

1 **TRADE OR BUSINESS NAMES**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Ron Bigelow**

5 AN ACT RELATING TO CORPORATIONS AND OTHER BUSINESS ENTITIES;
6 AMENDING PROVISIONS RELATED TO DISTINGUISHING NAMES; AND MAKING
7 TECHNICAL CORRECTIONS.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **16-10a-401**, as enacted by Chapter 277, Laws of Utah 1992

11 **48-2a-102**, as last amended by Chapter 61, Laws of Utah 1994

12 **48-2b-106**, as last amended by Chapter 61, Laws of Utah 1994

13 *Be it enacted by the Legislature of the state of Utah:*

14 Section 1. Section **16-10a-401** is amended to read:

15 **16-10a-401. Corporate name.**

16 (1) The name of a corporation:

17 (a) must contain:

18 (i) the word:

19 (A) "corporation[;]";

20 (B) "incorporated[;]"; or

21 (C) "company[;]" [σ];

22 (ii) the abbreviation:

23 (A) "corp.[;]";

24 (B) "inc.[;]"; or

25 (C) "co.[;]"; or

26 (iii) words or abbreviations of like import in another language;

27 (b) may not contain language stating or implying that the corporation is organized for a

1 purpose other than that permitted by Section 16-10a-301 and its articles of incorporation; and

2 (c) [may not,] without the written consent of the United States Olympic Committee, may
3 not contain the words:

4 (i) "Olympic[,]";

5 (ii) "Olympiad[,]"; or

6 (iii) "Citius Altius Fortius."

7 (2) Except as authorized by Subsections (3) and (4), the name of a corporation must be
8 distinguishable, as defined in Subsection (5), upon the records of the division from:

9 (a) the name of any domestic corporation incorporated in or foreign corporation authorized
10 to transact business in this state;

11 (b) the name of any domestic or foreign nonprofit corporation incorporated or authorized
12 to transact business in this state;

13 (c) the name of any domestic or foreign limited liability company formed or authorized
14 to transact business in this state;

15 (d) the name of any limited partnership formed or authorized to transact business in this
16 state;

17 (e) any name reserved or registered with the division for a corporation, limited liability
18 company, or general or limited partnership, under the laws of this state; and

19 (f) any business name, fictitious name, assumed name, trademark, or service mark
20 registered by the division.

21 (3) (a) A corporation may apply to the division for authorization to file its articles of
22 incorporation under, or to register or reserve, a name that is not distinguishable upon its records
23 from one or more of the names described in Subsection (2).

24 (b) The division shall approve the application filed under Subsection (3)(a) if:

25 [~~(a)~~] (i) the other person whose name is not distinguishable from the name under which
26 the applicant desires to file, or which the applicant desires to register or reserve[,];

27 (A) consents to the filing, registration, or reservation in writing; and

28 (B) submits an undertaking in a form satisfactory to the division to change its name to a
29 name that is distinguishable from the name of the applicant; or

30 [~~(b)~~] (ii) the applicant delivers to the division a certified copy of the final judgment of a
31 court of competent jurisdiction establishing the applicant's right to make the requested filing in this

1 state under the name applied for.

2 (4) A corporation may make a filing under the name, including the fictitious name, of
3 another domestic or foreign corporation that is used or registered in this state if:

4 (a) the other corporation is incorporated or authorized to transact business in this state; and

5 (b) the filing corporation:

6 [(a)] (i) has merged with the other corporation; or

7 [(b)] (ii) has been formed by reorganization of the other corporation.

8 (5) (a) A name is distinguishable from other names, trademarks, and service marks on the
9 records of the division if it:

10 (i) contains one or more different letters or numerals[;] or [if it]

11 (ii) has a different sequence of letters or numerals from the other names on the division's
12 records. [~~Differences between singular and plural forms of words are distinguishing.~~]

13 (b) Differences which are not distinguishing are:

14 (i) the words or abbreviations of the words;

15 (A) "corporation[;]";

16 (B) "company[;]";

17 (C) "incorporated[;]";

18 (D) "limited partnership[;]";

19 (E) "L.P.[;]";

20 (F) "limited[;]";

21 (G) "ltd.[;]";

22 (H) "limited liability company[;]";

23 (I) "limited company[;]";

24 (J) "L.C.[;]"; or

25 (K) "L.L.C.";

26 (ii) the presence or absence of the words or symbols of the words "the," "and," or "a[;]";

27 (iii) differences in punctuation and special characters; [or]

28 (iv) differences in capitalization; or

29 (v) on or after May 4, 1998, differences between singular and plural forms of words.

30 (c) The director of the division has the power and authority reasonably necessary to
31 interpret and efficiently administer this section and to perform the duties imposed [upon] on the

1 division by this section.

2 (6) A name [which] that implies that the corporation is an agency of this state or of any
3 of its political subdivisions, if it is not actually such a legally established agency or subdivision,
4 may not be approved for filing by the division.

5 Section 2. Section **48-2a-102** is amended to read:

6 **48-2a-102. Name.**

7 (1) The name of each limited partnership as set forth in its certificate of limited
8 partnership:

9 (a) shall contain the [words] terms:

10 (i) "limited partnership[.];";

11 (ii) "limited[.];";

12 (iii) "L.P.[.];" or

13 (iv) "Ltd.";

14 (b) may not contain the name of a limited partner unless:

15 (i) it is [also] the name of a general partner [or];

16 (ii) it is the corporate name of a corporate general partner; or

17 [(ii)] (iii) the business of the limited partnership had been carried on under that name
18 before the admission of that limited partner;

19 (c) may not contain:

20 (i) the words:

21 (A) "association[.];";

22 (B) "corporation[.];" or

23 (C) "incorporated[.]" [or];

24 (ii) any abbreviation [thereof,] of a word listed in this Subsection (1)(a); or

25 (iii) any [words] word or [any] abbreviation [thereof which are] that is of like import in
26 any other language; and

27 (d) [may not,] without the written consent of the United States Olympic Committee, may
28 not contain the words:

29 (i) "Olympic[.];";

30 (ii) "Olympiad[.];" or

31 (iii) "Citius Altius Fortius."

1 (2) ~~No~~ (a) A person or entity other than a limited partnership formed or registered under
 2 this title may not use in its name in this state any of the terms:

3 (i) "limited[;]";

4 (ii) "limited partnership[;]";

5 (iii) "Ltd.[;]"; or

6 (iv) "L.P." ~~[in its name in this state except that any]~~

7 (b) Notwithstanding Subsection (2)(a):

8 (i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use
 9 its actual name in this state if it also uses:

10 (A) "corporation[;]";

11 (B) "incorporated[;]"; or

12 (C) any abbreviation of ~~[them is also used. Notwithstanding Subsection 48-2a-102 (2):]~~
 13 a word listed in this Subsection (2)(b)(i);

14 ~~[(a)]~~ (ii) a limited liability company may use in its name in this state the terms:

15 (A) "limited[;]";

16 (B) "limited company[;]";

17 (C) "L.C.[;]";

18 (D) "L.L.C.[;]";

19 (E) "LC[;]"; or

20 (F) "LLC" ~~[in its name in this state];~~ and

21 ~~[(b)]~~ (iii) a limited liability partnership may use the terms "limited liability partnership,"
 22 "L.L.P.," or "LLP" in the manner allowed in Section 48-1-45.

23 (3) Except as authorized by Subsection (4), the name of a limited partnership must be
 24 distinguishable as defined in Subsection (5) upon the records of the division from:

25 (a) the name of any limited partnership formed or authorized to transact business in this
 26 state;

27 (b) the corporate name of any corporation incorporated or authorized to transact business
 28 in this state;

29 (c) any limited partnership name reserved under this chapter;

30 (d) any corporate name reserved under Title 16, Chapter 10a, Utah Revised Business
 31 Corporation Act;

1 (e) any fictitious name adopted by a foreign corporation or limited partnership authorized
2 to transact business in this state because its real name is unavailable;

3 (f) any corporate name of a not-for-profit corporation incorporated or authorized to
4 transact business in this state; and

5 (g) any assumed business name, trademark, or service mark registered by the division.

6 (4) (a) A limited partnership may apply to the division for approval to file its certificate
7 under, or to reserve, a name that is not distinguishable upon the division's records from one or
8 more of the names described in Subsection (3).

9 (b) The division shall approve of the name for which application is made under Subsection
10 (4)(a) if:

11 [(a)] (i) the other person whose name is not distinguishable from the name under which
12 the applicant desires to file;

13 (A) consents to the filing in writing; and

14 (B) submits an undertaking in a form satisfactory to the division to change its name to a
15 name that is distinguishable from the name of the applicant; or

16 [(b)] (ii) the applicant delivers to the division a certified copy of the final judgment of a
17 court of competent jurisdiction establishing the applicant's right to use in this state the name for
18 which the application is made.

19 (5) A name is distinguishable from other names, trademarks, and service marks registered
20 with the division if it contains one or more different letters or numerals from other names upon the
21 division's records. [~~Differences between singular and plural forms of words are distinguishing.~~]

22 (6) The following differences are not distinguishing:

23 (a) the words;

24 (i) "corporation[;]";

25 (ii) "incorporated[;]";

26 (iii) "company[;]";

27 (iv) "limited partnership[;]";

28 (v) "limited[;]";

29 (vi) "L.P.[;]"; or

30 (vii) "Ltd.[;]" [~~or any~~];

31 (b) an abbreviation [thereof] of a word listed in Subsection (6)(a);

1 [(b)] (c) the presence or absence of the words or symbols of the words "the," "and," "a,"
2 or "plus";

3 [(c)] (d) differences in punctuation and special characters; [or]

4 [(d)] (e) differences in capitalization; or

5 (f) on or after May 4, 1998, differences between singular and plural forms of words.

6 (7) The director of the division shall have the power and authority reasonably necessary
7 to interpret and efficiently administer this section and to perform the duties imposed upon the
8 division by this section.

9 (8) A name that implies that the limited partnership is an agency of this state or any of its
10 political subdivisions, if it is not actually such a legally established agency or subdivision, may
11 not be approved for filing by the division.

12 Section 3. Section **48-2b-106** is amended to read:

13 **48-2b-106. Name -- Exclusive right.**

14 (1) The name of each limited liability company as set forth in the articles of organization:

15 (a) shall contain the words:

16 (i) "limited company[.];";

17 (ii) "limited liability company[.];";

18 (iii) "L.C.[.];" or

19 (iv) "L.L.C.";

20 (b) may not contain:

21 (i) the words:

22 (A) "association[.];";

23 (B) "corporation[.];";

24 (C) "incorporated[.];";

25 (D) "limited partnership[.];";

26 (E) "limited[.];";

27 (F) "L.P.[.];" or

28 (G) "Ltd.[.];" or

29 (ii) words or any abbreviation with a similar meaning in any other language; and

30 (c) [~~may not,~~] without the written consent of the United States Olympic Committee, may
31 not contain the words:

1 (i) "Olympic[.];

2 (ii) "Olympiad[.]; or

3 (iii) "Citius Altius Fortius."

4 (2) (a) A person or entity, other than a limited liability company formed or registered
5 under this chapter, may not use in its name in this state any of the terms:

6 (i) "limited liability company[.];

7 (ii) "limited company[.];

8 (iii) "L.L.C.[.];

9 (iv) "L.C.[.];

10 (v) "LLC[.]; or

11 (vi) "LC" [~~in its name in this state, except that any~~].

12 (b) Notwithstanding Subsection (2)(a):

13 (i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use
14 its actual name in this state if it also uses:

15 (A) "corporation[.];

16 (B) "incorporated[.]; or [any]

17 (C) an abbreviation of [~~these is also used;~~ the words listed in this Subsection (2)(b)(i); or
18 [~~(b) Notwithstanding Subsection (2)(a);~~

19 (ii) a limited liability partnership may use in its name the terms:

20 (A) "limited liability partnership[.];

21 (B) "L.L.P.[.]; or

22 (C) "LLP" [~~in its name~~].

23 (3) Except as authorized by Subsection (4), the name of a limited liability company must
24 be distinguishable as defined in Subsection (5) upon the records of the division from:

25 (a) the name of any limited partnership formed or authorized to transact business in this
26 state;

27 (b) the name of any limited liability company formed or authorized to transact business
28 in this state;

29 (c) the corporate name of any corporation incorporated or authorized to transact business
30 in the state;

31 (d) any limited partnership name reserved under this chapter;

1 (e) any limited liability company name reserved under this chapter;

2 (f) any corporate name reserved under;

3 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act, as amended[;]; or

4 (ii) Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, as
5 amended;

6 (g) any fictitious name adopted by a foreign corporation, limited partnership, or limited
7 liability company authorized to transact business in this state because its real name is unavailable;

8 (h) any corporate name of a not-for-profit corporation incorporated or authorized to
9 transact business in this state; and

10 (i) any assumed name, trademark, or service mark registered by the division.

11 (4) (a) A limited liability company may apply to the division for approval to file its articles
12 of organization under or to reserve a name that is not distinguishable upon the division's records
13 from one or more of the names described in Subsection (3).

14 (b) The division shall approve the name for which the company applies under Subsection
15 (4)(a) if:

16 [(a)] (i) the other person whose name is not distinguishable from the name under which
17 the applicant desires to file;

18 (A) consents to the filing in writing; and

19 (B) submits an undertaking in a form satisfactory to the division to change its name to a
20 name that is distinguishable from the name of the applicant; or

21 [(b)] (ii) the applicant delivers to the division a certified copy of the final judgment of a
22 court of competent jurisdiction establishing the applicant's right to use the name in this state.

23 (5) A name is distinguishable from other names, trademarks, and service marks registered
24 with the division if it contains one or more different letters or numerals from other names upon the
25 division's records. [~~Differences between singular and plural forms of words are distinguishing.~~]

26 (6) The following differences are not distinguishing:

27 (a) the [~~words~~] terms:

28 (i) "corporation[;]";

29 (ii) "incorporated[;]";

30 (iii) "company[;]";

31 (iv) "limited partnership[;]";

- 1 (v) "limited[;]";
- 2 (vi) "L.P.[;]";
- 3 (vii) "Ltd.[;]";
- 4 (viii) "limited liability company[;]";
- 5 (ix) "limited company[;]";
- 6 (x) "L.C.[;]"; or
- 7 (xi) "L.L.C.[;]"~~[or any]~~;
- 8 (b) an abbreviation of [these words] a word listed in Subsection (6)(a);
- 9 ~~(b)~~ (c) the presence or absence of the words or symbols of the words "the," "and," "a,"
- 10 or "plus";
- 11 ~~(c)~~ (d) differences in punctuation and special characters; ~~[or]~~
- 12 ~~(d)~~ (e) differences in capitalization; or
- 13 (f) on or after May 4, 1998, differences between singular and plural forms of words.
- 14 (7) The director of the division shall have the power and authority reasonably necessary
- 15 to interpret and efficiently administer this section and to perform the duties imposed ~~[upon]~~ on the
- 16 division by this section.
- 17 (8) A name that implies that a limited liability company is an agency of this state or any
- 18 of its political subdivisions, if it is not actually such a legally established agency or subdivision,
- 19 may not be approved for filing by the division.
- 20 (9) The exclusive right to a name may be reserved by:
- 21 (a) any person intending to:
- 22 (i) organize a limited liability company under this chapter; and ~~[to]~~
- 23 (ii) adopt that name;
- 24 (b) any limited liability company or any foreign limited liability company registered in this
- 25 state intending to adopt that name;
- 26 (c) any foreign limited liability company intending to:
- 27 (i) register in this state; and ~~[intending to]~~
- 28 (ii) adopt that name; and
- 29 (d) any person intending to:
- 30 (i) organize a foreign limited liability company~~[-and intending to]~~;
- 31 (ii) have ~~[it]~~ the company register in this state; and

1 (iii) adopt that name.

2 (10) (a) The reservation described in Subsection (10)(a) shall be made by filing with the
3 division an application executed under penalty of perjury by the applicant to reserve a specified
4 name.

5 (b) If the division finds that the name is available for use by a limited liability company
6 or a foreign limited liability company, it shall reserve the name exclusively for the applicant for
7 a period of 120 days. The name reservation may be renewed for any number of subsequent periods
8 of 120 days.

9 (c) The exclusive right to a reserved name may be transferred to any other person by filing
10 with the division a notice of the transfer executed under penalty of perjury by the applicant for
11 whom the name was reserved and specifying the name and address of the transferee.

Legislative Review Note
as of 12-10-97 8:50 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel