

## CHAPTER 4

### NAME

#### §401. Corporate name

**1. Prohibition.** A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 301 and the corporation's articles of incorporation.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Distinguishable name.** Except as authorized by subsections 3 and 4, a corporate name must be distinguishable on the records of the Secretary of State from:

A. The name of a corporation, nonprofit corporation, limited liability company, limited liability partnership or limited partnership that is incorporated, organized or authorized to transact business or carry on activities in this State; [PL 2003, c. 344, Pt. B, §45 (AMD).]

B. Assumed, fictitious, reserved and registered name filings for all entities; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. Marks registered under Title 10, chapter 301-A unless the registered owner or holder of the mark is the same person or entity as the corporation seeking to use a name that is not distinguishable on the records of the Secretary of State and files proof of ownership with the Secretary of State. [PL 2003, c. 344, Pt. B, §45 (AMD).]

[PL 2003, c. 344, Pt. B, §45 (AMD).]

**3. Refuse to file name.** The Secretary of State, in the Secretary of State's discretion, may refuse to file a name that:

A. Consists of or comprises language that is obscene; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Inappropriately promotes abusive or unlawful activity; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. Falsely suggests an association with public institutions; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

D. Violates any other provision of the law of this State with respect to names. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**4. Authorization to use name.** A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable on the records of the Secretary of State from one or more of the names described in subsection 2. The Secretary of State shall authorize use of the name applied for if:

A. The entity in possession of the name consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable on the records of the Secretary of State from the name of the applicant; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. The applicant delivers to the Secretary of State 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. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**5. Use of another corporation's name.** A corporation may use the name, including the assumed or fictitious name, of another domestic or foreign corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the corporation proposing to use the name:

A. Has merged with the other corporation; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Has been formed by reorganization of the other corporation; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. Has acquired all or substantially all of the assets, including the corporate name, of the other corporation. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**6. Determining distinguishability.** In determining whether names are "distinguishable on the records," the Secretary of State shall disregard the following:

A. The words or abbreviations of words that describe the nature of the entity, including "professional association," "corporation," "company," "incorporated," "chartered," "limited," "limited partnership," "limited liability company," "professional limited liability company," "limited liability partnership," "registered limited liability partnership," "limited liability limited partnership," "service corporation" or "professional corporation"; [PL 2005, c. 543, Pt. D, §11 (AMD); PL 2005, c. 543, Pt. D, §18 (AFF).]

B. The presence or absence of the words or symbols of the words "and" and "the"; and [PL 2003, c. 344, Pt. B, §46 (AMD).]

C. The differences in the use of punctuation, capitalization or special characters. [PL 2003, c. 344, Pt. B, §46 (AMD).]

D. [PL 2003, c. 344, Pt. B, §46 (RP).]  
[PL 2005, c. 543, Pt. D, §11 (AMD); PL 2005, c. 543, Pt. D, §18 (AFF).]

**7. Change of corporate name by foreign corporation.** If a foreign corporation authorized to transact business in this State changes its corporate name to one that does not satisfy the requirements of this section, the foreign corporation may not transact business in this State under the proposed new name until it adopts a name satisfying the requirements of this section and files an amended application for authority under section 1504 that is accompanied by a statement of use of a fictitious name under section 404.

[PL 2003, c. 344, Pt. B, §47 (NEW).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §§B45-47 (AMD). PL 2005, c. 543, §D11 (AMD). PL 2005, c. 543, §D18 (AFF).

#### §402. Reserved name

**1. Reserve use of name.** A person may reserve the exclusive use of a corporate name, including an assumed or fictitious name, by delivering for filing an application to the Secretary of State. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a period of 120 days. The reservation may not be renewed, but after the expiration of the reservation, the same name may be reserved by the same or another applicant.

[PL 2013, c. 99, §2 (AMD).]

**2. Transfer of reservation.** The owner of a reserved corporate name under subsection 1 may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, signed by the transferor, that states the name and address of the transferee.  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2013, c. 99, §2 (AMD).

### §403. Registered name of foreign corporation

**1. Register corporate name.** A foreign corporation may register its corporate name if the name is distinguishable on the records of the Secretary of State pursuant to section 401.  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**2. Application.** To register its corporate name a foreign corporation must deliver to the Secretary of State for filing an application that:

A. Sets forth its corporate name, the state or country and date of its incorporation, the address of its principal office and a brief description of the nature of the business in which it is engaged; and  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

B. Is accompanied by a certificate of existence or a document of similar import duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated. The certificate of existence must have been made not more than 90 days prior to the delivery of the application for filing. [PL 2003, c. 344, Pt. B, §48 (AMD).]

[PL 2003, c. 344, Pt. B, §48 (AMD).]

**3. Applicant's exclusive use.** The corporate name is registered for the foreign corporation's exclusive use upon the effective date of the application until the end of the calendar year in which the application was filed.  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**4. Renewal of registered name.** A foreign corporation whose registration is effective may renew it for a successive year by delivering for filing to the Secretary of State a renewal application that complies with the requirements of subsection 2 between October 1st and December 31st. The renewal application, when filed, renews the registration for the following calendar year.  
[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**5. Qualify as foreign corporation.** A foreign corporation whose registration is effective may, after the registration is effective, qualify as a foreign corporation under the registered name or may consent in writing to the use of that name by a corporation subject to this Act or by another foreign corporation authorized to transact business in this State. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.  
[PL 2003, c. 344, Pt. B, §49 (AMD).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §§B48,49 (AMD).

### §404. Assumed or fictitious name of corporation

**1. Assumed name; defined.** As used in this section, "assumed name" includes a trade name, the name of a division not separately incorporated and not used in conjunction with the real corporate name and any name other than the real name of a corporation, except a fictitious name.  
[PL 2003, c. 344, Pt. B, §50 (AMD).]

**2. Fictitious name; defined.** As used in this section, "fictitious name" is a name adopted by a foreign corporation authorized to transact business in this State because its real name is unavailable pursuant to section 401.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**3. Authorized to transact business.** Upon complying with this section, a domestic or foreign corporation authorized to transact business in this State may transact its business in this State under one or more assumed or fictitious names.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**4. File statement indicating use of assumed or fictitious name.** Prior to transacting business in this State under an assumed or fictitious name, a corporation shall execute and deliver for filing, in accordance with section 121, a statement setting forth:

- A. The corporate name; [PL 2003, c. 344, Pt. B, §51 (AMD).]
- B. That it intends to transact business under an assumed or fictitious name; [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
- C. The assumed or fictitious name that it proposes to use; [PL 2003, c. 344, Pt. B, §51 (AMD).]
- D. If the assumed name is not to be used at all of the corporation's places of business in this State, the locations where it will be used; and [PL 2003, c. 344, Pt. B, §51 (AMD).]
- E. If the corporation is a foreign corporation:
  - (1) The jurisdiction of incorporation; and
  - (2) The date on which it was authorized to transact business in this State. [PL 2003, c. 344, Pt. B, §52 (NEW).]

A separate statement must be executed and delivered for filing with respect to each assumed or fictitious name that the corporation proposes to use.

[PL 2003, c. 344, Pt. B, §§51, 52 (AMD).]

**5. Compliance required.** Each assumed or fictitious name must comply with the requirements of section 401.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**6. Enjoin use of assumed or fictitious name.** If a corporation uses an assumed or fictitious name without complying with the requirements of this section, the continued use of the assumed or fictitious name may be enjoined upon suit by the Attorney General or by any person adversely affected by the use of the assumed or fictitious name.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**7. Enjoin use despite compliance.** Notwithstanding its compliance with the requirements of this section, the use of an assumed or fictitious name may be enjoined upon suit of the Attorney General or of any person adversely affected by such use if:

- A. The assumed or fictitious name did not, at the time the statement required by subsection 4 was filed, comply with the requirements of section 401; or [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]
- B. The assumed or fictitious name is not distinguishable on the records of the Secretary of State from a name in which the plaintiff has prior rights by virtue of the common law or statutory law of unfair competition, unfair trade practices, common law copyright or similar law. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

The mere filing of a statement pursuant to subsection 4 does not constitute actual use of the assumed or fictitious name set out in that statement for purposes of determining priority of rights.

[PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

**8. Terminate use of assumed or fictitious name.** A corporation may terminate an assumed or fictitious name by executing and delivering, in accordance with section 121, a statement setting forth:

A. The name of the corporation; [PL 2003, c. 344, Pt. B, §53 (AMD).]

B. That it no longer intends to transact business under the assumed or fictitious name; and [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

C. The assumed or fictitious name it intends to terminate. [PL 2001, c. 640, Pt. A, §2 (NEW); PL 2001, c. 640, Pt. B, §7 (AFF).]

[PL 2003, c. 344, Pt. B, §53 (AMD).]

#### SECTION HISTORY

PL 2001, c. 640, §A2 (NEW). PL 2001, c. 640, §B7 (AFF). PL 2003, c. 344, §§B50-53 (AMD).

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