
**SENATE COMMITTEE ON
BANKING AND FINANCIAL INSTITUTIONS**
Senator Steven Bradford, Chair
2019 - 2020 Regular

Bill No:	SB 522	Hearing Date:	January 15, 2019
Author:	Hertzberg		
Version:	January 6, 2020 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Eileen Newhall		

Subject: Business entities: filings

SUMMARY Modifies the rules used by the Secretary of State's Office (SOS) when deciding whether to approve a name proposed to be used by a corporation, limited partnership (LP), or limited liability company (LLC).

EXISTING LAW

- 1) Prohibits the SOS from filing articles of incorporation for a corporation whose name is likely to mislead the public or whose name is the same as, or resembles so closely as to tend to deceive, the name of an existing corporation, as specified, but allows a corporation to use a name that is substantially the same as the name of an existing corporation, if the existing corporation consents (Corporations Code Sections 201, 2601, 5122, 7122, 9122, 12302, and 13409). These code sections apply to general stock corporations, social purpose corporations, nonprofit public benefit corporations, nonprofit mutual benefit corporations, nonprofit religious corporations, cooperative corporations, and professional corporations, respectively.
- 2) Requires professional corporations to follow the naming requirements in the General Corporation Law and the Moscone-Knox Professional Corporation Act (Corporations Code Sections 201, 13403, and 13409), as well as rules administered by individual government licensing agencies with jurisdiction over the profession.
- 3) Requires the name of a new LP to be distinguishable in the records of the SOS from the name of any existing LP, as specified, but allows an LP to apply to the SOS to use a name that would otherwise be prohibited, if certain criteria are met (Corporations Code Section 15901.08).
- 4) Requires the name of a new LLC to be distinguishable in the records of the SOS from the name of any existing LLC, as specified, and prohibits the name from being one that the SOS determines is likely to mislead the public. Allows an LLC to apply to the SOS to use a name that would otherwise be prohibited, if certain criteria are met (Corporations Code Section 17701.08).

THIS BILL

- 1) Replaces existing rules applicable to corporate name reviews conducted by the SOS with one requirement and one prohibition, as follows: a) the name of the new corporation must be distinguishable in the records of the SOS from the name of any

existing domestic corporation or foreign corporation authorized to transact business in California, as specified, and b) the name of the new corporation may not be a name that the SOS determines is likely to mislead the public. These new requirements apply to general stock corporations, social purpose corporations, nonprofit public benefit corporations, nonprofit mutual benefit corporations, nonprofit religious corporations, cooperative corporations, and professional corporations.

- 2) Deletes language in the code section applicable to naming rules for professional corporations, which is superfluous given the changes this bill makes to the standards for general corporation name review.
- 3) Updates the naming rules applicable to LPs by providing that the name of a new LP may not be one that the SOS determines is likely to mislead the public, deletes superfluous language from the code section applicable to naming rules for LPs, and clarifies that the use by an LP of a name in violation of the aforementioned rules may be enjoined, notwithstanding the filing of a certificate of LP by the SOS.
- 4) Deletes superfluous language from the code section applicable to naming rules for LLCs and clarifies that the use by an LLC of a name in violation of the aforementioned rules may be enjoined, notwithstanding the filing of LLC articles of incorporation by the SOS.

COMMENTS

- 1) Purpose: This bill is sponsored by the SOS to remove the subjectivity in California's naming rules and improve the ability of the SOS to electronically process naming requests.
- 2) Background: For historic reasons, the rules used by the SOS to vet the names of entities seeking to file formation documents with the SOS are inconsistent between corporations, LPs, and LLCs. When reviewing *corporation* names, the SOS is required to ensure that the proposed name is not likely to mislead the public and is not the same as, nor so close to another existing corporation name that the proposed name would be likely to deceive. The SOS is also required to ensure that a proposed corporation name is not substantially the same as the name of an existing corporation, unless the existing corporation consents to the use of the substantially similar name by the new corporation.

Naming rules for *LPs* require the proposed name to be distinguishable in the records of the SOS from the names used by existing LPs. Naming rules for *LLCs* require the proposed name to be distinguishable in the records of the SOS from the names used by existing LLCs and prohibit the SOS from approving any name the SOS determines is likely to mislead the public.

- 3) Discussion: This bill standardizes the naming rules for the three main types of business entities whose names are reviewed by the SOS (corporations, LPs, and LLCs) and does so in a manner that, according to the SOS, is consistent with the naming rules used by a majority of other states in the country. If amended as desired by the SOS, California's naming rules will require two things: a) that the proposed name be distinguishable in the SOS records from all other business

entities of that same type (i.e., proposed new corporation names will be compared to the names of existing corporations, proposed new LP names will be compared to the names of existing LPs, and proposed new LLC names will be compared to the names of existing LLCs); and b) the proposed name of the corporation, LP, or LLC may not be one that the SOS determines is likely to mislead the public.

- 4) Support: The SOS is sponsoring SB 522 to “help make it easier to do business in California by adopting a ‘distinguishable in the records’ standard in the process of approving names for corporations. Existing law requires the SOS to use complex, time-consuming ways of determining availability of a corporation’s proposed name for use in California. SB 522 provides for a more efficient corporation naming process by applying the distinguishable in the records model while preserving the entity naming protections currently in law...This proposal will reduce the time it takes for SOS staff to compare proposed corporate names against existing names. The anticipated efficiencies will allow us to add staff resources to other key business program areas and improve customer service.”

- 5) Opposition: None received.

- 6) Amendments: Although he has not taken a position on the measure, corporate law attorney Keith Bishop is suggesting that the author take several amendments. Some of the suggested amendments are sufficiently substantive to require further vetting by the author and sponsor; others are sufficiently technical and clarifying that they are recommended for inclusion in the bill at this time.

a) Technical and Clarifying Amendments Recommended for Inclusion at This Time:

- i) Amend Sections 201(b)(1), 2601(b)(1), 5122(b)(1), 7122(c)(1), 9122(b)(1), and 12302(b)(1) to make it clear that the phrase “authorized to transact business” applies only to foreign corporations transacting intrastate business, and amend Section 17701.08(b)(1) to make it clear that the phrase “authorized to transact business” applies only to foreign LLCs transacting intrastate business.
- ii) Amend Sections 201(b)(2), 2601(b)(2), 5122(b)(2), 7122(b)(2), 9122(b)(2), and 12302(b)(2) to strike the words “for another corporation,” which more clearly reflects the fact that entities other than corporations, such as applicants, may reserve corporate names.

b) More Substantive Amendments That Require Further Vetting:

- i) Amend Sections 201(a), 2601(a), 5122(a), 7122(a), 9122(a) and 12302(a) to absolve entities like blood banks and food banks from the requirement to obtain DBO’s approval before they may apply to the SOS to use the word “bank” in their corporation names.
- ii) Amend Sections 201(b), 2601(b), 5122(b), 7122(b), 9122(b), 12302(b), 15901.08(d) and 17701.08(b) to strike the “likely to mislead” standard on grounds that this standard is inconsistent with the Model Business Corporation Act and retains the subjectivity already present in California law.

LIST OF REGISTERED SUPPORT/OPPOSITION

Support

Secretary of State Alex Padilla (sponsor)

Opposition

None received

-- END --