

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1366

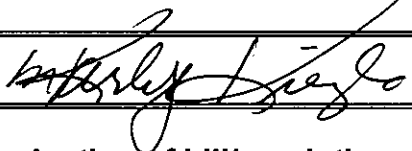
2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1366
January 24, 2011
Job # 13273

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a partnership fictitious name and a trade name filed with the Secretary of State

Minutes:

Chairman Keiser:

Rep Roger Brabandt District #5: I have introduced HB 1366 on behalf of the Secretary of States Office. This bill changes the format for easier reading by breaking it up in numerical sections. The bill actually does 2 things. It changes the format for easy reading and secondly requires all bills filed to the Secretary of State Office to be in English.

Vice Chairman Kasper: Has there been a problem records not submitted in English?

Rep Brabandt: I might have to defer to Al but I do think it means plain English.

Al Jaeger Secretary of State: (see attached testimony). For your information, as of this morning we have had 1,785 fictitious partnership names on file and we had 22,249 trade names on file.

Representative Ruby: On page 3, line 6; you strike the E from franchise? Is that right or are you striking the comma also.

Representative N Johnson: Comma.

Vice Chairman Kasper: Back on line 6, page 3; I think I found a spelling error where it says franchiser. Should it say Franchisor?

Al Jaeger Secretary of State: According to Clair it is correct.

Representative Nathe: I notice here under the law of section one there is a filing fee of 10 dollars. I see in section two of the bill they have a filing fee of 10 dollars but it is not in the law, is that something new?

Al Jaeger: All of the fees are all uniform. We have not added or taken anything away.

Representative Frantsvog: Asked for the number of fictitious Trade names and partnerships.

Al Jaeger: Explained what a fictitious partnership or trade name is. When you have a partnership and you are not using your own names, you have to file a statement with us. Trade name can be owned by any number of people, can be owned by a sole proprietorship but not operating by his own name. A trade name can also operate as a cooperation.

Representative Ruby: Is a fictitious name usually listed as a DBA?

Al Jaeger: No, if you have the name you don't have register with the DBA.

Chairman Keiser: One of changes I think is a significant one is in Sec 2, sub section 3, line 22 & 23, where you are now clarifying the name is reserved and registered unless there is filed written consent. I think it's a terrific condition. You are now putting into statue.

Al Jaeger: Our general law is that the Secretary of State cannot grant a name that is deceptively similar to something else that is currently in the books. That is unless they come to you and it is agreed that the name is okay. You than put it in writing and we put it on file. It's actually in the law. If you look on top of page 3 it is changed around.

Chairman Keiser: My question is: Another company had the same name as my company and they had the name about 8 years. How did they get that name when my name was already on file? Once it was identified by them wanting to sell the business, they then asked my permission to use the name. I of course said, "No".

Al Jaeger: If could be that the name wasn't registered in my office. I can pick up the yellow book pages in the phone book and find a whole bunch of names not registered in our office. Under the current state law they are not suppose to get a sales tax permit or any other license without registering at our office, first.

Chairman Keiser: Are we missing the opportunity for a lot of registrations fees.

Al Jaeger: We try to educate the public and bankers not to open accounts without their name being registered. To register a trade name it costs \$25 for 5 years.

Representative N Johnson: Do you every prosecute anyone?

Al Jaeger: I have no control at all. That's a civil matter. It is a law that you do have it registered. We go through the deceptively similar we take it very seriously. We do have a policy we follow but some of it is a personal call. If we make a mistake there is nothing that we can do to correct it.

Chairman Keiser: Asked if anyone is in support, opposition, neutral:

Representative N Johnson: Chairman did you register your name?

Chairman Keiser: Absolutely

Chairman Keiser: Is there anyone else will testify for HB 1366? In opposition? Is there anyone neutral?

Chairman Keiser: The hearing is closed in HB1366 and what are the wishes of the committee?

Rep Ruby: Made a motion for HB1366

Rep Nathe: Seconded the motion

DO PASS Yeas 13 Nays 0 O Absent Carrier is Rep Frantsvog

Date: Jan 24-2011

Roll Call Vote # _____

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1366

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Ruby Seconded By Nathe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	Ab	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Frantsvog

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

REPORT OF STANDING COMMITTEE

HB 1366: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1366 was placed on the Eleventh order on the calendar.

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1366

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1366
February 8, 2011
Job # 14203

☐ Conference Committee

Committee Clerk Signature

Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to the maintenance of insurance by school districts.

Minutes:

"Attached Testimony"

The Senate Industry, Business and Labor Committee discusses HB 1366.

Clara Jenkins, Director of the Business Systems and Programs for the Secretary of State. I am here **testifying for Secretary of State** and support HB 1366. The changes make the format of these two existing sections of law, consistent with the format and the same name availability requirements that also exist for other business entities registered with the Secretary of State office. Other than the format change, the only addition this bill makes to current law is the requirement that a name, filed with Secretary of State, must be expressed with English letters or characters. This makes it clear that the Secretary of State office will only accept registrations "stated as such" because the agencies software system will not accept letters or characters that are unique to a foreign language. These same changes are being made in SB 2174, for other business entities, that are administered by the Secretary of State. Otherwise, all the remaining underlined text in the bill, already exists in other parts of state law, or in the two sections of laws, shown below. Secretary Jaeger added the current statistics that we have for partnership fictitious names that are on file. (Attached Testimony #1)

Clara Jenkins states that there is the potential someone could actually offer a business name to us in Chinese characters. There is absolutely no way it could be entered into the system nor could we make a determination, whether the name is available, because we don't understand it. This is a nation-wide standard that all Secretary of States are going to do this. By putting this in the law, it gives us an actual basis, upon which we can deny it.

Senator Klein states that the bill is to simply clarify some language but the "meat" of it is that it has to be in English.

Clara Jenkins states, "Exactly".

No opposition to HB 1366.

Senator Klein closes the hearing on HB 1366.

Motion made for DO PASS made by Senator Nodland.

Seconded by Senator Lafeen.

Bill is passed 7-0-0.

Carried by Senator Andrist.

Date: 2-8-11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1366

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Nodland Seconded By Senator Laffen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Andrist

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

REPORT OF STANDING COMMITTEE

HB 1366: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1366 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1366



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

January 24, 2011

TO: Rep. Keiser, Chairman,
and Members of the House Industry, Business and Labor Committee

FR: Al Jaeger, Secretary of State

RE: HB 1366 – Partnership Fictitious Names and Trade Names

I appreciate and thank Rep. Brabandt for introducing this bill on behalf of the Secretary of State.

For easier reading, Sections 1 and 2 of this bill change the format of the law as it currently appears in the Century Code (see below). The changes makes the format of these two existing sections of law consistent with the format and the same name availability requirements that also exist for other business entities registered with the Secretary of State's office.

Other than the format changes, the only addition this bill makes to current law is the requirement that a name filed with the Secretary of State must be expressed with English letters or characters (page 1, lines 8 through 10 and on page 2, lines 12 through 14). This makes it clear that the Secretary of State's office will only accept registrations stated as such because the agency's software system will not accept letters or characters that are unique to a foreign language.

Otherwise, all of the remaining underlined text in the bill already exists in other parts of state law or in the two sections of law shown below.

Section 1

N.D.C.C. § 45-11-01(3) – As it currently appears in the North Dakota Century Code

3. The fictitious name:

- a. May not contain the word "corporation", "company", "incorporated", "limited liability company", or "limited", or an abbreviation of any of those words. This subsection does not preclude the word "limited" from being used in conjunction with the word "partnership".
- b. May not be the same as or deceptively similar to any corporate name, limited liability company name, trade name, partnership name on file with the secretary of state, limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state, unless there is filed with the fictitious name certificate a written consent of the holder of the similar name to use the proposed name and a filing fee of ten dollars.

Section 2

N.D.C.C. § 47-25-03 – As it currently appears in the North Dakota Century Code

A trade name registered may not be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company name, domestic or foreign limited partnership name, domestic or foreign limited liability partnership name, domestic or foreign limited liability limited partnership name, or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if a franchise, a written consent from the franchiser. A trade name may not contain the word "company", "corporation", "incorporated", "limited", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of any of these words unless the owner of the trade name is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership as indicated by the words used in the name.



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

February 8, 2011

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

FR: Al Jaeger, Secretary of State

RE: HB 1366 – Partnership Fictitious Names and Trade Names

I appreciate and thank Rep. Brabandt for introducing this bill on behalf of the Secretary of State.

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Other than the format changes, the only addition this bill makes to current law is the requirement that a name filed with the Secretary of State must be expressed with English letters or characters (page 1, lines 8 through 10 and on page 2, lines 12 through 14). This makes it clear that the Secretary of State's office will only accept registrations stated as such because the agency's software system will not accept letters or characters that are unique to a foreign language. These same changes are being made in SB 2174 for other business entities.

Otherwise, all of the remaining underlined text in the bill already exists in other parts of state law or in the two sections of law shown below.

NOTE: Partnership Fictitious Names on File – 1,770 Trade Names on File – 22,262

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3. The fictitious name:

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- b. May not be the same as or deceptively similar to any corporate name, limited liability company name, trade name, partnership name on file with the secretary of state, limited partnership name, foreign limited partnership name, or fictitious name certificate on file with the secretary of state, unless there is filed with the fictitious name certificate a written consent of the holder of the similar name to use the proposed name and a filing fee of ten dollars.

Section 2

N.D.C.C. § 47-25-03 – As it currently appears in the North Dakota Century Code

A trade name registered may not be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company name, domestic or foreign limited partnership name, domestic or foreign limited liability partnership name, domestic or foreign limited liability limited partnership name, or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if a franchise, a written consent from the franchiser. A trade name may not contain the word "company", "corporation", "incorporated", "limited", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of any of these words unless the owner of the trade name is a corporation, limited liability company, limited partnership, limited liability partnership, or limited liability limited partnership as indicated by the words used in the name.

512 12/1/11 #1