

ASSOCIATIONS CODE (15 PA.C.S.) AND NAMES (54 PA.C.S.) - AMEND

Act of Jun. 22, 2000, P.L. 356, No. 43

Cl. 15

Session of 2000

No. 2000-43

HB 368

AN ACT

Amending Titles 15 (Corporations and Unincorporated Associations) and 54 (Names) of the Pennsylvania Consolidated Statutes, further providing for filing requirements, for corporate names and for senior corporation name changes; further providing for fictitious name definitions, scope, registration and decennial filings; further providing for name registration, for change by order of court and for decennial filings and delaying the date of a decennial filing relating to names.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 135 of Title 15 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:

§ 135. Requirements to be met by filed documents.

* * *

(e) **Distinguishable names.**--A name shall not be considered distinguishable upon the records of the department from another name for purposes of this title and 54 Pa.C.S. (relating to names) solely because the names differ from each other in any or all of the following respects:

(1) Use of punctuation marks.

(2) Use of a definite or indefinite article.

(3) Use of any of the following terms to designate the status of an association: corporation, company, incorporated, limited, association, fund, syndicate, limited partnership, limited liability company, trust or business trust. This paragraph includes abbreviations, in any language, of the terms listed in this paragraph.

Section 2. Sections 1303(b) introductory paragraph and (1) introductory and last paragraphs and (i), introductory paragraph, (A) and (D) and (ii) and 1304(b) of Title 15 are amended to read:

§ 1303. Corporate name.

* * *

(b) **Duplicate use of names.**--The corporate name shall [not] be [the same as or confusingly similar to] **distinguishable upon the records of the department from :**

(1) The name of any other domestic corporation for profit or not-for-profit which is either in existence or for which articles of incorporation have been filed but have not yet become effective, or of any foreign corporation for profit or not-for-profit which is either authorized to do

business in this Commonwealth or for which an application for a certificate of authority has been filed but has not yet become effective, [or of any domestic or foreign limited partnership that has filed in the Department of State a certificate or qualified under Chapter 85 (relating to limited partnerships) or under corresponding provisions of prior law,] or the name of any association registered at any time under 54 Pa.C.S. Ch. 5 (relating to corporate and other association names), unless:

(i) [where the name is the same or confusingly similar,] the other association:

(A) has stated that it is about to change its name, or to cease to do business, or is being wound up, or is a foreign association about to withdraw from doing business in this Commonwealth, and the statement and [the] a written consent [of the other association] to the adoption of the name is filed in the Department of State;

* * *

(D) has had the registration of its name under 54 Pa.C.S. Ch. 5 terminated [and, if the termination was effected by operation of 54 Pa.C.S. § 504 (relating to effect of failure to make decennial filings), the application for the use of the name is accompanied by a verified statement stating that at least 30 days' written notice of intention to appropriate the name was given to the delinquent association at its registered office and that, after diligent search by the affiant, the affiant believes the association to be out of existence; or

(ii) where the name is confusingly similar, the consent of the other association to the adoption of the name is filed in the Department of State.

The consent of the association shall be evidenced by a statement to that effect executed by the association].

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§ 1304. Required name changes by senior corporations.

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(b) Enforcement of undertaking to release name.--If a corporation has used a name [the same as or confusingly similar to] **which is not distinguishable upon the records of the department from** the name of another corporation or other association as permitted by section [1303(b)(1)(i)] **1303(b)(1)** (relating to duplicate use of names) and the other corporation or other association continues to use its name in this Commonwealth and does not change its name, cease to do business, be wound up or withdraw as it proposed to do in its consent or change its name as required by subsection (a), any court having jurisdiction, upon the application of:

(1) the Attorney General, acting on his own motion or at the instance of any administrative department, board or commission of this Commonwealth; or

(2) any person adversely affected;
may enjoin the other corporation or other association from continuing to use its name [or a confusingly similar name].

Section 3. The definitions of "entity" and "fictitious name" in section 302 of Title 54 are amended and the section is amended by adding a definition to read:

§ 302. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Entity." Any individual[,], **or any** corporation, association, partnership, joint-stock company, business trust, syndicate, joint adventureship or other combination or group of persons.

"Fictitious name." Any assumed or fictitious name, style or designation other than the proper name of the entity using such name. The term includes [the] **a** name [of any association,] **assumed by a** general partnership, [business trust,] syndicate, joint adventureship or similar combination or group of persons.

"Proper name." The name set forth in:

- (1) **the articles of incorporation, for a corporation;**
- (2) **the statement of registration, for a limited liability partnership;**
- (3) **the certificate of limited partnership, for a limited partnership;**
- (4) **the statement of election, for an electing partnership;**
- (5) **the certificate of organization, for a limited liability company;**
- (6) **the articles of association, for a professional association;**
- (7) **the deed of trust or other trust instrument, for a business trust; or**
- (8) **a publicly filed document in another jurisdiction which is of a type listed in paragraphs (1) through (7).**

Section 4. Sections 303(b)(2)(iii), (v), (vi), (vii) and (viii), 311(e), 321, 501(a), 502(c), 503, 504, 702(b)(5), 1314 and 1515 of Title 54 are amended to read:

§ 303. Scope of chapter.

* * *

(b) Mandatory registration.--

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(2) Paragraph (1) shall not apply to any:

* * *

[(iii) Limited partnership which is registered in the department pursuant to 15 Pa.C.S. Ch. 85 (relating to limited partnerships) or under corresponding provisions of prior law. The preceding sentence shall not apply to any entity which includes the limited partnership as a participant unless the entity is itself such a limited partnership.]

* * *

[(v) Electing partnership existing under 15 Pa.C.S. Ch. 87 (relating to electing partnerships).

(vi) Limited liability company which is registered in the department pursuant to 15 Pa.C.S. Ch. 89 (relating to limited liability companies).

(vii) Registered limited liability partnership which

is registered in the department pursuant to 15 Pa.C.S. Ch. 82 (relating to registered limited liability partnerships).

(viii) Business trust which is registered in the department pursuant to 15 Pa.C.S. Ch. 95 (relating to business trusts).]

* * *

§ 311. Registration.

* * *

(e) Duplicate use of names.--The fictitious name shall [not] be [the same as or confusingly similar to] **distinguishable upon the records of the department from :**

(1) The name of any domestic corporation, or any foreign corporation authorized to do business in this Commonwealth, or the name of any corporation or other association registered at any time under Chapter 5 (relating to corporate and other association names) unless such name is available or is made available for use under the provisions or procedures of 15 Pa.C.S. § 5303(b)(1)(i) or (ii) (relating to duplicate use of names) or the equivalent.

[(2) The name of any limited partnership organized under 15 Pa.C.S. Ch. 85 (relating to limited partnerships).]

(3) The name of any administrative department, board or commission or other agency of this Commonwealth.

(4) A name the exclusive right to which is at the time reserved by any other person whatsoever in the manner provided by statute.

* * *

[§ 321. Decennial filings required.

(a) General rule.--Every registrant of a fictitious name registered under this chapter shall decennially, during the year 2000 and each year thereafter divisible by ten, file in the department a report, which shall be executed in the same manner as an application for amendment of fictitious name registration, and shall set forth:

(1) The fictitious name as theretofore registered.

(2) An identification of the last preceding filing in the department with respect to the fictitious name.

(3) A statement that the business or activity set forth of record continues to be carried on, under or through the fictitious name or that the parties desire that the registration of the fictitious name be continued in effect.

(4) Such other information necessary to the administration of this chapter as the department may specify by regulation.

(b) Requirement satisfied by other filings.--Subsection (a) shall not apply to a registrant which during the preceding ten years has made any filing with the department under this chapter other than a report required by subsection (a).

(c) Effect of failure to make decennial filings.--On January 1 of the year following the year during which a report is required to be filed under subsection (a), every fictitious name with respect to which no such report has been filed during the immediately preceding year shall be deemed to be no longer registered under this chapter. Such registration may thereafter

be restored only by the filing under this chapter of an original application for registration of fictitious name.

(d) Cross reference.--See 15 Pa.C.S. § 134 (relating to docketing statement).]

§ 501. Register established.

(a) General rule.--A register is established by this chapter which shall consist of such of the following names as are not deleted therefrom by operation of section 504 (relating to effect of failure to make [decennial] filings) or 506 (relating to voluntary termination of registration by corporations and other associations):

(1) A name registered prior to February 13, 1973 , under the act of May 16, 1923 (P.L.246, No.160), relating to registration of certain names.

(2) A name registered under section 502 (relating to certain additions to register).

(3) In the case of a domestic or qualified foreign corporation, a name rendered unavailable for corporate use by other corporations by reason of any filing in the department by such domestic or qualified foreign corporation.

(4) A name registered under 15 Pa.C.S. § 4131 (relating to registration of name) or any similar provision of law.

(5) In the case of a business trust which exists subject to 15 Pa.C.S. Ch. 95 (relating to business trusts), the name of the trust as set forth in the instrument filed in the department under 15 Pa.C.S. § 9503 (relating to documentation of trust).

(6) In the case of a limited partnership or limited liability company subject to 15 Pa.C.S. Ch. 85 (relating to limited partnerships) or 89 (relating to limited liability companies), the name of the partnership or company as set forth in the certificate of limited partnership, certificate of organization or application for registration as a foreign limited partnership or foreign limited liability company, as the case may be.

(7) In the case of a business trust which exists subject to 15 Pa.C.S. Ch. 95 (relating to business trusts), the name of the trust as set forth in the instrument filed in the department under 15 Pa.C.S. § 9503 (relating to documentation of trust), or in the application for registration filed pursuant to 15 Pa.C.S. § 9507 (relating to foreign business trusts).

(8) In the case of a registered limited liability partnership subject to 15 Pa.C.S. Ch. 82 (relating to registered limited liability partnerships) that is not also a limited partnership, the name of the partnership as set forth in the statement of registration or application for registration as a foreign registered limited liability partnership.

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§ 502. Certain additions to register.

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(c) Limitation on names which may be registered.--
Notwithstanding subsections (a) and (b), no new name shall be registered or deemed to be registered under this section which

is **not distinguishable upon the records of** the [same as or confusingly similar to] **department from** any other name then registered or deemed to be registered under this chapter, without the consent of the senior registrant.

* * *

§ 503. Decennial filings required.

(a) General rule.--[Every] **Except as otherwise provided in this section, every** corporation or other association whose name is registered under this chapter shall [decennially], during the year [2000] **2001** and [each] **every tenth** year thereafter [divisible by ten], file in the department a report, which shall be executed by the corporation or other association, and shall set forth:

- (1) The name of the corporation or other association.
- (2) The address, including street and number, if any, of its registered or other office.
- (3) A statement that the corporation or other association continues to exist.
- (4) Such other information necessary to the administration of this chapter as the department may specify by regulation.

(b) Exceptions.--Subsection (a) shall not apply to **any of the following :**

- (1) [a] **A** corporation or other association which during the preceding ten years has made any filing in the department, [a permanent record of which is retained by the department,] other than :
 - (i) a report required by subsection (a); or
 - (ii) **a filing required by:**
 - (A) 15 Pa.C.S. § 1305 (relating to reservation of corporate name);
 - (B) 15 Pa.C.S. § 5305 (relating to reservation of corporate name);
 - (C) 15 Pa.C.S. § 8203(b) (relating to name);
 - (D) 15 Pa.C.S. § 8505(b) (relating to name); or
 - (E) 15 Pa.C.S. § 8905(b) (relating to name).

(2) [a] **A** corporation whose name is registered pursuant to section 501(a)(4) (relating to register established).

(3) **A corporation which has had officer information forwarded to the department by the Department of Revenue during the preceding ten years under 15 Pa.C.S. § 1110 (relating to annual report information).**

(b.1) **Exemption.--An entity which made a filing after December 31, 1989, and before January 1, 1991, pursuant to a provision of this title or 15 Pa.C.S. (relating to corporations and unincorporated associations) shall be exempt from the 2001 decennial filing. For purposes of this subsection, none of the following shall be considered a filing:**

- (1) **A filing under:**
 - (i) 15 Pa.C.S. § 1305;
 - (ii) 15 Pa.C.S. § 5305;
 - (iii) 15 Pa.C.S. § 8203(b);
 - (iv) 15 Pa.C.S. § 8505(b); or
 - (v) 15 Pa.C.S. § 8905(b).
- (2) **A name registration under section 501(a)(4).**

(3) Forwarding of information to the department by the Department of Revenue under 15 Pa.C.S. § 1110.

(c) Cross reference.--See 15 Pa.C.S. § 134 (relating to docketing statement).

§ 504. Effect of failure to make [decennial] filings.

On January 1 of the year following the year during which a report is required to be filed under section 503 (relating to decennial filings required), the name of every corporation and association which has failed to comply with such section shall no longer be deemed to be registered under this chapter.

§ 702. Change by order of court.

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(b) Procedure.--Prior to entry of an order of approval of change of name, all of the following shall apply:

* * *

(5) The procedure in this subsection shall not apply to proceedings involving:

(i) An election to resume a prior surname pursuant to section 704 (relating to divorced person may resume prior name).

(ii) Name changes involving minor children in adoption proceedings pursuant to 23 Pa.C.S. § 2904 (relating to name of adoptee).

(iii) A name change involving a minor child whose name is being changed pursuant to section 703 (relating to effect on children).

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§ 1314. Decennial filings required.

(a) General rule.--Every registrant of any insignia registered under this chapter shall [decennially], during the year [2000] **2001** and [each] **every tenth** year thereafter [divisible by ten], file in the department a report, which shall set forth:

(1) The name of the organization and its address, including street and number, if any.

(2) An identification of the last preceding filing in the department with respect to the insignia.

(3) A statement that the insignia shall continue to be registered in the department.

(4) Such other information necessary to the administration of this chapter as the department may specify by regulation.

(b) Requirement satisfied by other filings.--Subsection (a) shall not apply to a registrant which during the preceding ten years has made any filing with the department under this chapter other than a report required by subsection (a).

(c) Effect of failure to make [decennial] filings.--On January 1 of the year following the year during which a report is required to be filed under subsection (a), every insignia theretofore registered under this chapter with respect to which no such report has been filed during the immediately preceding year shall cease to be registered under this chapter. Such registration may thereafter be restored only by the filing under this chapter of an original application for registration of the insignia.

(d) Cross reference.--See 15 Pa.C.S. § 134 (relating to docketing statement).

§ 1515. Decennial filings required.

(a) General rule.--Every registrant of a mark registered under this chapter shall [decennially], during the year [2000] **2001** and [each] **every tenth** year thereafter [divisible by ten], file in the department a report, which shall set forth:

(1) The name and address, including street and number, if any, of the registrant.

(2) An identification of the last preceding filing in the department with respect to the mark.

(3) A statement that the mark continues to be used in connection with the articles or supplies specified in the registration.

(4) Such other information necessary to the administration of this chapter as the department may specify by regulation.

(b) Requirement satisfied by other filings.--Subsection (a) shall not apply to a registrant which during the preceding ten years has made any filing with the department under this chapter other than a report required by subsection (a).

(c) Effect of failure to make [decennial] filings.--On January 1 of the year following the year during which a report is required to be filed under subsection (a), every mark theretofore registered under this chapter with respect to which no such report has been filed during the immediately preceding year shall cease to be registered under this chapter. Such registration may thereafter be restored only by the filing under this chapter of an original application for registration of the mark.

(d) Cross reference.--See 15 Pa.C.S. § 134 (relating to docketing statement).

Section 5. This act shall take effect as follows:

(1) The amendment of 15 Pa.C.S. §§ 135(e), 1303(b)(1)(i)(A) and (D) and (ii) and 1304(b) and 54 Pa.C.S. §§ 302, 303(b)(2)(iii), (v), (vi), (vii) and (viii), 311(e), 502(c) and 702(b)(5) shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 22nd day of June, A. D. 2000.

THOMAS J. RIDGE