

Offered: 4/1/86
Referred: Finance

Original sponsor: Phillips

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 544 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to business licenses and the use of
7 business names."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. AS 08.02 is amended by adding a new section to read:
10 Sec. 08.02.030. DENIAL OF LICENSE FOR USE OF CERTAIN NAMES. (a)
11 Unless the similarity arises solely from the use of the legal name of
12 a natural person who is the applicant for the license or involved in
13 the operation of the applicant if the applicant is not a natural
14 person, the department or a board listed in AS 08.01.010 may not issue
15 a license to a person whose business name is the same as, or decep-
16 tively similar to
17 (1) the name of a corporation incorporated under the laws
18 of the state;
19 (2) the name under which a foreign corporation has been
20 authorized to transact business in the state;
21 (3) a name reserved or registered under AS 10; or
22 (4) the name of a licensee under AS 43.70.
23 (b) A person who knowingly does business under a name that is
24 not available to the person under (a) of this section is guilty of a
25 violation.
26 * Sec. 2. AS 10.05.021(a) is repealed and reenacted to read:
27 (a) The corporate name must contain the word "corporation,"
28 "company," "incorporated" or "limited," or an abbreviation of one of
29 these words. The corporate name may not contain a word or phrase that

1 indicates or implies that the corporation is organized for a purpose
2 other than the purpose contained in the articles of incorporation, and
3 must be available to the corporation under AS 10.50.010.

4 * Sec. 3. AS 10.05.033 is repealed and reenacted to read:

5 Sec. 10.05.033. REGISTRATION OF CORPORATE NAME. A corporation
6 organized and existing under the laws of a state or territory of the
7 United States may register its corporate name if the name is available
8 to the corporation under AS 10.50.010.

9 * Sec. 4. AS 10.05.519(c) is amended to read:

10 (c) When a corporation has given cause for involuntary dissolu-
11 tion and has failed to correct the neglect, omission or delinquency as
12 provided in this section, the commissioner shall dissolve the corpora-
13 tion by issuing a certificate of involuntary dissolution containing a
14 statement that the corporation has been dissolved, the date, and the
15 reason for which it was dissolved. The original certificate of disso-
16 lution shall be placed in the department files and a copy of it mailed
17 to the corporation at its registered office or in care of one of its
18 principal officers or directors, at the last known address of the
19 officer or director, as shown by the records of the commissioner.
20 Upon the issuance of the certificate of involuntary dissolution, the
21 existence of the corporation shall cease, except as otherwise provided
22 in this section, and its name shall be available to and may be adopted
23 by another person [CORPORATION] no less than six months after the
24 dissolution.

25 * Sec. 5. AS 10.05.519(d) is amended to read:

26 (d) A corporation dissolved by the commissioner under the pro-
27 visions of this section may be reinstated by the commissioner at any
28 time within two years from the date of the certificate of involuntary
29 dissolution whenever it is established to the satisfaction of the

1 commissioner that in fact there was no cause for the dissolution, or
2 whenever the neglect or delinquency resulting in dissolution has been
3 corrected and payment made of double the amount delinquent along with
4 the amount the corporation would have paid had it not been dissolved
5 during the two-year period. Reinstatement may not be authorized if
6 the name of the corporation to be reinstated is not available to the
7 corporation under AS 10.50.010 [THE SAME OR A DECEPTIVELY SIMILAR
8 CORPORATE, RESERVED OR REGISTERED NAME IS CURRENTLY ON FILE WITH THE
9 COMMISSIONER], unless the corporation being reinstated contemporane-
10 ously amends its articles of incorporation to change its name to a
11 name that is available under AS 10.50.010 [CONFORM WITH THE PROVISIONS
12 OF THIS CHAPTER].

13 * Sec. 6. AS 10.05.606 is amended to read:

14 Sec. 10.05.606. CORPORATE NAME OF FOREIGN CORPORATION. A certi-
15 ficate of authority may not be issued to a foreign corporation unless
16 the corporate name of the corporation

17 (1) contains the word "corporation," "company," "incor-
18 porated," or "limited," or an abbreviation of one of these words, or,
19 for use in the state, adds at the end of its name one of these words
20 or an abbreviation of one of them;

21 (2) does not contain a word or phrase that [WHICH] indi-
22 cates or implies that it is organized for a purpose other than the
23 purpose contained in its articles of incorporations or that it is
24 authorized or empowered to conduct the business of banking or insur-
25 ance;

26 (3) is available to the foreign corporation under AS 10.-
27 50.010 [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A
28 DOMESTIC CORPORATION EXISTING UNDER THE LAWS OF THE STATE OR A FOREIGN
29 CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THE STATE, OR A NAME

1 THE EXCLUSIVE RIGHT TO WHICH IS RESERVED IN THE MANNER PROVIDED IN
2 THIS TITLE, OR THE NAME OF A CORPORATION WHICH HAS IN EFFECT A REGIS-
3 TRATION OF ITS NAME AS PROVIDED IN THIS CHAPTER].

4 * Sec. 7. AS 10.05.607 is amended to read:

5 Sec. 10.05.607. ASSUMED CORPORATE NAME. When a foreign corpora-
6 tion, applying for a certificate of authority, has a name that is not
7 available under AS 10.50.010 [THE SAME AS OR DECEPTIVELY SIMILAR TO
8 THAT OF A CORPORATION REGISTERED UNDER THIS CHAPTER], it shall

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

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

14 * Sec. 8. AS 10.20.021 is repealed and reenacted to read:

15 Sec. 10.20.021. CORPORATE NAME. The corporate name may not

16 (1) contain a word or phrase that indicates or implies that
17 the corporation is organized for a purpose other than one or more of
18 the purposes contained in the corporation's articles of incorporation;

19 (2) be a name that is prohibited to the corporation under
20 AS 10.50.010.

21 * Sec. 9. AS 10.20.470 is repealed and reenacted to read:

22 Sec. 10.20.470. CORPORATE NAME OF FOREIGN CORPORATION. A certi-
23 ficate of authority may not be issued to a foreign corporation unless
24 the corporate name of the corporation

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

28 (2) is available to the corporation under AS 10.50.010.

29 * Sec. 10. AS 10.20.471 is amended to read:

1 Sec. 10.20.471. ASSUMED CORPORATE NAME. When a foreign corpora-
2 tion, applying for a certificate of authority, has a name that is not
3 available under AS 10.50.010 [THE SAME AS OR DECEPTIVELY SIMILAR TO
4 THAT OF A CORPORATION OPERATING UNDER THIS CHAPTER], it shall

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

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

10 * Sec. 11. AS 10.35.020 is repealed and reenacted to read:

11 Sec. 10.35.020. APPLICATION TO RESERVE NAME. Reservation of a
12 business name is made by filing an application with the commissioner.
13 Upon finding that the name is available for business use, the commis-
14 sioner shall reserve it for the exclusive use of the applicant for a
15 period of 120 days. A name is not available to the applicant if the
16 applicant's name gives the impression that the business is incorporat-
17 ed or the name is prohibited by AS 10.50.010.

18 * Sec. 12. AS 10.35.040 is amended to read:

19 Sec. 10.35.040. REGISTRATION OF NAME. (a) A person conducting a
20 business may register its name if the name is available to the person
21 under AS 10.50.010 [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE
22 NAME OF A DOMESTIC CORPORATION OR A FOREIGN CORPORATION AUTHORIZED TO
23 TRANSACTION BUSINESS IN THE STATE, OR A NAME RESERVED OR REGISTERED UNDER
24 THIS TITLE].

25 (b) Registration of the name gives the exclusive right to the
26 use of the name and the person who has registered the name may enjoin
27 the use of the same name or a deceptively similar name and has a cause
28 of action for damages against a person [ANYONE] who uses the same name
29 or a deceptively similar name.

1 * Sec. 13. AS 10 is amended by adding a new chapter to read:

2 CHAPTER 50. BUSINESS NAMES.

3 Sec. 10.50.010. DENIAL OF CERTIFICATE OR AUTHORIZATION. Unless
4 the similarity arises solely from the use of the legal name of a
5 natural person who is the applicant or involved in the operation of
6 the applicant if the applicant is not a natural person, the department
7 may not issue a certificate of incorporation or an authorization to
8 transact business in the state, or reserve or register a corporate or
9 business name under this title, for a person whose proposed corporate
10 name is the same as, or deceptively similar to

11 (1) the name of a corporation incorporated under the laws
12 of the state;

13 (2) the name under which a foreign corporation has been
14 authorized to transact business in the state;

15 (3) the name of the holder of a license issued by the
16 department under AS 08.01.010 or by a board listed in AS 08.01.010;

17 (4) a name reserved or registered under this title; or

18 (5) the name of a licensee under AS 43.70.

19 Sec. 10.50.020. REVIEW OF DENIAL. (a) If the department denies
20 a certificate of incorporation or an authorization to transact busi-
21 ness in the state or declines to reserve or register a name, the
22 applicant may appeal the department's action by filing a notice of
23 appeal with the department within 30 days of the denial.

24 (b) The department shall establish by regulation the procedures
25 for an appeal under (a) of this section.

26 Sec. 10.50.030. PENALTY. A person who knowingly does business
27 under a name that is not available to the person under AS 10.50.010 is
28 guilty of a violation.

29 Sec. 10.50.200. DEFINITION. In this chapter, "department" means

1 the Department of Commerce and Economic Development.

2 * Sec. 14. AS 43.05.230 is amended by adding a new subsection to read:

3 (h) The department may release information received or collected
4 by the department under AS 43.70 that is related to the legal or
5 business names of licensees to the Department of Commerce and Economic
6 Development for use in carrying out its statutory responsibilities.

7 * Sec. 15. AS 43.70.020(a) is amended to read:

8 (a) For the privilege of engaging in a business in the state, a
9 person shall first apply, on [UPON] forms prescribed by the commis-
10 sioner of revenue, and obtain a license, and pay the license fee
11 provided for in AS 43.70.030. A license issued to a firm for a par-
12 ticular line of business covers all its operations in the state in the
13 line of business regardless of the number of its establishments. A
14 license issued under this subsection must [SHALL] include

- 15 (1) the name and address of the licensee;
16 (2) the line of business to be conducted; [AND]
17 (3) the year for which the license is issued; and
18 (4) the business name of the licensee.

19 * Sec. 16. AS 43.70.020(b) is repealed and reenacted to read:

20 (b) A license issued under this section is valid for two years
21 after the date of issuance, unless the licensee also holds a license
22 issued by the Department of Commerce and Economic Development under
23 AS 08.01.010 or by a board listed in AS 08.01.010, in which case the
24 license issued under this section is valid for the same length of time
25 as the other license. A licensee under this section shall apply for
26 renewal of the license and pay the renewal fee before the date the
27 license expires.

28 * Sec. 17. AS 43.70.020 is amended by adding a new subsection to read:

29 (e) Unless the similarity arises solely from the use of the

1 legal name of a natural person who is the applicant for the license or
2 involved in the operation of the applicant if the applicant is not a
3 natural person, the department may not issue a license under this
4 section to a person whose legal or business name is the same as, or
5 deceptively similar to

- 6 (1) the name of a domestic corporation in the state;
- 7 (2) the name under which a foreign corporation has been
8 authorized to transact business in the state;
- 9 (3) the name of the holder of a license issued by the
10 Department of Commerce and Economic Development under AS 08.01.010 or
11 by a board listed in AS 08.01.010;
- 12 (4) a name reserved or registered under AS 10; or
- 13 (5) the name of a licensee under this chapter.

14 * Sec. 18. AS 43.70 is amended by adding a new section to read:

15 Sec. 43.70.025. REVIEW OF DENIAL OF BUSINESS LICENSE. (a) If
16 the commissioner denies a person a business license under AS 43.70.-
17 020(e), the person may appeal the denial by filing a notice of appeal
18 with the commissioner within 30 days of the denial.

19 (b) The commissioner shall establish by regulation the proce-
20 dures for an appeal under (a) of this section.

21 * Sec. 19. AS 43.70.030(a) is amended to read:

22 (a) The license fee for each business is \$25 for each year of
23 the period for which the license is issued or portion of a year. The
24 renewal fee is the same amount as the license fee.

25 * Sec. 20. AS 43.70.020(c) and 43.70.030(d) are repealed.

26 * Sec. 21. (a) AS 08.02.030(a), added by sec. 1 of this Act, does not
27 apply to the renewal of a license that is otherwise eligible for renewal,
28 and that was issued by the Department of Commerce and Economic Development
29 under AS 08.01.010, or by a board listed under AS 08.01.010, before the

1 effective date of this Act.

2 (b) AS 10.35.040(a), as amended by sec. 12 of this Act, does not
3 apply to the renewal under AS 10.35.070 of a business name registration in
4 existence on the date this Act takes effect.

5 (c) AS 43.70.020(e), added by sec. 17 of this Act, does not apply to
6 the renewal of a business license that was issued or renewed for 1986 and
7 that is otherwise eligible for renewal.