

CHAPTER 188
SB 223-FN – FINAL VERSION

2015 SESSION

15-0934
03/06

SENATE BILL ***223-FN***

AN ACT relative to name availability for business organizations.

SPONSORS: Sen. Woodburn, Dist 1; Sen. Sanborn, Dist 9; Sen. Daniels, Dist 11; Rep. Gagnon,
Sull 5; Rep. Cilley, Straf 4

COMMITTEE: Commerce

ANALYSIS

This bill modifies the name availability standard for business organizations.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through.~~]
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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SB 223-FN – FINAL VERSION

15-0934
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT relative to name availability for business organizations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 188:1 Name. Amend the introductory paragraph of RSA 292:3, II to read as follows:

2 II. Except as authorized by paragraphs III and IV, a corporation name, based upon the
3 records of the secretary of state, shall be distinguishable from, and not the same as~~[,] or likely to be~~
4 ~~confused with or mistaken for~~].

5 188:2 Name. Amend RSA 292:3, III to read as follows:

6 III. A corporation may apply to the secretary of state for authorization to use a name that is
7 not distinguishable from, or is the same as, ~~[or likely to be confused with or mistaken for]~~ one or
8 more of the names described in paragraph II, as determined from review of the records of the
9 secretary of state. The secretary of state shall authorize use of the name applied for if:

10 (a) The holder or holders of the name as described in paragraph II gives written consent
11 to use the name that is not distinguishable from ~~[or likely to be confused with or mistaken for]~~ the
12 name of the applying corporation; or if the name is the same, one or more words are added to the
13 name to make the new name distinguishable from the other name; or

14 (b) The other entity consents to the use in writing and submits an undertaking in a form
15 satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not
16 the same as, ~~[or likely to be confused with or mistaken for]~~ the name of the applying corporation; or

17 (c) The applicant delivers to the secretary of state a certified copy of the final judgment
18 of a court of competent jurisdiction establishing the applicant's right to use the name applied for in
19 this state.

20 188:3 Corporate Name. Amend the introductory paragraph of RSA 293-A:4.01(b) to read as
21 follows:

22 (b) Except as authorized by subsections (c) and (d), a corporate name, based upon the
23 records of the secretary of state, shall be distinguishable from, and not the same as~~[,] or likely to be~~
24 ~~confused with or mistaken for~~].

25 188:4 Corporate Name. Amend the introductory paragraph of RSA 293-A:4.01(c) and RSA 293-
26 A:4.01(c)(1) to read as follows:

27 (c) A corporation may apply to the secretary of state for authorization to use a name that
28 is not distinguishable from, or is the same as, ~~[or not likely to be confused with or mistaken for]~~ one
29 or more of the names described in subsection (b) of this section, as determined from a review of the
30 records of the secretary of state.

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1 (1) the holder or holders of the name as described in subsection (b) gives written
2 consent to use the name that is not distinguishable from [~~or likely to be confused with or mistaken~~
3 ~~for~~] the name of the applying corporation; or if the name is the same, one or more words are added to
4 the name to make the new name distinguishable from the other name;

5 188:5 Use of Names. Amend the introductory paragraph of RSA 293-B:17, I(b) to read as
6 follows:

7 (b) Except as authorized by subparagraphs (c) and (d), a New Hampshire investment
8 trust name, based upon the records of the secretary of state, shall be distinguishable from, and not
9 the same as [~~or likely to be confused with or mistaken for~~]:

10 188:6 Use of Names. Amend RSA 293-B:17, I(c) to read as follows:

11 (c) A New Hampshire investment trust may apply to the secretary of state for
12 authorization to use a name that is not distinguishable from, or is the same as, [~~or likely to be~~
13 ~~confused with or mistaken for~~] one or more of the names described in subparagraph (b), as
14 determined from review of the records of the secretary of state. The secretary of state shall authorize
15 use of the name applied for if:

16 (1) The holder or holders of the name as described in subparagraph (b) gives written
17 consent to use the name that is not distinguishable from [~~or likely to be confused with or mistaken~~
18 ~~for~~] the name of the applying corporation; or if the name is the same, one or more words are added to
19 the name to make the new name distinguishable from the other name; or

20 (2) The other entity consents to the use in writing and submits an undertaking in a
21 form satisfactory to the secretary of state to change its name to a name that is distinguishable from,
22 and not the same as, [~~or likely to be confused with or mistaken for~~] the name of the applying
23 corporation; or

24 (3) The applicant delivers to the secretary of state a certified copy of the final
25 judgment of a court of competent jurisdiction establishing the applicant's right to use the name
26 applied for in this state.

27 188:7 Corporate Name. Amend the introductory paragraph of RSA 294-A:7, III(a) to read as
28 follows:

29 III.(a) Except as authorized by subparagraph (b), a professional corporation name, based
30 upon the records of the secretary of state, shall be distinguishable from, and not the same as [~~or~~
31 ~~likely to be confused with or mistaken for~~]:

32 188:8 Corporate Name. Amend RSA 294-A:7, III(b)(2) to read as follows:

33 (2) The applicant files with the secretary of state an application for authorization to
34 use a name that is not distinguishable from, or is the same as, [~~or likely to be confused with or~~
35 ~~mistaken for~~] one or more of the names described in subparagraph (a), as determined from review of
36 the records of the secretary of state. The secretary of state shall authorize use of the name applied

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1 for if:

2 (A) The holder or holders of the name as described in subparagraph (a) gives
3 written consent to use the name that is not distinguishable from [~~or likely to be confused with or~~
4 ~~mistaken for~~] the name of the applying corporation; or if the name is the same, one or more words
5 are added to the name to make the new name distinguishable from the other name; or

6 (B) The other entity consents to the use in writing and submits an undertaking
7 in a form satisfactory to the secretary of state to change its name to a name that is distinguishable
8 from, and not the same as, [~~or likely to be confused with or mistaken for~~] the name of the applying
9 corporation; or

10 (C) The applicant delivers to the secretary of state a certified copy of the final
11 judgment of a court of competent jurisdiction establishing the applicant's right to use the name
12 applied for in this state.

13 188:9 Use of Name. Amend the introductory paragraph of RSA 301:43-a, II to read as follows:

14 II. Except as authorized by paragraphs III and IV, a cooperative name, based upon the
15 records of the secretary of state, shall be distinguishable from, and not the same as[,~~or likely to be~~
16 ~~confused with or mistaken for~~]:

17 188:10 Use of Name. Amend RSA 301:43-a, III to read as follows:

18 III. A cooperative may apply to the secretary of state for authorization to use a name that is
19 not distinguishable from, or is the same as, [~~or likely to be confused with or mistaken for~~] one or
20 more of the names described in paragraph II, as determined from review of the records of the
21 secretary of state. The secretary of state shall authorize use of the name applied for if:

22 (a) The holder or holders of the name as described in paragraph II gives written consent
23 to use the name that is not distinguishable from [~~or likely to be confused with or mistaken for~~] the
24 name of the applying cooperative; or if the name is the same, one or more words are added to the
25 name to make the new name distinguishable from the other name; or

26 (b) The other entity consents to the use in writing and submits an undertaking in a form
27 satisfactory to the secretary of state to change its name to a name that is distinguishable from, and
28 not the same as, [~~or likely to be confused with or mistaken for~~] the name of the applying cooperative;
29 or

30 (c) The applicant delivers to the secretary of state a certified copy of the final judgment
31 of a court of competent jurisdiction establishing the applicant's right to use the name applied for in
32 this state.

33 188:11 Name. Amend the introductory paragraph of RSA 304-A:45, II to read as follows:

34 II. Except as authorized by paragraphs III and IV, a registered limited liability partnership
35 name, based upon the records of the secretary of state, shall be distinguishable from, and not the
36 same as[,~~or likely to be confused with or mistaken for~~]:

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1 188:12 Name. Amend RSA 304-A:45, III to read as follows:

2 III. A registered limited liability partnership may apply to the secretary of state for
3 authorization to use a name that is not distinguishable from, or is the same as, [~~or likely to be~~
4 ~~confused with or mistaken for~~] one or more of the names described in paragraph II, as determined
5 from review of the records of the secretary of state. The secretary of state shall authorize use of the
6 name applied for if:

7 (a) The holder or holders of the name as described in paragraph II gives written consent
8 to use the name that is not distinguishable from [~~or likely to be confused with or mistaken for~~] the
9 name of the applying registered limited liability partnership; or if the name is the same, one or more
10 words are added to the name to make the new name distinguishable from the other name; or

11 (b) The other entity consents to the use in writing and submits an undertaking in a form
12 satisfactory to the secretary of state to change its name to a name that is distinguishable from, and
13 not the same as, [~~or likely to be confused with or mistaken for~~] the name of the applying registered
14 limited liability partnership; or

15 (c) The applicant delivers to the secretary of state a certified copy of the final judgment of a
16 court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

17 188:13 Name. Amend the introductory paragraph of RSA 304-B:2, III to read as follows:

18 III. Except as authorized by paragraphs IV and V, a limited partnership name, based upon
19 the records of the secretary of state, shall be distinguishable from, and not the same as [~~or likely to~~
20 ~~be confused with or mistaken for~~]:

21 188:14 Name. Amend RSA 304-B:2, IV to read as follows:

22 IV. A limited partnership may apply to the secretary of state for authorization to use a name
23 that is not distinguishable from, or is the same as, [~~or likely to be confused with or mistaken for~~] one
24 or more of the names described in paragraph III, as determined from review of the records of the
25 secretary of state. The secretary of state shall authorize use of the name applied for if:

26 (a) The holder or holders of the name as described in paragraph III gives written consent
27 to use the name that is not distinguishable from [~~or likely to be confused with or mistaken for~~] the
28 name of the applying limited partnership; or if the name is the same, one or more words are added to
29 the name to make the new name distinguishable from the other name; or

30 (b) The other entity consents to the use in writing and submits an undertaking in a form
31 satisfactory to the secretary of state to change its name to a name that is distinguishable from, and not the
32 same as, [~~or likely to be confused with or mistaken for~~] the name of the applying limited partnership; or

33 (c) The applicant delivers to the secretary of state a certified copy of the final judgment of a
34 court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

35 188:15 Name. Amend the introductory paragraph of RSA 304-C:32, III to read as follows:

36 III. Except as authorized by paragraph IV, V, or VI, a limited liability company name, based

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1 upon the records of the secretary of state, shall be distinguishable from, and not the same as~~[-or not~~
2 ~~likely to be confused with or mistaken for]~~:

3 188:16 Name. Amend RSA 304-C:32, IV-V to read as follows:

4 IV. A limited liability company may apply to the secretary of state for authorization to use a
5 name that is not distinguishable from, or is the same as, ~~[or is likely to be confused with or mistaken~~
6 ~~for]~~ one or more of the names described in paragraph III as determined from review of the records of
7 the secretary of state.

8 V. The secretary of state shall authorize use of the name applied for if:

9 (a) The holder or holders of the name as described in paragraph III gives written consent
10 to use the name that is not distinguishable from~~[-or likely to be confused with or mistaken for]~~ the
11 name of the applying limited liability company; or if the name is the same, one or more words are
12 added to the name to make the new name distinguishable from the other name; or

13 (b) The other entity consents to the use in writing and submits an undertaking in a form
14 satisfactory to the secretary of state to change its name to a name that is distinguishable from, and
15 not the same as, ~~[or likely to be confused with or mistaken for]~~ the name of the applying limited
16 liability company; or

17 (c) The applicant delivers to the secretary of state a certified copy of the final judgment
18 of a court of competent jurisdiction establishing the applicant's right to use the name applied for in
19 this state.

20 188:17 Names. Amend the introductory paragraph of RSA 304-C:177, I(e) to read as follows:

21 (e) Except as authorized by subparagraphs I(f) and (g), a foreign limited liability
22 company name or a fictitious name used by a foreign limited liability company, based upon the
23 records of the secretary of state, shall be distinguishable from, and not the same as~~[-or likely to be~~
24 ~~confused with or mistaken for]~~:

25 188:18 Names. Amend RSA 304-C:177, I(f) to read as follows:

26 (f) A foreign limited liability company may apply to the secretary of state for
27 authorization to use a name that is not distinguishable from, or is the same as, ~~[or likely to be~~
28 ~~confused with or mistaken for]~~ one or more of the names described in subparagraph I(e), as
29 determined from review of the records of the secretary of state. The secretary of state shall authorize
30 use of the name applied for if:

31 (1) ~~[The entity with the name as described in subparagraph I(e) gives written~~
32 ~~consent to the applicant to use the name that is likely to be confused with or mistaken for its name;~~
33 ~~or~~

34 (2) The entity with the name as described in subparagraph I(e) gives written
35 consent to the applicant to use the name that is not distinguishable from or is the same as its name
36 and submits an undertaking in form satisfactory to the secretary of state to change its name to a

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1 name that is distinguishable from, and not the same as, the name of the applicant; or

2 ~~[(3)]~~ **(2)** The applicant delivers to the secretary of state a certified copy of the final
3 judgment of a court of competent jurisdiction establishing the applicant's right to use the name
4 applied for in this state.

5 188:19 Name. Amend the introductory paragraph of RSA 305-A:2-e, I to read as follows:

6 I. Except as authorized by paragraphs II and III, a foreign partnership name, based upon
7 the records of the secretary of state, shall be distinguishable from, and not the same as ~~[or likely to~~
8 ~~be confused with or mistaken for]~~:

9 188:20 Name. Amend RSA 305-A:2-e, II to read as follows:

10 II. A foreign partnership may apply to the secretary of state for authorization to use a name
11 that is not distinguishable from, or is the same as, ~~[or likely to be confused with or mistaken for]~~ one
12 or more of the names described in paragraph I, as determined from review of the records of the
13 secretary of state. The secretary of state shall authorize use of the name applied for if:

14 (a) The holder or holders of the name as described in paragraph I gives written consent
15 to use the name that is not distinguishable from ~~[or likely to be confused with or mistaken for]~~ the
16 name of the applying foreign partnership; or if the name is the same, one or more words are added to
17 the name to make the new name distinguishable from the other name; or

18 (b) The other entity consents to the use in writing and submits an undertaking in a form
19 satisfactory to the secretary of state to change its name to a name that is distinguishable from, and
20 not the same as, ~~[or likely to be confused with or mistaken for]~~ the name of the applying foreign
21 partnership; or

22 (c) The applicant delivers to the secretary of state a certified copy of the final judgment
23 of a court of competent jurisdiction establishing the applicant's right to use the name applied for in
24 this state.

25 188:21 Trade Name. Amend the introductory paragraph of RSA 349:1, IV(a) to read as follows:

26 IV.(a) Except as authorized by subparagraphs (b) and (c), a trade name, based upon the
27 records of the secretary of state, shall be distinguishable from, and not the same as ~~[or likely to be~~
28 ~~confused with or mistaken for]~~:

29 188:22 Trade Name. Amend RSA 349:1, IV(b) to read as follows:

30 (b) An applicant may apply to the secretary of state for authorization to use a name that
31 is not distinguishable from, or is the same as, ~~[or likely to be confused with or mistaken for]~~ one or
32 more of the names described in subparagraph (a), as determined from review of the records of the
33 secretary of state. The secretary of state shall authorize use of the name applied for if:

34 (1) The holder or holders of the name as described in subparagraph (a) gives written
35 consent to use the name that is not distinguishable from ~~[or likely to be confused with or mistaken~~
36 ~~for]~~ the name of the applying trade name; or if the name is the same, one or more words are added to

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1 the name to make the new name distinguishable from the other name; or

2 (2) The other entity consents to the use in writing and submits an undertaking in a
3 form satisfactory to the secretary of state to change its name to a name that is distinguishable from,
4 and not the same as, [~~or likely to be confused with or mistaken for~~] the name of the applying trade
5 name; or

6 (3) The applicant delivers to the secretary of state a certified copy of the final
7 judgment of a court of competent jurisdiction establishing the applicant's right to use the name
8 applied for in this state.

9 188:23 Effective Date. This act shall take effect January 1, 2016.

10

11 Approved: July 6, 2015

12 Effective Date: January 1, 2016