

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1422

2001 HOUSE JUDICIARY

HB 1422

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1422

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-29-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		01 to 1187
Committee Clerk Signature <i>Jean DeKrey</i>			

Minutes: Chairman DeKrey called the hearing to order on HB 1422. Relating to the definition of a fictitious name.

Rep Blair Thoreson: District 44 in North Fargo. (see attached testimony)

Rep Kim Koppelman: District 13, West Fargo. (see attached testimony and some amendments)

Rep Delmore: Are you going to go through what the amendments do?

Rep Koppelman: When we asked for the drafting, the Legislative Council thought that we were just dealing on partnership names, so that is what the original bill deals with. In my discussion with the Secretary of State, we talked about trade names.

Chairman DeKrey: If there are no further questions, Mr Jaeger do you wish to testify.

Al Jaeger: Secretary of State (see attached testimony)

Rep Delmore: How many registration challenges do you deal with, the way that the law is written now.

Al Jaeger: I would say that it is something that we deal with every day. We probably deal with 20 to 40 names in one week.

Rep Delmore: There isn't a fiscal note on this, would there be a loss of revenue?

Al Jaeger: No, this isn't a revenue type issue, it is a procedural issue.

Vice Chr Kretschmar: The amendments that you purpose, they wouldn't make anything mandatory?

Al Jaeger: Not any more than the current already does.

Chairman DeKrey: If there are no further questions, thank you for appearing in front of the committee. Anyone else wishing to testify on H.B. 1422?

Carol Two Eagles: People of All Nations Artwork Coop, I am the CEO of this coop registered with the Secretary Of States Office. I have a question regarding the registration. She gives the name in her native language and then translates it into People of All Nations Artwork Coop, if you put that name on the Internet, search engines never pick it up. So we came up with Native American Indian Store and that they do very single time. I went in registered that with Pride of Dakota, and then in October, I started getting e-mail from the Secretary of State's Office saying that we owed money for our trade name. I said there is no trade name. The name was referenced to all the above, and then she said what is the Native American Indian Store? I said that is a search engine, and we have going round bout this ever since. We even contacted an attorney about this problem. I wish you would make a clarification and cover cooperatives and other business with the Internet becoming more important. We don't know at this point if we are covered or not.

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House Judiciary Committee

Bill/Resolution Number HB 1422

Hearing Date 01-29-01

Chairman DeKrey: Are there any questions, if not thank you for appearing in front of this

committee. Anyone else wishing to testify on HB 1422? If not we will close the hearing on HB

1422.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1422 b

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-13-01

Tape Number	Side A	Side B	Meter #
1		xx	2709--3578
Committee Clerk Signature <i>Jean Dierckx</i>			

Minutes: Chair DeKrey : Let's look at HB1422.

Cory Fong, Sec. State : I will get right to the point. These amendments have to get in the bill in order for it to work for our office. Rep. Koppelman and L.C. worked on these amendments.

Rep. Delmore : How often is this really a problem?

Cory : That is a better question for someone in our business division.

Rep. Koppelman, Dist 13 : I can explain the amendment. It's mainly so small businesses don't have to pay the cost to Sec. State for registering. They still have the option. The Sec. State helped put these amendments together.

Rep. Eckre : What if you have two names wanted for the same type of business?

Rep. Koppelman : The rule of Sec. State is whoever was first at the plate is the one who gets the name. Who ever registered first. Some problems will always exist. Remember Cambell's soup problem in ND a few years back.

Rep. Eckre : Will ND get into litigation and cost us money?

Page 2  
House Judiciary Committee  
Bill/Resolution Number HB1422 b  
Hearing Date 2-13-01

Rep. Koppelman : This actually relaxes the way the law is enforced. In 1997 we passed a law that if you used a name other than your true name in your business, you have to register with the state. The question here is what is your true name. That's how this bill started. This says first name and last or last name is O.K.

Rep. Grande : I move amendments.

Rep. Kingsbury : I second.

**VOICE VOTE: ALL YES. PASSED.**

Rep. Klemin : I move a DO PASS AS AMENDED.

Rep. Grande : I second.

**VOTE: 12 YES and 0 NO with 3 absent. PASSED. Rep. Grande will carry the bill.**

VR  
2/13/01  
108 2

HOUSE AMENDMENTS TO HB 1422 HOUSE JUDICIARY 02-14-01

Page 1, line 1, replace "section" with "sections" and after "45-11-01" insert "and 47-25-01"

Page 1, line 2, remove "the definition of a" and replace "name" with "and trade names"

Page 1, line 7, remove "counterfeit, alias, feigned, or"

Page 1, line 8, remove "pretended" and replace "taken by a person, differing in some essential particular from the" with "assumed to identify"

Page 1, remove line 9

Page 1, line 10, remove "name or an individual's surname within", after "partnership" insert "and which does not include in its", and replace "if the true name or" with ";

- a. The true name of each organizational partner;
- b. The first name and surname of each partner; or
- c. The surname of each partner, repeating a surname if more than one partner has the same surname.

Page 1, remove lines 11 and 12

HOUSE AMENDMENTS TO HB 1422 HOUSE JUDICIARY 02-14-01  
Page 2, after line 10, insert:

**"SECTION 2. AMENDMENT.** Section 47-25-01 of the North Dakota Century Code is amended and reenacted as follows:

**47-25-01. Trade name defined - Registration.** ~~Every name under which any person or organization shall hereafter do or transact any business in this state, other than the true name of such person or organization, is hereby declared to be a "trade name".~~

1. a. As used in this section, a "trade name" is a name assumed to identify the business or activities of an individual or organization and which does not include in the name:
  - (1) The true name of the organization using the name;
  - (2) The first name and surname of each individual using the business name; or
  - (3) The surname of each individual, repeating a surname if more than one owner has the same surname.
- b. A name assumed under paragraph 3 or a name of an organization or association not otherwise registered with the secretary of state is a trade name if a license or permit to conduct business or operations is required by this state.



2. A person or organization that has registered a trade name ~~hereunder~~ under this section may institute a civil suit prohibiting any other person from using ~~such~~ the name.
3. ~~The provisions of this~~ This chapter shall does not prohibit any person engaged in business under a trade name ~~prior to~~ before July 1, 1959, from continuing business under ~~such~~ that name.
4. Notwithstanding any other provision of law, an individual or organization may register as a trade name under section 47-25-04 any name listed in paragraph 1, 2, or 3 of subdivision a of subsection 1."

Renumber accordingly

Date: 02-13-01  
Roll Call Vote #: /

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB-1422

House JUDICIARY Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as amend

Motion Made By Rep Klemm Seconded By Rep Grande

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemm	✓				
Rep John Mahoney					
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham					

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep Grande

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1422: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1422 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections" and after "45-11-01" insert "and 47-25-01"

Page 1, line 2, remove "the definition of a" and replace "name" with "and trade names"

Page 1, line 7, remove "counterfeit, alias, feigned, or"

Page 1, line 8, remove "pretended" and replace "taken by a person, differing in some essential particular from the" with "assumed to identify"

Page 1, remove line 9

Page 1, line 10, remove "name or an individual's surname not include in its", and replace "If the true name or" with ":

- a. The true name of each organizational partner;
- b. The first name and surname of each partner; or
- c. The surname of each partner, repeating a surname if more than one partner has the same surname."

Page 1, remove lines 11 and 12

Page 2, after line 10, insert:

**"SECTION 2. AMENDMENT.** Section 47-25-01 of the North Dakota Century Code is amended and reenacted as follows:

**47-25-01. Trade name defined - Registration.**~~Every name under which any person or organization shall hereafter do or transact any business in this state, other than the true name of such person or organization, is hereby declared to be a "trade name".~~

1. a. As used in this section, a "trade name" is a name assumed to identify the business or activities of an individual or organization and which does not include in the name:
  - (1) The true name of the organization using the name;
  - (2) The first name and surname of each individual using the business name; or
  - (3) The surname of each individual, repeating a surname if more than one owner has the same surname.
- b. A name assumed under paragraph 3 or a name of an organization or association not otherwise registered with the secretary of state is a trade name if a license or permit to conduct business or operations is required by this state.

2. A person or organization that has registered a trade name ~~hereunder~~  
under this section may institute a civil suit prohibiting any other person  
from using ~~such~~ the name.
3. ~~The provisions of this~~ This chapter ~~shall~~ does not prohibit any person  
engaged in business under a trade name ~~prior to~~ before July 1, 1959, from  
continuing business under ~~such~~ that name.
4. Notwithstanding any other provision of law, an individual or organization  
may register as a trade name under section 47-25-04 any name listed in  
paragraph 1, 2, or 3 of subdivision a of subsection 1."

Renumber accordingly

2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1422

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1422

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 13, 2001.

Tape Number	Side A	Side B	Meter #
1	x		0 to 12.8
2	x		7.8 to 8.5
Committee Clerk Signature <i>Andrew Perry</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on HB 1422 relating to fictitious names.

**Representative Blair Thoreson**, District 44, cosponsor. Intent of the bill: to clarify discrepancy on the law. Written testimony attached.

**Representative Kim Koppelman**, District 13, cosponsor. With this bill small businesses would be able to operate, using the owners' last name or the owners' first and last name in the business name without having to register the name with the state. Written testimony attached.

**Al Jaeger**, Secretary of State, in favor. Written testimony attached. In this bill we are talking about single proprietorships. The law requires that if you operate under a name other than your own you be registered with the Secretary of State. Business owners should be aware that name identity is a tremendous asset that should be protected. Owners should be encouraged to register the names it only costs twenty five dollars for five years.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1422

Hearing Date March 13, 2001.

No opposing testimony. Hearing closed.

Tape 2-A-7.8 to 8.5

**Senator Klein:** Motion: Do pass. **Senator Tollefson:** Second.

Roll call vote: 6 yes; 0 no; 1 absent not voting (Senator Espegard). Motion carried.

Floor assignment: **Senator Every**

Date: 3/13/01  
Roll Call Vote #: 1

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1422**

Senate Industry, Business and Labor

Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO Pass

Motion Made By Sen Klein Seconded By Sen Tollefson

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espgaard	A				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Sen Every

If the vote is on an amendment, briefly indicate intent:



REPORT OF STANDING COMMITTEE (410)  
March 13, 2001 12:42 p.m.

Module No: SR-43-5450  
Carrier: Every  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1422, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1422 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1422

**Testimony on House Bill 1422**  
**House Judiciary Committee**

Rep. Duane DeKrey, Chairman

Prairie Room

Monday, January 29, 2001

Mr. Chairman and members of the House Judiciary Committee, I am Rep. Blair Thoreson from District 44 in north Fargo.

I am here today to testify in favor of House Bill 1422. This bill is intended to clarify a discrepancy in current law, when it comes to registration of "fictitious names" or trade names that may be used by businesses in the state of North Dakota.

Under the current interpretation of the law, a business owner must use their entire name as the name of their business. Otherwise, that person must register the business' name with the Secretary of State, and pay a \$25 registration fee. This bill would help clarify this interpretation.

While I have signed on as the prime sponsor of this bill, Rep. Kim Koppelman has actually done the majority of the work crafting this legislation. At this time, with the Chair's consent, I will defer to Rep. Koppelman for further testimony on House Bill 1422.

Thank you, Mr. Chairman and members of the committee.



# NORTH DAKOTA HOUSE OF REPRESENTATIVES

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360



COMMITTEES:  
Appropriations

Representative Kim Koppelman  
District 13  
13 First Avenue Northwest  
West Fargo, ND 58078-1101

## Testimony on House Bill 1422

by Rep. Kim Koppelman

before the House Judiciary Committee

1-29-01

Mr. Chairman and Members of the House Judiciary Committee, I am Rep. Kim Koppelman and I represent District 13, which consists essentially of West Fargo and a small surrounding rural area.

House Bill 1422 was introduced to allow businesses whose names consist of the owner's name and terms describing the business to operate without being forced to register their names as trade names. For example, if "Bob Olson" owned "Olson Lawn Service," it could operate as a business without registering the name as a trade name.

This was the intent of current law, but there has been some confusion regarding the meaning of a true name and what types of names must be registered, as well as what types of names may be exempt from the requirement. To continue the example, current interpretation would hold that "Bob Olson Lawn Service" would not be forced to register as a trade name and pay associated fees, but "Olson Lawn Service" would.

This bill simply clarifies the intent of present law. With this bill in place, small businesses like this would be able to operate, using the owner's last name or the owner's first and last name in the business name, without being forced to register the name with the state. If the business chose to register its name, even though it wouldn't be required, it could certainly do so.

There were some drafting problems with the original version of this bill and, in consultation with the Secretary of State's office, amendments have been prepared. I would request that your committee adopt them and then would recommend the bill's passage.

Mr. Chairman and Members of the Committee, I'll be happy to attempt to answer any questions you might have.

ALVIN A. JAEGER  
SECRETARY OF STATE

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## SECRETARY OF STATE

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 29, 2001

**TO:** Rep. DeKrey and Members – House Judiciary Committee

**FR:** Al Jaeger, Secretary of State

**RE:** HB 1422 – Trade Names and Trademarks

This bill, as introduced, is not supported by the Secretary of State's office because it would create conflict and confusion in existing law.

Therefore, the agency has worked with Rep. Koppelman to prepare amendments that will achieve his intended goal when introducing the bill and still result in a law that is operationally feasible for the Secretary of State's office to administer.

The bill and amendments relate to the trade name provisions for sole proprietorships and for fictitious partnership names.

These amendments make the registration standards for a fictitious partnership name and a trade name for a sole proprietorship consistent in application with each other. In both sections of law, the amendments more clearly defined those business names that must be registered. At the same time, the amendments provide flexibility for those businesses not required to file a trade name or fictitious partnership, but who want to register even though state law does not require it.

The new and clearer definitions will eliminate many name registration challenges for the Secretary of State's Business Division. Naturally, this will also result in the providing of better services and protection for the agency's customers.

The proposed amendments to this bill also preserve the procedures adopted by the 1995 Legislative Assembly, when they passed HB 1331. With passage of that bill, the secretary of state, or any other licensing agency, could no longer issue licenses or permits to businesses unless the trade name was registered. This prevented agencies from licensing businesses in a name that another party had already registered with the Secretary of State's office for exclusive use in North Dakota under the trade name statutes.

The bottom line is that the amended bill will make the law much clearer as it pertains to the name registration requirements and options available for sole proprietorships and for those partnerships that fall under the fictitious partnership name requirements.

**Testimony on House Bill 1422**  
**Senate Industry, Business and Labor Committee**  
**Sen. Duane Mutch, Chairman**  
**Roosevelt Park Room**  
**Tuesday, March 13, 2001**

Mr. Chairman and members of the House Judiciary Committee, I am Rep. Blair Thoreson from District 44 in Fargo.

I am here today to introduce House Bill 1422. This bill was originally intended to clarify a discrepancy in current law, when it comes to registration of "fictitious names" or trade names that may be used by businesses in the state of North Dakota.

While I have signed on as the prime sponsor of this bill, Rep. Kim Koppelman has actually done the majority of the work crafting this legislation, including substantial amendments to the original bill that were adopted in the House. At this time, with the Chair's consent, I will defer to Rep. Koppelman for further testimony on House Bill 1422.

Thank you, Mr. Chairman and members of the committee.



# NORTH DAKOTA HOUSE OF REPRESENTATIVES



Representative Kim Koppelman  
District 13  
513 First Avenue Northwest  
West Fargo, ND 58078-1101

STATE CAPITOL  
600 EAST BOULEVARD  
BISMARCK, ND 58505-0360

COMMITTEES:  
Appropriations

## Testimony on House Bill 1422 by Rep. Kim Koppelman before the Senate IBL Committee 3-13-01

Mr. Chairman and Members of the Senate Industry, Business and Labor Committee, for the record, I am Rep. Kim Koppelman and I represent District 13.

House Bill 1422 was introduced to allow businesses whose names consist of the owner's name and terms describing the business to operate without being forced to register their names as trade names. For example, if "Bob Olson" owned "Olson Lawn Service," it could operate as a business without registering the name as a trade name.

This was the intent of current law, but there has been some confusion regarding the meaning of a true name and what types of names must be registered, as well as what types of names may be exempt from the requirement. To continue the example, current interpretation would hold that "Bob Olson Lawn Service" would not be forced to register as a trade name and pay associated fees, but "Olson Lawn Service" would.

This bill simply clarifies the intent of present law. With this bill in place, small businesses like this would be able to operate, using the owner's last name or the owner's first and last name in the business name, without being forced to register the name with the state. If the business chose to register its name, even though it wouldn't be required, it could certainly do so.

There were some drafting problems with the original version of this bill and, in consultation with the Secretary of State's office, amendments were prepared and adopted in the House.

Mr. Chairman and Members of the Committee, I would request that your committee's favorable consideration of House Bill 1422 and I'll be happy to attempt to answer any questions you might have.

ALVIN A. JAEGER  
SECRETARY OF STATE

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## SECRETARY OF STATE

STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

March 13, 2001

**TO:** Senator Traynor and Members – Senate Judiciary Committee

**FR:** Al Jaeger, Secretary of State

**RE:** HB 1422 – Fictitious Partnership Name and Trade Names

This bill, as originally introduced, would have created conflict and confusion in the state's existing law related to trade names and fictitious partnership names.

Consequently, the Secretary of State's office worked one of the bill's sponsors, Rep. Koppelman, on amendments that would still achieve his intended goal in sponsoring the bill and at the same time result in a law that was acceptable and operationally feasible for the Secretary of State's office to administer. The first engrossment before you is a product of that effort.

The bill, as amended, makes the registration standards for a fictitious partnership name and a trade name for a sole proprietorship procedurally consistent with each other. In both sections of the bill, the text more clearly defines those business names that must be registered. It also provides an option for those businesses that would not be required to file a trade name or fictitious partnership, but who desire to register a name even though not required by law to do so.

The new and clearer definitions in these two sections of the Century Code will eliminate many administrative challenges for the Secretary of State's Business Division when processing the registration of names. Naturally, this will also result in the providing of better services and protection of registered names for the agency's customers.

The first engrossment also preserves the procedures adopted by the 1995 Legislative Assembly, when it adopted HB 1331. With passage of that bill, the secretary of state, or any other licensing agency, could no longer issue licenses or permits to business entities unless the business name was registered. This change in the law was to prohibit all state agencies from issuing licenses to businesses in a name that another business entity had already registered with the Secretary of State's office.

The bottom line is that the amended bill will make the law much clearer as it pertains to the name registration requirements as well as providing options for sole proprietorships and for those partnerships that fall under the fictitious partnership name requirements.

The Secretary of State's office recommends a do pass on the first engrossed version of HB 1422.