

**AMENDMENTS RELATED TO USE OF BUSINESS NAMES**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to conducting business under an assumed name and addresses rights to use an assumed name.

**Highlighted Provisions:**

This bill:

- ▶ modifies a notice required on the certificate filed to use an assumed name;
- ▶ repeals a citation providing common law and other protections;
- ▶ creates a presumption that if a person registers an assumed name with the Division of Corporations and Commercial Code, the person has certain rights concerning the name; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 42-2-5**, as last amended by Laws of Utah 2010, Chapter 43
- 42-2-6.6**, as last amended by Laws of Utah 2010, Chapter 218
- 42-2-9**, as last amended by Laws of Utah 2002, Chapter 318



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

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

31 **42-2-5. Certificate of assumed and of true name -- Contents -- Execution -- Filing**

32 **-- Notice -- Data collection.**

33 (1) For purposes of this section, "filed" means the Division of Corporations and

34 Commercial Code has:

35 (a) received and approved, as to form, a document submitted under this chapter; and

36 (b) marked on the face of the document a stamp or seal indicating:

37 (i) the time of day and date of approval;

38 (ii) the name of the division; and

39 (iii) the division director's signature and division seal, or facsimiles of the signature or

40 seal.

41 (2) A person who carries on, conducts, or transacts business in this state under an

42 assumed name, whether that business is carried on, conducted, or transacted as an individual,

43 association, partnership, corporation, or otherwise, shall file with the Division of Corporations

44 and Commercial Code a certificate setting forth:

45 (a) the name under which the business is, or is to be carried on, conducted, or

46 transacted;

47 (b) the full true name, or names, of the person owning, and the person carrying on,

48 conducting, or transacting the business; and

49 (c) the location of the principal place of business, and the street address of the person.

50 (3) A certificate filed under this section shall be:

51 (a) executed by the person owning, and the person carrying on, conducting, or

52 transacting the business;

53 (b) filed not later than 30 days after the time of commencing to carry on, conduct, or

54 transact the business; and

55 (c) submitted in a machine printed format.

56 (4) A certificate filed with the Division of Corporations and Commercial Code under

57 this chapter shall include the following notice in a conspicuous place on the face ~~[thereof]~~ of

58 the notice:

59 NOTICE - THE FILING OF THIS APPLICATION AND ITS APPROVAL BY THE  
 60 DIVISION OF CORPORATIONS AND COMMERCIAL CODE DOES NOT AUTHORIZE  
 61 THE USE IN THE STATE OF UTAH OF AN ASSUMED NAME IN VIOLATION OF THE  
 62 RIGHTS OF ANOTHER UNDER FEDERAL[;] OR STATE[; ~~OR COMMON~~] LAW (SEE  
 63 UTAH CODE ANN. SECTIONS 42-2-5 ET SEQ., BUT MAY PROVIDE PROTECTIONS  
 64 OF YOUR ASSUMED NAME FROM UNAUTHORIZED USE).

65 (5) (a) A certificate filed under this section shall include a portion that allows the  
 66 person filing the form to voluntarily disclose the gender and race of one or more owners of the  
 67 entity for which the filing is made.

68 (b) Race shall be indicated under Subsection (5)(a) by selecting from the categories of  
 69 race listed in 15 U.S.C. Sec. 631(f).

70 (c) A person is not required to provide information under Subsection (5)(a) concerning  
 71 the gender or race of one or more owners of the entity for which the filing is made.

72 (d) (i) The Division of Corporations and Commercial Code shall compile information  
 73 concerning the gender or race included on certificates filed with the Division of Corporations  
 74 and Commercial Code.

75 (ii) Information compiled by the Division of Corporations and Commercial Code under  
 76 Subsection (5)(d)(i) may be compiled in a manner determined by the Division of Corporations  
 77 and Commercial Code by rules made pursuant to Title 63G, Chapter 3, Utah Administrative  
 78 Rulemaking Act.

79 Section 2. Section **42-2-6.6** is amended to read:

80 **42-2-6.6. Assumed name.**

81 (1) The assumed name:

82 (a) may not contain any word or phrase that indicates or implies that the business is  
 83 organized for any purpose other than one or more of the purposes contained in its application;

84 (b) shall be distinguishable from any registered name or trademark of record in the  
 85 offices of the Division of Corporations and Commercial Code, as defined in Subsection  
 86 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code  
 87 pursuant to Subsection (2);

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

- 90 (i) "Olympic";
- 91 (ii) "Olympiad"; or
- 92 (iii) "Citius Altius Fortius";
- 93 (d) without the written consent of the Division of Consumer Protection issued in
- 94 accordance with Section 13-34-114, may not contain the words:
- 95 (i) "university";
- 96 (ii) "college"; or
- 97 (iii) "institute" or "institution"; and
- 98 (e) an assumed name authorized for use in this state on or after May 1, 2000, may not
- 99 contain the words:
- 100 (i) "incorporated";
- 101 (ii) "inc."; or
- 102 (iii) a variation of "incorporated" or "inc."
- 103 (2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in
- 104 Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of
- 105 the name by a corporation as defined in:
- 106 (a) Subsection 16-6a-102(25);
- 107 (b) Subsection 16-6a-102(34);
- 108 (c) Subsection 16-10a-102(11); or
- 109 (d) Subsection 16-10a-102(20).
- 110 (3) The Division of Corporations and Commercial Code shall authorize the use of the
- 111 name applied for if:
- 112 (a) the name is distinguishable from one or more of the names and trademarks that are
- 113 on the division's records; or
- 114 (b) the applicant delivers to the division a certified copy of the final judgment of a
- 115 court of competent jurisdiction establishing the applicant's right to use the name applied for in
- 116 this state.
- 117 (4) The assumed name, for purposes of recordation, shall be either translated into
- 118 English or transliterated into letters of the English alphabet if it is not in English.
- 119 (5) The Division of Corporations and Commercial Code may not approve an
- 120 application for an assumed name to any person violating this section.

121 (6) The director of the Division of Corporations and Commercial Code shall have the  
122 power and authority reasonably necessary to interpret and efficiently administer this section  
123 and to perform the duties imposed on the division by this section.

124 (7) A name that implies by any word in the name that it is an agency of the state or of  
125 any of its political subdivisions, if it is not actually such a legally established agency, may not  
126 be approved for filing by the Division of Corporations and Commercial Code.

127 (8) ~~[Section]~~ Subsections 16-10a-403(1) and (3) ~~[applies]~~ apply to this chapter.

128 (9) (a) The requirements of Subsection (1)(d) do not apply to a person who filed a  
129 certificate of assumed and of true name with the Division of Corporations and Commercial  
130 Code on or before May 4, 1998, until December 31, 1998.

131 (b) On or after January 1, 1999, any person who carries on, conducts, or transacts  
132 business in this state under an assumed name shall comply with the requirements of Subsection  
133 (1)(d).

134 Section 3. Section **42-2-9** is amended to read:

135 **42-2-9. Corporate names, limited liability company names, and trademark,**  
136 **service mark, and trade name rights not affected.**

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

139 (2) (a) This chapter does not affect the statutory ~~[or common law]~~ trademark, service  
140 mark, or trade name rights granted by state or federal statute.

141 (b) An act listed in Subsection (2)(c) of itself does not authorize the use in this state of  
142 an assumed name in violation of the rights of another as established under:

143 (i) this chapter;

144 (ii) Title 70, Chapter 3a, Registration and Protection of Trademarks and Service Marks  
145 Act;

146 (iii) the state law relating to names of corporations, partnerships, and other legal  
147 business entities; or

148 (iv) the federal Trademark Act of 1946, 15 U.S.C. Section 1051 et seq. ~~[or]~~

149 ~~[(v) the common law, including rights in a trade name.]~~

150 (c) Subsection (2)(b) applies to:

151 (i) a filing under this chapter;

152 (ii) an approval by the Division of Corporations and Commercial Code pursuant to this  
153 chapter; or

154 (iii) the use of an assumed name.

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

157 (4) Notwithstanding the other provisions of this section, if a person registers an  
158 assumed name with the Division of Corporations and Commercial Code pursuant to this  
159 chapter, and maintains the registration, the person is presumed to have use of the assumed  
160 name that is superior to another person's use of that name, unless the other person can  
161 demonstrate a superior right to use the name under trademark, service mark, or trade name  
162 rights granted by state or federal statute before the day on which the Division of Corporations  
163 and Commercial Code registers the assumed name.

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**Legislative Review Note**  
as of 2-19-13 10:20 AM

**Office of Legislative Research and General Counsel**