

HOUSE No. 2773

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to business entity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>	<i>1/21/2011</i>
<i>William F. Galvin</i>	<i>Secretary of the Commonwealth</i>	

HOUSE No. 2773

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2773) of Angelo M. Scaccia and William F. Galvin relative to certain business entity procedures. Financial Services.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to business entity.

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 2008 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. If
9 the state secretary determines that one or more grounds exist for revoking the registration of a
10 partnership, he shall notify the partnership of his determination. The notice shall be sent in
11 writing and mailed postage prepaid to the office of the partnership's resident agent, or if the
12 resident agent consents, sent by electronic mail to an electronic mail address furnished by the
13 agent for such purpose. If the partnership has not appointed a resident agent, notice shall be

given by mail to the partnership at the address of its principal office as shown in the records of the state secretary, or if the partnership consents, sent by electronic mail to an electronic mail address furnished by the partnership for such purpose. The notice shall specify the annual reports which have not been filed, the fees which have not been paid and the payment which has been dishonored. If the partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the state secretary that each ground determined by the secretary of state does not exist within 60 days after notice is given, the state secretary shall administratively revoke the registration of the partnership.

SECTION 2.

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

Section 50. Electronic Filings

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

Section 51. Correcting a Filed Certificate

(a) A limited liability partnership may correct a document filed with the state secretary if the document:

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

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

(b) A document is corrected:

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

(2) by delivering the certificate of correction to the secretary of state for filing.

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

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

(e) The fee for filing a certificate of correction is \$100.00.

Section 52. Pre-clearance of Filings

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

SECTION 3.

Section 13 of chapter 109 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the following subsection:-

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

SECTION 4.

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

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

SECTION 5.

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

13A. Correcting a Filed Certificate

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

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

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

(b) A document is corrected:

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

(2) by delivering the certificate of correction to the secretary of state for filing.

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

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

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

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

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

96 SECTION 6.

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

99 SECTION 7.

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

102 43A. Conversions

103 (a) As used in this section, an “other entity” means a corporation organized under chapter
104 156D, a corporation organized under chapter 180, a foreign business corporation, a foreign
105 nonprofit corporation and any association or entity other than a governmental or quasi-
106 governmental organization. The term includes, without limitation, limited liability companies,
107 general partnerships, limited liability partnerships, joint ventures, joint stock companies, business
108 trusts and profit and not-for-profit unincorporated associations.

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

114 (c) A limited partnership converting into an other entity shall comply with the terms of
115 this section and of its certificate of limited partnership and its partnership agreement, to the
116 extent they are applicable. An other entity converting into a limited partnership shall comply

117 with the terms of any laws applicable to it and of its organic documents, to the extent they are
118 applicable.

119 (d) A limited partnership or an other entity converting pursuant to the authority of this
120 section (herein the “converting entity”) shall adopt a plan of entity conversion that contains
121 substantially the information required by section 9.51 of chapter 156D to be contained in a plan
122 of entity conversion of a business corporation, modified to account for the nature of the
123 converting entity, as well as any information required by any laws applicable to the converting
124 entity. The plan shall be approved by the converting entity in the manner an amendment of its
125 organic documents must be approved.

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

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

134 SECTION 8.

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

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

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

(2) all interest and penalties imposed by law for failure to pay the fees. A foreign limited partnership is further liable to the commonwealth, for each month or part thereof during which it transacted business without delivering the certificate, an amount determined by the secretary of state, which shall in no event exceed the amount established by the Commissioner of Administration under section 3B of Chapter 7, except that a foreign limited partnership which has delivered such certificate shall not be liable for such monthly penalty for the first ten (10) days during which it transacted business without delivering such certificate. Such fees and penalties may be levied by the secretary of state. The attorney general may bring an action necessary to recover amounts due to the commonwealth under this subsection including an action to restrain a foreign limited partnership against which fees and penalties have been imposed pursuant to this subsection from transacting business in the commonwealth until the fees and penalties have been paid.

SECTION 9.

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

Section 61. Fees

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

SECTION 10.

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

(a) the state secretary may commence a proceeding to dissolve a limited partnership if:

(1) the limited partnership has failed for 2 or more consecutive years to comply with the laws requiring the filing of annual reports;

(2) payment of any fee due the commonwealth was dishonored when presented for payment and the limited partnership has failed to correct the failure within 20 days after written notice of such failure was mailed to the limited partnership; or

(3) he is satisfied that the limited partnership has become inactive and its dissolution would be in the public interest.

(b) If the state secretary determines that one or more grounds exist for dissolving a limited partnership, he shall notify the partnership's resident agent of his determination. The notice shall be sent in writing and mailed postage prepaid to the resident agent's office, or if the resident agent consents, sent by electronic mail to an electronic mail address furnished by the agent for such purpose. The notice shall specify the annual reports which have not been filed,

the fees which have not been paid and the payment which has been dishonored. If the partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the state secretary that each ground determined by the secretary of state does not exist within 90 days after notice is given, the state secretary shall administratively dissolve the limited partnership.

SECTION 11.

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

(a) The state secretary may commence a proceeding to revoke the authority of a foreign limited partnership to transact business in the commonwealth if:

(1) the foreign limited partnership has failed for 2 consecutive years to comply with the laws requiring the filing of annual reports;

(2) payment of any fee due the commonwealth was dishonored when presented for payment and the foreign limited partnership has failed to correct the failure within 20 days after written notice of such failure was mailed to the foreign limited partnership; or

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

(b) If the state secretary determines that one or more grounds exist to revoke the authority of the foreign limited partnership to transact business in the commonwealth, he shall notify the foreign limited partnership's resident agent of his determination. The notice shall be sent in

writing and mailed postage prepaid to the resident agent's office, or if the resident agent consents, sent by electronic mail to an electronic mail address furnished by the agent for such purpose. The notice shall specify the annual reports which have not been filed, the fees which have not been paid and the payment which has been dishonored. If the partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the state secretary that each ground determined by the secretary of state does not exist within 90 days after notice is given, the state secretary shall administratively dissolve the limited partnership.

SECTION 12.

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

Section 67. Good Standing

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

Section 68. Pre-clearance of Filings

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

SECTION 13.

Section 17 of chapter 156A of the General Laws as appearing in the 1996 Official Edition, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) A foreign professional corporation shall register under the provisions of this section if the corporation would be required to incorporate under this chapter if organized in the commonwealth and

(1) it maintains an office in the commonwealth; or

(2) any of its shareholders, officers, or directors conducts activity on behalf of the corporation in the commonwealth as to require licensing under the provisions of chapter one hundred and twelve or chapter two hundred and twenty-one.

SECTION 14.

Section 17 of chapter 156C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the following subsection:-

(a) The original signed copy of the certificate of organization and of any certificates of amendment or cancellation or any judicial decree of amendment or cancellation, of any certificate of consolidation, merger or conversion and of any restated certificate shall be delivered to the state secretary. A person who executes a certificate as an attorney-in-fact or

fiduciary shall not be required to exhibit evidence of his authority as a prerequisite to filing. Any certificate authorized to be filed with the state secretary shall be originally signed except as otherwise required by this chapter or permitted from time to time by the state secretary. Unless the state secretary finds that any certificate does not conform to law, upon receipt of all filing fees required by law, he shall evidence his approval on or with the document. Upon said approval and payment of all filing fees required by law, the filing shall be deemed filed with the secretary of state. Said endorsement shall be conclusive of the date and time of its filing in the absence of actual fraud.

SECTION 15.

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

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

SECTION 16.

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

17A. Correcting a Filed Certificate

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

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

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

265 (b) A document is corrected:

266 (1) by preparing a certificate of correction that (i) describes the document, including

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

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

269 error, incorrect statement or defective execution; and

270 (2) by delivering the certificate of correction to the secretary of state for filing.

271 (c) A certificate of correction is effective on the effective date of the document it corrects

272 except as to persons relying on the uncorrected document and adversely affected by the

273 correction. As to those persons, the certificate of correction is effective when filed.

274 (d) A certificate of correction cannot be used to change the effective date of a filed

275 document; provided, however, that if a document has been filed with a delayed effective date, a

276 certificate of correction may be filed prior to said date:

277 (1) to accelerate the effective date to a date not earlier than the date of the certificate of

278 correction, or

279 (2) to abandon a merger or amendment if the authority to do so is granted by the merger

280 agreement or the persons approving the amendment.

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

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

SECTION 17.

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

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

SECTION 18.

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

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

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

(2) all interest and penalties imposed by law for failure to pay the fees. A foreign limited liability company is further liable to the commonwealth, for each year or part thereof during

which it transacted business without delivering the certificate, an amount not to exceed \$500.00 except that a foreign limited liability company which has delivered such certificate shall not be liable for such penalty for the first 10 days during which it transacted business without delivering such certificate. Such fees and penalties may be levied by the secretary of state. The attorney general may bring an action necessary to recover amounts due to the commonwealth under this subsection including an action to restrain a foreign limited liability company against which fees and penalties have been imposed pursuant to this subsection from transacting business in the commonwealth until the fees and penalties have been paid. No such failure shall affect the validity of any contract involving the foreign limited liability company, nor is a member or manager of a foreign limited liability company liable for the obligations of the foreign limited liability company solely by reason of such failure, but no action shall be maintained or recovery had by the foreign limited liability company in any of the courts of the commonwealth as long as such failure continues. The failure of a foreign limited liability company to register with the state secretary shall not prevent the foreign limited liability company from defending any action, suit or proceeding in any of the courts of the commonwealth.

SECTION 19.

Chapter 156C of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking section 69 and inserting in place thereof:-

Section 69. Conversions

(a) As used in this section, an “other entity” means a corporation organized under chapter 156D, a corporation organized under chapter 180, a foreign business corporation, a foreign nonprofit corporation and any association or entity other than a governmental or quasi-

governmental organization. The term includes, without limitation, limited partnerships, general partnerships, limited liability partnerships, joint ventures, joint stock companies, business trusts and profit and not-for-profit unincorporated associations.

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

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

(d) A limited liability company or an other entity converting pursuant to the authority of this section (herein the “converting entity”) shall adopt a plan of entity conversion that contains substantially the information required by section 9.51 of chapter 156D to be contained in a plan of entity conversion of a business corporation, modified to account for the nature of the converting entity, as well as any information required by any laws applicable to the converting entity. The plan shall be approved by the converting entity in the manner an amendment of its organic documents must be approved.

(e) the converting entity shall file with the secretary of state, and with any other governmental agency with which the converting entity or the surviving entity is required to make

public filings, articles of entity conversion that contain substantially the information required by section 9.53 of chapter 156D to be contained in articles of entity conversion of a business corporation or a domestic or foreign other entity, modified to account for the nature of the converting entity and the surviving entity.

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

SECTION 20.

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

Section 73. Pre-clearance of Filings

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

SECTION 21.

Section 1.20 of chapter 156D, as so appearing, is hereby amended by striking paragraph (h) and inserting in place thereof the following:-

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

SECTION 22.

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

Section 1.22. Filing Service and Copying Fees

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

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

SECTION 23.

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

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

SECTION 24.

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

(c) A domestic other entity may become a domestic business corporation, provided that in the case of a domestic other entity that exists pursuant to the authority of a chapter of the General

Laws, that chapter permits. Section 9.55 governs the effect of converting to a domestic business corporation. If the organic law of a domestic other entity, including the chapter of the General Laws pursuant to which the other entity exists, does not provide procedures for the approval of an entity conversion, the conversion shall be adopted and approved, and the entity conversion effectuated, in the same manner as a merger of the other entity and its interest holders shall be entitled to appraisal rights if appraisal rights are available upon any type of merger under the organic law of the other entity. If the organic law of a domestic other entity does not provide procedures for the approval of either an entity conversion or a merger, a plan of entity conversion shall be adopted and approved, the entity conversion effectuated, and appraisal rights exercised, in accordance with the procedures in this subdivision and PART 13 of this chapter. Without limiting the provisions of this subsection, a domestic other entity whose organic law does not provide procedures for the approval of an entity conversion shall be subject to subsection (e) of this section and clause (7) of section 9.52. For purposes of applying this subdivision and PART 13 of this chapter:

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

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

SECTION 25.

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

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

SECTION 26.

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

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

SECTION 27.

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

Section 15.30. Grounds for Revocation

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

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

424 (b) the payment of any fee due the commonwealth was dishonored when presented
425 for payment and the corporation has failed to correct the failure within 20 days after written
426 notice of such failure was mailed to the corporation; or

427 (c) he is satisfied that the revocation of the foreign corporation's authority to transact
428 business in the commonwealth would be in the public interest.