

HOUSE No. 2819

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 a business entity.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Angelo M. Scaccia</i>	<i>14th Suffolk</i>	<i>1/15/2015</i>
<i>William F. Galvin</i>	<i>Secretary of the Commonwealth</i>	<i>1/15/2015</i>

HOUSE No. 2819

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2819) of Angelo M. Scaccia and William Francis Galvin (Secretary of the Commonwealth) relative to the reporting requirements of limited liability partnerships and certain corporations. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2877 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act relative to a 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 2012 Official
3 Edition, is hereby amended by striking, in line 4 and line 17, the words “federal employer
4 identification number of the partnership”.

5 SECTION 2.

6 Section 45 of chapter 108A of the General Laws, as appearing in the 2012 Official
7 Edition, is hereby amended by striking subsection (6) and inserting in place thereof the following
8 subsection:-

9 (6) If a partnership fails to file an annual report when due, pay the required fee, or the
10 payment of any fee due the commonwealth was dishonored when presented for payment and the
11 partnership has failed to make payment within 20 days after written notice of such failure was
12 mailed to the partnership, the state secretary may revoke the registration of the partnership. If
13 the state secretary determines that one or more grounds exist for revoking the registration of a
14 partnership, he shall notify the partnership of his determination. The notice shall be sent in
15 writing and mailed postage prepaid to the office of the partnership's resident agent, or if the
16 resident agent consents, sent by electronic mail to an electronic mail address furnished by the
17 agent for such purpose. If the partnership has not appointed a resident agent, notice shall be
18 given by mail to the partnership at the address of its principal office as shown in the records of
19 the state secretary, or if the partnership consents, sent by electronic mail to an electronic mail
20 address furnished by the partnership for such purpose. The notice shall specify the annual
21 reports which have not been filed and the fees which have not been paid. If the partnership does
22 not correct each ground for revocation or demonstrate to the reasonable satisfaction of the state
23 secretary that each ground determined by the secretary of state does not exist within 60 days after
24 notice is given, the state secretary shall administratively revoke the registration of the
25 partnership.

26 SECTION 3.

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

29 Section 50. Electronic Filings

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

34 Section 51. Correcting a Filed Certificate

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

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

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

39 (b) A document is corrected:

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

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

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

48 (d) A certificate of correction cannot be used to change the effective date of a filed
49 document.

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

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

54 Section 52. Pre-clearance of Filings

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

57 SECTION 4.

58 Section 13 of chapter 109 of the General Laws, as appearing in the 2012 Official Edition,
59 is hereby amended by striking subsection (a) and inserting in place thereof the following
60 subsection:-

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

68 SECTION 5.

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

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

75 SECTION 6.

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

78 13A. Correcting a Filed Certificate

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

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

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

83 (b) A document is corrected:

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

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

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

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

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

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

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

102 SECTION 7.

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

105 SECTION 8.

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

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

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

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

125 SECTION 9.

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

128 Section 61. Fees

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

133 SECTION 10.

134 Section 64 of chapter 109 is hereby amended by striking out subsections (a) and (b)
135 inserting in place thereof the following subsections:-

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

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

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

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

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

150 partnership does not correct each ground for dissolution or demonstrate to the reasonable
151 satisfaction of the state secretary that each ground determined by the secretary of state does not
152 exist within 90 days after notice is given, the state secretary shall administratively dissolve the
153 limited partnership.

154 SECTION 11.

155 Section 65 of chapter 109 is hereby amended by striking out subsections (a) and (b) and
156 inserting in place thereof the following subsection:-

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

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

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

164 (b) If the state secretary determines that one or more grounds exist to revoke the
165 authority of the foreign limited partnership to transact business in the commonwealth, he shall
166 notify the foreign limited partnership's resident agent of his determination. The notice shall be
167 sent in writing and mailed postage prepaid to the resident agent's office, or if the resident agent
168 consents, sent by electronic mail to an electronic mail address furnished by the agent for such
169 purpose. The notice shall specify the annual reports which have not been filed, the fees which
170 have not been paid and the payment which has been dishonored. If the partnership does not

171 correct each ground for revocation or demonstrate to the reasonable satisfaction of the state
172 secretary that each ground determined by the secretary of state does not exist within 90 days after
173 notice is given, the state secretary shall administratively revoke the authority of the limited
174 partnership to transact business in the commonwealth.

175 (c) The authority of the foreign limited partnership to transact business in the
176 commonwealth shall cease on the date on which the Secretary makes such revocation effective.

177 SECTION 12.

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

180 Section 67. Good Standing

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

190 Section 68. Pre-clearance of Filings

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

193 SECTION 13.

194 Section 17 of chapter 156A of the General Laws as appearing in the 2012 Official
195 Edition, is hereby amended by striking out paragraph (a) and inserting in place thereof the
196 following paragraph:-

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

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

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

204 SECTION 14.

205 Section 17 of chapter 156C of the General Laws, as appearing in the 2012 Official
206 Edition, is hereby amended by striking subsection (a) and inserting in place thereof the following
207 subsection:-

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

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

220 SECTION 15.

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

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

227 SECTION 16.

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

230 17A. Correcting a Filed Certificate

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

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

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

235 (b) A document is corrected:

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

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

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

239 error, incorrect statement or defective execution; and

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

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

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

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

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

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

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

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

248 correction, or

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

250 agreement or the persons approving the amendment.

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

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

255 SECTION 17.

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

258 (5A) the name of any other person in addition to any manager who is authorized to
259 execute documents to be filed with the office of the state secretary, and at least one shall be
260 named if there are no managers.

261 SECTION 18.

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

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

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

268 and

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

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

286 SECTION 19.

287 Chapter 156C, as so appearing, is hereby amended by striking section 70 and inserting in
288 place thereof:-

289 (a) The state secretary may commence a proceeding to dissolve a limited liability
290 company if:

291 1. The limited liability company has failed for two consecutive years to comply with
292 the law requiring the filing of annual reports; or

293 2. The payment of any fee due the commonwealth was dishonored when presented
294 for payment and the limited liability company has failed to make payment within 20 days after
295 written notice of such failure was mailed to the limited liability company; or

296 3. He is satisfied that the limited liability company has become inactive and its
297 dissolution would be in the public interest.

298 (b) If the state secretary determines that grounds exist under subsection (a), he shall
299 notify the limited liability company of his determination. The notice shall be sent in writing and
300 mailed postage prepaid to the office of the limited liability company's resident agent, or if the
301 resident agent consents, sent by electronic mail to an electronic mail address furnished by the
302 agent for such purpose. The notice shall specify the annual reports which have not been filed
303 and the fees which have not been paid. If the limited liability company does not correct each
304 ground for dissolution or demonstrate to the reasonable satisfaction of the state secretary that
305 each ground for dissolution does not exist within 90 days after notice is given, the state secretary
306 shall administratively dissolve the limited liability company.

307 (c) A limited liability company administratively dissolved continues in existence but
308 shall not carry on any business except that necessary to wind up and liquidate its affairs.

309 SECTION 20.

310 Chapter 156C as so appearing is hereby amended by striking section 72 and inserting in
311 place thereof:-

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

314 1. The foreign limited liability company has failed for two consecutive years to
315 comply with the laws requiring the filing of annual reports; or

316 2. The payment of any fee due the commonwealth was dishonored when presented
317 for payment and the foreign limited liability company has failed to make payment within 20 days
318 after written notice of such failure was mailed to the foreign limited liability company;

319 (b) If the state secretary determines that grounds exist under subsection (a), he shall
320 notify the foreign limited liability company of his determination. The notice shall be sent in
321 writing and mailed postage prepaid to the office of the foreign limited liability company's
322 resident agent, or if the resident agent consents, sent by electronic mail to an electronic mail
323 address furnished by said agent for such purpose. The notice shall specify the annual reports
324 which have not been filed and the fees which have not been paid. If the foreign limited liability
325 company does not correct each ground for revocation or demonstrate to the reasonable
326 satisfaction of the state secretary that each ground for revocation does not exist within 90 days
327 after notice is given, the state secretary shall administratively revoke the authority of the foreign
328 limited liability company to transact business in the commonwealth.

329 (c) The authority of the foreign limited liability company to transact business in the
330 commonwealth shall cease on the date on which the state secretary makes such revocation
331 effective.

332 SECTION 21.

333 Chapter 156C is hereby further amended by adding, after section 72, the following new
334 section:-

335 Section 73. Pre-clearance of Filings

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

338 SECTION 22.

339 Section 1.20 of chapter 156D as appearing in the 2012 Official Edition is hereby
340 amended by striking paragraph (h) and inserting in place thereof the following:-

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

344 SECTION 23.

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

347 Section 1.22. Filing Service and Copying Fees

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

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

353 SECTION 24.

354 Section 14.20 of chapter 156D, as so appearing, is hereby amended by striking clause (b)
355 and inserting the following:-

356 (b) the secretary of state is satisfied that the corporation has become inactive and its
357 dissolution would be in the public interest; or

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

361 SECTION 25.

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

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

367 SECTION 26.

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

370 Section 15.30. Grounds for Revocation

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

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

376 (b) the payment of any fee due the commonwealth was dishonored when presented
377 for payment and the corporation has failed to make payment within 20 days after written notice
378 of such failure was mailed to the corporation.