

SENATE No. 224

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. 224

By Mr. Collins, a petition (accompanied by bill, Senate, No. 224) of Nick Collins for legislation relative to a business entity. Economic Development and Emerging Technologies.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 256 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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 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 • A document is corrected:
- 37 • 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 • by delivering the certificate of correction to the secretary of state for filing.
- 42 • 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 • 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 • 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 • 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 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 • A document is corrected:

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

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

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

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

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

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

207 17A. Correcting a Filed Certificate

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

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

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

212 (b) A document is corrected:

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

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

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

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

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

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

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

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

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

234 (5A) the name of any other person in addition to any manager who is authorized to
235 execute documents to be filed with the office of the state secretary, and at least one shall be
236 named if there are no managers.

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

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

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

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

259 state secretary shall not prevent the foreign limited liability company from defending any action,
260 suit or proceeding in any of the courts of the commonwealth.

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

263 • The state secretary may commence a proceeding to dissolve a limited liability
264 company if:

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

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

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

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

279 each ground for dissolution does not exist within 90 days after notice is given, the state secretary
280 shall administratively dissolve the limited liability company.

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

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

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

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

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

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

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

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

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

307 Section 73. Pre-clearance of Filings

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

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

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

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

317 Section 1.22. Filing Service and Copying Fees

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

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

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

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

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

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

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

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

337 Section 15.30. Grounds for Revocation

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

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

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