

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Commerce and Economic Development to which was  
3 referred House Bill No. 838 entitled “An act relating to business registration  
4 requirements” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking all after the enacting clause  
6 and inserting in lieu thereof:

7 Sec. 1. 11 V.S.A. chapter 15 is amended to read:

8 CHAPTER 15. REGISTRATION OF BUSINESS ENTITIES

9 \* \* \*

10 § 1626. FAILURE TO REGISTER; ENFORCING COMPLIANCE

11 ~~Upon the complaint of the secretary of state, a person, copartnership,~~  
12 ~~association, limited liability company or corporation carrying on business in~~  
13 ~~this state contrary to this chapter may be enjoined therefrom by a superior~~  
14 ~~court and fined not more than \$100.00.~~

15 (a) A person who is not registered with the Secretary of State as required  
16 under this chapter, and any successor to the person or assignee of a cause of  
17 action arising out of the business of the person, may not maintain an action or  
18 proceeding or raise a counterclaim, crossclaim, or affirmative defense in this  
19 State until the person, successor, or assignee registers with the Secretary.

1        (b) The failure of a person to register as required under this chapter does  
2        not impair the validity of a contract or act of the person or preclude it from  
3        defending an action or proceeding in this State.

4        (c) An individual does not waive a limitation on his or her personal liability  
5        afforded by other law solely by transacting business in this State without  
6        registering with the Secretary of State as required under this chapter.

7        (d) If a person transacts business in this State without registering with the  
8        Secretary of State as required under this chapter, the Secretary is its agent for  
9        service of process with respect to a right of action arising out of the transaction  
10       of business in this State.

11       (e) A person that transacts business in this State without registering with  
12       the Secretary of State as required under this chapter shall be liable to the  
13       State for:

14           (1) a civil penalty of \$50.00 for each day, not to exceed a total of  
15           \$10,000.00 for each year, it transacts business in this State without a  
16           registration;

17           (2) an amount equal to the fees due under this chapter during the period  
18           it transacted business in this State without a registration; and

19           (3) other penalties imposed by law.

20        (f) The Attorney General may maintain an action in the Civil Division of  
21        the Superior Court to collect the penalties imposed in subsection (e) of this

1 section and to restrain a person from transacting business in this State in  
2 violation of this chapter.

3 \* \* \*

4 § 1637. AUTHORITY TO TERMINATE AND AMEND REGISTRATION

5 The Secretary of State shall have the authority to:

6 (1) terminate the registration of a person who, under a provision of the  
7 laws of this State, or pursuant to a court order or assurance of discontinuance,  
8 is not authorized to conduct business in this State; and

9 (2) amend his or her records to reflect the termination of a registration  
10 pursuant to subdivision (1) of this section.

11 Sec. 2. 11 V.S.A. § 3303 is amended to read:

12 § 3303. EFFECT OF FAILURE TO QUALIFY

13 (a)(1) A foreign limited liability partnership transacting business in this  
14 state State may not maintain an action or proceeding or raise a counterclaim,  
15 crossclaim, or affirmative defense in this state State unless it has in effect a  
16 statement of foreign qualification.

17 (2) The successor to a foreign limited liability partnership that  
18 transacted business in this State without a certificate of authority and the  
19 assignee of a cause of action arising out of that business may not maintain a  
20 proceeding or raise a counterclaim, crossclaim, or affirmative defense based on

1 that cause of action in any court in this State until the foreign limited liability  
2 partnership or its successor or assignee obtains a certificate of authority.

3 (b) The failure of a foreign limited liability partnership to have in effect a  
4 statement of foreign qualification does not impair the validity of a contract or  
5 act of the foreign limited liability partnership or preclude it from defending an  
6 action or proceeding in this ~~state~~ State.

7 (c) A limitation on personal liability of a partner is not waived solely by  
8 transacting business in this ~~state~~ State without a statement of foreign  
9 qualification.

10 (d) If a foreign limited liability partnership transacts business in this ~~state~~  
11 State without a statement of foreign qualification, the ~~secretary of state~~  
12 Secretary of State is its agent for service of process with respect to a right of  
13 action arising out of the transaction of business in this ~~state~~ State.

14 (e) A foreign limited liability partnership that transacts business in this  
15 State without a statement of foreign qualification shall be liable to the  
16 State for:

17 (1) a civil penalty of \$50.00 for each day, not to exceed a total of  
18 \$10,000.00 for each year, it transacts business in this State without a statement  
19 of foreign qualification;

1           (2) an amount equal to the fees due under this chapter during the  
2           period it transacted business in this State without a statement of foreign  
3           qualification; and

4           (3) other penalties imposed by law.

5           Sec. 3. 11 V.S.A. § 3305 is amended to read:

6           § 3305. ACTION BY ATTORNEY GENERAL

7           The ~~attorney general~~ Attorney General may maintain an action in the Civil  
8           Division of the Superior Court to collect the penalties imposed in section 3303  
9           of this title and to restrain a foreign limited liability partnership from  
10           transacting business in this state State in violation of this subchapter.

11           Sec. 4. 11 V.S.A. § 3487 is amended to read:

12           § 3487. TRANSACTION OF BUSINESS WITHOUT REGISTRATION

13           (a)(1) A foreign limited partnership transacting business in this ~~state~~ State  
14           may not maintain an action or proceeding or raise a counterclaim, crossclaim,  
15           or affirmative defense in this state State until it has registered in this ~~state~~  
16           State.

17           (2) The successor to a foreign limited partnership that transacted  
18           business in this State without a certificate of authority and the assignee of a  
19           cause of action arising out of that business may not maintain a proceeding or  
20           raise a counterclaim, crossclaim, or affirmative defense based on that cause of

1 action in any court in this State until the foreign limited partnership or its  
2 successor or assignee obtains a certificate of authority.

3 (b) The failure of a foreign limited partnership to register in this ~~state~~ State  
4 does not impair the validity of any contract or act of the foreign limited  
5 partnership or prevent the foreign limited partnership from defending any  
6 action, suit, or proceeding in any court of this ~~state~~ State.

7 (c) A limited partner of a foreign limited partnership is not liable as a  
8 general partner of the foreign limited partnership solely by reason of having  
9 transacted business in this ~~state~~ State without registration.

10 (d) A foreign limited partnership, by transacting business in this ~~state~~ State  
11 without registration, appoints the ~~secretary of state~~ Secretary of State as its  
12 agent for service of process with respect to claims for relief and causes of  
13 action arising out of the transaction of business in this ~~state~~ State.

14 (e) A foreign limited partnership that transacts business in this State  
15 without a registration shall be liable to the State for:

16 (1) a civil penalty of \$50.00 for each day, not to exceed a total of  
17 \$10,000.00 for each year, it transacts business in this State without a  
18 registration;

19 (2) an amount equal to the fees due under this chapter during the period  
20 it transacted business in this State without a registration; and

21 (3) other penalties imposed by law.

1 Sec. 5. 11 V.S.A. § 3488 is amended to read:

2 § 3488. ACTION BY ATTORNEY GENERAL

3 The ~~attorney general~~ Attorney General may bring an action in the Civil  
4 Division of the Superior Court to collect the penalties imposed under section  
5 3487 of this title and to restrain a foreign limited partnership from transacting  
6 business in this ~~state~~ State in violation of this subchapter.

7 Sec. 6. 11 V.S.A. § 4119 is amended to read:

8 § 4119. EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF  
9 AUTHORITY

10 (a)(1) A foreign limited liability company transacting business in this State  
11 may not maintain a proceeding or raise a counterclaim, cross-claim, or  
12 affirmative defense in any court in this State until it obtains a certificate of  
13 authority to transact business in this State.

14 (2) The successor to a foreign limited liability company that transacted  
15 business in this State without a certificate of authority and the assignee of a  
16 cause of action arising out of that business may not maintain a proceeding or  
17 raise a counterclaim, crossclaim, or affirmative defense based on that cause of  
18 action in any court in this State until the foreign limited liability company or its  
19 successor or assignee obtains a certificate of authority.

20 (b) The failure of a foreign limited liability company to have a certificate of  
21 authority to transact business in this State does not impair the validity of a

1 contract or act of the company or prevent the foreign limited liability company  
2 from defending an action or proceeding in this State.

3 (c) A member or manager of a foreign limited liability company is not  
4 liable for the debts, obligations, or other liabilities of the company solely  
5 because the company transacted business in this State without a certificate of  
6 authority.

7 (d) If a foreign limited liability company transacts business in this State  
8 without a certificate of authority, it appoints the Secretary of State as its agent  
9 for service of process for claims arising out of the transaction of business in  
10 this State.

11 (e) A foreign limited liability company that transacts business in this State  
12 without a certificate of authority shall be liable to the State for:

13 (1) a civil penalty of \$50.00 for each day, not to exceed a total of  
14 \$10,000.00 for each year, it transacts business in this State without a certificate  
15 of authority;

16 (2) an amount equal to the fees due under this chapter during the period  
17 it transacted business in this State without a certificate of authority; and

18 (3) other penalties imposed by law.



1 Sec. 7. 11 V.S.A. § 4120 is amended to read:

2 § 4120. ACTION BY ATTORNEY GENERAL

3 The Attorney General may maintain an action in the Civil Division of the  
4 Superior Court to collect the penalties imposed under section 4119 of this title  
5 and to restrain a foreign limited liability company from transacting business in  
6 this State in violation of this chapter.

7 Sec. 8. 11A V.S.A. § 15.02 is amended to read:

8 § 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT  
9 AUTHORITY

10 (a) A foreign corporation transacting business in this ~~state~~ State without a  
11 certificate of authority may not maintain a proceeding or raise a counterclaim,  
12 crossclaim<sub>2</sub> or affirmative defense in any court in this ~~state~~ State until it obtains  
13 a certificate of authority.

14 (b) The successor to a foreign corporation that transacted business in this  
15 ~~state~~ State without a certificate of authority and the assignee of a cause of  
16 action arising out of that business may not maintain a proceeding or raise a  
17 counterclaim, crossclaim<sub>2</sub> or affirmative defense based on that cause of action  
18 in any court in this ~~state~~ State until the foreign corporation or its successor or  
19 assignee obtains a certificate of authority.

20 (c) A court may stay a proceeding commenced by a foreign corporation, its  
21 successor, or assignee until it determines whether the foreign corporation or its

1 successor requires a certificate of authority. If it so determines, the court may  
2 further stay the proceeding until the foreign corporation or its successor obtains  
3 the certificate.

4 (d) A foreign corporation that transacts business in this State without a  
5 certificate of authority is liable to the ~~state~~ State for:

6 (1) a civil penalty of \$50.00 for each day, ~~but~~ not to exceed a total of  
7 ~~\$1,000.00~~ \$10,000.00 for each year, it transacts business in this ~~state~~ State  
8 without a certificate of authority;

9 (2) an amount equal to ~~all the fees that would have been imposed due~~  
10 under this ~~chapter title~~ title during the ~~years, or parts thereof,~~ period it transacted  
11 business in this ~~state~~ State without a certificate of authority; and

12 (3) ~~such other penalties as are imposed by law. The attorney general~~  
13 ~~may collect all penalties due under this subsection.~~

14 (e) ~~Upon petition of the attorney general~~ The Attorney General may  
15 maintain an action in the Civil Division of the Superior Court to collect the  
16 penalties imposed in this section and to restrain a foreign corporation not in  
17 compliance with this chapter, ~~and its officers and agents, may be enjoined by~~  
18 ~~the courts of this state~~ from doing business within this ~~state~~ State.

19 (f) Notwithstanding subsections (a) and (b) of this section, the failure of a  
20 foreign corporation to obtain a certificate of authority does not impair the

1 validity of its corporate acts, to the extent they are otherwise in compliance  
2 with law, or prevent it from defending any proceeding in this ~~state~~ State.

3 Sec. 9. 11B V.S.A. § 15.02 is amended to read:

4 § 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT  
5 AUTHORITY

6 (a) A foreign corporation transacting business in this ~~state~~ State without a  
7 certificate of authority may not maintain a proceeding or raise a counterclaim,  
8 crossclaim, or affirmative defense in any court in this ~~state~~ State until it obtains  
9 a certificate of authority.

10 (b) The successor to a foreign corporation that transacted business in this  
11 ~~state~~ State without a certificate of authority and the assignee of a cause of  
12 action arising out of that business may not maintain a proceeding or raise a  
13 counterclaim, crossclaim, or affirmative defense based on that cause of action  
14 in any court in this ~~state~~ State until the foreign corporation or its successor or  
15 assignee obtains a certificate of authority.

16 (c) A court may stay a proceeding commenced by a foreign corporation, its  
17 successor, or assignee until it determines whether the foreign corporation or its  
18 successor requires a certificate of authority. If it so determines, the court may  
19 further stay the proceeding until the foreign corporation or its successor obtains  
20 the certificate.

1       ~~(d) A foreign corporation is liable for a civil penalty of \$50.00 for each~~  
2       ~~day, but not to exceed a total of \$1,000.00 for each year, it transacts business in~~  
3       ~~this state without a certificate of authority, an amount equal to all fees that~~  
4       ~~would have been imposed under this chapter during the years, or parts thereof,~~  
5       ~~it transacted business in this state without a certificate of authority, and such~~  
6       ~~other penalties as are imposed by law. The attorney general may collect all~~  
7       ~~penalties due under this subsection.~~

8       A foreign corporation that transacts business in this State without a  
9       certificate of authority is liable to the State for:

10       (1) a civil penalty of \$50.00 for each day, not to exceed a total of  
11       \$10,000.00 for each year, it transacts business in this State without a certificate  
12       of authority;

13       (2) an amount equal to the fees due under this title during the period it  
14       transacted business in this State without a certificate of authority; and

15       (3) other penalties imposed by law.

16       (e) The Attorney General may file an action in the Civil Division of  
17       Superior Court to collect the penalties due under this subsection and to restrain  
18       a foreign corporation not in compliance with this chapter from doing business  
19       within this State.

20       (f) Notwithstanding subsections (a) and (b) of this section, the failure of a  
21       foreign corporation to obtain a certificate of authority does not impair the

1 validity of its corporate acts or prevent it from defending any proceeding in  
2 this ~~state~~ State.

3 Sec. 10. 11C V.S.A. § 1402 is amended to read:

4 § 1402. APPLICATION FOR CERTIFICATE OF AUTHORITY

5 (a) A foreign enterprise may apply for a certificate of authority by  
6 delivering an application to the Secretary of State for filing. The application  
7 shall state:

8 (1) the name of the foreign enterprise and, if the name does not comply  
9 with section 111 of this title, an alternative name adopted pursuant to section  
10 1405 of this title;

11 (2) the name of the state or other jurisdiction under whose law the  
12 foreign enterprise is organized;

13 (3) the street address and, if different, mailing address of the principal  
14 office and, if the law of the jurisdiction under which the foreign enterprise is  
15 organized requires the foreign enterprise to maintain another office in that  
16 jurisdiction, the street address and, if different, mailing address of the required  
17 office;

18 (4) the street address and, if different, mailing address of the foreign  
19 enterprise's designated office in this State, and the name of the foreign  
20 enterprise's agent for service of process at the designated office; and

1 (5) the name, street address and, if different, mailing address of each of  
2 the foreign enterprise's current directors and officers.

3 (b) A foreign enterprise shall deliver with a completed application under  
4 subsection (a) of this section a certificate of good standing or existence or a  
5 similar record signed by the Secretary of State or other official having custody  
6 of the foreign enterprise's publicly filed records in the state or other  
7 jurisdiction under whose law the foreign enterprise is organized.

8 (c) A foreign enterprise may not transact business in this State without a  
9 certificate of authority.

10 Sec. 11. 11C V.S.A. § 1407 is amended to read:

11 § 1407. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT  
12 OF FAILURE TO HAVE CERTIFICATE

13 (a) To cancel its certificate of authority, a foreign enterprise shall deliver to  
14 the Secretary of State for filing a notice of cancellation. The certificate is  
15 canceled when the notice becomes effective under section 203 of this title.

16 (b)(1) A foreign enterprise transacting business in this State may not  
17 maintain an action or proceeding or raise a counterclaim, crossclaim, or  
18 affirmative defense in this State unless it has a certificate of authority.

19 (2) The successor to a foreign enterprise that transacted business in this  
20 State without a certificate of authority and the assignee of a cause of action  
21 arising out of that business may not maintain a proceeding or raise a

1 counterclaim, crossclaim, or affirmative defense based on that cause of action  
2 in any court in this State until the foreign enterprise or its successor or assignee  
3 obtains a certificate of authority.

4 (c) The failure of a foreign enterprise to have a certificate of authority does  
5 not impair the validity of a contract or act of the foreign enterprise or prevent  
6 the foreign enterprise from defending an action or proceeding in this State.

7 (d) A member of a foreign enterprise is not liable for the obligations of the  
8 foreign enterprise solely by reason of the foreign enterprise's having transacted  
9 business in this State without a certificate of authority.

10 (e) If a foreign enterprise transacts business in this State without a  
11 certificate of authority or cancels its certificate, it appoints the Secretary of  
12 State as its agent for service of process for an action arising out of the  
13 transaction of business in this State.

14 (f) A foreign enterprise that transacts business in this State without a  
15 certificate of authority is liable to the State for:

16 (1) a civil penalty of \$50.00 for each day, not to exceed a total of  
17 \$10,000.00 for each year, it transacts business in this State without a certificate  
18 of authority;

19 (2) an amount equal to the fees due under this title during the period it  
20 transacted business in this State without a certificate of authority; and

21 (3) other penalties imposed by law.

1 Sec. 12. 11C V.S.A. § 1408 is amended to read:

2 § 1408. ACTION BY ATTORNEY GENERAL

3 The Attorney General may maintain an action in the Civil Division of the  
4 Superior Court to collect the penalties imposed in section 1407 of this title and  
5 to restrain a foreign enterprise from transacting business in this State in  
6 violation of this ~~article~~ chapter.

7 Sec. 13. EFFECTIVE DATE

8 This act shall take effect on July 1, 2016.

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11 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

13

Representative \_\_\_\_\_

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FOR THE COMMITTEE