

PUBLIC CHAPTER NO. 741

HOUSE BILL NO. 3643

By Representative Sargent

Substituted for: Senate Bill No. 3817

By Senator Johnson

AN ACT to amend Tennessee Code Annotated, Title 48 and Title 61, relative to business organizations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-11-201, is amended by adding the following language as new, appropriately designated subdivisions:

() "Confirmation of good standing" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued a domestic or foreign corporation is current on all taxes and penalties to the satisfaction of the commissioner;

() "Tax clearance for termination or withdrawal" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that a domestic or foreign corporation has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties and taxes as required by the revenue laws of this state;

SECTION 2. Tennessee Code Annotated, Section 48-11-301(m), is amended by deleting the following language from the subsection:

by a certificate from the commissioner of revenue reciting that the business has properly filed all reports and paid all required taxes and penalties, the certificate requirement

and by substituting instead the following:

by a confirmation of good standing, tax clearance for termination or withdrawal, or other similar communication of taxpayer status by the commissioner of revenue, then such requirement

SECTION 3. Tennessee Code Annotated, Section 48-24-101(b), is amended by deleting the first sentence of the subsection in its entirety and by substituting instead the following language:

If the secretary of state finds that the articles of dissolution and termination of corporate existence comply with the requirements of subsection (a) and are accompanied by a tax clearance for termination or withdrawal relative to such corporation, then the secretary of state shall file the articles of dissolution and termination of corporate existence.

SECTION 4. Tennessee Code Annotated, Section 48-24-108(b), is amended by deleting the first sentence of the subsection and by substituting instead the following language:

If the secretary of state finds that the articles of termination of corporate existence comply with the requirements of subsection (a) and are accompanied by a tax clearance for termination or withdrawal relative to such corporation, then the secretary of state shall file the articles of termination of corporate existence.

SECTION 5. Tennessee Code Annotated, Section 48-24-203(a), is amended by deleting subdivision (4), by inserting the following language as a new subdivision (1), and by redesignating the subsequent subdivisions accordingly:

(1) Contain a confirmation of good standing relative to such foreign corporation;

SECTION 6. Tennessee Code Annotated, Section 48-24-203(b)(1), is amended by deleting the language "information required by subsection (a) and that the information is correct," and by substituting instead the language "confirmation of good standing and information required by subsection (a), and that such information is correct, then".

SECTION 7. Tennessee Code Annotated, Section 48-24-205(b), is amended by deleting the first sentence of the subsection in its entirety and by substituting instead the following language:

If the secretary of state finds that the articles of termination following administrative dissolution or revocation comply with the requirements of subsection (a) and are accompanied by a tax clearance for termination or withdrawal relative to the corporation, then the secretary of state shall file the articles of termination of corporate existence following administrative dissolution or revocation.

SECTION 8. Tennessee Code Annotated, Section 48-25-103, is amended by inserting the following language as a new subsection (c):

(c) If the secretary of state determines upon application that a foreign corporation has been transacting business in this state without a certificate of authority for a period of one (1) year or more, then the secretary of state shall not file the application until the foreign corporation submits a confirmation of good standing.

SECTION 9. Tennessee Code Annotated, Section 48-25-201(d), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(d) The secretary of state shall not file an application for a certificate of withdrawal unless it is accompanied by a tax clearance for termination or withdrawal relative to such foreign corporation.

SECTION 10. Tennessee Code Annotated, Section 48-25-303(a), is amended by deleting subdivision (4), by inserting the following language as a new subdivision (1), and by redesignating the subsequent subdivisions accordingly:

(1) Contain a confirmation of good standing relative to such foreign corporation;

SECTION 11. Tennessee Code Annotated, Section 48-25-303(b)(1), is amended by deleting the language "information required by subsection (a) and that the information is correct," and by substituting instead the language "confirmation of good standing and information required by subsection (a), and that such information is correct, then".

SECTION 12. Tennessee Code Annotated, Section 48-25-305(c), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(c) The secretary of state shall not file an application for a certificate of withdrawal following administrative revocation unless it is accompanied by a tax clearance for termination or withdrawal relative to such foreign corporation.

SECTION 13. Tennessee Code Annotated, Section 48-51-201, is amended by adding the following language as new, appropriately designated subdivisions:

() "Confirmation of good standing" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued a domestic or foreign corporation is current on all taxes and penalties to the satisfaction of the commissioner;

() "Tax clearance for termination or withdrawal" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that a domestic or foreign corporation has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties and taxes as required by the revenue laws of this state;

SECTION 14. Tennessee Code Annotated, Section 48-51-301(l), is amended by deleting the following language from the subsection:

by a certificate from the commissioner of revenue reciting that the business has properly filed all reports and paid all required taxes and penalties, the certificate requirement

and by substituting instead the following language:

by a confirmation of good standing, tax clearance for termination or withdrawal, or other similar communication of taxpayer status by the commissioner of revenue, then such requirement

SECTION 15. Tennessee Code Annotated, Section 48-64-101(d), is amended by deleting the first sentence in its entirety and by substituting instead the following language:

If the secretary of state finds that the articles of dissolution and termination of corporate existence comply with the requirements of subsection (a), and if the articles are accompanied by a tax clearance for termination or withdrawal relative to such corporation, then the secretary of state shall file the articles of dissolution and termination of corporate existence.

SECTION 16. Tennessee Code Annotated, Section 48-64-109(b), is amended by deleting the first sentence of the subsection and by substituting instead the following language:

If the secretary of state finds that the articles of termination of corporate existence comply with the requirements of subsection (a), and if the articles are accompanied by a tax clearance for termination or withdrawal relative to such corporation, then the secretary of state shall file the articles of dissolution and termination of corporate existence.

SECTION 17. Tennessee Code Annotated, Section 48-64-203(a), is amended by inserting the following language as a new subdivision (1) and by renumbering the subsequent subdivisions accordingly:

(1) Contain a confirmation of good standing relative to such foreign corporation;

SECTION 18. Tennessee Code Annotated, Section 48-64-203(b)(1), is amended by deleting the language "information required by subsection (a) and that the information is correct," and by substituting instead the language "confirmation of good standing and information required by subsection (a), and that such information is correct, then".

SECTION 19. Tennessee Code Annotated, Section 48-64-205(b), is amended by deleting the first sentence in its entirety and by substituting instead the following language:

If the secretary of state finds that the articles of termination following administrative dissolution or revocation comply with the requirements of subsection (a), and if the articles are accompanied by a tax clearance for termination or withdrawal, then the secretary of state shall file the articles of termination following administrative dissolution or revocation.

SECTION 20. Tennessee Code Annotated, Section 48-65-103, is amended by inserting the following language as a new subsection (c):

(c) If the secretary of state determines upon application that a foreign corporation has been transacting business in this state without a certificate of authority for a period of one (1) year or more, then the application shall not be issued by the secretary of state until the foreign corporation submits a confirmation of good standing relative to such foreign corporation.

SECTION 21. Tennessee Code Annotated, Section 48-65-201(d), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(d) The secretary of state shall not file an application for a certificate of withdrawal unless it is accompanied by a tax clearance for termination or withdrawal relative to such foreign corporation.

SECTION 22. Tennessee Code Annotated, Section 48-65-303(a), is amended by inserting the following language as a new subdivision (1) and by renumbering the subsequent subdivisions accordingly:

(1) Contain a confirmation of good standing relative to such foreign corporation;

SECTION 23. Tennessee Code Annotated, Section 48-65-303(b)(1), is amended by deleting the language "information required by subsection (a) and that the information is correct," and by substituting instead the language "confirmation of good standing and information required by subsection (a), and that such information is correct, then".

SECTION 24. Tennessee Code Annotated, Section 48-65-305(c), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(c) The secretary of state shall not file an application for a certificate of withdrawal following administrative revocation unless it is accompanied by a tax clearance for termination or withdrawal relative to such foreign corporation.

SECTION 25. Tennessee Code Annotated, Section 48-202-101, is amended by adding the following language as new, appropriately designated subdivisions:

() "Confirmation of good standing" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued an LLC or a foreign LLC is current on all taxes and penalties to the satisfaction of the commissioner;

() "Tax clearance for termination or withdrawal" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that an LLC or a foreign LLC has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties and taxes as required by the revenue laws of this state;

SECTION 26. Tennessee Code Annotated, Section 48-245-201, is amended by deleting subsection (c) in its entirety and by substituting instead the following language:

(c) The secretary of state shall file the articles of termination of existence of the LLC if the secretary of state finds that the articles:

(1) Comply with the provisions of subsection (b); and

(2) Are accompanied by a tax clearance for termination or withdrawal relative to such LLC.

SECTION 27. Tennessee Code Annotated, Section 48-245-303(a), is amended by inserting the following language as a new subdivision (1) and by renumbering the subsequent subdivisions accordingly:

(1) Contain a confirmation of good standing relative to such LLC;

SECTION 28. Tennessee Code Annotated, Section 48-245-303(b)(1), is amended by deleting the language "information required by subsection (a) and that the information is correct," and by substituting instead the language "confirmation of good standing and information required by subsection (a), and that such information is correct, then".

SECTION 29. Tennessee Code Annotated, Section 48-245-305, is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b)

(1) The secretary of state shall file the articles of termination following administrative dissolution if the secretary of state finds that the articles:

(A) Comply with the provisions of subsection (a); and

(B) Are accompanied by a tax clearance for termination or withdrawal relative to such LLC.

(2) Upon such filing, the existence of the LLC shall cease, except that the termination of LLC existence shall not take away or impair any remedy to or against the LLC or its members, governors, or managers for any right or claim existing or any liability incurred prior to such termination. Any such action or proceeding by or against the LLC may be prosecuted or defended by the LLC in its LLC name. The members, governors, or managers shall have the power to take such LLC or other action as may be appropriate to protect such remedy, right, or claim.

SECTION 30. Tennessee Code Annotated, Section 48-245-503, is amended by inserting the following language as a new subsection (c):

(c) The secretary of state shall file the articles of termination if the secretary of state finds that the articles of termination:

(1) Comply with the provisions of subsection (b); and

(2) Are accompanied by a tax clearance for termination or withdrawal relative to such LLC.

SECTION 31. Tennessee Code Annotated, Section 48-246-302, is amended by inserting the following language as a new subsection (c):

(c) If the secretary of state determines upon application that a foreign LLC has been transacting business in this state without a certificate of authority for a period of one (1) year or more, then the secretary of state shall not file the application until the foreign corporation submits a confirmation of good standing relative to such foreign LLC.

SECTION 32. Tennessee Code Annotated, Section 48-246-401, is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b) The secretary of state shall file the certificate of cancellation of authority if the secretary of state finds that the certificate of cancellation of authority:

(1) Complies with the provisions of subsection (a); and

(2) Is accompanied by a tax clearance for termination or withdrawal relative to such foreign LLC.

SECTION 33. Tennessee Code Annotated, Section 48-246-503(a), is amended by inserting the following language as a new subdivision (1) and by renumbering the subsequent subdivisions accordingly:

(1) Contain a confirmation of good standing relative to such foreign LLC;

SECTION 34. Tennessee Code Annotated, Section 48-246-503(b)(1), is amended by deleting the language "information required by subsection (a) and that the information is correct," and by substituting instead the language "confirmation of good standing and information required by subsection (a), and that such information is correct, then".

SECTION 35. Tennessee Code Annotated, Section 48-246-505, is amended by redesignating subsection (b) as subsection (c) and by inserting the following language as a new subsection (b):

(b) The secretary of state shall file the certificate of cancellation of authority of the foreign LLC if the secretary of state finds that the application:

(1) Complies with the provisions of subsection (a); and

(2) Is accompanied by a tax clearance for termination or withdrawal relative to such foreign LLC.

SECTION 36. Tennessee Code Annotated, Section 48-247-101(l), is amended by deleting the following language from the subsection:

by a certificate from the commissioner of revenue reciting that the business has properly filed all reports and paid all required taxes and penalties, the certificate requirement

and by substituting instead the following language:

by a confirmation of good standing, tax clearance for termination or withdrawal, or other similar communication of taxpayer status by the commissioner of revenue, then such requirement

SECTION 37. Tennessee Code Annotated, Section 48-249-102, is amended by adding the following language as new, appropriately designated subdivisions:

() "Confirmation of good standing" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued an LLC or a foreign LLC is current on all taxes and penalties to the satisfaction of the commissioner;

() "Tax clearance for termination or withdrawal" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that an LLC or a foreign LLC has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties, and taxes as required by the revenue laws of this state;

SECTION 38. Tennessee Code Annotated, Section 48-249-602, is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b) The secretary of state shall file the articles of termination of the LLC if the secretary of state finds that the articles:

(1) Comply with the provisions of subsection (a); and

(2) Are accompanied by a tax clearance for termination or withdrawal relative to such LLC.

SECTION 39. Tennessee Code Annotated, Section 48-249-606(a), is amended by inserting the following language as a new subdivision (1) and by renumbering the subsequent subdivisions accordingly:

(1) Contain a confirmation of good standing relative to such LLC;

SECTION 40. Tennessee Code Annotated, Section 48-249-606(b)(1), is amended by deleting the language "information required by subsection (a) and that the information is correct," and by substituting instead the language "confirmation of good standing and information required by subsection (a), and that such information is correct, then".

SECTION 41. Tennessee Code Annotated, Section 48-249-608(b), is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b)

(1) The secretary of state shall file the articles of termination following administrative dissolution if the secretary of state finds that the articles:

(A) Comply with the provisions of subsection (a); and

(B) Are accompanied by a tax clearance for termination or withdrawal relative to such LLC.

(2) Upon such filing, the existence of the LLC shall cease, except that the termination of LLC existence shall not take away or impair any remedy to or against the LLC or its members, directors, managers or officers for any right or claim existing or any liability incurred, prior to such termination. Any such action or proceeding by or against the LLC may be prosecuted or defended by the LLC in its LLC name. The members, directors, managers or officers shall have the power to take such LLC or other action, as may be appropriate, to protect such remedy, right or claim.

SECTION 42. Tennessee Code Annotated, Section 48-249-612, is amended by inserting the following language as a new subsection (c):

(c) The secretary of state shall file the articles of termination if the secretary of state finds that the articles of termination:

(1) Comply with the provisions of subsection (b); and

(2) Are accompanied by a tax clearance for termination or withdrawal relative to such LLC.

SECTION 43. Tennessee Code Annotated, Section 48-249-905, is amended by adding the following language as a new subsection (c):

(c) If the secretary of state determines upon application that a foreign LLC has been transacting business in this state without a certificate of authority for a period of one (1) year or more, then the secretary of state shall not file the application until the foreign corporation submits a confirmation of good standing relative to such foreign LLC.

SECTION 44. Tennessee Code Annotated, Section 48-249-907(a), is amended by deleting the language prior to subdivision (1) in its entirety and by substituting instead the following language:

A foreign LLC may cancel its certificate of authority by filing a certificate of cancellation of authority with the secretary of state accompanied by a tax

clearance for termination or withdrawal relative to such foreign LLC. The certificate of cancellation of authority shall set forth:

SECTION 45. Tennessee Code Annotated, Section 48-249-910(b), is amended by deleting subdivision (1) and by substituting instead the following language:

(1) If the secretary of state determines that the application:

(A) Is accompanied by a confirmation of good standing relative to such foreign LLC; and

(B) Contains the information required by subsection (a), and that the information is correct, then the secretary of state shall reinstate the certificate of authority, prepare a certificate that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign LLC, except that the copy of the certificate may be sent by first class mail; and

SECTION 46. Tennessee Code Annotated, Section 48-249-912(a), is amended by deleting the language prior to subdivision (1) in its entirety and by substituting instead the following language:

When a foreign LLC that has had its certificate of authority revoked desires to withdraw from this state, it may do so without first being reinstated, by filing with the secretary of state a certificate of cancellation of authority following administrative revocation of a certificate of authority accompanied by a tax clearance for termination or withdrawal relative to such foreign LLC. The cancellation of certificate of authority shall set forth:

SECTION 47. Tennessee Code Annotated, Section 48-249-1005(l), is amended by deleting the following language from the subsection:

by a certificate from the commissioner of revenue reciting that the entity has properly filed all reports and paid all required taxes and penalties, the certificate requirement

and by substituting instead the following language:

by a confirmation of good standing, tax clearance for termination or withdrawal, or other similar communication of taxpayer status by the commissioner of revenue, then such requirement

SECTION 48. Tennessee Code Annotated, Section 61-1-101, is amended by adding the following language as new, appropriately designated subdivisions:

() "Confirmation of good standing" means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued a limited liability partnership or a foreign limited liability partnership is current on all taxes and penalties to the satisfaction of the commissioner;

() “Tax clearance for termination or withdrawal” means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that a limited liability partnership or a foreign limited liability partnership has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties and taxes as required by the revenue laws of this state;

SECTION 49. Tennessee Code Annotated, Section 61-1-1001(f)(1), is amended by deleting subdivision (B) in its entirety and by substituting instead the following language:

(B) Accompanied by a tax clearance for termination or withdrawal relative to such registered limited liability partnership; or

SECTION 50. Tennessee Code Annotated, Section 61-1-1004, is amended by adding the following language as a new, appropriately designated subsection:

() If the secretary of state determines upon filing of the notice as provided in subsection (d), that a foreign registered limited liability partnership has been transacting business in this state without filing notice for a period of one (1) year or more, then the secretary of state shall also require that the foreign registered limited liability partnership submit a confirmation of good standing relative to such foreign registered limited liability partnership.

SECTION 51. Tennessee Code Annotated, Section 61-1-1004(f), is amended by designating the current language as subdivision (1) and by adding the following language as a new subdivision (2):

(2) The statement of withdrawal as a foreign registered limited liability partnership shall be accompanied by a tax clearance for termination or withdrawal relative to such foreign registered limited liability partnership.

SECTION 52. Tennessee Code Annotated, Section 61-2-101, is amended by adding the following language new, appropriately designated subdivisions:

() “Confirmation of good standing” means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that at the time such confirmation is issued a limited partnership or a foreign limited partnership is current on all taxes and penalties to the satisfaction of the commissioner;

() “Tax clearance for termination or withdrawal” means confirmation by the commissioner of revenue issued through electronic communication to the secretary of state or a certificate of tax clearance that a limited partnership or a foreign limited partnership has filed all applicable reports, including, but not limited to, a final report, and has paid all fees, penalties and taxes as required by the revenue laws of this state;

SECTION 53. Tennessee Code Annotated, Section 61-2-203, is amended by deleting subsections (c) and (d) and by substituting instead the following language:

(c) The secretary of state shall file the certificate of cancellation if the secretary of state finds that the certificate of cancellation:

(1) Complies with the provisions of subsection (b); and

(2) Is accompanied by a tax clearance for termination or withdrawal relative to such limited partnership; provided, however, that a confirmation of good standing shall be required in lieu of the tax clearance for termination or withdrawal if the limited partnership indicates in the certificate of cancellation that the limited partnership is converting to another entity type.

SECTION 54. Tennessee Code Annotated, Section 61-2-902, is amended by adding the following language as a new subsection (c):

(c) If the secretary of state determines upon registration that a foreign limited partnership has been doing business in this state for a period of one (1) year or more prior to applying for registration, then the secretary of state shall require the foreign limited partnership to submit a confirmation of good standing relative to such foreign limited partnership.

SECTION 55. Tennessee Code Annotated, Section 61-2-906, is amended by deleting subsection (b) in its entirety and by substituting instead the following language:

(b) The secretary of state shall file the certificate of cancellation of registration if the secretary of state finds that the certificate of cancellation of registration:

(1) Complies with the provisions of subsection (a); and

(2) Is accompanied by a tax clearance for termination or withdrawal relative to such foreign limited partnership.

SECTION 56. This act shall take effect on July 1, 2010, the public welfare requiring it.

PASSED: March 24, 2010



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 9th day of April 2010



PHIL BREDESEN, GOVERNOR