

HOUSE No. 2794

The Commonwealth of Massachusetts

PRESENTED BY:

Edward F. Coppinger

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 passage of the accompanying bill:

An Act relative to limited liability companies.

PETITION OF:

NAME:

Edward F. Coppinger

DISTRICT/ADDRESS:

10th Suffolk

HOUSE No. 2794

By Mr. Coppinger of Boston, a petition (accompanied by bill, House, No. 2794) of Edward F. Coppinger relative to the reinstatement of cancelled limited liability companies and cancelled foreign limited liability companies. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to limited liability companies.

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: Chapter 156C of the General Laws is hereby amended by adding the
2 following two sections:

3 Section 14A. Reinstatement following cancellation

4 (a) A limited liability company whose certificate of organization has been cancelled
5 pursuant to Section 14 may apply to the secretary of state for reinstatement at any time. The
6 application shall include:

7 (1) The exact name of the limited liability company;

8 (2) A statement that the name satisfies the requirements of Section 3 or the limited
9 liability company shall simultaneously submit a certificate of amendment to change its name to a
10 name that satisfies its requirements;

11 (3) The address of the limited liability company’s designated office;

12 (4) The street address of the resident agent’s office and the name of the resident agent;

13 (5) A statement that the certificate of revival is filed by one or more managers of the
14 limited liability company or one or more members of the limited liability company authorized
15 pursuant to the operating agreement to execute and file the certificate of revival to revive the
16 limited liability company;

17 (6) The name and address of each manager of a limited liability company managed by
18 managers or each member of a limited liability company managed by its members;

19 (7) The name of each person authorized to execute, acknowledge, deliver and record any
20 recordable instrument purporting to affect an interest in real property whether to be filed in the
21 registry of deeds or a district office of the land court, if any, and the business address, if different
22 from its principal office location;

23 (8) Any other matters the managers or members executing the certificate of revival
24 determine to include therein.

25 (b) If the secretary of state determines that the application contains the information
26 required by subsection (a) and that information is correct, he shall reinstate the limited liability
27 company.

28 (c) The secretary of state may subject the reinstatement to such terms and conditions,
29 including the payment of reasonable fees, as in his judgment the public interest may require. He
30 may in his discretion make the reinstatement effective for all purposes or for any specified
31 purpose or purposes, in each case with or without limitation of time. When the reinstatement is
32 effective, if by its terms it is effective for all purposes or if the secretary of state specifies that it
33 shall be effective for purposes of this sentence, then the reinstatement relates back to and takes
34 effect as of the effective date of the cancellation and the limited liability company resumes
35 carrying on its business as if the cancellation had never occurred, with all its original powers and
36 duties and with liability, for all contracts, acts, matters and things made, done or performed in its
37 name and on its behalf prior to reinstatement, as if the cancellation had never occurred, and with
38 all acts and proceedings of its managers and members, acting or purporting to act as such, which
39 would have been legal and valid but for such cancellation, standing ratified and confirmed, in
40 each case except as otherwise specified by the secretary of state.

41 (d) The certificate of reinstatement, or other equivalent public record, filed by the
42 secretary of state pursuant to this section shall constitute an amendment to the certificate of
43 organization of the limited liability company, effective when filed. Any specification in the
44 certificate of the purpose or purposes of reinstatement, or of a limitation of the time thereof, may,
45 by further certificate filed as aforesaid, be amended by the secretary of state for cause shown to
46 his satisfaction.

47 Section 14B. Appeal from denial of reinstatement

48 (a) If the secretary of state denies a limited liability company's application for
49 reinstatement following cancellation, he shall serve the limited liability company under section 5
50 with a written notice that explains the reason or reasons for denial.

51 (b) The limited liability company may appeal the denial of reinstatement to the superior
52 court for Suffolk county within 30 days after service of the notice of denial is perfected. The
53 limited liability company appeals by petitioning the court to set aside the cancellation and
54 attaching to the petition copies of the secretary of state's certificate, or other public record, of
55 cancellation, the limited liability company's application for reinstatement, and the secretary of
56 state's notice of denial.

57 (c) The court may summarily order the secretary of state to reinstate the cancelled limited
58 liability company or may take such other action the court considers appropriate.

59 (d) The court's final decision may be appealed as in other civil proceedings.

60 SECTION 2: Chapter 156C of the General Laws is amended by adding the following
61 section:

62 Section 53A. Reinstatement of a certificate of registration of a foreign limited liability
63 company that has been cancelled.

64 (a) A foreign limited liability company whose certificate of registration to transact
65 business in the commonwealth has been cancelled pursuant to section 53 may apply to the
66 secretary of state for reinstatement of its certificate of registration at any time. The application
67 shall include:

68 (1) The exact name of the foreign limited liability company;

69 (2) Its federal identification number;

70 (3) A statement that the name of the foreign limited liability company satisfies the
71 requirements of section 3 or the foreign limited liability company shall simultaneously submit a
72 certificate of amendment to change its name to a name that satisfies the requirements;

73 (4) The address of the foreign limited liability company's designated office located in the
74 commonwealth, if any;

75 (5) The street address of the resident agent's office and the name of the resident agent;

76 (6) A statement that the certificate of revival is filed by one or more managers of the
77 foreign limited liability company or one or more members of the foreign limited liability
78 company authorized pursuant to the operating agreement to execute and file the certificate of
79 revival to revive the foreign limited liability company;

80 (7) If necessary, an amended registration certificate pursuant to 950 CMR 112.23;

81 (8) An original certificate of legal existence or a certificate of good standing issued not
82 more than 90 days prior to such submission by an officer or agency properly authorized in the

83 jurisdiction of organization of the foreign limited liability company. If the certificate is in a
84 foreign language, a translation under oath of the translator shall be attached;

85 (9) Any other matters the managers or members executing the certificate of revival
86 determine to include therein.

87 (b) If the foreign limited liability company complies with the provisions of this section,
88 the secretary of state shall enter an order of reinstatement, reinstating the foreign limited liability
89 company's certificate of registration to transact business in the commonwealth.

90 (c) The secretary of state may subject the reinstatement to the payment of reasonable
91 fees, as in his judgment the public interest may require.