

## SENATE RULES COMMITTEE

SB 522

Office of Senate Floor Analyses

(916) 651-1520 Fax: (916) 327-4478

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### THIRD READING

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Bill No: SB 522

Author: Hertzberg (D)

Amended: 1/15/20

Vote: 21

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SENATE JUDICIARY COMMITTEE: 8-0, 1/14/20

AYES: Jackson, Borgeas, Lena Gonzalez, Jones, Monning, Stern, Umberg,  
Wieckowski

NO VOTE RECORDED: Durazo

SENATE BANKING & F.I. COMMITTEE: 5-0, 1/15/20

AYES: Bradford, Chang, Caballero, Durazo, Portantino

NO VOTE RECORDED: Dahle, Hueso

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

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**SUBJECT:** Business entities: filings

**SOURCE:** Secretary of State Alex Padilla

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**DIGEST:** This bill (1) changes the naming requirements for corporations by deleting the existing naming requirements and instead applying a distinguishable in the records of the Secretary of State (SOS) standard; (2) removes exceptions under the Uniform Limited Partnership Act of 2008 and the California Revised Limited Liability Company Act that allow a limited partnership (LP) or a limited liability company (LLC) to have the same name as another LP or LLC registered with the SOS; (3) prohibits the name of an LP from being one that is likely to mislead the public, as determined by the SOS; and (4) authorizes the enjoining of the use of a name by an LP or an LLC in violation of the naming requirements, notwithstanding registration by the SOS.

**ANALYSIS:**

Existing law:

- 1) Authorizes the formation of certain types of corporations under the General Corporation Act, Social Purpose Corporation Act, Nonprofit Public Benefit Corporation Law, Nonprofit Mutual Benefit Corporation Law, Nonprofit Religious Corporation Law, and the Cooperative Corporation Law. (Corp. Code §§ 100-2319, 2500-3503, 5110-6910, 7110-7160, 9110-9160, 12200-12704, respectively.)
  - a) Provides that corporate existence begins upon the filing of articles of incorporation by the SOS. (Corp. Code §§ 200(c), 2600(c), 5120(c), 7120(c), 9120(c), & 12300(c).)
  - b) Prohibits the SOS from filing articles of incorporation for a business with a name that is likely to mislead the public or that is the same as, or resembles so closely as to tend to deceive, the name of a domestic or foreign corporation that is authorized to transact intrastate business and has registered its name with the state, as provided; however, a corporation is authorized to adopt a name that is substantially the same as an existing domestic or foreign corporation upon proof of consent by that domestic or foreign corporation and a finding by the SOS that, under the circumstances, the public is not likely to be misled. (Corp. Code §§ 201(b), 2601(b), 5122(b), 7122(c), 9122(b), 12302(b).)
  - c) Provides that a name in violation of these provisions may be enjoined notwithstanding the filing of articles of incorporation by the SOS. (Corp. Code §§ 201(c), 2601(b)(1), 5122(b), 7122(c), 9122(b), 12302(c).)
- 2) Authorizes the formation of professional corporations under the Moscone-Knox Professional Corporation Act and exempts a domestic or foreign professional corporation's name from requirements of the General Corporation Law pertaining to having the same name as another corporation, provided that the name of the professional corporation contains and is restricted to the name or last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, or other organization. (Corp. Code §§ 13400-13410.)

- 3) Authorizes a business to organize as an LP under the Uniform Limited Partnership Act of 2008, as specified. (Corp. Code §§ 15900-15912.07.)
  - a) Requires a certificate of LP to be filed with the SOS for the LP to be formed. (Corp. Code § 15902.01.)
  - b) Requires the name of an LP to contain the phrase “limited partnership” or the abbreviation “L.P.” or “LP” at the end of its name. (Corp. Code §15901.08(b).)
  - c) Requires the name of an LP to be distinguishable in the records of the SOS from the name of any other LP registered or reserved with the SOS, except that an LP may apply for authorization to use a name that does not comply with these requirements, and the SOS may authorize its use, if:
    - i) the present user, registrant, or owner of the conflicting name consents and submits a form to the SOS; or
    - ii) the applicant delivers to the SOS a certified copy of a final judgment of a court establishing the applicant’s right to use the name; or
    - iii) the suppliant provides satisfactory proof to the SOS that the present user, registrant, or owner of the conflicting name has merged into the applicant, has been converted into the applicant, or has transformed substantially all of its assets to the applicant. (Corp. Code § 15901.08(d).)
- 4) Authorizes a business to organize as an LLC under the California Revised Limited Liability Company Act, as specified. (Corp. Code §§ 17701.01-17713.13.)
  - a) Requires an LLC to file its articles of organization with the SOS for the LLC to be formed. (Corp. Code § 17702.01(d).)
  - b) Requires the name of an LLC to contain the phrase “limited liability company” or the abbreviation “L.L.C.” or “LLC” at the end of its name. (Corp. Code §17701.08(a).)
  - c) Prohibits the name of an LLC from being a name that the SOS determines is likely to mislead the public and is required to be distinguishable from a name in the records of the SOS for any other LLC, except that an LLC may apply for authorization to use a name that does not comply with these requirements, and the SOS may authorize its use, if:

- i) the present user, registrant, or owner of the noncomplying name consents and submits a form to the SOS to change the noncomplying name; or
- ii) the applicant delivers to the SOS a certified copy of a final judgment of a court establishing the applicant's right to use the name. (Corp. Code § 17701.08(b)-(c).)

This bill:

- 1) Deletes the existing naming standard under the laws governing corporations and instead applies a distinguishable in the records of the SOS standard for corporations.
- 2) Removes the exception under the Moscone-Knox Professional Corporation Act to the prohibition on a professional corporation having the same name as another corporation and subjects professional corporations to the naming requirements under the General Corporation Law, as amended by this bill.
- 3) Removes the exception under the Uniform Limited Partnership Act of 2008 to the requirement that the name of an LP be distinguishable in the records of the SOS from the name of any other LP registered or reserved with the SOS.
  - a) Prohibits the name of an LP from being one that the SOS determines is likely to mislead the public.
  - b) Authorizes the enjoining of the use of a name by an LP in violation of the naming requirements under the act notwithstanding the filing of a certificate by the SOS.
- 4) Removes the exception under the California Revised Limited Liability Company Act to the requirement that the name of an LLC be distinguishable in the records of the SOS from the name of any LLC registered or reserved with the SOS. Authorizes the enjoining of the use of a name by an LLC in violation of the naming requirements under the act, notwithstanding the filing of articles of organization by the SOS.

## Comments

The California Corporations Code provides for the formation and governance of various business entities, including corporations, LPs, and LLCs. Each of these business entities must file certain documents with the SOS in order to form, convert business entities (such as from a corporation to an LLC), and remain in

good standing with the state. This process includes registering the name of a business entity with the SOS. Current law has different naming requirements for corporations, LPs, and LLCs. This bill intends to streamline the naming requirements so that they are the same for corporations, LPs, and LLCs. If the bill is enacted, a corporation, LP, or LLC will be prohibited from having a name that is likely to mislead the public, as determined by the SOS, and the name will have to be distinguishable from another name in the records of the SOS for a similar business entity.

Under the various acts governing corporations the SOS is prohibited from filing articles of incorporation for a corporation if the corporation's name is likely to mislead the public or is the same name as, or resembles so closely as to tend to deceive, a domestic corporation or a foreign corporation<sup>1</sup> that is authorized to transact intrastate business and has registered its name with the SOS.<sup>2</sup> However, existing law allows a corporation to use a name that is substantially the same as an existing domestic or foreign corporation upon proof of consent by the domestic or foreign corporation with the same name and a finding by the SOS that under the circumstances the public is not likely to be misled. This bill deletes the existing naming standard under the various acts governing corporations and instead provides that the name of a corporation must be distinguishable from the name of another corporation in the records of the SOS, which is the current standard for LPs and LLCs.

The name of an LP or LLC is required to be distinguishable in the records of the SOS; however, there are exceptions to the distinguishable in the records standard.<sup>3</sup> This bill removes these exceptions, which results in an LP or LLC being required to have a name that is distinguishable in the records of the SOS. Under existing law governing LPs, an LP is not prohibited from having a name that the SOS determines is likely to mislead the public. This requirement exists for corporations and LLCs.<sup>4</sup> This bill applies the same restriction on having a misleading name to LPs.

Lastly, the provisions governing corporations provide that the use of a name by a corporation in violation of the naming requirements may be enjoined regardless of the fact that the SOS filed the corporation's articles of incorporation.<sup>5</sup> This bill

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<sup>1</sup> A domestic corporation means a corporation formed under the laws of this state and a foreign corporation means any corporation other than a domestic corporation. (Corp. Code §§ 167 & 171.)

<sup>2</sup> Corp. Code §§ 201(b), 2601(b), 5122(b), 7122(c), 9122(b), 12302(b).

<sup>3</sup> Corp. Code §§ 15901.08(d) & 17701.08(b)-(c).

<sup>4</sup> Corp. Code §§ 201(b), 2601(b), 5122(b), 7122(c), 9122(b), 12302(b), & 17701.08(b).

<sup>5</sup> Corp. Code §§ 201(c), 2601(b)(1), 5122(b), 7122(c), 9122(b), 12302(c).

includes a similar authorization for LPs and LLCs. This bill also makes various technical and nonsubstantive changes.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No

**SUPPORT:** (Verified 1/22/20)

Secretary of State Alex Padilla (source)

**OPPOSITION:** (Verified 1/22/20)

None received

**ARGUMENTS IN SUPPORT:** The author writes:

SB 522 streamlines the [SOS]'s process of approving new businesses by adopting a single “distinguishable in the records” standard, coupled with the existing “likely to mislead” standard, for the proposed names of all types of business entities. This will greatly improve the efficiency and effectiveness of the Secretary of State’s analysis while creating a clear and predictable standard that ensures new business entities will have distinct names.

The sponsor of this bill, Secretary of State Alex Padilla, writes:

I am pleased to sponsor Senate Bill 522 [(SB 522)], which will 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 Secretary of State (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. Adopting this approach will improve the name review process for California business entities by using the straightforward statutory procedures used successfully for limited liability companies (LLCs) and limited partnerships (LPs).

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.

Prepared by: Amanda Mattson / JUD. / (916) 651-4113

1/22/20 15:23:47

**\*\*\*\* END \*\*\*\***