

Filing change

How Act 122 of 2022 changes filing requirements for those doing business in PA

INTERVIEWED BY ADAM BURROUGHS

Act 122 was signed into law on November 3, 2022, by Pennsylvania's former Gov. Tom Wolf. This legislation makes various changes to Title 15 of the Commonwealth's Consolidated Statutes, also known as the Associations Code. One notable change for businesses in Pennsylvania is the new mandatory Annual Report Filing. This requirement replaces the previous Decennial Report Filing requirement and aligns Pennsylvania with a majority of other states that already require similar annual report filings.

While the form is simple and inexpensive, the consequences of missing the filing date can be significant.

Smart Business spoke with Audra Hutter, an attorney at Babst Calland, about Act 122, the filing change, and what it means for entities doing business in Pennsylvania.

WHAT IS THE FILING REQUIREMENT?

Now, every year, organizations must file a report with the Pennsylvania Department of State that includes their business name; jurisdiction; registered office address; the name of at least one director, member or partner; names and titles of the principal officers; principal office address and its Department of State provided entity number.

Filing out the form is relatively simple and will likely be very similar to the forms companies were previously required to fill out every 10 years. There will be a \$7 filing fee for businesses, corporations, LLCs, limited partnerships, and limited liability partnerships. There is no fee for organizations that operate for not-for-profit purposes.

WHO NEEDS TO FILE AND WHEN ARE THE DEADLINES?

Organizations should receive information

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and a letter from the Pennsylvania Department of State letting them know that their filing deadline is approaching. However, an excuse of missing an annual filing due to lack of notice from the Department of State will not be an acceptable reason for missing the deadline. The filing dates will be the same every year — for example, corporations will be required to file by June 30, LLCs will need to file by September 30, and other filing entities or foreign filing entities must file by December 31.

Entities that are required to file include:

- Domestic business corporations.
- Domestic nonprofit corporations.
- Domestic limited liability partnerships.
- Domestic electing partnerships that are not limited partnerships.
- Domestic limited partnerships (including limited liability limited partnerships).
- Domestic limited liability companies.
- Domestic professional associations.
- Domestic business trusts.
- All registered foreign associations.

These new annual filings will not be required until 2024, with penalties for missed filings not beginning until 2027.

WHAT ARE THE CONSEQUENCES OF NOT FILING?

In 2027, when penalties are levied, the consequence of failing to file will be the commencement of the process of

administrative dissolution or cancellation of the business entity. Within six months of a missed deadline, the Department of State will send notice to an organization. If the annual report is not filed after the notice is received, then the Department will start the process of administratively dissolving and canceling the entity.

If an entity is dissolved, it will no longer be able to legally conduct business in Pennsylvania and its name will become available for new entities to claim. As such, if administratively canceled or dissolved, an entity may lose the ability to conduct business in Pennsylvania under their previous name.

A domestic entity can correct the dissolution or cancellation by applying for reinstatement, which would mean filing the reinstatement application, filing the missed annual reports, and paying the fees associated with each. A foreign entity may not simply apply for reinstatement, instead it must submit another Foreign Registration Statement to the Pennsylvania Department of State.

This change is an example of why it's important to keep up-to-date on state legislation — not just in Pennsylvania, but any state where a company conducts business — because a simple administrative change could have a significant impact on an organization. ●