SB

93

HFIN

FILE

(11)

HOUSE COMMITTEE REPORT

Date Referred to Committee: May 3, 1999

FURTHER REFERRALS:

Date of Committee Action: 5/5/99

The FINANCE Committee considered:

CSSB 93(FIN)

CS FOR SENATE BILL NO. 93(FIN)

NAMES OF ORGANIZATIONS & BUSINESSES

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

recommends it be replaced
with the following committee substitute _____

[ ] the same title
[ ] a new title

[ ] additional referral to _____ Committee
[ ] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)

[ ] fiscal note(s) _____

[ ] zero fiscal note(s) _____

APPROVES PREVIOUS: (Dept/Date)

[X] Senate fiscal note(s) DCED, 3/26/99

[ ] zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Therriault			X	
Foster	X			
Williams	X			
Davis	X			
Moses			X	
Grussendorf			X	
Davies		X		
Austerman		X		
Kohring	X			

CHAIR'S SIGNATURE _____

FISCAL NOTE No. 1

Bill Version: SB93
(S) Publish Date: 3/26/99

STATE OF ALASKA
1999 LEGISLATIVE SESSION

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
Title Names of Organizations and Businesses BRU Banking, Securities and Corporations
Component Banking, Securities and Corporations
Sponsor Senate Labor & Commerce
Requester Senate Labor & Commerce Component Serial No. 1233

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )	30.0	33.0	36.3	39.9	43.9	48.3

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

This legislation is intended to reduce confusion and make it clearer in cases where the name of a business may be viewed "deceptively similar" to another business name.

The purpose of this bill is to eliminate the confusion that currently exists within the three standards of business name distinction. This bill will be change current statutes from three standards of business name distinction to one standard.

With passage of this bill and subsequent implementation of new statutes, name disputes will be resolved between the parties, not the State of Alaska.

Franklin T. Elder

Prepared by Franklin T. Elder, Director Phone 465-2521
Division Banking, Securities and Corporations Date/Time 3/9/99 8:57 AM
Approved by Commissioner Deborah B. Sedwick Date _____
Agency Commerce and Economic Development

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STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

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Attn: Dave Gray – Senator Mackie
April 8, 1999

From: Dawn Williams

CS for Senate Bill No. 93(L&C)

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

The State of Alaska Corporation Section, under the Department of Commerce, is responsible for filing documents for corporations, limited partnerships, limited liability partnerships, and limited liability companies doing business in the State of Alaska, as well as the registration of business names.

Currently, there are three different guidelines under Title 10 and Title 32 that the Corporation Section must follow when determining name availability.

1. Deceptively similar
2. Distinct
3. Distinguishable on the record

This bill will bring all the chapters in Title 10 and Title 32 to the same standard, "distinguishable on the record", when determining the availability of all entity names to be filed with the Corporations Section. This is the standard used in the Uniform Act and to this date has been adopted by at least 25 other states.

The current three guidelines allow for conflicts to arise in which one entity feels the Department erred in filing a name because it could be viewed as too similar to another name on file. The public feels that when a name is filed it is "protected", however this is not the case in any state. A business entity must protect its own name from disparaging use, and there are remedies in the courts for that purpose. The Corporations Section is a filing agency, not an enforcement agency, therefore, these conflicts should not include the State and should at all times be discussed between the two conflicting entities. Consolidating to one guideline will lessen confusion and keep the state out of essentially private disputes over names.

This bill would have a positive fiscal impact for the Department. The standard of "distinguishable on the record" would allow for more entities to file their name with the department because the standard of "distinguishable" is less prohibitive than the "deceptively similar" standard. There are several names rejected per week based on the "deceptively similar" standard.

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TAX ID NO. 92-0087506

February 8, 1999

Deborah B. Sedwick, Commissioner
Department of Commerce and Economic Development
Post Office Box 110808
Juneau, Alaska 998011-0808

Re: Business Name Registration

Dear Commissioner Sedwick:

I applaud the Department's efforts to resolve a long-standing problem of having the State determine business names which are "deceptively similar" to other names. The State should not be making those determinations in the guise of corporate regulation; if they need be made, such determinations are more properly made by private parties, with the assistance of the courts if necessary, under concepts of unfair trade practices. Indeed, to the extent that the State has been forced into making such determinations (under the "deceptively similar" standard, *see, e.g.* Alaska Statutes 10.06.105 (business corporations), 10.20.021 (nonprofit corporations); 10.35.020 (business names); *cf.* AS 10.50.025 (limited liability companies)), the result has proved very frustrating to many of my clients, who find the State's determinations confusing and, at times, arbitrary.

I daresay I speak on behalf of many others in wholeheartedly supporting passage of legislation in the First Session of the Twenty-First Legislature to eliminate the "deceptively similar" standard currently set forth throughout Title 10 and elsewhere in the Alaska Statutes.

Thank you for your consideration.

Very truly yours,
BURR, PEASE & KURTZ

Ralph E. Duerre

nrb
bcc: Jerome O. List, D.D.S., M.D.
3531-1W22606

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FEB 1 AM 11 31

January 28, 1999

2-1-99

Deborah Sedwick, Commissioner
State of Alaska, Dept. of Commerce
and Economic Development
P.O. Box 110808
Juneau, Alaska 99811-0808

Re: Proposed business entity names legislation

Dear Commissioner:

I was pleased to see the proposed legislation from your department that would iron out many of the wrinkles and provide consistency to the various statutes in Titles 10 and 32 dealing with business entity names.

My office has a very active practice working with entrepreneurs and investors in organizing Alaska businesses that include corporations, partnerships and limited liability companies. My office is in almost daily contact with representatives of the Department addressing issues surrounding the organization of these business entities. Frequently, my office and our clients are faced with issues surrounding the use of business names and the determination of whether certain business names have already been taken or are available for new business entities. As the cover memo to the new legislation reflects, we currently face a labyrinth of varying rules addressing the use of business entity names.

I have read the proposed bill. I believe it would clarify and make consistent the rules surrounding the use of business entity names. The new legislation will substantially improve the current statutes dealing with business entity names and will avoid a significant amount of confusion that the Department, attorneys who organize businesses, and members of the business community would face in the absence of such clarifying legislation. I give this new legislation my wholehearted support.

Very truly yours,

BRIAN W. DURRELL, P.C.

Brian Durrell

Brian W. Durrell

BWD:jk
cc: Dawn Williams (via fax)

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AND CORPORATIONS

January 29, 1999

Debra B. Sedwick, Commissioner
State of Alaska
Department of Commerce and Economic Development
Division of Banking, Securities and Corporations
P.O. Box 110808
Juneau, Alaska 99811-0808

RE: Proposed Business Entity Names Legislation

Dear Commissioner:

Ashburn & Mason, P.C., has a very active corporate practice, organizing and assisting Alaska businesses which include corporations, limited liability companies, and partnerships. We are often in contact with the Anchorage and Juneau Corporations Division offices, frequently over the issues of business entity names. This is why we are very pleased to see the Department's proposed legislation concerning business entity names.

We have read the bill and believe it will clear up many of the problems surrounding the use of business names. The Department, members of the business community, and attorneys who organize businesses will all benefit from the passage of this bill. We give it our support.

Very truly yours,

ASHBURN & MASON, P.C.

By: Mark E. Ashburn

By: for William S. Cummings

By: _____
Donald W. McClintock

By: Kirsten Tinglum
for John C. McCarron

By: _____
A. William Saupe

By: Kirsten Tinglum
Kirsten Tinglum

By: Karen M. Procter
Karen M. Procter, Legal Assistant

cc: Dawn Williams, Supervisor
Corporations Division

N:\KMP\CORPLTR.AWS

January 15, 1999

Dawn Williams
State of Alaska
Department of Commerce and
Economic Development
Division of Corporations
Juneau AK, 99801

Dear Dawn Williams ,

SUBJECT: PROPOSED BUSINESS ENTITY LEGISLATION.

Complete Corporate Services of Alaska Incorporated has reviewed the proposed legislation. We feel that this legislation would be beneficial to the State of Alaska, and its citizens. We feel that the state's exposure due to the wording of the previous legislation is unnecessary and not beneficial. This exposure results in superfluous litigation. We at Complete Corporate Services of Alaska, Inc., believe that disputes over business entity names are better resolved by the parties involved. We believe that the state can improve service and reduce liability with the proposed legislation. From our experience, our customers would appreciate this more modern approach to name registration.

Sincerely,

James M. Barrett

James M. Barrett
Vice President
Complete Corporate Services of Alaska, Inc.

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Email: hompesch@pdalaska.net

January 26, 1999

VIA FAX

Ms. Dawn Williams
Records and Licensing Supervisor
Division of Banking, Securities
and Corporations
P.O. 110808
Juneau, Alaska 99811-0808

Dear Dawn:

I have reviewed and I support the proposed business entity names legislation to replace the old name standard of "deceptively similar" to the new less stringent name standard of "distinguishable on the record."

Sincerely,

HOMPESCH & ASSOCIATES
A Professional Corporation

Susan L. Evans

SLE/sg

Alaska State Legislature

SENATE LABOR & COMMERCE COMMITTEE

Official Business

State Capitol
Juneau, AK 99801-1182

(907)465-3844

SPONSOR STATEMENT

SB 93, Names of Businesses and Organizations.

The Alaska Department of Commerce and Economic Development, Division of Banking, Securities, and Corporations, Corporation Section is responsible for filing documents for corporations, limited partnerships, limited liability partnerships, and limited liability companies doing business in the State of Alaska, as well as filing registered names for business entities and reservation of names for corporations. To do that, the Corporation Section must follow name availability guidelines under Title 10 and Title 32 of the Alaska Statutes.

This proposed legislation is drafted to change the current name availability standards under which business entities are allowed to file with the State of Alaska, from three conflicting guidelines to one.

The current guidelines under Title 10 and Title 32 are as follows:

1. Alaska Statutes 10.06, 10.20, 10.35 and 32.11 each use the guideline"...name may not be the same as, or deceptively similar to, the name of a corporation or registered/reserved name filed under this title."

2. Alaska Statute 10.25 uses the guideline "...name shall be distinct from the name of other cooperatives or corporations organized under the laws of or authorized to do business in this state."

3. Alaska Statutes 10.50 and 32.05 use the guideline "...name is distinguishable on the records of the department (from all other entities filed)."

As a result of the difference in the current guidelines and the margin of error encountered in determining name availability, many conflicts arise each year between different business entities within Alaska. Some of these private name conflicts ultimately result in a conflict with the State of Alaska if an entity believes a name was filed inappropriately. The State expends scarce resources when it must be party to a lawsuit resulting from "conflicting" registered names.

The old standards of "deceptively similar" and "distinct" should be replaced by the newest guideline "distinguishable on the record." This guideline would allow for more entities to file with the State of Alaska, because it is not as stringent as the "deceptively similar" standard.

The adoption of this newer standard would remove the state from these conflicts and allow those entities that see a problem in name similarity to resolve their disputes privately.

Sectional for CS SB 93 (FIN), Names of Organizations & Businesses

Section 1
Section 06.05.301(b)
This is amended to comply with the changes set forth in AS 10.06.105(a) to include a new section AS 10.06.105(d).

Section 2
Section 10.06.005
The current purpose exclusion of insurance is deleted. The current standard does not allow for the incorporation of insurance companies, however, this is in direct violation with Alaska Insurance statutes which require insurance companies to be incorporated.

Section 3
Section 10.06.105(a)
The old standard of determining name availability is deleted. The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 4
Section 10.06.105(d)
A new section is added, changing the old standard of determining name availability from "deceptively similar" to "distinguishable on the record", making it easier for corporations to file with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 5
Section 10.06.115
The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 6
Section 10.06.125
The standard of determining name availability is changed to "distinguishable on the record", making it easier for corporations to register their corporate name with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 7
Section 10.06.130
A corporation who has the exclusive right to the use of a name under AS 10.06 may enjoin the use of a name that is not distinguishable on the records of the department from the

corporation's name. A corporation who has the exclusive right to the use of a name under AS10.06 has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the corporation's name.

The current law does not allow this provision.

Section 8
Section 10.06.033(e)
A corporation that reinstates, must amend its name if the name is no longer distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 9
Section 10.06.720
A foreign corporation may not obtain a certificate of authority unless its corporate name is distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 10
Section 10.13.120(a)
The standard of determining name availability is changed to "distinguishable on the record", making it easier for corporations to file with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 11
Section 10.15.578
A section is added requiring the name of a cooperative corporation to be "distinguishable on the record', and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. The current section does not include language allowing for the department to adopt regulations.

Section 12
Section 10.20.021
This section is repealed and reenacted to change the standard of determining name availability to "distinguishable on the record," making it easier for corporations to file with the state, and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. The current section does not include language allowing for the department to adopt regulations.

Section 13
Section 10.20.470
A foreign corporation may not obtain a certificate of authority unless its corporate name is distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 14
Section 10.20.471
When a foreign corporation has a name which is not distinguishable on the records of the department, it must select another name to use which is distinguishable on the records.

Section 15
Section 10.25.040
The old standard of determining name availability is deleted.

The current law uses a different standard, "distinct," to determine name availability.

Section 16
Section 10.25.040
New sections are added change the standard of determining name availability to "distinguishable on the record," making it easier for electric and telephone cooperatives to file with the state, and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section. Section (c) is added to allow corporations that become subject to this chapter by compliance with AS10.25.290 and 10.25.300 or 10.25.620 to retain a corporate name that does not comply with (a) of this section.

The current law uses a different standard, "distinct," to determine name availability. The change in this law will result in the conformity of each name availability statute which is implemented by this division. The current section does not include language allowing for the department to adopt regulations.

Section 17
Section 10.35.020
The standard of determining name availability is changed to "distinguishable on the record", making it easier for businesses to reserve their name with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 18
Section 10.35.020(b)
A new subsection is added to allow the department to adopt regulations under AS 44.62 to interpret or implement this section.

The current section does not include language allowing for the department to adopt regulations.

Section 19
Section 10.35.040
The standard of determining name availability is changed to "distinguishable on the record", making it easier for businesses to register their name with the state; and the term "organized entity" is defined; and a person who has the exclusive right to the use of a name under this section may to enjoin the use of a name that is not distinguishable on the records of the department from the registered name. A person who has the exclusive right to the use of a name under this section has a cause of action for damages against a person who uses a name that is not distinguishable on the records of the department from the registered name; and the department is allowed to adopt regulations under AS 44.62 to interpret or implement this section

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. "Organized entity" is a term used to define those entities which are subject to name availability determinations under the guideline of "distinguishable on the records". The current section does not include language allowing for the department to adopt regulations.

Section 20
Section 10.35.500
The definition of "department" is added.

The old section did not include a definition of "department."

Section 21
Section 10.40.015
The standard of determining name availability is added to use "distinguishable on the record".

The current law does not have a standard of determining name availability.
Section 22
Section 10.45.120(b)
The standard of determining name availability is added to use "distinguishable on the record".

The current law does not have a standard of determining name availability.

Section 23
Section 10.50.025
The section is repealed and reenacted.

The old law is repealed and reenacted to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 24
Section 10.50.035
The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The old law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 25
Section 10.50.040
The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The current law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 26
Section 10.50.408(e)
A company that reinstates, must amend its name if the name is no longer distinguishable on the records of the department.

The current law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 27
Section 32.05.480
The standard of determining name availability is changed to "distinguishable on the record", making it easier for entities to reserve their name with the state.

The current law is amended to conform to the language used in all sections where the term "organized entity" is used in determining name availability on the records of the department.

Section 28
Section 32.05.510
A name must be distinguishable under AS 32.05.480.

Section 29
Section 32.05.520
A limited liability partnership who has the exclusive right to the use of a name under this section may enjoin the use of a name that is not distinguishable on the records of the department from the limited liability partnership's name. A limited liability partnership's who has the exclusive right to the use of a name under this section has a cause of action for damages

against a person who uses a name that is not distinguishable on the records of the department from the corporation's name.

The current law does not allow this provision.

Section 30
Section 32.05.620(e)
A partnership that reinstates, must amend its name if the name is no longer distinguishable on the records of the department.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 31
Section 32.11.120(d)
This section is amended to provide for the new standard of "distinguishable on the records".

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 32
Section 32.11.810
This section is amended to change the standard of determining name availability to "distinguishable on the record," making it easier for limited partnerships to file with the state, and to allow the department to adopt regulations under AS 44.62 to interpret or implement this section

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year. The current section does not include language allowing for the department to adopt regulations.

Section 33
Section 32.11.810
A section is added to allow the department to adopt regulations under AS 44.62 to interpret or implement this section.

The current section does not include language allowing for the department to adopt regulations.

Section 34
Section 32.11.820(b)
This section is amended to change the standard of determining name availability for reserving a limited partnership name to "distinguishable on the record," making it easier for limited partnerships to file with the state.

The current law of "same as or deceptively similar" created confusion with the general public and led to several conflicts each year.

Section 35
Section 45.50.010
This section is amended to allow the department to check the names of "organized entities" on the records of the department against an application for registration of trade mark or service mark.

The current law does not have a provision to check the name of an entity when determining the availability of a trade mark or service mark.

Section 36
Sections 1-33 may not be interpreted to allow the department or any other person to take action against any entity organized before the effective date of this section.

Section 37
The Department may immediately proceed to adopt necessary regulations.

Section 38
Applies only to actions taken on or after the effective date.

Section 39
Provides the effective date of the Act.