

1 **CONDUCTING BUSINESS UNDER AN**
2 **ASSUMED NAME**

3 1999 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Greg J. Curtis**

6 AN ACT RELATING TO NAMES; REQUIRING THE INCLUSION OF A NOTICE RELATING
7 TO USE OF PROTECTED NAMES ON CERTIFICATES OF ASSUMED NAMES FILED
8 WITH THE DIVISION OF CORPORATIONS AND COMMERCIAL CODE; AND
9 CLARIFYING THAT AN ASSUMED NAME FILING DOES AUTHORIZE THE USE OF
10 NAMES IN VIOLATION OF APPLICABLE STATE AND FEDERAL LAW.

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

12 AMENDS:

13 **42-2-5**, as last amended by Chapter 108, Laws of Utah 1990

14 **42-2-9**, as last amended by Chapter 168, Laws of Utah 1992

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

16 Section 1. Section **42-2-5** is amended to read:

17 **42-2-5. Certificate of assumed and of true name -- Contents -- Execution -- Filing.**

18 (1) Every person who carries on, conducts, or transacts business in this state under an
19 assumed name, whether that business is carried on, conducted, or transacted as an individual,
20 association, partnership, corporation, or otherwise, shall file with the Division of Corporations and
21 Commercial Code a certificate setting forth:

22 (a) the name under which the business is, or is to be carried on, conducted, or transacted,
23 and the full true name, or names, of the person owning, and the person carrying on, conducting,
24 or transacting the business; and

25 (b) the location of the principal place of business, and the street address of the person.

26 (2) The certificate shall be executed by the person owning, and the person carrying on,
27 conducting, or transacting the business, and shall be filed not later than 30 days after the time of

28 commencing to carry on, conduct, or transact the business.

29 (3) "Filed" means the Division of Corporations and Commercial Code has received and
30 approved, as to form, a document submitted under the provisions of this chapter, and has marked
31 on the face of the document a stamp or seal indicating the time of day and date of approval, the
32 name of the division, the division director's signature and division seal, or facsimiles of the
33 signature or seal.

34 (4) Every certificate filed with the Division of Corporations and Commercial Code under
35 this chapter shall include the following notice in a conspicuous place on the face thereof:

36 NOTICE - THE FILING OF THIS CERTIFICATE AND ITS APPROVAL BY THE
37 DIVISION OF CORPORATIONS AND COMMERCIAL CODE DOES NOT AUTHORIZE THE
38 USE IN THE STATE OF UTAH OF AN ASSUMED NAME IN VIOLATION OF THE RIGHTS
39 OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE UTAH CODE ANN.
40 SECTIONS 42-2-5 ET SEQ.).

41 Section 2. Section **42-2-9** is amended to read:

42 **42-2-9. Corporate names, limited liability company names, and trademark, service**
43 **mark, and trade name rights not affected.**

44 (1) This chapter does not affect or apply to any corporation organized under the laws of
45 any state if it does business under its true corporate name.

46 (2) This chapter does not affect the statutory or common law trademark, service mark, or
47 trade name rights granted by state or federal statute. Neither a filing under this chapter, an
48 approval or authorization by the Division of Corporations and Commercial Code pursuant to this
49 chapter, nor the use of an assumed name shall, of itself, authorize the use in this state of an
50 assumed name in violation of the rights of another as established under this chapter, the state law
51 relating to trademarks (Title 70, Chapter 3), the state law relating to names of corporations,
52 partnerships, and other legal entities, the federal law relating to trademarks and service marks (15
53 U.S.C. Section 1051 et seq.), or the common law, including rights in a trade name.

54 (3) This chapter does not affect or apply to any limited liability company doing business
55 in this state under its true name.

Legislative Review Note

as of 2-3-99 11:42 AM

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

Office of Legislative Research and General Counsel