

2018 Regular Session

HOUSE BILL NO. 621

BY REPRESENTATIVE FOIL

SECRETARY OF STATE: Provides relative to omnibus corporate filing regulations

1 AN ACT

2 To amend and reenact R.S. 9:3403 and 3433, R.S. 12:1-202(A)(introductory paragraph) and

3 (B)(1), 1-401(A)(1) through (3)(introductory paragraph), (B)(introductory

4 paragraph), (C)(introductory paragraph) and (1), (D)(introductory paragraph), (F),

5 and (G), 1-1444(E)(2)(b), 203(C), 204(A), (B)(introductory paragraph) and (1), and

6 (F), 303(A)(3) and (B), 304(A)(2), 312.1, 1306(A)(3)(introductory paragraph) and

7 (a) and (4) and (E), and (F), 1308.3(C)(introductory paragraph), 1344, 1345(A)(2),

8 and 1811(A) and (B), R.S. 22:62(introductory paragraph), (1) through (4), (6)

9 through (8), and (10), 232.2(A)(introductory paragraph) and (2) through (4), and (D),

10 243(B)(introductory paragraph), (4), and (8) and (D) through (F), R.S.

11 49:222(B)(introductory paragraph), (a), (b), (e), and (f), (2), (4)(c) and (f), (5)(b), (6),

12 and R.S. 51:212 (introductory paragraph) and (5) and 3143(C), to enact R.S. 12:1-

13 401(A)(3)(e) and 1306(A)(5) and R.S. 49:222(B)(14) and to repeal R.S. 3:85(C) and

14 148, R.S. 22:232.2(A)(5), and R.S. 49:222(5)(f) through (h), relative to corporate

15 filings made to the secretary of state; to provide for the secretary of state's

16 responsibilities with respect to certain filings; to provide relative to business entities'

17 use of certain names; to provide relative to the listing of certain addresses; to provide

18 for the distinguishment of names upon the records of the secretary of state; to

19 provide an increase for certain filing fees; to provide an application and fees for

1 home service contract providers; to provide changes in statutory reference; to
2 provide technical corrections; and to provide for related matters.

3 Be it enacted by the Legislature of Louisiana:

4 Section 1. R.S. 9:3403 and 3433 are hereby amended and reenacted to read as
5 follows:

6 §3403. Contract of partnership; required content; use of names

7 A. A contract of partnership filed for registry with the secretary of state shall
8 contain the name and taxpayer identification number of the partnership, the
9 municipal address of its principal place of business in this state, and the name and
10 the municipal address of each partner, including partners in commendam, if any.
11 The failure to include the taxpayer identification number of the partnership shall not
12 invalidate nor cause the secretary of state to reject the contract.

13 B. If the secretary of state receives for filing a partnership agreement that
14 includes in the partnership name the word "bank", "banker", "banking", "savings",
15 "safe deposit", "trust", "trustee", "building and loan", "homestead", "credit union",
16 or any other word of similar import, the secretary of state shall not file the
17 partnership agreement until the secretary of state receives satisfactory evidence that
18 written notice of the proposed use of that name was delivered to the office of
19 financial institutions at least fourteen days prior to the filing made with the secretary
20 of state.

21 C. If the secretary of state receives for filing a partnership agreement that
22 includes in the partnership name the word "engineer", "engineering", "surveyor", or
23 "surveying", the secretary of state shall not file the partnership agreement until the
24 secretary of state receives either of the following:

25 (1) Satisfactory evidence that written notice of the proposed use of that name
26 was delivered to the Louisiana Professional Engineering and Land Surveying Board
27 at least ten days prior to the filing made with the secretary of state.

1 (2) A written waiver of the ten-day notice prescribed in Paragraph (1) of this
2 Subsection, signed by the executive secretary or any officer of the Louisiana
3 Professional Engineering and Land Surveying Board.

4 D. If the secretary of state receives for filing a partnership agreement that
5 includes in the partnership name the word "architect", "architectural", or
6 "architecture", the secretary of state shall not file the partnership agreement until the
7 secretary of state receives either of the following:

8 (1) Satisfactory evidence that written notice of the proposed use of that name
9 was delivered to the Louisiana State Board of Architectural Examiners at least ten
10 days prior to the filing made with the secretary of state.

11 (2) A written waiver of the ten-day notice prescribed in Paragraph (1) of this
12 Subsection, signed by the executive director or any member of the Louisiana State
13 Board of Architectural Examiners.

14 * * *

15 §3433. Name of registered limited liability partnership

16 A. A registered limited liability partnership's name shall contain the words
17 "registered limited liability partnership" or the abbreviation "L.L.P." as the last
18 words or letters of its name.

19 B. If the secretary of state receives for filing a registered limited liability
20 partnership registration that includes in the partnership name the word "bank",
21 "banker", "banking", "savings", "safe deposit", "trust", "trustee", "building and loan",
22 "homestead", "credit union", or any other word of similar import, the secretary of
23 state shall not file the registration until the secretary of state receives satisfactory
24 evidence that written notice of the proposed use of that name was delivered to the
25 office of financial institutions at least fourteen days prior to the filing made with the
26 secretary of state.

27 C. If the secretary of state receives for filing a registered limited liability
28 partnership registration that includes in the partnership name the word "engineer",

1 "engineering", "surveyor", or "surveying", the secretary of state shall not file the
2 registration until the secretary of state receives either of the following:

3 (1) Satisfactory evidence that written notice of the proposed use of that name
4 was delivered to the Louisiana Professional Engineering and Land Surveying Board
5 at least ten days prior to the filing made with the secretary of state.

6 (2) A written waiver of the ten-day notice prescribed in Paragraph (1) of this
7 Subsection, signed by the executive secretary or any officer of the Louisiana
8 Professional Engineering and Land Surveying Board.

9 D. If the secretary of state receives for filing a registered limited liability
10 partnership registration that includes in the partnership name the word "architect",
11 "architectural", or "architecture", the secretary of state shall not file the registration
12 until the secretary of state receives either of the following:

13 (1) Satisfactory evidence that written notice of the proposed use of that name
14 was delivered to the Louisiana State Board of Architectural Examiners at least ten
15 days prior to the filing made with the secretary of state.

16 (2) A written waiver of the ten-day notice prescribed in Paragraph (1) of this
17 Subsection, signed by the executive director or any member of the Louisiana State
18 Board of Architectural Examiners.

19 Section 2. R.S. 12:1-202(A)(introductory paragraph) and (B)(1), 1-401(A)(1)
20 through (3)(introductory paragraph), (B)(introductory paragraph), (C)(introductory
21 paragraph) and (1), (D)(introductory paragraph), (F), and (G), 1-1444(E)(2)(b), 203(C),
22 204(A), (B)(introductory paragraph) and (1), and (F), 303(A)(3) and (B), 304(A)(2), 312.1,
23 1306(A)(3)(introductory paragraph) and (a) and (4) and (E), and (F), 1308.3(C)(introductory
24 paragraph), 1344, 1345(A)(2), and 1811(A) and (B) are hereby amended and reenacted and
25 R.S. 12:1-401(A)(3)(e) and 1306(A)(5) are hereby enacted to read as follows:

26 §1-202. Articles of incorporation and signed consent by agent to appointment

27 A. The articles of incorporation ~~must~~ shall set forth all of the following:

28 * * *

1 B. The articles of incorporation may set forth any of the following:

2 (1) The names and street addresses, not a post office address only, of the
3 individuals who are to serve as the initial directors.

4 * * *

5 §1-401. Corporate name

6 A.(1) A corporate name may include words in any language but ~~must~~ shall
7 be written in English letters or characters.

8 (2) A corporate name ~~must~~ shall contain the word "corporation",
9 "incorporated", "company", or "limited," or the abbreviation, with or without
10 punctuation, "corp.", "inc.", "co.", or "ltd."

11 (3) A corporate name ~~may~~ shall not contain any of the following:

12 * * *

13 (e) Words or phrases that consist of or comprise immoral, deceptive, or
14 scandalous matter.

15 * * *

16 B. Except as authorized ~~by~~ in Subsections C and D of this Section, a
17 corporate name ~~must~~ shall be distinguishable upon the records of the secretary of
18 state from all of the following:

19 * * *

20 C. A corporation may apply to the secretary of state for authorization to use
21 a name in its filings with the secretary of state that is not distinguishable upon the
22 records of the secretary of state from one or more of the names described in
23 Subsection B of this Section. The secretary of state shall authorize the use of the
24 name applied for if either of the following occur:

25 (1) The other registrant consents to the use in writing and submits the
26 document required by law to change its name to one that is distinguishable upon the
27 records of the secretary of state from the name of the applying corporation, effective

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1 no later than the time that the applying corporation will begin to use the registrant's
2 former name.

3 * * *

4 D. A corporation may use in its filings with the secretary of state a name that
5 is not distinguishable upon the records of the secretary of state from one or more of
6 the names described in Subsection B of this Section if the registrant of the name is
7 incorporated, organized, or authorized to transact business in this state and the
8 proposed user corporation did any of the following:

9 * * *

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

18 G. If the secretary of state receives for filing articles of incorporation that
19 include in the corporate name the word "engineer", "engineering", "surveyor", ~~or~~
20 ~~"surveying,"~~ "surveying", or any derivative thereof, the secretary of state shall not
21 file the articles of incorporation until the secretary of state receives either of the
22 following:

23 (1) Satisfactory evidence that written notice of the proposed use of that name
24 was delivered to the Louisiana Professional Engineering and Land Surveying Board
25 at least ten days ~~earlier~~ prior to the filing made with the secretary of state.

26 (2) A written waiver of the ten-day notice requirement prescribed in
27 Paragraph (1) of this Subsection, signed by the executive secretary or any officer of
28 the Louisiana Professional Engineering and Land Surveying Board.

29 * * *

1 §1-1444. Reinstatement of terminated corporation

2 * * *

3 E. The articles of reinstatement shall state all of the following:

4 * * *

5 (2) That the reinstatement was approved in accordance with either of the
6 following:

7 * * *

8 (b) R.S. 12:1-1444(C), and that the directors and officers listed in the annual
9 report accompanying the articles of reinstatement were elected in accordance with
10 that Subsection. If the annual report is not yet due, the report to be made in
11 compliance with this Subsection shall be provided in a separate written statement.

12 * * *

13 §203. Articles of incorporation

14 * * *

15 C. The articles may also contain any of the following:

16 (1) Provisions ~~provisions~~ dealing generally with the authorized number and
17 qualifications of the shareholders and members, the property rights, basis of voting
18 and other rights and privileges of the shareholders and members, the liability of the
19 shareholders and members for dues or assessments and the methods of collection
20 thereof, and any other lawful provision desired for the regulation of the affairs of the
21 corporation, ~~including any provision authorized by R.S. 12:24(C).~~

22 (2) A provision eliminating or limiting the personal liability of a director or
23 officer to the corporation or its shareholders for monetary damages for breach of
24 fiduciary duty as a director or officer, provided that such provision does not
25 eliminate or limit the liability of a director or officer for any of the following:

26 (a) Any breach of the director's or officer's duty of loyalty to the corporation
27 or its shareholders.

28 (b) Acts or omissions not in good faith or which involve intentional
29 misconduct or a knowing violation of law.

1 (c) Liability pursuant to the provisions of R.S. 12:226(D).

2 (d) Any transaction from which the director or officer derived an improper
3 personal benefit.

4 (3) Provisions regarding any of the following:

5 (a) Managing the business and regulating the affairs of the corporation.

6 (b) Defining, limiting, and regulating the powers of the corporation, its board
7 of directors, and shareholders.

8 (4) Any provision for which this Chapter requires or permits to be set forth
9 in the bylaws.

10 (5)(a) A provision that cash, property or share dividends, shares issuable to
11 shareholders in connection with a reclassification of stock, and the redemption price
12 of redeemed shares that are not claimed by the entitled shareholders within a
13 reasonable time after the dividend or redemption price became payable or the shares
14 became issuable, despite reasonable efforts by the corporation to pay the dividend
15 or redemption price, or provide delivery of the certificates for the shares to such
16 shareholders, shall revert in full ownership to the corporation, and the corporation's
17 obligation to pay such dividend or redemption price or issue such shares, as the case
18 may be, shall therefor cease, provided that the board of directors may, at any time,
19 for any reason satisfactory to it, but need not, authorize either of the following:

20 (i) Payment of the amount of any cash or property dividend or redemption
21 price.

22 (ii) Issuance of any shares, ownership of which has reverted to the
23 corporation pursuant to a provision of the articles authorized by this Section, to the
24 person that would be entitled had such reversion not occurred.

25 (b) The "reasonable time" as stated in Subparagraph (a) of this Paragraph
26 means a period of time not less than one year.

27 * * *

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1 §204. Corporate name

2 A. The corporate name may be in any language, but ~~it must be~~ expressed in
3 English letters or characters. The corporate name shall not imply that the
4 corporation is an administrative agency ~~of any parish or~~ of this state, or any of its
5 political subdivisions, or of the United States. It shall not contain words or phrases
6 that consist of or comprise immoral, deceptive, or scandalous matter. It shall not
7 contain the words "bank," "banking," "banker," "savings," "trust," "deposit,"
8 "insurance," "mutual," "assurance," "indemnity," "casualty," "fiduciary,"
9 "homestead," "building and loan," "surety," "security," "guarantee," "cooperative,"
10 "state," "parish," "redevelopment corporation," "electric cooperative," or "credit
11 union."

12 B. As used in this Subsection, the term "corporation" includes nonprofit
13 corporations, business corporations, foreign corporations, and partnerships. The
14 corporate name shall be distinguishable from a name reserved pursuant to R.S. 12:1-
15 402(A) and shall be distinguishable upon the records of the secretary of state from
16 the name of any other corporation, limited liability company, partnership, or trade
17 name registered with the secretary of state unless any of the following Paragraphs
18 apply:

19 (1) The other registrant consents to the use of the name in writing and
20 submits the document required by law to change its name to one that is
21 distinguishable upon the records of the secretary of state from the name of the
22 applying corporation, effective no later than the time that the applying corporation
23 will begin to use the registrant's former name.

24 * * *

25 F. If the corporation seeking the issuance of a certificate of incorporation in
26 this state includes in its name the word "engineer", "engineering", "surveyor", ~~or~~
27 "surveying", or any derivative thereof, the secretary of state shall require, prior to the
28 issuance of the certificate of incorporation, evidence satisfactory to him that written
29 notice of such application for a certificate of incorporation has been delivered to the

1 Louisiana Professional Engineering and Land Surveying Board in writing not less
 2 than ten days prior to the date of issuance of the certificate of incorporation. If the
 3 applicant corporation files with its application to the secretary of state a written
 4 waiver signed by the executive secretary or any officer of the Louisiana Professional
 5 Engineering and Land Surveying Board waiving the requirement of ten days written
 6 notice to said board, as set forth in the preceding sentence, the secretary of state shall
 7 be authorized to proceed immediately with the processing of such application.

8 * * *

9 §303. Name of authorized foreign corporation

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

12 * * *

13 (3) Is not, subject to the exceptions provided in ~~R.S. 12:23(B)~~ R.S. 12:1-
 14 401(C), the same as or nondistinguishable upon the records of the secretary of state
 15 from the name of any business or nonprofit corporation organized under the laws of
 16 this state or of any foreign corporation authorized to transact business in this state,
 17 a trade name registered with the secretary of state, or a name the exclusive right to
 18 which is, at the time, reserved in the manner provided in Chapter 1 of this Title. In
 19 order to obviate this objection, a corporation may add some distinguishing term to
 20 its name for use in this state. No corporation shall include the phrase "doing
 21 business as" or the abbreviation "d/b/a" as part of the distinguishing term.

22 B. Whenever a foreign corporation which is authorized to transact business
 23 in this state, shall on or after January 1, 1969, change its name to one under which
 24 a certificate of authority would not be granted to it on application therefor, the
 25 certificate of authority of such corporation shall be deemed suspended, and it shall
 26 not thereafter transact any business in this state until it has changed its name to a
 27 name which is available to it under the laws of this state or until it has added some

1 distinguishing term upon the records of the secretary of state to its name for use in
2 this state.

3 * * *

4 §304. Application for certificate of authority

5 A. Application by a foreign corporation to procure a certificate of authority
6 shall be made to the secretary of state and shall set forth:

7 * * *

8 (2) If the name of the corporation does not conform to the requirements of
9 R.S. 12:303, the name of the corporation with the word, abbreviation or
10 distinguishing term upon the records of the secretary of state which it elects to add
11 ~~thereto~~ for use in this state.

12 * * *

13 §312.1. Termination of withdrawal proceedings

14 At any time before the certificate of withdrawal is issued by the secretary of
15 state pursuant to R.S. 12:312, withdrawal proceedings may be terminated by
16 delivering to the secretary of state a request that withdrawal proceedings be
17 terminated. The request shall be signed by any officer of the corporation. After all
18 fees and charges have been paid as required by law, the secretary of state shall place
19 the request to terminate withdrawal proceedings on file in his office ~~and shall~~
20 ~~acknowledge receipt of the request by returning the application for withdrawal forms~~
21 ~~to the corporation or its representative.~~ The secretary of the Department of Revenue
22 and the administrator of Louisiana Employment Security Law shall be notified by
23 the secretary of state of the termination of withdrawal proceedings.

24 * * *

25 §1306. Name

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

28 * * *

1 (3) Shall be distinguishable upon the records of the secretary of state from
 2 the name of any corporation, partnership, or other limited liability company
 3 organized under the laws of this state, any foreign corporation, partnership, or
 4 limited liability company registered or qualified to do business in this state, any
 5 name which is reserved under R.S. 12:1307 or R.S. 12:1-402(A), or any trade name
 6 registered with the secretary of state, unless any of the following ~~Paragraphs~~
 7 Subparagraphs apply:

8 (a) The other registrant consents to the use of the name in writing and
 9 submits the document required by law to change its name to one that is
 10 distinguishable upon the records of the secretary of state from the name of the
 11 applying corporation or limited liability company, effective no later than the time
 12 that the applying corporation or limited liability company will begin to use the
 13 registrant's former name.

14 * * *

15 (4) Shall not imply that the company is an administrative agency ~~of any~~
 16 ~~parish or~~ of this state, or any of its political subdivisions, or of the United States.

17 (5) Shall not contain words or phrases that consist of or comprise immoral,
 18 deceptive, or scandalous matter.

19 * * *

20 E. If the limited liability company seeking the issuance of a certificate of
 21 organization in this state includes in its name the word "engineer", "engineering",
 22 "surveyor", ~~or "surveying"~~, or any derivative thereof, the secretary of state shall
 23 require, prior to the issuance of the certificate of organization, evidence satisfactory
 24 to him that written notice of such application for a certificate of organization has
 25 been delivered to the Louisiana Professional Engineering and Land Surveying Board
 26 in writing not less than ten days prior to the date of issuance of the certificate of
 27 organization. If the applicant limited liability company files with its application to
 28 the secretary of state a written waiver signed by the executive secretary or any officer
 29 of the Louisiana Professional Engineering and Land Surveying Board waiving the

1 requirement of ten days written notice to said board, as set forth in the preceding
2 sentence, the secretary of state shall be authorized to proceed immediately with the
3 processing of such application.

4 F.(1) A limited liability company name shall not contain the word
5 "insurance" unless the limited liability company is an independent insurance agency
6 or brokerage firm.

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

13 * * *

14 §1308.3. Conversion of state of organization

15 * * *

16 C. The domestic or foreign limited liability company seeking conversion
17 shall file with the secretary of state a written request for conversion of the state of
18 organization. If the company is manager-managed, the request shall be executed by
19 a manager of the company. If the company is member-managed, the request shall
20 be executed by a member of the company. ~~Such~~ The request shall contain all of the
21 following:

22 * * *

23 §1344. Name of authorized foreign limited company

24 ~~No~~ A certificate of authority shall not be issued to a foreign limited liability
25 company unless the name of such company satisfies the requirements of R.S.
26 12:1306. If the name of a foreign limited liability company does not satisfy the
27 requirements of R.S. 12:1306(A)(1), to obtain or maintain a certificate of authority,
28 the foreign limited liability company may add the words "limited liability company"
29 or the abbreviation "L.L.C." or "L.C." to its name for use in this state. If its real

1 name is unavailable, the foreign limited liability company may add a distinguishing
2 term upon the records of the secretary of state to its name for use in this state.

3 §1345. Application for certificate of authority

4 A. Application by a foreign limited liability company to procure a certificate
5 of authority shall be made to the secretary of state and shall set forth the following:

6 * * *

7 (2) If the name of the limited liability company does not conform with the
8 requirements of R.S. 12:1344, then the name of the limited liability company with
9 the word, abbreviation, or distinguishing term upon the records of the secretary of
10 state that it elects to add ~~thereto~~ for use in this state.

11 * * *

12 §1811. Corporate purposes

13 A. A benefit corporation shall have a purpose of creating a general public
14 benefit. This purpose is in addition to its purpose ~~under R.S. 12:21~~ as described in
15 R.S. 12:1-201 et seq.

16 B. The articles of a benefit corporation may identify one or more specific
17 public benefits that it is the purpose of the benefit corporation to create in addition
18 to its purposes under ~~R.S. 12:21~~ R.S. 12:1-201 et seq. and Subsection A of this
19 Section. The identification of a specific public benefit under this Subsection shall
20 not limit the obligation of a benefit corporation under Subsection A of this Section.

21 * * *

22 Section 3. R.S. 22:62(introductory paragraph), (1) through (4), (6) through (8), and
23 (10), 232.2(A)(introductory paragraph) and (2) through (4), and (D), 243(B)(introductory
24 paragraph), (4), and (8) and (D) through (F) are hereby amended and reenacted to read as
25 follows:

26 §62. Articles of incorporation

27 Articles of incorporation shall be executed by authentic act signed by each
28 of the incorporators and shall state in the English language all of the following:

1 (1) The name of the corporation, which shall not be the same as nor
2 deceptively similar to the name of any other domestic insurer or of any alien or
3 foreign insurer authorized to do business in this state unless either of the following
4 Subparagraphs apply:

5 (a) ~~such~~ Such other domestic, alien or foreign insurer is about to change its
6 name, ~~or to~~ cease to do business, or is being wound up, or such foreign corporation
7 is about to withdraw from doing business in this state, and the written consent of
8 such other insurer to the adoption of its name or a deceptively similar name has been
9 given in writing and is filed with the articles, ~~or,~~

10 (b) ~~such~~ Such other insurer has ~~heretofore~~ been authorized to do business in
11 this state for more than two years and has never actively engaged in business;

12 (2) The purpose or purposes for which it is formed;

13 (3) Its duration;

14 (4) ~~The location and post office address of its registered office;~~ The street
15 address, not a post office address only, of its initial registered office, and if different,
16 the street address, not a post office address only, of the corporation's initial principal
17 office.

18 * * *

19 (6) The amount of paid in capital and minimum surplus, or initial fund, with
20 which the corporation will begin business;

21 (7) If a stock company, the number of shares, the amount of each share, and
22 the time when and the manner in which payment on stock subscribed shall be made;

23 (8) The names of the first directors, their ~~post office address~~ respective street
24 addresses, not post office addresses only, and their classification and terms of office
25 if they ~~be~~ are named in the articles. Where the first board of directors is not named
26 in the articles, the articles shall provide the place where, the date when the
27 organization is to be perfected, and a meeting of the stockholders or policyholders

1 for that purpose must be held not more than sixty days after the execution of the
2 articles. At that meeting the directors shall be elected;

3 * * *

4 (10) The designation of general officers, the number of directors, which shall
5 not be less than five nor more than fifty, and the mode and manner in which directors
6 shall be elected, and officers elected or appointed;

7 * * *

8 §232.2. Incorporation of a mutual insurance holding company

9 A. A mutual insurance holding company or an intermediate holding
10 company resulting from the reorganization of a domestic mutual insurance company
11 under R.S. 22:231 shall be incorporated pursuant to Title 12 of the Louisiana
12 Revised Statutes of 1950, the Louisiana Business Corporation Law Act, ~~R.S. 12:1~~
13 ~~through 178 R.S. 12:1-101 through R.S. 12:1-1705~~, and shall be subject to its
14 provisions and other provisions of Title 12 relative to business corporations, except
15 that:

16 * * *

17 (2) After approval of the commissioner, the articles showing the approval of
18 the commissioner shall be filed in the office of the secretary of state ~~together with~~
19 ~~an initial report, as prescribed by R.S. 12:101. If the first directors are not named in~~
20 ~~the articles of incorporation and the initial report, a supplemental report, setting forth~~
21 ~~their names and addresses, and signed by each incorporator or by any shareholder,~~
22 ~~shall be filed with the secretary of state and filed for record as provided by Paragraph~~
23 ~~(5) of this Subsection as soon as they have been selected.~~

24 (3) If the secretary of state finds that the articles have been approved by the
25 commissioner and that the articles ~~and initial report~~ are in compliance with this
26 Subpart and Title 12 of the Louisiana Revised Statutes of 1950, and after all fees
27 have been paid as required by law, the secretary of state shall record the articles ~~and~~
28 ~~the initial report in his office, endorse on each the date and issue a certificate of~~
29 ~~incorporation that shall show the date. The certificate of incorporation as filed on~~

1 the date and time of receipt. After filing the articles, the secretary of state shall
 2 deliver to the corporation or its representative a copy of the document with an
 3 acknowledgment of the date of filing. The secretary of state's filing of the articles
 4 of incorporation shall be conclusive evidence of the fact that the corporation has
 5 been duly incorporated except that in any proceeding brought by the state to annul,
 6 forfeit, or vacate a corporation's franchise, or by the commissioner to prohibit,
 7 suspend, or limit the corporation's right to conduct business as a mutual insurance
 8 holding company or an intermediate holding company, the certificate of
 9 incorporation shall be only prima facie evidence of due incorporation.

10 (4) ~~Upon the issuance of the certificate of incorporation, the corporation~~
 11 ~~shall be duly incorporated, and the corporate existence shall begin, as of the time~~
 12 ~~when the articles were filed with the secretary of state~~ Except as provided in R.S.
 13 12:1-203(C), the corporate existence begins, and the corporation is duly incorporated
 14 when the articles of incorporation become effective as provided in R.S. 12:1-123.

15 * * *

16 D. Notwithstanding ~~anything in any provision of law to the contrary within~~
 17 ~~the Louisiana Business Corporation Law Act, R.S. 12:1 through 178~~ R.S. 12:1-101
 18 through R.S. 12:1-1705, meetings of the mutual insurance holding company and the
 19 exercise of a member's voting rights shall be governed by R.S. 22:119 through 121
 20 and a written proxy conferred upon another policyholder either prior to,
 21 contemporaneously with, or after a reorganization under R.S. 22:231, shall remain
 22 in force indefinitely until revoked by the member.

23 * * *

24 §243. Incorporation

25 * * *

26 B. Articles of incorporation shall be executed by authentic act signed by each
 27 of the incorporators and shall state in the English language all of the following:

28 * * *

1 secretary of state shall deliver to the corporation or its representative a copy of the
2 document with an acknowledgment of the date of filing. The secretary of state's
3 filing of the articles of incorporation shall be conclusive evidence of the fact that the
4 corporation has been duly incorporated except that in any proceeding brought by the
5 state to annul, forfeit, or vacate a corporation's franchise, or by the commissioner to
6 prohibit, suspend or limit the corporation's right to conduct business as a health
7 maintenance organization, the certificate of incorporation shall be only prima facie
8 evidence of due incorporation.

9 (3) ~~Upon the issuance of the certificate of incorporation, the corporation~~
10 ~~shall be duly incorporated, and the corporate existence shall begin, as of the time~~
11 ~~when the articles were filed with the secretary of state~~ Except as provided in R.S.
12 12:1-203(C), the corporate existence begins and the corporation is duly incorporated
13 when the articles of incorporation become effective as provided in R.S. 12:1-123.

14 (4) ~~A multiple original of the articles or a copy certified by the secretary of~~
15 ~~state, with a copy of the certificate of incorporation, and a multiple original of the~~
16 ~~initial report, or a copy certified by the secretary of state, shall be filed in the office~~
17 ~~of the recorder of mortgages of the parish in which the registered office of the~~
18 ~~corporation is situated, and a certified copy of the articles and initial report, bearing~~
19 ~~the certificate of the proper parish recorder with a copy of the certificate of~~
20 ~~incorporation, shall be filed with the commissioner.~~

21 ~~(5)~~(4) The corporation shall not have authority to transact a health
22 maintenance organization business until a certificate of authority to transact such
23 business is issued to it by the commissioner.

24 E.(1) Except as otherwise provided in the articles of incorporation, an
25 incorporated health maintenance organization may amend its articles of
26 incorporation in the manner provided in ~~R.S. 12:31~~ R.S. 12:1-1003.

27 (2) After such amendment has been duly adopted, an authentic act setting
28 forth the amendment and the manner of adoption thereof shall be executed by such
29 person or persons authorized to do so at the meeting. A full copy of the resolution

1 adopting such amendment, certified as true copy by the secretary of the health
2 maintenance organization, shall be annexed to the authentic act. The articles of
3 amendment shall be approved by the commissioner and recorded with the secretary
4 of state, ~~the recorder of mortgages, and the commissioner,~~ in the same manner as that
5 provided ~~herein~~ for the original articles of incorporation.

6 (3) The provisions of Paragraphs (1) and (2) of this Subsection ~~shall not be~~
7 are not applicable when an incorporated health maintenance organization changes
8 either its registered agent or address, or both. In any such change, the incorporated
9 health maintenance organization shall provide the commissioner with the board
10 resolution and notice and shall follow the requirements of ~~Part X~~ Part 5 of Chapter
11 1, Title 12 of the Louisiana Revised Statutes of 1950.

12 F. The provisions of ~~R.S. 12:1 through R.S. 12:178,~~ R.S. 12:1-101 through
13 R.S. 12:1-1705 and other provisions of the Louisiana Revised Statutes of 1950,
14 relative to business corporations, shall apply to the regulation of the business and the
15 conduct of the affairs of any health maintenance organization which has been
16 incorporated pursuant to the provisions of this Subpart. If a conflict exists between
17 the provisions of this Subpart and said provisions of Title 12, the provisions of this
18 Subpart shall govern.

19 Section 4. R.S. 49:222(B)(introductory paragraph), (a), (b), (e) and (f), (2), (4)(c)
20 and (f), (5)(b), and (6) are hereby amended and reenacted and R.S. 49:222(B)(14) is hereby
21 enacted to read as follows:

22 §222. Fees chargeable by secretary of state

23 * * *

24 B. The secretary of state is authorized to collect the following fees:

25 (1) Domestic business corporations and limited liability companies.

26 (a) Twenty-five dollars for reserving a corporate name or limited liability
27 company name, transferring a reserved corporate name, registering a corporate name;
28 or renewing a registered corporate name, ~~or applying for use of an indistinguishable~~
29 ~~name by a corporation.~~

1 (b) Seventy-five dollars for filing and recording corporation articles of
2 incorporation, articles of amendment, articles of restatement, articles of
3 domestication, articles of charter surrender, articles of nonprofit conversion, articles
4 of nonprofit domestication and conversion, articles of dissolution, articles of
5 revocation of dissolution, articles of reinstatement, articles of merger or share
6 exchange, abandonment proceedings, simplified articles of termination, and articles
7 of correction.

8 * * *

9 (e) Twenty-five dollars for a corporation's statement of change of registered
10 agent or registered office, or both, the resignation of an agent or officer,
11 appointment of a registered agent, change of domicile, appointment of new officers,
12 directors, members, or managers, and change of address for agents, officers,
13 directors, members, or managers.

14 (f) Twenty-five dollars for a supplemental initial report for a limited liability
15 company.

16 * * *

17 (2) ~~Nonprofit~~ Domestic nonprofit corporations.

18 * * *

19 (4) Partnerships and registered limited liability partnerships.

20 * * *

21 (c)(i) For partnerships, one hundred dollars for filing a contract of
22 partnership, ~~amendment and termination of a domestic partnership or original or~~
23 ~~renewal forms, and merger or consolidation of a registered limited liability~~
24 partnership of a domestic partnership or a registered limited liability partnership, and
25 filing an amendment, merger, consolidation, or termination of a domestic
26 partnership.

27 (ii) For registered limited liability partnerships, one hundred twenty-five
28 dollars for filing a contract of partnership, ~~amendment and termination of a domestic~~
29 ~~partnership or original or renewal forms, conversions to and from a registered limited~~

1 liability company, and merger or consolidation of a registered limited liability
 2 partnership.

3 * * *

4 (f) ~~Twenty-five~~ Thirty dollars for annual reports for partnerships.

5 (5) Trade names, trademarks, and service marks.

6 * * *

7 (b) Seventy-five dollars for registering, renewing, assigning, or terminating
 8 a trade name, trademark, or service mark.

9 * * *

10 ~~(6) Articles of entity conversions:~~

11 ~~(a) Seventy-five dollars for conversion from or to a limited liability~~
 12 ~~company, except as provided in Subparagraph (6)(b) of this Paragraph:~~

13 ~~(b) One hundred dollars for conversion from or to a partnership, including~~
 14 ~~the conversion of a limited liability company from or to a partnership.~~

15 * * *

16 (14) Home Service Contract Provider Applications.

17 (a) Six hundred dollars for filing applications for home service contract
 18 providers.

19 (b) Two hundred fifty dollars for filing renewals for home service contract
 20 providers.

21 Section 5. R.S. 51:212(introductory paragraph) and (5) and 3143(C) are hereby
 22 amended and reenacted to read as follows:

23 §212. Registrability

24 A name or mark by which the name, goods, or services of any applicant for
 25 registration may be distinguished from the name, goods, or services of others shall
 26 not be registered if it:

27 * * *

28 (5)(a) Consists of a mark ~~which~~, which contains any of the following
 29 characteristics:

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 621 Reengrossed

2018 Regular Session

Foil

Abstract: Provides relative to omnibus corporate filing regulations.

Present law provides that a contract for partnership filed for registry with the secretary of state shall contain the name and taxpayer identification number of the partnership, the address of its principle place of business, and the name and address of each partner.

Present law requires that a registered limited liability partnership shall contain the words "registered limited liability partnership" or the abbreviation "L.L.P." as the last words or letters of its name.

Proposed law retains present law and further provides that if the name of a partnership or an L.L.C. register a name denoting a financial institution, an engineer or surveyor professional, or an architect or other derivative of the professions, the partnership is required to have written a letter to the respective board or office notifying the board or office of the name and have evidence that the notice of proposed use was delivered and that the time period has lapsed for objection to the proposed use of the name.

Present law provided passive language regarding the makeup and characteristics of corporate names. Proposed law clarifies language that appears to be mandatory but was not, and makes mandatory that a corporate name shall contain the word "corporation", "incorporated", "company", "limited", "corp.", "inc.", "co.", or "ltd."

Present law requires that unless authorized by the other registrant in writing or granted to the applicant by court order, an applicant must use a distinguishable name. Proposed law clarifies the language to specify that the applicant shall use a distinguishable upon the records of the secretary of state unless meeting the exceptions in present law.

Present law further requires that the corporate name be expressed in English letters or characters and not imply that the company is an administrative agency of this state, its political subdivisions, or of the United States. Proposed law retains present law and further requires that the name not contain any words or phrases that consist of immoral, deceptive, or scandalous matter.

Present law provides that articles of incorporation may contain provisions dealing with the number and qualifications of shareholders and members, property rights, basis of voting, and any other rights or privileges and liabilities of members and shareholders.

Proposed law retains present law and further allows shareholders to include a provision to eliminate or limit personal liability of a director or officer for damages for a breach of fiduciary duty, except as it applies to loyalty to the corporation or acts or omissions not in good faith or intentional misconduct.

Proposed law also allows provisions that permit provisions for dividends and property or share dividends, among other financial benefits.

Proposed law prohibits a limited liability company name from containing the word "insurance" unless the limited liability company is an independent insurance agency or brokerage firm.

Present law allows a domestic or foreign limited liability company to file for conversion with the secretary of state. Proposed law retains present law and provides that if the company is manager-managed, the manager shall execute the written request for conversion and if the company is member-managed, a member shall execute the request.

Present law provides that after the approval of the commissioner, articles showing the approval shall be filed with the secretary of state. Present law further provides for an initial and subsequent report. Proposed law deletes the provisions related to the initial and subsequent report.

Proposed law provides that after all fees have been paid, the secretary of state shall record the articles as filed on the date and time of receipt and that after filing the articles, he shall deliver a copy of the document with acknowledgments to the corporation.

Present law requires a post office address of a company's registered office. Proposed law requires a street address.

Present law provides for the filing fee of \$75 and the recording of corporation articles of incorporation, articles of amendment, articles of restatement, articles of domestication, articles of charter surrender, articles of nonprofit conversion, articles of nonprofit domestication and conversion, articles of dissolution, articles of revocation of dissolution, articles of reinstatement, articles of merger or share exchange, and articles of correction. Proposed law retains present law and adds for the recordation of abandonment proceedings and simplified articles of termination.

Proposed law raises the filing fee from \$25 to \$30 for annual reports for partnerships.

Present law provides for a \$75 cost for registering, renewing, or terminating a trade name, trademark, or service mark. Proposed law adds assigning to the list and otherwise retains present law.

Proposed law provides a \$600 fee for filing applications for home service contract provider applications and a \$250 fee for filing renewals.

Present law provides for the registration of a mark by which the goods or services of any applicant can be distinguished from another. Proposed law retains present law and adds a name to the possibilities of registration, along with or instead of a mark.

Proposed law makes technical changes.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 9:3403 and 3433, R.S. 12:1-202(A)(intro. para.) and (B)(1), 1-401(A)(1)-(3)(intro. para.), (B)(intro. para.), (C)(intro. para.) and (1), (D)(intro. para.), (F), and (G), 1-1444(E)(2)(b), 203(C), 204(A), (B)(intro. para.) and (1), and (F), 303(A)(3) and (B), 304(A)(2), 312.1, 1306(A)(3)(intro. para.) and (a) and (4) and (E), and (F), 1308.3(C)(intro. para.), 1344, 1345(A)(2), and 1811(A) and (B), R.S. 22:62 (intro. para.), (1)-(4), (6)-(8), and (10), 232.2(A)(intro. para.) and (2)-(4), and (D), 243(B)(intro. para.), (4) and (8) and (D)-(F), R.S. 49:222(B)(intro. para.), (a), (b), (e), and (f), (2), (4)(c) and (f), (5)(b), and (6) and R.S. 51:212 (intro. para.) and (5) and 3143(C); Adds R.S. 12:1-401(A)(3)(e) and 1306(A)(5) and R.S. 49:222(B)(14); Repeals R.S. 3:85(C) and 148, R.S. 22:232.2(A)(5), and R.S. 49:222(5)(f)-(h))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Make technical corrections.
2. Add language to require a street address, not a post address only, of the initial registered office and initial principal office of a corporation transacting authorized classes of insurance.
3. Add language to require a street address, not a post address only, of the initial registered office and initial principal office of a corporation transacting business as a health maintenance organization.
4. Delete a proposed law fee of \$100.00 relative to articles of entity conversion submitted by a limited liability company to the secretary of state.
5. Delete the present law fee of \$75.00 relative to articles of entity conversion submitted by a limited liability company to the secretary of state.

The House Floor Amendments to the engrossed bill:

1. Delete language to clarify authorized provisions for inclusion in articles of incorporation.