

delegates chosen as supporters by the state convention are not in fact committed to the candidate's candidacy, the candidate shall, within ten days of receiving the notification from the secretary of state, advise the secretary of state of the names of those delegates to whom the candidate objects on those grounds and shall name as substitute delegates any other individuals who are committed to the candidacy. The determination and selection by the presidential candidate shall take precedence over the decision of the state convention and is final. The secretary of state shall promptly notify the secretary of the state convention of the affected political party of the action by a presidential candidate.

Subd. 3. DELEGATE VOTES. At the national convention, delegates chosen because of their support for a presidential candidate shall vote for that candidate on the first ballot at the national convention regardless of the number of votes the candidate receives, and shall also vote for the candidate on the second and third ballots if the candidate receives at least 20 percent of the votes cast on the preceding ballot, unless they have been released from that obligation by the candidate.

Sec. 7. [207A.07] USE OF VOTING MACHINES.

The county auditor of each county in which lever voting machines or electronic voting systems are used shall provide all ballots, ballot labels, ballot cards, and other necessary printed forms and supplies needed to place the ballots required by sections 1 to 7 on the voting machines which otherwise are provided by the state when paper ballots are used. The total cost of printing and providing the forms must be paid by the state.

Presented to the governor May 26, 1989

Signed by the governor May 30, 1989, 11:48 a.m.

CHAPTER 292—S.F.No. 180

An act relating to commerce; regulating the use of names for certain business entities; providing a procedure for contesting the registration of a name; amending Minnesota Statutes 1988, sections 300.025; 302A.115, subdivisions 1, 3, and by adding a subdivision; 302A.117, subdivision 1; 303.05, by adding a subdivision; 317.09, subdivision 2, and by adding a subdivision; 322A.02; 322A.72; and 333.055, subdivision 4; amending Laws 1989, chapter 144, article 1, section 8, subdivision 1, and by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 5.

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

Section 1. [5.22] CONTEST OF REGISTRATION OF NAME.

Subdivision 1. NOTICE OF CONTEST; DEPOSIT. A person doing business in this state may contest the subsequent registration of a name 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 person

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who subsequently registered the contested name. The notice to the secretary of state must be accompanied by a \$100 deposit, which the secretary of state shall award to the prevailing party in the contest.

Subd. 2. PROCEDURE. (a) Upon receipt of a notice of contest, the secretary of state shall ask each party to the contest to submit within 30 days an affidavit setting forth the facts, opinions, and arguments for or against the retention of the contested name on the records of the secretary of state. The secretary of state shall review the affidavits and shall make a decision or order a hearing to be held within 30 days.

(b) If a hearing is ordered, the parties shall meet with the secretary of state before the hearing and attempt to settle the contest.

(c) If a settlement is not reached, the secretary of state shall hold a hearing. At the hearing, the secretary of state may consider evidence presented by the parties relating to the factual or legal issues raised by the contest. A record of the hearing is not required. The hearing is not a contested case hearing under chapter 14.

Subd. 3. STANDARD OF REVIEW. The secretary of state may order that the contested name be changed on the records of the secretary of state if it is likely that the use of the names will cause confusion, mistake, or deception among the public when applied to the goods or services provided by the businesses. In determining whether confusion, mistake, or deception is likely, the secretary of state shall consider:

- (1) the strength or unique nature of the names;
- (2) the similarity of sound, appearance, or meaning of the names;
- (3) the intent of the parties;
- (4) the type of businesses engaged in or to be engaged in by the parties;
- (5) the geographic market areas served by each party and the manner of distribution and marketing used in those areas;
- (6) the nature and quality of goods or services provided by the parties;
- (7) the level of sophistication of potential purchasers of goods or services offered by the parties;
- (8) whether the party contesting the subsequent registration of a name failed to make a timely objection or acquiesced to the use of the name so that it would be inequitable to prohibit its registration; and
- (9) whether the names in question are in fair use, have been abandoned, or are parodies of other names.

Subd. 4. DECISION; ENFORCEMENT. The secretary of state shall make a decision for one of the parties within ten days of the hearing and may order

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that the contested name be changed on the records of the office of the secretary of state and the relevant documents be amended by the secretary of state in a manner that results in a new name that is not the same as or deceptively similar to another name registered with the office of the secretary of state.

Subd. 5. APPEAL. A party may appeal the decision of the secretary of state to the district court within 20 days. The district court shall consider the factual and legal issues without reference to the decision of the secretary of state.

Subd. 6. LIABILITY. The office of the secretary of state is not liable for damages incurred as a result of the registration of a name found to be the same or deceptively similar to another name already registered with the office of the secretary of state. The office of the secretary of state is not liable for damages that arise from the decision of the secretary of state in a contest under this section.

Sec. 2. Minnesota Statutes 1988, section 300.025, is amended to read:

300.025 ORGANIZATION OF FINANCIAL CORPORATIONS.

(a) Three or more persons may form a corporation for any of the purposes specified in section 47.12 by applying to the department of commerce and complying with all applicable organizational requirements and the conditions set out in clauses (1) to (7). However, no corporation may be formed under this section if it may be formed under the Minnesota business corporation act. The incorporators must subscribe a certificate specifying:

(1) the corporation's name, which must distinguish it from all other corporations authorized to do business in this state, and must contain the word "company," "corporation," "bank," "association," or "incorporated";

(2) the general nature of the corporation's business and its principal place of business;

(3) the period of its duration, if limited;

(4) the names and places of residence of the incorporators;

(5) the board in which the management of the corporation will be vested, the date of the annual meeting at which it will be elected, and the names and addresses of the board members until the first election, a majority of whom must always be residents of this state;

(6) the amount of capital stock, if any, how the capital stock is to be paid in, the number of shares into which it is to be divided, and the par value of each share; and, if there is to be more than one class, a description and the terms of issue of each class, and the method of voting on each class; and

(7) the highest amount of indebtedness or liability to which the corporation will at any time be subject.

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The certificate may contain any other lawful provision defining and regulating the powers and business of the corporation, its officers, directors, trustees, members, and stockholders. However, a corporation subject to sections 48.27 and 51A.22, subdivision 2, may show its highest amount of indebtedness to be 30 times the amount of its capital and actual surplus.

(b) A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 1.

Sec. 3. Minnesota Statutes 1988, section 302A.115, subdivision 1, is amended to read:

Subdivision 1. **REQUIREMENTS; PROHIBITIONS.** The corporate name:

(a) Shall be in the English language or in any other language expressed in English letters or characters;

(b) Shall contain the word "corporation," "incorporated," or "limited," or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&;

(c) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose;

(d) Shall ~~not be the same as, or deceptively similar to,~~ distinguishable upon the records in the office of the secretary of state from the name of a domestic corporation or limited partnership, whether profit or nonprofit, or a foreign corporation or limited partnership authorized or registered to do business in this state, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved or provided for in sections 302A.117, 322A.03, or 333.001 to 333.54, unless there is filed with the articles one of the following:

(1) The written consent of the domestic corporation or limited partnership or foreign corporation or limited partnership authorized or registered to do business in this state or the holder of a reserved name or a name filed by or registered with the secretary of state under sections 333.001 to 333.54 having ~~the same or a deceptively similar~~ a name that is not distinguishable;

(2) A certified copy of a final decree of a court in this state establishing the prior right of the applicant to the use of the name in this state; or

(3) The applicant's affidavit that the corporation or limited partnership with ~~the same or deceptively similar~~ name that is not distinguishable has been incorporated or on file in this state for at least three years prior to the affidavit, if it is a domestic corporation or limited partnership, or has been authorized or registered to do business in this state for at least three years prior to the affidavit, if it is a foreign corporation or limited partnership, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54

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filed or registered that name at least three years prior to the affidavit, and has not during the three-year period filed any document with the secretary of state; that the applicant has mailed written notice to the corporation or limited partnership or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the corporation or in care of the agent of the limited partnership, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, that the applicant intends to use ~~the same or deceptively similar~~ a name that is not distinguishable and the notice has been returned to the applicant as undeliverable to the addressee corporation or limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the corporation or limited partnership with the ~~same or deceptively similar~~ name that is not distinguishable in the county in which is located the registered office of the corporation shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the corporation or limited partnership or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

Sec. 4. Minnesota Statutes 1988, section 302A.115, subdivision 3, is amended to read:

Subd. 3. **DETERMINATION.** The secretary of state shall determine whether a name is ~~"deceptively similar"~~ to "distinguishable" from another name for purposes of this section and section 302A.117.

Sec. 5. Minnesota Statutes 1988, section 302A.115, is amended by adding a subdivision to read:

Subd. 8. CONTEST OF REGISTRATION OF NAME. A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 1.

Sec. 6. Minnesota Statutes 1988, section 302A.117, subdivision 1, is amended to read:

Subdivision 1. **WHO MAY RESERVE.** The exclusive right to the use of a corporate name otherwise permitted by section 302A.115 may be reserved by:

(a) A person doing business in this state under that name ~~or a name deceptively similar to that name;~~

(b) A person intending to incorporate under this chapter;

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(c) A domestic corporation intending to change its name;

(d) A foreign corporation intending to make application for a certificate of authority to transact business in this state;

(e) A foreign corporation authorized to transact business in this state and intending to change its name;

(f) A person intending to incorporate a foreign corporation and intending to have the foreign corporation make application for a certificate of authority to transact business in this state; or

(g) A foreign corporation doing business under that name or a name deceptively similar to that name in one or more states other than this state and not described in clauses (d), (e), or (f).

Sec. 7. Minnesota Statutes 1988, section 303.05, is amended by adding a subdivision to read:

Subd. 4. CONTEST OF REGISTRATION OF NAME. A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 1.

Sec. 8. Laws 1989, chapter 144, article 1, section 8, subdivision 1, is amended to read:

Subdivision 1. ~~NAME. The name of a cooperative must distinguish the cooperative from other entities doing business in the state as domestic or foreign corporations or limited partnerships, or under assumed names, trade or service marks, or reserved corporate or limited partnership names, as provided in section 302A.115 upon the records in the office of the secretary of state from the name of a domestic corporation, whether profit or nonprofit, or a limited partnership, or a foreign corporation or a limited partnership authorized or registered to do business in this state, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved or provided for in sections 302A.117, 317A.117, 322A.03, or 333.001 to 333.54.~~

Sec. 9. Laws 1989, chapter 144, article 1, section 8, is amended by adding a subdivision to read:

Subd. 3. CONTEST OF REGISTRATION OF NAME. A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 1.

Sec. 10. Minnesota Statutes 1988, section 317.09, subdivision 2, is amended to read:

Subd. 2. **USE OF SIMILAR NAME FORBIDDEN.** The corporate name shall ~~not be the same as, nor deceptively similar to,~~ distinguishable from the name of any assumed name, trade or service mark, or limited partnership, or

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domestic corporation, whether profit or nonprofit, or of any foreign corporation or foreign limited partnership, whether profit or nonprofit, authorized or registered to do business in this state or to any name reserved under section 302A.117 or 322A.03, unless there is filed with the articles a written consent, court decree of prior right, or affidavit of nonuse of the kind required by section 302A.115, subdivision 1, paragraph (d).

The secretary of state shall determine whether a name is "~~deceptively similar~~" "distinguishable" from to another name for purposes of this section. This section does not abrogate or limit the law of unfair competition or unfair practices, nor sections 333.001 to 333.54, nor the laws of the United States with respect to the right to acquire and protect copyrights, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or principles of equity.

Sec. 11. Minnesota Statutes 1988, section 317.09, is amended by adding a subdivision to read:

Subd. 4. CONTEST OF REGISTRATION OF NAME. A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 1.

Sec. 12. If H.F. No. 1203 is enacted in the 1989 legislative session, Minnesota Statutes, section 317.09, subdivision 4, as added by section 11 of this act, is repealed and H.F. No. 1203, section 12, is amended by adding a subdivision to read:

Subd. 6. CONTEST OF REGISTRATION OF NAME. A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 1.

Sec. 13. If H.F. No. 1203 is enacted in the 1989 legislative session, H.F. No. 1203, section 12, subdivision 2, is amended to read:

Subd. 2. USE OF DECEPTIVELY SIMILAR NAME. (a) A corporate name ~~may not be the same as, or deceptively similar to,~~ must be distinguishable upon the records in the office of the secretary of state from the name of a domestic corporation or limited partnership, a foreign corporation or limited partnership authorized or registered to do business in this state, whether profit or nonprofit, or a name the right to which is, at the time of incorporation, reserved, registered, or provided for in section 13, 302A.117, 322A.03, or sections 333.001 to 333.54, unless one of the following is filed with the articles:

(1) the written consent of the organization having the ~~same or a deceptively similar~~ name that is not distinguishable;

(2) a certified copy of a final decree of a court in this state establishing the prior right of the applicant to use its corporate name in this state; or

(3) an affidavit of nonuse of the kind required by section 302A.115, subdivision 1, paragraph (d), clause (3).

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(b) The secretary of state shall determine whether a name is ~~deceptively similar~~ distinguishable from another name for purposes of this section and section 13.

(c) This subdivision does not affect the right of a corporation existing on January 1, 1991, or a foreign corporation authorized to do business in this state on that date, to use its corporate name.

Sec. 14. If H.F. No. 1203 is enacted in the 1989 legislative session, H.F. No. 1203, section 13, subdivision 1, is amended to read:

Subdivision 1. **WHO MAY RESERVE.** A corporate name permitted by section 12 may be reserved in the records of the secretary of state by:

(1) a person doing business in this state under that name ~~or a name deceptively similar to that name;~~

(2) a person intending to incorporate under this chapter;

(3) a domestic corporation intending to change its name;

(4) a foreign corporation intending to make application for a certificate of authority to transact business in this state;

(5) a foreign corporation authorized to transact business in this state and intending to change its name;

(6) a person intending to incorporate a foreign corporation and intending to have the foreign corporation make application for a certificate of authority to transact business in this state; or

(7) a foreign corporation doing business under that name or a name deceptively similar to that name in a state other than this state and not described in clauses (4) to (6).

Sec. 15. Minnesota Statutes 1988, section 322A.02, is amended to read:

322A.02 NAME.

(a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain without abbreviation the words "limited partnership";

(2) may not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) ~~may not must be the same as, or deceptively similar to,~~ distinguishable from the name of a domestic corporation or limited partnership, whether profit

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or nonprofit, or a foreign corporation or limited partnership authorized or registered to do business in this state, whether profit or nonprofit, or a name the right to which is reserved or provided for in the manner provided for in sections 302A.117, 322A.03, or 333.001 to 333.54, unless there is filed with the certificate a written consent, court decree of prior right, or affidavit of nonuse, of the kind required by section 302A.115, subdivision 1, paragraph (d); and

(4) may not contain the following words: corporation, incorporated.

The secretary of state shall determine whether a name is "~~deceptively similar~~" to "distinguishable" from another name for purposes of this section and section 322A.03. This section does not abrogate or limit the law of unfair competition or unfair practices, nor sections 333.001 to 333.54, nor the laws of the United States with respect to the right to acquire and protect copyrights, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or principles of equity.

(b) A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 1.

Sec. 16. Minnesota Statutes 1988, section 322A.72, is amended to read:

322A.72 NAME.

(a) A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in its state of organization) that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

(b) A person doing business in this state may contest the subsequent registration of a name with the office of the secretary of state as provided in section 1.

Sec. 17. Minnesota Statutes 1988, section 333.055, subdivision 4, is amended to read:

Subd. 4. The secretary of state shall accept for filing all certificates and renewals thereof which comply with the provisions of sections 333.001 to 333.06 and which are accompanied by the prescribed fees, notwithstanding the fact that the assumed name disclosed therein ~~may be the same as, or similar to,~~ not be distinguishable from one or more other assumed names already filed with the secretary of state. In the event of duplication or similarity, the secretary of state shall, within 20 days after the filing, notify in writing each previously filed business holding a certificate for the assumed name or a similar assumed name, of the duplication or similarity, including in the notice the name and last known address of the person so filing. The secretary of state shall not accept for filing a certificate that discloses an assumed name that is ~~the same as, or deceptively similar to,~~ not distinguishable from a corporate, or limited partnership name in

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use or reserved in this state by another or a trade or service mark registered with the secretary of state, unless there is filed with the certificate a written consent, court decree of prior right, or affidavit of nonuser of the kind required by section 302A.115, subdivision 1, clause (d). The secretary of state shall determine whether a name is "~~deceptively similar~~" to distinguishable from another name for purposes of this subdivision.

Sec. 18. EFFECTIVE DATE.

Sections 3, 4, 6, 8, 10, 13 to 15, and 17 are effective January 1, 1990.

Presented to the governor May 26, 1989

Signed by the governor May 26, 1989, 5:41 p.m.

CHAPTER 293—S.F.No. 1625

An act relating to public administration; appropriating money for education and related purposes to the higher education coordinating board, state board of vocational technical education, state board for community colleges, state university board, University of Minnesota, and the Mayo medical foundation, with certain conditions; amending Minnesota Statutes 1988, sections 121.93, subdivisions 2, 3, and 4; 126.56, subdivision 5; 135A.05; 135A.06, subdivision 3; 136.31, subdivisions 3 and 5; 136A.02, subdivisions 5, 6, and 7; 136A.04; 136A.05; 136A.08; 136A.101, subdivisions 1, 7, and 8; 136A.121; 136A.131; 136A.132; 136A.134, subdivision 4; 136A.15, subdivisions 1 and 7, and by adding a subdivision; 136A.16, subdivisions 1, 2, 5, 8, 9, and 10; 136A.162; 136A.17, subdivision 1; 136A.1701, subdivisions 1, 2, and 5; 136A.172; 136A.173, subdivision 1; 136A.174; 136A.175, subdivision 4; 136A.176; 136A.177; 136A.178; 136A.179; 136A.233; 136A.26, subdivision 1a; 136A.29, subdivision 9; 136A.69; 136C.04, subdivisions 1, 2, 6, 9, 10, and 18; 136C.042, subdivision 2; 136C.05, by adding subdivisions; 136C.07, subdivision 4; 136C.075; 136C.08, subdivision 1; 136C.15; 136C.31, by adding a subdivision; 136C.36; 136C.43, subdivision 1; 169.44, subdivision 18; 275.125, subdivision 14a; 354.094, subdivisions 1a and 1b; 354A.091, subdivision 1a; 355.46, subdivision 3; and Laws 1988, chapter 703, article 1, section 23; proposing coding for new law in Minnesota Statutes, chapters 135A and 136A; repealing Minnesota Statutes 1988, sections 121.936, subdivision 1a; 136A.042; 136A.09; 136A.101, subdivision 6; 136A.111; 136A.121, subdivisions 1, 4, and 15; 136A.14; 136A.141; 136A.142; 136A.225; 136A.51; 136A.52; 136A.53; 136A.55; 136C.07, subdivisions 1, 2, 3, and 6; 136C.21; 136C.211; 136C.212; 136C.213; 136C.22; 136C.221; 136C.222; 136C.223; 136C.25; 136C.26, subdivisions 1, 3, 4, 5, 6, 7, and 9; 136C.27, subdivision 2; 136C.28, subdivisions 1 and 2; 136C.29; 136C.33, subdivisions 1 and 2; 136C.42; 136C.43, subdivisions 1, 2, and 3; 256H.07; and 256H.13.

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

Section 1. HIGHER EDUCATION APPROPRIATIONS.

The sums in the columns marked "APPROPRIATIONS" are appropriated

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