
OLR Bill Analysis

sHB 6605

AN ACT CONCERNING BUSINESS REGISTRATIONS, TRADE NAMES, THE COMMERCIAL RECORDING DIVISION WITHIN THE OFFICE OF THE SECRETARY OF THE STATE AND COMMERCIAL REGISTERED AGENTS.

SUMMARY

This bill makes various changes in laws that govern certain business entities operating in the state. Primarily, it does the following:

1. expands the trade name law to, among other things, standardize the application form, limit a name's validity for five years at a time, and set a fee-charging schedule for towns (§§ 22-29 & 35);
2. sets out a process for commercial registered agent listing statements, which may include information on the methods the agent will accept for service of process, notices, and demands, other than in a written record (§§ 32-34);
3. renames the secretary of the state's (SOTS) Commercial Recording Division as the Business Services Division, and allows SOTS to accept the filing of documents and data over the Internet (§§ 30-31);
4. allows certain business entities to file online a supplemental report updating the annual report information (§§ 6, 10 & 17-21);
5. expands the information certain business entities must include in their filings with SOTS, including e-mail addresses and their North American Industry Classification System Code (§§ 1-21); and
6. eliminates the requirement that certain business documents be sworn to by a general partner (§§ 7-9).

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2021

§§ 1-21 — NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM CODE AND E-MAIL REQUIREMENT

The bill expands the information certain business entities must provide to SOTS to include an e-mail address and North American Industry Classification System Code (i.e., a six-digit, hierarchical coding system to classify all economic activity into 20 industry sectors). In certain circumstances, current law allows these entities to provide the information, but the bill requires it. These requirements apply to the following:

1. corporation and nonstock corporation incorporation certificates (CGS §§ 33-636 & -1026);
2. foreign corporation and nonstock foreign corporation applications for certificates of authority (CGS §§ 33-922 & -1212);
3. limited partnership's certificates and annual reports (CGS §§ 34-10 & -13e);
4. foreign limited partnership registrations and annual reports (CGS §§ 34-38g & -38s);
5. limited liability company (LLC) certificates of organization (CGS § 34-247);
6. foreign LLC registration certificates (CGS § 34-275b);
7. registered limited liability partnership (LLP) certificates (CGS § 34-419);
8. foreign registered LLP certificates of authority (CGS § 34-429);
9. statutory trust certificates (CGS § 34-503);
10. foreign statutory trust registrations (CGS § 34-531); and

11. domestic corporation, foreign corporation, nonstock domestic corporation, LLC, registered foreign LLC, registered LLP, and foreign registered LLP annual reports (CGS §§ 33-953 & -1243 and 34-247k, -420 & -431).

§§ 6, 10 & 17-21 – ONLINE SUPPLEMENTAL ANNUAL REPORT SUBMISSION

The bill allows a limited partnership, foreign limited partnership, domestic corporation, foreign corporation, nonstock domestic corporation, LLC, registered LLP, and foreign registered LLP to file online a supplemental report updating the annual report information, if the business entity has satisfied the report submission requirements. The supplemental report filing fee is \$20.

§§ 7-9 – ELIMINATION OF SWORN DOCUMENTS

The bill eliminates the requirement that a foreign limited partnership application, an amendment to it, or cancellation certificate be sworn to by the general partner. By law, a foreign limited partnership must register with SOTS before transacting business in the state. Current law requires the partnership to submit a signed copy of these documents that is signed and sworn to by a general partner. The bill requires the documents, and not copies, to be filed.

§§ 22-29 & 35 – TRADE NAMES

In Connecticut, a “trade name” is the term generally given to an individual doing business under an assumed name, sometimes called “doing business as” or “D/B/A” or sole proprietorship. The bill expands the trade name law to, among other things:

1. standardize the application form,
2. limit a name’s validity for five years at a time,
3. set a fee schedule for towns to charge,
4. establish a renewal and cancellation process,
5. allow SOTS to create an electronic system to process trade name

certificate applications, and

6. expand the trade name exemption to additional business entities that transact business under the name stated in its formation or registration document.

As under current law, the bill generally prohibits anyone from transacting business in the state under any assumed name or under any designation, name, or style, corporate or otherwise, other than the real name or names of the person or individuals transacting the business unless a trade name certificate has been issued.

Application (§§ 22 & 27)

The bill standardizes the trade name application by requiring it to be filed on a SOTS-prescribed form. As under current law, the application must be made to the town clerk's office in the town where the business is, or will be, principally transacted. The bill also makes separate applications for a natural person and business entity and requires additional information.

Natural Person. The application a natural person files must provide (1) the name under which the business is, or will be, transacted; (2) the business' physical address in the town of filing; (3) the business' e-mail address; and (4) the full name and physical and email address of each person transacting the business.

Entity. The application filed by a corporation or LLC must provide (1) the name under which the business is, or will be, transacted; (2) the SOTS-provided business identification number for the corporation or LLC; (3) the business name and address on file with SOTS; and (4) the business e-mail address.

As under current law, the bill requires a trade name certificate application to be executed by each natural person filing the application or, in the case of a corporation or LLC, by an authorized officer. Applications must be acknowledged before an authority qualified to administer oaths. Under the bill, the trade name application fees are \$20 each.

Validity (§ 22)

The bill requires town clerks to issue a trade name certificate upon accepting the application filed in accordance with this provision. The certificate is valid for five years from the issuance date.

All trade name certificates issued before October 1, 2021, expire five years from the effective date of their issuance unless renewed under the bill's provisions (see below). These trade names may be renewed at any time during the five-year period, and the renewed trade name is valid for five years from the date the town clerk accepted the renewal.

Renewal, Amendment, and Cancellation (§§ 23 & 27)

The bill allows trade name certificates to be renewed between six months before the certificate expires and the expiration date. A renewal application must be on a SOTS-prescribed form and provide the information required in the application form (see above). Upon accepting the renewal application, the town clerk must issue a new certificate, which is valid for five years from the previous certificate's expiration date.

The filer may (1) amend any information in an original application for a certificate or renewal at any time before the certificate expires and (2) cancel a certificate before the certificate expires upon filing a cancellation of the certificate with the town clerk where the original application was filed.

Under the bill, the trade name renewal, amendment, and cancellation fees are \$20 each, payable to the town clerk.

Alphabetical Index and SOTS Electronic System (§ 24)

As under current law, the bill requires each town clerk to keep an alphabetical index of the trade names. But the bill specifies that the town clerks index the certificates that they issued, as well as the trade name applications filed by natural individuals, corporations, or LLCs.

Current law requires SOTS to create an electronic system to collect from each town clerk the trade name information required by law. The bill instead allows SOTS to create an electronic system to process

applications for trade name certificates. It requires the system to provide for statewide public searching of trade name certificate information.

Under the bill, town clerks using the system are deemed compliant with the index requirement.

Presumptive Evidence (§ 25)

Under current law and the bill, a copy of any trade name certificate that the issuing town clerk certifies is presumptive evidence in all state courts of the facts the certificate contains. The bill's trade name provisions do not prevent the lawful use of a partnership name or designation if the name or designation includes the true surname of at least one of the individuals in the partnership.

Exemptions (§ 25)

The bill expands the business entities that are exempt from the trade name law. It does so by exempting SOTS-registered LLPs, corporations, and statutory trusts. As under current law, domestic or foreign limited partnerships and LLCs are also exempt. The entity must transact business under the name stated in its formation or registration document, as applicable, filed with SOTS.

Trade Name Determination (§ 25)

The bill specifies that it does not require a town clerk to determine that the trade name that is the subject of a trade name certificate issued under the bill is not already used in the town of filing or any other Connecticut town.

Penalty (§ 25)

As under current law and the bill, anyone transacting business in violation of the trade name provisions may be fined up to \$500, imprisoned up to one year, or both. Failing to comply is also deemed a Connecticut Unfair Trade Practices violation (CUTPA, see BACKGROUND).

Assumed or Fictitious Name in Advertisement (§ 26)

As under current law, the bill prohibits individuals from using an assumed or fictitious name in any printed advertisement in order to conduct the person's business that includes the name of any municipality in a manner suggesting the person's business is in the municipality unless (1) the business is, in fact, located in the municipality or (2) the person includes in the advertisement the complete street address of the location where the business is actually conducted (including city or town and, if out-of-state, the state).

Anyone violating the advertising provision is deemed to have committed a CUTPA violation. But the provision does not apply to the use of (1) any trademark or service mark registered under federal or state laws; (2) any name that, when applied to goods or services of the person's business, is merely descriptive of them; or (3) any name that is merely a surname.

The bill specifies that it does not impose liability on any publisher that relies on the written assurances of a person placing the advertisement that he or she has the authority to use any assumed or fictitious name.

§§ 30 & 31 – SOTS BUSINESS SERVICES DIVISION

The bill renames SOTS' Commercial Recording Division as the Business Services Division.

Under current law, SOTS may accept documents filed by telecopier or other electronic media and employ new technology as it is developed. The bill specifies that SOTS may accept documents and data filed over the Internet, while eliminating the option to submit documents by telecopier or other electronic media. As under current law, it allows the secretary to establish rules, fee schedules, and regulations for the filings.

Additionally, the bill requires a claim for credit toward future filing fees to be presented within one year after it accrues. It also allows SOTS to adjust the secretary's records to reflect that overpaid fees are no longer available for refund or credit.

§§ 32-34 – COMMERCIAL REGISTERED AGENTS

Commercial Registered Agent Listing Statements (§ 32)

The bill sets out a process for commercial registered agent listing statements, which may include information on the methods the agent will accept for service of process, notices, and demands other than in a written record. Under the bill, a “registered agent” means a registered agent of a corporation or LLC, or a statutory agent for service of process of a limited partnership, LLP, or statutory trust.

The bill allows a registered agent to deliver to SOTS for filing a commercial registered agent listing statement the agent signed. The statement takes effect upon filing and must state:

1. the individual or entity name that acts as a registered agent and, if an entity, the entity type and jurisdiction of formation;
2. that the registered agent is in the business of serving as a registered agent in Connecticut; and
3. the registered agent’s business address in Connecticut to which service of process, notices, and demands may be delivered.

Under the bill, if the name of a registered agent filing a commercial registered agent listing statement is indistinguishable on SOTS records from the name of another listed commercial registered agent, the person must adopt a fictitious name that is distinguishable and use that name in the registered agent’s statement and when it does business in Connecticut as a registered agent.

The bill requires SOTS to note the filing of a commercial registered agent listing statement in its records index for each entity the registered agent represents at filing. The statement effectively amends the registered agent filing for each of those entities to (1) designate the registered agent filing the commercial registered agent listing statement as the commercial registered agent of each of those entities and (2) delete the name and address of the former agent from the registered agent filing of each of those entities.

Termination (§ 33)

The bill allows a registered agent to terminate his or her listing as a commercial registered agent by delivering a signed commercial registered agent termination statement to SOTS. The statement must have the agent's name as listed with SOTS under the bill and state that the agent is no longer in the business of serving as a commercial registered agent in Connecticut. A termination statement takes effect at 12:01 a.m. on the 31st day after the day the statement is filed with SOTS.

Under the bill, the agent must promptly furnish each entity the agent represents with a notice in a record of the termination statement filing. When the termination statement takes effect, the agent ceases being the agent for each entity he or she represented before. Terminating the listing does not affect any contractual rights a represented entity has against the agent or the agent has against the entity.

Statement of Change (§ 34)

Under the bill, if a commercial registered agent changes his or her name or if an entity changes its entity type or jurisdiction of formation, as stated in its commercial registered agent listing, the agent must deliver to SOTS for filing a statement of change the agent signed. The statement must include:

1. the agent's name under the listing;
2. if the name of the agent has changed, the new name; and
3. if the agent's address has changed, the new address.

If the agent is an entity, the statement must include (1) if the agent's entity type has changed, the new entity type; and (2) if the agent's jurisdiction of formation has changed, the new jurisdiction of formation.

Under the bill, the SOTS statement of change filing is effective to change the information about the agent with respect to each entity the

agent represents. A statement of change filed with SOTS takes effect upon filing.

The bill requires a commercial registered agent to promptly furnish the following to each entity the agent represented: (1) a notice in a record of the SOTS statement of change filing relating to the agent's name or address and (2) the changes made in the statement.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0 (03/29/2021)