

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  
29 shall be distinguishable from a name reserved pursuant to R.S. 12:23(G) and shall

1 be distinguishable from the name of any other corporation, limited liability company,  
2 partnership, or trade name registered with the secretary of state unless any of the  
3 following Paragraphs ~~applies~~ apply:

4 \* \* \*

5 G.(1) A person may reserve a specified name for a nonprofit corporation by  
6 filing a signed application with the secretary of state.

7 (2) If the secretary of state finds that the name is available for use by a  
8 nonprofit corporation, he shall reserve the name for the exclusive use of the applicant  
9 for a 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 nonprofit corporation by filing with the secretary of state a notice of the  
12 transfer that specifies the name and address of the transferee and is signed by the  
13 applicant for whom the name was reserved.

14 §204.1. Corporate name restrictions

15 A.(1) Except as provided in this Section, the corporate name of a nonprofit  
16 corporation or organization shall not contain the name of any public park,  
17 playground, or other public facility together with the word "benefit", "benevolent",  
18 "endowment", "philanthropic", "foundation", or "fund". Nor shall a nonprofit  
19 corporation or organization deceptively or falsely imply or otherwise suggest that the  
20 corporation or organization is organized for the financial benefit of a park,  
21 playground, or other public facility unless the articles of incorporation provide that  
22 the revenues of such corporation or organization are dedicated to the exclusive or  
23 sole benefit of such park, playground, or other public facility and the governing  
24 authority of the governmental entity that owns or operates the park, playground, or  
25 public facility, by written consent, agrees to the corporate use of the name of the  
26 park, playground, or public facility.

27 (2) The corporate name of a nonprofit corporation or organization shall not  
28 consist of or comprise immoral, deceptive, or scandalous matter.

29 \* \* \*

1 §303. Name of authorized foreign corporation

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

4 (1) Contains the word "Corporation", "Incorporated" or "Limited," or an  
5 abbreviation of any of these words, or the word "Company" or the abbreviation "Co."  
6 if not immediately preceded by "and" or "&", or unless the corporation shall, for use  
7 in this state, add at the end of its name one of such words or abbreviations;

8 (2) Does not contain any word or phrase which indicates or implies that it  
9 is organized for any purpose other than one or more of the purposes contained in its  
10 articles or certificate of incorporation, or that it is authorized or empowered to  
11 conduct the business of banking, insurance underwriting or operating a homestead  
12 or building and loan association, or to engage in the practice of law; ~~and~~.

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

22 (4) Does not contain any word or phrase which consists of or comprises  
23 immoral, deceptive, or scandalous matter.

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 not contain any word or phrase which consists of or comprises  
2           immoral, deceptive, or scandalous matter.

3           ~~(3)~~(4) Shall be distinguishable from the name of any corporation or other  
4           limited liability company organized under the laws of this state, any foreign  
5           corporation or limited liability company registered or qualified to do business in this  
6           state, any name which is reserved under R.S. 12:1307 or R.S. 12:23(G), or any trade  
7           name registered with the secretary of state, unless any of the following Paragraphs  
8           apply:

9           (a) The corporation or other limited liability company is about to change its  
10          name, to cease doing business, or is being liquidated, or, if a foreign corporation or  
11          limited liability company, is about to withdraw from doing business in this state, and  
12          the written consent of the corporation or other limited liability company to the  
13          adoption of its name or a nondistinguishable name has been given and is filed with  
14          the articles of organization.

15          (b) The corporation or other limited liability company has theretofore been  
16          authorized to do business in this state for more than two years and has never actively  
17          engaged in business in this state. The failure of a domestic or foreign corporation  
18          to file a Louisiana corporate franchise tax return for two consecutive years shall  
19          constitute prima facie evidence that it has not actively engaged in business in this  
20          state during such period.

21          (c) The corporation or other limited liability company has failed to pay the  
22          taxes due by it to the state for the preceding five consecutive years.

23          (d) The corporation, if it is a foreign corporation, has not been authorized to  
24          do business in the state and has not filed a Louisiana corporate franchise tax return  
25          for two consecutive years.

26          (e) The charter of the corporation has been revoked by the secretary of state  
27          and that corporation has not filed a Louisiana corporate franchise tax return for two  
28          consecutive years.

1 (f) The other corporation or limited liability company filed for dissolution  
2 or withdrawal prior to the preceding five years and has not received the tax  
3 clearances required for final dissolution or withdrawal.

4 ~~(4)~~(5) Shall not imply that the company is an administrative agency of any  
5 parish or of this state or of the United States.

6 \* \* \*

7 §1307. Reservation of name; transfer of reserved name

8 \* \* \*

9 B.

10 \* \* \*

11 (2) If the secretary of state finds that the name is available for use by a  
12 limited liability company, he shall reserve the name for the exclusive use of the  
13 applicant for ~~sixty days or such shorter period as may be requested~~ a nonrenewable  
14 period of one hundred twenty days.

15 \* \* \*

16 Section 3. R.S. 51:213(B)(2) is hereby amended and reenacted to read as follows:

17 §213. Powers of the secretary of state; reservation of trade names, trademarks, and  
18 service marks

19 \* \* \*

20 B.

21 \* \* \*

22 (2) Application to reserve a trade name, trademark, or service mark shall be  
23 filed with the secretary of state. If the secretary of state finds that the trade name,  
24 trademark, or service mark is available for use, he shall reserve the trade name,  
25 trademark, or service mark for the exclusive use of the applicant for a ~~period of sixty~~  
26 ~~days or such shorter period as may be requested~~ nonrenewable period of one hundred  
27 twenty days. ~~When a trade name, trademark, or service mark is reserved as herein~~  
28 ~~provided, the person, firm, corporation, association, partnership, or other entity~~  
29 ~~making such reservation shall pay to the secretary of state, for the use and benefit of~~

