



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

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Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Secretary Of State TITLE-SERIES: 153-56

RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No

RULE NAME: Business Organization Name Distinguishability Rules

CITE STATUTORY AUTHORITY: W. Va. Code §29A-2-6(c).

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 09/16/2024 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

This rule section furnishes general guidelines used to determine whether a proposed name is acceptable as the name of a business entity in the records of the Secretary of State.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Circumstances requiring this rule is to provide guidance regarding the statutory requirement set forth in W. Va. Code 29A-2-6(C).

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

None

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

None

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

None

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2024 Increase/Decrease (use "-")	2025 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
<b>2. Estimated Total Revenues</b>			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

None

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**David Cook -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

**TITLE 153**  
**PROCEDURAL RULE**  
**SECRETARY OF STATE**

**SERIES 56**  
**BUSINESS ORGANIZATION NAME DISTINGUISHABILITY RULES**

**§153-56-1. General.**

1.1. Scope. -- This rule section furnishes general guidelines used to determine whether a proposed name is acceptable as the name of a business entity in the records of the Secretary of State.

1.2. Authority. -- W. Va. Code §29A-2-6(c).

1.3. Filing Date. --

1.4. Effective Date. --

**§153-56-2. Definitions.**

2.1. "Business identifier" or "name ending" means one or more letters or words denoting a business entity as permitted by law. The following list includes examples of business entity identifiers: Corporation, Corp., Inc., Company, Co., Limited Liability Company, LLC, Professional Corporation, PC, Professional Limited Liability Corporation, PLLC.

2.2. "Distinguishable" means, in relation to the name of a business, a difference between names which would allow a person to recognize or perceive the name of the business as being noticeably different.

2.3. "Business Entity" means any type of business organization including, but not limited to, domestic corporation, limited liability company, limited partnership, limited liability partnership, foreign corporation, and professional limited liability company.

2.4. "Key Word" means a word or proper noun other than an article of speech, preposition, conjunction, or a business identifier or name ending.

2.5. "Noticeably different" means different in a way that is easy to see or recognize. This includes (1) at least a one-word difference between names when the words are common terms and the company is or might appear to be in a similar business, and (2) at least a word order difference between names when the different word is a proper name or an unusual term, or when the company is clearly in a different type of business from the existing name.

2.6. "Symbol" means a mark or character used as a conventional representation of an object, function, or process, such as &, %, +, =, etc.

**§153-56-3. Distinguishable in the Records of the Secretary of State.**

3.1. In order to be approvable under the law, a proposed name of a business entity must be distinguishable on the records of the Secretary of State. In determining if a proposed name is distinguishable, the Secretary of State will utilize some or all of the following analyses on a case-by-case basis:

3.1.1. A key word is added that makes the name noticeably different.

E.g. "Dreams Corporation" and "Sweet Dreams Corporation" are distinguishable.

3.1.2. Words in a foreign language that are not translated into English, but must consist of letters in the Roman alphabet, Arabic numerals (0, 1, 2, 3, etc.), or symbols capable of being readily reproduced by the office of the Secretary of State.

E.g. "La Fleur" and "The Flower" are distinguishable.

"Casa Blanca Prod." and "White House Prod." are distinguishable.

"El Rodeo" and "The Rodeo" are distinguishable.

3.1.3. Distinction of service offered.

E.g. "A1 Plumbing" and "A1 Heating and Air" are distinguishable.

3.1.4. Words that are spelled differently or creatively are considered distinguishable.

E.g. "Crazy Cats Pet Shop" and "Krazy Katz Pet Shop" are distinguishable.

3.1.5. The name contains the use or different spellings of proper names.

E.g. "Jayne's Boutique" and "Jane's Boutique" are distinguishable.

"Roberta's Cookbook, Inc." and "Roberta Cook's Book, Inc." are distinguishable.

3.1.6. The key words have a marked difference in meaning in their contexts and the words are not literally identical.

E.g. "Capital Builders" and "Capitol Builders" are distinguishable.

3.1.7. Business names whose difference consists of key words with the same or similar meaning but are different words.

E.g. "Beautiful Flowers, Co." and "Gorgeous Florals, Co." are distinguishable.

3.1.8. Locality name to distinguish or specify a location of a business entity.

E.g. "The Apple Picking Company" and "The Mineral Wells Apple Picking Company" are distinguishable.

3.1.9. The key words or contractions of key words are derived from the same root word.

E.g. "Great Products" and "Great Productions" are distinguishable.

3.1.10. A proposed name might be distinguishable from an existing name when the difference between the proposed name and existing name is the addition or omission of a space or spaces so that the proposed name creates a new word or words that have different meanings.

E.g. "Got Ham LP" and "Gotham, LP" are distinguishable.

3.1.11. The expression of a number or numbers using letters instead of Arabic numerals is distinguishable.

E.g. "Roman Investments II" is distinguishable from "Roman Investments Too."

**§153-56-4. Not Distinguishable.**

4.1. A proposed name is not distinguishable from the name of any other existing entity or from a reserved name if the only difference between them is one or more of the following:

4.1.1. The use of the name or a derivative of a registered trademark that is still active within the records of the Secretary of State.

E.g. "WV Soda Co." where "WV Soda" is a registered trademark.

4.1.2. Distinction between upper and lower case letters, typeface, punctuation, hyphenation, or font.

E.g. "Doggy Day Spa LLC" and "DOGGY DAY SPA LLC" are not distinguishable.

"Reagan's Restaurant LP" and "Reagan's Restaurant! LP" are not distinguishable.

"Left Handed Scissors, Co." and "Left-Handed Scissors, Co." are not distinguishable.

4.1.3. Abbreviations and unabbreviated versions of the same words are not distinguishable.

E.g. "Jackson's Soccer Professionals, LLC" and "Jackson's Soccer Pros, LLC" are not distinguishable.

4.1.4. If the difference between the proposed name and existing name is a business identifier or name ending.

E.g. "L.S.S. Clothing, LLC" and "L.S.S. Clothing, Co." are not distinguishable.

4.1.5. The use of a different tense or plural of the same word does.

E.g. "Bake Cookies LP" and "Baked Cookies LP" are not distinguishable.

"Payton's Art Supply, LLC" and "Payton's Art Supplies, LLC." are not distinguishable.

4.1.6. Articles of speech (a, an, the, and, &), prepositions (of, for, by, with, on, to, etc.), contractions (can't vs cannot), pronouns (I, you, we, me, etc.).

E.g. "Lauryn and Ward LLC" and "Lauryn & Ward LLC" are not distinguishable.

"Mice and Men Co." and "Of Mice and Men Co." are not distinguishable.

4.1.7. The addition of one or more non-descriptive numbers.

E.g. "One Small Café LLC" and "1 Small Café LLC" are not distinguishable."

4.1.7.a. Notwithstanding the foregoing, the following cases using one or more non-descriptive numbers are approvable:

4.1.7.a.1. The name being requested is owned by the owner's current name on file. In this case, proof of affiliation may be requested by the Secretary of State for confirmation.

E.g. "Soul Food" and "Soul Food 2" are distinguishable if both are owned by the same owner(s).

4.1.7.a.2. Adding a street address.

E.g. "The Coffee Shop" and "The Coffee Shop on 123 Main St." are distinguishable.

4.1.7.a.3. Adding a distinguishing or narrowing word or phrase to an otherwise generic name.

E.g. "First Rite Ministries" and "Second Rite Ministries" would be acceptable.

E.g. "Cardinals Baseball, Inc." and "1967 World Champion Cardinals Baseball, Inc." would be acceptable.

4.1.8. Differences in the use of special characters: \* Asterisk, / backslash, [ left brace, ] right brace, ^ caret, @ at sign, ¢ cents sign, \$ dollar sign, = equal-to sign, > greater than, < less than, # number sign, % percentage sign, + plus sign, \_ underline, ~ tilde, etc.

E.g. "Cheese Pizza, LP" and "çhee\$e Pizza, LP" are not distinguishable.

4.1.9. Differences between the singular and plural forms of words.

E.g. "August's, LLC" and "Augusts, LLC" are not distinguishable.

4.1.10. Contractions.

E.g. "Cannot Stop, Inc." and "Can't Stop, Inc." are not distinguishable.

4.1.11. Names that are vulgar, contain profanity, or words or phrases that are generally considered a slur against an ethnic group, religion, gender, or heredity.

4.1.12. Names that are misleading to the public will not be considered distinguishable. A name may be misleading in the following circumstances:

4.1.12.a. If the proposed name creates a false implication of government affiliation or uses words that commonly denote governmental organization include, but are not limited to, "Agency," "Commission," "Department," "Bureau," "Division," "Municipal" or "Board" unless clearly not affiliated with a government agency.

E.g. "Secretary of State Filing Co." and "The Tax Department Billing Co." would not be approvable.

"Water Department Co." and "FBI Inc." would not be approvable.

"The Boot Department" and "Hair Care Agency" would be approvable.

4.1.13.b. Names that imply tax-exempt status in situations where the public could be misled.

E.g. "John's Charity Foundation, Inc." for a for-profit corporation

**§153-56-5. Additional Considerations for Determining Distinguishability.**

5.1. In these close cases, various tests may be employed on a case-by-case basis including but not limited to:

5.1.1. Business Type or Industry Test: whether the particular business type or industry makes a proposed name distinguishable. This takes into consideration certain factors such as the products or services of a business and whether the business has a physical location for customers in the state or it is only available through shipping or remote services.

5.1.2. Geography Test: the geographic location of the business entity compared with one in existence.

5.1.3. Phonetics Test: determination of whether the phonetics could be confusing or misleading to the public.