

SENATE BILL NO. 93

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 3/4/99

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the names of businesses and organizations; and providing for
2 an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 10.06.105(a) is amended to read:

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

1 * **Sec. 2.** AS 10.06.105 is amended by adding a new subsection to read:

2 (d) A corporate name must be distinguishable on the records of the department
3 from the name of any other organized entity and from a reserved or registered name.
4 The department may adopt regulations to interpret and enforce this subsection. In this
5 subsection, "organized entity" and "reserved or registered name" have the meanings
6 given in AS 10.35.040.

7 * **Sec. 3.** AS 10.06.115 is amended to read:

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

14 * **Sec. 4.** AS 10.06.125 is amended to read:

15 **Sec. 10.06.125. Registration of corporate name.** A corporation organized
16 and existing under the laws of a state or territory of the United States may register its
17 corporate name if the name is available for corporate use under AS 10.06.105(d)
18 [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A
19 DOMESTIC CORPORATION, THE NAME OF A FOREIGN CORPORATION
20 AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, OR A CORPORATE
21 NAME RESERVED OR REGISTERED UNDER THIS CHAPTER OR A BUSINESS
22 NAME RESERVED OR REGISTERED UNDER AS 10.35].

23 * **Sec. 5.** AS 10.06.633(e) is amended to read:

24 (e) A corporation dissolved under this section may be reinstated within two
25 years from the date of the certificate of involuntary dissolution if it is established to
26 the satisfaction of the commissioner that in fact there was no cause for the dissolution,
27 or if the neglect, omission, delinquency, or noncompliance resulting in dissolution has
28 been corrected and payment made of double the amount delinquent along with the
29 amount the corporation would have paid had it not been dissolved during the two-year
30 period. Reinstatement may not be authorized if the name is not available for
31 corporate use under AS 10.06.105(d) [SAME OR A DECEPTIVELY SIMILAR

1 CORPORATE, RESERVED, OR REGISTERED NAME IS CURRENTLY ON FILE
 2 WITH THE COMMISSIONER,] unless the corporation being reinstated amends its
 3 articles of incorporation to change its name to conform with the provisions of this
 4 chapter.

5 * **Sec. 6.** AS 10.06.720 is amended to read:

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

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

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

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

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

27 * **Sec. 7.** AS 10.13.120(a) is amended to read:

28 (a) The corporate name of a licensee must include the word "BIDCO" or
 29 **"Bidco" and must be distinguishable on the records of the department from the**
 30 **name of any other organized entity and from a reserved or registered name.**
 31 ["BIDCO."] A licensee may not transact business under a name other than its

1 corporate name. **In this subsection, "organized entity" and "reserved or registered**
 2 **name" have the meanings given in AS 10.35.040.**

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

4 **Sec. 10.15.578. Distinguishable names.** The name of a cooperative
 5 association must be distinguishable on the records of the department from the name
 6 of any other organized entity and from a reserved or registered name. The department
 7 may adopt regulations under AS 44.62 (Administrative Procedure Act) to interpret or
 8 implement this section. In this section, "organized entity" and "reserved or registered
 9 name" have the meanings given in AS 10.35.040.

10 * **Sec. 9.** AS 10.20.021 is repealed and reenacted to read:

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

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

21 * **Sec. 10.** AS 10.20.470 is amended to read:

22 **Sec. 10.20.470. Corporate name of foreign corporation.** A certificate of
 23 authority may not be issued to a foreign corporation unless the corporate name of the
 24 corporation

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

28 (2) is **available for use by the foreign corporation under**
 29 **AS 10.20.021(b)** [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE
 30 NAME OF A CORPORATION, WHETHER FOR PROFIT OR NOT FOR PROFIT,
 31 EXISTING UNDER THE LAWS OF THIS STATE, OR A FOREIGN

1 CORPORATION, WHETHER FOR PROFIT OR NOT FOR PROFIT, AUTHORIZED
 2 TO TRANSACT BUSINESS OR CONDUCT AFFAIRS IN THIS STATE, OR A
 3 CORPORATE OR BUSINESS NAME RESERVED OR REGISTERED
 4 AS PERMITTED BY THE LAWS OF THIS STATE].

5 * **Sec. 11.** AS 10.20.471 is amended to read:

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

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

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

14 * **Sec. 12.** AS 10.25.040 is amended to read:

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

24 * **Sec. 13.** AS 10.25.040 is amended by adding new subsections to read:

25 (b) The name of a cooperative must be distinguishable on the records of the
 26 Department of Commerce and Economic Development from the name of any other
 27 organized entity and from a reserved or registered name. The Department of
 28 Commerce and Economic Development may adopt regulations under AS 44.62
 29 (Administrative Procedure Act) to interpret or implement this subsection.

30 (c) The provisions of (a) of this section do not apply to a corporation that
 31 becomes subject to this chapter by compliance with AS 10.25.290 and 10.25.300 or

1 10.25.620 and that elects to retain a corporate name that does not comply with (a) of
2 this section.

3 * **Sec. 14.** AS 10.35.020 is amended to read:

4 **Sec. 10.35.020. Application to reserve name.** Reservation of a business name
5 is made by filing an application with the commissioner. Upon finding that the name
6 is available for business use, the commissioner shall reserve it for the exclusive use
7 of the applicant for a period of 120 days. A name is not available **for business use**
8 **if the name** [WHICH] is **not distinguishable on the records of the department**
9 **under AS 10.35.040(a)** [THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE
10 NAME OF A DOMESTIC CORPORATION OR A FOREIGN CORPORATION
11 AUTHORIZED TO TRANSACT BUSINESS IN THE STATE, OR A NAME
12 RESERVED OR REGISTERED UNDER THIS TITLE] or gives the impression that
13 the business is incorporated.

14 * **Sec. 15.** AS 10.35.020 is amended by adding a new subsection to read:

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

17 * **Sec. 16.** AS 10.35.040 is repealed and reenacted to read:

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

21 In this subsection,

22 (1) "organized entity" means

23 (A) a corporation under AS 10.06;

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

26 (C) a BIDCO licensed under AS 10.13;

27 (D) a cooperative organized under AS 10.15;

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

30 (F) a nonprofit corporation organized under AS 10.20;

31 (G) a nonprofit foreign corporation authorized under AS 10.20

1 to transact business in this state;

2 (H) a cooperative organized under AS 10.25;

3 (I) a religious corporation formed under AS 10.40;

4 (J) a professional corporation organized under AS 10.45;

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

6 (L) a foreign limited liability company registered under
7 AS 10.50;

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

9 (N) a foreign limited liability partnership registered under
10 AS 32.05;

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

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

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

15 (b) Registration of a name gives the exclusive right to the use of the name,
16 and the person who has registered the name may enjoin the use of the same name or
17 a deceptively similar name and has a cause of action for damages against anyone who
18 uses the same name or a deceptively similar name.

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

21 * **Sec. 17.** AS 10.35.500 is amended by adding a new paragraph to read:

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

24 * **Sec. 18.** AS 10.45.120 is amended by adding a new subsection to read:

25 (b) The corporate name of a professional corporation must be distinguishable
26 on the records of the Department of Commerce and Economic Development from the
27 name of any other organized entity and from a reserved or registered name. The
28 Department of Commerce and Economic Development may adopt regulations to
29 interpret and implement this subsection. In this subsection, "organized entity" and
30 "reserved or registered name" have the meanings given in AS 10.35.040.

31 * **Sec. 19.** AS 10.50.025 is repealed and reenacted to read:

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

7 * **Sec. 20.** AS 10.50.035 is amended to read:

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

15 * **Sec. 21.** AS 10.50.040 is amended to read:

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

20 * **Sec. 22.** AS 10.50.408(e) is amended to read:

21 (e) A company dissolved under this section may be reinstated within two years
22 from the date of the certificate of involuntary dissolution if it is established to the
23 satisfaction of the commissioner that in fact there was no cause for the dissolution, or
24 if the delinquency, failure, or misrepresentation resulting in dissolution has been
25 corrected and payment made of double the amount delinquent along with the amount
26 the company would have paid had it not been dissolved during the two-year period.
27 Reinstatement may not be authorized if the name of the company is not distinguishable
28 upon the records of the department **under AS 10.50.025** [,] unless the company being
29 reinstated amends its articles of organization to change its name to conform with the
30 provisions of this chapter.

31 * **Sec. 23.** AS 32.05.480 is repealed and reenacted to read:

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

7 * **Sec. 24.** AS 32.05.510(a) is amended to read:

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

11 * **Sec. 25.** AS 32.05.620(e) is amended to read:

12 (e) If the registration of a registered limited liability partnership is cancelled
13 under this section, the registration may be reinstated within two years from the date
14 of the certificate of cancellation if it is established to the satisfaction of the
15 commissioner that in fact (1) there was no cause for the cancellation, or the
16 delinquency, failure, or misrepresentation resulting in cancellation has been corrected;
17 and (2) the partnership pays two times the amount of any delinquent fee and the
18 amount the partnership would have paid had it not been cancelled during the two-year
19 period. Unless the partnership being reinstated amends its registration to change its
20 name to comply with AS 32.05.470 - 32.05.520, reinstatement may not be authorized
21 if the name of the partnership is not distinguishable in the records of the department
22 under AS 32.05.480.

23 * **Sec. 26.** AS 32.11.120(d) is amended to read:

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

29 * **Sec. 27.** AS 32.11.810 is amended to read:

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

- 1 (1) must contain without abbreviation the words "limited partnership";
- 2 (2) may not contain the name of a limited partner unless
- 3 (A) it is also the name of a general partner or the corporate
- 4 name of a corporate general partner; or
- 5 (B) the business of the limited partnership had been carried on
- 6 under that name before the admission of that limited partner; and
- 7 (3) **must be distinguishable on the records of the department from**
- 8 **[MAY NOT BE THE SAME AS, OR DECEPTIVELY SIMILAR TO,] the name of**
- 9 **any other organized entity and from a reserved or registered name; in this**
- 10 **paragraph, "organized entity" and "reserved or registered name" have the**
- 11 **meanings given in AS 10.35.040** [A CORPORATION OR LIMITED PARTNERSHIP
- 12 ORGANIZED UNDER THE LAWS OF THIS STATE OR LICENSED OR
- 13 REGISTERED AS A FOREIGN CORPORATION OR LIMITED PARTNERSHIP IN
- 14 THIS STATE].

15 * **Sec. 28.** AS 32.11.810 is amended by adding a new subsection to read:

16 (b) The department may adopt regulations under AS 44.62 (Administrative

17 Procedure Act) to interpret or implement (a)(3) of this section.

18 * **Sec. 29.** AS 32.11.820(b) is amended to read:

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

20 executed by the applicant, to reserve a specified name. If the department finds that

21 the name is available for use by a domestic or foreign limited partnership **under**

22 **AS 32.11.810** [, AND NOT A RESERVED OR REGISTERED NAME UNDER

23 AS 10.35], the department shall reserve the name for the exclusive use of the applicant

24 for a period of 120 days. Once having reserved a name, the same applicant may not

25 again reserve the same name until more than 60 days after the expiration of the last

26 120-day period for which that applicant reserved that name. The right to the exclusive

27 use of a reserved name may be transferred to another person by filing with the

28 department a notice of the transfer executed by the applicant for whom the name was

29 reserved and specifying the name and address of the transferee.

30 * **Sec. 30.** AS 45.50.010(a) is amended to read:

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

1 (1) immoral, deceptive, or scandalous matter;

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

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

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

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

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

24 (7) a mark that so resembles the name of another business,
25 regardless of the form in which the business without the mark does business, that
26 the mark is likely to cause confusion or mistake or to deceive.

27 * **Sec. 31. APPLICABILITY.** (a) Sections 1 - 29 of this Act may not be interpreted to
28 enable the Department of Commerce and Economic Development or any other person to take
29 action under AS 10 or AS 32 against an organization because the organization's name does
30 not comply with secs. 1 - 29 of this Act on or after the effective date of this section if the
31 name complied with the provisions of AS 10 or AS 32 applicable to the organization's name

1 before the effective date of this section, except that a corporation applying for reinstatement
2 under AS 10.06.633(e) on or after the effective date of this section must comply with
3 AS 10.06.633(e), as amended by sec. 5 of this Act, and a limited liability company applying
4 for reinstatement under AS 10.50.408(e) on or after the effective date of this section must
5 comply with AS 10.50.408(e), as amended by sec. 22 of this Act.

6 (b) This Act does not affect any cause of action that accrues before the effective date
7 of this section.

8 (c) AS 45.50.010(a)(7), as enacted by sec. 30 of this Act, does not invalidate the
9 registration of a mark that is registered under AS 45.50.010 - 45.50.205 before the effective
10 date of this section.

11 * **Sec. 32.** TRANSITION: REGULATIONS. Notwithstanding sec. 34 of this Act, the
12 Department of Commerce and Economic Development may immediately proceed to adopt
13 regulations necessary to implement the changes made by this Act. The regulations take effect
14 under AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 34
15 of this Act.

16 * **Sec. 33.** Section 32 of this Act takes effect immediately under AS 01.10.070(c).

17 * **Sec. 34.** Except as provided in sec. 32 of this Act, this Act takes effect July 1, 1999.