

15A: 4.3

LEGISLATIVE HISTORY CHECKLIST

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(Nonprofit corporations--reinstatement)

NJSA: 15A:4-3

LAWS OF: 1997 CHAPTER: 138

BILL NO: A2844

SPONSOR(S): Bateman

DATE INTRODUCED: March 24, 1997

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage denoted
First reprint enacted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: May 22, 1997

SENATE: June 26, 1997

DATE OF APPROVAL: June 27, 1997

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: Yes

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

KBP:pp

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[First Reprint]
ASSEMBLY, No. 2844

STATE OF NEW JERSEY

INTRODUCED MARCH 24, 1997

By Assemblymen BATEMAN and CARABALLO

1 AN ACT concerning nonprofit corporations and amending ¹N.J.S.
2 15A:4-3, ¹ N.J.S.15A:4-5 ¹and N.J.S.15A:15-1¹.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 ¹1. N.J.S. 15A:4-3 is amended to read as follows:

8 15A:4-3. Change of Registered Office or Registered Agent.

9 a. A domestic corporation or a foreign corporation authorized to
10 conduct activities in this State may change its registered office or its
11 registered agent, or both. When the registered office is changed, or
12 when the registered agent is changed, or dies, resigns or becomes
13 disqualified, the corporation shall, by resolution of the board,
14 forthwith fix the address of the new registered office or designate the
15 successor registered agent or both, as the case may be.

16 b. The corporation shall forthwith file in the office of the Secretary
17 of State a certificate executed on behalf of the corporation setting
18 forth:

19 (1) The name of the corporation;

20 (2) If the registered agent is not being changed, the name of the
21 registered agent;

22 (3) If the registered agent is being changed, the names of the
23 registered agent being succeeded and of the successor registered
24 agent;

25 (4) If the registered office is not being changed, the address of the
26 then registered office;

27 (5) If the registered office is being changed, the address of the
28 registered office immediately prior to the change, and the address of
29 the new registered office;

30 (6) That the address of its registered office and the address of its
31 registered agent will be identical after the change; and

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted May 1, 1997.

1 (7) That the change in registered office, or registered agent, or
2 both, is made pursuant to resolution of the board.

3 c. The registered agent of one or more domestic or foreign
4 corporations may change the registered office of the corporation or
5 corporations to another address in this State by filing in the office of
6 the Secretary of State a certificate executed by the agent and setting
7 forth:

8 (1) The names of all the corporations whose registered offices are
9 being changed and for which it is the registered agent, listed in
10 alphabetical order;

11 (2) The address of the registered office of each corporation
12 immediately prior to the change, and the address of the new registered
13 office;

14 (3) That the address of the registered office of each corporation and
15 the address of its registered agent will be identical after the change;
16 and

17 (4) A statement that at least 20 days' prior notice of the change has
18 been given to each corporation in writing.

19 The change of the registered office of each of the corporations
20 named in the certificate shall become effective upon the date of the
21 filing or at a later time, not to exceed 30 days after the date of filing,
22 as may be set forth in the certificate.

23 d. **■** If any certificate of change required by this section is not filed,
24 the corporation shall, after written demand by the Secretary of State
25 by certified mail addressed to the corporation at the last address
26 appearing of record in his office, forfeit to the State a penalty of
27 \$200.00 to be recovered with costs in a civil action prosecuted by the
28 Attorney General. No corporation shall be subject to penalty if it
29 shall, within 30 days after written demand, file the certificate of
30 change required by law and pay to the Secretary of State the fee
31 provided by law for the filing of each certificate of change. In lieu of
32 the civil action, the Secretary of State, after expiration of the 30-day
33 period, may issue a certificate to the Clerk of the Superior Court that
34 the corporation is indebted for the payment of the penalty, and the
35 clerk shall immediately enter upon the record of docketed judgments
36 the name of the corporation as the judgment debtor and of the State
37 as the judgment creditor, a statement that the penalty is imposed
38 under this section, the amount of the penalty, and the date of the
39 certificate. The entry shall have the same force as a judgment
40 docketed in the Superior Court. The Secretary of State within 5 days
41 after the entry shall give notice thereof to the corporation by certified
42 mail addressed to the corporation at the last address appearing of
43 record in the office of the Secretary of State. **■ Deleted by**
44 amendment, P.L. c. (now pending before the Legislature as this
45 bill).¹

46 (cf:P.L.1983, c. 127, s. 15A:4-3)

1 ¹~~1.~~2.¹ N.J.S.15A:4-5 is amended to read as follows:

2 15A:4-5. Annual Report to Secretary of State.

3 a. Every domestic corporation and every foreign corporation
4 authorized to conduct activities in this State shall file in the office of
5 the Secretary of State, within the time prescribed by this section, an
6 annual report, executed on behalf of the corporation, setting forth:

7 (1) the name of the corporation and, in the case of a foreign
8 corporation, the jurisdiction of its incorporation;

9 (2) the address, including the actual location as well as postal
10 designation, if different, of the registered office of the corporation in
11 this State, and the name of its registered agent in this State at that
12 address, and, if a foreign corporation, the address of its main or
13 headquarters office; and

14 (3) the names and addresses of the trustees and the officers of the
15 corporation, which addresses shall be either the residence address of
16 that person or other address where that person regularly receives mail
17 and which is not the address of the corporation.

18 b. The Secretary of State shall designate a date for filing annual
19 reports for each corporation required to submit a report pursuant to
20 this section and shall annually notify the corporation of the date so
21 designated not less than 60 days prior to that date. The corporation
22 shall file the report within 30 days before or within 30 days after the
23 date so designated. If the date so designated is not more than 6
24 months after the date on which an annual report pursuant to the
25 provisions of prior law was filed or on which the certificate of
26 incorporation became effective, the corporation shall not be required
27 to file an annual report until 1 year after the first occurrence of the
28 date so designated.

29 c. If the report is not filed for 2 consecutive years, the certificate
30 of incorporation of the corporation or the certificate of authority of a
31 foreign corporation shall, after written demand for the reports by the
32 Secretary of State by certified mail addressed to the corporation at the
33 last address appearing of record in the office of the Secretary of State,
34 be revoked for the failure to file reports. No corporation shall be
35 subject to the revocation of its certificate of incorporation or its
36 certificate of authority if it shall, within 60 days after the written
37 demand, file the reports required by law and pay to the Secretary of
38 State the fee provided by law for the filing of each report. ~~Any~~
39 ~~corporation having its certificate of incorporation or its certificate of~~
40 ~~authority revoked may, within 2 years of the revocation, cause a~~
41 ~~reinstatement of the certificate upon payment to the Secretary of State~~
42 ~~of double the amount of the fee then payable upon the filing of the~~
43 ~~certificate and upon filing a current annual report.~~ ¹~~1.~~2.¹ If the
44 certificate of incorporation of a domestic corporation or a certificate
45 of authority of a foreign corporation has been revoked, the certificate
46 shall be reinstated by proclamation of the Secretary of State upon

1 payment to the Secretary of State by the corporation of double the
 2 amount of the annual fee payable for each year for which it failed to
 3 file an annual report and upon filing a current annual report.】 Any
 4 corporation having its certificate of incorporation or its certificate of
 5 authority revoked may cause a reinstatement of the certificate upon
 6 payment to the Secretary of State of : the fee then payable upon the
 7 filing of the certificate of incorporation; a current annual report fee;
 8 and payment of a reinstatement filing assessment as set forth in N.J.S.
 9 15A:15-1.¹ The reinstatement relates back to the date of
 10 ¹【revocation of】 issuance of the proclamation revoking ¹ the
 11 certificate of incorporation or the certificate of authority and shall
 12 validate all actions taken in the interim. In the event that in the interim
 13 the corporate name has become unavailable, the Secretary of State
 14 shall issue the certificate upon, in the case of a domestic corporation,
 15 the filing of an amendment to its certificate of incorporation to change
 16 the corporate name to an available name, and, in the case of a foreign
 17 corporation, the filing of an amended certificate of authority adopting
 18 an ¹【assumed】 alternate ¹ name. ¹The Secretary of State shall
 19 provide the forms necessary to effect annual report reinstatements.¹

20 d. The Secretary of State shall furnish annual report forms, shall
 21 keep all the reports and shall prepare an alphabetical index thereof.
 22 The reports and index shall be open to public inspection at proper
 23 hours.

24 (cf: P.L.1983, c.127, s.15A:4-5)

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26 ¹3. N.J.S. 15A:15-1 is amended to read as follows:

27 15A:15-1. Filing Fees of the Secretary of State. On filing any
 28 certificate or other papers relative to corporations in the office of the
 29 Secretary of State, there shall be paid to the Secretary of State filing
 30 fees as follows:

31 a. Certificate of incorporation and amendments thereto:

32 (1) for filing the original certificate of incorporation \$50.00

33 (2) for filing a certificate of amendment of the certificate of
 34 incorporation including any number of amendments \$50.00

35 (3) for filing a certificate of abandonment of one or more
 36 amendments of the certificate of incorporation \$50.00

37 (4) for filing a certificate of merger or a certificate of
 38 consolidation \$50.00

39 (5) for filing a certificate of abandonment of a merger or
 40 consolidation \$50.00

41 b. Restated certificate of incorporation: for filing a restated
 42 certificate of incorporation including any amendments of the
 43 certificate of incorporation concurrently adopted \$50.00

44 c. Dissolution of corporation:

45 (1) for filing a certificate of dissolution \$50.00

46 (2) for filing a certificate of revocation of dissolution

1 proceedings \$50.00

2 d. Admission and withdrawal of foreign corporation:

3 (1) for filing an application for a certificate of authority to conduct
4 activities in this State and issuing a certificate of
5 authority.....\$100.00

6 (2) for filing an application for an amended certificate of authority
7 to conduct activities in this State and issuing an amended
8 certificate of authority\$50.00

9 (3) for filing an application for withdrawal from this State and
10 issuing a certificate of withdrawal\$50.00

11 (4) for filing a certificate of change of post office address to which
12 process may be mailed by the Secretary of State \$25.00

13 (5) for filing a certificate, order or decree with respect to the
14 dissolution of a foreign corporation, the termination of its existence,
15 or the cancellation of its authority, and issuing a certificate of
16 withdrawal\$50.00

17 e. Registered office and registered agent:

18 (1) for filing a certificate of change of address of registered office,
19 or change of registered agent or both\$10.00

20 (2) for filing a certificate of change of address of registered agent
21 where such certificate effects a change in the address of the registered
22 office of one or more corporations, for each corporation named in
23 the certificate\$10.00

24 (3) for filing an affidavit of resignation of a registered
25 agent.....\$10.00

26 f. Annual report:

27 for each such report required to be filed\$15.00

28 g. Reinstatement filing assessment:

29 payment of a reinstatement filing assessment....\$50.00¹

30 (cf:P.L.1987, c.435, s.12)

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32 ¹[2.] 4.¹ This act shall take effect immediately.

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37 Removes certain limitations on reinstatements of certificates of
38 incorporations of nonprofit corporations.

1 c. If the report is not filed for 2 consecutive years, the certificate
2 of incorporation of the corporation or the certificate of authority of a
3 foreign corporation shall, after written demand for the reports by the
4 Secretary of State by certified mail addressed to the corporation at the
5 last address appearing of record in the office of the Secretary of State,
6 be revoked for the failure to file reports. No corporation shall be
7 subject to the revocation of its certificate of incorporation or its
8 certificate of authority if it shall, within 60 days after the written
9 demand, file the reports required by law and pay to the Secretary of
10 State the fee provided by law for the filing of each report. **【Any**
11 **corporation having its certificate of incorporation or its certificate of**
12 **authority revoked may, within 2 years of the revocation, cause a**
13 **reinstatement of the certificate upon payment to the Secretary of State**
14 **of double the amount of the fee then payable upon the filing of the**
15 **certificate and upon filing a current annual report.】** If the certificate
16 of incorporation of a domestic corporation or a certificate of authority
17 of a foreign corporation has been revoked, the certificate shall be
18 reinstated by proclamation of the Secretary of State upon payment to
19 the Secretary of State by the corporation of double the amount of the
20 annual fee payable for each year for which it failed to file an annual
21 report and upon filing a current annual report. The reinstatement
22 relates back to the date of revocation of the certificate of
23 incorporation or the certificate of authority and shall validate all
24 actions taken in the interim. In the event that in the interim the
25 corporate name has become unavailable, the Secretary of State shall
26 issue the certificate upon, in the case of a domestic corporation, the
27 filing of an amendment to its certificate of incorporation to change the
28 corporate name to an available name, and, in the case of a foreign
29 corporation, the filing of an amended certificate of authority adopting
30 an assumed name.

31 d. The Secretary of State shall furnish annual report forms, shall
32 keep all the reports and shall prepare an alphabetical index thereof.
33 The reports and index shall be open to public inspection at proper
34 hours.

35 (cf: P.L.1983, c.127, s.15A:4-5)

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37 2. This act shall take effect immediately.

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STATEMENT

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42 Currently, any nonprofit corporation which has had its certificate
43 of incorporation or certificate of authority revoked for failure to file
44 an annual report with the Secretary of State may, within two years of
45 the revocation, make an application for reinstatement. The
46 corporation must also pay double the amount of the fee and file a

1 current annual report. This bill eliminates the two year limitation on
2 when a reinstatement can be effected and makes the procedures for
3 reinstating a nonprofit corporation similar to the procedures in N.J.S.
4 14A:4-6 of the "New Jersey Business Corporation Act."

5 Under the provisions of the bill, a certificate of incorporation or
6 certificate of authority will be reinstated if the corporation pays double
7 the amount of the annual fee for each year for which it failed to file an
8 annual report and upon filing of a current annual report. This is the
9 same as the current provision. However, the bill provides that the
10 reinstatement would relate back to the date of revocation of the
11 certificate and all action taken in the interim would be validated.
12 These modifications will prevent nonprofit corporations, which include
13 charities, from being dissolved solely as a result of the failure to file an
14 annual report, which is inconsistent with the treatment of business
15 corporations.

16 This bill also makes provisions for a situation in which the
17 corporate name becomes unavailable in the interim. The bill provides
18 that if the name becomes unavailable, in the case of a domestic
19 corporation, the Secretary of State is authorized to issue a certificate
20 of incorporation to change the corporate name to an available name.
21 In the case of a foreign corporation, the Secretary would issue a
22 certificate upon the filing of an amended certificate of authority
23 adopting an assumed name.

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28 Removes certain limitations on reinstatements of certificates of
29 incorporations of nonprofit corporations.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2844

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 1, 1997

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2844.

Currently, any nonprofit corporation which has had its certificate of incorporation or certificate of authority revoked for failure to file an annual report with the Secretary of State may, within two years of the revocation, make an application for reinstatement. The corporation must also pay double the amount of the fee and file a current annual report. This bill eliminates the two year limitation on when a reinstatement can be effected and makes the procedures for reinstating a nonprofit corporation similar to the procedures in N.J.S. 14A:4-6 of the "New Jersey Business Corporation Act."

Under the provisions of the bill as originally drafted, a certificate of incorporation or certificate of authority will be reinstated if the corporation pays double the amount of the annual fee for each year for which it failed to file an annual report and upon filing of a current annual report. The committee amendments change this provision. The committee amendments make changes in subsection c. of N.J.S. 15A:4-5 to omit the language of the bill concerning payment of double the amount of the annual fee. The amendments provide that any corporation having its certificate of incorporation or its certificate of authority revoked may cause a reinstatement of the certificate upon payment to the Secretary of State of : the fee then payable upon the filing of the certificate of incorporation; a current annual report fee; and payment of the \$50.00 reinstatement filing assessment as set forth in N.J.S.15A:15-1. The amendments also provide that the Secretary of State shall provide the necessary forms for annual report reinstatements to insure uniformity in filing submissions.

The bill provides that the reinstatement would relate back to the date of revocation of the certificate and all action taken in the interim would be validated. These modifications will prevent nonprofit corporations, which include charities, from being dissolved solely as a result of the failure to file an annual report, which is inconsistent with the treatment of business corporations.

This bill also makes provisions for a situation in which the corporate name becomes unavailable in the interim. The bill provides

that if the name becomes unavailable, in the case of a domestic corporation, the Secretary of State is authorized to issue a certificate of incorporation to change the corporate name to an available name. In the case of a foreign corporation, the Secretary would issue a certificate upon the filing of an amended certificate of authority adopting an alternate name.

The committee also amended the bill to add two new sections. N.J.S.15A:4-3 is amended to omit subsection d. N.J.S.15A:15-1, the section setting forth various fees, is amended to include the reinstatement filing assessment of \$50.00 as referred to in subsection c. of N.J.S.15A:4-5.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 2844

STATE OF NEW JERSEY

DATED: JUNE 5, 1997

The Senate Judiciary Committee reports favorably Assembly Bill No. 2844 (1R).

Currently, any nonprofit corporation which has had its certificate of incorporation or certificate of authority revoked for failure to file an annual report with the Secretary of State may, within two years of the revocation, make an application for reinstatement. The corporation must also pay double the amount of the fee and file a current annual report. This bill would eliminate the two year limitation period for reinstatement and establish a procedure for reinstatement similar to the procedure for the reinstatement of business corporations.

The bill provides that any nonprofit corporation having its certificate of incorporation or its certificate of authority revoked may cause a reinstatement of the certificate upon payment to the Secretary of State of: the fee payable upon the filing of the certificate of incorporation; a current annual report fee; and a \$50.00 reinstatement filing assessment.

The bill also provide that the reinstatement would relate back to the date of revocation of the certificate and all actions taken in the interim would be validated. These modifications will prevent nonprofit corporation, which include charities, from being dissolved solely as a result of the failure to file an annual report, which is inconsistent with the treatment of business corporations.

In addition, the bill makes provisions for a situation in which the corporate name becomes unavailable in the interim.

LEGISLATIVE FISCAL ESTIMATE TO

[First Reprint]

ASSEMBLY, No. 2844

STATE OF NEW JERSEY

DATED: May 30, 1997

Assembly Bill No. 2844 (1R) of 1997 eliminates the two year limitation on when a reinstatement of a nonprofit domestic or foreign corporation's certificate of incorporation or certificate of authority, revoked for failure to file an annual report with the Secretary of State, can be effected and makes the procedures for a reinstatement similar to the procedures in the "New Jersey Business Corporation Act," N.J.S.14A:4-6. The bill provides that any domestic nonprofit corporation having its certificate of incorporation revoked or any foreign nonprofit corporation having its certificate of authority revoked may cause a reinstatement of the certificate(s) upon payment to the Secretary of State of: the fee then payable upon the filing of the certificate of incorporation, \$50.00; a current annual report fee, \$15.00; plus payment of the \$50.00 reinstatement filing assessment imposed by this bill. The bill also provides that the Secretary of State shall provide the necessary forms for annual report reinstatements to insure uniformity in filing submissions. The bill further provides that the reinstatement would relate back to the date of revocation of the certificate, validating all actions taken in the interim. The bill also provides that if, during the interim, the name of the corporation becomes unavailable, the Secretary of State is authorized to issue a certificate of incorporation to change the name to an available name. In the case of a foreign corporation, an amended certificate of authority adopting an alternate name could be issued.

Currently nonprofit domestic and foreign corporations that have had their certificates revoked for failure to file an annual report with the Secretary of State may, within two years of the revocation, make application for reinstatement and are required to pay double the amount of the fee then payable upon the filing of the certificate, \$100.00, and the fee for filing a current annual report, \$15.00. This bill, by eliminating the double fee and imposing a \$50.00 reinstatement filing fee in addition to the current \$50.00 certificate of incorporation fee and the \$15.00 annual report fee, would require a payment equal to the amount which is currently charged, \$115.00. Based on this information, the Office of Legislative Services (OLS) estimates that this bill will not result in an increase or a decrease of revenue and is therefore revenue neutral. In addition, OLS estimates that requiring the Secretary of State to provide the forms for the reinstatement of certification would not result in any significant additional costs to the

department.

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.