

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1326

2007 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1326

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1326

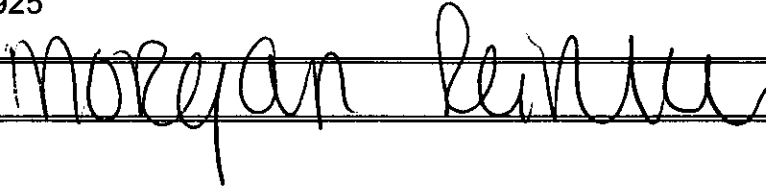
House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1925

Committee Clerk Signature



Minutes:

Clara Jenkins: *I'm offering this testimony on behalf of the Secretary of State. This bill is to apply the same requirements to partnership fictitious names and trade names that already exist of all the chapters of the Century Code. That is unless the name is first filed with the Secretary of States office. A state agency cannot issue a license or registration in that name to any other office. Because the law was not consistent, some state agencies inadvertently issued licenses and permits to partnerships and proprietorships. In some cases the names were similar to the names that were already on file with the Secretary of States file. This was ultimately discovered that some businesses were forced to incur legal fees and court orders, and in other situations the businesses have closed because of premature investments that were signed advertising office stationary. The value of first requiring registration of a name with the Secretary of State provides assurances to the applicants that they have chosen the name that is not susceptible to another name already on file. Secretary of State's office in state law provides an important service to businesses. This bill applies the law equally to all business entities and protects the agency from inadvertently issuing a license or permit in a name that is deceptively similar to a protected name. The businesses that are already registered expect this minimum protection.*

Rep. Meier: Can you give us an example of how this occurs?

Clara Jenkins: Yeah, it happens that we get a phone call and someone on the other line is extremely upset because they hear that a business in another part of the state is using a business name that they have already registered. When we go to check further we find out that they were either issued a tax permit, liquor license, or a restaurant permit by the licensing agency that actually does not have authority to do that. They do when it comes to appropriation or a different entity. They are part of the law that specifically prohibits it. This will prevent this from happening because in both parties are agreed, the one that has the legal protection can incur the legal fees to get the other party to stop, the other party probably has company logos, vehicles, etc, and all of that has to be redone.

Rep. Meier: Does this happen a lot?

Clara Jenkins: It happens a lot more often then we like to hear about. Really we don't have any authority for these issues but we certainly want to prevent the court actions that can be incurred. Unfortunately, it is easy to get into a business with an unprotected name and be unaware that there are new businesses that don't have the extra capitol to re-establish themselves.

Rep. Weiler: Can you give me an example of a state agency that gives a license or a permit.

Clara Jenkins: A lot of agencies can issue permits. The Attorney General's office, the Tax Department, the Insurance Department, the Highway Department. It's not just one agency that is unfortunately writing these permits and licenses. Some agencies are trying to get it so the new businesses have to be registered before you issue a license. If you get an applicant out there that it doesn't matter to them if they want it, you really don't have a basis on which to deny.

Rep. Kasper: Wouldn't it be advantageous to have any entity in state government that issues a license, permit, or registration to be required to check with the Secretary of State's office first and to see if that business is registered under your office before they issue the license?

Clara Jenkins: That is exactly what we are hoping to accomplish. They do that process now when it comes to incorporations, because statute specifically provides for it. Under these circumstances, it is not required. So some get through, some decide there is no process to do this because the statute doesn't provide for it.

Rep. Kasper: I know that that may be what the intent of this bill is, but that is not what the bill says. This bill does not require for any of the state agencies that issue the license, permit, or registration to check with your office first. It just says that a partnership may not transact business in the state or obtain a license, permit, or registration under a fictitious name until they register with you. It doesn't require those agencies to check with you when they are giving a permit which would be a logical step to avoid names falling through the cracks.

Rep. Kasper: This is the identical language that is now in the Century Code chapters, and because they are able to obtain a license or permit, the agencies require making sure that they are an applicant. The procedure for this checking is in place of the agencies.

Rep. Haas: When the Secretary of State's office issues a certificate of registration of trade names that goes to the person that is registering that name is that correct?

Clara Jenkins: That is correct.

Rep. Haas: Is it not also correct that if they want to go then to the State Tax Department to get a sales tax or permit that they have to provide evidence of the registration of trade names before it would be issued?

Clara Jenkins: That is not true. That is not part of the bill. It is true for a corporation. They

have to demonstrate proof that if they look at the application that they actually have line items in the application.

Rep. Clark: What I understand about this bill is basically it puts other state agencies on notice that they should not be issuing permits, licenses, or registration until they have been registered properly with the Secretary of State. I don't know if there is a secondary reason for doing that or not, but this bill is thought to be from the Secretary of State and he asked me to sponsor that.

Rep. Haas: Is there any additional testimony in favor of HB 1326. Is there any opposition testimony? If not we will close the hearing on HB 1326.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1326

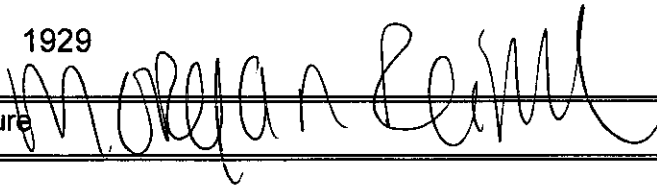
House Government and Veterans Affairs Committee

Check here for Conference Committee

Hearing Date: January 25, 2007

Recorder Job Number: 1929

Committee Clerk Signature



Minutes:

Rep. Weiler: I move a do pass.

Rep. Potter: I second that.

Rep. Haas: Is there any discussion? If not we will take a roll call vote on HB 1326. HB 1326

passes with a vote of 12-0-1. Who would like to carry this bill?

Rep. Potter: I will

Date: 1-25-07
Roll Call Vote #: |

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number HB 1326

Action Taken DO PASS

Motion Made By Rep. Weiler Seconded By Rep. Potter

Representatives	Yes	No	Representatives	Yes	No
Rep. C.B Haas Chairman	X		Rep. Bill Amerman		
Rep. Bette Grande V.P	X		Rep. Louise Potter	X	
Rep. Randy Boehning	X		Rep. Jasper Schneider	X	
Rep. Stacey Dahl	X		Rep. Lisa Wolf	X	
Rep. Glen Froseth	X				
Rep. Karen Karls	X				
Rep. Jim Kasper	X				
Rep. Lisa Meier	X				
Rep. Dave Weiler	X				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep. Potter

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

REPORT OF STANDING COMMITTEE

HB 1326: Government and Veterans Affairs Committee (Rep. Haas, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1326 was placed on the Eleventh order on the calendar.

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1326

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1326

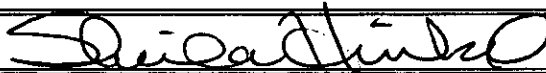
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 12, 2007**

Recorder Job Number: **4911**

Committee Clerk Signature



Partnership Fictitious Names & Trade Names

Representative Don Clark – District 44 - In Favor

Here to request the Secretary of State (SOS) to sponsor House bill 1326. This bill changes the Century Code in a minor way. Simply says a partnership may not transact business or obtain a licensed permit or registration from any state agency under a fictitious name or under a designation that does not show the names of the persons interested as partners until it has filed a "fictitious name" certificate with the SOS and paid the applicable fees.

The problem this bill is designed to solve: Puts the state agencies on notice that they should be issuing licenses, permits or registrations until the partnership is registered with the SOS as required. This will make the law consistent with the same laws that cover corporations and limited liabilities corporations. What's a fictitious name? If Casper and Clark on the House side started a business and called it "Fargo Snow Removal" that would be an example.

S Klein: So it would be fictitious that you would go into business with Representative Casper probably?

Don C: Yes, that would be fictitious.

S Klein: What we're trying to get at is that you need to be registered before you move on with the other process of becoming organized business.

Don C: There have been permits issued and so on before they have actually registered with his office.

S Andrist: Would it be a fictitious name if you used their personal names?

Don C: That's not fictitious, but you still need to be registered.

S Andrist: There are so many people are "out" – even kids and start hanging out a shingle and I wonder what the "gotcha" effect might be on these people that aren't aware of it.

Don C: I don't know that.

Al Jaeger, ND Secretary of State - In Favor

TESTIMONY # 1 *Went over testimony*

The state agency is not to give a permit unless registered with our office with a trade name.

There is no penalty, they're not going to jail. Sales tax permit should not be issued if they are not issued with the Secretary of State's office. They need to be registered first if it is a sole proprietor or a partnership. Example: got someone who had a franchise, and someone else was using the name. The tax dept. issued a sales tax permit and then looking into the records under "trade name." This is intended to protect people with their name on file. Clara Jenkins takes care of the trade names.

S Klein: What about the "Main Street Café." Where husband and wife or a family are proprietors, do all Main Street Café's need to be registered?

Al J: If it is a single proprietorship and names are alike, the agencies cannot issue permits.

S Klein: So you have a registration fee of \$25 and it is good for 5 years. Do qualifiers make the name difficult?

Al J: The law needs to be in place.

S Hacker: What If you don't want the registered name to become public? Say I was working for another person and going to spin off my own business. Are there situations where you can wait until the business is rolling?

AI J: You can RESERVE the name. If they've got a name they want it can be reserved, otherwise it may be wasted money.

S Hacker: Can you do a search?

AI J: We can give an idea, you can go on our website 24-7 to see what is available as soon as any document is registered.

S Hacker: What if you're doing fund raising?

AI J: You would have licensing, solicitation and charitable businesses. These are designed to protect people waiting to go into business. This is to have clean state agencies.

S Andrist: On the Main Street Café question. Are these going to have to register, "10" and share their name. there couldn't be 10 right now?

AI J: No one is being forced to.

S Andrist: There is a Mail Street Café in Bowbells.

AI J: We file the name unless it is infringed on and don't think it will change.

S Andrist: So the main Street Care doesn't stop from being a business.

AI J: A new business won't get a permit. The business must be covered.

S Klein: I see there the transport of the Main Street Café would be, a new couple moves here and takes the same name, so they won't be permitted and won't get their Sales and Use Permit.

AI J: Not necessarily. The name can be transferred, the ownership can be transferred.

S Klein: Now the new folks know the last folks had it for the last 12 years...

Al J: The other thing that happens, we deal with a lot of consents. Chances are if there is a Main Street Café in Wahpeton and someone else comes into a Main Street Cafe in Crosby, if the guy who has it in Wahpeton realizes that the Main Street Café in Crosby is not a competitor of his, he can sign a waiver. We have a lot of those.

S Andrist: You're assuring us there is no "gotcha" effect to this bill, othan the \$25 they're going to get you for the registration?

Al J: New people more than anything else.

S Andrist: So the Main Street Café for 20 years and decides to file to comply with this law.

Al J: Chances are they already have some of that already and have a Sales Tax Permit.

S Potter: This only affects the registration of new companies, because older companies are already under this law if they're transacting business in ND?

Al J: If someone who has been operating in the state and has not ever had a need to get a permit of any kind and then has to become registered, they could run into a problem. We encourage single proprietors to register their names. One in Bismarck for many, many years, had gotten into a dispute with the landlord and the landlord checked the records and realized that they had not registered the name with the business, and walked in and registered the name. That caused quite a bit of problem. Any time you are a sole proprietor, that's one of the first things we would appreciate. It would be good if the BANKS would right away tell their customers when they open their checking account to have proof that that name is already registered and protected.

S Potter: Currently, any partnership transacting business needs to file and register>

Al J: By law they're supposed to do it anyway.

S Behm: Did that guy get away with that and doing business? Seems like ti would be stealing.

AI J: They ended up settling out of court. There is a way you can legally go out and steal names, even though it is unethical, you could do it.

S Andrist: I was in business for 40 years and wasn't incorporated, I don't ever remember filing with you...

AI J: If you were in existence years ago, you were Grandfathered in.

S Andrist: Didn't I hear you say something about renewal?

AI J: You're still Grandfathered in.

S Heitkamp: I went to your office and after 5 times we got a name. Your office was helpful in getting a name with the concept I had because there was a list of name that had to register, so it wasn't that you couldn't work with them before you file.

AI J: If you spent a lot up front on a name and then found out that it was not useable. You wouldn't be a happy camper and frustrated with the system and "why didn't anyone tell us?" So by having this in law, when you went to somebody other than us, the agency, you need to file.

S Heitkamp: Most of the attorney's now will help you set up the tax structure, know that. The first call he told me to make was to your office.

AI J: People attempted to get real property, and had papers and everything, even the conveyances done through an attorney, and came to register the name and basically said, "its not available." That's not our problem.

Clara Jenkins – Director of Business SOS office - Asked to take the podium

S Klein: We have questions for you. Going back to the Main Street Café.

Clara J: We probably have several Main Street Cafes.

S Klein: Some may not be registered.

Clara J: Some may not be, we'll never go back and get all of those reconciled with the tax commissioner's office, I seriously doubt it. What we're trying to solve here. The SOS office registered names and gives exclusive rights to that customer. We don't want another state agency giving that name to somebody else. That's what we're trying to prevent. That's not a very pretty scene.

S Klein: So Bonnie & John's Main Street Café, if a person's name is NOT in the name they need to register? How do we designate that?

Clara J: If the person's names are included in that name, it, by law, is not a trade name. It is only when the names of the owners are not disclosed.

S Andrist: There must be 20 people/women who rented a room someplace in cosmetology and decided to call themselves "Shear Magic". 19 of them would have no idea they're supposed to file a name. They're in a little town and they could care less if there are 40 "Shear Magics" in the state.

Clara J: I believe we have the cosmetologists taken care of. When they go to apply for their license at the state board of cosmetology, they make sure that their registrations are in place before they issue a license. A lot of them rent a space within a facility and operating under a same name, they just sign up and register. Those are taken care of. To S Hacker's question, he wanted to preserve the anonymity in establishing a business. There are a couple ways. Reserve the name with your attorney, so it would be his name on the paperwork. The attorney would file a "reserve name" transfer to you. That would become a matter of public record.

S Hacker: All I'm doing is reserving the name, not registering it. This bill would require me to register it.

Clara J: You're not conducting business until you transact, you do not need to register. What it does is reserve the name so that when you start your business, it can be transferred. That's how you preserve your anonymity.

S Potter: I just love that "Clara" is giving us "Clara-fication."

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1326 B


Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 14, 2007**

Recorder Job Number: **5040**

Committee Clerk Signature



Fictitious Names & Trade Names, Sec. of State

S Klein: This the Secretary of State's (SOS) bill. Sense some reluctance as it moves forward. It means a new name for new owners such as the Main Street Café, would mean printing new menus and cards for new owners. If there are new owners, they have to pay the \$25 fee.

S Wanzek: In the current language, aren't they technically required to file TODAY?

S Potter: Currently any time a license or permit has to file, they are to file with SOS first before they transact business..

S Heitkamp: SOS has the right to think this is all not that popular, it's not with me. I think there are certain things businesses do when they get started and they make that mistake, and it ends up getting fixed in the end and they pay a heavy price for not getting things done right in the beginning if they overstep some boundaries. We keep setting up these fences, we keep giving more power to the folks in the executive branch, I've had this job for 14 years and haven't been flooded with businesses who had a name problem. I'm not a big fan of this bill.

S Klein: S Andrist made a point, we're suggesting a new tax for new business, because you need to spend \$25 for a 5 year license. If it's done well now, is this a big issue, does it happen often? Some people have had this issue. They are trying to mandate to the agencies that they don't do this unless they have registered.

S Hacker: I would agree with S Heitkamp's observation, the only complaint I've had above this, "don't do it," because some people want to keep it proprietary. I'm happy that some people aren't registered, but now you're going to make them go through more hoops, people are just going to say, "forget it, I won't even register," but go and do business anyways. I think for some small companies, they are making a good step in just registering for a Tax number who make less than \$15,000 a year.

S Andrist: I think this is a solution looking for a problem. Once instance where a problem was created, and now we're going to make everybody in the state pay \$5 a year?

S Behm: Why would you file under a fictitious name?

S Klein: What they mean by fictitious is like, instead of "Art Behm Dairy Farm" you would call it "Green Valley Dairies" THAT'S fictitious, that's not using your name in the name. If you continue to use "Art Behm Dairy Farm" you don't have to go through all of this... am I correct in that? Fictitious is to describe your business.

S Behm: Why would you want to do that?

S Klein: Make up some fancy name?

S Behm: Yes

S Klein: Well, in our community there is a little milk company, they're called "Fessenden Dairy." I suppose they could have been called "James Klein Dairy" but they're called "Fessenden Dairy". That's a fictitious name, the previous owner was "Fessenden Produce" and they just used a name as a spin off from that. It works. There's no problems, he gets a yearly license from the ND milk board.

S Heitkamp: Motion for a DO NOT PASS

S Hacker – Second

S Potter: I think you've made more out of this than it is. I'll support the bill. My biggest problem is that it has created a double negative in the Century Code. Instead of where it used to be a positive affirmation that you have to do this, now it says "you shouldn't to that, and you shouldn't' do that."

S Heitkamp: For Senator Potter to say we're making something out of this, that really hits low.

Roll vote for a DO NOT PASS on HB 1326 – 5-2-0 Passed as DO NOT PASS

Vote declines: Klein, Potter

Carrier: Heitkamp

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1326 C

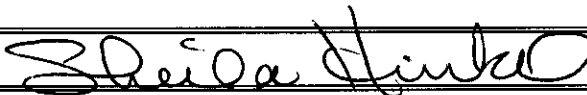
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 19, 2007**

Recorder Job Number: **5244**

Committee Clerk Signature



Partnership on fictitious names & trade names, Re-opened

S Klein: I had a tremendous amount of discussions in the hallways after someone heard about this. I'm asking whether or not we'd like to reconsider our actions.

S Heitkamp:

I move we Reconsider our actions

Second by S Wanzek

Voice vote: Unanimous "aye" - passed

S Klein: Secretary of State would like to bring us additional information so that we know.

Secretary of State, Al Jaeger (SOS)

You passed the bill out with a DNP and can answer some questions, we hope that you change your mind, the trade name bill, the law has been enforced since 1956, registering a trade name is not new. 1956 law clearly says that if a name is registered, that individual has it registered, the affected to go after to cease and desist. 1995 at that point passed a bill HB 1331, which said any organization that operates under a name other than a real name is supposed to be registered with the office. There is no penalty for not doing it, the intent is to establish the importance of the trade name. None of the state offices can issue a license unless they're registered with our office. The only way if they do not have a name similar to

someone else. A agency cannot give a license or permit to a partnership with fictitious name unless registered trade name. The most recent, Big Daddy's, since 1989, someone in Fargo also was Big Daddy's and got a liquor license based on the fact that they got a permit, names, big investment, found out if they could use the name, Big Daddy's in GF did not agree and started over with another name in Fargo and had to redo everything.

Second example. Name Image Tag for several years, single proprietor, back in December, became aware of a franchise called Image Suntanning, was coming into town at the new shopping area in Pinehurst and approached our office and asked how the person been given the name. It was too close. All of sudden we find out, the tax dept. gave a sales tax dept. permit even though they weren't registered with SOS office. The Franchise has dollars behind them. We sent the letter out, been ignored, their only recourse to go to courts and the company doesn't have the means to do that. The bill was to save the public from errors made by state agencies. The cases, thought they were protected, but someone came along and set up in front of them, unless the name is properly registered.

S Klein: Wouldn't it be suited as easy to send out 5 letters rather than saying it has to be done this way?

SOS: We have sent letters to the agencies. The agencies would appreciate having it in the law, and it gives them an out incase they give it erroneously. Now they don't need a hammer for the agencies, but if they inadvertently do it, we can revoke it.

S Andrist: My problem remains, because the agencies really haven't done their work, so we're charging \$5 a year, even if they could care less if there is another small.

SOS: \$25 for 5 years, doesn't impose anything on anyone.

S Andrist: They don't care how many corner grocery stores there are. Now they would have to abide by that fee

SOS: The corner grocery store may already have a permit. I don't see where we're putting a new requirement on any existing business. That's already out there. Corner grocery stores don't charge tax on food, but they do sell taxable items. In both cases cited, Big Daddy's case, when got something from SOS office, got something from the SOS office, and thought he was good to go.

S Andrist: Somehow there is a flaw in our plan. To protect the tax dept. from making a fault, we make everyone pay \$25 for 5 years?

SOS: If I could afford \$25 so that no one can legally steal my name, that would be pretty cheap insurance. One of the things should be protecting their name. Basic 101 entrepreneurship. Cheaper than liability insurance and other insurances they need to do. If they are really smart, they may take advantage of limited liability company. If it's one person, I don't see how we're imposing anything.

S Wanzek: This isn't going to be retroactive. What you're talking about here is moving forward, not the companies from years ago, you're not going to stir the old pot.

SOS: We're not going to go back. We don't have time to go back.
Just the single proprietor.

S Wanzek: Say if someone has been in a business, and start up the business, and find out you have filed, I would legally be the one to get the name.

SOS: I'll use the example of the Elbow Room – those who have been in Bismarck, Elbow Room, had a falling out with the landlord, and found the name is not filed, so the second party filed it. The name Elbow Room did not exist in the records. That almost went through legal challenge and they settled out of court. Within 5 minutes I could find 10 names in the yellow pages that are not registered.

S Heitkamp: Did he take the name then?

S Potter: Anyone doing business now has to pay the fee, anyone in the future has to pay the fee?

SOS: Yes

S Hacker: In the example, was money put on the table, to get the domain name.

SOS: Since 1995, it is a law. State agencies cannot give permits without the company being registered.

S Hacker: Do you do a national search?

SOS: No, just the record in ND. If I started up and made some adjustments to our documents since that hearing, If I started up Campbell Soup company, I would be contacted.

S Hacker: Then why was Dagwoods changed to Big Daddy's?

SOS: It could have been Fed protected.

S Hacker: Were you supportive of that federal search legislation?

SOS: Would have been exceedingly expensive. All of our forms say, "because you are granted the name in state of ND, doesn't mean you're protected federally."

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1326 D

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 20, 2007**

Recorder Job Number: **5315**

Committee Clerk Signature



Partnership Fictitious Names & Trade Names – part 4

S Klein: Discussion with Secretary of State (SOS) who was on point.

S Hacker: I feel that the Secretary should have the tax dept. could send an email when they get a registration, they can say you can register a name, and send a letter to those people and tell them they should get registered with the SOS.

S Heitkamp: Are you going to vote last again?

S Klein: I'm going to vote with SOS. I asked about the Main Street Cafe, I said, "when you registered your Main Street Café, what did you register?" "John and Bonnie Overbe, LLC," that took away the fictitious name when they registered. I asked the SOS, could they just notify those other agencies, have them ask the people requesting permit, "have you registered?"

S Potter: He just about lost me yesterday, we could Hog House and make it the government's responsibility, we could say that before any license, permit or registration is issued by any state agency, they need to check with the Secretary of State, to see if that fictitious name is there. It would be their responsibility. I could ask the legislative council to draft something.

S Klein: We could draft amendment to require the agencies to ask the SOS rather than having the people go in other directions

