

RESTRICTIONS ON NAMES OF BUSINESS ENTITIES

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Katherine Bryson

AN ACT RELATING TO CORPORATIONS; RESTRICTING THE USE OF CERTAIN EDUCATION RELATED TERMS; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

- 16-6-24**, as last amended by Chapter 277, Laws of Utah 1992
- 16-10a-401**, as enacted by Chapter 277, Laws of Utah 1992
- 42-2-6.6**, as last amended by Chapter 277, Laws of Utah 1992
- 48-2a-102**, as last amended by Chapter 61, Laws of Utah 1994
- 48-2b-106**, as last amended by Chapter 61, Laws of Utah 1994
- 53B-5-106**, as last amended by Chapter 155, Laws of Utah 1990

ENACTS:

53B-5-114, Utah Code Annotated 1953

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

Section 1. Section **16-6-24** is amended to read:

16-6-24. Corporate name -- Contents.

- (1) The corporate name of a nonprofit corporation:
 - (a) may not contain any word or phrase that indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;
 - (b) except as authorized by the [~~Division of Corporations and Commercial Code~~] division under Subsection (2), shall be distinguishable, as defined in Section 16-10a-401, from:
 - (i) the name of any domestic corporation, profit or nonprofit, existing under the laws of this state;
 - (ii) the name of any foreign corporation, profit or nonprofit, authorized to transact business in this state;
 - (iii) any name that is[~~, at the time,~~] reserved under Sections 16-6-25 and 16-10a-402;

- (iv) the name of a corporation that has registered its corporate name under Section 42-2-5;
- (v) the name of any trademark or service mark registered by the ~~[Division of Corporations and Commercial Code]~~ division; or
- (vi) any assumed name filed under Section 42-2-5;
- (c) shall be, for purposes of recordation, either translated into English or transliterated into letters of the English alphabet if it is not in English; ~~[and]~~
- (d) ~~[may not,]~~ 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) The ~~[Division of Corporations and Commercial Code]~~ division may authorize the use of the name applied for if:
 - (a) the name is distinguishable from one or more of the names and trademarks described in Subsection (1)(b) that are on the division's records; or
 - (b) if the applicant delivers to the ~~[Division of Corporations and Commercial Code]~~ division 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.
- (3) A corporation may use the name of another domestic or foreign corporation that is used in this state if:
 - (a) the other corporation is incorporated or authorized to transact business in this state; and
 - (b) the proposed user corporation:
 - ~~[(a)]~~ (i) has merged with the other corporation;

~~[(b)]~~ (ii) has been formed by reorganization of the other corporation; or

~~[(c)]~~ (iii) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(4) Only names of corporations may contain the:

(a) words "corporation," "incorporated[;]"; or ~~[the]~~

(b) abbreviation "corp." or "inc."

(5) The ~~[Division of Corporations and Commercial Code]~~ division may not issue a certificate of incorporation to any association violating the provisions of this section.

(6) (a) The requirements of Subsection (1)(e) 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)(e).

Section 2. Section **16-10a-401** is amended to read:

16-10a-401. Corporate name.

(1) The name of a corporation:

(a) must contain:

(i) the word:

(A) "corporation[;]";

(B) "incorporated[;]"; or

(C) "company[;]" ~~[or]~~;

(ii) the abbreviation:

(A) "corp.[;]";

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

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

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

(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by Section 16-10a-301 and its articles of incorporation; ~~[and]~~

(c) ~~[may not,]~~ 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:

- ~~[(a)]~~ (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

~~[(b)]~~ (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:

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

~~[(b)]~~ (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 [if it]

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

(b) Differences between singular and plural forms of words are distinguishing.

~~[(b)]~~ (c) 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; or

(iv) differences in capitalization.

~~(c)~~ (d) 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 ~~upon~~ on the division by this section.

(6) A name ~~[which]~~ 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 3. Section **42-2-6.6** is amended to read:

42-2-6.6. Assumed name.

(1) The assumed name:

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

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

(c) ~~[may not,]~~ 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) The Division of Corporations and Commercial Code shall authorize the use of the name applied for if:

(a) the name is distinguishable from one or more of the names and trademarks that are on the division's records[-]; or [if]

(b) 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 applied for in this state.

(3) The assumed name, for purposes of recordation, shall be either translated into English or transliterated into letters of the English alphabet if it is not in English.

(4) The Division of Corporations and Commercial Code may not approve an application for an assumed name to any person violating the provisions of this section.

(5) The director of the Division of Corporations and Commercial Code shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties ~~[herein]~~ imposed ~~[upon]~~ on the division by this section.

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

(7) ~~[The provisions of]~~ Section 16-10a-403 ~~[apply]~~ applies to this chapter.

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

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

Section 4. 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 ~~[words]~~ 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 ~~[also]~~ the name of a general partner ~~[or]~~;

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

~~[(it)]~~ (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~~[-]~~" ~~[or]~~;

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

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

(d) ~~[may not,]~~ 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) ~~[No]~~ (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." [in its name in this state except that any]

(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 [them is also used:] a word listed in this Subsection (2)(b)(i);

~~[Notwithstanding Subsection 48-2a-102 (2):]~~

~~[(a)]~~ (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" [in its name in this state]; and

~~[(b)]~~ (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:

~~[(a)]~~ (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

~~[(b)]~~ (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) 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.

(b) Differences between singular and plural forms of words are distinguishing.

(6) The following differences are not distinguishing:

(a) the [words] terms:

(i) "corporation[.];

(ii) "incorporated[.];

(iii) "company[.];

(iv) "limited partnership[.];

(v) "limited[.];

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

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

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

~~(b)~~ (c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

~~(c)~~ (d) differences in punctuation and special characters; or

~~(d)~~ (e) differences in capitalization.

(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 5. 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 [words] terms:

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

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

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

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

(b) may not contain:

(i) the [words] 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 in any other language; [and]

(c) [~~may not,~~] 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." [in its name in this state, except that any]
- (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 [any]
 - (C) an abbreviation of [~~these is also used.~~] the words listed in this Subsection (2)(b)(i); or
- [~~(b)~~] (ii) [~~Notwithstanding Subsection (2)(a);~~] a limited liability partnership may use in its

name the terms:

- (A) "limited liability partnership[.];"
- (B) "L.L.P.[.];" or
- (C) "LLP." [in its name.]

(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:

~~[(a)]~~ (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

~~[(b)]~~ (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) 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.

(b) Differences between singular and plural forms of words are distinguishing.

(6) The following differences are not distinguishing:

(a) the ~~[words]~~ 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.[;]"; [or any]

(b) an abbreviation of [these words] a word listed in Subsection (6)(a);

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

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

[~~(d)~~] (e) differences in capitalization.

(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~~] 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 [to]

(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 [~~intending to~~]
- (ii) adopt that name; and
- (d) any person intending to:
 - (i) organize a foreign limited liability company[~~and intending to~~];
 - (ii) have [it] 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).

Section 6. Section **53B-5-106** is amended to read:

53B-5-106. Responsibilities of Board of Regents.

The board is responsible for the administration of this chapter, and shall do the following:

- (1) prescribe the contents of the registration statements required by this chapter relating to the quality of education and ethical and business practices;
- (2) issue certification of registration upon receipt and approval of the registration statement

required under Section 53B-5-107;

(3) receive, investigate, and make available for public inspection the registration statements filed by proprietary schools operating or intending to operate in the state of Utah;

(4) maintain and publicize a list of proprietary schools for which a registration statement is on file with the board;

(5) investigate, on its own initiative or in response to a complaint filed with it, any institution subject to, or reasonably believed by the board to be subject to, this chapter; [and]

(6) negotiate and enter into interstate reciprocity agreements with other states, if in the judgment of the board, the agreements are or will help to effectuate the purposes of this chapter[-];
and

(7) consent to the use of educational terms in business names in accordance with Section 53B-5-114.

Section 7. Section **53B-5-114** is enacted to read:

53B-5-114. Consent to use of educational terms in business names.

(1) For purposes of this section:

(a) "Business name" means a name filed with the Division of Corporations and Commercial

Code under:

(i) Section 16-6-24;

(ii) Section 16-10a-401;

(iii) Section 42-2-6.6;

(iv) Section 48-2a-102; or

(v) Section 48-2b-106.

(b) "Educational term" means the term:

(i) "university";

(ii) "college"; or

(iii) "institution."

(2) If a statute listed in Subsection (1)(a) requires the written consent of the board to file a business name with the Division of Corporations and Commercial Code that includes an educational

term, the board may consent to the use of an educational term in accordance with this statute.

(3) The board shall consent to the use of an educational term in a business name if the person seeking to file the name:

(a) is registered under this chapter;

(b) is exempt from the chapter under Section 53B-5-105; or

(c) (i) is not engaged in educational activities; and

(ii) does not represent that it is engaged in educational activities.

(4) The board may withhold consent to use of an educational term in a business name if the person seeking to file the name:

(a) offers, sells, or awards a degree or any other type of educational credential; and

(b) fails to provide bona fide instruction through student-faculty interaction according to the standards and criteria established by the board under Subsection 53B-5-104(5).