Chapter 648

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Assumed Business Names

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CROSS REFERENCES

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648.005 Definitions. As used in this chapter:

(1) "Assumed business name" means one or more words or numerals, or a combination of words and numerals, that a person uses to identify any business that the person carries on, conducts or transacts, if at the time and place that the person carries on, conducts or transacts the business, the person does not conspicuously disclose the real and true name of each person who is carrying on, conducting or transacting the business. Any name that a person uses to identify a business that includes a word or phrase that suggests the existence of additional owners, such as "Company," "& Company," "& Daughters," "& Associates," or a similar word or phrase, is an assumed business name, unless it is the real and true name of the corporation that carries on, conducts or transacts the business.

(2) "Business" includes activity carried on, conducted or transacted by or on behalf of nonprofit, social, fraternal and charitable entities and unincorporated associations, as well as activity carried on, conducted or transacted for commercial gain.

(3) "Carry on, conduct or transact business" means:

(a) To sell or to lease to another, real estate, goods, intangible property or services;

(b) To purchase or to lease from another, real estate, goods, intangible property or services;

(c) To solicit an investment in or a donation to a business;

(d) Knowingly to permit another person to solicit an investment in or a donation to a business in which one has an interest; or

(e) To apply for an extension of credit.

(4) "Real and true name" means:

(a) The surname of an individual coupled with a combination of the individual's given names and initials;

(b) The corporate name of a domestic corporation stated in the articles of incorporation or amendment filed with the Office of the Secretary of State or the corporate name of a foreign corporation as stated under ORS 60.707 (1); or

(c) The name of a limited partnership stated in the certificate filed under ORS chapter 70.

(5) "Service mark" has the meaning given in ORS 647.005. [1963 c.551 §1; 1967 c.269 §5; 1971 c.194 §1; 1971 c.594 §35; 1985 c.677 §66a; 1985 c.728 §90; 1987 c.94 §105]

648.007 Requirement to register assumed business name and service mark; exceptions. (1) No person shall carry on, conduct or transact business under an assumed business name in a county where the business is located, where a physical facility of the business is located or where an employee of the business is stationed, unless the person has registered the assumed business name as provided in this chapter and maintains a current registration.

(2) A person shall register a service mark as an assumed business name if the person carries on, conducts or transacts business under the service mark and the person does not disclose conspicuously the person's real and true name at the time and place that the person carries on, conducts or transacts business.

(3) ORS 648.010 and subsection (1) of this section do not apply to:

(a) A foreign corporation that applied for and was issued a certificate of authority prior to September 20, 1985, and that carries on, conducts or transacts business in this state exclusively under the name that it stated in its application that it elects to use in this state, as shown on the records of the Office of the Secretary of State.

(b) A partnership which uses the surname of all or some of the partners all of whom are licensed by a common licensure board or commission.

(c) A 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. The secretary of each association shall maintain a complete and current record of the association's members, and shall furnish a copy of the record upon request.

(4) Nothing in this chapter shall preclude a person from registering more than one assumed business name. [1985 c.728 §92]

648.010 Registration of assumed business name; contents of application; designation of representative; effect. (1) Each person who will carry on, conduct or transact business under an assumed business name shall sign a verified application to register the assumed business name and shall submit the application to the Office of the Secretary of State, with the fee prescribed by this chapter. All of the persons who will carry on, conduct or transact a single business under an assumed business name shall file a consolidated application to register the assumed business name.

(2) The application shall state:

(a) The assumed business name to be registered. The applicant shall write the assumed business name in the alphabet used to write the English language. The assumed

business name may include numerals and incidental punctuation.

(b) The real and true name and street address of each person who intends to carry on, conduct or transact business under the assumed business name.

(c) The principal address at which the applicant intends to carry on, conduct or transact business and a listing of each county in which the applicant intends to carry on, conduct or transact business to the extent that ORS 648.007 would require the applicant to register the assumed business name for that county.

(d) The name and the mailing address of the person whom the applicant authorizes to represent the applicant in transactions with the Office of the Secretary of State with respect to the registration. All of the registrants of an assumed business name for a single business shall designate the same person under this subsection.

(e) The category of the classification code established by rule of the Secretary of State most closely designating the character of business that the applicant intends to carry on, conduct or transact under the assumed business name.

(f) Any other information that the Secretary of State by rule may require.

(3) The Secretary of State may require by rule any application for registration submitted under this section or any report submitted under ORS 648.017, to set forth the social security number or federal employer identification number of each of the parties of interest named in the application or report. The rules of the Secretary of State may identify classes of registrations for which a social security number or federal employer identification number shall be required.

(4) The person named in the application to be authorized to represent the applicant is authorized to receive notices under this chapter and to perform any duty that this chapter requires of the registrant of the assumed business name, but is not by the application or registration made the registrant's agent for the service of process. [Amended by 1961 c.355 §1; 1963 c.551 §2; 1969 c.154 §1; 1971 c.194 §2; 1985 c.728 §94; 1987 c.843 §21]

648.015 [1963 c.551 §7; 1967 c.233 §3; 1969 c.154 §2; 1971 c.318 §13; 1981 c.633 §74; repealed by 1985 c.728 §110]

648.017 Renewal of registration; fee; contents of application; effect of failure to renew; notice. (1) A registrant must apply to renew a registration of an assumed business name within 30 days before the second anniversary of the date that the Secretary of State registered the assumed business name and each second anniversary thereafter. The registrant must apply to the Office of the Secretary of State for renewal of the registration and submit with the renewal a renewal fee. The application for renewal must include all identifying information required by rule of the Secretary of State. Failure to apply for renewal and pay the required fee is grounds for administrative cancellation of the registration.

(2) Not less than 30 days before the application for renewal is due, the Secretary of State shall notify each authorized representative of the requirement to apply for renewal. The notice shall indicate the date by which the renewal application must be submitted, and shall include the renewal application. The notice shall state that if the registrant fails to submit the renewal application and renewal fee on or before the renewal deadline, the registration of the assumed business name will be canceled without further notice.

(3) If the Secretary of State finds that the application for renewal conforms to the requirements of this section, and all fees have been paid, the Secretary of State shall renew the registration. [1969 c.154 §6; 1977 c.78 §6; 1981 c.633 §75; 1985 c.728 §98; 1987 c.94 §161]

648.020 [Repealed by 1963 c.551 §21]

648.025 Amendment of registration; application; required signatures; statement of withdrawal, incapacity or death; designation of representative. (1) An application to amend a registration of an assumed business name shall be delivered to the Office of the Secretary of State for filing within 60 days after any of the following occurs:

(a) There is a change in the identity, names or addresses of the persons carrying on, conducting or transacting the business for which the assumed business name is registered;

(b) There is a change in the identity, name or address of the person authorized to represent the registrant or registrants; or

(c) The registrant commences to carry on, to conduct or to transact business under the assumed business name in a county or counties different from those that the registrant stated in the application where the registrant intended to carry on, to conduct or to transact business under the assumed business name; and

(d) The address of the principal place of business is changed.

(2) Except as provided in this subsection, the application required by subsection (1) of this section shall be signed by the registrant, if the registrant is an individual, by the officer of a corporation who is authorized to sign, if the registrant is a corporation, or by a general partner of a limited partnership, if

the registrant is a limited partnership. The application required by subsection (1) of this section may be signed by the authorized representative instead of the registrant or registrants in any of the following cases:

(a) The address of a person under paragraph (a) or (b) of subsection (1) of this section is changed.

(b) Any county is added or deleted under paragraph (c) of subsection (1) of this section.

(c) The address of the principal place of business under paragraph (d) of subsection (1) of this section is changed.

(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 or the authorized representative, shall submit to the Office of the Secretary of State a 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 renew the registration as required under ORS 648.017.

(5) The Secretary of State may designate by rule who shall be the authorized representative if the authorized representative withdraws and no new authorized representative is appointed within the time period prescribed in this section. [1963 c.551 §6; 1969 c.154 §3; 1981 c.633 §76; 1985 c.728 §99; 1987 c.94 §162]

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 Secretary of State 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 [Amended by 1955 c.661 §1; 1963 c.551 §8; 1969 c.154 §4; repealed by 1985 c.728 §110]

648.051 When registration refused; affidavit of applicant; registration effective until canceled. (1) Subject to subsection (2) of this section, the Secretary of State shall register the assumed business name contained in the application.

(2) The Secretary of State shall not register the assumed business name if the Secretary of State determines that the assumed business name is not distinguishable on the records of the Office of the Secretary of State from another assumed business name, or from a corporate name or limited partnership name, including a reserved name or registered corporate name of active record with the Office of the Secretary of State except as provided in subsection (3) of this section.

(3) The Secretary of State shall register an assumed business name if the applicant submits for filing an affidavit that the applicant has a right to use the assumed business name in the county or counties stated in the application for the character of business that the applicant will carry on, conduct or transact under the assumed business name. The affidavit shall state:

(a) That the affiant has been advised of the penalties for false swearing;

(b) The facts upon which the affidavit is based and that the affiant swears to the existence of the facts from the affiant's own knowledge; and

(c) That the affiant believes that the facts stated are sufficient to establish either:

(A) That prior use of the name by the applicant or by the licensor of the applicant has vested in the applicant a right to use the assumed business name for the character of business stated in the application in the county or counties listed in the application; or

(B) That the character of business that the applicant intends to carry on, conduct or transact under the assumed business name will not so resemble the character of business, if any, that the person who filed, reserved or registered the assumed business name, corporate name or limited partnership name identified under subsection (2) of this section conducts under the name in the county or any of the counties listed in the application as to be likely to cause confusion or mistake or to deceive.

(4) The registration of an assumed business name remains in effect until canceled. [1985 c.728 §96]

648.055 Cancellation of registration upon dissolution or when corporate authority revoked. (1) Where the only registrant of an assumed business name is a

domestic corporation which has been dissolved, the Secretary of State may cancel the registration.

(2) Where the only registrant of an assumed business name is a foreign corporation whose authority to transact business in this state has been withdrawn or revoked, the Secretary of State may cancel the registration. [1969 c.154 §7; 1987 c.94 §165]

648.057 Cancellation of registration upon termination of business; signature of registrant; delivery. (1) An assumed business name must be canceled not later than the 60th day after the registrant or registrants of the assumed business name cease doing business under that name.

(2) The application required by subsection (1) of this section shall be signed by the registrant or registrants of the assumed business name or by the authorized representative of the registrant or registrants and shall be delivered to the Office of the Secretary of State for filing. [1987 c.94 §164]

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 Secretary of State 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 to the Office of the Secretary of State. 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; 1991 c.132 §24]

648.080 [Amended by 1963 c.551 §11; repealed by 1985 c.728 §110]

648.081 False or fraudulent registration prohibited; cancellation of conflicting registration; effect on other remedies. (1) No person shall procure or maintain the registration of an assumed business name with the Office of the Secretary of State by knowingly making any false or fraudulent representation or declaration, orally or in writing, or by any other fraudulent means. No person shall register or use an assumed business name with an intent to create a likelihood of confusion with another person.

(2) A person that is not a corporation violates subsection (1) of this section if the person registers an assumed business name that contains either "corporation" or "incorporated" or an abbreviation of one or both of those words. A corporation may register as an assumed business name its corporate name minus the word, abbreviation or phrase that ORS 60.094 or 60.717 requires.

(3) The Secretary of State shall cancel the registration of a conflicting assumed business name if a person other than the registrant submits to the Office of the Secretary of State a certified copy of a final decree of a court of competent jurisdiction that finds that the person has a right superior to that of the registrant to use the name in this state. Nothing in this subsection shall preclude the Secretary of State from seeking an injunction under ORS 648.135 or a civil penalty under ORS 648.990 after cancellation if the former registrant continues to carry on, to conduct or to transact business under the assumed business name.

(4) Nothing in this section shall limit any person's right to seek a remedy under ORS 646.638 or to seek an injunction under ORS 647.107. [1985 c.728 §97; 1987 c.94 §106]

648.090 [Amended by 1963 c.551 §12; repealed by 1985 c.728 §110]

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 Filing, service and copying fees. (1) The Secretary of State shall charge and collect:

	Document	Fee
(a)	Application	$ 10
(b)	Renewal	$ 10
(c)	Each county designated on registration	$ 2
(d)	Each county added to registration or renewal	$ 2

(e)	Amendment	$ 10
(f)	Cancellation	$ 10

(2) The Secretary of State shall collect a fee of $20 each time process is served on the Secretary of State under this chapter.

(3) The Secretary of State by rule may establish fees, in addition to those provided for in subsections (1) and (2) of this section, for:

(a) Copying any public record maintained by the Office of Secretary of State and relating to assumed business names, and for certifying the copy.

(b) Certifying to facts of record, pursuant to this chapter. [1963 c.551 §15; 1967 c.233 §2; 1969 c.154 §9; 1981 c.633 §77; 1985 c.351 §26; 1987 c.94 §166; 1989 c.383 §5; 1991 c.132 §25]

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

648.130 [1971 c.194 §4; repealed by 1985 c.728 §110]

648.135 Enjoining violations of ORS 648.007; damages and attorney fees; effect on other laws. (1) The Secretary of State may bring a suit in the name of the state in the Circuit Court for Marion County, or in the circuit court of any county in which the defendant carries on, conducts or transacts business, to enjoin a violation of ORS 648.007. Upon a proper showing, the court shall grant a permanent or temporary injunction or restraining order. The court shall not require the Secretary of State to post a bond.

(2) A person who carries on, conducts or transacts business in violation of ORS 648.007 shall lack standing before the courts of this state to maintain a cause of action for the benefit of the business. The person may cure the incapacity at any time by complying with ORS 648.007. Nothing in this section shall extend any statute of limitations.

(3) In any action or suit in which the cause of action arises out of business that the defendant carried on, conducted or transacted in violation of ORS 648.007, the plaintiff shall be entitled to recover $500 or the actual costs, including attorney fees, that the court determines that the plaintiff reasonably incurred to ascertain the real and true name of the defendant, whichever is greater. The plaintiff may recover under this subsection even if the defendant prevails in the action or suit, unless the court finds that the action or suit was frivolous.

(4) Except as provided in this section, nothing in this chapter shall abrogate or limit the law as to unfair competition or unfair trade practices or derogate from the common law, the principles of equity or the statutes of this state or of the United States with respect to the right to acquire and to protect trade names. [1985 c.728 §93; 1987 c.390 §1]

648.990 Penalties. (1) Violation of any of the provisions of this chapter is punishable by a civil penalty not exceeding $100.

(2) A penalty imposed under this section is in addition to any other penalty which may be imposed by the state or a political subdivision of this state under any other civil or criminal statute. [Amended by 1963 c.551 §17; 1985 c.728 §101]