

SENATE BILL NO. 41

INTRODUCED BY T. FACEY

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING BUSINESS NAME AND REGISTRATION LAWS; PROVIDING RULEMAKING AUTHORITY; REVISING PROVISIONS RELATED TO ASSUMED BUSINESS NAMES, CONTESTED CASES, CORPORATE NAMES, FOREIGN LIMITED LIABILITY COMPANY CERTIFICATES OF AUTHORITY, AND REGISTRATION OF LIMITED LIABILITY PARTNERSHIPS; AMENDING SECTIONS 30-13-203, 35-1-310, 35-4-206, 35-8-1003, 35-10-701, AND 35-10-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Secretary of state rulemaking authority.** The secretary of state may adopt rules to implement the provisions of this chapter that assign duties to the secretary of state.

**Section 2.** Section 30-13-203, MCA, is amended to read:

**"30-13-203. Application for registration of assumed business name.** A person transacting business in this state under an assumed business name shall register with the secretary of state, on forms furnished by the secretary of state, an application for registration of the assumed business name, including but not limited to the following information:

- (1) the name and business mailing address of the applicant;
- (2) the complete proposed assumed business name; and
- ~~(3) the date of first use, in commerce, of the proposed assumed business name; and~~
- ~~(4)~~(3) a description of business transacted under the proposed assumed name."

**Section 3.** Section 35-1-310, MCA, is amended to read:

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

1 person who registered the contested name. The notice to the secretary of state must be accompanied by a \$100  
2 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 (i) whether the party contesting the registration of a name failed to make a timely objection or acquiesced  
26 to the use of the name so that it would be inequitable to prohibit its registration; and  
27 (j) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

28 (4) The secretary of state shall make a decision for one of the parties within 10 days of the hearing and  
29 may order that the contested name be changed in the records of the secretary of state and the relevant  
30 documents be amended by the secretary of state in a manner that results in a new name that is ~~not the same as~~

1 ~~or deceptively similar~~ distinguishable on the record to another name registered with the office of the secretary  
2 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 (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 **Section 4.** Section 35-4-206, MCA, is amended to read:

14 **"35-4-206. Corporate name.** The name of a domestic or foreign professional corporation:

15 (1) ~~(a) (i) except as provided in subsection (1)(b);~~ must contain the words "professional corporation" or  
16 the abbreviation "P.C."; and

17 ~~(ii)~~ may not contain any other words to indicate the type of business that it is other than "professional  
18 corporation" or "P.C."; unless

19 ~~(b)~~ the name of a foreign corporation contains the words "professional services" or "P.S.";

20 (2) may not contain any word or phrase that indicates or implies that the corporation is organized for any  
21 purpose other than the purposes contained in its articles of incorporation;

22 (3) ~~may not be the same as or deceptively similar to~~ must be distinguishable on the record from any  
23 assumed business name, limited partnership name, limited liability company name, trademark, or service mark  
24 registered or reserved with the secretary of state or to the name of any domestic corporation existing under the  
25 laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right  
26 to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a  
27 corporation that has in effect a registration of its corporate name as provided in the Montana Business  
28 Corporation Act. This subsection does not apply if:

29 (a) the similarity results from the use in the corporate name of personal names of shareholders or former  
30 shareholders or of natural persons who were associated with a predecessor entity; or

- 1 (b) the corporation files with the secretary of state either:
- 2 (i) the written consent of the other corporation or holder of a reserved or registered name to use ~~the~~
- 3 ~~same or a deceptively similar name and one or more words are added to make the name~~ a name that is not
- 4 distinguishable on the record from the other name; or
- 5 (ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the
- 6 corporation to the use of the name in this state.
- 7 (4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional
- 8 service described in the articles of incorporation of the corporation."

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10 **Section 5.** Section 35-8-1003, MCA, is amended to read:

11 **"35-8-1003. Application for certificate of authority.** (1) A foreign limited liability company may apply

12 for a certificate of authority to transact business in this state by delivering an application to the secretary of state

13 for filing. The application must set forth:

- 14 (a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a
- 15 name that satisfies the requirements of 35-8-1009;
- 16 (b) the name of the jurisdiction under whose law it is organized;
- 17 (c) its date of organization and period of duration;
- 18 (d) the business mailing address of its principal office, wherever located;
- 19 (e) the information required by 35-7-105(1); ~~and~~
- 20 (f) the names and business mailing addresses of its current managers, if different from its members; AND
- 21 (G) IF THE FOREIGN LIMITED LIABILITY COMPANY HAS ONE OR MORE SERIES OF MEMBERS, THE NAME OF EACH
- 22 SERIES OF MEMBERS. A COPY OF THE OPERATING AGREEMENT OF EACH SERIES OF MEMBERS MUST BE INCLUDED WITH
- 23 THE APPLICATION.

- 24 (2) A foreign limited liability company shall deliver with the completed application:
- 25 ~~———(a)~~ a certificate of existence or a similar document authenticated by the secretary of state or other official
- 26 having custody of corporate records in the jurisdiction under whose law the foreign limited liability company is
- 27 organized; ~~and~~
- 28 ~~———(b) if the foreign limited liability company has one or more series of members, the name of each series~~
- 29 ~~of members and a copy of the operating agreement of each series of members."~~

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1           **Section 6.** Section 35-10-701, MCA, is amended to read:

2           **"35-10-701. Registration of limited liability partnerships.** (1) To become a limited liability partnership,  
3 a partnership shall file with the secretary of state an application for registration on a form furnished by the  
4 secretary of state that indicates an intention to register as a limited liability partnership under this section.

5           (2) The application for registration of a limited liability partnership must be executed by two or more  
6 partners authorized to execute the application and registration and must contain the following information:

7           (a) the name and business mailing address of the limited liability partnership;

8           ~~(b) the date of first use, in commerce, of the proposed limited liability partnership;~~

9           ~~(c)~~(b) a description of business transacted by the limited liability partnership; and

10           ~~(d)~~(c) the name and business mailing address of each of the partners.

11           (3) The secretary of state shall register as a limited liability partnership any partnership that substantially  
12 complies with this section.

13           (4) A partnership's registration under this section is effective when the secretary of state files the  
14 partnership's application for registration under subsection (1) and remains in effect until it is canceled by the  
15 secretary of state.

16           (5) The fact that an application for registration of a limited liability partnership under this section or any  
17 renewals of that partnership are on file with the office of the secretary of state is notice that the partnership is a  
18 limited liability partnership and is notice of all other facts set forth in the application.

19           (6) The secretary of state shall provide necessary forms for the registration of a limited liability  
20 partnership under subsections (1) and (2) or any renewals of registration."

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22           **Section 7.** Section 35-10-703, MCA, is amended to read:

23           **"35-10-703. Name of limited liability partnerships.** (1) The name of a limited liability partnership must  
24 contain the words "limited liability partnership", the abbreviation "l.l.p." or "llp", or other words or abbreviations  
25 that may be required or authorized by the laws of the state in which the partnership is formed, including without  
26 limitation "professional limited liability partnership" or the abbreviation "p.l.l.p." or "pllp".

27           (2) The name of a limited liability partnership must be distinguishable on the record and may not contain  
28 business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability  
29 partnership is other than a limited liability partnership."

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1            NEW SECTION. **Section 8. Codification instruction.** [Section 1] is intended to be codified as an  
2 integral part of Title 30, chapter 13, and the provisions of Title 30, chapter 13, apply to [section 1].

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4            NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

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