs of a limited liability company, and the knowledge of the member acting in the particular matter acquired while a member or of which the person had knowledge at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated the knowledge to the acting member, operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

2. Notice to and knowledge of managers. ~~Subject to a limited liability company statement of authority as described in section 626, if~~ If the articles

of organization provide that management of a limited liability company is vested in a manager or managers:

A. Notice to a manager of a matter relating to the business or affairs of the limited liability company, and the knowledge of the manager acting in the particular matter, acquired while a manager or of which the person had knowledge at the time of becoming a manager and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager, operate as notice to or knowledge of the limited liability company except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

B. Notice to or knowledge of a member of a limited liability company, while that member is acting solely in that member's capacity as a member, is not notice to or knowledge of a limited liability company.

Sec. 15. 31 MRSA §652, sub-§2, ¶¶A and B, as enacted by PL 1993, c. 718, Pt. A, §1, are amended to read:

A. If a manager, more than one half by number of the disinterested managers or more than one half by number of the disinterested members, or such other number as is provided in the operating agreement or articles of organization, but in no event less than a majority in interest; or

B. If a member, more than one half by number of the disinterested members, or such other number as is provided in the operating agreement or articles of organization, but in no event less than a majority in interest.

Sec. 16. 31 MRSA §652, sub-§3, as enacted by PL 1993, c. 718, Pt. A, §1, is amended to read:

3. No waiver or modification of standard. ~~The~~ Except as provided in subsection 2, the provisions of this section may not be modified or waived in an operating agreement, the articles of organization or otherwise.

Sec. 17. 31 MRSA §701, sub-§2, as enacted by PL 1993, c. 718, Pt. A, §1, is amended to read:

2. Consent. Written consent of all members; or

Sec. 18. 31 MRSA §701, sub-§3, as enacted by PL 1993, c. 718, Pt. A, §1, is repealed.

Sec. 19. 31 MRSA §751, sub-§10, as enacted by PL 1993, c. 718, Pt. A, §1, is repealed.

Sec. 20. 31 MRSA §803, sub-§2, ¶¶B and C, as enacted by PL 1995, c. 633, Pt. B, §1, are amended to read:

B. If a foreign limited liability partnership seeking to file under the same or deceptively similar name executes and files with the Secretary of State proof that it will not do business in this State under that same or deceptively similar name but instead will do business under an assumed name, as provided in section 805; ~~or~~

C. If the foreign limited liability partnership was authorized to do business in this State before January 1, 1996 and had the right to use the name as its legal name before that date; or

Sec. 21. 31 MRSA §803, sub-§2, ¶D is enacted to read:

D. If the registered owner or holder of the mark is the same person or entity as the limited liability partnership seeking to use the same or similar name and files proof of ownership with the Secretary of State.

Sec. 22. 31 MRSA §871, sub-§8, as enacted by PL 1995, c. 633, Pt. B, §1, is amended to read:

8. Certificate of limited liability partnership, amendment or renunciation. For filing a certificate of limited liability partnership under section 822, a certificate of amendment under section 823, except as provided in subsection 6, or a certificate of renunciation under section 825, a fee of \$250. For filing a certificate of amendment under section 823 to change the name or address of the contact partner, the fee is \$20;

Sec. 23. 31 MRSA §871, sub-§10, as amended by PL 1997, c. 376, §71, is further amended to read:

10. Foreign limited liability partnerships. For filing an application for authority to do business as a foreign limited liability partnership under section 852, a certificate of amendment under section 855, except as provided in subsection 12, or a certificate of cancellation under section 857, a fee of \$250. For filing a certificate of amendment under section 855 to change the address of the registered or principal office or to change the name or address of the contact partner, the fee is \$30;

See title page for effective date.