

**HOUSE . . . . . No. 1722**

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The Commonwealth of Massachusetts

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**In the Year Two Thousand Nine**  
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An Act clarifying, correcting and amending certain business entity laws..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1.

2 Section 45 of chapter 108A of the General Laws, as appearing in the 2006 Official  
3 Edition, is hereby amended by striking subsection (6) and inserting in place thereof the following  
4 subsection:-

5 (6) If a partnership fails to file an annual report when due, pay the required fee, or the  
6 payment of any fee due the commonwealth was dishonored when presented for payment and the  
7 partnership has failed to correct the failure within 20 days after written notice of such failure was  
8 mailed to the partnership, the state secretary may revoke the registration of the partnership. The  
9 state secretary shall give the partnership at least 60 days notice of his intention to revoke the  
10 registration of the partnership. The notice shall be given by mail to the partnership at the address  
11 of its principal office as shown in the records of the state secretary. The notice shall specify the  
12 annual reports which have not been filed, the fees which have not been paid, the payment which  
13 has been dishonored, and the effective date of revocation. The revocation shall not be effective  
14 if the annual reports are filed, or the fees are paid, prior to the effective date of revocation.

15 SECTION 2.

16 Chapter 108A of the General Laws, as so appearing, is hereby further amended by adding  
17 the following new sections:-

18 Section 50. Electronic Filings

19 Electronic documents or transmissions may be filed with the secretary of state if, and to  
20 the extent, permitted by the secretary. The secretary of state may promulgate regulations  
21 regarding the procedures for electronic filings which supercede any inconsistent provisions of  
22 this chapter with respect to such filings.

23 Section 51. Correcting a Filed Certificate

24 A limited liability partnership may correct a document filed with the state secretary if the  
25 document:

26 (1) contains a typographical error or an incorrect statement; or

27 (2) was defectively executed, attested, sealed, verified or acknowledged.

28 A document is corrected:

29 by preparing a certificate of correction that (i) describes the document, including its filing  
30 date, (ii) specifies the typographical error, the incorrect statement and the reason it is incorrect or  
31 the manner in which the execution was defective and (iii) corrects the typographical error,  
32 incorrect statement or defective executions; and

33 by delivering the certificate of correction to the secretary of state for filing.

34 A certificate of correction is effective on the effective date of the document it corrects  
35 except as to persons relying on the uncorrected document and adversely affected by the  
36 correction. As to those persons, the certificate of correction is effective when filed.

37 If the secretary of state permits electronic filings, defects in the electronic recording or  
38 transmission of documents may be corrected under this section to the extent permitted by  
39 regulations promulgated by the secretary.

40 The fee for filing a certificate of correction is \$100.00.

41 Section 52. Pre-clearance of Filings

42 The fee for examining and provisionally approving any record at any time before the  
43 record is presented for filing is \$100.00.

44 SECTION 3.

45 Section 13 of chapter 109 of the General Laws, as appearing in the 2006 Official Edition,  
46 is hereby amended by striking subsection (a) and inserting in place thereof the following  
47 subsection:-

48 (a) A signed copy of the certificate of limited partnership and of any certificate of  
49 amendment or cancellation, or any judicial decree of amendment or cancellation, shall be  
50 delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary  
51 need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state  
52 finds that the certificate does not conform to law, upon receipt of all filing fees required by law,  
53 he shall evidence his approval on or with the document. Upon such approval and payment of all  
54 filing fees required by law, the filing shall be deemed to be filed with the secretary of state.

55 SECTION 4.

56 Section 13 of chapter 109 of the General Laws, as so appearing, is further amended by  
57 adding the following new subsection:-

58 (c) Electronic documents or transmissions may be filed with the secretary of state if, and  
59 to the extent, permitted by the secretary. The secretary of state may promulgate regulations  
60 regarding the procedures for electronic filings which supercede any inconsistent provisions of  
61 this chapter with respect to such filings.

62 SECTION 5.

63 Chapter 109 of the General Laws, as so appearing, is further amended by adding, after  
64 section 13, the following new section:-

65 13A. Correcting a Filed Certificate

66 A domestic or foreign limited partnership may correct a document filed with the state  
67 secretary if the document:

68 (1) contains a typographical error or an incorrect statement; or

69 (2) was defectively executed, attested, sealed, verified or acknowledged.

70 A document is corrected:

71 by preparing a certificate of correction that (i) describes the document, including its

72 filing date, (ii) specifies the typographical error, the incorrect statement and the reason it is

73 incorrect or the manner in which the execution was defective and (iii) corrects the typographical

74 error, incorrect statement or defective executions; and

75 by delivering the certificate of correction to the secretary of state for filing.

76 A certificate of correction is effective on the effective date of the document it corrects  
77 except as to persons relying on the uncorrected document and adversely affected by the  
78 correction. As to those persons, the certificate of correction is effective when filed.

79 A certificate of correction cannot be used to change the effective date of a filed  
80 document; provided, however, that if a document has been filed with a delayed effective date, a  
81 certificate of correction may be filed prior to said date:

82 (1) to accelerate the effective date to a date not earlier than the date of the certificate of  
83 correction; or

84 (2) to abandon a merger or amendment if the authority to do so is granted by the merger  
85 agreement or the persons approving the amendment.

86 If the secretary of state permits electronic filings, defects in the electronic recording or  
87 transmission of documents may be corrected under this section to the extent permitted by  
88 regulations promulgated by the secretary.

## 89 SECTION 6.

90 Chapter 109 of the General Laws is hereby further amended by striking Section 16 in its  
91 entirety.

## 92 SECTION 7.

93 Chapter 109 of the General Laws, as so appearing, is hereby amended by adding after  
94 section 43, the following new section:-

95 43A. Conversions

96 (a) As used in this section, an “other entity” means a corporation organized under chapter  
97 156D, a corporation organized under chapter 180, a foreign business corporation, a foreign  
98 nonprofit corporation and any association or entity other than a governmental or quasi-  
99 governmental organization. The term includes, without limitation, limited liability companies,  
100 general partnerships, limited liability partnerships, joint ventures, joint stock companies, business  
101 trusts and profit and not-for-profit unincorporated associations.

102 (b) A limited partnership may convert into an other entity and an other entity may convert  
103 into a limited partnership, provided in each case that if an other entity exists pursuant to the  
104 authority of a chapter of the General Laws, that chapter permits the conversion, and if an other  
105 entity is organized under the laws of a foreign jurisdiction, the laws of that jurisdiction permit the  
106 conversion.

107 (c) A limited partnership converting into an other entity shall comply with the terms of  
108 this section and of its certificate of limited partnership and its partnership agreement, to the  
109 extent they are applicable. An other entity converting into a limited partnership shall comply  
110 with the terms of any laws applicable to it and of its organic documents, to the extent they are  
111 applicable.

112 (d) A limited partnership or an other entity converting pursuant to the authority of this  
113 section (herein the “converting entity”) shall adopt a plan of entity conversion that contains  
114 substantially the information required by section 9.51 of chapter 156D to be contained in a plan  
115 of entity conversion of a business corporation, modified to account for the nature of the  
116 converting entity, as well as any information required by any laws applicable to the converting

117 entity. The plan shall be approved by the converting entity in the manner an amendment of its  
118 organic documents must be approved.

119 (e) The converting entity shall file with the state secretary, and with any other  
120 governmental agency with which the converting entity or the surviving entity is required to make  
121 public filings, articles of entity conversion that contain substantially the information required by  
122 section 9.53 of chapter 156D to be contained in articles of entity conversion of a business  
123 corporation or a domestic or foreign other entity, modified to account for the nature of the  
124 converting entity and the surviving entity.

125 (f) The effect of a conversion authorized by this section shall be the same as is provided  
126 in section 9.55 of chapter 156D.

127 SECTION 8.

128 Section 55 of chapter 109, as so appearing, is hereby amended by adding the following  
129 new subsection:-

130 (c) A foreign limited partnership is liable to the commonwealth for the years or parts of  
131 years during which it transacted business in the commonwealth without delivering to the  
132 secretary of state for filing the certificate required by section 49, an amount equal to:

133 (1) all fees which would have been imposed by law had it duly delivered the certificate;  
134 and

135 (2) all interest and penalties imposed by law for failure to pay the fees. A foreign limited  
136 partnership is further liable to the commonwealth, for each month or part thereof during which it  
137 transacted business without delivering the certificate, an amount determined by the secretary of

138 state, which shall in no event exceed the amount established by the Commissioner of  
139 Administration under section 3B of Chapter 7, except that a foreign limited partnership which  
140 has delivered such certificate shall not be liable for such monthly penalty for the first ten (10)  
141 days during which it transacted business without delivering such certificate. Such fees and  
142 penalties may be levied by the secretary of state. The attorney general may bring an action  
143 necessary to recover amounts due to the commonwealth under this subsection including an  
144 action to restrain a foreign limited partnership against which fees and penalties have been  
145 imposed pursuant to this subsection from transacting business in the commonwealth until the  
146 fees and penalties have been paid.

147 SECTION 9.

148 Chapter 109 is hereby amended by striking out section 61, as so appearing, and inserting  
149 in place thereof the following section:-

150 Section 61. Fees

151 The fee for filing in the office of the secretary of state any original certificate of limited  
152 partnership or application for registration as a foreign limited partnership shall be \$500.00. The  
153 fee for filing a certificate of amendment, correction, cancellation or withdrawal shall be \$100.00.  
154 The fee for reservation of a name shall be \$30.00.

155 SECTION 10.

156 Section 64 of chapter 109, as added by section 51 of chapter 182 of the Acts of 2008, is  
157 hereby amended by striking out subsection (a) and inserting in place thereof the following  
158 subsection:-



159 (a) the state secretary may commence a proceeding to dissolve a limited partnership if:  
160 the limited partnership has failed for 2 or more consecutive years to comply with the laws  
161 requiring the filing of annual reports;  
162 payment of any fee due the commonwealth was dishonored when presented for payment  
163 and the limited partnership has failed to correct the failure within 20 days after written notice of  
164 such failure was mailed to the limited partnership; or  
165 he is satisfied that the limited partnership has become inactive and its dissolution would  
166 be in the public interest.

167 SECTION 11.

168 Section 65 of chapter 109, as added by section 51 of chapter 182 of the Acts of 2008, is  
169 hereby amended by striking out subsection (a) and inserting in place thereof the following  
170 subsection:-

171 (a) The state secretary may commence a proceeding to revoke the authority of a foreign  
172 limited partnership to transact business in the commonwealth if:  
173 the foreign limited partnership has failed for 2 consecutive years to comply with the laws  
174 requiring the filing of annual reports;  
175 payment of any fee due the commonwealth was dishonored when presented for payment  
176 and the foreign limited partnership has failed to correct the failure within 20 days after written  
177 notice of such failure was mailed to the foreign limited partnership; or

178 he is satisfied that the revocation of the foreign limited liability partnership's authority to  
179 transact business in the commonwealth would be in the public interest.

180 SECTION 12.

181 Chapter 109, as so appearing, is hereby further amended by adding the following new  
182 sections:-

183 Section 67. Good Standing

184 A limited partnership shall be deemed to be in good standing with the secretary of state if  
185 such limited partnership appears, from the records of said secretary, to exist and has paid all fees  
186 due to the secretary, and no certificate of cancellation has been filed by or with respect to the  
187 limited partnership. Upon the request of any person and payment of such fee as may be  
188 prescribed by law, the state secretary shall issue a certificate stating, in substance, as to any  
189 limited partnership meeting the requirements of this section, that such limited partnership  
190 appears, from the records in his office, to exist and to be in good standing, and stating the  
191 identity of any and all general partners who are named in the most recent document filed with the  
192 state secretary.

193 Section 68. Pre-clearance of Filings

194 The fee for examining and provisionally approving any record at any time before the  
195 record is presented for filing is \$100.00.

196 SECTION 13.

197 Section 17 of chapter 156C of the General Laws, as appearing in the 2006 Official  
198 Edition, is hereby amended by striking subsection (a) and inserting in place thereof the following  
199 subsection:-

200 (a) The original signed copy of the certificate of organization and of any certificates of  
201 amendment or cancellation or any judicial decree of amendment or cancellation, of any  
202 certificate of consolidation, merger or conversion and of any restated certificate shall be  
203 delivered to the state secretary. A person who executes a certificate as an attorney-in-fact or  
204 fiduciary shall not be required to exhibit evidence of his authority as a prerequisite to filing. Any  
205 certificate authorized to be filed with the state secretary shall be originally signed except as  
206 otherwise required by this chapter or permitted from time to time by the state secretary. Unless  
207 the state secretary finds that any certificate does not conform to law, upon receipt of all filing  
208 fees required by law, he shall evidence his approval on or with the document. Upon said  
209 approval and payment of all filing fees required by law, the filing shall be deemed filed with the  
210 secretary of state. Said endorsement shall be conclusive of the date and time of its filing in the  
211 absence of actual fraud.

212 SECTION 14.

213 Section 17 of said chapter 156C, as so appearing, is hereby further amended by adding to  
214 section 17 the following new paragraph:-

215 (c) Electronic documents or transmissions may be filed with the secretary of state if, and  
216 to the extent, permitted by the secretary. The secretary of state may promulgate regulations  
217 regarding the procedures for electronic filings which supercede any inconsistent provisions of  
218 this chapter with respect to such filings.

219 SECTION 15.

220 Chapter 156C of the General Laws, as so appearing, is further amended by adding, after  
221 section 17, the following new section:-

222 17A. Correcting a Filed Certificate

223 (a) A domestic or foreign limited liability company may correct a document filed with the  
224 state secretary if the document:

225 (1) contains a typographical error or an incorrect statement; or

226 (2) was defectively executed, attested, sealed, verified or acknowledged.

227 (b) A document is corrected:

228 by preparing a certificate of correction that (i) describes the document, including its filing  
229 date, (ii) specifies the typographical error, the incorrect statement and the reason it is incorrect or  
230 the manner in which the execution was defective and (iii) corrects the typographical error,  
231 incorrect statement or defective execution; and

232 by delivering the certificate of correction to the secretary of state for filing.

233 (c) A certificate of correction is effective on the effective date of the document it corrects  
234 except as to persons relying on the uncorrected document and adversely affected by the  
235 correction. As to those persons, the certificate of correction is effective when filed.

236 A certificate of correction cannot be used to change the effective date of a filed  
237 document; provided, however, that if a document has been filed with a delayed effective date, a  
238 certificate of correction may be filed prior to said date:

239 (1) to accelerate the effective date to a date not earlier than the date of the certificate of  
240 correction, or

241 (2) to abandon a merger or amendment if the authority to do so is granted by the merger  
242 agreement or the persons approving the amendment.

243 If the secretary of state permits electronic filings, defects in the electronic recording or  
244 transmission of documents may be corrected under this section to the extent permitted by  
245 regulations promulgated by the secretary.”

246 The fee for filing a certificate of correction with the state secretary is \$100.00.

247 SECTION 16.

248 Section 48 of chapter 156C of the General Laws, as so appearing, is hereby amended by  
249 adding, after clause 5, the following new clause:-

250 (5A) the name of any other person in addition to any manager who is authorized to  
251 execute documents to be filed with the office of the state secretary, and at least one shall be  
252 named if there are no managers.

253 SECTION 17.

254 Section 54 of chapter 156C, as so appearing, is amended by striking paragraph (a) and  
255 inserting in place thereof:

256 (a) A foreign limited liability company is liable to the commonwealth for the years or  
257 parts of years during which it transacted business in the commonwealth without delivering to the  
258 secretary of state for filing the certificate required by section 48, an amount equal to: -

259 (1) all fees which would have been imposed by law had it duly delivered the certificate;  
260 and  
261 (2) all interest and penalties imposed by law for failure to pay the fees. A foreign limited  
262 liability company is further liable to the commonwealth, for each year or part thereof during  
263 which it transacted business without delivering the certificate, an amount not to exceed \$500.00  
264 except that a foreign limited liability company which has delivered such certificate shall not be  
265 liable for such penalty for the first 10 days during which it transacted business without delivering  
266 such certificate. Such fees and penalties may be levied by the secretary of state. The attorney  
267 general may bring an action necessary to recover amounts due to the commonwealth under this  
268 subsection including an action to restrain a foreign limited liability company against which fees  
269 and penalties have been imposed pursuant to this subsection from transacting business in the  
270 commonwealth until the fees and penalties have been paid. No such failure shall affect the  
271 validity of any contract involving the foreign limited liability company, nor is a member or  
272 manager of a foreign limited liability company liable for the obligations of the foreign limited  
273 liability company solely by reason of such failure, but no action shall be maintained or recovery  
274 had by the foreign limited liability company in any of the courts of the commonwealth as long as  
275 such failure continues. The failure of a foreign limited liability company to register with the  
276 state secretary shall not prevent the foreign limited liability company from defending any action,  
277 suit or proceeding in any of the courts of the commonwealth.

278 SECTION 18.

279 Chapter 156C of the General Laws, as appearing in the 2006 Official Edition, is hereby  
280 amended by striking section 69 and inserting in place thereof:-

281           Section 69. Conversions

282           (a) As used in this section, an “other entity” means a corporation organized under chapter  
283 156D, a corporation organized under chapter 180, a foreign business corporation, a foreign  
284 nonprofit corporation and any association or entity other than a governmental or quasi-  
285 governmental organization. The term includes, without limitation, limited partnerships, general  
286 partnerships, limited liability partnerships, joint ventures, joint stock companies, business trusts  
287 and profit and not-for-profit unincorporated associations.

288           (b) A limited liability company may convert into an other entity and an other entity may  
289 convert into a limited liability company, provided in each case that if an other entity exists  
290 pursuant to the authority of a chapter of the General Laws, that chapter permits the conversion,  
291 and if an other entity is organized under the laws of a foreign jurisdiction, the laws of that  
292 jurisdiction permit the conversion.

293           (c) A limited liability company converting into an other entity shall comply with the  
294 terms of this section and of its certificate of organization and its operating agreement, to the  
295 extent they are applicable. An other entity converting into a limited liability company shall  
296 comply with the terms of any laws applicable to it and of its organic documents, to the extent  
297 they are applicable.

298           (d) A limited liability company or an other entity converting pursuant to the authority of  
299 this section (herein the “converting entity”) shall adopt a plan of entity conversion that contains  
300 substantially the information required by section 9.51 of chapter 156D to be contained in a plan  
301 of entity conversion of a business corporation, modified to account for the nature of the  
302 converting entity, as well as any information required by any laws applicable to the converting

303 entity. The plan shall be approved by the converting entity in the manner an amendment of its  
304 organic documents must be approved.

305 (e) the converting entity shall file with the secretary of state, and with any other  
306 governmental agency with which the converting entity or the surviving entity is required to make  
307 public filings, articles of entity conversion that contain substantially the information required by  
308 section 9.53 of chapter 156D to be contained in articles of entity conversion of a business  
309 corporation or a domestic or foreign other entity, modified to account for the nature of the  
310 converting entity and the surviving entity.

311 (f) The effect of a conversion authorized by this section shall be the same as is provided  
312 in section 9.55 of chapter 156D.

313 SECTION 19.

314 Chapter 156C, as most recently amended by chapter 182 of the Acts of 2008, is hereby  
315 further amended by adding, after section 72, the following new section:-

316 Section 73. Pre-clearance of Filings

317 The fee for examining and provisionally approving any record at any time before the  
318 record is presented for filing is \$100.00.

319 SECTION 20.

320 Section 1.20 of chapter 156D, as so appearing, is hereby amended by striking paragraph

321 (h) and inserting in place thereof the following:-



322 (h) The document shall be delivered to the office of the secretary of state for filing and  
323 shall be accompanied by the correct filing fee and any payment or penalty required by this  
324 chapter or other law.

325 SECTION 21.

326 General Laws chapter 156D, as so appearing, is hereby further amended by striking  
327 section 1.22 and inserting in place thereof the following:-

328 Section 1.22. Filing Service and Copying Fees

329 The fee for examining and provisionally approving any record at any time before the  
330 record is presented for filing is \$100.000.

331 The commissioner of administration shall issue regulations prescribing fees for the filing  
332 and copying of documents, the issuance of certificates and the handling of service of process  
333 under this Act.

334 SECTION 22.

335 Section 9.50 of chapter 156D is hereby amended by striking clause (a) and inserting in  
336 place thereof:-

337 (a) A domestic business corporation may become a domestic other entity, provided that in  
338 the case of an other entity that exists pursuant to the authority of a chapter of the General Laws,  
339 that chapter permits. The conversion shall be effected pursuant to a plan of entity conversion.  
340 Section 9.55 governs the effect of converting to that form of a domestic other entity.

341 SECTION 23.

342 Section 9.50 of chapter 156D is hereby further amended by striking clause (c) and  
343 inserting in place thereof:-

344 (c) A domestic other entity may become a domestic business corporation, provided that in  
345 the case of a domestic other entity that exists pursuant to the authority of a chapter of the General  
346 Laws, that chapter permits. Section 9.55 governs the effect of converting to a domestic business  
347 corporation. If the organic law of a domestic other entity, including the chapter of the General  
348 Laws pursuant to which the other entity exists, does not provide procedures for the approval of  
349 an entity conversion, the conversion shall be adopted and approved, and the entity conversion  
350 effectuated, in the same manner as a merger of the other entity and its interest holders shall be  
351 entitled to appraisal rights if appraisal rights are available upon any type of merger under the  
352 organic law of the other entity. If the organic law of a domestic other entity does not provide  
353 procedures for the approval of either an entity conversion or a merger, a plan of entity  
354 conversion shall be adopted and approved, the entity conversion effectuated, and appraisal rights  
355 exercised, in accordance with the procedures in this subdivision and PART 13 of this chapter.  
356 Without limiting the provisions of this subsection, a domestic other entity whose organic law  
357 does not provide procedures for the approval of an entity conversion shall be subject to  
358 subsection (e) of this section and clause (7) of section 9.52. For purposes of applying this  
359 subdivision and PART 13 of this chapter:

360 (1) the other entity, its interest holders, interests and organic documents taken together,  
361 shall be deemed to be a domestic business corporation, shareholders, shares and articles of  
362 organization, respectively, and vice versa, as the context may require; and

363 (2) if the business affairs of the other entity are managed by a group of persons that is not  
364 identical to the interest holders, that group shall be deemed to be the board of directors.

365 SECTION 24.

366 Section 14.20 of chapter 156D, as so appearing, is hereby amended by adding the  
367 following new clause at the end thereof:-

368 (c) payment of any fee due the commonwealth was dishonored when presented for  
369 payment and the corporation has failed to correct the failure within twenty (20) days after written  
370 notice of such failure was mailed to the corporation.

371 SECTION 25.

372 Section 14.23 of chapter 156D, as appearing, is hereby amended by striking subsection  
373 (a) and inserting in place thereof the following subsection:-

374 (a) If the secretary of state denies a corporation's application for reinstatement following  
375 administrative dissolution, he shall provide the corporation with a written notice that explains the  
376 reason or reasons for denial.

377 SECTION 26.

378 Section 15.30 of chapter 156D, as so appearing, is hereby further amended by striking  
379 said section and inserting in place thereof:-

380 Section 15.30. Grounds for Revocation

381 The secretary of state may commence a proceeding under section 15.31 to revoke the  
382 authority of a foreign corporation to transact business in the commonwealth if:

383 the foreign corporation has failed for 2 or more consecutive years to comply with the law  
384 regarding the filing of reports with the secretary of state or the filing of tax returns or the  
385 payment of any taxes under chapter 62C or Chapter 63 for 2 or more consecutive years;

386 the payment of any fee due the commonwealth was dishonored when presented for  
387 payment and the corporation has failed to correct the failure within 20 days after written notice  
388 of such failure was mailed to the corporation; or

389 he is satisfied that the revocation of the foreign corporation's authority to transact  
390 business in the commonwealth would be in the public interest.

391 SECTION 27. Sections 7, 18, 22 and 23 shall be effective as of July 1, 2004.