
OLR Bill Analysis

sSB 428 (File 533, as amended by Senate "A")*

AN ACT CONCERNING BUSINESS REGISTRATIONS FILED WITH THE SECRETARY OF THE STATE.

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Makes changes to the Connecticut Business Registry regarding authenticating and verifying data, fraud prevention, requirements for registered agents, and penalties for committing prohibited actions

BACKGROUND

SUMMARY

This bill makes various changes in laws that govern certain business entities operating in the state. Among other things, the bill also expands the trade name law, expands the authority of the Secretary of the State (SOTS), and makes changes to the Connecticut Business Registry.

It also makes minor, technical, and conforming changes.

*Senate Amendment "A" (1) requires a filer who wants to file by paper to prove that online submission is impractical, rather than having it based on the secretary's determination; (2) for the Connecticut Business Registry, (a) requires the secretary to authenticate, rather than validate, submitted data; (b) allows her to reject certain unauthenticated data; and (c) allows the secretary to take certain administrative actions (e.g., dissolve the entity), rather than referring the matter to the attorney general; and (3) makes conforming changes.

EFFECTIVE DATE: January 1, 2025, unless stated otherwise below.

§§ 1-7 & 10-21 — NAICS CODE AND EMAIL REQUIREMENT

Expands the information certain business entities must include in their filings with SOTS to include valid email addresses and their NAICS code

The bill requires business entities filing the documents listed in the

following table to include a valid email address and their North American Industry Classification System (NAICS) code (i.e., a six-digit, hierarchical coding system that classifies economic activity into 20 industry sectors). As the table indicates, current law already requires the annual report filings to include a NAICS code and most other documents to include an email address if the entity has one. The bill instead requires all of the documents to include both.

Table: Current Requirements to Include Email Addresses and NAICS Codes in Specified Business Filings

<i>Business Filings Covered Under the Bill</i>	<i>Current Law</i>	
	<i>Email Address</i>	<i>NAICS Code</i>
Corporation and nonstock corporation incorporation certificates	Not required	Not required
Foreign corporation and nonstock foreign corporation applications for certificates of authority	Required, if any	Not required
Limited Partnership (LP) certificates	Required, if any	Not required
Foreign LP registration applications and annual reports	Required, if any	Not required
Limited Liability Corporation (LLC) certificates of organization	Required, if any	Not required
Foreign LLC registration certificates	Required, if any	Not required
Limited Liability Partnership (LLP) certificates	Required, if any	Not required
Foreign registered LLP certificates of authority	Required, if any	Not required
Statutory trust certificates	Not required	Not required
Foreign statutory trust registrations	Not required	Not required
Annual reports for LPs, domestic corporations, foreign corporations, nonstock domestic corporations, LLCs, registered foreign LLCs, registered LLPs, and foreign registered LLPs	Required, if any	Required

The bill also makes minor and conforming changes.

§§ 5 & 6 — LP'S CERTIFICATE AND ANNUAL REPORT

Eliminates the need to include the latest date of dissolution in an LP's certification; requires the annual reports to include the general partner's name and business address

The bill eliminates the current requirement that an LP include the latest date upon which it is to dissolve in order to get a certificate of limited partnership. It also requires each LP's annual report to include the general partner's name and business address.

§§ 7-9 — ELIMINATION OF SWORN DOCUMENTS

Eliminates the need for certain business documents to be sworn to by a general partner

The bill eliminates the requirement that specified LP business filings be sworn to by a general partner. It applies to foreign LP registration applications, amendments, and cancellations. By law, a foreign LP 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 signed documents, and not copies, to be filed.

§§ 12 & 53 — FOREIGN REGISTRATION CERTIFICATE

Requires foreign LLCs to file an authenticated certificate of existence with SOTS when filing or amending their foreign registration certificate

In registering to do business in the state, existing law requires a foreign LLC to deliver a foreign registration certificate to SOTS for filing.

When delivering this certificate to SOTS, the bill requires the foreign LLC to also deliver a certificate of existence, or a similar document, duly authenticated by SOTS or another official having custody of corporate records in the state or country where the LLC was formed.

The bill requires a registered foreign LLC to file an amendment to its foreign registration if there is a change in the company's name or the company's governing jurisdiction. The LLC must follow the requirements for filing the certificate for getting an amended registration.

§§ 17-21 — AMENDED ANNUAL REPORTS

Requires certain business entities to file an amended annual report with SOTS if certain information changes, and establishes a \$25 fee for doing so

The bill requires each corporation (stock and nonstock, but not banks, trust companies, insurance or surety companies, savings and loan associations, credit unions, or public service companies), foreign corporation, LLC, registered foreign LLC, registered LLP, and foreign registered LLP to file an amended annual report with SOTS if information required in the entity's annual report (except the entity's name) changes after the most current annual report was filed and within 30 days before the month the next annual report is due. The amended

annual report must meet the annual report requirements, including the entity's valid email address and NAICS code.

Under the bill, the filing fee for an amended annual report is \$25.

§§ 22 & 23 — ONLINE SUBMISSIONS OF BUSINESS FILINGS

Renames SOTS's Commercial Recording Division as the Business Services Division and the Records and Legislative Services Division as the Legislation and Elections Administration Division, and allows SOTS to require the filing of documents and data over the Internet with its Business Services Division under certain circumstances

The bill explicitly authorizes SOTS to accept document filings over the Internet, rather than by telecopier or other electronic media. By law, unchanged by the bill, the secretary may establish rules, fee schedules, and regulations for document filings. The bill specifies that these rules, fee schedules, and regulations are for filings with SOTS's Business Services Division.

The bill also authorizes SOTS to (1) require any Business Services Division filing to be submitted online and (2) allow paper filings of documents and data if the filer establishes to the secretary's satisfaction that online submission is impractical.

§§ 24-33 — SOTS EMAIL NOTIFICATIONS

Makes email the mode of communication that SOTS must use to effect certain actions the secretary is authorized to take (e.g., a corporation's dissolution)

The bill makes email the mode of communication that SOTS must use for certain actions (e.g., notices regarding annual report filing default and failure to maintain a registered or statutory agent for service). Under current law, these communications must be sent by regular, first-class, registered, or certified mail, as the case may be.

This applies to the notices and documents that under existing law SOTS sends to the various entities, as applicable, relating to the administrative dissolution of corporations (stock and nonstock); revocation of foreign corporations' certificates of authority; cancellation by forfeiture of LPs; dissolution by forfeiture of LLCs; and revocation of the certificate of registration for registered LLPs, foreign LPs, and foreign LLPs.

Under the bill, SOTS must send specific notifications and documents to the pertinent entity's latest email address shown on the secretary's records.

§§ 34-39 & 54-56 — TRADE NAMES

Expands the trade name law to, among other things, standardize the application form and limits the validity of a trade name to five years at a time

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 to five years at a time;
3. allow those issued trade names before January 1, 2025, to renew until December 31, 2029;
4. set the fees for towns to charge;
5. establish a renewal and cancellation process;
6. require SOTS to create an electronic system to process trade name certificate applications;
7. expand the trade name exemption to additional business entities that transact business under the name stated in its formation or registration document; and
8. make conforming changes.

As under current law, the bill generally prohibits anyone from transacting business in the state under an assumed or fictitious 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 without a trade name certificate. It also makes conforming changes.

Application (§§ 34 & 39)

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 Persons. An application filed by a natural person or a group of natural persons must include the (1) name under which the business is, or will be, transacted; (2) business's physical address in the town of filing; (3) business's valid email address; and (4) full name and physical and valid email address of each person transacting the business.

Business Organization. The application filed by a business organization must include the:

1. name under which the business is, or will be, transacted;
2. business organization's SOTS-provided business identification number;
3. business organization's name and principal business address on file with SOTS; and
4. business organization's principal business address and email address.

Under the bill, a "business organization" means any corporation, LP, LLP, or LLC on record with SOTS.

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 business organization, by an authorized officer of the business organization. Applications must be acknowledged before an authority qualified to administer oaths. Under the bill, the trade name application fees are \$20 each.

Validity (§ 34)

The bill requires town clerks to issue a trade name certificate upon

accepting an application filed under this provision. The certificate is valid for five years from the issuance date. But, under the bill, a trade name certificate issued before January 1, 2025, expires on December 31, 2029, unless it is renewed under the bill's provisions (see below). These trade names may be renewed at any time before the expiration date, and the renewed trade name is valid for five years from when the town clerk accepts the renewal.

Renewal, Amendment, and Cancellation (§§ 35 & 39)

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 it expires upon filing a cancellation 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 (§ 36)

As under current law, the bill requires each town clerk to keep an alphabetical index of 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 and business organizations.

Current law requires SOTS to create an electronic system to collect from each town clerk the trade name information required by law. The bill requires SOTS to create an electronic system to process applications for trade name certificates. It requires the system to allow statewide public searching of trade name certificate information.

Under the bill, town clerks using the system are deemed compliant

with the index requirement. Starting January 1, 2026, the bill allows SOTS to require town clerks to use the electronic system.

Presumptive Evidence (§ 37)

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 it includes the true surname of at least one of the individuals in the partnership.

Exemptions (§ 37)

The bill expands the business entities that are exempt from the trade name law 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 (§ 37)

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 unique in the town of filing or any other Connecticut town.

Penalty (§ 37)

As under current law and the bill, anyone transacting business in violation of the trade name provisions may be fined up to \$500, imprisoned for 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 (§ 38)

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 way suggesting the person's business is in the

municipality unless the (1) business is, in fact, located in the municipality or (2) person includes in the advertisement the complete street address of the location where the business is actually conducted (including the municipality 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 any (1) trademark or service mark registered under federal or state laws; (2) name that, when applied to goods or services of the person's business, is merely descriptive of them; or (3) 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.

§§ 40-42, 45 & 47 — ATTORNEY GENERAL ENFORCEMENT AUTHORITY

Establishes a three-year statute of limitations for the attorney general to bring enforcement action against a business entity that operated without a certificate of authority

By law, any foreign corporation (stock or nonstock), foreign LLC, foreign registered LLP, or foreign statutory trust is liable to the state for the time it transacted business in the state without a certificate of authority. In such a case, SOTS may generally levy fees, taxes, interest, and penalties.

Under the bill, the attorney general must bring any action to enforce this liability within three years after the date SOTS assessed the levy.

EFFECTIVE DATE: Upon passage

§§ 43, 46 & 48 — SOTS STATUTORY AUTHORITY

Gives SOTS express authority to (a) enforce the laws governing LLCs, partnerships, LLPs, and statutory trusts and (b) issue interrogatories to discern compliance

The bill expressly gives SOTS the power reasonably necessary to perform the duties required of the secretary by the laws governing LLCs, partnerships, LLPs, and statutory trusts.

EFFECTIVE DATE: Upon passage

§§ 44 & 49 — INTERROGATORIES

Establishes the requirements for the interrogatories SOTS may issue to certain business entities to determine compliance with the law, specifically regarding the entity's answer; penalties for untimely, untruthful, and incomplete answers; and confidentiality

Compliance With the Uniform Limited Liability Company Act and the Connecticut Statutory Trust Act

The bill authorizes SOTS to submit interrogatories to certain business entities as may be reasonably necessary and proper to allow the secretary to determine if the business has complied with the provisions of certain statutes.

Under the bill, SOTS may direct these interrogatories to any:

1. LLC (domestic or foreign) subject to the provisions of the Uniform Limited Liability Company Act, and to any of the LLC's members or managers, and
2. statutory trust (domestic or foreign) subject to the provisions of the Connecticut Trust Act and to any of the trustees.

Answer. The answer to the interrogatories must be full and complete and must be made in writing under oath within 30 days after the interrogatories' mailing or within any additional time the secretary allows.

If the interrogatories are directed to (1) an individual, they must be answered by the individual; (2) an LLC, they must be answered by any member or manager; or (3) a statutory trust, they must be answered by a trustee of the trust.

Penalty for Untimely, Untruthful, and Incomplete Answers

The bill imposes a penalty of up to \$500 for any LLC, LLC member or manager, statutory trust, and trustee that fails or refuses to answer the interrogatories timely, truthfully, and fully.

Confidentiality

Under the bill, SOTS's interrogatories and the related answers are not

open to public inspection and SOTS may not disclose any facts or information obtained from them, unless the (1) secretary's official duty requires it to be made public or (2) interrogatories or the answers are required for evidence in any criminal proceedings or in any other state action.

EFFECTIVE DATE: Upon passage

§§ 50-52 — CONNECTICUT BUSINESS REGISTRY

Makes changes to the Connecticut Business Registry regarding authenticating and verifying data, fraud prevention, requirements for registered agents, and penalties for committing prohibited actions

The bill makes changes related to information that registered business entities must give SOTS for the Connecticut Business Registry.

Under the bill, the "Connecticut Business Registry" is the data and filing history of all businesses that form or register with, and are made available to the public on, the state's centralized business website. A "registered business entity" is any corporation, LLC, LLP, LP, statutory trust, or any other business entity on the Connecticut Business Registry.

Authentication and Verification of Submitted Data (§ 50)

The bill allows the secretary to verify the data submitted to the Connecticut Business Registry and confirm that it has been transmitted with the authorization of the registered business entity for which it is filed. When verifying the data, the secretary may prevent data submissions that cannot be authenticated and reject these filings. The bill also authorizes the secretary to administratively dissolve, forfeit, revoke, or cancel the registered business entity, if she finds that any data submitted cannot be verified.

Fraud Prevention (§ 50)

The bill authorizes the secretary to do the following to prevent the fraudulent submission of data to the registry:

1. authenticate the identity of the person submitting a filing;
2. authenticate any and all email addresses and cellphone numbers provided in connection with a registry filing, including the email

address and cellphone number the person used when submitting the filing and the business's email address of record;

3. require proof that the registered business entity has authorization to use the address provided as the principal business address, which may include evidence that the (a) business or one of its principals owns or leases the property or (b) owner or lessor of the property allows the property to be used as the business's principal place of business;
4. require that all addresses submitted be valid according to the U.S. Postal Service; and
5. take any other measures the secretary deems necessary that further the provision's purposes and are consistent with state law.

Requirements for Registered Agents (§ 51)

The bill establishes the following requirements for any registered agent required to be appointed by law for any corporation, LLC, LLP, LP, or any other business entity that forms or is required to register with SOTS.

Natural Person. If the agent is a natural person, he or she must be an adult (age 18 or older) and a Connecticut resident during the time the person is named as agent. The secretary may require proof that the (1) name provided is the legal name of the person appointed agent, (2) residential address provided is the agent's primary residence, and (3) agent's business address is the agent's usual place of business.

Registered Business Entity. If the agent is another registered business entity, the entity must be in good standing with SOTS. "Good standing" means that the registered business entity is active on SOTS records and compliant with the entity's legal obligation to file annual reports and maintain a registered agent.

Business Address. The business address provided for a registered business entity appointed to serve as a registered agent for another

registered business entity must be the agent's usual place of business. Under the bill, a "usual place of business" is a place in the state that is customarily open during normal business hours where a person authorized to serve as a registered agent, including accepting of service of process and other notifications, is commonly present. It does not include a U.S. post office box or a commercial post office box.

Prohibited Actions (§ 52)

Under the bill, for any data, document, or record submitted to SOTS on behalf of a business entity, it is a prohibited action to:

1. include certain individuals' names on a filed document without their written consent,
2. include an address in a document filed with the secretary without the owner's or occupant's consent, and
3. deliver a document about an entity to SOTS if the person making the delivery lacks the necessary written consent or authority to do so.

A person's name cannot be included without consent if the person is included in the filing as the:

1. registered agent;
2. person causing the document to be delivered to SOTS for filing;
3. person incorporating, forming, or organizing an entity;
4. person named as officer, director, member, manager, partner, or other principal of the entity; or
5. any other person required under the relevant statutes to be identified in a document filed with SOTS.

Penalty for Violation. Under the bill, an intentional violation of this provision connected with a SOTS filing constitutes perjury, which is a class D felony (punishable by up to five years in prison, a fine of up to

\$5,000, or both).

EFFECTIVE DATE: Upon passage for the data validation and fraud prevention provisions; January 1, 2025, for the provisions on registered agents' requirements; and October 1, 2024, for the prohibited actions and penalty provisions.

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 (CGS § 42-110b(a)).

Related Bill

sHB 5236, § 25, favorably reported by the General Law Committee, among other things, allows the Department of Consumer Protection to impose a civil penalty of up to \$5,000 for CUTPA violations, after an administrative hearing.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 25 Nay 11 (03/28/2024)