

**BUSINESS ENTITY AMENDMENTS**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Afton B. Bradshaw**

AN ACT RELATING TO CORPORATIONS AND PARTNERSHIPS; ADDRESSING NAMES OF BUSINESS ENTITIES; REPLACING A SUSPENSION PROCESS WITH A DELINQUENCY PROCESS FOR CERTAIN BUSINESS ENTITIES; ADDRESSING USE OF THE TERM SERVE; ADDRESSING DISSOLUTION AND REINSTATEMENT PROCESSES; AMENDING REPORTING REQUIREMENTS OF CERTAIN BUSINESS ENTITIES; AND MAKING TECHNICAL CHANGES.

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

AMENDS:

- 16-6-97**, as last amended by Chapter 66, Laws of Utah 1987
- 16-6-99**, as last amended by Chapter 28, Laws of Utah 1995
- 16-10a-401**, as last amended by Chapter 38, Laws of Utah 1999
- 16-10a-1421**, as last amended by Chapter 220, Laws of Utah 1999
- 16-10a-1422**, as last amended by Chapter 220, Laws of Utah 1999
- 16-10a-1423**, as last amended by Chapter 220, Laws of Utah 1999
- 16-10a-1531**, as last amended by Chapter 220, Laws of Utah 1999
- 16-10a-1532**, as enacted by Chapter 277, Laws of Utah 1992
- 42-2-6.6**, as last amended by Chapter 86, Laws of Utah 1998
- 48-2a-102**, as last amended by Chapter 38, Laws of Utah 1999
- 48-2a-202**, as last amended by Chapter 189, Laws of Utah 1991
- 48-2a-203.5**, as last amended by Chapter 189, Laws of Utah 1991
- 48-2a-210**, as last amended by Chapter 41, Laws of Utah 1996
- 48-2b-106**, as last amended by Chapter 38, Laws of Utah 1999
- 48-2b-120**, as last amended by Chapter 54, Laws of Utah 1998
- 48-2b-121**, as last amended by Chapters 54 and 56, Laws of Utah 1998
- 48-2b-142**, as last amended by Chapter 28, Laws of Utah 1995

ENACTS:

**16-11-16**, Utah Code Annotated 1953

REPEALS:

**16-6-99.1**, as last amended by Chapter 313, Laws of Utah 1994

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

Section 1. Section **16-6-97** is amended to read:

**16-6-97. Annual report of domestic and foreign nonprofit corporations -- Contents.**

(1) Each domestic nonprofit corporation and each foreign nonprofit corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation [~~and~~];

(b) the state or country under whose laws it is incorporated;

~~(b)~~ (c) the address of its registered office in this state[;];

(d) the name of its registered agent in this state at [~~that~~] the address[~~, and,~~] specified in

Subsection (1)(c);

(e) in the case of a foreign corporation, the address of its principal office or other mailing address in the state or country under whose laws it is incorporated; and

~~(e)~~ (f) the names and respective addresses, including street and number, of the members of the governing board and the officers of the corporation.

(2) (a) The annual report required by Subsection (1) shall be on forms prescribed and furnished by the [~~Division of Corporations and Commercial Code~~] division.

(b) The information given in the annual report shall be current as of the date of the execution of the report.

(c) The annual report forms shall include a statement of notice to the corporation that failure to file the annual report will result in the [~~suspension~~] delinquency of its corporate charter.

(d) The annual report shall be signed under penalty of perjury by:

(i) (A) any authorized officer of the corporation; or[;]

(B) if the corporation is in the hands of a receiver or trustee, [~~it shall be signed on behalf of~~

~~the corporation under penalty of perjury] by the receiver or trustee[-If] on behalf of the corporation;  
and~~

~~(ii) the registered agent, if the registered agent has changed since the last annual report or other appointment of a registered agent[, the annual report shall also be signed by the registered agent].~~

Section 2. Section **16-6-99** is amended to read:

**16-6-99. Delinquency -- Dissolution and reinstatement.**

(1) A domestic corporation is considered delinquent if:

- (a) it does not file an annual report within the time prescribed by this chapter;
- (b) it fails to maintain a registered agent in this state for 60 consecutive days; or
- (c) it fails to file a statement noting any change of its registered office or registered agent within 60 days after the change.

(2) ~~(a)~~ The division [~~of Corporations and Commercial Code~~] shall mail a notice of delinquency to [~~each delinquent corporation, unless the corporation's certificate of incorporation is already suspended for any reason.~~]:

- ~~(i) the registered agent of the corporation; or~~
- ~~(ii) if there is no registered agent of record, at least one officer of the corporation.~~

~~(b)~~ The notice of delinquency required by Subsection (2)(a) shall state:

- ~~(i) the nature of the delinquency; and [shall state]~~
- ~~(ii) that the corporation shall be [suspended,] dissolved unless within 60 days of the mailing of the notice of delinquency it corrects the delinquency [and pays a notification fee within 30 days of the mailing of the notice of delinquency. The notice shall further state that a suspended corporation may be reinstated only after payment of a reinstatement fee].~~

~~[(3)-A] (c)~~ The division shall:

~~(i) mail a notice of delinquency [shall be mailed first-class, postage prepaid. The Division of Corporations and Commercial Code shall] required by Subsection (2)(a) in accordance with this section; and~~

~~(ii) include with the notice of delinquency any forms necessary to correct the delinquency.~~

~~[The division shall assess the corporation a delinquency notification fee as determined under Section 63-38-3.2.]~~

(3) (a) If the corporation does not remove the delinquency within 60 days from the date the division mails the notice of delinquency, the corporation is dissolved effective on the date of dissolution specified in Subsection (3)(c).

(b) If the corporation is dissolved under Subsection (3)(a), the division shall mail a certificate of dissolution to the:

(i) registered agent of the corporation; or

(ii) if there is no registered agent of record, at least one officer of the corporation.

(c) A corporation's date of dissolution is five days after the date the division mails the certificate of dissolution.

(d) A dissolved corporation may not be reinstated under this chapter, except as provided in Subsection (5).

(e) Except as provided in Subsection (4)(b), if a corporation is dissolved, the corporation may not do business in its corporate character under:

(i) any name; or

(ii) assumed name filed on behalf of the corporation under Section 42-2-5.

(f) On the date of dissolution, any assumed names filed on behalf of the dissolved corporation under Title 42, Chapter 2, Conducting Business Under an Assumed Name, are canceled.

(g) Notwithstanding Subsection (3)(f), the name of a corporation that is dissolved and any assumed name filed on its behalf are not available for two years from the date of dissolution for use by any other person:

(i) transacting business in this state; or

(ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under an Assumed Name.

(h) Notwithstanding Subsection (3)(f), if the corporation that is dissolved is reinstated in accordance with this section, the registration of the name of the corporation and any assumed names filed on its behalf are reinstated back to the date of dissolution.

(4) (a) Except as provided in Subsection (4)(b), a corporation dissolved under this section continues its corporate existence but may not carry on any business except the business necessary to wind up and liquidate its business and affairs.

(b) If the corporation is reinstated in accordance with this section, business conducted by the corporation during a period of administrative dissolution is unaffected by the dissolution.

(5) A corporation that is dissolved under this section or Section 16-6-62 may be reinstated if within two years from the date of dissolution the corporation:

(a) files with the division:

(i) an application for reinstatement; and

(ii) a certificate from the State Tax Commission that all taxes owed by the corporation have been paid; and

(b) pays all:

(i) past-due taxes;

(ii) penalties; and

(iii) reinstatement fees.

(6) If the division denies a corporation's application for reinstatement following a dissolution under this section, the division shall mail the corporation written notice:

(a) setting forth the reasons for denying the application; and

(b) stating that the corporation has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(7) A notice or certificate mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the registered agent of the corporation, if the notice or certificate is required to be mailed to the registered agent; or

(ii) the officer of the corporation that is sent the notice or certificate, if the notice or

certificate is required to be mailed to an officer of the corporation.

Section 3. 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

(ii) the corporation'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;

(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 for a corporation:



(A) incorporated in or authorized to do business in this state on or after May 4, 1998; or

(B) that changes its name on or after May 4, 1998; [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:

(I) is incorporated in or authorized to do business in this state on or after May 3, 1999[-]; or

(II) changes its name on or after May 3, 1999; or

(vii) differences in abbreviations, for a corporation:

(A) incorporated in or authorized to do business in this state on or after May 1, 2000; or

(B) that changes its name on or after May 1, 2000.

(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 4. Section **16-10a-1421** is amended to read:

**16-10a-1421. Procedure for and effect of administrative dissolution.**

(1) If the division determines that one or more grounds exist under Section 16-10a-1420 for dissolving a corporation, it shall ~~serve~~ mail the corporation ~~[in the manner provided in Section 16-10a-504 with]~~ written notice of:

(a) the division's determination that one or more grounds exist for dissolving; and

(b) the grounds for dissolving the corporation.

(2) (a) If the corporation does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the division that each ground does not exist, within 60 days after ~~service of~~ mailing the notice ~~[contemplated]~~ provided by Subsection (1), the division ~~[may]~~ shall administratively dissolve the corporation.

(b) ~~[The]~~ If a corporation is dissolved under Subsection (2)(a), the division shall ~~[serve]~~ mail written notice of the administrative dissolution ~~[on]~~ to the dissolved corporation ~~[in the manner provided in Section 16-10a-504]~~, stating the ~~[effective]~~ date of ~~[the]~~ dissolution specified in Subsection (2)(d).

(c) The division shall ~~[deliver]~~ mail a copy of the notice of administrative dissolution to:

(i) the last registered agent of the dissolved corporation[-]; or

(ii) if there is no registered agent of record, at least one officer of the corporation.

(d) A corporation's date of dissolution is five days after the date the division mails the written notice of dissolution under Subsection (2)(b).

(e) On the date of dissolution, any assumed names filed on behalf of the dissolved corporation under Title 42, Chapter 2, Conducting Business Under an Assumed Name, are canceled.

(f) Notwithstanding Subsection (2)(e), the name of the corporation that is dissolved and any assumed names filed on its behalf are not available for two years from the date of dissolution for use by any other person:

(i) transacting business in this state; or

(ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under an Assumed Name.

(g) Notwithstanding Subsection (2)(e), if the corporation that is dissolved is reinstated in accordance with Section 16-10a-1422, the registration of the name of the corporation and any assumed names filed on its behalf are reinstated back to the date of dissolution.

(3) (a) ~~[A]~~ Except as provided in Subsection (3)(b), a corporation administratively dissolved under this section continues its corporate existence but may not carry on any business except:

(i) the business necessary to wind up and liquidate its business and affairs under Section 16-10a-1405; and

(ii) to give notice to claimants in the manner provided in Sections 16-10a-1406 and 16-10a-1407.

(b) If the corporation is reinstated in accordance with Section 16-10a-1422, business conducted by the corporation during a period of administrative dissolution is unaffected by the dissolution.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(5) (a) Upon the administrative dissolution of a corporation, the division shall be an agent of the dissolved corporation for purposes of service of process.

(b) Service of process on the division under this Subsection (5) is service on the dissolved corporation.

(c) Upon receipt of process under this Subsection (5), the division shall deliver a copy of the process to the dissolved corporation at its principal office.

(6) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the registered agent of the corporation, if the notice is required to be mailed to the registered agent; or

(ii) the officer of the corporation that is mailed the notice, if the notice is required to be mailed to an officer of the corporation.

Section 5. Section **16-10a-1422** is amended to read:

**16-10a-1422. Reinstatement following dissolution.**

(1) A corporation [~~administratively~~] dissolved under Section 16-10a-1403 or 16-10a-1421 may apply to the division for reinstatement within two years after the effective date of dissolution by delivering to the division for filing an application for reinstatement that states:

(a) the effective date of [~~its administrative~~] the corporation's dissolution [~~and its~~];

(b) the corporation's corporate name as of [~~that~~] the effective date of dissolution;

[~~(b)~~] (c) that the grounds for dissolution either did not exist or have been eliminated;  
 [~~(c)~~] (d) the corporate name under which the corporation is being reinstated [~~and~~];  
 (e) that the name stated in Subsection (1)(d) satisfies the requirements of Section 16-10a-401;  
 [~~(d)~~] (f) that all taxes, fees, or penalties imposed pursuant to this chapter, otherwise owed by the corporation to the State Tax Commission, or otherwise imposed by applicable laws of this state have been paid;

[~~(e)~~] (g) the address of its registered office in this state [~~and~~];  
 (h) the name of its registered agent at [~~that~~] the office stated in Subsection (1)(g); and  
 [~~(f)~~] (i) any additional information the division determines to be necessary or appropriate.  
 (2) The corporation shall include in or with the application for reinstatement:  
 (a) the written consent to appointment by the designated registered agent[~~;~~]; and  
 (b) a certificate from the State Tax Commission reciting that all taxes owed by the corporation have been paid.

(3) If the division determines that the application for reinstatement contains the information required by Subsections (1) and (2) and that the information is correct, the division shall revoke the administrative dissolution. The division shall [~~serve~~] mail to the corporation in the manner provided in [~~Section 16-10a-504 with~~] Subsection 16-10a-1421(6) written notice of:

(a) the revocation; and  
 (b) the effective date of the revocation.  
 (4) When the reinstatement is effective, it relates back to the effective date of the administrative dissolution [~~and~~]. Upon reinstatement:

(a) an act of the corporation during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred; and

(b) the corporation may carry on its business, under the name stated pursuant to Subsection (1)[~~(c)~~](d), as if the administrative dissolution had never occurred.

Section 6. Section **16-10a-1423** is amended to read:

**16-10a-1423. Appeal from denial of reinstatement.**

If the division denies a corporation's application for reinstatement under Section 16-10a-1422

following administrative dissolution, the division shall ~~[serve]~~ mail to the corporation in the manner provided in ~~[Section 16-10a-504 with]~~ Subsection 16-10a-1421(6) written notice:

- (1) setting forth the reasons for denying the application; and
- (2) stating that the corporation has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 7. Section **16-10a-1531** is amended to read:

**16-10a-1531. Procedure for and effect of revocation.**

(1) If the division determines that one or more grounds exist under Section 16-10a-1530 for revoking the authority of a foreign corporation to transact business in this state, the division shall ~~[serve]~~ mail to the foreign corporation ~~[in the manner provided in Section 16-10a-1511 with]~~ written notice of:

- (a) the division's determination that one or more grounds exist for revocation; and
- (b) the grounds for revocation.

(2) (a) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after ~~[service of]~~ mailing the notice under Subsection (1), the division ~~[may]~~ shall revoke the foreign corporation's authority to transact business in this state.

(b) ~~[The]~~ If a foreign corporation's authority to transact business in this state is revoked under Subsection (2)(a), the division shall ~~[serve on]~~ mail to the foreign corporation ~~[in the manner provided~~

in Section 16-10a-1511 a] written notice of:

- (i) revocation; and
  - (ii) the effective date of the revocation.
- (c) The division shall ~~[deliver]~~ mail a copy of the notice to:
- (i) the last registered agent of the foreign corporation[-]; or
  - (ii) if there is no registered agent of record, at least one officer of the corporation.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the division's certificate revoking the corporation's certificate of authority.

(4) Revocation of a foreign corporation's authority to transact business in this state does not terminate the authority of the registered agent of the corporation.

(5) (a) Upon the revocation of a foreign corporation's authority to transact business in this state, the division becomes an agent for the foreign corporation for service of process in any proceeding based on a cause of action [~~which~~] that arose during the time the foreign corporation:

(i) transacted business in this state; or

(ii) was authorized to transact business in this state.

(b) Service of process on the division under this Subsection (5) is service on the foreign corporation.

(c) Upon receipt of process under this Subsection (5), the division shall mail a copy of the process to the foreign corporation at its principal office.

(6) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the registered agent of the foreign corporation, if the notice is required to be mailed to the registered agent; or

(ii) the officer of the foreign corporation that is mailed the notice, if the notice is required to be mailed to an officer of the foreign corporation.

Section 8. Section **16-10a-1532** is amended to read:

**16-10a-1532. Appeal from revocation.**

(1) A foreign corporation may appeal the division's revocation of its authority to transact business in this state to the district court of the county in this state where the last registered or principal office of the corporation was located or in Salt Lake County, within 30 days after [~~service of~~] the notice of revocation is [~~perfected~~] mailed under Section 16-10a-1531. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of the corporation's application for authority to transact business, and any amended applications, each as filed with the division, and the division's notice of revocation.

(2) The court may summarily order the division to reinstate the authority of the foreign corporation to transact business in this state or it may take any other action it considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 9. Section **16-11-16** is enacted to read:

**16-11-16. Corporate name.**

(1) The name of each professional corporation as set forth in its articles of incorporation:

(a) shall contain the terms:

(i) "professional corporation"; or

(ii) "P.C.";

(b) may not contain the words:

(i) "incorporated"; or

(ii) "inc.";

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

(i) Section 16-11-6; and

(ii) the professional corporation's articles of incorporation;

(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 in accordance with Section 53B-5-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute."

(2) The professional corporation may not imply by any word in the name that it is an agency of the state or of any of its political subdivisions.

(3) A person, other than a professional corporation formed or registered under this chapter, may not use in its name in this state any of the terms:

(a) "professional corporation"; or

(b) "P.C."

(4) Except as authorized by Subsection (5), the name of the professional corporation must be distinguishable, as defined in Subsection (6), 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.

(5) (a) A professional 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 (4).

(b) The division shall approve the application filed under Subsection (5)(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.

(6) (a) A name is distinguishable from other names, trademarks, and service marks registered with the division if it:

(i) contains one or more different letters or numerals from other names upon the division's records; or

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

(b) The following differences are not distinguishable:

(i) the words or abbreviations of the words:

(A) "corporation";

(B) "incorporated";

(C) "company";

(D) "limited partnership";

(E) "limited";

(F) "L.P.";

(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," "a," or "plus";

(iii) differences in punctuation and special characters;

(iv) differences in capitalization; or

(v) differences in abbreviations.

(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.

Section 10. 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);

(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[-]"; and

(e) an assumed name authorized for use in this state on or after May 1, 2000, may not contain the words:

(i) "incorporated";

(ii) "inc."; or

(iii) a variation of "incorporated" or "inc."

(2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of the name by a corporation as defined in:

(a) Subsection 16-6-19(4);

(b) Subsection 16-6-19(7);

(c) Subsection 16-10a-102(11); or

(d) Subsection 16-10a-102(19).

~~[(2)]~~ (3) 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

(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)]~~ (4) 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)]~~ (5) 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)]~~ (6) 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 imposed on the division by this section.

~~[(6)]~~ (7) A name 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)]~~ (8) Section 16-10a-403 applies to this chapter.

~~[(8)]~~ (9) (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 11. 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;
  - (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 for a limited partnership:
    - (i) formed in or registered as a foreign limited partnership in this state on or after May 4, 1998; or
    - (ii) that changes its name on or after May 4, 1998; [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:
      - (A) is formed in or registered as a foreign limited partnership in this state on or after May 3, 1999[-]; or
      - (B) changes its name on or after May 3, 1999; or
  - (h) differences in abbreviations, for a limited partnership:
    - (i) formed in or registered as a foreign limited partnership in this state on or after May 1, 2000; or
    - (ii) that changes its name on or after May 1, 2000.
- (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 12. Section **48-2a-202** is amended to read:

**48-2a-202. Amendment to certificate.**

(1) A certificate of limited partnership is amended by filing a certificate of amendment with the division. The certificate of amendment shall set forth:

- (a) the name of the limited partnership;
- (b) the date of filing the certificate; and
- (c) the amendment to the certificate.

(2) Within ~~[30]~~ 60 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

~~[(a) the admission of a new general partner;]~~

~~[(b) the withdrawal of a general partner;]~~

~~[(c)]~~ (a) the continuation of the business under Section 48-2a-801 after an event of withdrawal of a general partner;

~~[(d)]~~ (b) a change of the registered agent required to be maintained by Section 48-2a-104;

or

~~[(e)]~~ (c) a change of the limited partnership's principal place of business where the records required to be maintained by Section 48-2a-105 are kept.

(3) A general partner who knows or reasonably should know that any statement in a certificate of limited partnership or a certificate of amendment to a certificate of limited partnership was false at the time the certificate was executed ~~[or that any arrangement or other fact described in the certificate have changed;]~~ making the certificate inaccurate in any respect, shall promptly amend the certificate.



(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(5) ~~[No]~~ A person [has any liability] may not be held liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in Subsection (2) if the amendment is filed within the ~~[30]~~ 60 days specified in Subsection (2).

(6) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

Section 13. Section **48-2a-203.5** is amended to read:

**48-2a-203.5. Involuntary dissolution of certificate.**

(1) A certificate of limited partnership may be canceled involuntarily by a decree of a district court having competent jurisdiction upon petition by the director of the division, or by a party in interest who shall have standing to bring such an action, when it is established that:

(a) the limited partnership procured the issuance of a stamped copy of its certificate of limited partnership or the execution ~~[thereof]~~ of the certificate of limited partnership through fraud, in which case the certificate shall be canceled as of the date of its filing; or

(b) the limited partnership has continually exceeded or abused the authority conferred upon it by law or by the partnership agreement.

(2) A domestic limited partnership or a foreign limited partnership registered in this state is delinquent if:

(a) it does not file an annual report within the time prescribed by this chapter; or

(b) it fails to maintain a registered agent in this state for 60 consecutive days.

(3) ~~(a)~~ The division shall mail a notice of delinquency of [each] a delinquent limited partnership to [the general partners of]:

(i) the registered agent of the limited partnership [at the addresses set forth in the limited partnership's certificate, unless the limited partnership's certificate or registration is already suspended for any reason.]; or

(ii) if there is no registered agent of record, at least one general partner of the limited partnership.

(b) The notice of delinquency required under Subsection (3)(a) shall state:

(i) the nature of the delinquency; and ~~[shall state]~~

(ii) that the limited partnership shall be ~~[suspended;]~~ dissolved unless within 60 days of the mailing of the notice of delinquency it corrects the delinquency ~~[and pays a notification fee within 30 days of the mailing of the notice of delinquency. The notice shall further state that a suspended limited partnership may be reinstated only after payment of a reinstatement fee. A notice of delinquency shall be mailed first-class, postage prepaid].~~

(c) The division shall include with the notice of delinquency any forms necessary to correct the delinquency. ~~[The division shall assess the limited partnership a notification fee as determined under Section 48-2a-1107.]~~

~~[(4) A domestic limited partnership or a foreign limited partnership registered in this state that remains delinquent for more than 30 days after mailing of the notice of delinquency under this section shall be suspended. If a limited partnership is suspended under this section, the division shall mail a notice of suspension to the general partners of the limited partnership at the addresses set forth in the limited partnership's certificate, unless the limited partnership's certificate or registration is already suspended for any reason. A notice of suspension shall state:]~~

~~[(a) that the certificate or registration has been suspended;]~~

~~[(b) the reason for the suspension;]~~

~~[(c) the date of the suspension;]~~

~~[(d) that the limited partnership may remove the suspension by correcting the delinquency and paying a reinstatement fee determined by the division in accordance with Section 48-2a-1107 in addition to any fees required by Subsection (3); and]~~

~~[(e) that the limited partnership's certificate or registration will be canceled involuntarily one year after the date of mailing of the notice of suspension unless the limited partnership has removed the suspension before that time.]~~

~~[(5) The division shall include an annual report form in the notice of suspension if the suspension is due to failure to file an annual report.]~~

~~[(6)]~~ (4) (a) If the limited partnership does not remove the ~~[suspension]~~ delinquency within

~~[one year after]~~ 60 days from the date [of mailing of] the division mails the notice of [suspension] delinquency, the limited partnership's certificate or registration [may] shall be [canceled] dissolved involuntarily by the director of the division effective on the date specified in Subsection (4)(c). [The]

(b) If a limited partnership's certificate or registration is dissolved under Subsection (4)(a), the division shall mail a certificate of [cancellation] dissolution to:

(i) the [general partners] registered agent of the limited partnership [at the addresses set forth in the limited partnership's certificate. No canceled]; or

(ii) if there is no registered agent of record, at least one partner of the limited partnership.

(c) A limited partnership's date of dissolution is five days from the date the division mailed the certificate of dissolution under Subsection (4)(b).

(d) A dissolved limited partnership may not be reinstated except as set forth in Subsection [7] (5).

(e) [Any] On the date of dissolution, any assumed names filed on behalf of the [canceled] dissolved limited partnership under [Section 42-2-5] Title 42, Chapter 2, Conducting Business Under an Assumed Name, [also] are canceled. [The]

(f) Notwithstanding Subsection (4)(e), the name of a [canceled] dissolved limited partnership and any assumed names filed on its behalf are not available for [one year] two years from the date of [cancellation] dissolution for use by any other person:

(i) transacting business in this state[;]; or [person]

(ii) doing business under an assumed name under [Section 42-2-5] Title 42, Chapter 2, Conducting Business Under an Assumed Name.

(g) Notwithstanding Subsection (4)(e), if the limited partnership that is dissolved is reinstated in accordance with this section, the registration of the name of the limited partnership and any assumed names filed on its behalf are reinstated back to the date of dissolution.

[7] (5) Any limited partnership whose certificate or registration has been [canceled] dissolved under this section or Section 48-2a-203 may be reinstated within [one year] two years following [cancellation] the date of dissolution upon:

(a) application; and

(b) payment of:

(i) all penalties; and

(ii) all reinstatement fees.

~~[(8)]~~ (6) A limited partner of a limited partnership is not liable as a general partner of the limited partnership solely by reason of the limited partnership having had its limited partnership certificate or registration [~~suspended or canceled~~] dissolved.

~~[(9)]~~ (7) A limited partnership that has had its certificate or registration [~~suspended or canceled~~] dissolved may not maintain any action, suit, or proceeding in any court of this state until it has [~~removed the suspension or~~] reinstated its certificate or registration following [~~cancellation~~] dissolution.

(8) If the division denies a limited partnership's application for reinstatement following a dissolution under this section, the division shall mail the limited partnership written notice:

(a) setting forth the reasons for denying the application; and

(b) stating that the limited partnership has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(9) A notice or certificate mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division  
for:

(i) the registered agent of the limited partnership corporation, if the notice is required to be mailed to the registered agent; or

(ii) the partner of the limited partnership that is mailed the notice, if the notice is required to be mailed to a partner of the limited partnership.

Section 14. Section **48-2a-210** is amended to read:

**48-2a-210. Annual report.**

(1) (a) Each domestic limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file an annual report with the division[-];

(i) during the month of its anniversary date of formation, in the case of domestic limited partnerships~~;~~; or

(ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign limited partnerships authorized to transact business in this state~~;~~ ~~an~~].

(b) The annual report ~~setting~~ required by Subsection (1)(a) shall set forth:

~~(a)~~ (i) the name of the limited partnership ~~and~~];

(ii) the state or country under the laws of which it is formed;

~~(b)~~ (iii) the name and street address of the agent for service of process required to be maintained by Section 48-2a-104; ~~and~~]

~~(c)~~ (iv) any change of address of a general partner; and

(v) a change in the persons constituting the general partners.

(2) (a) The annual report required by Subsection (1) shall:

(i) be made on forms prescribed and furnished by the division~~;~~; and ~~[the information contained on the annual report shall be]~~

(ii) contain information that is given as of the date of execution of the annual report.

(b) The annual report forms shall include a statement of notice to the limited partnership that failure to file the annual report will result in the ~~[suspension and eventual cancellation]~~ dissolution of ~~[its certificate of]~~;

(i) the limited partnership, in the case of a domestic limited partnership~~;~~; or ~~of]~~

(ii) its registration, in the case of a foreign limited partnership authorized to transact business in this state.

(c) The annual report shall be signed ~~[under penalty of perjury]~~ by:

(i) any general partner~~;~~ ~~If]~~ under penalty of perjury; and

(ii) if the registered agent has changed since the last annual report or other appointment of a registered agent, ~~[the annual report shall also be signed by]~~ the new registered agent.

(3) (a) If the division finds that the annual report required by Subsection (1) conforms to the requirements of this chapter, it shall file the annual report.

(b) If the division finds that the annual report required by Subsection (1) does not conform to the requirements of this chapter, [it] the division shall mail the report first-class postage prepaid to the limited partnership at the addresses set forth in the certificate for any necessary corrections.

(c) If [~~a~~] the division returns an annual report [~~is returned~~] in accordance with Subsection (3)(b), the penalties for failure to file the annual report within the time prescribed in Section 48-2a-203.5 do not apply, as long as the report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the limited partnership.

Section 15. 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;

(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 for a limited liability company:

(i) formed in or registered as a foreign limited liability company in this state on or after May 4, 1998; or

(ii) that changes its name on or after May 4, 1998; [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;

(A) is formed in or registered as a foreign limited liability company in this state on or after May 3, 1999[-]; or

(B) changes its name on or after May 3, 1999; or

(h) differences in abbreviations, for a limited liability company;

(i) formed in or registered as a foreign limited liability company in this state on or after May 1, 2000; or

(ii) that changes its name on or after May 1, 2000.

(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).

Section 16. Section **48-2b-120** is amended to read:

**48-2b-120. Annual report.**

(1) (a) Each limited liability company and each foreign limited liability company authorized to transact business in this state shall file an annual report with the division[;]:

(i) during the month of its anniversary date of formation, in the case of domestic limited liability companies[;]; or

(ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign limited liability companies authorized to transact business in this state[~~, an~~].

(b) The annual report [~~setting~~] required by Subsection (1)(a) shall set forth:

~~(a)~~ (i) the name of the limited liability company [~~and~~];

(ii) the state or country under the laws of which it is formed;

~~(b)~~ (iii) the street address of the registered office [~~and~~];

(iv) the name of the agent for service of process at [~~that~~] the address listed in Subsection

~~(1)(b)(iii)~~, as required to be maintained under Section 48-2b-123;

~~(e)~~ (v) if there is a change of the registered agent required to be maintained by Section 48-2b-123;

~~(d)~~ (vi) if the street address or legal name of any manager or member with management authority named in the articles of organization of a domestic limited liability company, or named in the application for the registration of a foreign limited liability company, has changed, the new street address or legal name of the member or manager; and

~~(e)~~ (vii) any change in the persons constituting the managers or members with management authority, of a domestic or foreign limited liability company.

~~(2)~~ A change in the person constituting the managers, or members with management authority, of a domestic limited liability company shall be reflected in amended articles of organization, as provided in Section 48-2b-121.]

~~(3)~~ (2) (a) The annual report required by Subsection (1) shall:

(i) be made on forms prescribed and furnished by the division[;]; and ~~[the information contained on the annual report shall be]~~

(ii) contain information that is given as of the date of execution of the annual report.

(b) The annual report forms shall include a statement notifying the limited liability company that failure to file the annual report will result in the ~~[suspension and eventual cancellation of its certificate]~~ dissolution of:

(i) the organization, in the case of a domestic limited liability company[;]; or ~~[of]~~

(ii) its registration, in the case of a foreign limited liability company authorized to transact business in this state.

~~(4)~~ (3) The annual report shall be signed by:

(a) any manager or member with management authority~~[-If]~~ under penalty of perjury; and

(b) if the registered agent has changed since the last annual report, ~~[the annual report shall also be signed by]~~ the new registered agent.

~~(5)~~ (4) (a) If the annual report conforms to the requirements of this chapter, the division shall file the report.

(b) If the annual report does not conform, the division shall mail the report first class postage prepaid to the limited liability company at the street address set forth for its agent for service of process in the certificate of organization or most recent annual report, for any necessary corrections.

(c) If [a] the division returns an annual report [is returned] in accordance with Subsection (4)(b), the penalties for failure to file the annual report within the time prescribed in this section do not apply, as long as the annual report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the limited liability company.

Section 17. Section **48-2b-121** is amended to read:

**48-2b-121. When amendments to the articles of organization are required.**

(1) The articles of organization of a limited liability company shall be amended when:

(a) there is a change in the name of the limited liability company;

(b) there is a change in the character of the business of the limited liability company specified in the articles of organization;

(c) there is a false or erroneous statement in the articles of organization;

(d) there is a change in the time for the dissolution of the limited liability company that is:

(i) stated in the articles of organization; or

(ii) provided for in Subsection 48-2b-116(4); or

~~[(e) there is a change in:]~~

~~[(i) who is a manager of the limited liability company; or]~~

~~[(ii) if the limited liability company is managed by its members, who is a member of the limited liability company; or]~~

~~[(f)]~~ (e) the members desire to make a change in any other statement in the articles of organization in order for the articles to accurately represent the agreement among the members.

(2) Each limited liability company shall file with the division a copy of any amendment to the articles within 60 days after the adoption of the amendment.

(3) A limited liability company is not required to amend its articles of organization to report a change in:

(a) the street or mailing address of a manager or member with management authority; or

(b) the legal name of a manager or member with management authority.

Section 18. Section **48-2b-142** is amended to read:

**48-2b-142. Involuntary dissolution.**

(1) A limited liability company may be dissolved involuntarily by order of any court of competent jurisdiction in an action filed by the attorney general or the director of the division when it is established that the limited liability company:

(a) obtained the issuance of its certificate of organization or of its execution through fraud, in which case the certificate of organization shall be canceled as of the date of its filing;

(b) continually exceeded or abused the authority conferred upon it by law or by the operating agreement;

(c) committed a violation of any provision of law whereby it has forfeited its charter;

(d) carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner;

(e) abused its powers contrary to the public policy of the state; or

(f) failed to amend its articles of organization as required by Section 48-2b-121.

(2) A limited liability company or a foreign liability company registered in this state is delinquent if:

(a) it does not file an annual report within the time prescribed by this chapter; or

(b) it fails to maintain a registered agent in this state for 60 consecutive days.

(3) (a) ~~[Unless the limited liability company's certificate of organization is already suspended for any reason, the]~~ The division shall mail a notice of delinquency of each delinquent limited liability company to:

(i) the [managers] registered agent of the limited liability company [at the addresses set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization.]; or

(ii) if there is no registered agent of record, at least one manager of the limited liability company.

(b) The notice of delinquency shall state:

(i) the nature of the delinquency; and

(ii) that the limited liability company shall be [~~suspended~~] dissolved, unless it corrects the delinquency [~~and pays a notification fee~~] within [30] 60 days of the mailing of the notice of delinquency [~~; and~~].

[~~(iii) that a suspended limited liability company may be reinstated only after payment of a reinstatement fee.~~]

[~~(b) A notice of delinquency shall be mailed first class, postage prepaid.~~]

(c) The division shall include with the notice any forms necessary to correct the delinquency.

[~~(d) The division shall assess the limited liability company a notification fee, as determined under Section 63-38-3.2.~~]

[~~(4) (a) A limited liability company, or a foreign limited liability company registered in this state, that remains delinquent for more than 30 days after the mailing of the notice of delinquency under this section shall be suspended.~~]

[~~(b) Unless the limited liability company's certificate of organization is already suspended for any reason, if a limited liability company is suspended under this section, the division shall mail a notice of suspension to the managers of the limited liability company at the addresses set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization.~~]

[~~(c) The notice of suspension shall state:~~]

[~~(i) that the certificate of organization has been suspended;~~]

[~~(ii) the reason for the suspension;~~]

[~~(iii) the date of the suspension;~~]

[~~(iv) that the limited liability company may remove the suspension by correcting the delinquency and paying a reinstatement fee determined by the division in accordance with Section 63-38-3.2, in addition to any fees required by Subsection (3); and~~]

[~~(v) that the limited liability company's certificate of organization will be canceled~~]

~~involuntarily one year after the date of mailing of the notice of suspension unless the limited liability company has removed the suspension before that time.]~~

~~[(5) The division shall include an annual report form in the notice of suspension if the suspension is due to failure to file an annual report.]~~

~~[(6)] (4) (a) If the limited liability company does not remove the [suspension] delinquency within [one year] 60 days after the date of mailing of the notice of [suspension] delinquency, the limited liability company's certificate of organization [may] shall be [canceled] dissolved involuntarily by the director of the division effective on the date specified in Subsection (4)(c). [The]~~

~~(b) If a limited liability's certificate of organization is dissolved under Subsection (4)(a), the division shall mail a certificate of [cancellation] dissolution to [the managers]:~~

~~(i) the registered agent of the limited liability company [at the address set forth in the limited liability company's articles of organization, or, if the limited liability company is managed by its members, then to the members at the addresses set forth in the limited liability company's articles of organization. No canceled]; or~~

~~(ii) if there is no registered agent of record, at least one manager of the limited liability company.~~

~~(c) A limited liability company's date of dissolution is five days from the date the division mailed a certificate of dissolution under Subsection (4)(b).~~

~~(d) A dissolved limited liability company may not be reinstated, except as set forth in Subsection [(7)] (5).~~

~~(e) [Any] On the date of dissolution, any assumed names filed on behalf of the [canceled] dissolved limited liability company under [Section 48-2b-106 also] Title 42, Chapter 2, Conducting Business Under an Assumed Name, are [canceled. The] canceled.~~

~~(f) Notwithstanding Subsection (4)(e), the name of a [canceled] dissolved limited liability company and any assumed names filed on its behalf are not available for [one year] two years from the date of [cancellation] dissolution for use by any other person:~~

~~(i) transacting business in this state[;]; or [person]~~

~~(ii) doing business under an assumed name under [Section 48-2b-106] Title 42, Chapter 2,~~



Conducting Business Under an Assumed Name.

(g) Notwithstanding Subsection (4)(e), if the limited liability company that is dissolved is reinstated in accordance with this section, the registration of the name of the limited liability company and any assumed names filed on its behalf are reinstated back to the date of dissolution.

~~[(7)]~~ (5) Any limited liability company whose certificate of organization has been [canceled] dissolved under Section 48-2b-141 or this section may be reinstated within [one year] two years following [cancellation] dissolution upon:

- (a) application; and
- (b) payment of:
  - (i) all penalties; and
  - (ii) all reinstatement fees.

~~[(8)]~~ (6) A member of a limited liability company has no personal liability solely by reason of the limited liability company having had its certificate of organization [suspended or canceled] dissolved.

~~[(9)]~~ (7) A limited liability company that has had its certificate or registration [suspended or canceled] dissolved may not maintain any action, suit, or proceeding in any court of this state until it has [removed the suspension or] reinstated its certificate or registration following [cancellation] dissolution.

(8) If the division denies a limited liability company's application for reinstatement following a dissolution under this section, the division shall mail the limited liability company written notice:

- (a) setting forth the reasons for denying the application; and
- (b) stating that the limited liability company has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

(9) A notice or certificate mailed under this section shall be:

- (a) mailed first-class, postage prepaid; and
  - (b) addressed to the most current mailing address appearing on the records of the division
- for:

(i) the registered agent of the limited liability company, if the notice is required to be mailed to the registered agent; or

(ii) the manager of the limited liability company that is mailed the notice, if the notice is required to be mailed to a manager of the limited liability company.

**Section 19. Repealer.**

This act repeals:

**Section 16-6-99.1, Suspension -- Notice -- Failure to remove suspension.**