



Ohio Legislative Service Commission *122nd House Bill Analysis*

H.B. 579
122nd General Assembly
(As Introduced)

Reps. Coughlin, Tiberi, Garcia, Womer Benjamin, Terwilleger

- Permits the Secretary of State to make digitized copies of documents filed with his office, and to return to the filer evidence of the filing instead of the original documents as current law generally requires.
- Creates specific requirements regarding the filing of fictitious names.
- Removes the requirement in current law that applications for the registration of a trademark or service mark be accompanied by a facsimile of the mark.
- Specifies that the Secretary of State can prohibit the registration of a trade name, trademark, service mark, or corporate name if the use of that mark or name is not distinguishable from a mark or name being used by a limited liability company in the state.
- Requires the Secretary of State to cancel the registration of a name, mark, or device upon a voluntary request for that cancellation, if the registration has not been renewed in accordance with law, or if the registration has been canceled by the Secretary of State or a court of competent jurisdiction for specified reasons.
- Permits incorporators to amend the articles of incorporation before the corporation begins business if the initial stated capital is not set forth in the articles.
- Preserves the name of a corporation, nonprofit corporation, or foreign corporation whose articles of incorporation have been canceled for one year after the date of cancellation, and specifies that, if reinstatement is not made within one year, the corporation must change its name as a condition of reinstatement if another entity has registered that name.
- Removes the requirement that a domestic corporation applying for reinstatement of its articles of incorporation designate a statutory agent, if it previously has not done so, as a condition of reinstatement.
- Prescribes certain information that must be filed with the Secretary of State regarding the merger or consolidation of nonprofit corporations.
- Changes the amount of time for which a certificate of good standing used by a foreign corporation to apply for a license to transact business in this state is valid from 60 days to 90 days.
- Provides that a foreign corporation whose license has been canceled may have that license reinstated by filing an application for reinstatement and a fee of \$10 with the Secretary of State.
- Requires that quadruplicate copies of service of process, rather than triplicate copies as currently is required, be served upon the Secretary of State in his capacity as the agent of process for foreign corporations licensed to transact business in this state, and permits the Secretary of State to give notice to a foreign corporation at an address shown on its Ohio corporate franchise tax report.

- Requires that the name of a limited liability company be distinguishable from any trade name for which the exclusive right of use is registered with the Secretary of State, unless consent to use that name has been granted and is filed with the Secretary of State.
- Permits the filing of statements of correction upon a change or misstatement of information provided to the Secretary of State by partnerships seeking to become registered limited liability partnerships, and removes the provision that provided that a partnership is permitted to become a limited liability partnership if it is in "substantial compliance" with the Limited Liability Partnership Law.
- Specifies that registration as a foreign limited liability partnership ceases if the registration is voluntarily withdrawn or is canceled by the Secretary of State because the partnership failed to file its annual report as required by law.
- Requires certain documents to be signed by "any authorized representative" rather than by a member or officer of the entity.
- Makes other changes to the General Corporation Law, the Nonprofit Corporation Law, the Foreign Corporation Law, the Limited Liability Company Law, the Limited Partnerships Law, and the Credit Union Law.

CONTENT AND OPERATION

Documents filed with the Secretary of State

In general

The Secretary of State currently is permitted to make copies of all documents that must be filed with his office, in legible handwriting, typewriter, printing, microfilm, or by any authorized photostatic process, and he then may return or destroy the documents once they are copied (sec. 111.201). The bill additionally authorizes the Secretary of State to make copies by any authorized digitized process, and removes the ability of the Secretary of State to make handwritten, typewritten, or printed copies. Additionally, the bill removes the Secretary of State's ability to return the original documents once they are copied.

Documents filed by corporations, limited partnerships, and limited liability companies

Copies of articles of incorporation. Currently, when articles of incorporation and other certificates relating to a corporation are filed properly with the Secretary of State in accordance with the General Corporation Law (R.C. Chapter 1701.), the Secretary is required to endorse on the documents his approval, the date of filing, and a file number. He also must make a copy of the documents in legible handwriting, typewriter, printing, microfilm, or by any authorized photostatic process. The articles or other certificate certified by the Secretary of State must be returned to the person filing the articles or certificate. (Sec. 1701.08(A).)

The bill removes the requirement that the Secretary of State "endorse" his approval upon the documents, and also removes the endorsement language from the provisions in the General Corporation Law and Nonprofit Corporation Law regarding the reservation of corporate names. Under current law, a person or corporation that wishes to reserve a name may submit a written application to the Secretary of State specifying the name desired. If the Secretary finds that the name is available, he currently is required to endorse his approval upon and file the application. (Secs. 1701.05(E) and 1702.05(E).) Once a name is reserved, the right to use that name may be transferred by a written transfer filed with the Secretary of State, and the bill specifies that the transfer must be on a form the Secretary of State prescribes. (secs. 1701.05(E) and 1702.05(E)). The bill further eliminates the requirement that the Secretary of State make a handwritten, typed, or printed copy, and, instead, permits copying by any authorized digitized process. The Secretary of State must return evidence of the filing to the person filing the document rather than returning the original articles or other certificate. The bill makes similar changes for documents filed with the Secretary of State pursuant to the Nonprofit Corporation Law and the Limited Partnership Law (secs. 1702.07(A), 1782.13(A)(3), and 1782.50(A)).

Copies of articles of organization. Currently, articles of organization or other certificates relating to limited liability companies and foreign limited liability companies (LLC) that are filed with the Secretary of State must be endorsed by the Secretary of State, copied, and returned to the person who filed it (secs. 1705.07(A) and 1705.54(B)). The bill removes the requirement that the Secretary of State endorse the documents, and specifies that the copies must be made by microfilm or by any other authorized photostatic or digitized process. Moreover, evidence of the filing, rather than the

original document, must be returned to the filer. The bill makes similar changes to articles and documents relating to credit unions that are filed under the Credit Union Law (sec. 1733.08(A)).

Copies of certificates of registration for trade names and trademarks

The Secretary of State currently is required, if an applicant for the registration of a trade name or fictitious name A "trade name" is a name used in business or trade to designate the business of the user and to which the user asserts a right to exclusive use (sec. 1329.01(A)(1)). A "fictitious name" is a name used in business or trade that is fictitious and that the user has not registered or is not entitled to register as a trade name (sec. 1329.01(A)(2)). complies with all applicable registration requirements, to issue and deliver a certificate of registration to the applicant (see "**Trade name and fictitious name requirements**," below). The certificate of registration is issued under the signature and seal of the Secretary of State, and shows the name and business address of the applicant, the name, title, or designation registered, the date of first use claimed, and the date and term of registration of the trade name or fictitious name. (Sec. 1329.03.)

The bill eliminates the requirement that the Secretary of State issue this certificate of registration. Instead, the bill specifies that the Secretary of State will accept the document for filing, make a copy of the document by microfilm or by other authorized photostatic or digitized process, and return evidence of the filing to the person filing the document. The bill makes similar changes to the requirements for filing trade names, marks, and devices "Name, mark, or device" means any word, name, symbol, picture, design or device, or any combination, produced upon, and used by a person to indicate ownership of articles and supplies. "Articles and supplies" means any item that is designed and intended for re-use in the normal course of trade by the person filing for the name, mark, or device, as well as vessels, receptacles, and utensils used as packages or containers in the sale and distribution of any natural or processed product, compound, mixture, or substance. (Sec. 1329.41(A) and (D), not in the bill.) (sec. 1329.43).

Trade name and fictitious name requirements

Trade name application

A trade name application currently must be signed by the applicant or by a member or officer of the applicant (sec. 1329.01(C)). The bill substitutes "any authorized representative" of the applicant for the applicant's "member or officer."

Fictitious name registration

Currently, a person that does business under a fictitious name and that has not registered and does not wish to or cannot register the fictitious name is required to report the use of the fictitious name to the Secretary of State and to provide the Secretary of State certain prescribed information such as the name, address, and nature of the business conducted (sec. 1329.01(D)). The bill specifies that the address submitted by the user must be the user's business address, and requires a fictitious name report submitted to the Secretary of State to be signed by the user or by the user's authorized representative. Under the bill, a single fictitious name may be registered upon each fictitious name report that is submitted, and each report must be accompanied by a \$10 filing fee, payable to the Secretary of State. (Sec. 1329.01(E).)

If the user is a limited partnership, existing law further requires the user to provide the name and residence address of the general partners, and the Secretary of State is required to provide information as to the identity of the user to anyone inquiring into that identity (sec. 1329.01(D)(1)). The bill removes the requirement to provide identifying information.

The bill further specifies that a fictitious name user that is a limited partnership that existed before July 1, 1994, and that has not registered with the Secretary of State pursuant to the Limited Partnership Law (R.C. Chapter 1782.), must provide the name of the Ohio county in which the limited partnership's certificate of limited partnership or application for registration as a foreign limited partnership is filed. For all other limited partnerships, as well as for corporations, professional associations, limited liability companies, and other entities, the user is required to identify the form of the entity and the state under whose laws it was formed. (Sec. 1329.01(D)(1)(b) and (c).)

Trademark or service mark applications

Currently, a trademark or service mark A "trademark" is any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him, and to distinguish them from goods made or sold by others. A "service mark" is a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising used in commerce. (Sec. 1329.54(A) and (F), not in the bill.) application must be signed by the applicant or by a member or officer of the applicant (sec. 1329.56). The bill substitutes "any authorized representative" of the applicant for the applicant's "member or officer."

Current law further requires that the application for registration of a trademark or service mark be accompanied by a specimen or facsimile of the trademark or service mark as actually used. The bill removes the "facsimile" language and

only permits the applicant to submit a specimen evidencing actual use.

Availability of names for registering names, marks, and labels

Trade names. Current law prohibits the Secretary of State from "filing" (i.e. accept) an application for the registration of a trade name for the following reasons:

- (1) The application indicates or implies that the trade name is connected with a government agency of this state, another state, or the United States and the trade name is not so connected;
- (2) The application indicates or implies that the applicant is incorporated and it is not;
- (3) The trade name is not distinguishable upon the records in the office of the Secretary of State from: (a) any other trade name previously registered, (b) any corporate name of a foreign or domestic corporation, whether nonprofit or for profit, or (c) any trademark or service mark previously filed and recorded with the Secretary of State and not abandoned, unless the written consent of the corporation or the person to whom the trade name is registered is filed with the application or the written consent of the former registrant of the trademark or service mark is filed with the application. (Sec. 1329.02(A).)

The bill includes in the list of names for which the Secretary of State is precluded from filing an application for a trade name unless the name is distinguishable. Generally, a name is not considered distinguishable from another name solely because it differs from the other name in only one or more of the following: (1) the use of word or abbreviation "corporation," "company," "incorporated," or "limited," (2) the use of any article, conjunction, contraction, abbreviation, or punctuation, or (3) the use of a different tense or number of the same word (secs. 1701.05(B) and 1702.05(B)). or unless consent to use the name has been granted by the particular entity, the name of any domestic or foreign LLC registered with the Secretary of State. The bill makes similar changes to the requirement for the registration of corporate names and the names of nonprofit corporations that such names be distinguishable from other names in use or that consent has been granted to use the name. With respect to obtaining consent to use a name from a LLC, the bill specifies that the writing granting consent must be signed by an authorized member, manager, or representative of the LLC. (Secs. 1701.05(A) and (C), 1702.05(A) and (C), 1703.04(D), and 1703.15.)

Registration of a name, mark, or device. Currently, in order to register the use of a name, mark, or device to indicate ownership of articles or supplies, the user must file with the Secretary of State a statement with prescribed information, which must be accompanied by a copy, specimen, facsimile, or counterpart of the name, mark, or device, and a \$20 filing fee (sec. 1329.42). The bill removes the requirement that the statement be accompanied by a copy, facsimile, or counterpart, and, instead, specifies that it be accompanied only by a specimen evidencing actual use of the name, mark, or device.

Trademarks and service mark. Current law also prohibits the registration of a trademark or service mark that (1) resembles some other trademark or service mark registered in Ohio, or (2) is a trademark, service mark, corporate name, or trade name previously used in Ohio by another and not abandoned, if that trademark or service mark is likely to cause confusion, mistake, or deception (sec. 1329.55(F)). The bill includes, as a reason for prohibiting the registration of a trademark or service mark, the use of the name of a LLC that is not distinguishable from other names or marks used in the state.

Cancellation of the registration of names, marks, and devices

The bill requires the Secretary of State to cancel from the register he maintains of names, marks, and devices the following:

- (1) Any registration for which he receives from the registrant or the assignee of record a voluntary, written request for the cancellation of the registration;
- (2) Any registration granted pursuant to the requirements for registering a trade name, mark, or device that has not been renewed in accordance with law;
- (3) Any registration for which he or a court of competent jurisdiction finds that (a) the registered mark has been abandoned, (b) the registrant is not the owner of the mark of ownership, or (c) the registration was granted improperly or was obtained fraudulently.
- (4) Any registration of which a court of competent jurisdiction orders cancellation on any ground. (Sec. 1329.47.)

General corporation law

Amendment to articles of incorporation

Currently, if an initial stated capital is set forth in a corporation's articles of incorporation, the incorporators may adopt an amendment to the articles by a written, signed agreement before subscriptions to shares have been received in an amount that the stated capital of those shares is at least equal to the initial stated capital (sec. 1701.70(A)). The bill also permits the incorporators, by written, signed agreement, to amend the articles of incorporation before the corporation begins business if the initial stated capital is *not* set forth in the articles.

Certificates of merger or consolidation

A certificate of merger or consolidation presently must be filed with the Secretary of State upon adoption by each constituent entity of an agreement of merger or consolidation. The certificate must be signed by an authorized officer of each constituent corporation, by at least one general partner of any constituent partnership, and by an authorized representative of each other constituent entity. (Sec. 1701.81(A).) The bill modifies this provision by requiring signatures only of an "authorized representative" of the corporation, partnership, or other entity involved in the merger or consolidation.

Reservation of corporate name

Upon reinstatement of a corporation's or professional association's articles of incorporation that were canceled in accordance with law, A corporation's articles of incorporation can be canceled for the corporation's failure to appoint a statutory agent and for the failure to pay any tax required by law (secs. 1701.07 and 5733.22). A professional association's articles of incorporation can be canceled for the association's failure to file the annual report required by law (sec. 1785.06). Each of these sections provide for the reinstatement of the articles of incorporation upon curing the deficiency for which the articles were canceled. the rights, privileges, and franchises, including all real or personal property rights and credits and all contract and other rights, of the corporation or association existing at the time its articles were canceled become fully vested in the corporation or association as if the articles had not been canceled. The corporation or association again becomes entitled to exercise the rights, privileges, and franchises authorized by its articles of incorporation. (Sec. 1701.922(A).)

The bill specifies that the name of a corporation whose articles of incorporation have been canceled must be reserved for one year after the date of cancellation. The Secretary of State is required to have an applicant for reinstatement, as a prerequisite to that reinstatement, amend its articles or incorporation by changing its name if the reinstatement of the articles is not made within one year after the date of the cancellation and it appears that a corporate name, LLC name, or trade name has been filed with the Secretary of State that is not distinguishable from the name of the corporation seeking reinstatement. The bill makes similar changes regarding the reservation of a corporate name with respect to nonprofit corporations whose articles of incorporation have been canceled (secs. 1702.59 and 1702.60).

Reservation of corporate name after failure to pay taxes. Under current law, any corporation whose articles of incorporation or license certificate to do or transact business in this state has expired, been canceled, or been revoked by the Secretary of State for failure to make any report or return or to pay any tax or fee, may have the articles or certificate restored if it:

- (1) pays to the Secretary of State of any additional fees and penalties required;
- (2) files with the Secretary of State of a certificate from the tax commissioner that the corporation has complied with all the requirements pertaining to franchise or excise tax reports and has paid all franchise or excise taxes, fees, or penalties due for every year of its delinquency;
- (3) pays to the Secretary of State of an additional fee of \$10.

If the reinstatement is not made within one year from the date the corporation's articles were canceled or the date of the foreign corporation's license to do business, and it appears that the articles or license has been issued to a corporation of the same or similar name, the applicant for reinstatement is required, as a prerequisite to such reinstatement, to amend its articles by changing its name. (Sec. 5733.22(A).) The bill removes all references to the "expiration" of a foreign corporation's license to transact business in Ohio.

Under current law, if a domestic corporation applying for reinstatement of its articles of incorporation has not previously designated an agent upon whom process may be served as required by law, the corporation, at the time of reinstatement and as a prerequisite to reinstatement, must designate a statutory agent. Any officer, shareholder, creditor, or receiver of any such corporation may take all steps to effect reinstatement, and, in that case, the designation of an agent upon whom process may be served is not a prerequisite to the reinstatement of the corporation. (Sec. 5733.22(A)(2).) The bill removes this condition relating to the statutory agent.

Nonprofit corporation law

Mergers and consolidations

Under the current Nonprofit Corporation Law, upon the adoption of a merger or consolidation, a certificate of merger or consolidation must be filed with the Secretary of State. The certificate must be signed by an authorized officer of each constituent corporation and must contain either a signed agreement or a copy and a statement by the officer of each constituent corporation of the manner of its adoption by that corporation. The merger or consolidation becomes effective upon filing or at a later date specified in the agreement. A copy of the agreement, certified by the Secretary of State, may be filed for record in the office of the county recorder of any county in this state, in the records of deeds. (Sec. 1702.43.)

Form of certificate of merger or consolidation. The bill specifies that a certificate of merger or consolidation must be on a form prescribed by the Secretary of State and must set forth the following information:

- (1) the name of each constituent entity and the state under whose laws each exists;
- (2) a statement that each constituent entity has complied with all the laws under which it exists and that those laws permit the merger or consolidation;
- (3) the name and mailing address of the person or entity that is to provide, in response to any written request made by a member or other person, a copy of the agreement of merger or consolidation;
- (4) the effective date of the merger or consolidation, which may be after the date of filing of the certificate;
- (5) the signature of the representative authorized to sign the certificate on behalf of each constituent entity and the office each holds or the capacity in which the representative is acting;
- (6) a statement that the agreement of merger or consolidation is authorized on behalf of each constituent entity and that the persons who signed the certificate on behalf of each entity are entitled to do so;
- (7) in the case of a merger, a statement that one or more specified constituent entities will be merged into a specified surviving entity, or, in the case of a consolidation, a statement that the constituent entities will be consolidated into a new entity;
- (8) in the case of a merger, if the surviving entity is a foreign entity not licensed to transact business in Ohio, the name and address of the statutory agent upon whom any process, notice, or demand may be served;
- (9) in the case of a consolidation, the name and address of the statutory agent upon whom any process, notice, or demand against any constituent entity or the new entity may be served. (Sec. 1702.43(A)(1).)

In the case of a consolidation into a new domestic corporation, the certificate of consolidation must be accompanied by a copy of the articles of incorporation of the new domestic corporation (sec. 1702.43(A)(2)). In the case of a merger into a new domestic corporation, the certificate of merger must be accompanied by a copy of any amendments to the articles of incorporation of the surviving domestic corporation (sec. 1702.43(A)(3)).

If the surviving or new entity is a foreign entity that desires to transact business in Ohio as a foreign corporation, the certificate of merger or consolidation must contain a statement to that effect and a statement regarding the appointment of a statutory agent and consent to service of process, notice, or demand as generally is required under current law when a foreign corporation applies for a certificate authorizing it to transact business in this state (sec. 1702.43(A)(4)).

If a domestic or foreign corporation licensed to transact business in Ohio is a constituent entity and the surviving or new entity resulting from the merger or consolidation is not a domestic or foreign corporation that is to be licensed to transact business in Ohio, the certificate of merger or consolidation must be accompanied by the affidavits, receipts, certificates, or other evidence required when a domestic corporation voluntarily dissolves or when a foreign corporation surrenders its license to transact business in this state (sec. 1702.43(A)(5)).

If any constituent entity in a merger or consolidation is organized or formed under the laws of another state or under an Ohio law other than the Nonprofit Corporation Law the bill requires that all documents that the other state or law requires to be filed also are filed properly (sec. 1702.43(B)).

Issuance of certificate of merger or consolidation. The bill requires the Secretary of State, upon request and payment of a \$10 fee, to furnish a certificate that sets forth the following information:

- (1) the name of each constituent entity and the state under whose laws each existed prior to the merger or consolidation;
- (2) the name of the surviving or new entity and the state under whose laws it exists;
- (3) the date of filing of the certificate or merger with the Secretary of State;
- (4) the effective date of the merger or consolidation.

As under current law, this certificate, or a copy of the merger or consolidation certified by the Secretary of State, may be filed for record in the office of the recorder of any county in Ohio, and, if filed, it must be recorded in the records of deeds for that county. (Sec. 1702.43(D).)

Terminology change. The bill further changes the term "agreement of merger or consolidation" to "certificate of merger or consolidation" throughout the Nonprofit Corporation Law (secs. 1702.43 and 1702.46).

Foreign Corporations Law

Filing applications to transact business as a foreign corporation

Under current law, to procure a license to transact business in this state, a foreign corporation for profit must file with the Secretary of State a certificate of good standing or subsistence, dated not earlier than 60 days prior to the filing of the application, under the seal of the Secretary of State, or other proper official, of the state under whose laws the corporation was incorporated, setting forth statutorily prescribed information (sec. 1703.04(A)). The bill changes the amount of time for which a certificate of good standing is valid from 60 days to 90 days prior to filing the application.

Reinstatement of license to transact business as a foreign corporation

Current law prohibits a foreign corporation from transacting any business in Ohio that could not be lawfully transacted by a domestic corporation. The Secretary of State must give the corporation notice of the statutorily prescribed deficiencies. These deficiencies are: (1) the foreign corporation licensed to transact business in Ohio is transacting in this state a business that a domestic corporation could not lawfully transact, (2) the foreign corporation is transacting business in Ohio under a corporate name that is not readily distinguishable from the name of every other foreign or domestic corporation authorized to transact business in this state, without the consent of the other corporation filed as evidenced by resolution of its board of directors, and (3) the foreign corporation has failed, after the death or resignation of its designated agent or his removal from this state, to designate another statutory agent as required by law (sec. 1703.15). by certified mail, and unless the failure is cured within 30 days after the mailing of the notice or within any further period granted by the Secretary of State, he is required to cancel the license of the corporation to transact business in Ohio, give notice of the cancellation to the corporation by mail, and make a notation of the cancellation on his records. (Sec. 1703.15.)

The bill specifies that a foreign corporation whose license has been canceled may be reinstated by filing with the Secretary of State an application for reinstatement, on a form prescribed by the Secretary, and a fee of \$10. If the application is submitted in a tax year or calendar year other than that in which the cancellation occurred, the application also must be accompanied by a certificate of reinstatement issued by the Ohio Department of Taxation.

Preservation of corporate name. Under the bill, the name of the corporation whose license has been canceled must be preserved for one year after the date of cancellation. If the reinstatement is not made within one year after the cancellation and it appears that a corporate name, LLC name, or trade name has been filed that is not distinguishable from the name of the foreign corporation, the Secretary of State must require the applicant for reinstatement, as a prerequisite to reinstatement, to apply for authorization to transact business in Ohio under an assumed name.

Secretary of State as agent of foreign corporation

Under current law, the Secretary of State is the agent of process for any foreign corporation licensed to transact business in Ohio. Service is made upon the Secretary of State by leaving triplicate copies of the process and a fee of \$5. The bill requires that quadruplicate copies be filed. Upon receipt of that process and fee, the Secretary of State currently gives notice to the corporation at its principal office and its principal office in Ohio. The bill further requires the Secretary of State to give notice to the corporation at any different address shown on its last franchise tax report filed in Ohio. (Sec. 1703.19.)

Limited liability companies

Application for name

The name of a limited liability company currently must include the words, "limited liability company," without abbreviation or one of the following abbreviations: "LLC," "L.L.C.," "limited," "ltd.," or "Ltd.". Generally, the Secretary of State cannot accept for filing the articles of organization of a LLC if the company name set forth in the articles is not distinguishable on the records of the Secretary of State from the name of either (1) any other LLC, whether the name is of a domestic LLC or of a foreign LLC registered as a foreign LLC, or (2) any foreign or domestic corporation. (Sec. 1705.05(B)(1).) The bill further requires that the name of the LLC be distinguishable from any trade name for which the exclusive right, at the time in question, is properly registered with the Secretary of State.

Currently, the Secretary of State may accept for filing the articles of organization of a LLC whose name is not distinguishable from the name of another LLC, corporation, or limited partnership if there also is filed in the Secretary of

State's office the consent of the other LLC, corporation, or limited partnership to using the particular name (sec. 1705.05(B)(2)). The bill includes registered trade names as names that must be distinguishable, and removes the reference to limited partnerships.

A consent given by one LLC to the use of a name by another LLC must be in the form of an instrument, prescribed by the Secretary of State, signed by an authorized member, manager, or other representative of the consenting LLC (sec. 1705.05(C)). The bill provides that corporations and persons to whom is registered the exclusive right to use a trade name may consent to the use of a name, and requires the signature of any authorized officer of the corporation or the person or his representative of the trade name for that purpose.

Credit unions

Currently, as soon as the board of directors or the liquidating agent of a bankrupt or insolvent credit union determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as required by law, the board or agent must execute a certificate of dissolution on a form prescribed by the Superintendent of Credit Unions and file the certificate with the Secretary of State. After filing or recording and indexing the certificate, the Secretary of State is required to forward the certificate to the Superintendent, at which point the credit union must be dissolved (sec. 1733.37(C)). The bill replaces the requirement to "file" the certificate with the Secretary of State with the requirement to "submit" the certificate, and requires the Secretary of State to forward evidence of the filing to the Superintendent rather than the original certificate.

Limited liability partnerships

Domestic LLPs

Existing law permits a partnership to become a registered limited liability partnership (LLP) if there has been substantial compliance by a partnership with the Limited Liability Partnership Law. Currently, to become a registered partnership having limited liability, a partnership must file with the Secretary of State a registration application that contains only the following information: (1) the name of the partnership, (2) the address of the partnership's principal office or, if the partnership's principal office is not in Ohio, the address of the partnership office filing for registration and the name and address of the statutory agent for service of process in Ohio, (3) the number of partners, (4) a brief statement of the business in which the partnership is engaging, and (5) a statement indicating that the partnership is applying for status as a registered partnership having limited liability (sec. 1775.61). The partnership becomes a LLP upon filing its completed registration application and the required fee with the Secretary of State or at any later date or time specified in the registration application. A partnership continues to be a LLP if the partnership has substantially complied with the requirements of the Limited Liability Partnership Law. The status of a partnership as a LLP is not adversely affected by minor errors or subsequent changes in the information provided in the LLP's registration application, which application may be provided by the Secretary of State. (Sec. 1775.61(F) and (H).)

The bill removes the provisions relating to "substantial compliance," and the authorization of the Secretary of State to provide forms for registration applications. Instead, the bill provides that, if any statement in a registration application was materially false when made or if any facts described have changed, thereby making the application inaccurate in any material respect, the LLP must promptly file with the Secretary of State a certificate correcting the application, on a form the Secretary prescribes, which must be signed by one or more partners authorized by the partnership to execute the statement of correction. (Sec. 1775.61(G).)

Foreign LLPs

A foreign LLP transacting business in Ohio is required to comply with the name and annual reporting requirements set forth in law as well as any statutory or administrative registration or filing requirements governing the specific type of business in which the partnership engages (sec. 1775.64(C)). The bill makes a foreign LLP subject to the same correction requirements that the bill applies to domestic LLPs (see "**Domestic LLPs**," above). The bill also specifies that registration as a foreign LLP ceases if either (1) the registration is voluntarily withdrawn by filing with the Secretary of State a prescribed form signed by an authorized partner, or (2) the registration is canceled by the Secretary of State for the LLP's failure to file its annual report as required by law.

HISTORY

ACTION DATE JOURNAL ENTRY

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