

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 (a) 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 (b)(1) The Secretary of State's termination of a person's registration
12 appoints the Secretary as the person's agent for service of process in any
13 proceeding based on a cause of action that arose during the time the person
14 was authorized to transact or was transacting without authorization business in
15 this State.

16 (2) Upon receipt of process, the Secretary of State shall mail a copy of
17 the process to the secretary of the terminated person at its principal office
18 shown in its most recent annual report or in any subsequent communication
19 received from the person stating the current mailing address of its principal
20 office, or, if none is on file, in its application for registration.

1 (c) If the terminated person demonstrates to the reasonable satisfaction of
2 the Secretary of State that the he or she has addressed the grounds for
3 termination and pays to the Secretary a fee of \$25.00 for each year the person
4 is delinquent, the Secretary may cancel the termination and prepare a
5 certificate of reinstatement, file the original of the certificate, and serve a copy
6 on the person.

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

8 § 3303. EFFECT OF FAILURE TO QUALIFY

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

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

19 (b) The failure of a foreign limited liability partnership to have in effect a
20 statement of foreign qualification does not impair the validity of a contract or

1 act of the foreign limited liability partnership or preclude it from defending an
2 action or proceeding in this ~~state~~ State.

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

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

10 (e) A foreign limited liability partnership that transacts business in this
11 State without a statement of foreign qualification shall be liable to the
12 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 statement
15 of foreign qualification;

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

19 (3) other penalties imposed by law.

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

21 § 3305. ACTION BY ATTORNEY GENERAL

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

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

6 § 3487. TRANSACTION OF BUSINESS WITHOUT REGISTRATION

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

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

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

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

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

8 (e) A foreign limited partnership that transacts business in this State
9 without a registration shall be 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
12 registration;

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

15 (3) other penalties imposed by law.

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

17 § 3488. ACTION BY ATTORNEY GENERAL

18 The ~~attorney general~~ Attorney General may bring an action in the Civil
19 Division of the Superior Court to collect the penalties imposed under section
20 3487 of this title and to restrain a foreign limited partnership from transacting
21 business in this state State in violation of this subchapter.

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

2 § 4119. EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF
3 AUTHORITY

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

8 (2) The successor to a foreign limited liability company that transacted
9 business in this State without a certificate of authority and the assignee of a
10 cause of action arising out of that business may not maintain a proceeding or
11 raise a counterclaim, crossclaim, or affirmative defense based on that cause of
12 action in any court in this State until the foreign limited liability company or its
13 successor or assignee obtains a certificate of authority.

14 (b) The failure of a foreign limited liability company to have a certificate of
15 authority to transact business in this State does not impair the validity of a
16 contract or act of the company or prevent the foreign limited liability company
17 from defending an action or proceeding in this State.

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

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

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

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

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

12 (3) other penalties imposed by law.

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

14 § 4120. ACTION BY ATTORNEY GENERAL

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

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

20 § 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT
21 AUTHORITY

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

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

11 (c) A court may stay a proceeding commenced by a foreign corporation, its
12 successor, or assignee until it determines whether the foreign corporation or its
13 successor requires a certificate of authority. If it so determines, the court may
14 further stay the proceeding until the foreign corporation or its successor obtains
15 the certificate.

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

18 (1) a civil penalty of \$50.00 for each day, ~~but~~ not to exceed a total of
19 ~~\$1,000.00~~ \$10,000.00 for each year, it transacts business in this ~~state~~ State
20 without a certificate of authority;

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

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

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

11 (f) Notwithstanding subsections (a) and (b) of this section, the failure of a
12 foreign corporation to obtain a certificate of authority does not impair the
13 validity of its corporate acts, to the extent they are otherwise in compliance
14 with law, or prevent it from defending any proceeding in this ~~state~~ State.

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

16 § 15.02. CONSEQUENCES OF TRANSACTING BUSINESS WITHOUT
17 AUTHORITY

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

1 (b) The successor to a foreign corporation that transacted business in this
2 ~~state~~ State without a certificate of authority and the assignee of a cause of
3 action arising out of that business may not maintain a proceeding or raise a
4 counterclaim, crossclaim, or affirmative defense based on that cause of action
5 in any court in this ~~state~~ State until the foreign corporation or its successor or
6 assignee obtains a certificate of authority.

7 (c) A court may stay a proceeding commenced by a foreign corporation, its
8 successor, or assignee until it determines whether the foreign corporation or its
9 successor requires a certificate of authority. If it so determines, the court may
10 further stay the proceeding until the foreign corporation or its successor obtains
11 the certificate.

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

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

1 (1) a civil penalty of \$50.00 for each day, not to exceed a total of
2 \$10,000.00 for each year, it transacts business in this State without a certificate
3 of authority;

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

6 (3) other penalties imposed by law.

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

11 (f) Notwithstanding subsections (a) and (b) of this section, the failure of a
12 foreign corporation to obtain a certificate of authority does not impair the
13 validity of its corporate acts or prevent it from defending any proceeding in
14 this ~~state~~ State.

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

16 § 1402. APPLICATION FOR CERTIFICATE OF AUTHORITY

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

1 (1) the name of the foreign enterprise and, if the name does not comply
2 with section 111 of this title, an alternative name adopted pursuant to section
3 1405 of this title;

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

6 (3) the street address and, if different, mailing address of the principal
7 office and, if the law of the jurisdiction under which the foreign enterprise is
8 organized requires the foreign enterprise to maintain another office in that
9 jurisdiction, the street address and, if different, mailing address of the required
10 office;

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

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

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

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

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

4 § 1407. CANCELLATION OF CERTIFICATE OF AUTHORITY; EFFECT
5 OF FAILURE TO HAVE CERTIFICATE

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

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

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

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

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

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

8 (f) A foreign enterprise 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 Sec. 12. 11C V.S.A. § 1408 is amended to read:

17 § 1408. ACTION BY ATTORNEY GENERAL

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

1 Sec. 13. EFFECTIVE DATE

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

3

4

5 (Committee vote: _____)

6

7

Representative _____

8

FOR THE COMMITTEE