

## Initial Statement of Reasons

### Title 2. Administration Division 7. Secretary of State Chapter 8.5. Business Entity Names

Amending Sections 21000, 21001, 21001.2, 21001.3, 21002, 21003, 21004,  
21005, 21006

Repealing Sections 21004.5, 21005.5 and 21008  
Title 2 California Code of Regulations  
(Business Entity Names)

Hearing Date: No hearing date is scheduled. A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the contact person listed no later than 15 days prior to the close of the written comment period.

Written Public Comment Period: October 23, 2020, through December 7, 2020.

#### Specific Purpose of the Amendments

Statutory standards prohibit the Secretary of State from filing a corporate, limited liability company or limited partnership document with a proposed name or reserving a corporate, limited liability company or limited partnership name if the name is too similar to an existing or reserved corporate, limited liability company or limited partnership name respectively. Statutory standards also prohibit the Secretary of State from filing or reserving a corporate or limited liability company name if the name is misleading to the public. In 2014, the Secretary of State created regulations that interpreted and made more specific the statutory standards for corporation, limited liability company and limited partnership names.

In anticipation of the passing of Senate Bill 522 in the California Legislature's 2019 to 2020 session, the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, effective January 1, 2021, changes the statutory standards for corporate proposed names from the current "deceptively similar" and "substantially the same as" standards to a "distinguishable in the record" standard. Existing regulations already interpret and make specific a "distinguishable in the record" standard for limited liability companies and limited partnerships. The purpose of the proposed amendments is to reflect the statutory changes of the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law,

Uniform Limited Partnership Act of 2008 and apply the already defined “distinguishable on the record” standard to proposed corporate names.

Additionally, the amendments will reflect the statutory changes in Senate Bill 522 that make clear that the “likely to mislead the public” standard already set forth in existing statutes and regulations applies to limited partnerships.

The proposed changes will also clarify some existing ambiguities.

Specifically,

- 1) The changes to Subsection 21000(a) updates the references to reflect numbering changes to other sections of the Business Entity Name Regulations. The phrase “the same, deceptively similar to, substantially the same as” is being removed to reflect the new standard of distinguishable in the record.
- 2) Changes to Subsection 21000(b) removes the same phrase “the same, deceptively similar to, substantially the same as” to apply the statutory name standard of distinguishable in the record.
- 3) Changes to Subsection 21000(c) removes the phrases “the same as, deceptively similar to,” “or whether a proposed name will require consent from an existing business entity of record for use of a proposed name,” to reflect the new standard of distinguishable in the record.
- 4) Subsection 21001(b) is deleted as the term “Deceptively similar” is no longer part of the statutory standard and does not need to be defined.
- 5) Subsection 21001(c) is renumbered to Subsection 21001(b) as the existing 21001(b) is being deleted.
- 6) Subsection 21001(d) is renumbered to Subsection 21001(c) as the existing 21001(c) is being renumbered.
- 7) Subsection 21001(e) is renumbered to Subsection 21001(d) as the existing 21001(d) is being renumbered.
- 8) Subsection 21001(f) is renumbered to Subsection 21001(e) as the existing 21001(e) is being renumbered.
- 9) Subsection 21001(f) is added to define and clarify the term “punctuation.”
- 10) Subsection 21001(g) is added to define and clarify the term “symbol.”
- 11) Existing Subsection 21001(g) is renumbered to Subsection 21001(h) with the addition of Subsection 21001(f) and Subsection 21001(g).

12) Subsection 21001.1(b) is being deleted to apply the statutory name standard (“distinguishable in the records of the Secretary of State”) as “the same as or deceptively similar to” and “substantially similar to” is no longer part of the statutory standard.

13) Subsection 21001.1(c) is renumbered to Subsection 21001.1(b) as the existing Subsection 21001.1(b) is being deleted.

14) Subsection 21001.3(b) is added to reflect the current standard “likely to mislead the public” applies to Limited Partnership names.

15) Section 21002 is being renamed to delete the statutory standard of “Same or Deceptively Similar Names” and to name it “Punctuation & Symbols” to retain the punctuation and symbol examples and reflect the change in statutory standards.

16) Section 21002, first paragraph is being deleted as it is no longer the applicable standard.

17) Subsection 21002(a) is being deleted as it is no longer the applicable statutory standard.

18) Subsection 21002(b) is being deleted as it is no longer the applicable statutory standard.

19) Subsection 21002(c) is being deleted as it is no longer the applicable statutory standard.

20) Subsection 21002(d) is being deleted as it is no longer the applicable statutory standard.

21) Subsection 21002(e) is being deleted as it is no longer the applicable statutory standard.

22) Subsection 21002(f), first sentence is being deleted to list the following examples of punctuation and symbols.

23) Subsection 21002(f)(1) is renumbered to Subsection 21002(a).

24) Subsection 21002(f)(2) is renumbered to Subsection 21002(b).

25) Subsection 21002(f)(2) examples are deleted to remove the deceptively similar standard examples as it is no longer the applicable statutory standard.

26) Subsection 21002(f)(3) is being deleted to remove the deceptively similar standard as it is no longer the applicable statutory standard.

- 27) Subsection 21002(g) is being deleted to remove the deceptively similar standard as it is no longer the applicable statutory standard.
- 28) Subsection 21002(h) is being deleted to remove all examples of the deceptively similar standard as it is no longer the applicable statutory standard.
- 29) Section 21003 is being deleted in its entirety to remove the “Substantially Similar” standard as it is no longer the applicable statutory standard.
- 30) Section 21004 is being deleted in its entirety as the consent requirements were applicable to the statutory standards “Substantially Similar” or “Substantially the Same” which were deleted from statute.
- 31) Section 21004.5 is being deleted in its entirety as the “Deceptively Similar and Substantially the Same As” standard is no longer the applicable statutory standard.
- 32) Section 21005 is being renumbered to Section 21003 as the existing Section 21003 contents are being deleted in its entirety.
- 33) Section 21005.5 is being renumbered to Section 21004 as the existing Section 21004 contents are being deleted in its entirety.
- 34) Existing Subsection 21005.5(b)(3) which will be renumbered to Subsection 21004(b)(3), is being amended to reflect the change in reference to the subsection regarding the definitions to punctuations and symbols.
- 35) Existing Subsection 21005.5(b)(3) which will be renumbered to Subsection 21004(b)(3), examples are being amended to reflect corporate names consistent in the change of the statutory standard to “distinguishable in the record” regarding corporate names.
- 36) Existing Subsection 21005.5(b) which will be renumbered to Subsection 21004(b), will add Subsection 21004(b)(4) to distinguish the symbol of ampersand with the word “and” to clarify any ambiguity.
- 37) Existing Subsection 21005.5(b)(4) is being renumbered to Subsection 21004(b)(5) to reflect the addition of the Subsection 21004(b)(4).
- 38) Existing Section 21006 is being renumbered to Section 21005 as the existing Section 21005 is being renumbered to Section 21003. The name of the section adds “Court Judgments.” Subsection 21004.5 is being deleted and 21004.5(b) regarding court judgments is being retained and moved to the new Section 21005.

39) Existing Subsection 21006(a) which is being renumbered to Subsection 21005(a), is being amended to delete the references to the “substantially the same as” standard as it is no longer the applicable standard.

40) Existing Subsection 21006 which is being renumbered to Section 21005, is adding Subsection 21005(c) regarding court judgments that were originally in Subsection 21004.5(b) as it is being retained.

41) Existing Section 21008 is being renumbered to Section 21006 as existing Section 21006 is being renumbered to Section 21005.

42) Existing Section 21008, first paragraph, which is being renumbered to Section 21006, is being amended to remove the references to “same as, deceptively similar to or substantially the same as” standard which has been amended out of statute.

#### Necessity for the Amendments

The changes to the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act which becomes operative on January 1, 2020 in anticipation of the passing of Senate Bill 522, will change the “deceptively similar” and “substantially the same as” standards for corporate proposed names to a “distinguishable in the records” of the Secretary of State standard. Additionally, Senate Bill 522 will amend current limited partnership law to make clear that the “likely to mislead the public” standard also applies to limited partnerships. Existing regulations must be amended to comply with the statutory changes effective January 1, 2021.

#### Specifically,

1) The regulation reference updates in Subsection 21000(a) are needed to reflect the numbering and organizational changes being made in the proposed regulations and the change in standard to match the statutory requirements of “distinguishable in the records” of the Secretary of State.

2) Removing the “the same, deceptively similar to, substantially the same as” in Subsection 21000(b) to apply the statutory name standard of distinguishable in the record is necessary to reduce the number of documents returned by the Secretary of State to reflect the change in standard to “distinguishable in the record.”

3) Removing the phrases “the same as, deceptively similar to,” “or whether a proposed name will require consent from an existing business entity of record for

use of a proposed name” in Subsection 21000(c) is necessary to reflect the change in standard to “distinguishable in the record.”

4) Deleting Subsection 21001(b) removes the definition of the term “Deceptively similar” as it is no longer part of the standard and no longer needs to be defined. It is necessary to reflect the change in standard to “distinguishable in the record.”

5) Renumbering existing Subsection 21001(c) is necessary for organization and clarity because Subsection 21001(b) is being deleted.

6) Renumbering existing Subsection 21001(d) is necessary for organization and clarity because Subsection 21001(c) is being renumbered.

7) Renumbering existing Subsection 21001(e) is necessary for organization and clarity because Subsection 21001(d) is being renumbered.

8) Renumbering existing Subsection 21001(f) is necessary for organization and clarity because Subsection 21001(e) is being renumbered.

9) Adding Subsection 21001(f) to define the term “punctuation” is necessary for clarity and reference.

10) Adding Subsection 21001(g) to define the term “symbol” is necessary for clarity and reference.

11) Renumbering existing Subsection 21001(g) is necessary for organization and clarity because of the addition of Subsection 21001(f) and Subsection 21001(g).

12) Subsection 21001.1(b) is being removed to apply the statutory name standard (“distinguishable in the records of the Secretary of State”) and “the same as or deceptively similar to” and “substantially similar to” is no longer part of the standard and is necessary to reflect the change in standard to “distinguishable in the record.”

13) Renumbering existing Subsection 21001.1(c) is necessary for organization and clarity because Subsection 21001.1(b) is being deleted.

14) Adding Subsection 21001.3(b) to reflect the current standard “likely to mislead the public” to Limited Partnership names is necessary to delete the current exemption that would allow Limited Partnerships the use of noncomplying names if certain conditions are met.

15) Renaming Section 21002 to delete the standard of “Same or Deceptively Similar Names” and to name it “Punctuation \* & Symbols” is necessary to reflect the statutory standard and retain the punctuation and symbol examples for clarity and reference.

- 16) Section 21002, first paragraph is being deleted as it is no longer the applicable standard is necessary to reflect the change in standard to “distinguishable in the record.”
- 17) Subsection 21002(a) is being deleted as it is no longer the applicable standard and is necessary to reflect the change in standard to “distinguishable in the record.”
- 18) Subsection 21002(b) is being deleted as it is no longer the applicable standard and is necessary to reflect the change in standard to “distinguishable in the record.”
- 19) Subsection 21002(c) is being deleted as it is no longer the applicable standard and is necessary to reflect the change in standard to “distinguishable in the record.”
- 20) Subsection 21002(d) is being deleted as it is no longer the applicable standard and is necessary to reflect the change in standard to “distinguishable in the record.”
- 21) Subsection 21002(e) is being deleted as it is no longer the applicable standard and is necessary to reflect the change in standard to “distinguishable in the record.”
- 22) Subsection 21002(f), first sentence is being deleted to simply list the following examples of punctuation and symbols. Changing Subsection 21002(f) to simply reflect examples of punctuation and symbols will allow the public to determine which are acceptable in proposed names.
- 23) Renumbering existing Subsection 21002(f)(1) to Subsection 21002(a) is necessary for organization and clarity because Subsection 21002(f) is being deleted.
- 24) Renumbering existing Subsection 21002(f)(2) to Subsection 21002(b) is necessary for organization and clarity because Subsection 21002(f) is being deleted.
- 25) Deleting the examples in Subsection 21002(f)(2) is necessary to remove the deceptively similar standard which is no longer to be used.
- 26) Deleting the examples in Subsection 21002(f)(3) is necessary to remove the deceptively similar standard which is no longer to be used.
- 27) Deleting the examples in Subsection 21002(g) is necessary to remove the deceptively similar standard which is no longer to be used.

28) Deleting all the examples in Subsection 21002(h) is necessary to remove the deceptively similar standard which is no longer to be used.

29) Deleting Section 21003 in its entirety is necessary to remove the “Substantially Similar” standard to reflect the change in standard to “distinguishable in the record.”

30) Deleting Section 21004 in its entirety is necessary to remove the “Substantially Similar” or “Substantially the Same” standard to reflect the change in standard to “distinguishable in the record.”

31) Deleting Section 21004.5 in its entirety is necessary to remove the “Substantially Similar” or “Substantially the Same” standard to reflect the change in standard to “distinguishable in the record.”

32) Renumbering existing Section 21005 to Section 21003 is necessary for organization and clarity because current Section 21003 is being deleted.

33) Renumbering existing Section 21005.5 to Section 21004 is necessary for organization and clarity because current Section 21004 is being deleted.

34) The changes to existing Subsection 21005.5(b)(3) which will be renumbered to 21004(b)(3), is being amended to reflect the change in reference to the subsection regarding punctuations and is necessary for organization and clarity.

35) The amendments to the examples in existing Subsection 21005.5(b)(3) which will be renumbered to 21004(b)(3), is necessary to reflect examples of corporate names consistent in the change of the statutory standard to “distinguishable in the record” regarding corporate names.

36) The addition of Subsection 21004(b)(4) to existing Subsection 21005.5(b) which will be renumbered to 21004(b), to define the distinguish the symbol of ampersand with the word “and” is necessary to clarify any ambiguity.

37) Renumbering existing Subsection 21005.5(4) to 21004(b)(5) is necessary to reflect the addition of the subsection 21004(b)(4) for organization and clarity.

38) Renumbering existing Section 21006 to Section 21005 is necessary for organization and clarity because the existing Section 21005 is being renumbered to Section 21003 and the name is reflected to add “Court Judgments” where the old Subsection 21004.5(b) regarding court judgments is being retained.

39) The changes to existing Subsection 21006(a) which is being renumbered to 21005(a) is necessary to delete the references to the “substantially the same as”



standard to reflect corporate names consistent in the change of the statutory standard to “distinguishable in the record” regarding corporate names.

40) The addition to existing Subsection 21006 which is being renumbered to 21005, adding Subsection 21005(c) regarding court judgments that were originally in 21004.5(b). Retaining the subsection regarding court judgments is necessary as this section was originally in Section 21004.5 is being deleted in its entirety.

41) Renumbering existing Section 21008 to Section 21006 is necessary for organization and clarity because existing Section 21006 is being renumbered to Section 21005.

42) Changes to existing Subsection 21008, first paragraph, which is being renumbered to Section 21006, is being amended to remove the references to “same as, deceptively similar to or substantially the same as” to reflect corporate names consistent in the change of the statutory standard to “distinguishable in the record” regarding corporate names.

#### Technical, Theoretical, and/or Empirical Study, Reports, or Documents Relied Upon

The Secretary of State did not rely on any technical, theoretical or empirical studies or reports in proposing the amendment and adoption of these regulations.

However, the Economic Impact Analysis/Assessment (EIA) prepared pursuant to Government Code section 11346.3(b) is a document relied upon.

#### Business Impact

The Secretary of State is unaware of an adverse economic impact on businesses.

The changes to the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act effective January 1, 2021, changes the statutory standards for comparing proposed names of corporations to registered or reserved corporate names from the current “deceptively similar” and “substantially the same as” standards to a “distinguishable in the record” standard. Existing regulations already interpret

and make specific a “distinguishable in the record” standard for limited partnerships and limited liability companies. The purpose of the proposed amendments is to reflect the statutory changes of the California General Corporations Law, the Social Purpose Corporations Act, the Nonprofit Public Benefit Corporation Law, the Nonprofit Mutual Benefit Corporation Law, the Nonprofit Religious Corporation Law, the Cooperative Corporation Law, Uniform Limited Partnership Act of 2008, and the California Revised Uniform Limited Liability Company Act and apply the already defined “distinguishable in the record” standard to corporate proposed names. Amending the Business Entity Name regulations will help persons and businesses trying to determine the availability of business entity names prior to filing their documents with the Secretary of State.

#### Specific Technologies or Equipment

These regulations do not mandate the use of specific technologies or equipment.

#### Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific. The Secretary of State considered leaving the regulations as they are currently written. However, doing so would create confusion as the existing regulations would conflict with the new statutory requirements.