

SENATE No. 256

The Commonwealth of Massachusetts

PRESENTED BY:

Nick Collins

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:

Nick Collins

DISTRICT/ADDRESS:

First Suffolk

SENATE No. 256

By Mr. Collins, a petition (accompanied by bill, Senate, No. 256) of Nick Collins for legislation relative to a business entity. Economic Development and Emerging Technologies.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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.

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

27 Section 50. Electronic Filings

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

32 Section 51. Correcting a Filed Certificate

- 33 • A limited liability partnership may correct a document filed with the state
34 secretary if the document:
- 35 (1) contains a typographical error or an incorrect statement; or
36 (2) was defectively executed, attested, sealed, verified or acknowledged.
- 37 • A document is corrected:
- 38 • by preparing a certificate of correction that (i) describes the document, including
39 its filing date, (ii) specifies the typographical error, the incorrect statement and the reason it is
40 incorrect or the manner in which the execution was defective and (iii) corrects the typographical
41 error, incorrect statement or defective executions; and
- 42 • by delivering the certificate of correction to the secretary of state for filing.
- 43 • A certificate of correction is effective on the effective date of the document it
44 corrects except as to persons relying on the uncorrected document and adversely affected by the
45 correction. As to those persons, the certificate of correction is effective when filed.
- 46 • A certificate of correction cannot be used to change the effective date of a filed
47 document, provided however, that if a document has been filed with a delayed effective date, a
48 certificate of correction may be filed prior to said date to accelerate the effective date to a date
49 not earlier than the date of the certificate of correction.
- 50 • 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 • 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 2016 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 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 • A document is corrected:

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

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

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

129 • the limited partnership has failed for 2 or more consecutive years to comply with
130 the laws requiring the filing of annual reports;

- 131 • payment of any fee due the commonwealth was dishonored when presented for
132 payment and the limited partnership has failed to make payment within 20 days after written
133 notice of such failure was mailed to the limited partnership; or
- 134 • he is satisfied that the limited partnership has become inactive and its dissolution
135 would be in the public interest.

136 (b) If the state secretary determines that one or more grounds exist for dissolving a
137 limited partnership, he shall notify the partnership's resident agent of his determination. The
138 notice shall be sent in writing and mailed postage prepaid to the resident agent's office, or if the
139 resident agent consents, sent by electronic mail to an electronic mail address furnished by the
140 agent for such purpose. The notice shall specify the annual reports which have not been filed,
141 the fees which have not been paid and the payment which has been dishonored. If the
142 partnership does not correct each ground for dissolution or demonstrate to the reasonable
143 satisfaction of the state secretary that each ground determined by the secretary of state does not
144 exist within 90 days after notice is given, the state secretary shall administratively dissolve the
145 limited partnership.

146 SECTION 10.

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

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

151 • the foreign limited partnership has failed for 2 consecutive years to comply with
152 the laws requiring the filing of annual reports;

153 • payment of any fee due the commonwealth was dishonored when presented for
154 payment and the foreign limited partnership has failed to make payment within 20 days after
155 written notice of such failure was mailed to the foreign limited partnership; or

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

167 • The authority of the foreign limited partnership to transact business in the
168 commonwealth shall cease on the date on which the secretary makes such revocation effective.

169 SECTION 11.

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

172 Section 67. Good Standing

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

182 Section 68. Pre-clearance of Filings

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

185 SECTION 12.

186 Section 17 of chapter 156A of the General Laws as appearing in the 2016 Official
187 Edition, is hereby amended by striking out paragraph (a) and inserting in place thereof the
188 following paragraph:-

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

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

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

196 SECTION 13.

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

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

209 SECTION 14.

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

212 (c) Electronic documents or transmissions may be filed with the secretary of state if, and
213 to the extent, permitted by the secretary. The secretary of state may promulgate regulations

214 regarding the procedures for electronic filings which supercede any inconsistent provisions of
215 this chapter with respect to such filings.

216 SECTION 15.

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

219 17A. Correcting a Filed Certificate

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

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

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

224 (b) A document is corrected:

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

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

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

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

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

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

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

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

244 SECTION 16.

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

247 (5A) the name of any other person in addition to any manager who is authorized to
248 execute documents to be filed with the office of the state secretary, and at least one shall be
249 named if there are no managers.

250 SECTION 17.

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

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

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

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

275 SECTION 18.

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

278 • The state secretary may commence a proceeding to dissolve a limited liability
279 company if:

280 • The limited liability company has failed for two consecutive years to comply with
281 the law requiring the filing of annual reports; or

282 • The payment of any fee due the commonwealth was dishonored when presented
283 for payment and the limited liability company has failed to make payment within 20 days after
284 written notice of such failure was mailed to the limited liability company; or

285 • He is satisfied that the limited liability company has become inactive and its
286 dissolution would be in the public interest.

287 • If the state secretary determines that grounds exist under subsection (a), he shall
288 notify the limited liability company of his determination. The notice shall be sent in writing and
289 mailed postage prepaid to the office of the limited liability company's resident agent, or if the
290 resident agent consents, sent by electronic mail to an electronic mail address furnished by the
291 agent for such purpose. The notice shall specify the annual reports which have not been filed
292 and the fees which have not been paid. If the limited liability company does not correct each
293 ground for dissolution or demonstrate to the reasonable satisfaction of the state secretary that
294 each ground for dissolution does not exist within 90 days after notice is given, the state secretary
295 shall administratively dissolve the limited liability company.

296 • A limited liability company administratively dissolved continues in existence but
297 shall not carry on any business except that necessary to wind up and liquidate its affairs.

298 SECTION 19.

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

301 • The state secretary may commence a proceeding to revoke the authority of a
302 foreign limited liability company to transact business in the commonwealth if:

303 • The foreign limited liability company has failed for two consecutive years to
304 comply with the laws requiring the filing of annual reports; or

305 • The payment of any fee due the commonwealth was dishonored when presented
306 for payment and the foreign limited liability company has failed to make payment within 20 days
307 after written notice of such failure was mailed to the foreign limited liability company;

308 • If the state secretary determines that grounds exist under subsection (a), he shall
309 notify the foreign limited liability company of his determination. The notice shall be sent in
310 writing and mailed postage prepaid to the office of the foreign limited liability company's
311 resident agent, or if the resident agent consents, sent by electronic mail to an electronic mail
312 address furnished by said agent for such purpose. The notice shall specify the annual reports
313 which have not been filed and the fees which have not been paid. If the foreign limited liability
314 company does not correct each ground for revocation or demonstrate to the reasonable
315 satisfaction of the state secretary that each ground for revocation does not exist within 90 days

316 after notice is given, the state secretary shall administratively revoke the authority of the foreign
317 limited liability company to transact business in the commonwealth.

318 • The authority of the foreign limited liability company to transact business in the
319 commonwealth shall cease on the date on which the state secretary makes such revocation
320 effective.

321 SECTION 20.

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

324 Section 73. Pre-clearance of Filings

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

327 SECTION 21.

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

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

333 SECTION 22.

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

336 Section 1.22. Filing Service and Copying Fees

337 • The commissioner of administration shall issue regulations prescribing fees for
338 the filing and copying of documents, the issuance of certificates and the handling of service of
339 process under this Act.

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

342 SECTION 23.

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

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

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

350 SECTION 24.

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

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

356 SECTION 25.

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

359 Section 15.30. Grounds for Revocation

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

- 362 • the foreign corporation has failed for 2 or more consecutive years to comply with
363 the law regarding the filing of reports with the secretary of state or the filing of tax returns or the
364 payment of any taxes under chapter 62C or Chapter 63 for 2 or more consecutive years; or
- 365 • the payment of any fee due the commonwealth was dishonored when presented
366 for payment and the corporation has failed to make payment within 20 days after written notice
367 of such failure was mailed to the corporation.