
OLR Bill Analysis

sHB 5489 (as amended by House "A")*

AN ACT CONCERNING THE INTEGRITY OF THE BUSINESS REGISTRY.

SUMMARY:

This bill:

1. subjects various business entities to the secretary of the state's administrative dissolution or similar procedure for failing to file an annual report,
2. makes changes regarding the notice of final action the secretary sends in the administrative dissolution and similar procedures for different business entities and authorizes a limited liability partnership (LLP) to seek reinstatement,
3. makes changes to the secretary's procedures to revoke the certificate of authority to conduct business in Connecticut for foreign stock and nonstock corporations,
4. eliminates a number of fees for business entities filing documents with the secretary to terminate their existence or cease doing business in Connecticut, and
5. requires various business entities to include their email addresses on certain documents filed with the secretary.

The bill also makes technical and conforming changes.

*House Amendment "A" makes the provisions eliminating certain fees and adding a fee for LLP reinstatement effective July 1, 2015 instead of January 1, 2015 and makes a technical change.

EFFECTIVE DATE: January 1, 2015, except the provisions eliminating certain fees and adding a fee for LLP reinstatement are

effective July 1, 2015.

FAILING TO FILE ANNUAL REPORTS

§§ 2 & 7 — *Connecticut Stock and Nonstock Corporations*

The bill allows the secretary of the state to administratively dissolve (1) Connecticut stock corporations that fail to file an annual report for more than one year past its due date and (2) Connecticut nonstock corporations that fail to file an annual report for more than two years. The secretary can currently use this authority when a corporation fails to maintain a registered agent as required by law or the agent cannot be found.

As under current law for this process, (1) the secretary must send a notice of administrative dissolution by registered or certified mail to the corporation's principal office as shown on the secretary's records, (2) the corporation has three months to fix the deficiency, and (3) the secretary files a certificate of administrative dissolution stating the corporation is administratively dissolved because of its default.

§§ 4-5 & 9-10 — *Foreign Stock and Nonstock Corporations*

The bill makes a foreign stock corporation's failure to file its annual report with the secretary grounds for revoking its certificate of authority to transact business in Connecticut. It subjects a foreign nonstock corporation to revocation proceedings upon failure to file the report, rather than when the report is 60 days past due as required by current law. By law, the secretary can revoke the certificates of these corporations for several specified reasons. The bill alters current law's revocation procedures and applies them to revocations for failing to file an annual report (see below).

§§ 12 & 15 — *Limited Partnerships (LP)*

The bill allows the secretary to cancel a Connecticut LP by forfeiture for failing to file an annual report for one year past its due date. The secretary can currently use this procedure for an LP that fails to maintain a statutory agent.

As under current law, the secretary must send notice by registered

or certified mail to the LP that its rights and powers are prima facie forfeited within three months after the notice's mailing. If the LP does not fix the deficiency, the secretary files a certificate of cancellation by forfeiture.

For foreign LPs, the bill makes failing to file an annual report grounds for revoking its certificate to do business in Connecticut. Existing law gives the secretary this authority based on an LP's wilful misrepresentation of a material fact in a document, exceeding its statutory authority, or failing to have an agent for service of process for at least 60 days.

As under current law, the secretary must give at least 20 days written notice to the foreign LP by registered or certified mail to its last-known address. The bill eliminates an option of notice by mail evidenced by a certificate of mailing. If the foreign LP does not correct the problem, the secretary revokes the LP's certificate.

§§ 18 & 20 — *Limited Liability Companies (LLC)*

The bill allows the secretary to dissolve an LLC by forfeiture if it has not filed an annual report more than one year since its due date. The LLC has three months to file the report or the secretary files a certificate of dissolution by forfeiture.

The law already allows such a dissolution for failing to maintain a statutory agent for service of process. As under current law, the secretary can mail notice of this reason for dissolution by registered or certified mail. The bill no longer allows notice by mail evidenced by a certificate of mailing.

For a foreign LLC, the bill allows revocation for failing to file an annual report. Currently, this procedure applies to wilful misrepresentation of a material fact in a document, exceeding its statutory authority, or failing to have an agent for service of process for at least 60 days. As under current law, the secretary must give at least 20 days written notice to the foreign LLC by registered or certified mail to its last-known address. The bill eliminates an option of

notice by mail evidenced by a certificate of mailing.

§§ 23 & 25 — LLPs

Under current law, the secretary must notify an LLP of proceedings to revoke a certificate of registration if the LLP is more than three months past its annual report's due date. The bill instead (1) makes the revocation discretionary and (2) requires that the report be past due for more than one year before proceedings begin. The law already allows such a revocation for failing to have a statutory agent for service of process.

As under current law, the secretary can notify the LLP by registered or certified mail and the LLP has three months from mailing to fix the problem or the secretary revokes its certificate. The bill eliminates the option of notice by mail evidenced by a certificate of mailing.

Existing law already subjects a foreign LLP to revocation procedures for failing to file an annual report. The bill eliminates the option for the secretary to send notice of these proceedings by mail evidenced by a certificate of mailing.

NOTICE OF ADMINISTRATIVE DISSOLUTION OR SIMILAR PROCEDURE

By law, if a business entity does not cure the deficiency that triggered a notice of dissolution or similar procedures, the dissolution or procedure becomes final. The bill (1) makes a number of similar changes that apply to the notices the secretary must send to these businesses and (2) applies them to dissolutions or procedures based on failing to file an annual report. The changes vary depending on the type of entity.

Various Entities

For a stock or nonstock corporation administrative dissolution, LP certificate of cancellation, LLC dissolution by forfeiture, or LLP revocation of certificate of registration, current law requires the secretary to mail a copy of the certificate of dissolution or other termination document to the entity's last-known principal office. The

bill eliminates requirements that the secretary (1) use registered or certified mail and (2) publish notice of the dissolution in two successive issues of the *Connecticut Law Journal*. Instead, the bill requires her to post the notices on her website for 60 days (§§ 2, 7, 12, 18, and 23).

For foreign LPs, foreign LLCs, and foreign registered LLPs, the law already requires simply mailing the notice, and the bill additionally requires posting it on the secretary's website for 60 days (§§ 15, 20 & 25).

For an LLP subject to a proceeding for failing to maintain a statutory agent, the law allows the secretary to send notice by registered or certified mail. The bill eliminates the option to send it by mail evidenced by a certificate of mailing.

Foreign Stock and Nonstock Corporations

By law, the secretary can revoke the certificate for these corporations if (1) the corporation is 60 days past due on license fees, franchise taxes, or penalties; (2) the corporation does not have a registered agent or office in the state or does not inform the secretary of changes regarding its agent for at least 60 days; (3) an incorporator, director, officer, or agent signs a document for filing with the secretary knowing it is false in a material respect; or (4) the secretary receives an authenticated certificate from the corporation's state of incorporation indicating its dissolution or merger into another entity. As described above, the secretary can also revoke a certificate for failing to file an annual report.

The bill alters the procedures applicable to all of these revocations in the following ways.

1. Instead of serving written notice (which could be by a proper officer or other person lawfully empowered to do so, by registered or certified mail, return receipt requested), the bill requires the secretary to provide notice by registered or certified mail sent to the principal office's address as shown in the

records.

2. The bill gives the corporation 90 days after mailing, rather than 60 days from service as under current law, to correct the problem.
3. After this period, instead of serving a copy of the revocation certificate, the bill requires mailing a copy to the corporation's last-known principal office address and posting a notice on the secretary's website for 60 days.

LLP REINSTATEMENT

The bill allows a registered LLP whose status is revoked by the secretary as described above to file for reinstatement. The bill requires changing the LLP's name through an amendment to the certificate of LLP if its name is no longer available. The LLP must (1) file a certificate of reinstatement with the secretary; (2) pay all penalties, forfeitures, and reinstatement fees; (3) file an annual report for the current year; and (4) appoint a statutory agent for service of process. The bill makes reinstatement effective upon filing the certificate, allows the status as an LLP to commence, and reinvests the LLP with its statutory rights and powers (§ 27).

The bill adds a \$120 fee for a domestic or foreign LLP filing a certificate of reinstatement (§ 21).

ELIMINATED FILING FEES

The bill eliminates fees for certain filings with the secretary of the state, as shown in Table 1.

Table 1: Entity Filing Fees Eliminated by the Bill

<i>Bill §</i>	<i>Entity</i>	<i>Document</i>	<i>Filing Fee Eliminated</i>
1	Stock corporation	Certificate of dissolution	\$50
1	Foreign stock corporation	Application for and certificate of withdrawal	100
6	Nonstock corporation	Certificate of dissolution	20

6	Foreign nonstock corporation	Application for and certificate of withdrawal	40
14	LP	Certificate of cancellation	60
16	LLC	Articles of dissolution by resolution, articles of dissolution by expiration, or a judicial decree of dissolution	50
16	Foreign LLC	Application for and certificate of withdrawal	120
21	LLP	Renunciation of status	50
21	Foreign LLP	Withdrawal of certificate of authority	120
26	Statutory trust	Certificate of cancellation	120

EMAIL ADDRESSES

The bill requires business entities to include email addresses, if they have one, on the following documents filed with the secretary's office:

1. a foreign stock corporation's application for certificate of authority to transact business in Connecticut (§ 3),
2. a foreign nonstock corporation's application for certificate of authority to conduct affairs in Connecticut (§ 8),
3. an LP certificate (§ 11),
4. a foreign LP's application for registration (§ 13),
5. an LLC's articles of organization (§ 17),
6. a foreign LLC's application to register to do business in Connecticut (§ 19),
7. an LLP's certificate of registration (§ 22), and
8. a foreign registered LLP's certificate of authority (§ 24).

BACKGROUND

Related Bill

sSB 411 (File 541), passed by the Senate, includes a provision on the effect of an LLC's or LP's reinstatement after administrative

dissolution or cancellation.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 32 Nay 0 (04/01/2014)

Finance, Revenue and Bonding Committee

Joint Favorable

Yea 48 Nay 0 (04/25/2014)