

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

1 AN ACT

2 To amend and reenact R.S. 12:204(B)(introductory paragraph), 204.1(A), 303(A),

3 1306(A)(3) and (4), and 1307(B)(2) and R.S. 51:213(B)(2), to enact R.S. 9:3401(C)

4 and R.S. 12:1-401(A)(3)(e), 204(G), and 1306(A)(5), and to repeal R.S.

5 12:1307(B)(3), relative to names of business entities, trade names, trademarks, and

6 service marks; to provide an application process to specify partnership and nonprofit

7 corporate names with the secretary of state; to provide for a reservation period of the

8 specified name; to provide for the right to transfer specified partnership and

9 nonprofit corporate names; to amend the reservation period for specified names of

10 limited liability companies; to prohibit the inclusion of certain language in the names

11 of business entities generally; to include partnerships as a business entity for which

12 names are required to be distinguishable; to amend the reservation period for

13 specified trade names, trademarks, or service marks; to repeal the assessed fee

14 relative to reserving a trade name, trademark, or service mark; to provide for

15 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 §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.~~

\* \* \*

8  
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)]

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| HB 394 Original | 2015 Regular Session | Miller |
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**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))