

PUBLIC CHAPTER NO. 743

HOUSE BILL NO. 3645

By Representative Sargent

Substituted for: Senate Bill No. 3815

By Senator Johnson

AN ACT to amend Tennessee Code Annotated, Title 48 and Title 61, relative to business organizations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 48-14-101(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) Except as authorized by subsection (c), the name of a domestic corporation, and the name of a foreign corporation that is authorized to transact business in this state or is applying for a certificate of authority to transact business in this state, shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

SECTION 2. Tennessee Code Annotated, Section 48-14-101(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) A domestic or foreign corporation, or person acting on behalf of a corporation not yet formed, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a

form satisfactory to the secretary of state to use the same registered agent.

SECTION 3. Tennessee Code Annotated, Section 48-54-101(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) Except as authorized by subsection (c), the name of a corporation, shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

SECTION 4. Tennessee Code Annotated, Section 48-54-101(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) A domestic corporation, or person acting on behalf of a corporation not yet formed, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

SECTION 5. Tennessee Code Annotated, Section 48-65-106(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) Except as authorized by subsections (c) and (d), the name of a foreign corporation that is authorized to transact business in this state or is applying for a certificate of authority to transact business in this state, shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

SECTION 6. Tennessee Code Annotated, Section 48-65-106(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) A foreign corporation, or person acting on behalf of a corporation not yet authorized to transact business in this state, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

SECTION 7. Tennessee Code Annotated, Section 48-207-101(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) Except as authorized by subsection (c), the name of a domestic LLC, and the name of a foreign LLC that is authorized to transact business in this state or is applying for a certificate of authority to transact business in this state, shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

SECTION 8. Tennessee Code Annotated, Section 48-207-101(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) A domestic or foreign LLC, or person acting on behalf of an LLC not yet formed, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

SECTION 9. Tennessee Code Annotated, Section 61-1-1003(b), is amended by deleting the subsection in its entirety and by substituting instead the following:

(b) Except as authorized by subsection (c), the name of a domestic limited liability partnership, and the name of a foreign limited liability partnership that is registered in this state or is applying for registration in this state, shall be distinguishable upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

SECTION 10. Tennessee Code Annotated, Section 61-1-1003(c), is amended by deleting the subsection in its entirety and by substituting instead the following:

(c) A domestic or foreign limited liability partnership, or person acting on behalf of a limited liability partnership not yet registered, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

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

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent; or

(4) In the case of a registered limited liability partnership or a foreign registered limited liability partnership, the name of the partnership is composed solely of the names of the partners in the partnership.

SECTION 11. Tennessee Code Annotated, Section 61-2-102(4)(A), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(A) Except as authorized by subdivision (B), must be such as to distinguish it upon the records of the secretary of state from the respective names of or for every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

SECTION 12. Tennessee Code Annotated, Section 61-2-102(4)(B), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(B) A limited partnership, or person acting on behalf of a limited partnership not yet registered, may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary of state's records from one (1) or more of the names described in subdivision (A). The secretary of state shall authorize use of the indistinguishable name applied for, if:

(1) The person holding the right to use the previously filed name described in subdivision (A) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subdivision (A) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

SECTION 13. Tennessee Code Annotated, Section 61-2-904(a), is amended by deleting the punctuation “;” and all of the language following the language “domestic limited partnership” and by substituting instead the punctuation “.”.

SECTION 14. Tennessee Code Annotated, Section 61-2-904, is amended by inserting the following language as new subsections (b) and (c) and by redesignating subsequent subsections accordingly:

(b) Except as authorized by subsection (c) the name of a foreign limited partnership that registers to do business in this state, shall be distinguishable upon the records of the secretary of state from the respective names of or for

every other entity, whether true, assumed, reserved or registered, to the extent the use or reservation of such names is evidenced by a filing with the secretary of state under applicable law.

(c) A foreign limited partnership may apply to the secretary of state for authorization to use a name that is not distinguishable upon his records from one (1) or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:


(1) The person holding the right to use the previously filed name described in subsection (b) consents to the use in writing and submits an undertaking, in a form satisfactory to the secretary of state, to cancel its reservation of such name or change such name to a name that is distinguishable upon the records of the secretary of state from the name of the applicant;

(2) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state; or

(3) The person holding the right to use the previously filed name described in subsection (b) consents in writing to the use of such name by the applicant, and both the other person and the applicant consent in a form satisfactory to the secretary of state to use the same registered agent.

SECTION 15. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: March 25, 2010


KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 9th day of April 2010



PHIL BREDESEN, GOVERNOR