Topic: Wrongfully Terminated Entities

Question by: Betsy Bogart

Jurisdiction: California

Date: October 16, 2020

Jurisdiction	Question(s)
	I am interested in knowing your jurisdiction?s procedure for handling the reinstatement of business entities that have been wrongfully terminated whether by fraud or accident. For example, California requires a court order to reinstate an entity that has been wrongfully terminated. See California Government Code section 12260 et seq. Similarly, in Texas a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. See Texas Business Organizations Code section 11.153. What is the procedure in your jurisdiction? If possible, please point me to the proper code sections, state statutes, or legal authority that your jurisdiction relies upon.
Manitoba	
Corporations Canada	Canadian federal corporations that are dissolved by mistake are usually not revived. Instead, the Canada Business Corporations Act (CBCA) provides the Director with the authority to cancel a certificate in specific circumstances, including cancelling a certificate of dissolution issued by error or when the Director lacked authority to issue the certificate in the first place. The cancellation must not prejudice the creditors and shareholders. All cancellation applications are considered on their merit. Also, the CBCA provides that a federal corporation or any other interested person may ask a court to order the cancellation of the certificate of dissolution.
Alabama	
Alaska	
Arizona	
Arkansas	
California	
Colorado	

Jurisdiction	Question(s)
	I am interested in knowing your jurisdiction?s procedure for handling the reinstatement of business entities that have been wrongfully terminated whether by fraud or accident. For example, California requires a court order to reinstate an entity that has been wrongfully terminated. See California Government Code section 12260 et seq. Similarly, in Texas a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. See Texas Business Organizations Code section 11.153. What is the procedure in your jurisdiction? If possible, please point me to the proper code sections, state statutes, or legal authority that your jurisdiction relies upon.
Connecticut	In 2017, Connecticut adopted the new Model Limited Liability Company Act, which provides that LLCs can reinstate at any time following any type of dissolution, unless dissolved by court order. CGS 34-267b. https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcga.ct.gov%2Fcurrent%2Fpub%2Fchap_613a.htm%23sec_34-267b&data=04%7C01%7Cpviverto%40azsos.gov%7Cf0414daa45c643df372c08d88b634f6a%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637412606731171173%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=vTReSOzeF9zruFQ%2FkzapwlB9U1AvPnUssX8FJYkkysg%3D&reserved=0 Corporations still fall under the older corporations act and can only reinstate following involuntary dissolution. CGS 33-892. https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcga.ct.gov%2Fcurrent%2Fpub%2Fchap_601.htm%23sec_33-892&data=04%7C01%7Cpviverto%40azsos.gov%7Cf0414daa45c643df372c08d88b634f6a%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637412606731171173%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=d5NlelkDyoizV7m7W27DzUyvKHznDf500w5cp8Hrju4%3D&reserved=0 But a corporation may revoke its dissolution within 120 days of the effective date of the dissolution if authorized to do so. CGS 33-893 https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcga.ct.gov%2Fcurrent%2Fpub%2Fchap_601.htm%23sec_33-883&data=04%7C01%7Cpviverto%40azsos.gov%7Cf0414daa45c643df372c08d88b634f6a%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637412606731171173%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=GFDorQ797N6GNGbgtkSUMoNRUSsMdVCrHCkUCZh0MHM%3D&reserved=0
Delaware	
District of Columbia	
Florida	
Georgia	

Jurisdiction	Question(s)
	I am interested in knowing your jurisdiction?s procedure for handling the reinstatement of business entities that have been wrongfully terminated whether by fraud or accident. For example, California requires a court order to reinstate an entity that has been wrongfully terminated. See California Government Code section 12260 et seq. Similarly, in Texas a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. See Texas Business Organizations Code section 11.153. What is the procedure in your jurisdiction? If possible, please point me to the proper code sections, state statutes, or legal authority that your jurisdiction relies upon.
Hawaii	
Idaho	
Illinois	
Indiana	
Iowa	
Kansas	
Kentucky	
Louisiana	In Louisiana, any business entity that has been wrongfully terminated, would be required to get a court order to reinstate. This is found in Louisiana Corporation Law R.S. 12:250.1 (B) and R.S. 12:1335.1 (B), respectively, for NP corp?s and LLC?s. The only exception to that is a domestic business corporation--they have 5 years from the date of termination to reinstate w/o a court order. They would file the prescribed SOS form in order to reinstate, but after 5 years have passed, they too would require a court order. Although we have had some fraudulent filings, none of the cases have resulted in terminating an entity, so we have not had to deal with that scenario. (Most of the fraudulent filings we have found, have involved original filings or changes on an existing entity.) If an entity had some type of fraudulent filing done on their company and it resulted in its termination, obviously, they could submit a court order and we would honor the court order to have it reinstated.
Maine	

Jurisdiction	Question(s)
	I am interested in knowing your jurisdiction?s procedure for handling the reinstatement of business entities that have been wrongfully terminated whether by fraud or accident. For example, California requires a court order to reinstate an entity that has been wrongfully terminated. See California Government Code section 12260 et seq. Similarly, in Texas a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. See Texas Business Organizations Code section 11.153. What is the procedure in your jurisdiction? If possible, please point me to the proper code sections, state statutes, or legal authority that your jurisdiction relies upon.
Maryland	Our Department actually supported legislation in 2016 (codified in the Maryland Code, Corporations and Associations Article ?1-201.1) that created a process for voiding fraudulently filed documents, and providing for rights of appeal. We probably only receive about 50 of these affidavits each year. https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fmgaleg.maryland.gov%2Fmgawebsite%2Flaws%2FStatuteText%3Farticle%3Dgca%26section%3D1-201.1%26enactments%3Dtrue&data=04%7C01%7Cpviverto%40azsos.gov%7C68651a1c34554dca56fd08d8721b5e40%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637384809620796171%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=5JA7lC6YsZH5HGlxm7sTVTkeretFAm5H2lKozPzp%2FWg%3D&reserved=0 Notably, this statute encompasses unauthorized or fraudulent filings, but not necessarily filings made by "mistake". If someone says (as recently happened) that a year ago they meant to file a name change, but instead created a new entity, there is no recourse available to correct that mistake. Also, occasionally the availability of this process results in back-and-forths between competing interests when the issue should probably be litigated. But generally, it is a more efficient and less expensive option for customers.
Massachusetts	
Michigan	
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	

Jurisdiction	Question(s)
	I am interested in knowing your jurisdiction?s procedure for handling the reinstatement of business entities that have been wrongfully terminated whether by fraud or accident. For example, California requires a court order to reinstate an entity that has been wrongfully terminated. See California Government Code section 12260 et seq. Similarly, in Texas a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. See Texas Business Organizations Code section 11.153. What is the procedure in your jurisdiction? If possible, please point me to the proper code sections, state statutes, or legal authority that your jurisdiction relies upon.
Nevada	Nevada will also honor a court order in a matter like that, however, in addition, our office has statutory authority to make administrative changes and remove fraudulent filings following an investigation and determination of fraud. We update the record via an Officer?s Statement/Affidavit signed by the Deputy and return the entity to the status it was prior to termination. We may also refer the case to the Attorney General?s office for prosecution. https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.leg.state.nv.us%2FNRS%2FNRS-225.html%23NRS225Sec084&data=04%7C01%7Cpviverto%40azsos.gov%7C68651a1c34554dca56fd08d8721b5e40%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637384809620796171%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=Go7OK7qmchFLCLEMfFDQwua39ugZtj%2BBQIHdP7SqjKA%3D&reserved=0 https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.leg.state.nv.us%2FNAC%2FNAC-225.html%23NAC225Sec020&data=04%7C01%7Cpviverto%40azsos.gov%7C68651a1c34554dca56fd08d8721b5e40%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637384809620806159%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sdata=GepdLkUDSQzeNyaL240nrkfY0jBzKvKH4BrK1ao35Jw%3D&reserved=0
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
North Dakota	
Ohio	
Oklahoma	

Jurisdiction	Question(s)
	I am interested in knowing your jurisdiction?s procedure for handling the reinstatement of business entities that have been wrongfully terminated whether by fraud or accident. For example, California requires a court order to reinstate an entity that has been wrongfully terminated. See California Government Code section 12260 et seq. Similarly, in Texas a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. See Texas Business Organizations Code section 11.153. What is the procedure in your jurisdiction? If possible, please point me to the proper code sections, state statutes, or legal authority that your jurisdiction relies upon.
Oregon	
Pennsylvania	
Rhode Island	
South Carolina	
South Dakota	
Tennessee	
Texas	
Utah	
Vermont	

Jurisdiction	Question(s)
	I am interested in knowing your jurisdiction?s procedure for handling the reinstatement of business entities that have been wrongfully terminated whether by fraud or accident. For example, California requires a court order to reinstate an entity that has been wrongfully terminated. See California Government Code section 12260 et seq. Similarly, in Texas a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. See Texas Business Organizations Code section 11.153. What is the procedure in your jurisdiction? If possible, please point me to the proper code sections, state statutes, or legal authority that your jurisdiction relies upon.
Virginia	Betsy, we generally take the position that the termination of an improperly terminated entity should be reversed. This can be accomplished by a petition to the Commission by the entity. See subsection E of Section 13.1-1004<https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Flaw.lis.virginia.gov%2Fvacode%2Ftitle13.1%2Fchapter12%2Fsection13.1-1004%2F&data=04%7C01%7Cpviverto%40azsos.gov%7C32c15097d7634110203b08d8750e9563%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637388052791355956%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=7sYdPdbHGCn3e5zX9mA3r4YEQg333joBYI3K%2FTwSJd4%3D&reserved=0> of the Code of Virginia. A less formal approach was introduced, I believe in 2014, to allow the Clerk of the Commission to determine whether the person who signed or delivered the document was without authority to act on behalf of the entity and, if so, to adjust our records. See subsection D of Section 12.1-19<https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Flaw.lis.virginia.gov%2Fvacode%2Ftitle13.1%2Fchapter12%2Fsection12.1-19%2F&data=04%7C01%7Cpviverto%40azsos.gov%7C32c15097d7634110203b08d8750e9563%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637388052791355956%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=Z6YibZUnBTNwYkEa0ytWp%2FRccJ4Xa2wpzVriAepWOYE%3D&reserved=0> of the Code of Virginia. If an entity chooses to reinstate as opposed to using one of these remedies, the wrongful termination remains a part of its record.
Washington	
West Virginia	
Wisconsin	
Wyoming	

Additional comments:

Full text of email:

I am interested in knowing your jurisdiction?s procedure for handling the reinstatement of business entities that have been wrongfully terminated whether by fraud or accident. For example, California requires a court order to reinstate an entity that has been wrongfully terminated. See California Government Code section 12260 et seq. Similarly, in Texas a court may order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. See Texas Business Organizations Code section 11.153. What is the procedure in your jurisdiction?

If possible, please point me to the proper code sections, state statutes, or legal authority that your jurisdiction relies upon.

Kenny Nguyen
Attorney
Business Programs Division
California Secretary of State
knguyen2@sos.ca.gov<mailto:knguyen2@sos.ca.gov>

916-603-7900

[cid:a7f3ac7a-53cb-4975-ac60-ab7ce93100b2]<https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fbizfile.sos.ca.gov%2F&data=04%7C01%7Cpviverto%40azsos.gov%7C7e16a8e4cc754a2d1f6508d8720d5e16%7Cb4494a03f26d475dba4139871e763531%7C1%7C0%7C637384749029778570%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=%2FQ8BrSe4yufc%2BoooybkbhEOblTysLAzvgabbG6RtF1k%3D&reserved=0>

Making it easier to do business in California!

Betsy Bogart
Business Programs Division Chief
California Business Connect Co-Sponsor
California Secretary of State
betsy.bogart@sos.ca.gov<mailto:betsy.bogart@sos.ca.gov>

916 695-1197

[cid:3bf1301c-da03-4707-9b1d-048d166f81e2]

bizfile.sos.ca.gov

Making it easier to do business in California!