

Chapter 648

1983 REPLACEMENT PART

Assumed Business Names

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CROSS REFERENCES

- Insurers, names, 731.430
Property under unit ownership, similarity of name to other enterprise, 94.029
- 648.015**
Trade names, service marks ineligible for registration, 647.035

648.005 Definitions. As used in this chapter, "real and true name" means:

- (1) The surname of an individual coupled with one or more given names, one or more initials or any combination thereof;
- (2) The corporate name of a corporation as filed with the Corporation Commissioner;
- (3) The name a foreign corporation elects for use within this state under ORS 57.675 (1)(b); or
- (4) The name of a limited partnership as filed under ORS 69.160 to 69.470. [1963 c.551 §1; 1967 c.269 §5; 1971 c.194 §1; 1971 c.594 §35]

648.010 Registration of assumed business name required; application for registration. (1) No person or persons shall carry on, conduct or transact business in this state under any assumed name or under any designation, name or style, other than the real and true name of each person conducting the business or having an interest therein, standing alone or coupled with words which merely describe the business carried on and do not suggest the existence of additional owners, unless such assumed name or designation, name or style has been registered with the Corporation Commissioner. Words which suggest the existence of additional owners within the meaning of this section include such words as "Company," "& Company," "& Sons," "& Associates" and the like.

(2) The person or all the persons conducting the business or having an interest therein shall sign and cause to have filed a verified application for registration with the Corporation Commissioner. An application for registration shall set forth:

(a) The designation, name or style under which the business is to be conducted.

(b) The real and true name of each person conducting or intending to conduct the business, or having an interest therein, together with the street address of each such person.

(c) Every county in which the assumed name or other designation, name or style is used or is intended to be used to carry on, conduct or transact business.

(d) The name and street address of the person authorized to represent the applicant or applicants for the assumed business name. If the application is granted and the assumed business name registered with the Corporation Commissioner, the person authorized to represent the registrant or registrants shall be authorized to receive notices and perform other duties required by the registrant or registrants of the assumed business name under the provisions of this chap-

ter. The registrant or registrants shall keep current the name of the authorized representative in the office of the Corporation Commissioner.

(e) Such other information as the Corporation Commissioner shall require.

(3) Subject to ORS 648.015, the Corporation Commissioner shall register the assumed business name contained in the application and shall notify the registrant or registrants of such registration.

(4) The registration of an assumed business name remains in effect until canceled. [Amended by 1961 c.355 §1; 1963 c.551 §2; 1969 c.154 §1; 1971 c.194 §2]

648.015 Registration of assumed business name same or similar to reserved registered name or mark prohibited; exceptions. (1) Except as provided in subsection (2) of this section, when an application for registration or amendment of an assumed business name contains an assumed business name which is the same as, or deceptively similar to, an assumed business name already registered for a county designated in the application or any corporate, limited partnership, reserved or registered name or trade-mark, trade name or service mark currently on file with the Corporation Commissioner, the Insurance Commissioner or the Superintendent of Banks, the Corporation Commissioner shall not register the assumed business name for which application is made.

(2) The Corporation Commissioner may register an assumed business name containing a reserved or registered name, trade-mark, trade name or service mark described in subsection (1) of this section if the applicant files with the Corporation Commissioner:

(a) A written consent of the corporation or holder of the reserved or registered name, trade-mark, trade name or service mark authorizing the applicant to use the name or mark, and adds one or more words to make the name or mark distinguishable from the reserved or registered name or mark; or

(b) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to use the reserved or registered name or mark in this state. [1963 c.551 §7; 1967 c.233 §3; 1969 c.154 §2; 1971 c.318 §13; 1981 c.633 §74]

648.017 Report; fee; notice; effect of failure to report. (1) On the second anniversary of the first day of the month next following the registration of an assumed business name the registrant shall file a report and reporting fee with the Corporation Commissioner. The regis-

trant shall file a report and reporting fee on the same date every fifth year following. The report shall contain the information required under ORS 648.010 (2). The report may make any amendment permitted by ORS 648.025 without payment of the fee required by ORS 648.115 (2). Failure to file this report is grounds for cancellation of the registration.

(2) Not less than 30 days before the reporting date the Corporation Commissioner shall notify each authorized representative or one of the registrants of the requirement to file a report. The notice shall be sent by first-class mail, shall indicate the date on which the report is due and shall include forms for the report. The report shall contain the information required under ORS 648.010 (2). The notice shall state that if the registrant fails to submit the report and reporting fee on or before the reporting deadline, the registration of the assumed business name is automatically canceled without further notice. [1969 c.154 §6; 1977 c.78 §6; 1981 c.633 §75]

648.020 [Repealed by 1963 c.551 §21]

648.025 Amendment or cancellation of registration required in certain cases.

(1) Within 60 days after any one of the following events occurs with respect to a registered assumed business name, a verified application for amendment or cancellation of the registration shall be filed with the Corporation Commissioner and shall in cases of amendment contain the information required under ORS 648.010 (2):

(a) There is a change in the names or identity of the persons conducting or having an interest in the business for which the name is registered;

(b) The use of the assumed business name is discontinued; or

(c) There is a change in the identity of the counties in which the name is used or is intended to be used.

(2) The application required by subsection (1) of this section shall be filed by the person or persons required to register an assumed business name under ORS 648.010 (1) and, with respect to any other person then shown on the records of the Corporation Commissioner as a registrant, shall be accompanied by a verified statement of withdrawal, incapacity or death as permitted by subsection (3) of this section or other proof of such withdrawal, incapacity or death satisfactory to the Corporation Commissioner.

(3) Whenever any person having an interest in a business with a registered assumed business name withdraws from the business or dies, the

person who is withdrawing, or in case of the person's death or incapacity, the legal representative of such person, may file with the Corporation Commissioner a verified statement of such withdrawal, incapacity or death.

(4) The amendment of the registration of an assumed business name supersedes the original registration of the assumed business name on all matters amended but does not operate as a report filed under ORS 648.017. [1963 c.551 §6; 1969 c.154 §3; 1981 c.633 §76]

648.029 Alteration of registration to reflect corporate structure change. Where a domestic corporation is a party of interest to an assumed business name and consolidates, merges or amends its articles of incorporation to change its corporate name or a foreign corporation procures an amended certificate of authority, the Corporation Commissioner may alter the assumed business name registration to indicate the surviving or changed corporate name. [1969 c.154 §8]

Note: 648.029 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 648 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

648.030 [Repealed by 1963 c.551 §21]

648.035 [1963 c.551 §5; 1967 c.233 §1; repealed by 1969 c.154 §10]

648.040 [Repealed by 1963 c.551 §21]

648.045 [1963 c.551 §4; repealed by 1981 c.633 §83]

648.050 Cancellation of registration for similarity or nonuse; notice; proof of use; appeal. (1) The Corporation Commissioner shall forthwith by certified mail notify the registrant of an assumed business name when the Corporation Commissioner has received:

(a) An application for registration for assumed name which is legally sufficient except that the name is the same as or deceptively similar to a name already registered with the Corporation Commissioner with respect to one or more counties designated in the application; and

(b) A petition alleging upon information and belief that such registered name is not being used in such counties.

(2) If the Corporation Commissioner has knowledge that a business conducted under an assumed name has been discontinued or that an assumed business name is not being used in any county in connection with the business, the Corporation Commissioner may notify by mail the registrant of such assumed business name.

(3) The notice required under subsections (1) and (2) of this section shall indicate that the registration shall be canceled with respect to all or certain specified counties, as the case may be, unless the registrant or registrants file, within 60 days from the date of the mailing of the notice, a verified statement that at the time of filing the statement the registrant or registrants are in fact using the assumed business name in the county or counties involved. Filing of such a statement is not a report filed under this chapter.

(4) If the verified statement of use is not filed with respect to any county involved within the 60-day period, the Corporation Commissioner shall issue a certificate canceling the registration with respect to such county, sending a copy of the certificate to the registrant, and shall register the assumed business name in the name of the petitioner. No fee shall be required for the filing of the statement of use within the 60-day period provided by this subsection.

(5) If the required statement of use is filed with respect to any county, the existing registration shall remain unaffected as to that county and the Corporation Commissioner shall reject the new application and petition, if any, with respect to that county.

(6) If a petition filed under subsection (1) of this section is rejected as provided in subsection (5) of this section, a petitioner may file a complaint in the circuit court in Marion County or in the county with respect to which the petition was denied raising the question of actual use of the registered name in such county by the registrant. If the circuit court finds that at the time the verified statement of use was filed the registered name was not in fact being used in such county, it shall issue its order directing the Corporation Commissioner to cancel the existing registration with respect to such county and register the name requested by the petitioner in such county. [Amended by 1955 c.661 §1; 1963 c.551 §8; 1969 c.154 §4]

648.055 Cancellation of registration upon dissolution or when corporate authority revoked. (1) Where the only party of interest of an assumed business name is a domestic corporation which has been dissolved, the Corporation Commissioner may cancel the registration.

(2) Where the only party of interest of an assumed business name is a foreign corporation whose authority to transact business in this state has been withdrawn or revoked, the Corporation Commissioner may cancel the registration. [1969 c.154 §7]

648.060 [Amended by 1963 c.551 §9; repealed by 1967 c.152 §1 (648.061 enacted in lieu of 648.060)]

648.061 Consent of nonresident persons or corporations to service of process. Any of the persons not domiciled within this state or foreign corporations not authorized to do business within this state who appear as parties of interest in an application for registration filed under ORS 648.010 shall be deemed to have appointed the Corporation Commissioner as agent upon whom may be served at any time any process, notice or demand required or permitted by law to be served upon them. [1967 c.152 §2 (enacted in lieu of 648.060)]

648.070 Service of process on nonresident. A person making service of process authorized by ORS 648.061 shall make the service by delivering a copy of the process in person or by certified mail, with a fee of \$2 in the hands of the Corporation Commissioner or to the office of the commissioner. The service shall be sufficient and valid personal service upon the persons not domiciled in this state to whom ORS 648.061 applies if the plaintiff immediately sends notice of the service and a copy of the process by certified mail to the principal office of the persons against whom the process or pleadings are directed, and the return receipt of the latter and plaintiff's affidavit of compliance with this section are appended to the process and entered as a part of the return thereof. The defendant persons against whom the process or pleadings are directed shall have 30 days after the date of mailing of the process or pleadings in which to appear and plead. Personal service outside the state in accordance with the statutes of Oregon relating to personal service of summons outside the state shall relieve the plaintiff from mailing copies of the summons or process by registered mail as provided in this section. [Amended by 1963 c.551 §10; 1983 c.717 §33]

648.080 Irrigation associations. (1) ORS 648.010 does not apply to any mutual and voluntary association composed of 10 or more farmers and landowners formed for the purpose of constructing, owning and operating reservoirs, irrigation ditches and irrigation works.

(2) Each such association shall have a secretary and keep on file with its secretary a complete list and record of its members and shall furnish a copy thereof whenever requested so to do. [Amended by 1963 c.551 §11]

648.090 Effect of failing to file certificate. No persons carrying on, conducting or transacting business in the manner described in ORS 648.010, or having any interest therein, are

entitled to maintain any suit or action in any of the courts of this state without alleging and proving that they have registered the assumed business name as provided for in ORS 648.010 with respect to the county in which the person conducted the business giving rise to such suit or action. [Amended by 1963 c.551 §12]

648.100 [Amended by 1961 c.355 §2; repealed by 1963 c.551 §21]

648.105 [1963 c.551 §13; repealed by 1983 c.717 §42]

648.110 [Repealed by 1963 c.551 §21]

648.115 Fee schedule. The Corporation Commissioner shall charge and collect:

(1) For the filing of each registration or report of an assumed business name:

(a) Each registration or report, \$5.

(b) Each county designated on the registration or report, \$1.50.

(2) For each amendment filed, \$5.

(3) For each additional county designated on a filed amendment, \$1.50.

(4) For each petition filed under ORS 648.050, \$5. [1963 c.551 §15; 1967 c.233 §2; 1969 c.154 §9; 1981 c.633 §77]

648.125 Rules and regulations. In accordance with any applicable provisions of ORS 183.310 to 183.550, the Corporation Commissioner may make such reasonable rules and regulations as are necessary or proper for the administration of this chapter. [1963 c.551 §14]

648.130 Enjoining prohibited use of assumed business name. Whenever the Corporation Commissioner determines that any person is violating ORS 648.010 (1), the commissioner may bring suit in the name of the state in any circuit court of this state to enjoin the acts or practices. Upon proper showing, the court shall grant a permanent or temporary injunction or restraining order. The court shall not require the commissioner to post a bond. [1971 c.194 §4]

648.990 Penalties. Violation of any of the provisions of ORS 648.010, 648.025 or 648.061 is punishable, upon conviction, by a fine not exceeding \$100. [Amended by 1963 c.551 §17]