

Date of Hearing: July 27, 2020

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

SB 522 (Hertzberg) – As Amended July 27, 2020

SENATE VOTE: 37-0

SUBJECT: Business entities: filings

SUMMARY: Streamlines the naming requirements of corporations, limited partnerships, and limited liability companies by creating uniform standards that business entity names are distinguishable in the records of the Secretary of State and that names are not likely to mislead the public.

Specifically, **this bill:**

- 1) Deletes the existing naming standard under the laws governing corporations and instead applies a distinguishable in the records of the Secretary of State (SOS) standard for corporations.
- 2) Removes the exception under the Moscone-Knox Professional Corporation Act to the prohibition on a professional corporation having the same name as another corporation and subjects professional corporations to the naming requirements under the General Corporation Law, as amended by this bill.
- 3) Removes the exception under the Uniform Limited Partnership Act of 2008 to the requirement that the name of a limited partnership (LP) be distinguishable in the records of the SOS from the name of any other LP registered or reserved with the SOS.
 - a. Prohibits the name of an LP from being one that the SOS determines is likely to mislead the public.
 - b. Authorizes the enjoining of the use of a name by an LP in violation of the naming requirements under the act notwithstanding the filing of a certificate by the SOS.
- 4) Removes the exception under the California Revised Limited Liability Company Act to the requirement that the name of a limited liability company (LLC) be distinguishable in the records of the SOS from the name of any LLC registered or reserved with the SOS. Authorizes the enjoining of the use of a name by an LLC in violation of the naming requirements under the act, notwithstanding the filing of articles of organization by the SOS.
- 5) Requires that general filings with the SOS contain the corporate name and number as they appear in the SOS's records with respect to general, nonprofit, and cooperative corporations.

EXISTING LAW:

- 1) Authorizes the formation of certain types of corporations under the General Corporation Act, Social Purpose Corporation Act, Nonprofit Public Benefit Corporation Law, Nonprofit Mutual Benefit Corporation Law, Nonprofit Religious Corporation Law, and the Cooperative

Corporation Law. (Corp. Code §§ 100-2319, 2500-3503, 5110-6910, 7110-7160, 9110-9160, 12200-12704, respectively.)

- a) Prohibits the SOS from filing articles of incorporation for a business with a name that is likely to mislead the public or that is the same as, or resembles so closely as to tend to deceive, the name of a domestic or foreign corporation that is authorized to transact intrastate business and has registered its name with the state, as provided; however, a corporation is authorized to adopt a name that is substantially the same as an existing domestic or foreign corporation upon proof of consent by that domestic or foreign corporation and a finding by the SOS that, under the circumstances, the public is not likely to be misled. (Corporations Code §§ 201(b), 2601(b), 5122(b), 7122(c), 9122(b), 12302(b).)
 - b) Provides that a name in violation of these provisions may be enjoined notwithstanding the filing of articles of incorporation by the SOS. (Corp. Code §§ 201(c), 2601(b)(1), 5122(b), 7122(c), 9122(b), 12302(c).)
- 2) Authorizes the formation of professional corporations under the Moscone-Knox Professional Corporation Act and exempts a domestic or foreign professional corporation's name from requirements of the General Corporation Law pertaining to having the same name as another corporation, provided that the name of the professional corporation contains and is restricted to the name or last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, or other organization. (Corp. Code §§ 13400-13410.)
- 3) Authorizes a business to organize as an LP under the Uniform Limited Partnership Act of 2008, as specified. (Corp. Code §§ 15900-15912.07.)
- a) Requires a certificate of LP to be filed with the SOS for the LP to be formed. (Corp. Code § 15902.01.)
 - b) Requires the name of an LP to contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" at the end of its name. (Corp. Code § 15901.08(b).)
 - c) Requires the name of an LP to be distinguishable in the records of the SOS from the name of any other LP registered or reserved with the SOS, except that an LP may apply for authorization to use a name that does not comply with these requirements, and the SOS may authorize its use, if:
 - i) the present user, registrant, or owner of the conflicting name consents and submits a form to the SOS; or
 - ii) the applicant delivers to the SOS a certified copy of a final judgment of a court establishing the applicant's right to use the name; or
 - iii) the suppliant provides satisfactory proof to the SOS that the present user, registrant, or owner of the conflicting name has merged into the applicant, has been converted into the applicant, or has transformed substantially all of its assets to the applicant. (Corp. Code § 15901.08(d).)

- 4) Authorizes a business to organize as an LLC under the California Revised Limited Liability Company Act, as specified. (Corp. Code §§ 17701.01-17713.13.)
 - a) Requires an LLC to file its articles of organization with the SOS for the LLC to be formed. (Corp. Code § 17702.01(d).)
 - b) Requires the name of an LLC to contain the phrase “limited liability company” or the abbreviation “L.L.C.” or “LLC” at the end of its name. (Corp. Code §17701.08(a).)
 - c) Prohibits the name of an LLC from being a name that the SOS determines is likely to mislead the public and is required to be distinguishable from a name in the records of the SOS for any other LLC, except that an LLC may apply for authorization to use a name that does not comply with these requirements, and the SOS may authorize its use, if:
 - i) the present user, registrant, or owner of the noncomplying name consents and submits a form to the SOS to change the noncomplying name; or
 - ii) the applicant delivers to the SOS a certified copy of a final judgment of a court establishing the applicant’s right to use the name. (Corp. Code § 17701.08(b)-(c).)

FISCAL EFFECT: Unknown.

COMMENTS:

1) PURPOSE

This bill is sponsored by the Secretary of State. According to the author:

SB 522 streamlines the Secretary of State's process of approving new businesses by adopting a single "distinguishable in the records" standard, coupled with the existing "likely to mislead" standard, for the proposed names of all types of business entities. This will greatly improve the efficiency and effectiveness of the Secretary of State's analysis while creating a clear and predictable standard that ensures new business entities will have distinct names.

2) STATUS QUO

The Secretary of State (SOS) is charged with administering processes for registering business entities in California, including registering the name of a business. Under existing law, SOS must account for standards and exemptions related to permissible names that differ between corporations, limited partnerships (LPs), and limited liability companies (LLCs). The differing standards have led SOS to maintain separate databases for the different business types, creating inefficiencies in processing business filings.

In addition to the differing standards between business types, the requirements for corporations are unnecessarily complicated. For example, SOS is prohibited from accepting articles of incorporation with a corporate name which is likely to mislead the public, or which is the same as, or resembles so closely as to tend to deceive, the name of another corporation. Existing law, however, allows for the above conditions if the pre-existing corporation with a similar name consents to the proposed name and if SOS determines the

public is not likely to be misled. This forces SOS to conduct a subjective review process that results in a lack of coherency and creates confusion for business organizers.

3) STANDARDIZATION WILL LIKELY IMPROVE PROCESSES AND OUTCOMES

This bill proposes to simplify the process for reviewing corporate names by adopting a “distinguishable in the records” standard that aligns with existing standards for LPs and LLCs, which is also the standard used by nearly 40 other states in reviewing corporate names, according to the author’s office. The bill would also strike exemptions to that standard for LPs and LLCs, creating uniform standards for SOS to follow regardless of business type. In addition to the “distinguishable in the records” standard, the bill would require SOS to evaluate whether a proposed LP name is “likely to mislead,” which is already a standard required for names of corporations and LLCs.

Creating a uniform and streamlined process for evaluating the proposed names of business entities should result in better processes at SOS. Business organizers should have a better experience that leads to coherent outcomes. Standardization should also assist in SOS automation efforts and reduce the time it takes for SOS staff to review business filings, leading to long-term cost savings for the state and shorter review periods for business organizers.

REGISTERED SUPPORT / OPPOSITION:

Support

Secretary of State, Alex Padilla

Opposition

None received.

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