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An Act To Amend the Maine Limited Liability Company Act

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

Whereas, the Maine Limited Liability Company Act, as enacted by Public Law 2009, chapter 629, takes effect on July 1, 2011; and

Whereas, the delayed effective date allows amendment of the Maine Limited Liability Company Act prior to its effective date; and

Whereas, the effective dates of the amendments to the Maine Limited Liability Company Act should coincide with the effective date of the Act itself; 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:

PART A

Sec. A-1. 31 MRSA §1502, sub-§2, as enacted by PL 2009, c. 629, Pt. A, §2 and affected by §3, is amended to read:

2. Certificate of formation. "Certificate of formation" means the certificate described in section ~~1541~~1531, and the certificate as amended or restated.

Sec. A-2. 31 MRSA §1502, sub-§16, as enacted by PL 2009, c. 629, Pt. A, §2 and affected by §3, is amended to read:

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.~~

Sec. A-3. 31 MRSA §1502, sub-§17, as enacted by PL 2009, c. 629, Pt. A, §2 and affected by §3, is amended to read:

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~~interests 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.

Sec. A-4. 31 MRSA §1502, sub-§23, as enacted by PL 2009, c. 629, Pt. A, §2 and affected by §3, is amended to read:

23. Secretary of State. "Secretary of State" means the Secretary of State for ~~the~~this State.

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

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

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

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

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

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.~~

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

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~~paragraph A and B, subparagraphs (1) and (2) and matters that may be included pursuant to section 1611, subsection 2, but is not notice of any other fact.

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

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~~entity~~converted organization in a merger or consolidation; or

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

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

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

§ 1591. Grounds for administrative dissolution of 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.

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

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

1. Notice of determination to administratively dissolve 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 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.

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

§ 1593. Reinstatement following administrative dissolution of 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 Secretary of State shall cancel the certificate of formation of the limited liability company ~~must be cancelled~~, effective on the 6th anniversary of the effective date of administrative dissolution.

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

§ 1594. Appeal from denial of reinstatement of 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.

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

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

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

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

§ 1604.Revival of limited liability company after dissolution

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

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.

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

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

- A. Has in this State the same but no greater rights of a limited liability company of like character;
- B. Has in this State the same but no greater privileges as a limited liability company of like character;
and
- C. 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.

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

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 fails to appoint a replacement registered agent after its registered agent has resigned as required by under Title 5, section 111;

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

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 within 60 days after the notice under subsection 1 was issued. The Secretary of State shall send notice to the foreign limited liability company as required by subsection 7 that recites the ground or grounds for revocation and the effective date of revocation.

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

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~~limited liability company agreement or this chapter or arising independently of the membership relationship.

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

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

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

B. No ~~membership~~transferable 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.

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

E. If the surviving organization exists before the merger:

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

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

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

H. Except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of subchapter ~~7~~8;

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

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

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

§ 1661. Registered agent for 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.

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

§ 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.

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

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

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

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

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

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

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

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

Sec. A-31. 31 MRSA §1693, sub-§5, as enacted by PL 2009, c. 629, Pt. A, §2 and affected by §3, is amended to read:

5. Administrative dissolution prior to effective date. A domestic limited liability company administratively dissolved under former chapter 13 is deemed to have been administratively dissolved under section 1592 for purposes of reinstatement following administrative dissolution under section 1593.

PART B

Sec. B-1. 31 MRSA §852, sub-§1, ¶N, as enacted by PL 1995, c. 633, Pt. B, §1, is amended to read:

N. Being a partner in a registered limited partnership or a domestic general partnership or a member in a domestic limited liability company.

Sec. B-2. 31 MRSA §1431, sub-§9, ¶C, as enacted by PL 2005, c. 543, Pt. C, §2, is amended to read:

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

Sec. B-3. 31 MRSA §1502, sub-§20, ¶C, as enacted by PL 2009, c. 629, Pt. A, §2 and affected by §3, is amended to read:

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

Sec. B-4. 31 MRSA §1508, sub-§5, as enacted by PL 2009, c. 629, Pt. A, §2 and affected by §3, is amended to read:

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 limited liability company 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.

Sec. B-5. 31 MRSA §1510, sub-§2, as enacted by PL 2009, c. 629, Pt. A, §2 and affected by §3, is amended to read:

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

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

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

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

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~~limited liability company 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- A. The name of the ~~domestic~~limited liability company or foreign limited liability company and the jurisdiction of its organization;
- B. The date on which the original annual report was filed; and
- C. The information that has changed and the date on which it changed.

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

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

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

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

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

3. Excused from liability. If the annual report of a ~~domestic~~limited liability company or foreign limited liability company is not delivered for filing within the time specified in section 1665, the limited liability company is excused from the liability provided in this section and from any other penalty for

failure to file timely the report if it establishes to the satisfaction of the Secretary of State that failure to file was the result of excusable neglect and it furnishes the Secretary of State a copy of the report within 30 days after it learns that the Secretary of State failed to receive the original report.

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

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~~limited liability company 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.

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

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~~limited liability company 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.

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

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

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

2. Party to action. If a petitioner under subsection 1 is not the ~~domestic~~ limited 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.

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

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

Sec. B-18. 31 MRSA §1680, sub-§9, as enacted by PL 2009, c. 629, Pt. A, §2 and affected by §3, is amended to read:

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

Sec. B-19. 31 MRSA §1680, sub-§18, as corrected by RR 2009, c. 2, §86, is amended to read:

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

Sec. B-20. 39-A MRSA §324, sub-§3, ¶C, as amended by PL 2009, c. 520, §2, is further amended to read:

C. The employer, if organized as a corporation, is subject to administrative dissolution as provided in Title 13-C, section 1421 or revocation of its authority to do business in this State as provided in Title 13-C, section 1532. The employer, if organized as a domestic limited liability company, is subject to administrative dissolution as provided in Title 31, section ~~608-B~~1592. The employer, if licensed, certified, registered or regulated by any board authorized by Title 5, section 12004-A or whose license may be revoked or suspended by proceedings in the District Court or by the Secretary of State, is subject to revocation or suspension of the license, certification or registration.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect July 1, 2011.

SUMMARY

This bill makes several changes to the Maine Limited Liability Company Act, which takes effect July 1, 2011. Most of the changes are technical, but several are substantive.

The technical changes remove redundant language, correct cross-references, clarify definitions and make some grammatical changes.

The bill deletes the unnecessary inclusion of the word “domestic” when referring to limited liability companies formed in this State.

The bill makes the following substantive changes.

1. The bill amends the definition of "low-profit limited liability company" by striking all references to foreign limited liability companies. The change allows the laws of the state of organization to govern whether a foreign limited liability company is a low-profit limited liability company. The change conforms the statute to those of other states that have adopted low-profit limited liability company legislation.

2. Under the current law, the articles of organization require the organizer to designate whether the limited liability company will be a member-run limited liability company or a manager-run limited liability company. This designation establishes apparent authority for the limited liability company. If the limited liability company is a member-run entity, each of the members has authority to bind the

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