

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

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 clarifying, correcting and amending certain business entity laws.

PETITION OF:

NAME:

Angelo M. Scaccia
William F. Galvin

DISTRICT/ADDRESS:

14th Suffolk
Secretary of the Commonwealth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT CLARIFYING, CORRECTING AND AMENDING CERTAIN BUSINESS ENTITY LAWS.

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 2006 Official Edition, is
3 hereby amended by striking subsection (6) and inserting in place thereof the following subsection:-

4 (6) If a partnership fails to file an annual report when due, pay the required fee, or the
5 payment of any fee due the commonwealth was dishonored when presented for
6 payment and the partnership has failed to correct the failure within 20 days after
7 written notice of such failure was mailed to the partnership, the state secretary may
8 revoke the registration of the partnership. The state secretary shall give the partnership
9 at least 60 days notice of his intention to revoke the registration of the partnership. The
10 notice shall be given by mail to the partnership at the address of its principal office as
11 shown in the records of the state secretary. The notice shall specify the annual reports
12 which have not been filed, the fees which have not been paid, the payment which has
13 been dishonored, and the effective date of revocation. The revocation shall not be
14 effective if the annual reports are filed, or the fees are paid, prior to the effective date
15 of revocation.

16

17 SECTION 2.

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

20

21 Section 50. Electronic Filings

22 Electronic documents or transmissions may be filed with the secretary of state
23 if, and to the extent, permitted by the secretary. The secretary of state may promulgate
24 regulations regarding the procedures for electronic filings which supercede any
25 inconsistent provisions of this chapter with respect to such filings.

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27

28

29 Section 51. Correcting a Filed Certificate

30 (a) A limited liability partnership may correct a document filed with the state secretary if
31 the document:

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

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

34 (b) A document is corrected:

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

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

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

- 43 (d) If the secretary of state permits electronic filings, defects in the electronic recording or
44 transmission of documents may be corrected under this section to the extent permitted
45 by regulations promulgated by the secretary.
46 (e) The fee for filing a certificate of correction is \$100.00.
47

48 Section 52. Pre-clearance of Filings

49 The fee for examining and provisionally approving any record at any time before
50 the record is presented for filing is \$100.00.
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55 SECTION 3.

56 Section 13 of chapter 109 of the General Laws, as appearing in the 2006 Official Edition, is
57 hereby amended by striking subsection (a) and inserting in place thereof the following subsection:-

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

67 SECTION 4.

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

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

74

75 SECTION 5.

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

78 13A. Correcting a Filed Certificate

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

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

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

83 (b) A document is corrected:

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

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

90 (c) A certificate of correction is effective on the effective date of the document it corrects
91 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 (d) 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
95 effective date, a 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
97 certificate of correction; or

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

100 (e) If the secretary of state permits electronic filings, defects in the electronic recording or
101 transmission of documents may be corrected under this section to the extent permitted
102 by regulations promulgated by the secretary.
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106 SECTION 6.

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

108

109 SECTION 7.

110 Chapter 109 of the General Laws, as so appearing, is hereby amended by adding after section
111 43, the following new section:-

112 43A. Conversions

113 (a) As used in this section, an "other entity" means a corporation organized under
114 chapter 156D, a corporation organized under chapter 180, a foreign business
115 corporation, a foreign nonprofit corporation and any association or entity other than a
116 governmental or quasi-governmental organization. The term includes, without
117 limitation, limited liability companies, general partnerships, limited liability partnerships,
118 joint ventures, joint stock companies, business trusts and profit and not-for-profit
119 unincorporated associations.

120 (b) A limited partnership may convert into an other entity and an other entity may
121 convert into a limited partnership, provided in each case that if an other entity exists

122 pursuant to the authority of a chapter of the General Laws, that chapter permits the
123 conversion, and if an other entity is organized under the laws of a foreign jurisdiction,
124 the laws of that jurisdiction permit the conversion.

125 (c) A limited partnership converting into an other entity shall comply with the terms of
126 this section and of its certificate of limited partnership and its partnership agreement, to
127 the extent they are applicable. An other entity converting into a limited partnership
128 shall comply with the terms of any laws applicable to it and of its organic documents, to
129 the extent they are applicable.

130 (d) A limited partnership or an other entity converting pursuant to the authority of this
131 section (herein the "converting entity") shall adopt a plan of entity conversion that
132 contains substantially the information required by section 9.51 of chapter 156D to be
133 contained in a plan of entity conversion of a business corporation, modified to account
134 for the nature of the converting entity, as well as any information required by any laws
135 applicable to the converting entity. The plan shall be approved by the converting entity
136 in the manner an amendment of its organic documents must be approved.

137 (e) The converting entity shall file with the state secretary, and with any other
138 governmental agency with which the converting entity or the surviving entity is required
139 to make public filings, articles of entity conversion that contain substantially the
140 information required by section 9.53 of chapter 156D to be contained in articles of
141 entity conversion of a business corporation or a domestic or foreign other entity,
142 modified to account for the nature of the converting entity and the surviving entity.

143 (f) The effect of a conversion authorized by this section shall be the same as is provided
144 in section 9.55 of chapter 156D.

145

146 SECTION 8.

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

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

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

155 (2) all interest and penalties imposed by law for failure to pay the fees.
156 A foreign limited partnership is further liable to the commonwealth, for
157 each month or part thereof during which it transacted business without
158 delivering the certificate, an amount determined by the secretary of
159 state, which shall in no event exceed the amount established by the
160 Commissioner of Administration under section 3B of Chapter 7, except
161 that a foreign limited partnership which has delivered such certificate
162 shall not be liable for such monthly penalty for the first ten (10) days
163 during which it transacted business without delivering such certificate.
164 Such fees and penalties may be levied by the secretary of state. The
165 attorney general may bring an action necessary to recover amounts due
166 to the commonwealth under this subsection including an action to
167 restrain a foreign limited partnership against which fees and penalties
168 have been imposed pursuant to this subsection from transacting
169 business in the commonwealth until the fees and penalties have been
170 paid.

171

172 SECTION 9.

173 Chapter 109 is hereby amended by striking out section 61, as so appearing, and inserting in
174 place thereof the following section:-

175 Section 61. Fees

176 The fee for filing in the office of the secretary of state any original certificate of
177 limited partnership or application for registration as a foreign limited partnership shall

178 be \$500.00. The fee for filing a certificate of amendment, correction, cancellation or
179 withdrawal shall be \$100.00. The fee for reservation of a name shall be \$30.00.

180

181 SECTION 10.

182 Section 64 of chapter 109, as added by section 51 of chapter 182 of the Acts of 2008, is hereby
183 amended by striking out subsection (a) and inserting in place thereof the following subsection:-

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

- 185 (1) the limited partnership has failed for 2 or more consecutive years to
186 comply with the laws requiring the filing of annual reports;
- 187 (2) payment of any fee due the commonwealth was dishonored when
188 presented for payment and the limited partnership has failed to
189 correct the failure within 20 days after written notice of such failure
190 was mailed to the limited partnership; or
- 191 (3) he is satisfied that the limited partnership has become inactive and
192 its dissolution would be in the public interest.

193

194 SECTION 11.

195 Section 65 of chapter 109, as added by section 51 of chapter 182 of the Acts of 2008, is hereby
196 amended by striking out subsection (a) and inserting in place thereof the following subsection:-

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

- 199 (1) the foreign limited partnership has failed for 2 consecutive years to
200 comply with the laws requiring the filing of annual reports;
- 201 (2) payment of any fee due the commonwealth was dishonored when
202 presented for payment and the foreign limited partnership has
203 failed to correct the failure within 20 days after written notice of
204 such failure was mailed to the foreign limited partnership; or

205 (3) he is satisfied that the revocation of the foreign limited liability
206 partnership's authority to transact business in the commonwealth
207 would be in the public interest.

208 SECTION 12.

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

210 Section 67. Good Standing

211 A limited partnership shall be deemed to be in good standing with the secretary
212 of state if such limited partnership appears, from the records of said secretary, to exist
213 and has paid all fees due to the secretary, and no certificate of cancellation has been
214 filed by or with respect to the limited partnership. Upon the request of any person and
215 payment of such fee as may be prescribed by law, the state secretary shall issue a
216 certificate stating, in substance, as to any limited partnership meeting the requirements
217 of this section, that such limited partnership appears, from the records in his office, to
218 exist and to be in good standing, and stating the identity of any and all general partners
219 who are named in the most recent document filed with the state secretary.

220

221 Section 68. Pre-clearance of Filings

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

224

225 SECTION 13.

226 Section 17 of chapter 156C of the General Laws, as appearing in the 2006 Official Edition, is
227 hereby amended by striking subsection (a) and inserting in place thereof the following subsection:-

228 (a) The original signed copy of the certificate of organization and of any certificates of
229 amendment or cancellation or any judicial decree of amendment or cancellation, of any
230 certificate of consolidation, merger or conversion and of any restated certificate shall be
231 delivered to the state secretary. A person who executes a certificate as an attorney-in-

232 fact or fiduciary shall not be required to exhibit evidence of his authority as a
233 prerequisite to filing. Any certificate authorized to be filed with the state secretary shall
234 be originally signed except as otherwise required by this chapter or permitted from time
235 to time by the state secretary. Unless the state secretary finds that any certificate does
236 not conform to law, upon receipt of all filing fees required by law, he shall evidence his
237 approval on or with the document. Upon said approval and payment of all filing fees
238 required by law, the filing shall be deemed filed with the secretary of state. Said
239 endorsement shall be conclusive of the date and time of its filing in the absence of
240 actual fraud.

241

242 SECTION 14.

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

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

249

250 SECTION 15.

251 Chapter 156C of the General Laws, as so appearing, is further amended by adding, after section
252 17, the following new section:-

253 17A. Correcting a Filed Certificate

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

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

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

- 259 (b) A document is corrected:
- 260 (1) by preparing a certificate of correction that (i) describes the
- 261 document, including its filing date, (ii) specifies the typographical
- 262 error, the incorrect statement and the reason it is incorrect or the
- 263 manner in which the execution was defective and (iii) corrects the
- 264 typographical error, incorrect statement or defective execution; and
- 265 (2) by delivering the certificate of correction to the secretary of state
- 266 for filing.
- 267 (c) A certificate of correction is effective on the effective date of the document it
- 268 corrects except as to persons relying on the uncorrected document and adversely
- 269 affected by the correction. As to those persons, the certificate of correction is effective
- 270 when filed.
- 271 (d) A certificate of correction cannot be used to change the effective date of a filed
- 272 document; provided, however, that if a document has been filed with a delayed
- 273 effective date, a certificate of correction may be filed prior to said date:
- 274 (1) to accelerate the effective date to a date not earlier than the date of
- 275 the certificate of correction, or
- 276 (2) to abandon a merger or amendment if the authority to do so is
- 277 granted by the merger agreement or the persons approving the
- 278 amendment.
- 279 (e) If the secretary of state permits electronic filings, defects in the electronic recording
- 280 or transmission of documents may be corrected under this section to the extent
- 281 permitted by regulations promulgated by the secretary.”
- 282 (f) The fee for filing a certificate of correction with the state secretary is \$100.00.

283

284

285 SECTION 16.

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

288 (5A) the name of any other person in addition to any manager who is authorized to
289 execute documents to be filed with the office of the state secretary, and at least one
290 shall be named if there are no managers.

291

292 SECTION 17.

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

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

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

301 (2) all interest and penalties imposed by law for failure to pay the fees.
302 A foreign limited liability company is further liable to the
303 commonwealth, for each year or part thereof during which it transacted
304 business without delivering the certificate, an amount not to exceed
305 \$500.00 except that a foreign limited liability company which has
306 delivered such certificate shall not be liable for such penalty for the first
307 10 days during which it transacted business without delivering such
308 certificate. Such fees and penalties may be levied by the secretary of
309 state. The attorney general may bring an action necessary to recover
310 amounts due to the commonwealth under this subsection including an
311 action to restrain a foreign limited liability company against which fees
312 and penalties have been imposed pursuant to this subsection from
313 transacting business in the commonwealth until the fees and penalties
314 have been paid. No such failure shall affect the validity of any contract
315 involving the foreign limited liability company, nor is a member or
316 manager of a foreign limited liability company liable for the obligations

317 of the foreign limited liability company solely by reason of such failure,
318 but no action shall be maintained or recovery had by the foreign limited
319 liability company in any of the courts of the commonwealth as long as
320 such failure continues. The failure of a foreign limited liability company
321 to register with the state secretary shall not prevent the foreign limited
322 liability company from defending any action, suit or proceeding in any of
323 the courts of the commonwealth.

324

325 SECTION 18.

326 Chapter 156C of the General Laws, as appearing in the 2006 Official Edition, is hereby
327 amended by striking section 69 and inserting in place thereof:-

328 Section 69. Conversions

329 (a) As used in this section, an "other entity" means a corporation organized under
330 chapter 156D, a corporation organized under chapter 180, a foreign business
331 corporation, a foreign nonprofit corporation and any association or entity other than a
332 governmental or quasi-governmental organization. The term includes, without
333 limitation, limited partnerships, general partnerships, limited liability partnerships, joint
334 ventures, joint stock companies, business trusts and profit and not-for-profit
335 unincorporated associations.

336 (b) A limited liability company may convert into an other entity and an other entity may
337 convert into a limited liability company, provided in each case that if an other entity
338 exists pursuant to the authority of a chapter of the General Laws, that chapter permits
339 the conversion, and if an other entity is organized under the laws of a foreign
340 jurisdiction, the laws of that jurisdiction permit the conversion.

341 (c) A limited liability company converting into an other entity shall comply with the
342 terms of this section and of its certificate of organization and its operating agreement,
343 to the extent they are applicable. An other entity converting into a limited liability

344 company shall comply with the terms of any laws applicable to it and of its organic
345 documents, to the extent they are applicable.

346 (d) A limited liability company or an other entity converting pursuant to the authority of
347 this section (herein the “converting entity”) shall adopt a plan of entity conversion that
348 contains substantially the information required by section 9.51 of chapter 156D to be
349 contained in a plan of entity conversion of a business corporation, modified to account
350 for the nature of the converting entity, as well as any information required by any laws
351 applicable to the converting entity. The plan shall be approved by the converting entity
352 in the manner an amendment of its organic documents must be approved.

353 (e) the converting entity shall file with the secretary of state, and with any other
354 governmental agency with which the converting entity or the surviving entity is required
355 to make public filings, articles of entity conversion that contain substantially the
356 information required by section 9.53 of chapter 156D to be contained in articles of
357 entity conversion of a business corporation or a domestic or foreign other entity,
358 modified to account for the nature of the converting entity and the surviving entity.

359 (f) The effect of a conversion authorized by this section shall be the same as is provided
360 in section 9.55 of chapter 156D.

361 SECTION 19.

362 Chapter 156C, as most recently amended by chapter 182 of the Acts of 2008, is hereby further amended
363 by adding, after section 72, the following new section:-

364 Section 73. Pre-clearance of Filings

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

367 SECTION 20.

368 Section 1.20 of chapter 156D, as so appearing, is hereby amended by striking paragraph (h) and inserting
369 in place thereof the following:-

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

373 SECTION 21.

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

376 Section 1.22. Filing Service and Copying Fees

377 (a) The fee for examining and provisionally approving any record at any time before the
378 record is presented for filing is \$100.000.

379 (b) The commissioner of administration shall issue regulations prescribing fees for the
380 filing and copying of documents, the issuance of certificates and the handling of
381 service of process under this Act.

382 SECTION 22.

383 Section 9.50 of chapter 156D is hereby amended by striking clause (a) and inserting in
384 place thereof:-

385 (a) A domestic business corporation may become a domestic other entity, provided that
386 in the case of an other entity that exists pursuant to the authority of a chapter of the
387 General Laws, that chapter permits. The conversion shall be effected pursuant to a plan
388 of entity conversion. Section 9.55 governs the effect of converting to that form of a
389 domestic other entity.

390 SECTION 23.

391 Section 9.50 of chapter 156D is hereby further amended by striking clause (c) and
392 inserting in place thereof:-

393 (c) A domestic other entity may become a domestic business corporation, provided that
394 in the case of a domestic other entity that exists pursuant to the authority of a chapter

395 of the General Laws, that chapter permits. Section 9.55 governs the effect of converting
396 to a domestic business corporation. If the organic law of a domestic other entity,
397 including the chapter of the General Laws pursuant to which the other entity exists,
398 does not provide procedures for the approval of an entity conversion, the conversion
399 shall be adopted and approved, and the entity conversion effectuated, in the same
400 manner as a merger of the other entity and its interest holders shall be entitled to
401 appraisal rights if appraisal rights are available upon any type of merger under the
402 organic law of the other entity. If the organic law of a domestic other entity does not
403 provide procedures for the approval of either an entity conversion or a merger, a plan of
404 entity conversion shall be adopted and approved, the entity conversion effectuated, and
405 appraisal rights exercised, in accordance with the procedures in this subdivision and
406 PART 13 of this chapter. Without limiting the provisions of this subsection, a domestic
407 other entity whose organic law does not provide procedures for the approval of an
408 entity conversion shall be subject to subsection (e) of this section and clause (7) of
409 section 9.52. For purposes of applying this subdivision and PART 13 of this chapter:

410 (1) the other entity, its interest holders, interests and organic
411 documents taken together, shall be deemed to be a domestic business
412 corporation, shareholders, shares and articles of organization,
413 respectively, and vice versa, as the context may require; and

414 (2) if the business affairs of the other entity are managed by a group of
415 persons that is not identical to the interest holders, that group shall be
416 deemed to be the board of directors.

417 SECTION 24.

418 Section 14.20 of chapter 156D, as so appearing, is hereby amended by adding the following new
419 clause at the end thereof:-

420 (c) payment of any fee due the commonwealth was dishonored when presented for
421 payment and the corporation has failed to correct the failure within twenty (20) days
422 after written notice of such failure was mailed to the corporation.

423 SECTION 25.

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

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

429 SECTION 26.

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

432 Section 15.30. Grounds for Revocation

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

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

440 (b) the payment of any fee due the commonwealth was dishonored when presented for
441 payment and the corporation has failed to correct the failure within 20 days after
442 written notice of such failure was mailed to the corporation; or

443 (c) he is satisfied that the revocation of the foreign corporation's authority to transact
444 business in the commonwealth would be in the public interest.

445 SECTION 27

446 Sections 7, 18, 22 and 23 shall be effective as of July 1, 2004.