

**TRADE AND BUSINESS NAME AMENDMENTS**

1999 GENERAL SESSION

STATE OF UTAH

**Sponsor: Afton B. Bradshaw**

AN ACT RELATING TO CORPORATIONS AND PARTNERSHIPS; EXEMPTING DEPOSITORY INSTITUTIONS FROM CERTAIN CORPORATE NAME REQUIREMENTS; AMENDING PROVISIONS RELATED TO DISTINGUISHING NAMES; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

**16-10a-401**, as last amended by Chapters 43 and 86, Laws of Utah 1998

**48-2a-102**, as last amended by Chapters 43 and 86, Laws of Utah 1998

**48-2b-106**, as last amended by Chapters 43 and 86, Laws of Utah 1998

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

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

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

(1) The name of a corporation:

(a) except for the name of a depository institution as defined in Section 7-1-103, must

contain:

(i) the word:

(A) "corporation";

(B) "incorporated"; or

(C) "company";

(ii) the abbreviation:

(A) "corp.";

(B) "inc."; or

(C) "co."; or

(iii) words or abbreviations of like import to the words or abbreviations listed in

Subsections (1)(a)(i) and (ii) in another language;

(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by:

- (i) Section 16-10a-301; and [its]
- (ii) the corporations's articles of incorporation;

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

- (i) "Olympic";
- (ii) "Olympiad"; or
- (iii) "Citius Altius Fortius"; and

(d) without the written consent of the State Board of Regents issued in accordance with Section 53B-5-114, may not contain the words:

- (i) "university";
- (ii) "college"; or
- (iii) "institute."

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

- (a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;
- (b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;
- (c) the name of any domestic or foreign limited liability company formed or authorized to transact business in this state;
- (d) the name of any limited partnership formed or authorized to transact business in this state;
- (e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and
- (f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.

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

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

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

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

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

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.

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

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

(b) the filing corporation:

(i) has merged with the other corporation; or

(ii) has been formed by reorganization of the other corporation.

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

(i) contains one or more different letters or numerals; or

(ii) has a different sequence of letters or numerals from the other names on the division's records.

(b) Differences which are not distinguishing are:

(i) the words or abbreviations of the words:

(A) "corporation";

(B) "company";

(C) "incorporated";

- (D) "limited partnership";
- (E) "L.P.";
- (F) "limited";
- (G) "Ltd.";
- (H) "limited liability company";
- (I) "limited company";
- (J) "L.C."; or
- (K) "L.L.C.";
- (ii) the presence or absence of the words or symbols of the words "the," "and," or "a";
- (iii) differences in punctuation and special characters;
- (iv) differences in capitalization; [or]
- (v) for a corporation incorporated in or authorized to do business in this state on or after May 4, 1998, differences between singular and plural forms of words; or
- (vi) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:
  - (A) the sequence of letters or numbers is identical; and
  - (B) the corporation is incorporated in or authorized to do business in this state on or after May 3, 1999.
- (c) The director of the division has the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.
- (6) A name that implies that the corporation is an agency of this state or of any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.
- (7) (a) The requirements of Subsection (1)(d) do not apply to a corporation incorporated in or authorized to do business in this state on or before May 4, 1998, until December 31, 1998.
- (b) On or after January 1, 1999, any corporation incorporated in or authorized to do business in this state shall comply with the requirements of Subsection (1)(d).

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

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

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

(a) shall contain the terms:

(i) "limited partnership";

(ii) "limited";

(iii) "L.P."; or

(iv) "Ltd.";

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

(i) it is the name of a general partner;

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

(iii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) may not contain:

(i) the words:

(A) "association";

(B) "corporation"; or

(C) "incorporated";

(ii) any abbreviation of a word listed in this Subsection (1)(c); or

(iii) any word or abbreviation that is of like import to the words listed in Subsection (1)(c)(i) in any other language;

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

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(e) without the written consent of the State Board of Regents issued in accordance with Section 53B-5-114, may not contain the words:

- (i) "university";
- (ii) "college"; or
- (iii) "institute."

(2)(a) A person or entity other than a limited partnership formed or registered under this title may not use in its name in this state any of the terms:

- (i) "limited";
- (ii) "limited partnership";
- (iii) "Ltd."; or
- (iv) "L.P."

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

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

- (A) "corporation";
- (B) "incorporated"; or
- (C) any abbreviation of a word listed in this Subsection (2)(b)(i);

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

- (A) "limited";
- (B) "limited company";
- (C) "L.C.";
- (D) "L.L.C.";
- (E) "LC"; or
- (F) "LLC"; and

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

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

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

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

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

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

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

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

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

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

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

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file:

(A) consents to the filing in writing; and

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

(ii) the applicant delivers to the division 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 for which the application is made.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different letters or numerals from other names upon the division's records.

(6) The following differences are not distinguishing:

(a) the terms:

- (i) "corporation";
  - (ii) "incorporated";
  - (iii) "company";
  - (iv) "limited partnership";
  - (v) "limited";
  - (vi) "L.P."; or
  - (vii) "Ltd.";
  - (b) an abbreviation of a word listed in Subsection (6)(a);
  - (c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";
  - (d) differences in punctuation and special characters;
  - (e) differences in capitalization; [øɾ]
  - (f) for a limited partnership that is formed in or registered as a foreign limited partnership in this state on or after May 4, 1998, differences between singular and plural forms of words; or
  - (g) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:
    - (i) the sequence of letters or numbers is identical; and
    - (ii) the limited partnership is formed in or registered as a foreign limited partnership in this state on or after May 3, 1999.
- (7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.
- (8) A name that implies that the limited partnership is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.
- (9) (a) The requirements of Subsection (1)(e) do not apply to a limited partnership that is formed in or registered as a foreign limited partnership in this state on or before May 4, 1998, until December 31, 1998.
- (b) On or after January 1, 1999, any limited partnership formed in or registered as a foreign

limited partnership in this state shall comply with the requirements of Subsection (1)(e).

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

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

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

(a) shall contain the terms:

(i) "limited company";

(ii) "limited liability company";

(iii) "L.C."; or

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

(b) may not contain:

(i) the terms:

(A) "association";

(B) "corporation";

(C) "incorporated";

(D) "limited partnership";

(E) "limited";

(F) "L.P."; or

(G) "Ltd."; or

(ii) words or any abbreviation with a similar meaning to those described in Subsection

(1)(b)(i) in any other language;

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

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the State Board of Regents in accordance with Section 53B-5-114, may not contain the words:

(i) "university";

- (ii) "college"; or
- (iii) "institute."

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

- (i) "limited liability company";
- (ii) "limited company";
- (iii) "L.L.C.";
- (iv) "L.C.";
- (v) "LLC"; or
- (vi) "LC".

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

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

- (A) "corporation";
- (B) "incorporated"; or
- (C) an abbreviation of the words listed in this Subsection (2)(b)(i); or

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

- (A) "limited liability partnership";
- (B) "L.L.P."; or
- (C) "LLP".

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

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

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

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

- (d) any limited partnership name reserved under this chapter;
  - (e) any limited liability company name reserved under this chapter;
  - (f) any corporate name reserved under:
    - (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act, as amended; or
    - (ii) Title 16, Chapter 6, Utah Nonprofit Corporation and Cooperative Association Act, as amended;
  - (g) any fictitious name adopted by a foreign corporation, limited partnership, or limited liability company authorized to transact business in this state because its real name is unavailable;
  - (h) any corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and
    - (i) any assumed name, trademark, or service mark registered by the division.
- (4) (a) A limited liability company may apply to the division for approval to file its articles of organization under or to reserve a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3).
- (b) The division shall approve the name for which the company applies under Subsection (4)(a) if:
- (i) the other person whose name is not distinguishable from the name under which the applicant desires to file:
    - (A) consents to the filing in writing; and
    - (B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or
  - (ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name in this state.
- (5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different letters or numerals from other names upon the division's records.
- (6) The following differences are not distinguishing:
- (a) the terms:

- (i) "corporation";
  - (ii) "incorporated";
  - (iii) "company";
  - (iv) "limited partnership";
  - (v) "limited";
  - (vi) "L.P.";
  - (vii) "Ltd.";
  - (viii) "limited liability company";
  - (ix) "limited company";
  - (x) "L.C."; or
  - (xi) "L.L.C.";
  - (b) an abbreviation of a word listed in Subsection (6)(a);
  - (c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";
  - (d) differences in punctuation and special characters;
  - (e) differences in capitalization; [or]
  - (f) for a limited liability company that is formed in or registered as a foreign limited liability company in this state on or after May 4, 1998, differences between singular and plural forms of words; or
    - (g) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:
      - (i) the sequence of letters or numbers is identical; and
      - (ii) the limited liability company is formed in or registered as a foreign limited liability company in this state on or after May 3, 1999.
- (7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.
- (8) A name that implies that a limited liability company is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may

not be approved for filing by the division.

(9) The exclusive right to a name may be reserved by:

(a) any person intending to:

(i) organize a limited liability company under this chapter; and

(ii) adopt that name;

(b) any limited liability company or any foreign limited liability company registered in this state intending to adopt that name;

(c) any foreign limited liability company intending to:

(i) register in this state; and

(ii) adopt that name; and

(d) any person intending to:

(i) organize a foreign limited liability company;

(ii) have the company register in this state; and

(iii) adopt that name.

(10) (a) The reservation described in Subsection (9)(a) shall be made by filing with the division an application executed under penalty of perjury by the applicant to reserve a specified name.

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

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

(11) (a) The requirements of Subsection (1)(d) do not apply to a limited liability company that is formed in or registered as a foreign limited liability company in this state on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any limited liability company formed in or registered as a

foreign limited liability company in this state shall comply with the requirements of Subsection (1)(d).