

1 HOUSE BILL NO. 428

2 INTRODUCED BY T. BERRY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING BUSINESS FILING WITH THE SECRETARY OF STATE;
5 ALLOWING A PERSON DOING BUSINESS IN MONTANA TO CONTEST THE REGISTRATION OF AN
6 ASSUMED BUSINESS NAME; MODIFYING THE EXISTING CONTEST OF REGISTRATION OF NAME
7 PROCESS; ALLOWING THE SECRETARY OF STATE TO ASSESS CERTAIN FEES AND COSTS TO THE
8 LOSING PARTY WHEN AN ASSUMED BUSINESS NAME IS CONTESTED; PROVIDING A PENALTY;
9 AMENDING SECTIONS 30-13-202 AND 35-1-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
10 DATE."

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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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14 **Section 1.** Section 30-13-202, MCA, is amended to read:

15 **"30-13-202. Registration of assumed business name -- when prohibited -- contest procedure.** (1)
16 When an application for registration or amendment to the registration of an assumed business name contains
17 an assumed business name that is the same as or not distinguishable on the record from an assumed business
18 name already registered or from any corporate name, limited partnership name, limited liability company name,
19 limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state,
20 the secretary of state may not register the assumed business name for which application is made.

21 (2) An applicant for an assumed business name may not use a business name identifier that incorrectly
22 states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it
23 is.

24 (3) A person doing business in this state may contest the registration of an assumed business name by
25 following the procedures set forth in 35-1-310."

26
27 **Section 2.** Section 35-1-310, MCA, is amended to read:

28 **"35-1-310. Contest of registration of name -- penalty.** (1) A person doing business in this state may
29 contest the ~~subsequent~~ registration of a name under this section with the office of the secretary of state by filing
30 an acknowledged notice of contest with the secretary of state and sending a copy of the notice of contest to the

1 person who ~~subsequently~~ registered the contested name. The notice to the secretary of state must be
2 accompanied by a \$100 deposit, which the secretary of state shall award to the prevailing party in the contest.

3 (2) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit
4 within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the
5 contested name in the records of the secretary of state. The secretary of state shall review the affidavits and shall
6 make a decision or order a hearing to be held within 30 days. If a hearing is ordered, the parties shall meet with
7 the secretary of state before the hearing and attempt to settle the contest. If a settlement is not reached, the
8 secretary of state shall hold a hearing. At the hearing the secretary of state may consider evidence presented
9 by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required.
10 The hearing is not a contested case hearing. Where consistent with this section, the informal procedures of the
11 Montana Administrative Procedure Act apply.

12 (3) The secretary of state may order that the contested name be changed on the records of the secretary
13 of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when
14 applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or
15 deception is likely, the secretary of state shall consider:

- 16 (a) the strength or unique nature of the names;
17 (b) the similarity of sound, appearance, or meaning of the names;
18 (c) the intent of the parties;
19 (d) the type of businesses engaged in or to be engaged in by the parties;
20 (e) the geographic market areas served by each party and the manner of distribution and marketing used
21 in those areas;
22 (f) the nature and quality of goods or services provided by the parties;
23 (g) the level of sophistication of potential purchasers of goods or services offered by the parties;
24 (h) the length of time the parties have been transacting business under the name or names in question;
25 ~~(h)~~(i) whether the party contesting the ~~subsequent~~ registration of a name failed to make a timely objection
26 or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and
27 ~~(i)~~(j) whether the names in question are in fair use, have been abandoned, or are parodies of other
28 names.

29 (4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and
30 may order that the contested name be changed in the records of the secretary of state and the relevant

1 documents be amended by the secretary of state in a manner that results in a new name that is not the same as
2 or deceptively similar to another name registered with the office of the secretary of state.

3 (5) The secretary of state may order that the losing party pay any attorney fees and costs incurred by
4 the prevailing party to contest the name or by the secretary of state to administer the provisions of this section,
5 including any hearings.

6 ~~(5)(6)~~ A party may appeal the decision of the secretary of state to the district court within 20 days. The
7 district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

8 (7) (a) A person who registers an assumed business name under 30-13-202 with the intent to deceive
9 or harass another person doing legitimate business under the laws of this state is subject to a penalty of \$1,000
10 in a civil action brought by a county attorney in the district court with jurisdiction for the county.

11 (b) A penalty collected pursuant to subsection (7)(a) must be deposited in the county general fund."

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13 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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