

2015 Regular Session

HOUSE BILL NO. 394

BY REPRESENTATIVE MILLER

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TRADEMARKS/TRADE NAMES: Provides relative to names of business entities, trade names, trademarks, and service marks

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AN ACT

To amend and reenact R.S. 12:204(B)(introductory paragraph), 204.1(A), 303(A), 1306(A)(3) and (4), and 1307(B)(2) and R.S. 51:213(B)(2), to enact R.S. 9:3401(C) and R.S. 12:1-401(A)(3)(e), 204(G), and 1306(A)(5), and to repeal R.S. 12:1307(B)(3), relative to names of business entities, trade names, trademarks, and service marks; to provide an application process to specify partnership and nonprofit corporate names with the secretary of state; to provide for a reservation period of the specified name; to provide for the right to transfer specified partnership and nonprofit corporate names; to amend the reservation period for specified names of limited liability companies; to prohibit the inclusion of certain language in the names of business entities generally; to include partnerships as a business entity for which names are required to be distinguishable; to amend the reservation period for specified trade names, trademarks, or service marks; to repeal the assessed fee relative to reserving a trade name, trademark, or service mark; to provide for technical corrections; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 9:3401(C) is hereby enacted to read as follows:

3 §3401. Central registry; creation

4 * * *

5 C.(1) A person may reserve a specified partnership name by filing a signed
6 application with the secretary of state.

7 (2) If the secretary of state finds that the name is available for use by a
8 partnership, he shall reserve the name for the exclusive use of the applicant for a
9 nonrenewable period of one hundred twenty days.

10 (3) The exclusive right to use a reserved name may be transferred to another
11 person or partnership by filing with the secretary of state a notice of the transfer that
12 specifies the name and address of the transferee and is signed by the applicant for
13 whom the name was reserved.

14 Section 2. R.S. 12:204(B)(introductory paragraph), 204.1(A), 303(A), 1306(A)(3)
15 and (4), and 1307(B)(2) are hereby amended and reenacted and R.S. 12:1-401(A)(3)(e),
16 204(G), and 1306(A)(5) are hereby enacted to read as follows:

17 §1-401. Corporate name

18 A.

19 * * *

20 (3) A corporate name may not contain any of the following:

21 * * *

22 (e) Any language that consists of or comprises immoral, deceptive, or
23 scandalous matter.

24 * * *

25 §204. Corporate name

26 * * *

27 B. As used in this Subsection, the term "corporation" includes nonprofit
28 corporations, business corporations, and foreign corporations. The corporate name

1 shall be distinguishable from a name reserved pursuant to R.S. 12:23(G) and shall
2 be distinguishable from the name of any other corporation, limited liability company,
3 partnership, or trade name registered with the secretary of state unless any of the
4 following Paragraphs ~~applies~~ apply:

5 * * *

6 G.(1) A person may reserve a specified name for a nonprofit corporation by
7 filing a signed application with the secretary of state.

8 (2) If the secretary of state finds that the name is available for use by a
9 nonprofit corporation, he shall reserve the name for the exclusive use of the applicant
10 for a nonrenewable period of one hundred twenty days.

11 (3) The exclusive right to use a reserved name may be transferred to another
12 person or nonprofit corporation by filing with the secretary of state a notice of the
13 transfer that specifies the name and address of the transferee and is signed by the
14 applicant for whom the name was reserved.

15 §204.1. Corporate name restrictions

16 A.(1) Except as provided in this Section, the corporate name of a nonprofit
17 corporation or organization shall not contain the name of any public park,
18 playground, or other public facility together with the word "benefit", "benevolent",
19 "endowment", "philanthropic", "foundation", or "fund". Nor shall a nonprofit
20 corporation or organization deceptively or falsely imply or otherwise suggest that the
21 corporation or organization is organized for the financial benefit of a park,
22 playground, or other public facility unless the articles of incorporation provide that
23 the revenues of such corporation or organization are dedicated to the exclusive or
24 sole benefit of such park, playground, or other public facility and the governing
25 authority of the governmental entity that owns or operates the park, playground, or
26 public facility, by written consent, agrees to the corporate use of the name of the
27 park, playground, or public facility.

1 (2) The corporate name of a nonprofit corporation or organization shall not
2 consist of or comprise immoral, deceptive, or scandalous matter.

3 * * *

4 §303. Name of authorized foreign corporation

5 A. No certificate of authority shall hereafter be issued to a foreign
6 corporation unless its corporate name:

7 (1) Contains the word "Corporation", "Incorporated" or "Limited," or an
8 abbreviation of any of these words, or the word "Company" or the abbreviation "Co."
9 if not immediately preceded by "and" or "&", or unless the corporation shall, for use
10 in this state, add at the end of its name one of such words or abbreviations;

11 (2) Does not contain any word or phrase which indicates or implies that it
12 is organized for any purpose other than one or more of the purposes contained in its
13 articles or certificate of incorporation, or that it is authorized or empowered to
14 conduct the business of banking, insurance underwriting or operating a homestead
15 or building and loan association, or to engage in the practice of law; ~~and.~~

16 (3) Is not, subject to the exceptions provided in R.S. 12:23(B), the same as
17 or nondistinguishable from the name of any business or nonprofit corporation
18 organized under the laws of this state or of any foreign corporation authorized to
19 transact business in this state, a trade name registered with the secretary of state or
20 a name the exclusive right to which is, at the time, reserved in the manner provided
21 in Chapter 1 of this Title. In order to obviate this objection, a corporation may add
22 some distinguishing term to its name for use in this state. No corporation shall
23 include the phrase "doing business as" or the abbreviation "d/b/a" as part of the
24 distinguishing term.

25 (4) Does not contain any word or phrase which consists of or comprises
26 immoral, deceptive, or scandalous matter.

27 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §1306. Name

2 A. The name of each limited liability company as set forth in its articles of
3 organization:

4 * * *

5 (3) Shall not contain any word or phrase which consists of or comprises
6 immoral, deceptive, or scandalous matter.

7 ~~(3)~~(4) Shall be distinguishable from the name of any corporation or other
8 limited liability company organized under the laws of this state, any foreign
9 corporation or limited liability company registered or qualified to do business in this
10 state, any name which is reserved under R.S. 12:1307 or R.S. 12:23(G), or any trade
11 name registered with the secretary of state, unless any of the following Paragraphs
12 apply:

13 (a) The corporation or other limited liability company is about to change its
14 name, to cease doing business, or is being liquidated, or, if a foreign corporation or
15 limited liability company, is about to withdraw from doing business in this state, and
16 the written consent of the corporation or other limited liability company to the
17 adoption of its name or a nondistinguishable name has been given and is filed with
18 the articles of organization.

19 (b) The corporation or other limited liability company has theretofore been
20 authorized to do business in this state for more than two years and has never actively
21 engaged in business in this state. The failure of a domestic or foreign corporation
22 to file a Louisiana corporate franchise tax return for two consecutive years shall
23 constitute prima facie evidence that it has not actively engaged in business in this
24 state during such period.

25 (c) The corporation or other limited liability company has failed to pay the
26 taxes due by it to the state for the preceding five consecutive years.

27 (d) The corporation, if it is a foreign corporation, has not been authorized to
28 do business in the state and has not filed a Louisiana corporate franchise tax return
29 for two consecutive years.

1 (e) The charter of the corporation has been revoked by the secretary of state
2 and that corporation has not filed a Louisiana corporate franchise tax return for two
3 consecutive years.

4 (f) The other corporation or limited liability company filed for dissolution
5 or withdrawal prior to the preceding five years and has not received the tax
6 clearances required for final dissolution or withdrawal.

7 ~~(4)~~(5) Shall not imply that the company is an administrative agency of any
8 parish or of this state or of the United States.

9 * * *

10 §1307. Reservation of name; transfer of reserved name

11 * * *

12 B.

13 * * *

14 (2) If the secretary of state finds that the name is available for use by a
15 limited liability company, he shall reserve the name for the exclusive use of the
16 applicant for ~~sixty days or such shorter period as may be requested~~ a nonrenewable
17 period of one hundred twenty days.

18 * * *

19 Section 3. R.S. 51:213(B)(2) is hereby amended and reenacted to read as follows:

20 §213. Powers of the secretary of state; reservation of trade names, trademarks, and
21 service marks

22 * * *

23 B.

24 * * *

25 (2) Application to reserve a trade name, trademark, or service mark shall be
26 filed with the secretary of state. If the secretary of state finds that the trade name,
27 trademark, or service mark is available for use, he shall reserve the trade name,
28 trademark, or service mark for the exclusive use of the applicant for a ~~period of sixty~~

1 ~~days or such shorter period as may be requested nonrenewable period of one hundred~~
 2 ~~twenty days. When a trade name, trademark, or service mark is reserved as herein~~
 3 ~~provided, the person, firm, corporation, association, partnership, or other entity~~
 4 ~~making such reservation shall pay to the secretary of state, for the use and benefit of~~
 5 ~~the state, a fee of five dollars as a condition of such reservation. The secretary of~~
 6 ~~state may, for good cause shown, extend the reservation for an additional period of~~
 7 ~~not more than thirty days. Not more than two such extensions shall be granted.~~

* * *

9 Section 4. R.S. 12:1307(B)(3) is hereby repealed in its entirety.

10 Section 5. This Act shall become effective on October 5, 2015.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 394 Original

2015 Regular Session

Miller

Abstract: Makes changes to reservations of names and name requirements for business entities, trade names, trademarks, and service marks.

Proposed law authorizes persons to specify names of partnerships and nonprofit corporations by filing a signed application with the secy. of state.

Proposed law requires the secy. of state to reserve specified names of partnerships and nonprofit corporations available for use for a nonrenewable period of 120 days.

Proposed law provides the right to transfer specified, reserved names to a transferee through a signed application with the secy. of state.

Proposed law prohibits names of corporations generally, foreign corporations, and limited liability companies from containing language that consists of or comprises immoral, deceptive, or scandalous matter.

Present law requires the secy. of state to reserve a specified name available for use for a domestic or foreign limited liability company for 60 days or less as may be requested by the applicant. Present law authorizes the secy. of state to extend the reservation, not more than twice, for an additional 30 days for good cause shown. Proposed law repeals the extension and reservation periods of present law and requires a nonrenewable reservation period of 120 days.

Present law requires the secy. of state to reserve a specified trade name, trademark, or service mark available for use for 60 days or less as may be requested by the applicant. Present law authorizes the secy. of state to extend the reservation, not more than twice, for an additional 30 days for good cause shown. Proposed law repeals the extension and reservation periods of present law and requires a nonrenewable reservation period of 120 days.

Present law requires a \$5 reservation fee to be paid to the secy. of state by the person, firm, corporation, association, partnership, or other entity making the reservation for a trade name, trademark, or service mark. Proposed law repeals present law.

(Amends R.S. 12:204(B)(intro. para.), 204.1(A), 303(A), 1306(A)(3) and (4), and 1307(B)(2) and R.S. 51:213(B)(2); Adds R.S. 9:3401(C), R.S. 12:1-401(A)(3)(e), 204(G), and 1306(A)(5); Repeals R.S. 12:1307(B)(3))