

HOUSE No. 2777

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>1/16/2019</i> |
| <i>William Francis Galvin</i> | <i>Secretary of the Commonwealth</i> | <i>1/16/2019</i> |

HOUSE No. 2777

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 2777) of Angelo M. Scaccia and William Francis Galvin relative to the reporting requirements of limited liability partnerships and certain corporations. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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. Section 45 of Chapter 108A of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by striking, in line 4 and line 18, the words “federal
3 employer identification number of the partnership”.

4 SECTION 2. Section 45 of chapter 108A of the General Laws, as so appearing is hereby
5 further amended by striking subsection (6) and inserting in place thereof the following
6 subsection:-

7 (6) If a partnership fails to file an annual report when due, pay the required fee, or the
8 payment of any fee due the commonwealth was dishonored when presented for payment and the
9 partnership has failed to make payment within 20 days after written notice of such failure was
10 mailed to the partnership, the state secretary may revoke the registration of the partnership. If
11 the state secretary determines that one or more grounds exist for revoking the registration of a
12 partnership, he shall notify the partnership of his determination. The notice shall be sent in

13 writing and mailed postage prepaid to the office of the partnership's resident agent, or if the
14 resident agent consents, sent by electronic mail to an electronic mail address furnished by the
15 agent for such purpose. If the partnership has not appointed a resident agent, notice shall be
16 given by mail to the partnership at the address of its principal office as shown in the records of
17 the state secretary, or if the partnership consents, sent by electronic mail to an electronic mail
18 address furnished by the partnership for such purpose. The notice shall specify the annual
19 reports which have not been filed and the fees which have not been paid. If the partnership does
20 not correct each ground for revocation or demonstrate to the reasonable satisfaction of the state
21 secretary that each ground determined by the secretary of state does not exist within 60 days after
22 notice is given, the state secretary shall administratively revoke the registration of the
23 partnership.

24 SECTION 3. Chapter 108A of the General Laws, as so appearing, is hereby further
25 amended by adding the following new sections:-

26 Section 50. Electronic Filings

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

31 Section 51. Correcting a Filed Certificate

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

- 34 (1) contains a typographical error or an incorrect statement; or
- 35 (2) was defectively executed, attested, sealed, verified or acknowledged.
- 36 (b) A document is corrected:
- 37 (1) by preparing a certificate of correction that (i) describes the document, including
- 38 its filing date, (ii) specifies the typographical error, the incorrect statement and the reason it is
- 39 incorrect or the manner in which the execution was defective and (iii) corrects the typographical
- 40 error, incorrect statement or defective executions; and
- 41 (2) by delivering the certificate of correction to the secretary of state for filing.
- 42 (c) A certificate of correction is effective on the effective date of the document it
- 43 corrects except as to persons relying on the uncorrected document and adversely affected by the
- 44 correction. As to those persons, the certificate of correction is effective when filed.
- 45 (d) A certificate of correction cannot be used to change the effective date of a filed
- 46 document, provided however, that if a document has been filed with a delayed effective date, a
- 47 certificate of correction may be filed prior to said date to accelerate the effective date to a date
- 48 not earlier than the date of the certificate of correction.
- 49 (e) If the secretary of state permits electronic filings, defects in the electronic
- 50 recording or transmission of documents may be corrected under this section to the extent
- 51 permitted by regulations promulgated by the secretary.
- 52 (f) The fee for filing a certificate of correction is \$100.00.

53 Section 52. Pre-clearance of Filings

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

56 SECTION 4. Section 13 of chapter 109 of the General Laws, as appearing in the 2016
57 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the
58 following subsection:-

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

66 SECTION 5. Section 13 of chapter 109 of the General Laws, as so appearing, is further
67 amended by adding the following new subsection:-

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

72 SECTION 6. Chapter 109 of the General Laws, as so appearing, is further amended by
73 adding, after section 13, the following new section:-

74 13A. Correcting a Filed Certificate

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

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

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

79 (b) A document is corrected:

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

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

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

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

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

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

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

98 SECTION 7. Chapter 109 of the General Laws is hereby further amended by striking
99 Section 16 in its entirety.

100 SECTION 8. Section 55 of chapter 109, as so appearing, is hereby amended by adding
101 the following new subsection:-

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

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

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

117 imposed pursuant to this subsection from transacting business in the commonwealth until the
118 fees and penalties have been paid.

119 SECTION 9. Section 64 of chapter 109 is hereby amended by striking out subsections
120 (a) and (b) inserting in place thereof the following subsections:-

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

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

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

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

129 (b) If the state secretary determines that one or more grounds exist for dissolving a
130 limited partnership, he shall notify the partnership's resident agent of his determination. The
131 notice shall be sent in writing and mailed postage prepaid to the resident agent's office, or if the
132 resident agent consents, sent by electronic mail to an electronic mail address furnished by the
133 agent for such purpose. The notice shall specify the annual reports which have not been filed,
134 the fees which have not been paid and the payment which has been dishonored. If the
135 partnership does not correct each ground for dissolution or demonstrate to the reasonable
136 satisfaction of the state secretary that each ground determined by the secretary of state does not

137 exist within 90 days after notice is given, the state secretary shall administratively dissolve the
138 limited partnership.

139 SECTION 10. Section 65 of chapter 109 is hereby amended by striking out subsections
140 (a) and (b) and inserting in place thereof the following subsection:-

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

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

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

148 (b) If the state secretary determines that one or more grounds exist to revoke the
149 authority of the foreign limited partnership to transact business in the commonwealth, he shall
150 notify the foreign limited partnership's resident agent of his determination. The notice shall be
151 sent in writing and mailed postage prepaid to the resident agent's office, or if the resident agent
152 consents, sent by electronic mail to an electronic mail address furnished by the agent for such
153 purpose. The notice shall specify the annual reports which have not been filed, the fees which
154 have not been paid and the payment which has been dishonored. If the partnership does not
155 correct each ground for revocation or demonstrate to the reasonable satisfaction of the state
156 secretary that each ground determined by the secretary of state does not exist within 90 days after
157 notice is given, the state secretary shall administratively revoke the authority of the limited
158 partnership to transact business in the commonwealth.

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

161 SECTION 11. Chapter 109, as so appearing, is hereby further amended by adding the
162 following new sections:-

163 Section 67. Good Standing

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

173 Section 68. Pre-clearance of Filings

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

176 SECTION 12. Section 17 of chapter 156A of the General Laws as appearing in the 2016
177 Official Edition, is hereby amended by striking out paragraph (a) and inserting in place thereof
178 the following paragraph:-

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

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

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

186 SECTION 13. Section 17 of chapter 156C of the General Laws, as so appearing is hereby
187 further amended by striking subsection (a) and inserting in place thereof the following
188 subsection:-

189 (a) The original signed copy of the certificate of organization and of any certificates of
190 amendment or cancellation or any judicial decree of amendment or cancellation, of any
191 certificate of consolidation, merger or conversion and of any restated certificate shall be
192 delivered to the state secretary. A person who executes a certificate as an attorney-in-fact or
193 fiduciary shall not be required to exhibit evidence of his authority as a prerequisite to filing.
194 Unless the state secretary finds that any certificate does not conform to law, upon receipt of all
195 filing fees required by law, he shall evidence his approval on or with the document. Upon said
196 approval and payment of all filing fees required by law, the filing shall be deemed filed with the
197 secretary of state. Said endorsement shall be conclusive of the date and time of its filing in the
198 absence of actual fraud.

199 SECTION 14.

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

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

206 SECTION 15. Chapter 156C of the General Laws, as so appearing, is further amended by
207 adding, after section 17, the following new section:-

208 17A. Correcting a Filed Certificate

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

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

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

213 (b) A document is corrected:

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

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

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

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

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

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

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

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

233 SECTION 16. Section 48 of chapter 156C of the General Laws, as so appearing, is
234 hereby amended by adding, after clause 5, the following new clause:-

235 (5A) the name of any other person in addition to any manager who is authorized to
236 execute documents to be filed with the office of the state secretary, and at least one shall be
237 named if there are no managers.

238 SECTION 17. Section 54 of chapter 156C, as so appearing, is amended by striking
239 paragraph (a) and inserting in place thereof:

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

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

245 (2) all interest and penalties imposed by law for failure to pay the fees. A foreign limited
246 liability company is further liable to the commonwealth, for each year or part thereof during
247 which it transacted business without delivering the certificate, an amount not to exceed \$500.00
248 except that a foreign limited liability company which has delivered such certificate shall not be
249 liable for such penalty for the first 10 days during which it transacted business without delivering
250 such certificate. Such fees and penalties may be levied by the secretary of state. The attorney
251 general may bring an action necessary to recover amounts due to the commonwealth under this
252 subsection including an action to restrain a foreign limited liability company against which fees
253 and penalties have been imposed pursuant to this subsection from transacting business in the
254 commonwealth until the fees and penalties have been paid. No such failure shall affect the
255 validity of any contract involving the foreign limited liability company, nor is a member or
256 manager of a foreign limited liability company liable for the obligations of the foreign limited
257 liability company solely by reason of such failure, but no action shall be maintained or recovery
258 had by the foreign limited liability company in any of the courts of the commonwealth as long as
259 such failure continues. The failure of a foreign limited liability company to register with the
260 state secretary shall not prevent the foreign limited liability company from defending any action,
261 suit or proceeding in any of the courts of the commonwealth.

262 SECTION 18. Chapter 156C, as so appearing, is hereby amended by striking section 70
263 and inserting in place thereof:-

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

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

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

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

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

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

284 SECTION 19. Chapter 156C as so appearing is hereby amended by striking section 72
285 and inserting in place thereof:-

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

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

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

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

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

306 SECTION 20. Chapter 156C is hereby further amended by adding, after section 72, the
307 following new section:-

308 Section 73. Pre-clearance of Filings

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

311 SECTION 21. Section 1.20 of chapter 156D as appearing in the 2016 Official Edition is
312 hereby amended by striking paragraph (h) and inserting in place thereof the following:-

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

316 SECTION 22. General Laws chapter 156D, as so appearing, is hereby further amended
317 by striking section 1.22 and inserting in place thereof the following:-

318 Section 1.22. Filing Service and Copying Fees

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

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

324 SECTION 23. Section 14.20 of chapter 156D, as so appearing, is hereby amended by
325 striking clause (b) and inserting the following:-

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

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

331 SECTION 24. Section 14.23 of chapter 156D, as appearing, is hereby amended by
332 striking subsection (a) and inserting in place thereof the following subsection:-

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

336 SECTION 25. Section 15.30 of chapter 156D, as so appearing, is hereby further amended
337 by striking said section and inserting in place thereof:-

338 Section 15.30. Grounds for Revocation

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

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

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