

CS FOR SENATE BILL NO. 93(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/21/99

Referred: Rules

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the purposes of certain businesses and corporations; relating
2 to the names of businesses and organizations; relating to the registration under
3 the Alaska Trademark Act of marks that resemble the name of another business
4 or organization; and providing for an effective date."

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

6 * Section 1. AS 06.05.301(b) is amended to read:

7 (b) The provisions of AS 10.06 (Alaska Corporations Code) apply to state
8 banks, except those provisions inconsistent with this chapter. The provisions
9 inconsistent with this chapter include AS 10.06.010(4) - (8), 10.06.105(a) and (d),
10 10.06.325, 10.06.356, 10.06.358 - 10.06.360, 10.06.370, 10.06.385 - 10.06.388,
11 10.06.420(i), 10.06.430, 10.06.453, 10.06.460(b), 10.06.485, 10.06.522 - 10.06.868,
12 10.06.915, 10.06.960, and 10.06.990(30) and (36).

13 * Sec. 2. AS 10.06.005 is amended to read:

14 Sec. 10.06.005. Purposes. A corporation may be organized under this chapter

1 for any lawful purpose [EXCEPT FOR THE PURPOSE OF INSURANCE].

2 * **Sec. 3.** AS 10.06.105(a) is amended to read:

3 (a) A corporate name must [SHALL] contain the word "corporation",
 4 "company", "incorporated", or "limited", or an abbreviation of one of these words.
 5 The corporate name may not contain a word or phrase that indicates or implies that
 6 the corporation is organized for a purpose other than the purpose contained in its
 7 articles of incorporation. [THE CORPORATE NAME MAY NOT BE THE SAME
 8 AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A DOMESTIC
 9 CORPORATION EXISTING UNDER THE LAWS OF THIS STATE OR A
 10 FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS
 11 STATE, OR A NAME THAT HAS BEEN RESERVED OR REGISTERED
 12 AS PROVIDED IN THIS TITLE.]

13 * **Sec. 4.** AS 10.06.105 is amended by adding a new subsection to read:

14 (d) A corporate name must be distinguishable on the records of the department
 15 from the name of any other organized entity and from a reserved or registered name.
 16 The department may adopt regulations to enforce this subsection. In this subsection,
 17 "organized entity" and "reserved or registered name" have the meanings given in
 18 AS 10.35.040.

19 * **Sec. 5.** AS 10.06.115 is amended to read:

20 **Sec. 10.06.115. Application to reserve corporate name.** Reservation of a
 21 corporate name is made by filing an application with the commissioner. If the
 22 commissioner finds that the name is available for corporate use under
 23 AS 10.06.105(d) [, AND NOT A RESERVED OR REGISTERED BUSINESS NAME
 24 AS SET OUT IN AS 10.35], the commissioner shall reserve it for the exclusive use
 25 of the applicant for a period of 120 days.

26 * **Sec. 6.** AS 10.06.125 is amended to read:

27 **Sec. 10.06.125. Registration of corporate name.** A corporation organized
 28 and existing under the laws of a state or territory of the United States may register its
 29 corporate name if the name is available for corporate use under AS 10.06.105(d)
 30 [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A
 31 DOMESTIC CORPORATION, THE NAME OF A FOREIGN CORPORATION

1 AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, OR A CORPORATE
 2 NAME RESERVED OR REGISTERED UNDER THIS CHAPTER OR A BUSINESS
 3 NAME RESERVED OR REGISTERED UNDER AS 10.35].

4 * **Sec. 7.** AS 10.06.130 is repealed and reenacted to read:

5 **Sec. 10.06.130. Use of corporate name.** (a) A corporation that is organized
 6 under this chapter has the exclusive right to the name under which it was organized.
 7 A foreign corporation that has obtained a certificate of authority under this chapter has
 8 the exclusive right to the name under which it received its certificate of authority. A
 9 corporation that has registered a name under AS 10.06.125 has the exclusive right to
 10 the use of the registered name.

11 (b) A corporation with the exclusive right to a name under (a) of this section
 12 (1) may enjoin the use of a name that is not distinguishable on the
 13 records of the department from the name to which the corporation has the exclusive
 14 right under (a) of this section;

15 (2) has a cause of action for damages against a person who uses a
 16 name that is not distinguishable on the records of the department from the name to
 17 which the corporation has the exclusive right under (a) of this section.

18 * **Sec. 8.** AS 10.06.633(e) is amended to read:

19 (e) A corporation dissolved under this section may be reinstated within two
 20 years from the date of the certificate of involuntary dissolution if it is established to
 21 the satisfaction of the commissioner that in fact there was no cause for the dissolution,
 22 or if the neglect, omission, delinquency, or noncompliance resulting in dissolution has
 23 been corrected and payment made of double the amount delinquent along with the
 24 amount the corporation would have paid had it not been dissolved during the two-year
 25 period. Reinstatement may not be authorized if the **name is not available for**
 26 **corporate use under AS 10.06.105(d)** [SAME OR A DECEPTIVELY SIMILAR
 27 CORPORATE, RESERVED, OR REGISTERED NAME IS CURRENTLY ON FILE
 28 WITH THE COMMISSIONER,] unless the corporation being reinstated amends its
 29 articles of incorporation to change its name to conform with the provisions of this
 30 chapter.

31 * **Sec. 9.** AS 10.06.720 is amended to read:

Sec. 10.06.720. Corporate name of foreign corporation. A certificate of authority may not be issued to a foreign corporation unless the corporate name of the corporation

(1) contains the word "corporation", "company", "incorporated", or "limited", or an abbreviation of one of these words, or, for use in this state, adds at the end of its name one of these words or an abbreviation of one of them;

(2) does not contain a word or phrase that indicates or implies that it is organized for a purpose other than the purpose contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

(3) does not contain the word "city", "borough", or "village" or otherwise imply that the corporation is a municipality, but the name of a city, borough, or village may be used in the corporate name;

(4) is **available for corporate use under AS 10.06.105(d)** [NOT THE SAME NAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A DOMESTIC CORPORATION EXISTING UNDER THE LAWS OF THIS STATE OR A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, OR A NAME THE EXCLUSIVE RIGHT TO WHICH IS RESERVED IN THE MANNER PROVIDED IN THIS TITLE, OR THE NAME OF A CORPORATION THAT HAS IN EFFECT A REGISTRATION OF ITS NAME AS PROVIDED IN THIS CHAPTER].

* **Sec. 10.** AS 10.13.120(a) is amended to read:

(a) The corporate name of a licensee must include the word "BIDCO" or **"Bidco" and must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name.** ["BIDCO."] A licensee may not transact business under a name other than its corporate name. **In this subsection, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.**

* **Sec. 11.** AS 10.15 is amended by adding a new section to article 8 to read:

Sec. 10.15.578. Distinguishable name. The name of a cooperative association must be distinguishable on the records of the department from the name of any other

1 organized entity and from a reserved or registered name. The department may adopt
 2 regulations under AS 44.62 (Administrative Procedure Act) to implement this section.
 3 In this section, "organized entity" and "reserved or registered name" have the meanings
 4 given in AS 10.35.040.

5 * **Sec. 12.** AS 10.20.021 is repealed and reenacted to read:

6 **Sec. 10.20.021. Corporate name.** (a) The name of a corporation may not
 7 contain a word or phrase that indicates or implies that it is organized for a purpose
 8 other than one or more of the purposes contained in the articles of incorporation of the
 9 corporation.

10 (b) The name of the corporation must be distinguishable on the records of the
 11 department from the name of any other organized entity and from a reserved or
 12 registered name. The department may adopt regulations under AS 44.62
 13 (Administrative Procedure Act) to implement this subsection. In this subsection,
 14 "organized entity" and "reserved or registered name" have the meanings given in
 15 AS 10.35.040.

16 * **Sec. 13.** AS 10.20.470 is amended to read:

17 **Sec. 10.20.470. Corporate name of foreign corporation.** A certificate of
 18 authority may not be issued to a foreign corporation unless the corporate name of the
 19 corporation

20 (1) does not contain a word or phrase that [WHICH] indicates or
 21 implies that it is organized for any purpose other than the purpose contained in its
 22 articles of incorporation;

23 (2) is available for use by the foreign corporation under
 24 AS 10.20.021(b) [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE
 25 NAME OF A CORPORATION, WHETHER FOR PROFIT OR NOT FOR PROFIT,
 26 EXISTING UNDER THE LAWS OF THIS STATE, OR A FOREIGN
 27 CORPORATION, WHETHER FOR PROFIT OR NOT FOR PROFIT, AUTHORIZED
 28 TO TRANSACT BUSINESS OR CONDUCT AFFAIRS IN THIS STATE, OR A
 29 CORPORATE OR BUSINESS NAME RESERVED OR REGISTERED
 30 AS PERMITTED BY THE LAWS OF THIS STATE].

31 * **Sec. 14.** AS 10.20.471 is amended to read:

1 **Sec. 10.20.471. Assumed corporate name.** When a foreign corporation,
 2 applying for a certificate of authority, has a name **that is not available for use by the**
 3 **foreign corporation under AS 10.20.021(b)** [THE SAME AS OR DECEPTIVELY
 4 SIMILAR TO THAT OF A CORPORATION OPERATING UNDER THIS
 5 CHAPTER], it shall

6 (1) select a name under which it elects to do business in the state;

7 (2) clearly identify on all advertising, contracts, and other legal
 8 documents its true corporate name as well as its assumed name.

9 * **Sec. 15.** AS 10.25.040 is amended to read:

10 **Sec. 10.25.040. Name.** The name of a cooperative must include the words
 11 "electric" or "telephone," as appropriate to its purpose, and "cooperative," and the
 12 abbreviation "inc." [THE NAME OF A COOPERATIVE SHALL BE DISTINCT
 13 FROM THE NAME OF OTHER COOPERATIVES OR CORPORATIONS
 14 ORGANIZED UNDER THE LAWS OF OR AUTHORIZED TO DO BUSINESS IN
 15 THIS STATE. THIS SECTION DOES NOT APPLY TO A CORPORATION THAT
 16 BECOMES SUBJECT TO THIS CHAPTER BY COMPLIANCE WITH AS 10.25.290
 17 AND 10.25.300 OR 10.25.620 AND THAT ELECTS TO RETAIN A CORPORATE
 18 NAME THAT DOES NOT COMPLY WITH THIS SECTION.]

19 * **Sec. 16.** AS 10.25.040 is amended by adding new subsections to read:

20 (b) The name of a cooperative must be distinguishable on the records of the
 21 Department of Commerce and Economic Development from the name of any other
 22 organized entity and from a reserved or registered name. The Department of
 23 Commerce and Economic Development may adopt regulations under AS 44.62
 24 (Administrative Procedure Act) to implement this subsection.

25 (c) The provisions of (a) of this section do not apply to a corporation that
 26 becomes subject to this chapter by compliance with AS 10.25.290 and 10.25.300 or
 27 10.25.620 and that elects to retain a corporate name that does not comply with (a) of
 28 this section.

29 * **Sec. 17.** AS 10.35.020 is amended to read:

30 **Sec. 10.35.020. Application to reserve name.** Reservation of a business name
 31 is made by filing an application with the commissioner. Upon finding that the name

is available for business use, the commissioner shall reserve it for the exclusive use of the applicant for a period of 120 days. A name is not available for business use if the name [WHICH] is not distinguishable on the records of the department under AS 10.35.040(a) [THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A DOMESTIC CORPORATION OR A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THE STATE, OR A NAME RESERVED OR REGISTERED UNDER THIS TITLE] or gives the impression that the business is incorporated.

* **Sec. 18.** AS 10.35.020 is amended by adding a new subsection to read:

(b) The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement this section.

* **Sec. 19.** AS 10.35.040 is repealed and reenacted to read:

Sec. 10.35.040. Registration of name. (a) A person conducting a business may register its name if the name is distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. In this subsection,

(1) "organized entity" means

(A) a corporation under AS 10.06;

(B) a foreign corporation authorized under AS 10.06 to transact business in this state;

(C) a BIDCO licensed under AS 10.13;

(D) a cooperative organized under AS 10.15;

(E) a foreign cooperative under AS 10.15 that is authorized under AS 10.06 to do business in this state;

(F) a nonprofit corporation organized under AS 10.20;

(G) a nonprofit foreign corporation authorized under AS 10.20 to transact business in this state;

(H) a cooperative organized under AS 10.25;

(I) a religious corporation formed under AS 10.40;

(J) a professional corporation organized under AS 10.45;

(K) a limited liability company organized under AS 10.50;

1 (L) a foreign limited liability company registered under
2 AS 10.50;

3 (M) a registered limited liability partnership under AS 32.05;

4 (N) a foreign limited liability partnership registered under
5 AS 32.05;

6 (O) a limited partnership formed under AS 32.11; or

7 (P) a foreign limited partnership registered under AS 32.11;

8 (2) "reserved or registered name" means a name reserved or registered
9 under this chapter, AS 10.06, AS 10.50, AS 32.05, or AS 32.11.

10 (b) Registration of a name gives the person who has registered the name the
11 exclusive right to the use of the name. A person who has registered a name under this
12 chapter

13 (1) may enjoin the use by another person of a name that is not
14 distinguishable on the records of the department from the registered name;

15 (2) has a cause of action for damages against another person who uses
16 a name that is not distinguishable on the records of the department from the registered
17 name.

18 (c) The department may adopt regulations under AS 44.62 (Administrative
19 Procedure Act) to implement (a) of this section.

20 * **Sec. 20.** AS 10.35.500 is amended by adding a new paragraph to read:

21 (3) "department" means the Department of Commerce and Economic
22 Development.

23 * **Sec. 21.** AS 10.40 is amended by adding a new section to read:

24 **Sec. 10.40.015. Distinguishable name.** A corporate name must be
25 distinguishable on the records of the Department of Commerce and Economic
26 Development from the name of another organized entity and from a reserved or
27 registered name. The department may adopt regulations to enforce this section. In this
28 section, "organized entity" and "reserved or registered name" have the meanings given
29 in AS 10.35.040.

30 * **Sec. 22.** AS 10.45.120 is amended by adding a new subsection to read:

31 (b) The corporate name of a professional corporation must be distinguishable

on the records of the Department of Commerce and Economic Development from the name of any other organized entity and from a reserved or registered name. The Department of Commerce and Economic Development may adopt regulations to implement this subsection. In this subsection, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

* **Sec. 23.** AS 10.50.025 is repealed and reenacted to read:

Sec. 10.50.025. Distinguishable name. The name of a limited liability company must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. The department may adopt regulations to implement this section. In this section, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

* **Sec. 24.** AS 10.50.035 is amended to read:

Sec. 10.50.035. Application to reserve company name. Reservation of a name under AS 10.50.030 is made by filing an application with the department. If the department finds that the name is available for use by a limited liability company [,] and is distinguishable on the records of the department under AS 10.50.025 [NOT A RESERVED OR REGISTERED BUSINESS NAME UNDER AS 10.35 OR THIS CHAPTER], the department shall reserve it for the exclusive use of the applicant for a period of 120 days.

* **Sec. 25.** AS 10.50.040 is amended to read:

Sec. 10.50.040. Registration of company name. A limited liability company or a foreign limited liability company may register its name if the name is distinguishable on the records of the department [FROM THE NAMES IDENTIFIED] under AS 10.50.025.

* **Sec. 26.** AS 10.50.408(e) is amended to read:

(e) A company dissolved under this section may be reinstated within two years from the date of the certificate of involuntary dissolution if it is established to the satisfaction of the commissioner that in fact there was no cause for the dissolution, or if the delinquency, failure, or misrepresentation resulting in dissolution has been corrected and payment made of double the amount delinquent along with the amount the company would have paid had it not been dissolved during the two-year period.

Reinstatement may not be authorized if the name of the company is not distinguishable upon the records of the department under AS 10.50.025 [,] unless the company being reinstated amends its articles of organization to change its name to conform with the provisions of this chapter.

* **Sec. 27.** AS 32.05.480 is repealed and reenacted to read:

Sec. 32.05.480. Distinguishable name. The name of a limited liability partnership must be distinguishable on the records of the department from the name of any other organized entity and from a reserved or registered name. The department may adopt regulations to implement this section. In this section, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

* **Sec. 28.** AS 32.05.510(a) is amended to read:

(a) A foreign limited liability partnership not intending to conduct affairs in this state may register its name if the name is distinguishable on the records of the department under AS 32.05.480.

* **Sec. 29.** AS 32.05.520 is amended to read:

Sec. 32.05.520. Use of nondistinguishable name. Registration or reservation under this chapter gives the person who has registered exclusive right to the use of the name. The person may enjoin the use of a name that is not distinguishable on the records of the department from the name to which the person has the exclusive right, and the person has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the name to which the person has the exclusive right.

* **Sec. 30.** AS 32.05.620(e) is amended to read:

(e) If the registration of a registered limited liability partnership is cancelled under this section, the registration may be reinstated within two years from the date of the certificate of cancellation if it is established to the satisfaction of the commissioner that in fact (1) there was no cause for the cancellation, or the delinquency, failure, or misrepresentation resulting in cancellation has been corrected; and (2) the partnership pays two times the amount of any delinquent fee and the amount the partnership would have paid had it not been cancelled during the two-year period. Unless the partnership being reinstated amends its registration to change its

name to comply with AS 32.05.470 - 32.05.520, reinstatement may not be authorized if the name of the partnership is not distinguishable on [IN] the records of the department under AS 32.05.480.

* **Sec. 31.** AS 32.11.120(d) is amended to read:

(d) A limited partner who knowingly permits the limited partner's name to be used in the name of the limited partnership, except under circumstances permitted by AS 32.11.810(a)(2) [AS 32.11.810(2)], is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

* **Sec. 32.** AS 32.11.810 is amended to read:

Sec. 32.11.810. Name. The name of a limited partnership as set out in its certificate of limited partnership

(1) must contain without abbreviation the words "limited partnership";

(2) may not contain the name of a limited partner unless

(A) it is also the name of a general partner or the corporate name of a corporate general partner; or

(B) the business of the limited partnership had been carried on under that name before the admission of that limited partner; and

(3) must be distinguishable on the records of the department from [MAY NOT BE THE SAME AS, OR DECEPTIVELY SIMILAR TO,] the name of any other organized entity and from a reserved or registered name; in this paragraph, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040 [A CORPORATION OR LIMITED PARTNERSHIP ORGANIZED UNDER THE LAWS OF THIS STATE OR LICENSED OR REGISTERED AS A FOREIGN CORPORATION OR LIMITED PARTNERSHIP IN THIS STATE].

* **Sec. 33.** AS 32.11.810 is amended by adding a new subsection to read:

(b) The department may adopt regulations under AS 44.62 (Administrative Procedure Act) to implement (a)(3) of this section.

* **Sec. 34.** AS 32.11.820(b) is amended to read:

(b) The reservation shall be made by filing with the department an application,

executed by the applicant, to reserve a specified name. If the department finds that the name is available for use by a domestic or foreign limited partnership under AS 32.11.810 [, AND NOT A RESERVED OR REGISTERED NAME UNDER AS 10.35], the department shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the same applicant may not again reserve the same name until more than 60 days after the expiration of the last 120-day period for which that applicant reserved that name. The right to the exclusive use of a reserved name may be transferred to another person by filing with the department a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

* **Sec. 35.** AS 45.50.010(a) is amended to read:

(a) A mark may not be registered if it consists of or comprises

(1) immoral, deceptive, or scandalous matter;

(2) matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

(3) the flag, coat of arms, or other insignia of the United States, this or another state, a municipality of this or another state, a foreign nation, or simulation of any of these;

(4) the name, signature, or portrait identifying a living individual, except with the written consent of the individual;

(5) a mark that, (A) when used on or in connection with goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them; (B) when used on or in connection with the goods or services of the applicant, is primarily geographically descriptive or deceptively misdescriptive of them; (C) is primarily merely a surname; however, this paragraph does not prevent the registration of a mark used by the applicant that has become distinctive of the applicant's goods or services; the commissioner may accept as evidence that the mark has become distinctive, as used on or in connection with the applicant's goods or services, proof of continuous use of the mark as a mark by the applicant in this state for the five years immediately preceding the date on which the claim of distinctiveness is made; [OR]

(6) a mark that so resembles a mark registered in the state or in the United States Patent and Trademark Office, or a mark previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive; or

(7) a mark that so resembles the name of another organized entity, or a reserved or registered name, that the mark is likely to cause confusion or mistake or to deceive; the form of operation of the organized entity without the mark, or of the person without the mark who holds the right to the reserved or registered name, is not a factor in determining whether the mark resembles a name under this paragraph; in this paragraph, "organized entity" and "reserved or registered name" have the meanings given in AS 10.35.040.

* **Sec. 36. APPLICABILITY.** (a) Sections 1 and 3 - 34 of this Act may not be interpreted to enable the Department of Commerce and Economic Development or any other person to take action under AS 10 or AS 32 against an organization because the organization's name does not comply with secs. 1 and 3 - 34 of this Act on or after the effective date of this section if the name complied with the provisions of AS 10 or AS 32 applicable to the organization's name before the effective date of this section, except that a corporation applying for reinstatement under AS 10.06.633(e) on or after the effective date of this section must comply with AS 10.06.633(e), as amended by sec. 8 of this Act, and a limited liability company applying for reinstatement under AS 10.50.408(e) on or after the effective date of this section must comply with AS 10.50.408(e), as amended by sec. 26 of this Act.

(b) Sections 1 and 3 - 34 of this Act do not affect any cause of action that accrues before the effective date of this section.

(c) AS 45.50.010(a)(7), as enacted by sec. 35 of this Act, does not invalidate the registration of a mark that is registered under AS 45.50.010 - 45.50.205 before the effective date of this section.

* **Sec. 37. TRANSITION: REGULATIONS.** Notwithstanding sec. 39 of this Act, the Department of Commerce and Economic Development may immediately proceed to adopt regulations necessary to implement the changes made by secs. 1 and 3 - 34 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date under sec. 39 of this Act.

- 1 * **Sec. 38.** Section 37 of this Act takes effect immediately under AS 01.10.070(c).
- 2 * **Sec. 39.** Except as provided in sec. 37 of this Act, this Act takes effect July 1, 1999.