

HOUSE No. 2677

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia and William F. Galvin

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:

Angelo M. Scaccia

14th Suffolk

William F. Galvin

Secretary of the Commonwealth

HOUSE No. 2677

By Representative Scaccia of Boston and Galvin, a petition (accompanied by bill, House, No. 2677) of Angelo M. Scaccia and William F. 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 Ninetieth General Court
(2017-2018)**

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

4 SECTION 2. Section 45 of chapter 108A of the General Laws, as appearing in the 2012
5 Official Edition, is hereby amended by striking subsection (6) and inserting in place thereof the
6 following 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.
- 47 (e) If the secretary of state permits electronic filings, defects in the electronic
- 48 recording or transmission of documents may be corrected under this section to the extent
- 49 permitted by regulations promulgated by the secretary.
- 50 (f) The fee for filing a certificate of correction is \$100.00.

51 Section 52. Pre-clearance of Filings

52 The fee for examining and provisionally approving any record at any time before the

53 record is presented for filing is \$100.00.

54 SECTION 4. Section 13 of chapter 109 of the General Laws, as appearing in the 2012
55 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the
56 following subsection:-

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

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

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

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

72 13A. Correcting a Filed Certificate

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

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

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

77 (b) A document is corrected:

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

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

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

81 error, incorrect statement or defective executions; and

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

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

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

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

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

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

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

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

90 correction; or

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

92 agreement or the persons approving the amendment.

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

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

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

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

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

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

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

117 SECTION 9. Chapter 109 is hereby amended by striking out section 61, as so appearing,
118 and inserting in place thereof the following section:-

119 Section 61. Fees

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

124 SECTION 10. Section 64 of chapter 109 is hereby amended by striking out subsections
125 (a) and (b) inserting in place thereof the following subsections:-

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

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

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

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

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

144 SECTION 11. Section 65 of chapter 109 is hereby amended by striking out
145 subsections (a) and (b) and inserting in place thereof the following subsection:-

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

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

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

153 (b) If the state secretary determines that one or more grounds exist to revoke the
154 authority of the foreign limited partnership to transact business in the commonwealth, he shall
155 notify the foreign limited partnership's resident agent of his determination. The notice shall be

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

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

166 SECTION 12. Chapter 109, as so appearing, is hereby further amended by adding
167 the following new sections:-

168 Section 67. Good Standing

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

178 Section 68. Pre-clearance of Filings

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

181 SECTION 13. Section 17 of chapter 156A of the General Laws as appearing in the 2012
182 Official Edition, is hereby amended by striking out paragraph (a) and inserting in place thereof
183 the following paragraph:-

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

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

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

191 SECTION 14. Section 17 of chapter 156C of the General Laws, as appearing in the 2012
192 Official Edition, is hereby amended by striking subsection (a) and inserting in place thereof the
193 following subsection:-

194 (a) The original signed copy of the certificate of organization and of any certificates of
195 amendment or cancellation or any judicial decree of amendment or cancellation, of any
196 certificate of consolidation, merger or conversion and of any restated certificate shall be
197 delivered to the state secretary. A person who executes a certificate as an attorney-in-fact or
198 fiduciary shall not be required to exhibit evidence of his authority as a prerequisite to filing. Any

199 certificate authorized to be filed with the state secretary shall be originally signed except as
200 otherwise required by this chapter or permitted from time to time by the state secretary. Unless
201 the state secretary finds that any certificate does not conform to law, upon receipt of all filing
202 fees required by law, he shall evidence his approval on or with the document. Upon said
203 approval and payment of all filing fees required by law, the filing shall be deemed filed with the
204 secretary of state. Said endorsement shall be conclusive of the date and time of its filing in the
205 absence of actual fraud.

206 SECTION 15. Section 17 of said chapter 156C, as so appearing, is hereby further
207 amended by adding to section 17 the following new paragraph:-

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

212 SECTION 16. Chapter 156C of the General Laws, as so appearing, is further amended by
213 adding, after section 17, the following new section:-

214 17A. Correcting a Filed Certificate

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

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

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

219 (b) A document is corrected:

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

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

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

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

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

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

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

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

239 SECTION 17. Section 48 of chapter 156C of the General Laws, as so appearing, is
240 hereby amended by adding, after clause 5, the following new clause:-

241 (5A) the name of any other person in addition to any manager who is authorized to
242 execute documents to be filed with the office of the state secretary, and at least one shall be
243 named if there are no managers.

244 SECTION 18. Section 54 of chapter 156C, as so appearing, is amended by striking
245 paragraph (a) and inserting in place thereof:

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

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

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

263 liability company solely by reason of such failure, but no action shall be maintained or recovery
264 had by the foreign limited liability company in any of the courts of the commonwealth as long as
265 such failure continues. The failure of a foreign limited liability company to register with the
266 state secretary shall not prevent the foreign limited liability company from defending any action,
267 suit or proceeding in any of the courts of the commonwealth.

268 SECTION 19. Chapter 156C, as so appearing, is hereby amended by striking section 70
269 and inserting in place thereof:-

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

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

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

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

279 (b) If the state secretary determines that grounds exist under subsection (a), he shall
280 notify the limited liability company of his determination. The notice shall be sent in writing and
281 mailed postage prepaid to the office of the limited liability company's resident agent, or if the
282 resident agent consents, sent by electronic mail to an electronic mail address furnished by the
283 agent for such purpose. The notice shall specify the annual reports which have not been filed

284 and the fees which have not been paid. If the limited liability company does not correct each
285 ground for dissolution or demonstrate to the reasonable satisfaction of the state secretary that
286 each ground for dissolution does not exist within 90 days after notice is given, the state secretary
287 shall administratively dissolve the limited liability company.

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

290 SECTION 20. Chapter 156C as so appearing is hereby amended by striking section 72
291 and inserting in place thereof:-

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

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

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

299 (b) If the state secretary determines that grounds exist under subsection (a), he shall
300 notify the foreign limited liability company of his determination. The notice shall be sent in
301 writing and mailed postage prepaid to the office of the foreign limited liability company's
302 resident agent, or if the resident agent consents, sent by electronic mail to an electronic mail
303 address furnished by said agent for such purpose. The notice shall specify the annual reports
304 which have not been filed and the fees which have not been paid. If the foreign limited liability

305 company does not correct each ground for revocation or demonstrate to the reasonable
306 satisfaction of the state secretary that each ground for revocation does not exist within 90 days
307 after notice is given, the state secretary shall administratively revoke the authority of the foreign
308 limited liability company to transact business in the commonwealth.

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

312 SECTION 21. Chapter 156C is hereby further amended by adding, after section 72, the
313 following new section:-

314 Section 73. Pre-clearance of Filings

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

317 SECTION 22. Section 1.20 of chapter 156D as appearing in the 2012 Official Edition is
318 hereby amended by striking paragraph (h) and inserting in place thereof the following:-

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

322 SECTION 23. General Laws chapter 156D, as so appearing, is hereby further amended
323 by striking section 1.22 and inserting in place thereof the following:-

324 Section 1.22. Filing Service and Copying Fees

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

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

330 SECTION 24. Section 14.20 of chapter 156D, as so appearing, is hereby amended by
331 striking clause (b) and inserting the following:-

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

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

337 SECTION 25. Section 14.23 of chapter 156D, as appearing, is hereby amended by
338 striking subsection (a) and inserting in place thereof the following subsection:-

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

342 SECTION 26. Section 15.30 of chapter 156D, as so appearing, is hereby further amended
343 by striking said section and inserting in place thereof:-

344 Section 15.30. Grounds for Revocation

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

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

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