

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.

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

5 SECTION 2.

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

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

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

25 SECTION 3.

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

28 Section 50. Electronic Filings

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

33 Section 51. Correcting a Filed Certificate

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

54 • The fee for filing a certificate of correction is \$100.00.

55 Section 52. Pre-clearance of Filings

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

58 SECTION 4.

59 Section 13 of chapter 109 of the General Laws, as appearing in the 2016 Official Edition,
60 is hereby amended by striking subsection (a) and inserting in place thereof the following
61 subsection:-

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

69 SECTION 5.

70 Section 13 of chapter 109 of the General Laws, as so appearing, is further amended by
71 adding the following new subsection:-

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

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

76 SECTION 6.

77 Chapter 109 of the General Laws, as so appearing, is further amended by adding, after
78 section 13, the following new section:-

79 13A. Correcting a Filed Certificate

80 • A domestic or foreign limited partnership may correct a document filed with the
81 state secretary if the document:

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

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

84 • A document is corrected:

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

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

90 • A certificate of correction is effective on the effective date of the document it
91 corrects except as to persons relying on the uncorrected document and adversely affected by the
92 correction. As to those persons, the certificate of correction is effective when filed.

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

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

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

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

103 SECTION 7.

104 Chapter 109 of the General Laws is hereby further amended by striking Section 16 in its
105 entirety.

106 SECTION 8.

107 Section 55 of chapter 109, as so appearing, is hereby amended by adding the following
108 new subsection:-

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

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

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

126 SECTION 9.

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

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

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

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

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

147 SECTION 10.

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

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

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

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

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

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

170 SECTION 11.

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

173 Section 67. Good Standing

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

183 Section 68. Pre-clearance of Filings

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

186 SECTION 12.

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

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

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

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

197 SECTION 13.

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

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

210 SECTION 14.

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

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

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

217 SECTION 15.

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

220 17A. Correcting a Filed Certificate

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

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

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

225 (b) A document is corrected:

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

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

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

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

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

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

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

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

245 SECTION 16.

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

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

251 SECTION 17.

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

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

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

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

276 SECTION 18.

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

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

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

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

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

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

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

299 SECTION 19.

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

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

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

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

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

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

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

322 SECTION 20.

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

325 Section 73. Pre-clearance of Filings

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

328 SECTION 21.

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

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

334 SECTION 22.

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

337 Section 1.22. Filing Service and Copying Fees

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

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

343 SECTION 23.

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

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

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

351 SECTION 24.

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

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

357 SECTION 25.

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

360 Section 15.30. Grounds for Revocation

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

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