

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
94th General Assembly
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A Bill

SENATE BILL 205

By: Senator C. Penzo
By: Representative Lundstrum

For An Act To Be Entitled

AN ACT TO ASSIST SMALL BUSINESS OWNERS TO FORM A
LEGAL ENTITY IN THIS STATE; TO CLARIFY THE PROCEDURES
AND STANDARDS USED FOR NAME AVAILABILITY FOR CERTAIN
CORPORATIONS AND LIMITED LIABILITY COMPANIES; AND FOR
OTHER PURPOSES.

Subtitle

TO ASSIST SMALL BUSINESS OWNERS TO FORM A
LEGAL ENTITY IN THIS STATE; AND TO
CLARIFY THE PROCEDURES AND STANDARDS USED
FOR NAME AVAILABILITY FOR CERTAIN
CORPORATIONS AND LIMITED LIABILITY
COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly that this act shall:

(1) Confirm that the standard to be used for name availability for a corporation or legal entity in this state is that the name is distinguishable and that the standard shall not be whether or not the name is confusingly similar; and

(2) Provide the only factors that the Secretary of State may use in determining whether or not a corporate or legal entity name is distinguishable.



SECTION 2. Arkansas Code § 4-26-401(3), concerning the standard for corporate name availability, is amended to read as follows:

(3)(A) Shall ~~not be the same as or confusingly similar to be~~ distinguishable from the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved under § 4-26-402, or the name of a corporation which has in effect a registration of its corporate name under § 4-26-403.

(B) ~~No~~ A foreign corporation ~~may~~ shall not be admitted to this state if its corporate name is ~~identical with or confusingly similar to~~ not distinguishable from the name of any domestic corporation, or the name of any foreign corporation then admitted to this state, or any name then reserved or registered under § 4-26-402 or § 4-26-403.

SECTION 3. Arkansas Code § 4-26-401, concerning corporate name requirements, is amended to add an additional subdivision to read as follows:

(4) In determining whether or not a corporate name is distinguishable under subdivision (3)(A) of this section, a corporate name that is different from the name of another entity or filing is distinguishable unless the only difference is one (1) or more of the following:

(A) A suffix;

(B) A definite or indefinite article;

(C) The word "and" and the symbol "&;

(D) The singular, plural, or possessive form of a word; or

(E) A punctuation mark or a symbol.

SECTION 4. Arkansas Code § 4-26-405(b)(3), concerning acceptance of a proposed fictitious name of a corporation, is amended to read as follows:

(3) However, the Secretary of State shall not accept such filing if the proposed fictitious name is not distinguishable under § 4-26-401 from the same as or confusingly similar to the name of any domestic corporation, or any foreign corporation admitted to this state, or any name reserved or registered under §§ 4-26-402 and 4-26-403.

SECTION 5. Arkansas Code § 4-27-401 is amended to read as follows:

4-27-401. Corporate name.

(a) A corporate name:

(1) must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language; and

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by § 4-27-301 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) the corporate name of a corporation incorporated or authorized to transact business in this state;

(2) a corporate name reserved or registered under § 4-27-402 or §4-27-403;

(3) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) In determining whether or not a corporate name is distinguishable under subsection (b) of this section, a corporate name that is different from the name of another entity or filing is distinguishable unless the only difference is one (1) or more of the following:

(1) A suffix;

(2) A definite or indefinite article;

(3) The word "and" and the symbol "&;"

(4) The singular, plural, or possessive form of a word; or

(5) A punctuation mark or a symbol.

(d) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his records from one (1) or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the

Secretary of State from the name of the applying corporation; or

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

~~(d)~~(e) A corporation may use the name of another domestic or foreign corporation that is used in this state if the corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

- (1) has merged with the other corporation;
- (2) has been formed by reorganization of the other corporation;

or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

SECTION 6. Arkansas Code § 4-27-404(b), concerning the use of a fictitious name under the Arkansas Business Corporation Act of 1987, is amended to read as follows:

(b) Each such form shall be executed (without verification) in duplicate and filed with the Secretary of State. The Secretary of State shall retain one (1) counterpart; and the other counterpart, bearing the file marks of the Secretary of State, shall be returned to the corporation and, unless its registered office is in Pulaski County, filed by it with the county clerk. An index of such filings shall be maintained in each office. However, the Secretary of State shall not accept such filing unless the proposed fictitious name is distinguishable under § 4-27-401 upon the records of the Secretary of State from the name of any domestic corporation, or any foreign corporation authorized to do business in the state or any name reserved or registered under §§ 4-27-402 and 4-27-403.

SECTION 7. Arkansas Code § 4-33-401 is amended to read as follows:
4-33-401. Corporate name.

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by § 4-33-301 and its articles of incorporation.

(b) Except as authorized by subsections (c), ~~and (d)~~, and (e) of this section, a corporate name must be distinguishable upon the records of the

Secretary of State from:

(1) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) a corporate name reserved or registered under § 4-33-402 or § 4-33-403 of this chapter or § 4-26-402 or § 4-27-402; or

(3) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(c) In determining whether or not a corporate name is distinguishable under subsection (b) of this section, a corporate name that is different from the name of another entity or filing is distinguishable unless the only difference is one (1) or more of the following:

(1) a suffix;

(2) a definite or indefinite article;

(3) the word "and" and the symbol "&;

(4) the singular, plural, or possessive form of a word; or

(5) a punctuation mark or a symbol.

(d) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) the applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

~~(d)~~(e) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation;

or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

~~(e)~~(f) This chapter does not control the use of fictitious names.

SECTION 8. Arkansas Code § 4-38-112 is amended to read as follows:
4-38-112. Permitted names.

(a) The name of a limited liability company must contain the phrase “limited liability company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”. “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

(b) Except as otherwise provided in subsection ~~(d)~~(e), the name of a limited liability company, and the name under which a foreign limited liability company may register to do business in this state, must be distinguishable on the records of the Secretary of State from any:

(1) name of an existing person whose formation required the filing of a record by the Secretary of State and which is not at the time administratively dissolved;

(2) name of a limited liability partnership whose statement of qualification is in effect;

(3) name under which a person is registered to do business in this state by the filing of a record by the Secretary of State;

(4) name reserved under § 4-38-113 or other law of this state providing for the reservation of a name by the filing of a record by the Secretary of State;

(5) name registered under § 4-38-114 or other law of this state providing for the registration of a name by the filing of a record by the Secretary of State; and

(6) name registered under § 4-26-405, § 4-27-404, § 4-38-122, and § 4-42-707.

(c) In determining whether or not a limited liability company name is distinguishable under subsection (b) of this section, a limited liability company name that is different from the name of another entity or filing is distinguishable unless the only difference is one (1) or more of the following:

(1) a suffix;

(2) a definite or indefinite article;

(3) the word "and" and the symbol "&;

(4) the singular, plural, or possessive form of a word; or

(5) a punctuation mark or a symbol.

(d) If a person consents in a record to the use of its name and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable on the records of the Secretary of State from any name in any category of names in subsection (b), the name of the consenting person may be used by the person to which the consent was given.

~~(d)~~(e) Except as otherwise provided in subsection ~~(e)~~(f), in determining whether a name is the same as or not distinguishable on the records of the Secretary of State from the name of another person, words, phrases, or abbreviations indicating a type of person, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "P.C.", "PC", "professional association", "P.A.", "PA", "Limited", "Ltd.", "limited partnership", "L.P.", "LP", "limited liability partnership", "L.L.P.", "LLP", "registered limited liability partnership", "R.L.L.P.", "RLLP", "limited liability limited partnership", "L.L.L.P.", "LLLp", "registered limited liability limited partnership", "R.L.L.L.P.", "RLLLLP", "limited liability company", "L.L.C.", "LLC", "limited cooperative association", "limited cooperative", or "L.C.A.", or "LCA" may not be taken into account.

~~(e)~~(f) A person may consent in a record that is satisfactory to the Secretary of State to the use of a name that is not distinguishable on the records of the Secretary of State from its name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in subsection ~~(d)~~(e). In such a case, the person need not change its name pursuant to subsection ~~(e)~~(d).

~~(f)~~(g) The name of a limited liability company or foreign limited liability company may not contain the name of any person who is not a member, except that the name of a former member or member of a predecessor organization may continue to be included in the name.

~~(g)~~(h) A limited liability company or foreign limited liability company may use a name that is not distinguishable from a name described in subsections (b)(1) through (6) if the company delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the company to use the name in this

state.

SECTION 9. Arkansas Code § 4-38-122(c), concerning the acceptability of a proposed fictitious name under the Uniform Limited Liability Company Act, is amended to read as follows:

(c) The Secretary of State shall not accept a filing if the proposed fictitious name is ~~the same as, or confusingly similar to,~~ not distinguishable under § 4-38-112 from the name of any domestic corporation, limited liability company, limited partnership, limited liability partnership or any other entity registered with the Secretary of State, or any foreign entity authorized to do business in the state or any name reserved or registered under §§ 4-27-402, 4-27-403, 4-38-113, or 4-47-109.

SECTION 10. Arkansas Code § 4-42-707(b), concerning the acceptability and use of fictitious names under the Uniform Partnership Act, is amended to read as follows:

(b) Each such form shall be executed, without verification, in duplicate and filed with the Secretary of State. The Secretary of State shall retain one (1) counterpart and the other counterpart, bearing the file marks of the Secretary of State, shall be returned to the registered limited liability partnership. However, the Secretary of State shall not accept such filing if the proposed fictitious name is ~~the same as, or confusingly similar to,~~ not distinguishable from the name of any domestic corporation, limited liability company, limited partnership, limited liability partnership, or any other entity registered with the Secretary of State, or any such foreign entity authorized to do business in the state or any name reserved or registered under § 4-27-402, § 4-27-403, § 4-38-113, § 4-38-114, or § 4-47-109.

SECTION 11. Arkansas Code § 4-47-108 is amended to read as follows:
4-47-108. Name.

(a) The name of a limited partnership may contain the name of any partner.

(b) The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and may not contain the phrase "limited liability

limited partnership” or the abbreviation “LLL” or “L.L.L.P.”.

(c) The name of a limited liability limited partnership must contain the phrase “limited liability limited partnership” or the abbreviation “LLL” or “L.L.L.P.” and must not contain the abbreviation “L.P.” or “LP.”

(d) Unless authorized by subsection (e), the name of a limited partnership must be distinguishable in the records of the Secretary of State from:

(1) the name of each person other than an individual incorporated, organized, or authorized to transact business in this State; and

(2) each name reserved under § 4-47-109 or other state laws allowing the reservation or registration of business names, including fictitious name statutes.

(e) In determining whether or not a limited liability partnership name is distinguishable under subsection (d) of this section, a limited liability partnership name that is different from the name of another entity or filing is distinguishable unless the only difference is one (1) or more of the following:

(1) a suffix;

(2) a definite or indefinite article;

(3) the word "and" and the symbol "&;

(4) the singular, plural, or possessive form of a word; or

(5) a punctuation mark or a symbol.

(f) A limited partnership may apply to the Secretary of State for authorization to use a name that does not comply with subsection (d). The Secretary of State shall authorize use of the name applied for if, as to each conflicting name:

(1) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the Secretary of State to change the conflicting name to a name that complies with subsection (d) and is distinguishable in the records of the Secretary of State from the name applied for;

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant’s right to use in this State the name applied for; or

(3) the applicant delivers to the Secretary of State proof

satisfactory to the Secretary of State that the present user, registrant, or owner of the conflicting name:

(A) has merged into the applicant;

(B) has been converted into the applicant; or

(C) has transferred substantially all of its assets,

including the conflicting name, to the applicant.

~~(f)~~(g) Subject to § 4-47-905, this section applies to any foreign limited partnership transacting business in this State, having a certificate of authority to transact business in this State, or applying for a certificate of authority.