

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

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January 26, 1999

VIA FAX

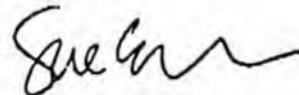
Ms. Dawn Williams
Records and Licensing Supervisor
Division of Banking, Securities
and Corporations
P.O. 110808
Juneau, Alaska 99811-0808

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

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 10.06.035(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 AS 10.25.290 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.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. SB 93 (L&C)

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 House 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						
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CHANGE IN REVENUES ()	30.0	33.0	36.3	39.9	43.9	48.3
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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 4/27/99 3:15 AM
 Approved by Commissioner Deborah B. Sedwick Date 4/28/99
 Agency Commerce and Economic Development

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Comments On Sections of Draft Business Entity Names Bill

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. When one of these business entities files to do business in Alaska, its name is registered as part of the filing process, if no other entity has registered the name. Businesses that are not incorporated can register their names for five years by paying a \$25 filing fee. As with corporate filings, a name can be registered if it has not been registered by another business entity operating in Alaska.

There are three different guidelines under Title 10 and Title 32 that the Corporation Section must follow when determining name availability for business entities filing with the State of Alaska. As a result of differences in these guidelines, many conflicts arise each year between different business entities within Alaska. In recent years, name conflicts have turned into lawsuits as a result of the confusion caused by these three inconsistent statutory guidelines. To avoid these conflicts, this legislation replaces the old standards of "deceptively similar" and "distinct" with the newest guideline "distinguishable on the record."

The following statutes must be followed when determining name availability:

- 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."
- 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."
- Alaska Statutes 10.50 and 32.05 use the guideline "...name is distinguishable on the records."

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 guideline that gives rise to almost all of these conflicts is the business name or corporate name standard "the same as or deceptively similar to".

It is in the best interest of the State if these statutes are changed to adhere to one standard when determining name availability. That guideline should be "distinguishable on the record." This change would not take away the right of the registrant to protect its name from those who would use it fraudulently. However, the State of Alaska would no longer be held liable for damages for issuing registration to a name that might be similar to another entity that is on file. Furthermore, the State of Alaska would not forego revenue by changing these statutes. It may be possible that revenues would increase because of

the volume of additional applicants granted registration by the new and less stringent name standard.

The State of Utah does an excellent job of outlining the role of states in corporate and business name registration. This is outlined below.

Purpose of Corporate & Business Name Registration

- Many attorneys and members of the public mistakenly believe that the division grants exclusive rights to a business name when the division issues a certificate of incorporation or accepts a DBA application for filing. The fact is that division approval has little or nothing to do with acquiring business or corporate name rights. State registration is merely one step in obtaining such rights.
- The division was never statutorily intended to conclusively determine name availability. First of all, the division checks for name availability by comparing the requested name with those of record in the division offices. This search does not include, because it is practically impossible to do so, possible conflicts with names of foreign corporations doing business in Utah without state authorization, assumed business names that have been used but are not currently registered and trademarks or service marks that have been registered only federally or not at all. Without checking a proposed name against these kinds of names, the division cannot conclusively adjudge name availability.
- Even if the division had the records and resources necessary to compare requested names with all "predictable names," the division still could not effectively identify all conflicts because such requires extensive legal education for those making such decisions. Moreover, the time required to process such reviews would virtually bring business and corporate registration to a halt. The process could require upwards of twelve to sixteen months to otherwise complete (based on the procedures used by the federal trademark office).
- Another reason the division cannot grant exclusive and absolute right to a corporate or business name is that name rights are obtained through usage, not through registration. Hence, prior usage of the name gives the user rights that are superior to those of a later registrant. Likewise, a later user may have rights superior to a prior registrant who has not used the name.
- The Utah Attorney General issued an informal opinion in 1985 stating the purpose of registering a DBA is primarily for identification purposes. That is, a DBA registration is an advisory or notice to the public of the individuals or entities associated with that business DBA. The division's role is purely ministerial. Registration or filing a DBA does not grant property rights or property interests in a name. The division does not have the power and authority to determine or settle competing claims to a name under the common law or under other statutes. These matters must be settled in a court of law.

The recodification of Alaska's corporate laws is based on the American Bar Association's 1950 draft **Model Business Corporation Act (National Act)**, *as amended*. Language in §4.01 (b), of the **Model Business Corporation Act**, *Except as authorized by subsections (c) and (d)*, a corporate name must be distinguishable upon the records of the

Secretary of State. Adoption of this language would bring the State of Alaska into compliance with the **Model Business Corporation Act**.

At this time, research of current state statutes, codes and regulations for the other 49 states shows that the standard of "distinguishable on the record" has been adopted by at least 25 states.

Section 1

Section 10.06.105(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 2

Section 10.06.105(d)

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 3

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 4

Section 10.15.575(a)

The standard of determining name availability is changed to "distinguishable on the record", making it easier for cooperatives 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 5

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 6

Section 10.25.040

This section is repealed and reenacted to 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

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 7

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 8

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 9

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.

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 10.35.040(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 11

Section 32.11.810

This section is repealed and reenacted 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 12

The Department may immediately proceed to adopt necessary regulations.

Section 14

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

Section 15

Provides the effective date of the Act.

CS FOR SENATE BILL NO. 93(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

13 (a) A corporate name must [SHALL] contain the word "corporation",
14 "company", "incorporated", or "limited", or an abbreviation of one of these words.

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The corporate name may not contain a word or phrase that indicates or implies that the corporation is organized for a purpose other than the purpose contained in its articles of incorporation. [THE CORPORATE NAME MAY NOT BE THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE NAME OF A DOMESTIC CORPORATION EXISTING UNDER THE LAWS OF THIS STATE OR A FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, OR A NAME THAT HAS BEEN RESERVED OR REGISTERED AS PROVIDED IN THIS TITLE.]

* Sec. 3. AS 10.06.105 is amended by adding a new subsection to read:

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

* Sec. 4. AS 10.06.115 is amended to read:

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

* Sec. 5. AS 10.06.125 is amended to read:

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

* Sec. 6. AS 10.06.130 is repealed and reenacted to read:

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

7 (b) A corporation with the exclusive right to a name under (a) of this section

8 (1) may enjoy the use of a name that is not distinguishable on the
9 records of the department from the name to which the corporation has the exclusive
10 right under (a) of this section;

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

14 * Sec. 7. AS 10.06.633(e) is amended to read:

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

27 * Sec. 8. AS 10.06.720 is amended to read:

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

31 (1) contains the word "corporation", "company", "incorporated", or

1 "limited", or an abbreviation of one of these words, or, for use in this state, adds at the
2 end of its name one of these words or an abbreviation of one of them;

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

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

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

18 * Sec. 9. AS 10.13.120(a) is amended to read:

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

25 * Sec. 10. AS 10.15 is amended by adding a new section to article 8 to read:

26 Sec. 10.15.578. Distinguishable name. The name of a cooperative association
27 must be distinguishable on the records of the department from the name of any other
28 organized entity and from a reserved or registered name. The department may adopt
29 regulations under AS 44.62 (Administrative Procedure Act) to interpret or implement
30 this section. In this section, "organized entity" and "reserved or registered name" have
31 the meanings given in AS 10.35.040.

1 * **Sec. 11.** AS 10.20.021 is repealed and reenacted to read:

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

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

12 * **Sec. 12.** AS 10.20.470 is amended to read:

13 **Sec. 10.20.470. Corporate name of foreign corporation.** A certificate of
14 authority may not be issued to a foreign corporation unless the corporate name of the
15 corporation

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

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

27 * **Sec. 13.** AS 10.20.471 is amended to read:

28 **Sec. 10.20.471. Assumed corporate name.** When a foreign corporation,
29 applying for a certificate of authority, has a name that is not available for use by the
30 foreign corporation under AS 10.20.021(b) [THE SAME AS OR DECEPTIVELY
31 SIMILAR TO THAT OF A CORPORATION OPERATING UNDER THIS

1 CHAPTER], it shall

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

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

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

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

15 * Sec. 15. AS 10.25.040 is amended by adding new subsections to read:

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

21 (c) The provisions of (a) of this section do not apply to a corporation that
22 becomes subject to this chapter by compliance with AS 10.25.290 and 10.25.300 or
23 10.25.620 and that elects to retain a corporate name that does not comply with (a) of
24 this section.

25 * Sec. 16. AS 10.35.020 is amended to read:

26 **Sec. 10.35.020. Application to reserve name.** Reservation of a business name
27 is made by filing an application with the commissioner. Upon finding that the name
28 is available for business use, the commissioner shall reserve it for the exclusive use
29 of the applicant for a period of 120 days. A name is not available for business use
30 if the name [WHICH] is not distinguishable on the records of the department
31 under AS 10.35.040(a) [THE SAME AS, OR DECEPTIVELY SIMILAR TO, THE

1 NAME OF A DOMESTIC CORPORATION OR A FOREIGN CORPORATION
2 AUTHORIZED TO TRANSACT BUSINESS IN THE STATE, OR A NAME
3 RESERVED OR REGISTERED UNDER THIS TITLE] or gives the impression that
4 the business is incorporated.

5 * **Sec. 17.** AS 10.35.020 is amended by adding a new subsection to read:

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

8 * **Sec. 18.** AS 10.35.040 is repealed and reenacted to read:

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

13 (1) "organized entity" means

14 (A) a corporation under AS 10.06;

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

17 (C) a BIDCO licensed under AS 10.13;

18 (D) a cooperative organized under AS 10.15;

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

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

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

24 (H) a cooperative organized under AS 10.25;

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

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

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

28 (L) a foreign limited liability company registered under
29 AS 10.50;

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

31 (N) a foreign limited liability partnership registered under

1 AS 32.05;

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

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

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

6 (b) Registration of a name gives the person who has registered the name the
7 exclusive right to the use of the name. A person who has registered a name under this
8 chapter

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

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

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

16 * Sec. 19. AS 10.35.500 is amended by adding a new paragraph to read:

17 (3) "department" means the Department of Commerce and Economic
18 Development.

19 * Sec. 20. AS 10.40 is amended by adding a new section to read:

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

26 * Sec. 21. AS 10.45.120 is amended by adding a new subsection to read:

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

1 "reserved or registered name" have the meanings given in AS 10.35.040.

2 * **Sec. 22.** AS 10.50.025 is repealed and reenacted to read:

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

9 * **Sec. 23.** AS 10.50.035 is amended to read:

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

17 * **Sec. 24.** AS 10.50.040 is amended to read:

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

22 * **Sec. 25.** AS 10.50.408(e) is amended to read:

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

1 provisions of this chapter.

2 * Sec. 26. AS 32.05.480 is repealed and reenacted to read:

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

9 * Sec. 27. AS 32.05.510(a) is amended to read:

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

13 * Sec. 28. AS 32.05.520 is amended to read:

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

21 * Sec. 29. AS 32.05.620(e) is amended to read:

22 (e) If the registration of a registered limited liability partnership is cancelled
23 under this section, the registration may be reinstated within two years from the date
24 of the certificate of cancellation if it is established to the satisfaction of the
25 commissioner that in fact (1) there was no cause for the cancellation, or the
26 delinquency, failure, or misrepresentation resulting in cancellation has been corrected;
27 and (2) the partnership pays two times the amount of any delinquent fee and the
28 amount the partnership would have paid had it not been cancelled during the two-year
29 period. Unless the partnership being reinstated amends its registration to change its
30 name to comply with AS 32.05.470 - 32.05.520, reinstatement may not be authorized
31 if the name of the partnership is not distinguishable on [IN] the records of the

1 department under AS 32.05.480.

2 * Sec. 30. AS 32.11.120(d) is amended to read:

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

8 * Sec. 31. AS 32.11.810 is amended to read:

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

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

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

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

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

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

25 * Sec. 32. AS 32.11.810 is amended by adding a new subsection to read:

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

28 * Sec. 33. AS 32.11.820(b) is amended to read:

29 (b) The reservation shall be made by filing with the department an application,
30 executed by the applicant, to reserve a specified name. If the department finds that
31 the name is available for use by a domestic or foreign limited partnership under

1 AS 32.11.810 [, AND NOT A RESERVED OR REGISTERED NAME UNDER
2 AS 10.35], the department shall reserve the name for the exclusive use of the applicant
3 for a period of 120 days. Once having reserved a name, the same applicant may not
4 again reserve the same name until more than 60 days after the expiration of the last
5 120-day period for which that applicant reserved that name. The right to the exclusive
6 use of a reserved name may be transferred to another person by filing with the
7 department a notice of the transfer executed by the applicant for whom the name was
8 reserved and specifying the name and address of the transferee.

9 * Sec. 34. AS 45.50.010(a) is amended to read:

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

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

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

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

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

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

30 (6) a mark that so resembles a mark registered in the state or in the
31 United States Patent and Trademark Office, or a mark previously used by another and

1 not abandoned, as to be likely, when used on or in connection with the goods or
2 services of the applicant, to cause confusion or mistake or to deceive; or

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

10 * Sec. 35. APPLICABILITY. (a) Sections 1 - 33 of this Act may not be interpreted to
11 enable the Department of Commerce and Economic Development or any other person to take
12 action under AS 10 or AS 32 against an organization because the organization's name does
13 not comply with secs. 1 - 33 of this Act on or after the effective date of this section if the
14 name complied with the provisions of AS 10 or AS 32 applicable to the organization's name
15 before the effective date of this section, except that a corporation applying for reinstatement
16 under AS 10.06.633(e) on or after the effective date of this section must comply with
17 AS 10.06.633(e), as amended by sec. 7 of this Act, and a limited liability company applying
18 for reinstatement under AS 10.50.408(e) on or after the effective date of this section must
19 comply with AS 10.50.408(e), as amended by sec. 25 of this Act.

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

22 (c) AS 45.50.010(a)(7), as enacted by sec. 34 of this Act, does not invalidate the
23 registration of a mark that is registered under AS 45.50.010 - 45.50.205 before the effective
24 date of this section.

25 * Sec. 36. TRANSITION: REGULATIONS. Notwithstanding sec. 38 of this Act, the
26 Department of Commerce and Economic Development may immediately proceed to adopt
27 regulations necessary to implement the changes made by this Act. The regulations take effect
28 under AS 44.62 (Administrative Procedure Act), but not before the effective date of sec. 38
29 of this Act.

30 * Sec. 37. Section 36 of this Act takes effect immediately under AS 01.10.070(c).

31 * Sec. 38. Except as provided in sec. 36 of this Act, this Act takes effect July 1, 1999.

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

TONY KNOWLES, GOVERNOR

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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.

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.



Official Business

Alaska State Legislature

SENATE LABOR & COMMERCE COMMITTEE

State Capitol
Juneau, AK 99801-1182

(907)465-3844

April 7, 1999

MEMORANDUM

To: Senator Torgerson, Co-chair
Senator Parnell, Co-chair
Senate Finance Committee

From: Senator Mackie, Chair
Senate Labor & Commerce Committee

Re: SB 93, Names of Businesses and Organizations.

Attached is an amendment proposed for SB 93 from the Department of Commerce and Economic Development. I believe this is one of those things that was an oversight in original drafting of the bill and merits favorable consideration by the finance committee. My staff has consulted with our own legal affairs agency and their verbal opinion is that the title change is required.

Thank you for your attention to this matter.

STATE OF ALASKA
DEPARTMENT OF COMMERCE
AND ECONOMIC DEVELOPMENT
TONY KNOWLES, GOVERNOR



Division of Banking, Securities and Corporations
PO Box 110808
Juneau AK 99811-0808
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TELECOPIER TRANSMITTAL SHEET

Date: 4/7/99 Time: 12:30

To: Dave Gray

From: Dawn Williams

RE: CS SB 93

Number of Pages Being Transmitted: 2 Includes cover

Dave,
Thank you for taking a look at this. This is a simple addition. Originally (pre-1988), insurance companies could file for incorporation with us. Under current statutes, insurance companies cannot file with my division, however, Div. Of Insurance statutes requires them to file with my division before they have legal recognition.

We would like to further impose on Senator Mackie to speak to Senator Parnell to ask for this amendment to be added to the current bill. I spoke to Darwin in Senator Parnell's office and he said that this would be the best way to effect this change.

Thank you very much. - Dawn

If there are any problems with this transmission, please call the number listed above.

A suggested title change:

"An Act relating to corporate purpose; 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."

An added change:

AS 10.06.005 is amended to read:

Purposes. A corporation may be organized under this chapter for any lawful purpose [except for the purpose of insurance].

The current statute does not allow for the incorporation of companies whose purpose is insurance. However, under AS 21.69.040(d) (Insurance Statutes), an insurance corporation does not legally exist until the issuance of a certificate of incorporation by the Commissioner (under AS 10.06). There are currently Insurance corporations on our files. When AS 10.05 was changed to AS 10.06 in 1988, the purpose section was changed to exclude banking and insurance. The Banking Division changed their statutes in 1993(1994) including an amendment to AS 10.06.005 to take out the exclusion of banking.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 26, 1999

SUBJECT: Bill draft relating to names of organizations (Work Order No. 21-LS0475\A)

TO: Senator Jerry Mackie, Chair
Senate Labor and Commerce Committee
Attn: Dave

FROM: Theresa Bannister *TLB/mb*
Legislative Counsel

*A CS is
being drafted
to incorporate
these issues.*

This memo accompanies a draft of the bill described above.

1. AS 10.25.040. Please be aware that under the third sentence of current AS 10.25.040 certain cooperatives are not subject to its restrictions (arguably including the "distinct from" provision in the second sentence of the section). I am interpreting this third sentence to apply only to the first sentence of AS 10.25.040 (requiring the use of certain terms) and have drafted the bill accordingly.
2. AS 10.40 (religious corporations). The draft does not amend this chapter to require distinguishable names. The material did not cover this chapter. The chapter does not establish any criteria for the names of corporations organizing under it. Do you want to impose the "distinguishable on the records" requirement on these corporations?
3. Private cause of action regarding name. The draft does not change the "deceptively similar" language relating to private causes of action, because the old language seems appropriate for that purpose. See, for example, AS 10.06.130. If you want this changed to "distinguishable on the records," please advise.
4. Banking law reference. AS 06.05.301(b) refers to AS 10.06.105(a) as one of the provisions of AS 10.06 that do not apply to state banks. Since the draft breaks out part of AS 10.06.105(a) into a new AS 10.06.105(d), this banking reference should be changed to include (d). The draft does not do this.

If I may be of further assistance, please advise.

TLB:jdr:glc
99-071.jdr
Enclosure



Alaska Business Entity Names Act

**Department of Commerce and
Economic Development**

**Division of Banking, Securities, and
Corporations**

Draft Business Entity Names Bill

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Draft Fiscal Note

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. draft

Revision Date/Time (Note if correction) _____ Dept. Affected Commerce & Econ. Dev.
 Title Business Entity Names BRU Banking, Securities and Corporations
 Component Banking, Securities and Corporations
 Sponsor _____
 Requester _____ 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 ()	150.0	165.0	181.5	199.7	219.6	241.6
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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 (FYS9) 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.

Prepared by Franklin T. Elder, Acting Director Phone 465-2521
 Division Banking, Securities and Corporations Date/Time 2/8/99 1:11 PM
 Approved by Commissioner Deborah B. Sedwick Date _____
 Agency Commerce and Economic Development

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Letters of Support

BURR, PEASE & KURTZ

A PROFESSIONAL CORPORATION

OF COUNSEL

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TAX ID NO. 82-0067300

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

BRIAN W. DURRELL P.C.
L A W O F F I C E

BRIAN W. DURRELL

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FEB 1 09 11 31
JAN 28 1999
AND COMMUNICATIONS

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

2-1-99

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 W. Durrell

BWD:jk

cc: Dawn Williams (via fax)

ASHBURN AND MASON

LAWYERS

A PROFESSIONAL CORPORATION

1130 WEST SIXTH AVENUE, SUITE 100
ANCHORAGE, ALASKA 99501-5914

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MARK E. ASHBURN
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DONALD W. McCLINTOCK III
DONNA J. McCREADY
A. WILLIAM SAUPE
KIRSTEN TINGLUM

January 29, 1999

3 PM 3 32
DIVISION OF
SECURITIES,
CORPORATIONS

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: _____

William S. Cummings

ASHBURN AND MASON, P.C.

Debra B. Sedwick, Commissioner
January 29, 1999
Page -2-

By: 

Donald W. McClintock

By: 
for 

John C. McCarron

By: 

A. William Saupe

By: 

Kirsten Tinglum

By: 

Karen M. Procter, Legal Assistant

cc: Dawn Williams, Supervisor
Corporations Division

NAKMP\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
Vice President
Complete Corporate Services of Alaska, Inc.

3839 RIVERSIDE DRIVE
STE 101
JUNEAU, AK 99801

HOMPESCH & ASSOCIATES
ATTORNEYS AT LAW

A PROFESSIONAL CORPORATION
119 N. CUSHMAN STREET, SUITE 100
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SUSAN L. EVANS
RICHARD W. HOMPESCH II
PROFESSIONAL STAFF
BARBARA CORY HOMPESCH
ACCREDITED TAX ADVISOR
ENROLLED AGENT (IRS)

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

**Comments On Sections of Draft
Business Entity Names Bill**

Comments On Sections of Draft Business Entity Names Bill

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. When one of these business entities files to do business in Alaska, its name is registered as part of the filing process, if no other entity has registered the name. Businesses that are not incorporated can register their names for five years by paying a \$25 filing fee. As with corporate filings, a name can be registered if it has not been registered by another business entity operating in Alaska.

There are three different guidelines under Title 10 and Title 32 that the Corporation Section must follow when determining name availability for business entities filing with the State of Alaska. As a result of differences in these guidelines, many conflicts arise each year between different business entities within Alaska. In recent years, name conflicts have turned into lawsuits as a result of the confusion caused by these three inconsistent statutory guidelines. To avoid these conflicts, this legislation replaces the old standards of "deceptively similar" and "distinct" with the newest guideline "distinguishable on the record."

The following statutes must be followed when determining name availability:

- 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."
- 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."
- Alaska Statutes 10.50 and 32.05 use the guideline "...name is distinguishable on the records."

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 guideline that gives rise to almost all of these conflicts is the business name or corporate name standard "the same as or deceptively similar to".

It is in the best interest of the State if these statutes are changed to adhere to one standard when determining name availability. That guideline should be "distinguishable on the record." This change would not take away the right of the registrant to protect its name from those who would use it fraudulently. However, the State of Alaska would no longer be held liable for damages for issuing registration to a name that might be similar to another entity that is on file. Furthermore, the State of Alaska would not forego revenue by changing these statutes. It may be possible that revenues would increase because of

the volume of additional applicants granted registration by the new and less stringent name standard.

The State of Utah does an excellent job of outlining the role of states in corporate and business name registration. This is outlined below.

Purpose of Corporate & Business Name Registration

- Many attorneys and members of the public mistakenly believe that the division grants exclusive rights to a business name when the division issues a certificate of incorporation or accepts a DBA application for filing. The fact is that division approval has little or nothing to do with acquiring business or corporate name rights. State registration is merely one step in obtaining such rights.
- The division was never statutorily intended to conclusively determine name availability. First of all, the division checks for name availability by comparing the requested name with those of record in the division offices. This search does not include, because it is practically impossible to do so, possible conflicts with names of foreign corporations doing business in Utah without state authorization, assumed business names that have been used but are not currently registered and trademarks or service marks that have been registered only federally or not at all. Without checking a proposed name against these kinds of names, the division cannot conclusively adjudge name availability.
- Even if the division had the records and resources necessary to compare requested names with all "predictable names," the division still could not effectively identify all conflicts because such requires extensive legal education for those making such decisions. Moreover, the time required to process such reviews would virtually bring business and corporate registration to a halt. The process could require upwards of twelve to sixteen months to otherwise complete (based on the procedures used by the federal trademark office).
- Another reason the division cannot grant exclusive and absolute right to a corporate or business name is that name rights are obtained through usage, not through registration. Hence, prior usage of the name gives the user rights that are superior to those of a later registrant. Likewise, a later user may have rights superior to a prior registrant who has not used the name.
- The Utah Attorney General issued an informal opinion in 1985 stating the purpose of registering a DBA is primarily for identification purposes. That is, a DBA registration is an advisory or notice to the public of the individuals or entities associated with that business DBA. The division's role is purely ministerial. Registration or filing a DBA does not grant property rights or property interests in a name. The division does not have the power and authority to determine or settle competing claims to a name under the common law or under other statutes. These matters must be settled in a court of law.

The recodification of Alaska's corporate laws is based on the American Bar Association's 1950 draft **Model Business Corporation Act (National Act)**, *as amended*. Language in §4.01 (b), of the **Model Business Corporation Act**, *Except as authorized by subsections (c) and (d), a corporate name must be distinguishable upon the records of the*

Secretary of State. Adoption of this language would bring the State of Alaska into compliance with the **Model Business Corporation Act**.

At this time, research of current state statutes, codes and regulations for the other 49 states shows that the standard of "distinguishable on the record" has been adopted by at least 25 states.

Section 1

Section 10.06.105(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 2

Section 10.06.105(d)

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 3

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 4

Section 10.15.575(a)

The standard of determining name availability is changed to "distinguishable on the record", making it easier for cooperatives 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 5

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 6

Section 10.25.040

This section is repealed and reenacted to 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

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 7

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 8

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 9

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.

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 10.35.040(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 11

Section 32.11.810

This section is repealed and reenacted 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 12

The Department may immediately proceed to adopt necessary regulations.

Section 14

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

Section 15

Provides the effective date of the Act.

Draft
Business Entity Names Act Bill

____ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to corporate, company, cooperative association, and other
2 business names and their registration or reservation; and providing for an
3 effective date."

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

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

6 (a) A corporate name shall contain the word "corporation", "company",
7 "incorporated", or "limited", or an abbreviation of one of these words. The corporate
8 name may not contain a word or phrase that indicates or implies that the corporation
9 is organized for a purpose other than the purpose contained in its articles of
10 incorporation. The corporate name must be distinguishable on the records of the
11 department from [MAY NOT BE THE SAME AS, OR DECEPTIVELY SIMILAR
12 TO,] the name of a domestic corporation, limited liability company, or limited
13 liability partnership existing under the laws of this state, or a foreign corporation,
14 limited liability company, or limited liability partnership authorized to transact

1 business in this state, or a name that has been reserved or registered as provided in this
2 title or AS 32.

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

4 (d) The department may adopt regulations under AS 44.62 (Administrative
5 Procedure Act) to interpret or implement this section.

6 * Sec. 3. AS 10.13.120(a) is amended to read:

7 (a) The corporate name of a licensee must include the word "BIDCO" or
8 "Bidco[.]" and must be distinguishable on the records of the department from any
9 other licensee under this chapter. A licensee may not transact business under a name
10 other than its corporate name.

11 * Sec. 4. AS 10.15.575(a) is amended to read:

12 (a) A person other than a cooperative association incorporated under this
13 chapter or a previous law of the state may not use the term "cooperative," or any
14 variation of the term, as part of its corporate or other business name or title. However,
15 this section does not apply to cooperatives organized to generate and transmit electric
16 energy and power or to furnish electric or telephone service. The name of a
17 cooperative association must be distinguishable on the records of the department
18 from other cooperatives incorporated under this chapter. The department may
19 adopt regulations under AS 44.62 (Administrative Procedure Act) to interpret or
20 implement this section.

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

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

26 (b) The corporate name must be distinguishable on the records of the
27 department from the name of a corporation, regardless of whether the corporation was
28 organized for profit or not for profit, limited liability company, or limited liability
29 partnership, existing under the laws of this state, or a foreign corporation, limited
30 liability company, or limited liability partnership, authorized to transact business in this
31 state, or a corporate or business name reserved or registered as permitted by the laws

1 of this state.

2 (c) The department may adopt regulations under AS 44.62 (Administrative
3 Procedure Act) to interpret or implement this section.

4 * Sec. 6. AS 10.25.040 is repealed and reenacted to read:

5 Sec. 10.25.040. Name. (a) Except for a corporation that becomes subject to
6 this chapter by compliance with AS 10.25.290 and 10.25.300, or 10.25.620, and that
7 elects to retain a corporate name that does not comply with this provision, the name
8 of the cooperative must include the words "electric" or "telephone," as appropriate to
9 its purpose, and "cooperative," and the abbreviation "inc." The name of a cooperative
10 must be distinguishable on the records of the department from the name of any other
11 cooperative, corporation, limited liability company, or limited liability partnership,
12 organized under the laws of or authorized to do business in this state, or any business
13 name reserved or registered as provided by the laws of this state.

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

16 * Sec. 7. AS 10.35.020 is amended to read:

17 Sec. 10.35.020. Application to reserve name. Reservation of a business name
18 is made by filing an application with the commissioner. Upon finding that the name
19 is available for business use, the commissioner shall reserve it for the exclusive use
20 of the applicant for a period of 120 days. For a name to be available, it must be
21 distinguishable on the records of the department from [A NAME IS NOT
22 AVAILABLE WHICH IS THE SAME AS, OR DECEPTIVELY SIMILAR TO,] the
23 name of any other [A] domestic corporation, limited liability company, or limited
24 liability partnership, or foreign corporation, limited liability company, or limited
25 liability partnership authorized to transact business in this [THE] state, or a name
26 reserved or registered under this title or gives the impression that the business is
27 incorporated.

28 * Sec. 8. AS 10.35.020 is amended by adding a new subsection to read:

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

31 * Sec. 9. AS 10.35.040 is amended to read:

1 **Sec. 10.35.040. Registration of name.** A person conducting a business may
2 register its name if the name is distinguishable on the records of the department
3 from [NOT THE SAME AS, OR DECEPTIVELY SIMILAR TO,] the name of any
4 other [A] domestic corporation, limited liability company, or limited liability
5 partnership, or a foreign corporation, limited liability company, or limited liability
6 partnership, authorized to transact business in the state, or a name reserved or
7 registered under this title. Registration of the name gives the exclusive right to the use
8 of the name and the person who has registered the name may enjoy the use of the
9 same name or a deceptively similar name and has a cause of action for damages
10 against anyone who uses the same name or a deceptively similar name.

11 * **Sec. 10.** AS 10.35.040 is amended by adding a new subsection to read:

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

14 * **Sec. 11.** AS 32.11.810 is repealed and reenacted to read:

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

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

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

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

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

23 (3) must be distinguishable on the records of the department from the
24 name of a corporation, limited partnership, limited liability company, or limited
25 liability partnership, organized under the laws of this state or licensed or registered as
26 a foreign corporation, limited partnership, limited liability company, or limited liability
27 partnership in this state.

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

30 * **Sec. 12. TRANSITION: REGULATIONS.** Notwithstanding sec. 15 of this Act, the
31 Department of Commerce and Economic Development may immediately proceed to adopt

1 regulations necessary to implement the changes made by this Act. The regulations take effect
2 under AS 44.62 (Administrative Procedure Act), but not before July 1, 1999.

3 * Sec. 13. APPLICABILITY. This Act applies only to actions taken on or after July 1,
4 1999.

5 * Sec. 14. Section 12 of this Act takes effect immediately under AS 01.10.070(c).

6 * Sec. 15. Except as provided in sec. 14 of this Act, this Act takes effect July 1, 1999.

1-LS0475VA
Bannister
2/25/99

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (a) The corporate name of a licensee must include the word "BIDCO" or
29 "Bidco" and must be distinguishable on the records of the department from the
30 name of any other organized entity and from a reserved or registered name.

31 ["BIDCO."] A licensee may not transact business under a name other than its

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (1) "organized entity" means

23 (A) a corporation under AS 10.06;

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

26 (C) a BIDCO licensed under AS 10.13;

27 (D) a cooperative organized under AS 10.15;

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

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

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

1 to transact business in this state;

2 (H) a cooperative organized under AS 10.25;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (b) The reservation shall be made by filing with the department an application,
20 executed by the applicant, to reserve a specified name. If the department finds that
21 the name is available for use by a domestic or foreign limited partnership under
22 AS 32.11.810 [, AND NOT A RESERVED OR REGISTERED NAME UNDER
23 AS 10.35], the department shall reserve the name for the exclusive use of the applicant
24 for a period of 120 days. Once having reserved a name, the same applicant may not
25 again reserve the same name until more than 60 days after the expiration of the last
26 120-day period for which that applicant reserved that name. The right to the exclusive
27 use of a reserved name may be transferred to another person by filing with the
28 department a notice of the transfer executed by the applicant for whom the name was
29 reserved and specifying the name and address of the transferee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTIONAL

<S SR 93(LFC)

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 10.06.105(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 3

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 4

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 5

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 6

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 AS 10.06 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 7

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 8

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 9

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 10

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 11

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 12

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 12

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 14

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 15

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 AS 10.25.290 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 16

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 17

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 18

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 19

Section 10.35.500

The definition of “department” is added.

The old section did not include a definition of “department.”

Section 20

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 21

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 22

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 23

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 24

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 25

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 26

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 27

Section 32.05.510

A name must be distinguishable under AS 32.05.480.

Section 28

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 29

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 30

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 31

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 32

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 33

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 34

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 35

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 36

The Department may immediately proceed to adopt necessary regulations.

Section 37

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

Section 38

Provides the effective date of the Act.

Alaska State House of Representatives
Twenty-First Legislature
First Session

RCS# 384
Item 12

05-11-99
10:45:17

CSSB 93 (FIN)
Third Reading
Final Passage

Yeas	27	Austerman, Barnes, Bunde, Cissna, Coghill, Cowdery, Davis, Dyson, Foster, Green, Halcro, Harris, Hudson, Joule, Kohring, Kott, Masek, Morgan, Mulder, Murkowski, Phillips, Porter, Rokeberg, Sanders, Therriault, Whitaker, Williams
Nays:	12	Berkowitz, Brice, Croft, Davies, Grussendorf, Kapsner, Kemplen, Kerttula, Kookesh, Moses, Ogan, Smalley
Excused:	0	
Absent:	1	James

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

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Attn: Dave Gray
From: Dawn Williams, Records & Licensing Supervisor
Date: May 10, 1999
Re: CSSB 93

“An Act relating to the purposes of certain business 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.”

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 Titles 10 and 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 name conflicts which the State should not be party to.
- A company is responsible for choosing a name which would not conflict with another name.
- The State does not give any business entity the legal right to a name. The Corporations Section is a filing agency, not an enforcement agency, therefore, these name conflicts should not include the State, and should at all times be discussed between the two conflicting entities.
- The legal right to an entity name is gained through “Common law” use. A business entity must protect its own name from disparaging use, and there are remedies in the courts for that purpose.
- 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 year based on the “deceptively similar” standard.

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, AND CORPORATIONS

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Attn: Dave Gray
From: Dawn Williams, Records & Licensing Supervisor
Date: May 10, 1999
Re: CSSB 93

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CS FOR SENATE BILL NO. 93(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/21/99
Referred: Rules

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

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

New Section 2
Deleted

*This is a hang over technical change ✓
existing law. The division does necessarily deal with
insurance corp.*

1-LS0475VG

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

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

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

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

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

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

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

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

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

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

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

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

11 (b) A corporation with the exclusive right to a name under (a) of this section

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

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

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

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

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

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

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

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

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

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

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

23 (a) The corporate name of a licensee must include the word "BIDCO" or
 24 "Bidco" and must be distinguishable on the records of the department from the
 25 name of any other organized entity and from a reserved or registered name.

26 ["BIDCO."] A licensee may not transact business under a name other than its
 27 corporate name. In this subsection, "organized entity" and "reserved or registered
 28 name" have the meanings given in AS 10.35.040.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (b) The department may adopt regulations under AS 44.62 (Administrative
 11 Procedure Act) ^[interpret or] to implement this section.

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

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

17 (1) "organized entity" means

18 (A) a corporation under AS 10.06;

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

21 (C) a BIDCO licensed under AS 10.13;

22 (D) a cooperative organized under AS 10.15;

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

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

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

28 (H) a cooperative organized under AS 10.25;

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

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

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