

2017 Regular Session

HOUSE BILL NO. 211

BY REPRESENTATIVE FOIL

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

SECRETARY OF STATE: Provides relative to business filings with the secretary of state

1 AN ACT

2 To amend and reenact R.S. 12:1-401(C) and (F), 1-403(B)(2), 204(B)(introductory  
3 paragraph), 236(C)(1)(a), 308(A)(1), 1306(A)(3)(introductory paragraph) and (F),  
4 1308(A)(2)(b), 1350(A)(1)(c) and (B)(2) and R.S. 51:215(A)(1), to enact R.S.  
5 12:1308.3(C)(8)(c), and to repeal R.S. 12:315 and 1356, relative to regulations by  
6 the secretary of state with respect to filings of business entities; to provide relative  
7 to corporations, partnerships, and certain limited liability companies; to provide  
8 relative to agents for service of process; to repeal certain penalties applicable to  
9 foreign limited liability companies; to provide technical changes; and to provide for  
10 related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 12:1-401(C) and (F), 1-403(B)(2), 204(B)(introductory paragraph),  
13 236(C)(1)(a), 308(A)(1), 1306(A)(3)(introductory paragraph) and (F), 1308(A)(2)(b), and  
14 1350(A)(1)(c) and (B)(2) are hereby amended and reenacted and R.S. 12:1308.3(C)(8)(c)  
15 is hereby enacted to read as follows:

16 §1-401. Corporate name

17 \* \* \*

18 C. A corporation may apply to the secretary of state for authorization to use  
19 a name in its filings with the secretary of state that is not distinguishable from one  
20 or more of the names described in Subsection B of this Section. The secretary of

1 state shall authorize the use of the name applied for if ~~either~~ any of the following  
2 occur:

3 (1) The other registrant consents ~~to the use~~ in writing and ~~submits an~~  
4 ~~undertaking in a form satisfactory to the secretary of state to change its name to a~~  
5 ~~name that is distinguishable from the name of the applying corporation to the~~  
6 adoption of its name and states it is about to change its name, or cease doing  
7 business, or become liquidated, or if a foreign corporation, is about to withdraw  
8 from doing business in this state, and such consent is filed with the articles.

9 (2) The incorporator of the corporation and the other registrant attest in  
10 writing that the corporation, when incorporated, will be directly or indirectly owned  
11 by the other registrant.

12 (3) The applicant delivers to the secretary of state a certified copy of the final  
13 judgment of a court of competent jurisdiction establishing the applicant's right to use  
14 the name applied for in this state.

15 \* \* \*

16 F. If the secretary of state receives for filing articles of incorporation that  
17 include in the corporate name the word "bank", "banker", "banking", "savings", "safe  
18 deposit", "trust", "trustee", "building and loan", "homestead", "credit union", or any  
19 other word of similar import, the secretary of state shall not file the articles of  
20 incorporation until the secretary of state receives satisfactory evidence that written  
21 notice of the proposed use of that name was delivered to the office of financial  
22 institutions at least ~~ten~~ fourteen days earlier.

23 \* \* \*

24 §1-403. Registered name

25 \* \* \*

26 B. A foreign corporation registers its corporate name, or its corporate name  
27 with any addition authorized by R.S. 12:303(A)(3), by delivering to the secretary of  
28 state for filing an application which does both of the following:

29 \* \* \*

1 (2) Is accompanied by a certificate of existence, or a document of similar  
2 import, from the state or country of incorporation which is dated within ninety days  
3 of receipt by the secretary of state.

4 \* \* \*

5 §204. Corporate name

6 \* \* \*

7 B. As used in this Subsection, the term "corporation" includes nonprofit  
8 corporations, business corporations, ~~and~~ foreign corporations, and partnerships. The  
9 corporate name shall be distinguishable from a name reserved pursuant to ~~R.S.~~  
10 ~~12:23(G)~~ R.S. 12:1-402(A) and shall be distinguishable from the name of any other  
11 corporation, limited liability company, partnership, or trade name registered with the  
12 secretary of state unless any of the following Paragraphs apply:

13 \* \* \*

14 §236. Registered office and agent

15 \* \* \*

16 C.(1)(a) Every corporation shall continuously maintain in this state at least  
17 one registered agent, which agent may be ~~either~~ any of the following:

- 18 (i) An individual who is a resident of this state;
- 19 (ii) A partnership which is authorized to practice law in this state; ~~or~~
- 20 (iii) A business corporation, ~~or~~ a limited liability company, foreign  
21 corporation, or foreign limited liability company authorized to transact business in  
22 this state, which is authorized by its articles or certificate of incorporation or  
23 organization to act as the agent of a corporation for service of process, and which has  
24 on file with the secretary of state a certificate or amended certificate setting forth the  
25 names of at least two individuals at its address in this state, each of whom is  
26 authorized to receive any process served on it as such agent.

27 \* \* \*

1 §308. Registered agent, registered office and principal business establishment,  
2 keeping of records by foreign corporation

3 A. Each foreign corporation authorized to transact business in this state shall  
4 have and continuously maintain in this state:

5 (1) At least one registered agent, which agent may be ~~either~~ any of the  
6 following:

7 (a) ~~an~~ An individual resident in this state whose business office is identical  
8 with the corporation's registered office;

9 (b) ~~an~~ An individual attorney or a partnership which is authorized to practice  
10 law in this state;~~or,~~

11 (c) ~~a~~ A domestic corporation, ~~or a~~ domestic limited liability company, foreign  
12 corporation, or foreign limited liability company authorized to transact business in  
13 this state, which has a business office identical with such registered office, which is  
14 authorized by its articles or certificate of incorporation or organization to act as the  
15 agent of a corporation for service of process, and which has on file with the secretary  
16 of state both a certificate or amended certificate setting forth the names of at least  
17 two individuals in such office, each of whom is authorized to receive any process  
18 served on it as such agent and a notarized affidavit of acknowledgement and  
19 acceptance signed by each registered agent. The failure to attach a notarized  
20 affidavit of acknowledgement and acceptance as required by this Section shall not  
21 be a defense to proper service of process on the corporation.

22 \* \* \*

23 §1306. Name

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

26 \* \* \*

27 (3) Shall be distinguishable from the name of any corporation, partnership,  
28 or other limited liability company organized under the laws of this state, any foreign  
29 corporation, partnership, or limited liability company registered or qualified to do

1 business in this state, any name which is reserved under R.S. 12:1307 or ~~R.S.~~  
2 ~~12:23(G)~~ R.S. 12:1-402(A), or any trade name registered with the secretary of state,  
3 unless any of the following Paragraphs apply:

4 \* \* \*

5 F. If a limited liability company seeking issuance of a certificate of  
6 organization in Louisiana includes in its name the words "bank", "banker",  
7 "banking", "savings", "safe deposit", "trust", "trustee", "building and loan",  
8 "homestead", or "credit union", the secretary of state shall require written approval  
9 from the commissioner of the office of financial institutions dated not less than ~~ten~~  
10 fourteen days prior to the issuance of the certificate of organization.

11 \* \* \*

12 §1308. Registered office and registered agent

13 A. Each limited liability company shall continuously maintain:

14 \* \* \*

15 (2) At least one registered agent who shall be one of the following:

16 \* \* \*

17 (b) A partnership or professional law corporation, which is authorized to  
18 practice law in this state, or a domestic corporation, domestic limited liability  
19 company, ~~or foreign corporation,~~ or foreign limited liability company authorized to  
20 transact business in this state, which is authorized by its articles or certificate of  
21 incorporation or organization to act as the agent of a limited liability company for  
22 service of process and which has on file with the secretary of state a certificate  
23 setting forth the name of at least two individuals at its address in this state, each of  
24 whom is authorized to receive any process served upon it as such agent. Legal  
25 process and other notices or demands may be served on the limited liability company  
26 by service upon this agent and, if the agent is a partnership, upon any partner.

27 \* \* \*

28 §1308.3. Conversion of state of organization

29 \* \* \*

1 C. The domestic or foreign limited liability company seeking conversion  
2 shall file with the secretary of state a written request for conversion of the state of  
3 organization. Such request shall contain all of the following:

4 \* \* \*

5 (8) If the limited liability company is converting its state of organization  
6 from another state to this state:

7 \* \* \*

8 (c) A copy of its articles of organization which are in compliance with the  
9 requirements of R.S. 12:1305, when the written request for conversion is filed with  
10 the secretary of state.

11 \* \* \*

12 §1350. Registered agent; registered office and principal business establishment;  
13 keeping of records by foreign limited liability company

14 A. Each foreign limited liability company authorized to transact business in  
15 this state shall have and continuously maintain in this state:

16 (1) At least one registered agent, which agent shall be one of the following:

17 \* \* \*

18 (c) A domestic corporation, domestic limited liability company, ~~or a foreign~~  
19 corporation, or foreign limited liability company authorized to transact business in  
20 this state, which has a business office identical to such registered office, and which  
21 is authorized by its articles or certificate of incorporation or organization to act as an  
22 agent of a limited liability company for service of process, and which has on file with  
23 the secretary of state a certificate setting forth the names of at least two individuals  
24 at its address in this state, each of whom is authorized to receive any process served  
25 on it as such agent.

26 \* \* \*

27 B.

28 \* \* \*

1 (2) If its registered agent is an individual or a corporation, the address of its  
2 ~~principal~~ registered office and the address of the business office of its registered  
3 agent, as changed, shall be identical.

4 \* \* \*

5 Section 2. R.S. 51:215(A)(1) is hereby amended and reenacted to read as follows:

6 §215. Certificate of registration

7 A.(1) Upon compliance by the applicant with the requirements of this  
8 Subpart, if the secretary of state finds that the trade name is distinguishable from or  
9 not the same as a trade name, limited liability company name, partnership name, or  
10 corporate name already in use in this state, or that the trademark or service mark is  
11 distinguishable from or not the same as a trademark or service mark already in use  
12 in this state which is registered in the same class, the secretary of state shall cause  
13 a certificate of registration to be issued and delivered to the applicant.

14 \* \* \*

15 Section 3. R.S. 12:315 and 1356 are hereby repealed in their entirety.

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 211 Reengrossed

2017 Regular Session

Foil

**Abstract:** Makes changes to law applicable to filings of business entities with the secy. of state.

Present law generally requires the names of business entities to be distinguishable from one another. Proposed law retains present law.

Present law authorizes a corporation to have a name non-distinguishable from that of another business entity, if the latter entity consents in writing.

Proposed law retains present law and requires the latter entity to consent in writing that it is (1) changing its name, (2) ceasing business, or (3) becoming liquidated. Requires such consent to be filed with the articles.

If the latter entity is a foreign corporation, proposed law authorizes the non-distinguishable name change if the foreign corporation is withdrawing from business in the state of La. Requires such consent to be filed with the articles.

Proposed law adds that a corporation may use a certain name if the incorporator of the corporation and the other registrant attest, in writing, that the corporation, when incorporated, will be directly or indirectly owned by the other registrant.

Present law requires corporations to submit certain proposed corporate names to the office of financial institutions at least 10 days prior to the filing of articles of incorporation with the secy. of state.

Proposed law changes the time frame from 10 days to 14 days.

Present law requires a foreign corporation to register its corporate name and a certificate of existence with the secy. of state. Proposed law retains present law and requires the certificate of existence to be dated within 90 days of its receipt by the secy. of state.

Proposed law changes the definition of "corporation" to include partnerships and generally requires partnership names to be distinguished from names of other business entities.

Proposed law adds "limited liability companies" and "foreign limited liability companies" as business entities that may act as corporate agents for service of process.

Present law requires a certificate of incorporation to show a business entity's authority to act as agent for service of process. Proposed law retains present law and adds certificates of organization as an additional means to show such authority.

Present law requires a limited liability company to submit certain proposed partnership names to the office of financial institutions at least 10 days prior to the filing of articles of organization with the secy. of state.

Proposed law changes the time frame from 10 days to 14 days.

Proposed law requires a foreign limited liability company seeking conversion to a domestic limited liability corporation to provide a copy of its articles of organization as provided in present law (R.S. 12:1305).

Proposed law requires both domestic and foreign limited liability companies to have at least one registered agent which has a business office identical to its registered office.

Present law generally requires trade names to be distinguishable from one another. Proposed law retains present law and adds "partnership names" as names requiring distinguishment.

Proposed law repeals certain penalties applicable to foreign corporations and foreign limited liability companies.

Proposed law makes technical changes to delete a repealed statutory reference (R.S. 12:23(G)) to reflect the current statutory reference (R.S. 12:1-402(A)).

(Amends R.S. 12:1-401(C) and (F), 1-403(B)(2), 204(B)(intro. para.), 236(C)(1)(a), 308(A)(1), 1306(A)(3)(intro. para.) and (F), 1308(A)(2)(b), 1350(A)(1)(c) and (B)(2) and R.S. 51:215(A)(1); Adds R.S. 12:1308.3(C)(8)(c); Repeals R.S. 12:315 and 1356)



Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Authorize a corporation to use a certain name if the incorporator of the corporation and the other registrant attest, in writing, that the corporation, when incorporated, will be directly or indirectly owned by the other registrant.
2. Make technical changes.