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STATE OF ALASKA  
THE LEGISLATURE

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JUNEAU, ALASKA 99811  
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May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

H. Judiciary	3/21/86	1:30 pm
" "	3/26/86	1:30 pm



# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 544  
 Title : "An Act prohibiting the use of certain business names..."

Sponsor : Representative Phillips  
 Requestor : Governor's Office/OMB  
 Date of Request : February 26, 1986

**FISCAL DETAIL**

Agency Affected : Department of Law  
 BRU : Legal Services

Components : Legal Services Operations

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Please see attached analysis.

Prepared by : Richard I. Pegues, Director Phone : 465-3672  
 Division : Administrative Services Division Date : 2/28/86  
 Approved by Commissioner : Harold M. Brown, Attorney General Date : 2/28/86  
 Agency : Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 544

This bill would empower the commissioner of the Department of Commerce to bring actions in the name of the state to enjoin persons from doing business under a name that is the same, or deceptively similar to, the name of a domestic or a foreign corporation authorized to transact business in the state under AS 10.05, AS 10.20 and AS 10.35. Likewise, the bill would amend AS 43.70 so that the Department of Revenue may not issue a license to an applicant whose business name is the same as, or deceptively similar to, the business name of another person licensed under AS 43.70, unless the similarity arises solely from the use of the applicant's legal name in the business name.

Under existing statute, disputes over corporate names are handled as civil actions between private parties, and do not involve the intercession of the state. Because the bill gives the Commissioner of Commerce the responsibility for bringing such actions, the Department of Law would experience some additional workload in order to handle these disputes in court. We do not anticipate sufficient additional work to warrant fiscal note funds at this time. We caution, however, that this sort of bill, when combined with other similar legislation, will have a cumulative effect, eventually having an additional cost. At the least, it will contribute to growing case backlogs, which should be avoided in a period of diminishing resources.

The limitation of names on business licenses, in the proposed amendment to AS 43.70, does appear overly restrictive. Surely, Alaska is big enough to accommodate the host of small businesses, the names of which start with many identical given names and end with the names of similar trades, and that are already scattered across the state.

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: 3/19/86

REQUEST

Bill/Resolution No: HB 544  
 Title: An Act prohibiting the use of certain business names and establishing remedies and penalties for violations  
 Sponsor: Phillips  
 Requestor: Judiciary  
 Date of Request: February 28, 1986

FISCAL DETAIL

Agency Affected: Revenue  
 BRU: Public Services  
 Components: Public Services Operating

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES	16.6	17.3	18.0	18.7	19.5	20.3
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	8.0	1.0	1.1	1.1	1.2	1.2
SUPPLIES	4.6	4.8	5.0	5.2	5.4	5.6
EQUIPMENT	8.8	-	-	-	-	-
LAND & STRUCTURES	-	-	-	-	-	-
GRANTS/CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	38.0	22.8	23.7	25.0	26.1	27.1

CAPITAL	-	-	-	-	-	-
---------	---	---	---	---	---	---

REVENUE	-	-	-	-	-	-
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	38.0	22.8	23.7	25.0	26.1	27.1
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
TOTAL	-	-	-	-	-	-

POSITIONS:

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	2	2	2	2	2	2

ANALYSIS: Attach a separate page if necessary

Prepared by: *Sally Smith 3/19/86*  
 Division: Public Services

Phone: 465-2392  
 Date: March 9, 1986

Approved by Commissioner: *Mary J. Stedahl*  
 Agency: Revenue

Date: 3/10/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 544

Assumptions:

1. The provisions of HB 544 will not be applied retroactively.
2. The implementaion of HB 544 will begin with calendar year 1987
3. Available at Service Centers and by mail.

Program Summary

The Public Services Division of the Department of Revenue currently examines approximately 74,000 Business License applications on an annual basis. Of these 74,000, about 21,000 are new applications. In order to carry out the applicable provisions of HB 544, the Department will need two additional temporary employees. This is based on an examination rate of 350 documents per Document Processor Clerk I position over the five months of peak work flow. Two additional work stations, complete with computer terminals, are required along with additional office space. Further, an extensive revision of the two computer programs integral to production of business licenses is nessesary.

Note:

We have considered various automated computer systems and none seem suitable to current needs. The one system known as "NUANS" that seems tailored to business name use regulation is currently operated by Canadian federal and provicial governments and is "machine specific." In order to utilize this system, the Department would be required to negotiate its use with the federal government of Canada and institute a complete new computer system. The future of regulation of Alaska business requires a close interface between the concerned agencies, computer systems like "NUANS" can be part of the solution.

Two possible impacts of passage involve a delay in issuance of business licenses of one to taree weeks and the possibility of large numbers of appeals based on firms or individuals who disagree with the Department's findings. Some consideration should be given to authorization of an appeal system.

Position Title Document Processor Clerk			No. of Positions 2	Range/Step 7	Barg. Unit GGU	Gov.	Approval	Disapp.
Time Status T	Staff Months 10	RP Number	Location AWA	Election District		Leg.		
Type of Expenditure			Justification					
		Amount	HB 544 calls for screening of Business names duplicate/ deceptively similar content. Two Document Processor Clerk I's are required to perform that screening function. They will also generate reject notices to duplicate applicants.					
1	2	3						
Salary	15,375							
Benefits	1,181							
Premium Pay	-							
Other	-							
Total Personal Services		16,556						
Travel		-						
Contractual		-						
Commodities		-						
Equipment		-						
Other		-						
Total Cost		16,556						
Receipt Code	Funding Source							
	Federal Receipts 1002							
	G.F. Match 1003							
	General Funds 1004		16,556					
	I-A Receipts 1005							
	Program Receipts 1028							
	CIP Receipts 1061							
	Other							
For M&B Use Only								
Key Number								

REQUEST FOR  
NEW POSITION

Agency Revenue  
 BRU Revenue Collect. & Management  
 Component Operating

Page 1 of 1  
 Revised Date 3/19/87

FY 87

# Alaska State Legislature

IN SESSION:  
P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4949



BOX 142  
EAGLE RIVER, ALASKA  
99577

## Representative Randy Phillips

HOUSE DISTRICT 15

### MEMORANDUM

To: The Honorable M. Mike Miller  
Chairman, House Judiciary Committee

From: Representative Randy Phillips *REP.*

Date: March 19, 1986

Re: HB 544

Thank you for scheduling HB 544 for hearing this coming Friday. I do apologize for being so late in transmitting the enclosed information to you, but I have been waiting for the Division of Legal Services to provide me with a suggested substitute.

For your information, I am enclosing the following in regards to this bill:

- a. February 11, 1986 letter from Northland Enterprises
- b. February 27, 1986 sectional analysis of HB 544
- c. Article from Equipment Management publication
- d. "Name Availability Procedure Guidelines" provided to me by the Department of Commerce & Economic Development
- e. Position paper and fiscal note from the Department of Commerce & Economic Development
- f. An untitled list of suggested improvements provided to me by JoAnn Shultz of the Department of Commerce & Economic Development
- g. Fiscal note from the Department of Law

Memorandum  
March 19, 1986  
Page Two

- h. March 11, 1986 letter from JoAnn Shultz of  
the Department of Commerce & Economic Development

As soon as Legal Services provides me with further suggested amendments, I will provide you with a copy of the same.

I appreciate your cooperation and your staff's cooperation in setting this bill up for a teleconference hearing on Friday. At the present time, Mr. Monte Parrish of Northland Enterprises plans to be available in Anchorage to testify on the bill and Ms. Theresa Weiser of Alaska Bait Company plans to be available in Sitka to testify on the bill.

If you have any questions or need further information, please do not hesitate to contact me.

Enclosures

BIL' SHEFFIELD, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

*DIVISION OF BANKING, SECURITIES & CORPORATIONS*

POUCH D  
JUNEAU, ALASKA 99811

Banking & Securities (907) 465-2521  
Corporations Section (907) 465-2530

ANCHORAGE

Corporation Information (907) 563-2163

March 11, 1986

The Honorable Randy Phillips  
State House of Representatives  
P.O. Box V  
Juneau, AK 99811

Dear Representative Phillips:

Re: Suggested Changes Required to Statutes  
to Facilitate the Intent of HB 544

In an effort to determine what statutory changes would be required to facilitate the intent of HB 544, an interdepartmental meeting was held March 4, 1986. In attendance were Sally Smith and Dan Anderson, Public Services Division, Department of Revenue; Nancy Dunn, Division of Occupational Licensing; and JoAnn Schultz, Corporations Section, Department of Commerce and Economic Development.

The following areas of concern have been identified as requiring statutory amendments if an effective effort is to be made to avoid duplicity of names.

Title 43 is administered by the Department of Revenue, Title 10 by the Corporations Section, and Title 8 by the Division of Occupational Licensing, Department of Commerce and Economic Development.

**CONFIDENTIALITY**

Title 43 would require a change to the provisions which state that the information on the business license is available to the public, but that a portion of the information contained in the application is confidential.

Title 10, no confidentiality problem. All information is public.

Title 8, no confidentiality problem. All computer-accessed information is public in nature.

#### AUTHORITY TO DENY

Title 43 would require amendment to provide authority to deny an application based on a filing under Titles 8, 10, and 43.

Title 10 would require amendment to provide authority to deny an application based on a filing under Titles 8 and 43. The Corporations Section currently has statutory authority to deny an application based on filings within its own files.

Title 8 would require amendment to provide authority to deny an application based on a filing under Titles 8, 10, and 43. Currently, Occupational Licensing denies applications on the basis of "deceptively similar" names only through 12 AAC 21.030, in the case of construction contractors who are sole proprietors or partnerships. Otherwise, an application can be denied only because it is incomplete based on statutes and regulations, not because of any check for "deceptive similarity" in names.

#### APPEAL PROCESS

If an application is denied, an appeal process should be provided for in all the titles. Consideration may be given to a consolidated appeal process established in one of the Departments.

For budgetary purposes, the Corporations Section would prefer the appeal process to be modeled after AS 10.05.789, which provides for the superior court to try the matter de novo. AS 10.20.655 and .670 also provide for appeal process for nonprofits. AS 10.35, business names, has no appeal provision.

Revenue would suggest an appeal procedure similar to the Gaming appeals provisions of 15 AAC.

No amendments are necessary in Title 8. All Occupational Licensing statutes under AS 08.01 makes reference to AS 44.62, the Administrative Procedure Act. An appeal process in any of the licensing areas is subject to AS 44.62.370.

#### RENEWAL DATE

To lessen the impact during the business license renewal period, the Department of Revenue would suggest amending AS 43.70 to provide for renewal on the anniversary date. Thus, allowing time to review applications for duplicity of name.

Corporations Section is not impacted by renewal dates. Its filings are fairly consistent throughout the year--an average of 213 corporations registering per month and 172 names being registered or reserved per month. These figures do not take into consideration the number of rejections based on unavailability of the name submitted.

No amendments are necessary under Title 8. Licenses are subject to annual, biennial, or quadriennial license renewals as specified in the individual licensing statutes, and are renewed on a date set by the department. Because of the volume of renewals to be processed, a specific renewal date allows processing to be handled more efficiently.

#### DISTINGUISHABLE ON THE RECORD

It is suggested that consideration be given to the use of a standard of "distinguishable upon the record" rather than "deceptively similar" upon which to base rejection of an application. Enclosed is an excerpt from the Model Business Corporation Act which discusses "distinguishable upon the record."

The last suggestion is not required to accomplish the intent of HB 544. However, the other recommendations are required before any effective effort may be made to avoid duplicity of names.

#### OTHER CONSIDERATIONS

1. It has come to our attention that the City Cab, Inc. cab drivers are all licensed individually under the business name of City Cab, Inc. There may be other instances where a corporation or business has the individuals involved in the business licensed individually under the same business name.
2. Alaska is a very large state. Is there potential for conflict if there is a business name used in a different locality? Many communities may have an Uptown Cafe or Downtown Cafe, a Frontier Bar, an Alaska Tavern, etc.
3. Currently, the Corporations Section is able to respond by telephone on the availability of a name. If it is necessary to search 70,000 records rather than 25,000 using different files, it may become necessary to eliminate this service to the public. Revenue would encounter a similar situation.

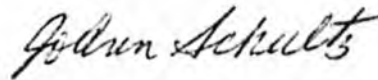
Honorable Randy Phillips

-4-

March 11, 1986

In conclusion, upon completion of the sponsor substitute for HB 544, we would be pleased to review the bill prior to its hearing in House Judiciary.

Sincerely,



JoAnn Schultz  
Supervisor  
Corporations Section

JS/ss0158Z  
031186b

Chapter 4. Name

	Page
§ 4.01. Corporate name.....	107
4.02. Reserved name.....	115
4.03. Registered name.....	118

§ 4.01. CORPORATE NAME

(a) A corporate name:

(1) must contain the word "corporation," "incorporated," "company," or "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd.," or words or abbreviations of like import in another language; and

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 3.01 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the secretary of state from:

(1) the corporate name of a corporation incorporated or authorized to transact business in this state;

(2) a corporate name reserved or registered under section 4.02 or 4.03;

June 25, 1984

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(3) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable; and

(4) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state.

(c) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable upon his records from one or more of the names described in subsection (b). The secretary of state shall authorize use of the name applied for if:

(1) the other corporation consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying corporation; or

(2) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign

corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

- (1) has merged with the other corporation;
- (2) has been formed by reorganization of the other corporation; or
- (3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) This Act does not control the use of fictitious names.

#### CROSS-REFERENCES

"Deliver" includes mail, see § 1.40.

Effective time and date of filing, see § 1.23.

Filing fees, see § 1.22.

Filing requirements, see § 1.20.

Foreign corporations, see ch. 15.

Professional corporations, see Model Professional Corporation Supplement.

Registered name, see § 4.03.

Reserved name, see § 4.02.

Statement of name in articles, see § 2.02.

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## OFFICIAL COMMENT

All of chapter 4, relating to corporate names, has been reviewed and revised in light of the responsibilities that should reasonably be placed on secretaries of state considering their available resources.

Section 4.01 deals with two basic name requirements: (1) the name must indicate "corporateness," and (2) the name must be distinguishable upon the records of the secretary of state.

1. Indication of corporateness

Section 4.01(a) permits the words indicating corporateness to include "corporation," "incorporated," "limited," or "company" or an abbreviation of them. While the words "company" and "limited" are commonly used by partnerships or limited partnerships, and therefore do not uniquely indicate corporateness, their use is widespread and is continued since it creates no discernible harm. The Act also permits the use of words or abbreviations in another language that import corporateness.

2. Names that are "distinguishable upon the records of the secretary of state"

The revision of the Model Act is based on the fundamental premise that its name provisions should only ensure that each corporation has a sufficiently distinctive name so that it may be

MODEL BUSINESS CORPORATION ACT

June 25, 1984

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distinguished from other corporations upon the records of the secretary of state. The general business corporation statute should not be a partial substitute for a general assumed name, unfair competition, or antifraud statute. As a result, the Model Act does not restrict the power of a corporation to adopt or use an assumed or fictitious name with the same freedom as an individual or impose a requirement that an "official" name not be "deceptively similar" to another corporate name (a requirement of earlier versions of the Model Act). Principles of unfair competition, not the business corporation act, provide the limits on the competitive use of similar names.

The phrase "distinguishable upon the records of the secretary of state" is drawn from section 102(a)(1) of the Delaware General Corporation Law. The principal justifications for requiring a distinguishable official name are (1) to prevent confusion within the secretary of state's office and the tax office and (2) to permit accuracy in naming and serving corporate defendants in litigation. Thus, confusion in an absolute or linguistic sense is the appropriate test under the Model Act, not the competitive relationship between the corporations, which is the test for fraud or unfair competition. The precise scope of "distinguishable upon the records of the secretary of state" is an appropriate subject of regulation by the office of secretary of state in order to ensure uniformity of administration. Corporate names that differ only in the words used to indicate corporateness are generally not

June 25, 1984

Page 112

distinguishable. Thus, if ABC Corporation is in existence, the names "ABC Inc.," "ABC Co.," or "ABC Corp." should not be viewed as distinguishable. Similarly, minor variations between names that are unlikely to be noticed, such as the substitution of a "." for a "," or the substitution of an arabic numeral for a word, such as "2" for "Two", or the substitution of a lower case letter for a capital, such as "d" for "D," generally should not be viewed as being distinguishable.

The elimination of the "deceptively similar" requirement that appeared in earlier versions of the Model Act and the specific recognition appearing in section 4.01(e), that corporations may use artificial or fictitious names to the same extent an individual can, are based on the fact that the secretary of state does not generally police the unfair competitive use of names and, indeed, usually has no resources to do so. For example, assume that "ABC Corporation" operates a retail furniture store in Albany, New York, and another group wants to use the same name to engage in a business involving imports of textiles in New York City. An attempt to incorporate a second "ABC Corporation" (or a very close variant such as "ABC Corp." or "ABC Inc.") should be rejected because the names are not distinguishable upon the records of the secretary of state. If the second group uses a distinguishable official name, like "ABD Corporation", it probably may lawfully assume the fictitious name "ABC Corporation" to import goods in New York City if it files the assumed name

June 25, 1984

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certificate required by New York law. In these situations, the secretary of state will usually not know in what business or in what geographical area "ABC Corporation" is active or what name ABD Corporation is actually using in its business; he simply maintains an alphabetical list of "official" corporate names as they appear from corporate records and makes his decision about whether a proposed name is distinguishable from other "official names" by comparing the proposed name with those on the list. This assumes that there is either no assumed name statute or that if there is such a statute it requires only local filing in counties or, as in New York, a central filing which does not become part of the corporate records maintained by the secretary of state's office. These assumptions are generally if not universally correct.

### 3. Classes of unavailable names

Section 4.01(b)(3) lists classes of "official names" that are not available. Names in use and thus unavailable from the standpoint of the secretary of state's uniqueness test for "official names" come from the following sources: (1) official names of profit or not-for-profit domestic corporations, (2) official names of foreign profit or not-for-profit corporations qualified to transact business, (3) reserved names, and (4) registered names. The secretary of state becomes involved with fictitious or assumed names only in the situation where a foreign

Alaska State Legislature  
House of Representatives



Labor and Commerce Committee

LETTER OF INTENT

3/3/86

Representative M.M. Miller, Ch. House Judiciary Comm.

The Labor & Commerce Committee considered and passed HB 544 today after noting that some of the issues will be more appropriate for the Judiciary Committee's consideration.

Testimony from the Dept. of Commerce and Dept. of Revenue indicate that there are some problems with the bill as written. Representatives from these departments said they would work with Rep. Phillips (sponsor) to fix these problems.

Signed,

A handwritten signature in cursive script, appearing to read "Mike Navarre".

Rep. Mike Navarre, Ch. House Labor & Commerce

FROM THE OFFICE OF  
REP. MIKE NAVARRE  
FOR YOUR INFORMATION

# Alaska State Legislature

IN SESSION  
P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4949



BOX 142  
EAGLE RIVER, ALASKA  
99577

## Representative Randy Phillips

HOUSE DISTRICT 15

### MEMORANDUM

TO: Representative Mike Navarre  
Chairman, House Labor & Commerce Committee

FROM: Representative Randy Phillips <sup>R.E.P.</sup>

DATE: February 28, 1986

RE: House Bill 544  
An Act prohibiting the use of certain business  
names and establishing remedies and penalties  
for violations

Thank you for your prompt scheduling of the captioned bill.

Enclosed are the following:

- a. Sectional analysis of the bill prepared by Theresa Bannister of Legislative Affairs.
- b. Letter from Monte Parrish of Northland Enterprises describing the problem area the bill addresses.
- c. Copy of article from Equipment Management concerning use of one business name by another business ("Minority contracting fraud probes being stressed by Department of Transportation:)

If you have any questions, please do not hesitate to contact me.

Enclosures

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99801  
907 465 3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1986

SUBJECT: Sectional analysis for HB 544  
TO: Representative Randy Phillips  
FROM: Theresa L. Bannister *tlb*  
Legislative Counsel

This memo contains the sectional analysis that you requested for HB 544.

Section 1 amends the basic corporations chapter to allow the commissioner of commerce and economic development ("commissioner") to use a court action to stop a person from doing business under certain reserved, registered or used names. Requires the commissioner to give notice and an opportunity to stop the prohibited use to the person before bringing the court action. Imposes a penalty (a violation) on a person who knowingly uses a name prohibited to the person.

Section 2 amends the nonprofit corporations chapter in a manner similar to that in Section 1.

Section 3 amends the chapter dealing with reservation of a business name in a manner similar to that indicated in Section 1, but only with regard to use of a name that is the same as, or similar to, a name reserved under AS 10.35.

Section 4 requires an applicant for a state business license to indicate its business name in the application.

Section 5 prohibits the Department of Commerce and Economic Development from issuing a business license to an applicant whose business name is the same as or deceptively similar to the name of another licensee, unless the similarity arises solely from the applicant's use of its legal name. Clarifies what is the business name of a foreign corporation operating in the state under an assumed name.

TLB:mk  
m3/009

# NORTHLAND ENTERPRISES

February 11, 1986

Randy Phillips  
State Representative  
P.O. Box V  
Juneau, AK 99811

Dear Randy,

Please accept my apology in the delay of my response to you regarding HB 544.

I have reviewed the bill as you have requested, and do indeed feel that it will perform exactly what is needed. Without belaboring the details of difficulty backgrounding our experiences, I will summarize as follows;

To date, I have been forced three times to contest other persons or businesses use of our registered and licensed business name "Northland Enterprises". To reiterate, in each case our discovery of their infringement was incidental.

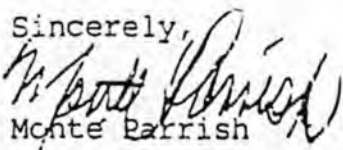
Threats of litigation seem to have had varying degrees of effect in dissuading those companies. One even held a legally issued business license with the same name as our company, another was intent on obtaining a license and ignoring us until we demonstrated that it would constitute an infringement on our registration of the name (as no Alaska law prohibits duplicate licensing).

We had the surprise and misfortune of being considered an associate of one of those companies by their different creditors, for which we were threatened with being penalized for their many delinquencies. As a result, I fear our company suffering consequential implications (which I have no doubt has occurred) if and when these or other companies default and/or otherwise cause an i action on the reputation we are trying to earn.

I am convinced that this type of situation will plague other Alaskan businesses in the future if left unchecked.

I am very appreciative of your assistance to the business community by the proposal of HB 544 to close a loophole in business ethics that presently allows duplicate business names and licenses.

Sincerely,

  
Monte Barrish

# EM

EQUIPMENT MANAGEMENT  
**IN WASHINGTON**

By EPHRAIM KAHN  
Washington Editor

## **Minority contracting fraud probes being stressed by Department of Transportation**

Secretary Elizabeth Hanford Dole of the Department of Transportation has told Inspector General Joseph P. Welsch to "mount an offensive against minority fronts with the same determination and vigor that have assured our success in efforts against bid-rigging." The Inspector General is working in conjunction with the Department of Justice. Sec. Dole recently told the National Minority Supplier Development Council that she expects significant results in the investigation and prosecution of minority fronts.

In fiscal 1985, disadvantaged businesses received over \$1.7 billion from Federal Highway Administration and Urban Mass Transit Administration projects. Both these agencies are actively supporting investigations of possible fraud. The probes will be directed toward prosecuting non-disadvantaged prime contractors who are abusing the program.

Inspector General Welsch said "some schemes involve the voluntary participation of minority 'fronts,' while some involve participation by legitimate disadvantaged businesses who are used as

'brokers' for 'pass-through' subcontracts to non-disadvantaged firms. Others use the name of disadvantaged businesses without their knowledge or consent. The number of schemes and variations is limited only by the ingenuity of the operator."

He added that criminal violations have included false statements, false claims, perjury, mail fraud, wire fraud, conspiracy, antitrust violations, extortion, and others. "Because of the potential for abuses in this multi-billion dollar program, the Fraud Section of the Criminal Division, the Department of Justice, is taking measures to insure that all substantive criminal violations receive full prosecutive consideration," Welsch added. He requests anyone with knowledge of fraud in this program to call the toll-free Hotline at 800-424-9071 (755-1855 in the Washington, D.C. area). Callers may be anonymous and may request that their identity be protected.

## **Improved prompt pay laws will be sought by coalition this year**

The Coalition for State Prompt Pay, a group of 26 trade associations including several in the construction industry, will try to persuade the nine states that don't have prompt pay laws to pass them in 1986 and to convince the legislatures of 41 states that have those laws to improve them.

At this point, 41 states and the District of Columbia have laws that require government agencies to pay contractors promptly or to pay interest penalties when payment is late. Six states (Missouri, New Mexico, North Dakota, Ohio, Tennessee, and Texas) and the District of Columbia adopted new prompt pay laws in 1985. In addition, California, Florida, Hawaii, Minnesota, Montana, and Virginia enacted strengthening amendments to their existing prompt pay laws.

The federal prompt pay law, which requires that contractors be paid within 30 days and that interest be paid on overdue amounts, was passed in 1982. The state laws are similar to the federal law. The Coalition reports that enactment of the federal law resulted in a substantial increase in the number of on-time payments to contractors.

Coalition director Kenton Pattie noted that Congress recently has held hearings on improving the federal prompt pay law, and that the construc-

tion industry has expressed particular concern about lateness in progress payments. Some federal agencies fail to pay interest on progress payments, and they also fail to make progress payments on time, contending that the prompt pay law does not apply to payments made in advance of completion of the contract.

The construction industry is trying to get that changed. Pattie said the Coalition—which has at least 15 construction-related associations in its membership—will try to have the federal statute amended in 1986 to state clearly that progress payments are subject to the prompt payment act and that they should be made within the 30 days prescribed for paying other bills. Pattie notes, however, that some people have said this would be bad—or at least a mixed blessing—for construction because agencies might decide to slow payments that they are now making in less than 30 days, as well as progress payments, timing them to arrive on or about the thirtieth day. This could result in delaying payments to those contractors who have been getting their money before the day that interest payments would start to accrue.

*(Continued on page 10)*

## NAME AVAILABILITY PROCEDURE GUIDELINES

A name availability search or check is performed for all new names and all changes of names for corporations and other legal entities registered with the division. By law, a name cannot be accepted that is the same as or deceptively similar to one of record. Mail availabilities have priority over everything else in the Information Center, except phone inquiries. Procedures will not cover every situation. The ultimate test of "deceptive similarity" is: will the general public be confused, either intentionally or unintentionally, about the new applicant and names on files. The guidelines for "deceptive similarity" are listed below. The process is essentially the same for all legal entities. The general guidelines are covered in Paragraphs A to Y.

ALL OPINIONS REGARDING NAME AVAILABILITY ARE MERELY ADVISORY AND ARE NOT FINAL, UNLESS AND UNTIL A PROPER LEGAL INSTRUMENT EMPLOYING THE NAME HAS BEEN STAMPED FILED BY OUR OFFICE.

A PRELIMINARY NAME AVAILABILITY SEARCH BY TELEPHONE IS NOT A GUARANTY: IT IS NOT A RESERVATION. IT IS A QUICK SEARCH, AND ALL TESTS FOR NAME AVAILABILITY (INCLUDING THE SAME AS, DECEPTIVELY SIMILAR, REVERSALS, ABBREVIATIONS, PHONETIC COMPARISON, ETC.) ARE NOT ACCOMPLISHED IN A BRIEF TELEPHONE INQUIRY. THEREFORE, THE CUSTOMER SHOULD BE ADVISED AS FOLLOWS: "THIS DOES NOT RESERVE THE NAME. IT WILL BE CHECKED AGAIN WHEN THE DOCUMENTS AND FEES ARE RECEIVED IN OUR OFFICE. YOU SHOULD NOT USE THE NAME UNTIL YOU RECEIVE YOUR COPY STAMPED FILED."

In determining name availability, proposed corporate names are not compared to trademarks registered in Alaska.

A. Every check results in one of the following decisions:

1. Name is available;
2. Name is available with consent of the entity having a similar name;
3. Name is available with additional terminology;
4. Name is not available; or
5. Name is available with the addition of one or more words and consent of the entity on file.

B. Same Name:

The same name cannot be accepted.

C. Word Endings:

Each word of the name should be examined for different word endings. The following tests are used to determine if a name is deceptively similar to another of record.

D. Noise words:

1. "Noise" words, such as "of," "for," "in," "an," "and," "the," "to," "too" and "at," are not considered descriptive words and should be ignored. Institute of Health...also check Institute for Health. These are considered identical names.

ABC Company	Johnson-Harris, Inc.
AB and C Company	Johnson and Haris, Inc.
A and BC Company	
AB Company	Alaska-Hawaii
A and B Company	Alaska and Hawaii

2. "A" is considered.

"A" is considered when it is at the beginning of a name. "A" is often used by a business entity to get its name listed first in the Yellow Pages, e.g., "A-Creative Coachworks," "A Design & Builders." Therefore, when checking a name, e.g., "A-Cut Above," check under "A" as a word, as well as under the word "Cut" and "Kut."

E. Abbreviations:

1. Check abbreviations if applicable:

Brothers Bros.	Builders Bldrs.	Junior Jr.	Los Angeles L.A.
Management Mgt.	Manufacturing Mfg.	Metropolitan Metro	Mister Mr.
Mount or Mountain Mt.		Alaska AK	Plumbing Plbg.
Robert Robt.	Saint St.	Television TV	United States U.S.
William Wm.			

F. Acronyms/Initials:

1. Check acronyms as separate names. Only one, not both, are acceptable. Case law in other states sets forth that a business may have only one name per business.

EXAMPLE: "International Customer Exchange (ICE)." We would accept "International Customer Exchange" or "ICE," if available, but both cannot be the corporate name.

2. Initials.

Initials that either spell a word or can be pronounced as a word are checked as a word and are considered identical, i.e., "F.I.T.T.E.R.S." and "Fitters."

G. Hyphenated Words:

Hyphenated words, two words or one word, i.e., "Tri-City," "Tri City" and "TriCity" are considered identical and are filed as one word.

H. Spaces and Special Characters:

1. Spaces and special characters, periods, commas, apostrophes, etc., are not considered.
2. Capitalization is ignored, e.g., "JOHN'S TOWING" is considered the same as "John's Towing."

I. Corporate Endings/Special Corporate Words:

1. Corp., Inc., Ltd.

Common corporate endings are considered synonymous and are not considered when checking name availability. One of these must appear in a corporate name:

Corporation or Corp.  
Company or Co.  
Incorporated or Inc.  
Limited or Ltd.

2. The corporate name may not contain the word "city," "borough" or "village" or otherwise imply that the corporation is a municipality.

3. Special Corporate Provisions

- a. Professional corporations require "Corporation" or "Incorporated" or the abbreviation "Corp." and "Inc." or the words "A Professional Corporation" in their corporate name.
- b. The word "Cooperative" or "COOP" or "CO-OP" can only be used in the name of a cooperative corporation.

EXCEPTION: The word "COOP" can be used in a name such as "Chicken Coop Tavern."

J. Reverse Name:

1. Names should be reversed and checked backward, such as:

Bill-Marr	Harris-Johnson Company
Bil-Mar	Johnson-Harris Company
Mar-Bil	
Bill-Mar	

Host of America	Paris-Boutique
American Hosts	Botique of Paris

Alaska Fishermen's Association  
Association of Fishermen of Alaska

EXCEPTION: Initials do not need to be reversed:  
A and B Company is available against  
B and A Company

2. All names should be checked forward, backward and for combinations, such as:

Alaska Fishermen's Association  
Alaska Association of Fishermen  
Fishermen's Association of Alaska  
Association of Fishermen of Alaska  
Association of Alaska Fishermen  
Associated Fishermen of Alaska  
Fishermen's Association, Alaska Chapter

K. Personal Names:

A personal name by itself is allowed with a corporate designation if the name is available.

L. First names, initials and nicknames:

1. The following names are available against each other:
  - a. "James Smith Construction Company" is available against "Smith Construction Company."
  - b. "Jim Smith Construction Company" is available against the above two names with consent from "James Smith Construction Co."
  - c. "J. Smith Construction Company" is available against the above names with consent of "James Smith Construction Co." and "Jim Smith Construction Co."
  - d. "J. A. Smith Construction Company" is available against all the above.

2. The following names should be checked against each other:

- a. "Don" and "Donald."
- b. "Doug" and "Douglas."

The above are short forms of specific words. "Don" may be considered an abbreviation of "Donald."

3. In general, the first two words of a proposed name cannot be identical without consent. "Anchorage Service & Supply, Inc." needs consent from "Anchorage Service, Inc."

M. Words Requiring Other Boards' or Commissions' Approval:

Certain words cannot be filed without referring the registrant to other boards, i.e., Certified Accountant, Architect, Bank Trust, Savings Bank, Engineer, Underwriter, Bonding Company.

1. Accounting Any of the following words, or abbreviations, used in a name must be referred to the Board of Accountancy for clearance. Check their availability and refer the customer to the Board of Accountancy.

Certified Accountant, A.A.  
Chartered Accountant, C.A.  
Enrolled Accountant, E.A.  
Licensed Accountant, L.A.  
Registered Accountant, R.A.  
Public Accountant, P.A.  
Certified Public Accountant, CPA

2. Architect, Architecture, Engineer, Engineering and Land Surveyors. These terms cannot be used without the approval of the Board of Architect, Engineers and Land Surveyors. If a corporation is using such term, it must be filed as a professional corporation.

3. Banking Division Referrals. The following names cannot be used unless they have been cleared by the Banking Division. If names include these terms, check the name and refer the customer to the Banking Division. "Trust" may be used if the entity is a business trust.

bank	bankers	banking	Premium Finance. Co.
savings bank	savings	trust	trustee
trusteed	trust company	loan company	savings & loan

4. Insurance Agencies. The following words cannot be used by Insurance Agencies:

adviser	advisers	bonding company
Broker or brokers	brokerage	counselor or counselors
consultant	consultants	exchange
insurance company	insurance group	insuror
reciprocal	underwriter	

The terms "Company," "Inc.," "Corp." or "Corporation" will be accepted in a name availability check, provided it is preceded by descriptive words, i.e., "Insurance Service Company." The words "Insurance Company" without intervening descriptive words will not be accepted.

If any questions arise concerning names used in the above terms, refer the customer or name to the Division of Insurance.

5. Water Districts. If a proposed name includes the term "Water District" or "Water Company," the Public Utilities Commission must be contacted prior to filing.

N. Government Implication

The name cannot be similar to a governmental entity, e.g., "Franklin's Bureau of Investigation," or "Childrens Services, Inc." would not be acceptable.

O. Abusive Words:

Abusive words are not accepted.

P. Foreign Language Words:

Since we do not have the skill to translate foreign language words to their English equivalent, we do not normally cross check them except when a word or term is widely used or known.

EXAMPLE: "De" and "Del," rather than "of," may be used in some Spanish names.

Martinez de Mexico...Martinez of Mexico

Asociacion...Association

Usually a foreign language title is distinctive enough and we need not be too concerned to determine its English counterpart.

Q. Contracted Words, Coined Words and Coined Phrases:

1. Use special care when checking contracted words and "coined" words or phrases. Contracted words or terms may be a contraction or a combination of two or more words, i.e., "Comptrol" may be a contraction of "Computer" and "Control," as may be

"Compcn." In these instances, "Comptrol" and "Compcn" may require the consent of "Computer Control" or may need additional descriptive terminology.

The original or first corporation to use a contracted or coined word is sometimes jealous and protective of his "invented" word and may attempt to prevent others using the word. Therefore, it is wise to be cautious when checking these names.

Each name must be approved or disapproved on an individual basis and any questionable names should be approved by a supervisor. The more frequently a word is used, the less unique it becomes and additional names would probably be approved more readily. However, if there are only one or two corporations on file which use an unusual or contracted word, consent may be required.

For its first four letters, "Xerox" may have used "xero," a combining form meaning dry, added "x" and "invested" a now very well-known word. Anyone else wishing to use "Xerox" in their corporate name would probably need consent.

R. Key, Descriptive, Nondescriptive and Generic Words:

1. Each word in a corporate title must be checked. Some words in the title may have more weight or meaning than others, but the name should always be considered as a whole.
  - a. The first word in a title is usually considered a "key" word. For example, in "Pacific Company," "Pacific" is the key word. In "Pacific Communications Company," "Pacific" is the first key word and "Communications" is the second and descriptive key word. "Company" is merely an ending or nondescriptive word. In "Pacific Communications Enterprises Company," the words "Pacific" and "Communications" are still the key words in the titles and "Enterprises" merely adds verbage to the name. Therefore, if we have "Pacific Communications Company" on file and someone wanted the proposed name "Pacific Communications Enterprises," we would not accept the name without consent because "Enterprises" does not further qualify the title.

EXCEPTION: If we have many corporations with the same beginning, i.e., "Pacific Communications Associates," "Pacific Communications Development Company," "Pacific Communications Radio Co.," "Pacific Communications Industries," etc.

- b. Descriptive words may sometimes be nondescriptive words and nondescriptive words may sometimes be considered "key" or descriptive words.

We would not accept "Pacific Communications Enterprises" against "Pacific Communications Company," but would find no conflict between "Pacific Enterprises" and "Pacific Company." In "Pacific Enterprises," the word "Enterprises" becomes a major or "key" word in the title. We would not accept "Pacific Communications Enterprises" against "Pacific Communications Associates," but would accept "Pacific Enterprises" against "Pacific Associates." In these instances, you remove the descriptive qualifying word "Communications" and "upgrade" the nondescriptive words "Enterprises" and "Associates" to "key" words.

2. In name checks, we consider generic words similar to nondescriptive. They differ because of their more frequent use. They include common words such as "United," "General" and "Universal"; geographical words such as "Northwest"; type of business words as "Computer" and "Marketing"; and numbers such as "First" are generic and cannot, by themselves, be protected.

The name must be considered as a whole. The removal or addition of a word may change the context of the name as a whole.

#### S. Adjectives:

Sometimes a title may have a qualifying or descriptive word that is not necessarily a "key" word, but, rather, acts as an adjective, describing a specific type and sometimes preceded by a descriptive key word.

EXAMPLE: "Northwest Investment Company" or "Northwest Diversified Investment Company." The word "Diversified" in the second title describes a certain type of investment.

"Northwest Investment Company" or "Northwest Land Investment Company," again, the word "Land" in the second title describes the type of investment. In each of the above instances, the basic key words are the same: "Northwest Investment." In each case, consent should be required, especially if the type of investment Northwest Investment Company is making is unknown.

Sometimes the addition of an adjective may change the title so that it would not require consent; or two titles may have the same key words but different adjectives.

EXAMPLE: "Arrowhead Money Management, Inc." or "Arrowhead Property Management, Inc."

In the above instance, the meaning is different, making each name distinctive enough to allow both titles.

T. Checking the Name as a Whole:

Always consider the name as a whole, even though certain words are or are not normally available against each other. Placing them in con-text changes the condition of the words.

This is one of the most important aspects in checking corporate names...DO NOT TAKE A WORD OUT OF CONTEXT.

EXAMPLE: WRONG: Is "associates" available against "enterprises"?

RIGHT: Is "Martin Plumbing Associates" available against "Martin Plumbing Enterprises"? (No or with consent)

RIGHT: Is "Martin Associates, Inc." available against "Martin Enterprises, Inc."? (Yes, it is)

U. Two-Name Check:

Insure that the applicant is not attempting to file two distinct names as one, i.e., "Lakeside Hotel and Roundup Room Lounge." Under certain conditions two names may be accepted, however, only the first name is protected. The applicant is informed that the name is filed alphabetically and is not cross-referenced.

V. Places:

In checking names followed by a city or location, it may require the consent of the other entity, if one is on file, i.e., "Bootleggers of Bend" or "Bootleggers, Inc."

W. Nationally Known and Generally Known Words:

1. Franchises

Many corporations have franchised operations, i.e., "Culligan Soft-Water"; "Coca-Cola"; "McDonalds"; "Kentucky Fried Chicken," etc.

Normally a consent is required from the "parent" corporation. If the parent corporation is on file, always require additional terminology from the new applicant in addition to the consent from parent corporation. Check with the supervisor to determine whether consent should be required.

2. Nationally Known and Generally Known Words: Applicants submitting names that appear similar to nationally known names should be warned of possible infringement of Federal Trade Names or Service Marks.

EXAMPLES: "Leggs Panti's," "Smith Bros. Pharmacy," or "Martinizing" would be acceptable under Alaska law, however, the applicant should be aware of potential infringement. These areas require management approval.

X. Fewer Words:

A name with fewer words or a shortened form of a name is generally not accepted without consent or additional terminology in front of a name. For example, if "Wasilla Interior Design" is on file and "Wasilla Design" is requested, additional terminology or consent may be required. Check with the supervisor.

Y. Synonymous Words and Combined Terms:

Check words with similar meanings or terms which have become accepted through usage as "belonging" together. This will not make the request "unavailable," but may require consent.

Airline  
Airways

Auto  
Automobile  
Car

Builders  
Construction  
Contractors  
General Contractors  
General Construction  
Home Builders

Drug Store  
Pharmacy  
RX Pharmacy  
Prescription Pharmacy

Farm  
Ranch

Gas  
Oil  
Petroleum

Mail  
Postal

Mart  
Market

Maintenance  
Building Maintenance  
Janitorial

Productions  
Picture  
Film  
Motion Pictures

Tennis Club  
Swim and Tennis Club

Title  
Title Insurance  
Escrow and Title

Trucking  
Transport

Van and Storage  
Van Lines  
Transfer and Storage  
Moving

You may not always feel a conflict exists between many of the above. It depends many times on the context in which the word is used, the position of the word in the title and other words used in the title that may require consent.

EXAMPLE: Consent must be obtained from existing corporation "Quality Title Service" for a new name "Escrow and Title Service." However, we would probably accept "Title Service Company" and "Escrow and Title Service Company" together.

HB 544: "An Act prohibiting the use of certain business names and establishing remedies and penalties for violations."

The Department of Commerce and Economic Development supports the concept of duplicate name avoidance of HB 544. It is the understanding of the department that the intent of HB 544 is to avoid the issuance of a business license under a name which is the same as or deceptively similar to a name already licensed.

Currently, agencies which license do so independently of each other in many respects. For example, businesses do not apply for all needed licenses at the same point in time; licensing in one agency is not necessarily conditional on licensing in another agency; and there is a lack of statutory authority to enforce prohibitions related to the use of similar names. For these reasons, the department feels it would be necessary to develop an interactive, common data base to ensure that the same or deceptively similar names are not licensed.

Statutory authority will need to be granted to the Department of Commerce and Economic Development to allow the administrators of Title 10 and Title 8 to deny an application based on a business license application under Title 43 and conversely granting authority to the Department of Revenue under Title 10.


Corporation's files are now maintained on the IBM mainframe. The Division of Occupational Licensing and the Department of Revenue Business License Section maintain their files on a Wang system. It will be necessary to seek a uniform data base to accomplish the goal of avoiding the acceptance of filings which are the same or deceptively similar.

The department does, however, have concerns with Sections 1, 2, and 3 of HB 544, as originally drafted, which authorized the Commissioner of the Department of Commerce and Economic Development to seek injunctive relief. To seek such an injunction is presently in, and presumably would continue to be vested in, the person who has registered a corporate name (AS 10.05.034) or who has registered a business name (AS 10.35.040). If the department is granted injunctive authority under HB 544 to enjoin a person from doing business under the same or deceptively similar name, it would only be able to address conflicts which are a result of a filing under Title 10. Disputes resulting from business name conflicts have traditionally been settled through private litigation. States have generally refrained from intervening in such private business concerns.

It is noted that the Corporations Section has on file approximately 25,000 names, while the Department of Revenue has approximately 65,000 business names on file and the Division of Occupational Licensing has approximately 25,000 names.

The department would propose an amendment to Title 8, the Central Licensing Act, which would provide a means of reducing the instances of the use of the same or deceptively similar name. The proposed amendment is attached.

The department also suggests that Title 10 be clarified by amendment to provide specific private rights of action to a person who is granted a Certificate of Incorporation or a Certificate of Authority. Currently, injunctive relief may be sought by a person who has registered a corporate name under AS 10.05.034 or who has registered a business name under AS 10.35.040. No similar specific authority exists for corporations formed under Title 10. Suggested amendments to Title 10 are attached.

  
Lore H. Lounsbury, Commissioner  
Department of Commerce & Economic  
Development

3/3/86  
Date

Suggested alternatives to Sections 1, 2 and 3 of HB 544:

Section 1. AS 10.05.261 is amended by adding a new subsection to read:

(b) The certificate of incorporation gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 2 AS 10.05.624 is amended by adding a new subsection to read:

(b) The certificate of authority gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 3 AS 10.10.030(4) is amended by adding a new subsection to read:

(e) The certificate of incorporation gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 4 AS 10.15.345 is amended by adding a new subsection to read:

(b) The certificate of incorporation gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 5 10.20.161 is amended by adding a new subsection to read:

(b) The certificate of incorporation gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 6 AS 10.20.500 is amended by adding a new subsection to read:

(b) The certificate of authority gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 7 AS 08.01.060 is amended by adding a new subsection to read:

(b) An applicant for a license as a corporation must attach a copy of the certification of authority for foreign corporations or the certificate of incorporation for domestic corporations issued by the Corporations Section, Division of Banking, Securities, and Corporations, Department of Commerce and Economic Development.

# NORTHLAND ENTERPRISES

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February 11, 1986

Randy Phillips  
State Representative  
P.O. Box V  
Juneau, AK 99811

Dear Randy,

Please accept my apology in the delay of my response to you regarding HB 544.

I have reviewed the bill as you have requested, and do indeed feel that it will perform exactly what is needed. Without belaboring the details of difficulty backgrounding our experiences, I will summarize as follows;

To date, I have been forced three times to contest other persons or businesses use of our registered and licensed business name "Northland Enterprises". To reiterate, in each case our discovery of their infringement was incidental.

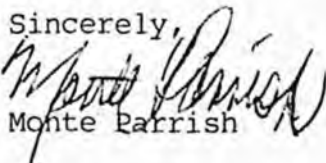
Threats of litigation seem to have had varying degrees of effect in dissuading those companies. One even held a legally issued business license with the same name as our company, another was intent on obtaining a license and ignoring us until we demonstrated that it would constitute an infringement on our registration of the name (as no Alaska law prohibits duplicate licensing).

We had the surprise and misfortune of being considered an associate of one of those companies by their different creditors, for which we were threatened with being penalized for their many delinquencies. As a result, I fear our company suffering consequential implications (which I have no doubt has occurred) if and when these or other companies default and/or otherwise cause an infraction on the reputation we are trying to earn.

I am convinced that this type of situation will plague other Alaskan businesses in the future if left unchecked.

I am very appreciative of your assistance to the business community by the proposal of HB 544 to close a loophole in business ethics that presently allows duplicate business names and licenses.

Sincerely,

  
Monte Parrish

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**Box 3528, Eagle River, Alaska 99577, (907) 688-9700**

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 27, 1986

SUBJECT: Sectional analysis for HB 544  
TO: Representative Randy Phillips  
FROM: Theresa L. Bannister *TLB*  
Legislative Counsel

This memo contains the sectional analysis that you requested for HB 544.

Section 1 amends the basic corporations chapter to allow the commissioner of commerce and economic development ("commissioner") to use a court action to stop a person from doing business under certain reserved, registered or used names. Requires the commissioner to give notice and an opportunity to stop the prohibited use to the person before bringing the court action. Imposes a penalty (a violation) on a person who knowingly uses a name prohibited to the person.

Section 2 amends the nonprofit corporations chapter in a manner similar to that in Section 1.

Section 3 amends the chapter dealing with reservation of a business name in a manner similar to that indicated in Section 1, but only with regard to use of a name that is the same as, or similar to, a name reserved under AS 10.35.

Section 4 requires an applicant for a state business license to indicate its business name in the application.

Section 5 prohibits the Department of Commerce and Economic Development from issuing a business license to an applicant whose business name is the same as or deceptively similar to the name of another licensee, unless the similarity arises solely from the applicant's use of its legal name. Clarifies what is the business name of a foreign corporation operating in the state under an assumed name.

TLB:mkr  
m3/089

# EM

EQUIPMENT MANAGEMENT  
**IN WASHINGTON**

By EPHRAIM KAHN  
Washington Editor

## **Minority contracting fraud probes being stressed by Department of Transportation**

Secretary Elizabeth Hanford Dole of the Department of Transportation has told Inspector General Joseph P. Welsch to "mount an offensive against minority fronts with the same determination and vigor that have assured our success in efforts against bid-rigging." The Inspector General is working in conjunction with the Department of Justice. Sec. Dole recently told the National Minority Supplier Development Council that she expects significant results in the investigation and prosecution of minority fronts.

In fiscal 1985, disadvantaged businesses received over \$1.7 billion from Federal Highway Administration and Urban Mass Transit Administration projects. Both these agencies are actively supporting investigations of possible fraud. The probes will be directed toward prosecuting non-disadvantaged prime contractors who are abusing the program.

Inspector General Welsch said "some schemes involve the voluntary participation of minority 'fronts,' while some involve participation by legitimate disadvantaged businesses who are used as

'brokers' for 'pass-through' subcontracts to non-disadvantaged firms. Others use the name of disadvantaged businesses without their knowledge or consent. The number of schemes and variations is limited only by the ingenuity of the operator."

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At this point, 41 states and the District of Columbia have laws that require government agencies to pay contractors promptly or to pay interest penalties when payment is late. Six states (Missouri, New Mexico, North Dakota, Ohio, Tennessee, and Texas) and the District of Columbia adopted new prompt pay laws in 1985. In addition, California, Florida, Hawaii, Minnesota, Montana, and Virginia enacted strengthening amendments to their existing prompt pay laws.

The federal prompt pay law, which requires that contractors be paid within 30 days and that interest be paid on overdue amounts, was passed in 1982. The state laws are similar to the federal law. The Coalition reports that enactment of the federal law resulted in a substantial increase in the number of on-time payments to contractors.

Coalition director Kenton Pattie noted that Congress recently has held hearings on improving the federal prompt pay law, and that the construc-

tion industry has expressed particular concern about lateness in progress payments. Some federal agencies fail to pay interest on progress payments, and they also fail to make progress payments on time, contending that the prompt pay law does not apply to payments made in advance of completion of the contract.

The construction industry is trying to get that changed. Pattie said the Coalition—which has at least 15 construction-related associations in its membership—will try to have the federal statute amended in 1986 to state clearly that progress payments are subject to the prompt payment act and that they should be made within the 30 days prescribed for paying other bills. Pattie notes, however, that some people have said this would be bad—or at least a mixed blessing—for construction because agencies might decide to slow payments that they are now making in less than 30 days, as well as progress payments, timing them to arrive on or about the thirtieth day. This could result in delaying payments to those contractors who have been getting their money before the day that interest payments would start to accrue.

(Continued on page 10)

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB 544  
 Title : An Act prohibiting the use of  
 certain business names and establishing  
 remedies & penalties for violations.  
 Sponsor : Phillips  
 Requestor : \_\_\_\_\_  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Commerce & Econ. Dev.  
 BRU : Banking, Securities and  
 Corporations  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		4.2	3.0	3.0	3.0	3.0
SUPPLIES						
EQUIPMENT		10.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	14.2	3.0	3.0	3.0	3.0
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

**FUNDING : (Thousands of Dollars)**

GENERAL FUND	-0-	14.2	3.0	3.0	3.0	3.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						


**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Funding will permit acquisition of Wang Terminals for the Corporation Section to allow access to compatible data base for cross referencing business names between all affected agencies. Four terminals - Juneau, Two terminals - Anchorage.

Prepared by : Lawrence P. Carroll Phone : 465-2521  
 Division : Banking, Securities & Corporations Date : March 3, 1985

Approved by Commissioner :  Date : 3/3/86  
 Agency : Dept. of Commerce & Econ. Dev.

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Our idea is to give stated injunctive relief to the filer rather than to the Commissioner of Commerce and Economic Development. Several attorneys have contacted me in the past expressing concern about the lack of stated injunctive relief for a corporation which has incorporated in Alaska or which has qualified to do business in Alaska. Alaska Statutes 10.05.034 and 10.35.040 are the only sections in Title 10 which provide stated injunctive relief.

*J. L. W.*

Sec. 4 AS 10.15.345 is amended by adding a new subsection to read:

(b) The certificate of incorporation gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 5 10.20.161 is amended by adding a new subsection to read:

(b) The certificate of incorporation gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 6 AS 10.20.500 is amended by adding a new subsection to read:

(b) The certificate of authority gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 7 AS 08.01.060 is amended by adding a new subsection to read:

(b) An applicant for a license as a corporation must attach a copy of the certification of authority for foreign corporations or the certificate of incorporation for domestic corporations issued by the Corporations Section, Division of Banking, Securities, and Corporations, Department of Commerce and Economic Development.

Suggested alternatives to Sections 1, 2 and 3 of HB 544:

Section 1. AS 10.05.261 is amended by adding a new subsection to read:

(b) The certificate of incorporation gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 2 AS 10.05.624 is amended by adding a new subsection to read:

(b) The certificate of authority gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.

Sec. 3 AS 10.10.030(4) is amended by adding a new subsection to read:

(e) The certificate of incorporation gives the exclusive right to the use of the corporate name and the corporation may enjoin the use of the same name or a deceptively similar name and has a cause of action for damages against anyone who uses the same name or a deceptively similar name.