Additional research re: trade name registration laws

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1. Transition, phase-in, and grandfather provisions, grace periods, etc. for trade name registration statutes; how other states handled the retroactive registrations of entities that were already using trade names when the registration statute became effective .

Most of the provisions of this sort that I have been able to find are in those states where trade name registration statutes have been in place for some time but were amended at some point. The transition provisions in these statutes deal with the change-over from the older statutory scheme to the new law.

I have, however, been able to find one example of a broad transition provision that might be appropriate for Mississippi:

> **N.D. Stat. Ann. § 47-25-01. Trade name defined – Registration**
>
> …
>
> This chapter does not prohibit any person engaged in business under a trade name before July 1, 1959, from continuing business under that name.

Including such a provision in the proposed Mississippi statute would assure business owners that they will not lose their rights in existing trade names.

Other sample transition provisions

Illinois – 85 Ill. Code § 405/2

Persons conducting such business or any business under an assumed name who have prior to [the date of passage] changed their names or whose names are additions to a business organization conducting business under an assumed name, for which a certificate has previously been filed, shall file another certificate setting out the change in their names or that their names are additions to a business already in operation and every address where such business is conducted or transacted in the county within 30 days after [the date of passage].

Missouri – Mo. Code Ann. § 417.210(7) & (8)

All fictitious name registrations filed on or after August 28, 2004, shall be governed by the provisions of this section and shall remain active on the record of the secretary of state for a period of five years. Such registered fictitious name filing shall expire at the end of the five-year period unless a renewal is filed under subsection 9 of this section.

All active fictitious name registrations filed prior to August 28, 2004, shall remain active on the record of the secretary of state for a period of five years. Such registered fictitious name filing shall expire at the end of the five-year period unless a renewal is filed under subsection 9 of this section.

2. How the statutes handle registration of businesses that are franchises with numerous locations in the state with the same name.

I have found only one state – North Dakota – which has a statute dealing with this specific issue.

> **§ 47-25-03. Trade name – Nature**
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> A trade name registered may not be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, [etc.] … unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if a franchise, a written consent from the franchiser.

To see how other states' trade name registration systems deal with franchises, I searched for "McDonald's" in a number of state databases and found the following:

- Alaska (optional registration) – While registration is not required, a good number of franchises usually use a name like "McDonald's Restaurant – (city) – (store number)," or "McDonald's of (city)."
- Colorado (mandatory) – It is unclear under the statute whether a parent entity would need to register only once, or whether it would need to make a filing for each location owned by the entity. A search of the trade names database revealed approximately 30 different registrations, generally in the format of McDonald's of (city) or McDonald's (store number).
- Minnesota (mandatory) – Again, unclear under the statute how franchises should be treated. However, a search revealed only a couple of particular locations, leading me to believe that registration is not required for each franchise location.
- Utah (mandatory) – Again, unclear under the statute whether each location must make a trade name filing. A search revealed only a couple of active registrations for the McDonald's name, however, leading me to believe that registration is not required for each franchise location.

3. What incentives do states with optional registration provide to encourage registration?

- Alaska – exclusive rights to use of the name; ability to seek injunction to stop use of the name; cause of action for damages
- Arizona – Registered prevents registration of the name by subsequent filers; also prevents another person from incorporating or otherwise forming a business entity under the name registered.
- Nebraska – Allows trademark infringement-type remedies (injunctions, damages) against those who use the trade name or a confusingly similar name.