

**USE OF BUSINESS NAMES**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jim Nielson**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies provisions related to the name under which a person conducts business.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ makes registration of a name a material fact in an action regarding the use of a business name;
- ▶ provides for evidence of registration by certified copy; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**42-2-9**, as last amended by Laws of Utah 2002, Chapter 318

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

Section 1. Section **42-2-9** is amended to read:



28           **42-2-9. Corporate names, limited liability company names, and trademark,**  
29 **service mark, and trade name rights not affected -- Registration material fact in court**  
30 **actions.**

31           (1) This chapter does not affect or apply to [~~any~~] a corporation organized under the  
32 laws of any state if it does business under its true corporate name.

33           (2) (a) This chapter does not affect the statutory or common law trademark, service  
34 mark, or trade name rights granted by state or federal statute.

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

37           (i) this chapter;

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

40           (iii) the state law relating to names of corporations, partnerships, and other legal  
41 business entities;

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

43           (v) the common law, including rights in a trade name.

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

45           (i) a filing under this chapter;

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

48           (iii) the use of an assumed name.

49           (3) This chapter does not affect or apply to [~~any~~] a limited liability company doing  
50 business in this state under its true name.

51           (4) (a) As used in this Subsection (4), "filer" means a person who:

52           (i) registers a name with the Division of Corporations and Commercial Code; and

53           (ii) files an action in a court of competent jurisdiction alleging that another person is  
54 violating a law described in Subsection (2)(b)(i), (ii), (iii), or (v), by use of a name.

55           (b) Notwithstanding the other provisions of this section, if a filer files an action  
56 described in Subsection (4)(a), the court shall consider the filer's registration of the name as a  
57 material fact in favor of the filer if the filer registers the name before the person against whom  
58 the filer files the action files the name.

59           (c) A certified copy of the registration of a name with the Division of Corporations and  
60 Commercial Code is evidence of when a name is registered with the Division of Corporations  
61 and Commercial Code.

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**Legislative Review Note**  
**as of 1-13-14 2:14 PM**

**Office of Legislative Research and General Counsel**