

**SENATE . . . . . No. 256**

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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**

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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.

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**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.