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10/2/03

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1169

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10/2/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1169

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/15/03

Tape Number	Side A	Side B	Meter #
2	x		26.2-51.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Chairman Kelser opened the hearing on HB 1169.

Rep. Froseth of District 6 introduced HB 1169, submitted at request of the Secretary of State. It relates to the registration and protection of service marks, provides retroactive application and declares an emergency. He then deferred to Secretary of State, Al Jaeger, who walked the committee through the bill. (See attached)

Current law has been on the books since the late 1950's. Section 1 defines the bill. Section 10 breaks the registration into one class for goods and one for services and provides guidelines.

Clara Jenkins, Director of Business Division, was also present to answer questions from the committee.

Rep. Boe: Regarding registration for a multi-state company, would they have to register state by state? Secretary Jaeger replied that federal trademark registration procedures supersede state ones.

Rep. Johnson asked where the "generic language" situation is addressed in HB 1169.

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10/2/03
Date

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1169

Hearing Date 1/15/03

Clara Jenkins, Director of Business Division of the Office of the Secretary of State, took the podium to answer this question. "Subsection 5 in Section 1 means that it must distinguish the services of one person, including unique services from others. If it is not distinctive it is not "registerable".

Rep. Ekstrom: Is there a way to prevent defamations?

Jaeger: There is a provision where there are civil things that an individual can do. We are an office of records, we make the best judgment we can.

Rep. Ruby: Does this bill require all service companies to register their name and logo?

Clara Jenkins: The name has to be filed under a different statute but trademark or logo registration is voluntary. The design is probably under the patent law, the mark associated with that product, which becomes a label, the packaging and letterhead and advertising, that's what the trademark is. It has nothing to do with design of product. The tradesman statute protects the tradesman itself. The trademark protects the logo.

Rep. Ruby: Is it possible that lawsuits will be filed if this bill passes?

Clara Jenkins: I doubt it. We've already been filing them, they've been protected by us but not by law.

Rep. Dosch: This bill will clear up something I've always questioned. I trademarked my business name in ND. When I went to do it federally I was told I couldn't as it was a service mark, not a trademark. This brings us into compliance with federal procedures.

Jaeger: Trademark doesn't protect a tradesman.

No one was present to testify in opposition to HB 1169. **Chairman Kelser** closed the hearing.

Rep. Johnson moved a do pass, **Rep. Zaiser** seconded the motion. The motion carried 13-0-1.

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Dan H. Bell
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10/2/03
Date

Date: 1/15/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1169

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Johnson Seconded By Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelser	✓		Rep. Roe	✓	
Rep. Severson, Vice-Chair	✓		Rep. Ekstrom	✓	
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser		
Rep. Johnson	✓				
Rep. Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad	✓				
Rep. Ruby	✓				
Rep. Tiegan	-	-			

Total (Yes) 13 No 0

Absent 1

Floor Assignment Ruby

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

REPORT OF STANDING COMMITTEE (410)
January 16, 2003 12:08 p.m.

Module No: HR-08-0642
Carrier: Ruby
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1169: Industry, Business and Labor Committee (Rep. Kelsor, Chairman)
recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1169 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-08-0642

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1/12/03
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1169

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10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1169

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-05-03

Tape Number	Side A	Side B	Meter #
1	XXXX		4250-5090
Committee Clerk Signature <i>Lisa VanBeekom</i>			

Minutes: Chairman Mutch opened the hearing on HB 1169. All Senators were present.

HB 1169 relates to registration and protection of service marks; to provide for retroactive application; and to declare an emergency.

Testimony in support of HB 1169

Representative Glen Froseth, introduced the bill. See written testimony. HB 1169 was introduced at the request of the Secretary of State and was prompted by an opinion of the Attorney General in regard to registration of "Service Marks". Under this legislation a "Service Mark" may be registered similar to that of a "Trade Mark".

Clara Jenkins, Director, Business Division, on behalf of Al Jaegar, Secretary of State, spoke in support of the bill. See attached testimony. This bill corrects the discrepancy in the law by allowing the registration of service marks, which is a mark associated with a service rather than goods.

End Testimony.

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10/2/03
Date

Page 2
Senate Industry, Business and Labor Committee
Bill/Resolution Number 1169
Hearing Date 03-05-03

There were no questions from the committee.

There was no opposition.

The hearing was closed.

Senator Espegard moved a DO PASS. Senator Krebsbach seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Espegard

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10/2/03
Date

Date: 03-05-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1169

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Espesgard Seconded By Krebsbach

Senators	Yes	No	Senators	Yes	No
Sen. Mutch, Chairman	X				
Sen. Klein, Vice Chairman	X				
Sen. Krebsbach	X				
Sen. Nething	X				
Sen. Heitkamp	X				
Sen. Every	X				
Sen. Espesgard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Espesgard

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

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10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 5, 2003 2:11 p.m.

Module No: SR-39-4011
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1169: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1169 was placed
on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-39-4011

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2003 TESTIMONY

HB 1169

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Deanna Holladay
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10/2/03
Date

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.state.nd.us/sec



SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0600

January 15, 2003

PHONE (701) 328-2900
FAX (701) 328-2992

E-MAIL sec@state.nd.us

TO: Rep. George Kelser, Chairman,
and Members of the House Industry, Business, and Labor Comm'ttee

FR: Al Jaeger, Secretary of State

RE: HB 1109 - Registration and Protection of Marks - Trademarks and Service marks

The introduction of this bill is the result of a recommendation included in an Attorney General's Letter Opinion (2002-L-44) dated July 19, 2002. It was issued in response to a question asked by my office related to the registering of certain phrases as trademarks with the Secretary of State's office. As a point of information, each registration of a trademark is valid for ten years.

The Attorney General's research revealed that the trademark law (Chapter 47-22) applied only to goods, and not to services. Nevertheless, the Secretary of State's office has been filing trademarks related to services (under classification # 50, N.D.C.C. § 47-22-09) for at least the past 30 years.

Therefore, this bill does the following:

It enables the registration of service marks. A service mark is a mark associated with a service rather than goods.

Section 1 Establishes the definitions.

Sections 2, 3, 4, 5, 6, 7, 8, and 9 Changes the word trademark to mark and refers to services as applicable.

Section 10 Creates two sub-classifications, i.e., one class for Goods and one class for Services.

Sections 11, 12, 13, and 14 Changes the word trademark to mark and refers to services as applicable.

Section 15 The retroactive clause is to "legalize" those service marks previously registered with the Secretary of State's office under what was previously perceived as the law. The retroactive clause will allow those service marks to remain registered. The filers of those trademarks, in good faith, thought they were being protected under North Dakota law. And, it allows the Secretary of State's office to renew those service marks that are already on file without interruption of protection.

Section 16 The emergency clause is requested in order to enable the more immediate registration of service marks, which are currently pending registration in the Secretary of State's office and which cannot be filed because of the Attorney General's opinion. In addition, there are registrations that have expired or are near the expiration of their ten-year registration cycle that cannot be filed. Without the emergency clause, the normal effective date of this bill would be August 1, 2003. With the emergency clause, the bill will become effective as soon as it is filed in the office of the Secretary of State after the Governor has signed it. The adoption of the emergency clause will allow the pending registrations and registration renewals to be processed and filed several months earlier. This would be of tremendous benefit and value to the owners of these marks.

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Danna Baller
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1/21/03
Date

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 106
BISMARCK ND 58505-0500

March 5, 2003

PHONE (701) 328-2900
FAX (701) 328-2992

E-MAIL sec@state.nd.us

TO: Senator Mutch, Chairman, and Members of the Senate Industry, Business, and Labor Committee

FR: Clara Jenkins, Director, Business Division, on behalf of Al Jaeger, Secretary of State

RE: HB 1169 - Registration and Protection of Marks - Trademarks and Service marks

The Secretary of State asked Representative Froseth and Senator Espgaard to introduce this bill as the result of a recommendation made by the Attorney General in a Letter Opinion (2002-L-44) dated July 19, 2002. The opinion responded to five questions raised by the Secretary of State as they pertained to his authority related to the registering of trademarks. (Note: under current law, each trademark registration is valid for ten years.)

One of the questions pertained to the Secretary of State's office long standing (over thirty years) practice of registering trademarks related to services under the classification of # 50 in N.D.C.C. § 47-22-09. However, the Attorney General determined that the trademark law (Chapter 47-22) applied only to goods, and not to services.

Therefore, this bill corrects that discrepancy in the law by allowing the registration of service marks, which is a mark associated with a service rather than goods.

Section 1: Establishes the definitions for a mark and a service mark.

Sections 2, 3, 4, 5, 6, 7, 8, and 9: As applicable, these sections change the word trademark to mark and refers to services where necessary.

Section 10: Creates two sub-classifications, i.e., one class for Goods and one class for Services.

Sections 11, 12, 13, and 14: As applicable, these sections change the word trademark to mark and refers to services where necessary.

Section 15: The retroactive clause in this section is to "legalize" those service marks previously registered with the Secretary of State's office under what was previously perceived as the law. The retroactive clause will allow those service marks to remain registered. The filers of those trademarks, in good faith, thought they were being protected under North Dakota law. In addition, it allows the Secretary of State's office to renew those service marks already on file without interruption of protection.

Section 16: The emergency clause in this section is requested in order to enable the more immediate registration of service marks, which are currently pending registration in the Secretary of State's office and which cannot be filed since the issuance of the Attorney General's opinion last July. In addition, there are registrations that have expired or are near the expiration of their ten-year registration cycle that cannot be renewed. Normally, the effective date of this bill would be August 1, 2003. With the emergency clause, the bill would become effective as soon as it is filed in the office of the Secretary of State after the Governor has signed it. The result would be that the pending registrations and registration renewals could be processed and filed several months earlier, which would be of tremendous benefit and value to the owners of these marks.

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**TESTIMONY HB 1169
By Rep. Glen Froseth**

Chairman Mutch and members of the Senate IBL Committee, for the record my name is Rep. Glen Froseth from District 6, which is all of Bottineau and Renville Counties and the northern half of rural Ward County.

HB1169 was introduced at the request of the Secretary of State and was prompted by an opinion of the Attorney General in regard to registration of "Service Marks". Under this legislation a "Service Mark" may be registered similar to that of a "Trade Mark".

Although there are some substantant changes throughout the bill, the heart of the bill is on page 1, Section 1, beginning on line 20 where it describes a "Service Mark".

I would like for the committee to hear the testimony of the Secretary of State's office and the explanation of why this bill is necessary to clear up a matter that has been somewhat confusing over several years and that this bill is necessary to make the registering of a Service Mark legal through his office.

Thank you and I urge your favorable consideration on HB1169.

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