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AUTHORIZED USE OF A BUSINESS NAME

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca P. Edwards

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to business names.

Highlighted Provisions:

This bill:

- ▶ repeals a requirement that a certificate filed with the Division of Corporations and Commercial Code contain certain language;
- ▶ repeals a provision related to a statutory or common law trademark, service mark, or trade name rights granted by state or federal statute; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 42-2-5**, as last amended by Laws of Utah 2010, Chapter 43
- 42-2-9**, as last amended by Laws of Utah 2002, Chapter 318

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

Section 1. Section **42-2-5** is amended to read:



28 **42-2-5. Certificate of assumed and of true name -- Contents -- Execution -- Filing**
29 **-- Notice.**

30 (1) For purposes of this section, "filed" means the Division of Corporations and
31 Commercial Code has:

32 (a) received and approved, as to form, a document submitted under this chapter; and

33 (b) marked on the face of the document a stamp or seal indicating:

34 (i) the time of day and date of approval;

35 (ii) the name of the division; and

36 (iii) the division director's signature and division seal, or facsimiles of the signature or
37 seal.

38 (2) A person who carries on, conducts, or transacts business in this state under an
39 assumed name, whether that business is carried on, conducted, or transacted as an individual,
40 association, partnership, corporation, or otherwise, shall file with the Division of Corporations
41 and Commercial Code a certificate setting forth:

42 (a) the name under which the business is, or is to be carried on, conducted, or
43 transacted;

44 (b) the full true name, or names, of the person owning, and the person carrying on,
45 conducting, or transacting the business; and

46 (c) the location of the principal place of business, and the street address of the person.

47 (3) A certificate filed under this section shall be:

48 (a) executed by the person owning, and the person carrying on, conducting, or
49 transacting the business;

50 (b) filed not later than 30 days after the time of commencing to carry on, conduct, or
51 transact the business; and

52 (c) submitted in a machine printed format.

53 ~~[(4) A certificate filed with the Division of Corporations and Commercial Code under~~
54 ~~this chapter shall include the following notice in a conspicuous place on the face thereof:]~~

55 ~~[NOTICE - THE FILING OF THIS APPLICATION AND ITS APPROVAL BY THE~~
56 ~~DIVISION OF CORPORATIONS AND COMMERCIAL CODE DOES NOT AUTHORIZE~~
57 ~~THE USE IN THE STATE OF UTAH OF AN ASSUMED NAME IN VIOLATION OF THE~~
58 ~~RIGHTS OF ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE UTAH~~

59 ~~CODE ANN. SECTIONS 42-2-5 ET SEQ.;~~

60 ~~[(5)]~~ (4) (a) A certificate filed under this section shall include a portion that allows the
61 person filing the form to voluntarily disclose the gender and race of one or more owners of the
62 entity for which the filing is made.

63 (b) Race shall be indicated under Subsection ~~[(5)]~~ (4)(a) by selecting from the
64 categories of race listed in 15 U.S.C. Sec. 631(f).

65 (c) A person is not required to provide information under Subsection ~~[(5)]~~ (4)(a)
66 concerning the gender or race of one or more owners of the entity for which the filing is made.

67 (d) (i) The Division of Corporations and Commercial Code shall compile information
68 concerning the gender or race included on certificates filed with the Division of Corporations
69 and Commercial Code.

70 (ii) Information compiled by the Division of Corporations and Commercial Code under
71 Subsection ~~[(5)]~~ (4)(d)(i) may be compiled in a manner determined by the Division of
72 Corporations and Commercial Code by rules made pursuant to Title 63G, Chapter 3, Utah
73 Administrative Rulemaking Act.

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

75 **42-2-9. Corporate names, limited liability company names, and trademark,
76 service mark, and trade name rights not affected.**

77 (1) This chapter does not affect or apply to any corporation organized under the laws of
78 any state if it does business under its true corporate name.

79 ~~[(2)(a) This chapter does not affect the statutory or common law trademark, service
80 mark, or trade name rights granted by state or federal statute.]~~

81 ~~[(b)]~~ (2) (a) An act listed in Subsection (2)~~[(c)]~~(b) of itself does not authorize the use in
82 this state of an assumed name in violation of the rights of another as established under:

83 (i) this chapter;

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

86 (iii) the state law relating to names of corporations, partnerships, and other legal
87 business entities; or

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

89 ~~[(v) the common law, including rights in a trade name.]~~

- 90 [~~(c)~~] (b) Subsection (2)[~~(b)~~](a) applies to:
- 91 (i) a filing under this chapter;
- 92 (ii) an approval by the Division of Corporations and Commercial Code pursuant to this
- 93 chapter; or
- 94 (iii) the use of an assumed name.
- 95 (3) This chapter does not affect or apply to any limited liability company doing
- 96 business in this state under its true name.

Legislative Review Note
as of 2-22-11 6:50 AM

Office of Legislative Research and General Counsel