

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

SENATE BILL 205

5 By: Senator C. Penzo
6 By: Representative Lundstrum
7

For An Act To Be Entitled

9 AN ACT TO ASSIST SMALL BUSINESS OWNERS TO FORM A
10 LEGAL ENTITY IN THIS STATE; TO CLARIFY THE PROCEDURES
11 AND STANDARDS USED FOR NAME AVAILABILITY FOR CERTAIN
12 CORPORATIONS AND LIMITED LIABILITY COMPANIES; AND FOR
13 OTHER PURPOSES.
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Subtitle

16 TO ASSIST SMALL BUSINESS OWNERS TO FORM A
17 LEGAL ENTITY IN THIS STATE; AND TO
18 CLARIFY THE PROCEDURES AND STANDARDS USED
19 FOR NAME AVAILABILITY FOR CERTAIN
20 CORPORATIONS AND LIMITED LIABILITY
21 COMPANIES.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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27 SECTION 1. DO NOT CODIFY. Legislative intent.

28 It is the intent of the General Assembly that this act shall:

29 (1) Confirm that the standard to be used for name availability
30 for a corporation or legal entity in this state is that the name is
31 distinguishable and that the standard shall not be whether or not the name is
32 confusingly similar; and

33 (2) Provide the only factors that the Secretary of State may use
34 in determining whether or not a corporate or legal entity name is
35 distinguishable.
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1 SECTION 2. Arkansas Code § 4-26-401(3), concerning the standard for
2 corporate name availability, is amended to read as follows:

3 (3)(A) Shall ~~not be the same as or confusingly similar to be~~
4 distinguishable from the name of any domestic corporation existing under the
5 laws of this state or any foreign corporation authorized to transact business
6 in this state, or a name the exclusive right to which is, at the time,
7 reserved under § 4-26-402, or the name of a corporation which has in effect a
8 registration of its corporate name under § 4-26-403.

9 (B) ~~No~~ A foreign corporation ~~may~~ shall not be admitted to
10 this state if its corporate name is ~~identical with or confusingly similar to~~
11 not distinguishable from the name of any domestic corporation, or the name of
12 any foreign corporation then admitted to this state, or any name then
13 reserved or registered under § 4-26-402 or § 4-26-403.

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15 SECTION 3. Arkansas Code § 4-26-401, concerning corporate name
16 requirements, is amended to add an additional subdivision to read as follows:

17 (4) In determining whether or not a corporate name is
18 distinguishable under subdivision (3)(A) of this section, a corporate name
19 that is different from the name of another entity or filing is
20 distinguishable unless the only difference is one (1) or more of the
21 following:

- 22 (A) A suffix;
- 23 (B) A definite or indefinite article;
- 24 (C) The word "and" and the symbol "&;
- 25 (D) The singular, plural, or possessive form of a word; or
- 26 (E) A punctuation mark or a symbol.

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28 SECTION 4. Arkansas Code § 4-26-405(b)(3), concerning acceptance of a
29 proposed fictitious name of a corporation, is amended to read as follows:

30 (3) However, the Secretary of State shall not accept such filing
31 if the proposed fictitious name is not distinguishable under § 4-26-401 from
32 the same as or confusingly similar to the name of any domestic corporation,
33 or any foreign corporation admitted to this state, or any name reserved or
34 registered under §§ 4-26-402 and 4-26-403.

35
36 SECTION 5. Arkansas Code § 4-27-401 is amended to read as follows:

1 4-27-401. Corporate name.

2 (a) A corporate name:

3 (1) must contain the word "corporation," "incorporated,"
 4 "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or
 5 "ltd.," or words or abbreviations of like import in another language; and

6 (2) may not contain language stating or implying that the
 7 corporation is organized for a purpose other than that permitted by § 4-27-
 8 301 and its articles of incorporation.

9 (b) Except as authorized by subsections (c) and (d) of this section, a
 10 corporate name must be distinguishable upon the records of the Secretary of
 11 State from:

12 (1) the corporate name of a corporation incorporated or
 13 authorized to transact business in this state;

14 (2) a corporate name reserved or registered under § 4-27-402 or
 15 §4-27-403;

16 (3) the fictitious name adopted by a foreign corporation
 17 authorized to transact business in this state because its real name is
 18 unavailable; and

19 (4) the corporate name of a not-for-profit corporation
 20 incorporated or authorized to transact business in this state.

21 (c) In determining whether or not a corporate name is distinguishable
 22 under subsection (b) of this section, a corporate name that is different from
 23 the name of another entity or filing is distinguishable unless the only
 24 difference is one (1) or more of the following:

25 (1) A suffix;

26 (2) A definite or indefinite article;

27 (3) The word "and" and the symbol "&;

28 (4) The singular, plural, or possessive form of a word; or

29 (5) A punctuation mark or a symbol.

30 (d) A corporation may apply to the Secretary of State for
 31 authorization to use a name that is not distinguishable upon his records from
 32 one (1) or more of the names described in subsection (b) of this section. The
 33 Secretary of State shall authorize use of the name applied for if:

34 (1) the other corporation consents to the use in writing and
 35 submits an undertaking in form satisfactory to the Secretary of State to
 36 change its name to a name that is distinguishable upon the records of the

1 Secretary of State from the name of the applying corporation; or

2 (2) the applicant delivers to the Secretary of State a certified
3 copy of the final judgment of a court of competent jurisdiction establishing
4 the applicant's right to use the name applied for in this state.

5 ~~(d)~~(e) A corporation may use the name of another domestic or foreign
6 corporation that is used in this state if the corporation is incorporated or
7 authorized to transact business in this state and the proposed user
8 corporation:

9 (1) has merged with the other corporation;

10 (2) has been formed by reorganization of the other corporation;

11 or

12 (3) has acquired all or substantially all of the assets,
13 including the corporate name, of the other corporation.

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15 SECTION 6. Arkansas Code § 4-27-404(b), concerning the use of a
16 fictitious name under the Arkansas Business Corporation Act of 1987, is
17 amended to read as follows:

18 (b) Each such form shall be executed (without verification) in
19 duplicate and filed with the Secretary of State. The Secretary of State
20 shall retain one (1) counterpart; and the other counterpart, bearing the file
21 marks of the Secretary of State, shall be returned to the corporation and,
22 unless its registered office is in Pulaski County, filed by it with the
23 county clerk. An index of such filings shall be maintained in each office.
24 However, the Secretary of State shall not accept such filing unless the
25 proposed fictitious name is distinguishable under § 4-27-401 upon the records
26 of the Secretary of State from the name of any domestic corporation, or any
27 foreign corporation authorized to do business in the state or any name
28 reserved or registered under §§ 4-27-402 and 4-27-403.

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30 SECTION 7. Arkansas Code § 4-33-401 is amended to read as follows:
31 4-33-401. Corporate name.

32 (a) A corporate name may not contain language stating or implying that
33 the corporation is organized for a purpose other than that permitted by § 4-
34 33-301 and its articles of incorporation.

35 (b) Except as authorized by subsections (c), ~~and (d)~~, and (e) of this
36 section, a corporate name must be distinguishable upon the records of the

1 Secretary of State from:

2 (1) the corporate name of a nonprofit or business corporation
 3 incorporated or authorized to do business in this state;

4 (2) a corporate name reserved or registered under § 4-33-402 or
 5 § 4-33-403 of this chapter or § 4-26-402 or § 4-27-402; or

6 (3) the fictitious name of a foreign business or nonprofit
 7 corporation authorized to transact business in this state because its real
 8 name is unavailable;

9 (c) In determining whether or not a corporate name is distinguishable
 10 under subsection (b) of this section, a corporate name that is different from
 11 the name of another entity or filing is distinguishable unless the only
 12 difference is one (1) or more of the following:

- 13 (1) a suffix;
- 14 (2) a definite or indefinite article;
- 15 (3) the word "and" and the symbol "&;
- 16 (4) the singular, plural, or possessive form of a word; or
- 17 (5) a punctuation mark or a symbol.

18 (d) A corporation may apply to the Secretary of State for
 19 authorization to use a name that is not distinguishable upon the Secretary of
 20 State’s records from one (1) or more of the names described in subsection (b)
 21 of this section. The Secretary of State shall authorize use of the name
 22 applied for if:

23 (1) the other corporation consents to the use in writing and
 24 submits an undertaking in form satisfactory to the Secretary of State to
 25 change its name to a name that is distinguishable upon the records of the
 26 Secretary of State from the name of the applying corporation; or

27 (2) the applicant delivers to the Secretary of State a certified
 28 copy of a final judgment of a court of competent jurisdiction establishing
 29 the applicant’s right to use the name applied for in this state.

30 ~~(d)~~(e) A corporation may use the name (including the fictitious name)
 31 of another domestic or foreign business or nonprofit corporation that is used
 32 in this state if the other corporation is incorporated or authorized to do
 33 business in this state and the proposed user corporation:

- 34 (1) has merged with the other corporation;
- 35 (2) has been formed by reorganization of the other corporation;

36 or

1 (3) has acquired all or substantially all of the assets,
 2 including the corporate name, of the other corporation.

3 ~~(e)~~(f) This chapter does not control the use of fictitious names.

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 5 SECTION 8. Arkansas Code § 4-38-112 is amended to read as follows:
 6 4-38-112. Permitted names.

7 (a) The name of a limited liability company must contain the phrase
 8 “limited liability company” or “limited company” or the abbreviation
 9 “L.L.C.”, “LLC”, “L.C.”, or “LC”. “Limited” may be abbreviated as “Ltd.”, and
 10 “company” may be abbreviated as “Co.”.

11 (b) Except as otherwise provided in subsection ~~(d)~~(e), the name of a
 12 limited liability company, and the name under which a foreign limited
 13 liability company may register to do business in this state, must be
 14 distinguishable on the records of the Secretary of State from any:

15 (1) name of an existing person whose formation required the
 16 filing of a record by the Secretary of State and which is not at the time
 17 administratively dissolved;

18 (2) name of a limited liability partnership whose statement of
 19 qualification is in effect;

20 (3) name under which a person is registered to do business in
 21 this state by the filing of a record by the Secretary of State;

22 (4) name reserved under § 4-38-113 or other law of this state
 23 providing for the reservation of a name by the filing of a record by the
 24 Secretary of State;

25 (5) name registered under § 4-38-114 or other law of this state
 26 providing for the registration of a name by the filing of a record by the
 27 Secretary of State; and

28 (6) name registered under § 4-26-405, § 4-27-404, § 4-38-122,
 29 and § 4-42-707.

30 (c) In determining whether or not a limited liability company name is
 31 distinguishable under subsection (b) of this section, a limited liability
 32 company name that is different from the name of another entity or filing is
 33 distinguishable unless the only difference is one (1) or more of the
 34 following:

35 (1) a suffix;

36 (2) a definite or indefinite article;

1 (3) the word "and" and the symbol "&;

2 (4) the singular, plural, or possessive form of a word; or

3 (5) a punctuation mark or a symbol.

4 (d) If a person consents in a record to the use of its name and
5 submits an undertaking in a form satisfactory to the Secretary of State to
6 change its name to a name that is distinguishable on the records of the
7 Secretary of State from any name in any category of names in subsection (b),
8 the name of the consenting person may be used by the person to which the
9 consent was given.

10 ~~(d)~~(e) Except as otherwise provided in subsection ~~(e)~~(f), in
11 determining whether a name is the same as or not distinguishable on the
12 records of the Secretary of State from the name of another person, words,
13 phrases, or abbreviations indicating a type of person, such as "corporation",
14 "corp.", "incorporated", "Inc.", "professional corporation", "P.C.", "PC",
15 "professional association", "P.A.", "PA", "Limited", "Ltd.", "limited
16 partnership", "L.P.", "LP", "limited liability partnership", "L.L.P.", "LLP",
17 "registered limited liability partnership", "R.L.L.P.", "RLLP", "limited
18 liability limited partnership", "L.L.L.P.", "LLLLP", "registered limited
19 liability limited partnership", "R.L.L.L.P.", "RLLLLP", "limited liability
20 company", "L.L.C.", "LLC", "limited cooperative association", "limited
21 cooperative", or "L.C.A.", or "LCA" may not be taken into account.

22 ~~(e)~~(f) A person may consent in a record that is satisfactory to the
23 Secretary of State to the use of a name that is not distinguishable on the
24 records of the Secretary of State from its name except for the addition of a
25 word, phrase, or abbreviation indicating the type of person as provided in
26 subsection ~~(d)~~(e). In such a case, the person need not change its name
27 pursuant to subsection ~~(e)~~(d).

28 ~~(f)~~(g) The name of a limited liability company or foreign limited
29 liability company may not contain the name of any person who is not a member,
30 except that the name of a former member or member of a predecessor
31 organization may continue to be included in the name.

32 ~~(g)~~(h) A limited liability company or foreign limited liability
33 company may use a name that is not distinguishable from a name described in
34 subsections (b)(1) through (6) if the company delivers to the Secretary of
35 State a certified copy of a final judgment of a court of competent
36 jurisdiction establishing the right of the company to use the name in this

1 state.

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3 SECTION 9. Arkansas Code § 4-38-122(c), concerning the acceptability
 4 of a proposed fictitious name under the Uniform Limited Liability Company
 5 Act, is amended to read as follows:

6 (c) The Secretary of State shall not accept a filing if the proposed
 7 fictitious name is ~~the same as, or confusingly similar to,~~ not
 8 distinguishable under § 4-38-112 from the name of any domestic corporation,
 9 limited liability company, limited partnership, limited liability partnership
 10 or any other entity registered with the Secretary of State, or any foreign
 11 entity authorized to do business in the state or any name reserved or
 12 registered under §§ 4-27-402, 4-27-403, 4-38-113, or 4-47-109.

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14 SECTION 10. Arkansas Code § 4-42-707(b), concerning the acceptability
 15 and use of fictitious names under the Uniform Partnership Act, is amended to
 16 read as follows:

17 (b) Each such form shall be executed, without verification, in
 18 duplicate and filed with the Secretary of State. The Secretary of State
 19 shall retain one (1) counterpart and the other counterpart, bearing the file
 20 marks of the Secretary of State, shall be returned to the registered limited
 21 liability partnership. However, the Secretary of State shall not accept such
 22 filing if the proposed fictitious name is ~~the same as, or confusingly similar~~
 23 ~~to,~~ not distinguishable from the name of any domestic corporation, limited
 24 liability company, limited partnership, limited liability partnership, or any
 25 other entity registered with the Secretary of State, or any such foreign
 26 entity authorized to do business in the state or any name reserved or
 27 registered under § 4-27-402, § 4-27-403, § 4-38-113, § 4-38-114, or § 4-47-
 28 109.

29

30 SECTION 11. Arkansas Code § 4-47-108 is amended to read as follows:
 31 4-47-108. Name.

32 (a) The name of a limited partnership may contain the name of any
 33 partner.

34 (b) The name of a limited partnership that is not a limited liability
 35 limited partnership must contain the phrase “limited partnership” or the
 36 abbreviation “L.P.” or “LP” and may not contain the phrase “limited liability

1 limited partnership” or the abbreviation “LLL” or “L.L.L.P.”.

2 (c) The name of a limited liability limited partnership must contain
 3 the phrase “limited liability limited partnership” or the abbreviation “LLL”
 4 or “L.L.L.P.” and must not contain the abbreviation “L.P.” or “LP.”

5 (d) Unless authorized by subsection (e), the name of a limited
 6 partnership must be distinguishable in the records of the Secretary of State
 7 from:

8 (1) the name of each person other than an individual
 9 incorporated, organized, or authorized to transact business in this State;
 10 and

11 (2) each name reserved under § 4-47-109 or other state laws
 12 allowing the reservation or registration of business names, including
 13 fictitious name statutes.

14 (e) In determining whether or not a limited liability partnership name
 15 is distinguishable under subsection (d) of this section, a limited liability
 16 partnership name that is different from the name of another entity or filing
 17 is distinguishable unless the only difference is one (1) or more of the
 18 following:

- 19 (1) a suffix;
- 20 (2) a definite or indefinite article;
- 21 (3) the word "and" and the symbol "&;
- 22 (4) the singular, plural, or possessive form of a word; or
- 23 (5) a punctuation mark or a symbol.

24 (f) A limited partnership may apply to the Secretary of State for
 25 authorization to use a name that does not comply with subsection (d). The
 26 Secretary of State shall authorize use of the name applied for if, as to each
 27 conflicting name:

- 28 (1) the present user, registrant, or owner of the conflicting
 29 name consents in a signed record to the use and submits an undertaking in a
 30 form satisfactory to the Secretary of State to change the conflicting name to
 31 a name that complies with subsection (d) and is distinguishable in the
 32 records of the Secretary of State from the name applied for;
- 33 (2) the applicant delivers to the Secretary of State a certified
 34 copy of the final judgment of a court of competent jurisdiction establishing
 35 the applicant’s right to use in this State the name applied for; or
- 36 (3) the applicant delivers to the Secretary of State proof

1 satisfactory to the Secretary of State that the present user, registrant, or
2 owner of the conflicting name:

3 (A) has merged into the applicant;

4 (B) has been converted into the applicant; or

5 (C) has transferred substantially all of its assets,
6 including the conflicting name, to the applicant.

7 ~~(f)~~(g) Subject to § 4-47-905, this section applies to any foreign
8 limited partnership transacting business in this State, having a certificate
9 of authority to transact business in this State, or applying for a
10 certificate of authority.

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