

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rule I pertaining to a name ) PROPOSED ADOPTION  
availability standard for registered )  
business names )

TO: All Concerned Persons

1. On December 16, 2011, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206, State Capitol Building, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on December 2, 2011, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 444-5375; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail [jquintana@mt.gov](mailto:jquintana@mt.gov).

3. The rule as proposed to be adopted provides as follows:

NEW RULE I DISTINGUISHABLE ON/IN THE RECORD(S) (1) Pursuant to Title 30, chapter 13, MCA, and Title 35, chapters 1, 2, 7, 8, and 12, MCA, "distinguishable on the record" and "distinguishable in the records" means that a registered business name must be sufficiently distinctive from another registered business name so that it does not cause confusion in an absolute or linguistic sense.

(2) Business names that contain key words that are different and do not copy a business name already on record are "distinguishable." For example, "Bill's Carpentry" is distinguishable from "Bill's Builders."

(3) Geographic and numeric designations, phonetic similarities, and abbreviations of words (other than business identifiers) will make business names "distinguishable." For example, "Two for One Diner's Club" is distinguishable from "241 Diner's Club."

(4) The following conditions will not make a registered business name distinguishable:

(a) the use of punctuation marks or special characters, for example: "R/D Construction" and "R D Construction" are not distinguishable;

(b) the use of articles "a," "an," or "the," for example: "The Painted Pony" and "Painted Pony" are not distinguishable;

(c) the use of business name identifiers or their abbreviations, for example: "ABC Inc.," "ABC Co.," and "ABC Corp." are not distinguishable;

(d) the substitution of an arabic numeral for a word, for example: "2" and "Two" are not distinguishable;

(e) the substitution of a lower case letter for a capital letter, for example: "d" and "D" are not distinguishable;

(f) the use of plurals, possessives, or tense, for example: plurals--"Fine Line Inc." and "Fine Lines Inc." are not distinguishable; possessives--"Employee Services" and "Employees' Services" are not distinguishable; and tense--"Swim Inc.," "Swimming Inc.," "Swims Inc.," and "Swam Inc." are not distinguishable; and

(g) the use of internet domain suffixes, for example: "whitehouse.com," "whitehouse.org," and "whitehouse.net" are not distinguishable.

AUTH: 35-1-1307, MCA

IMP: 30-13-202, 35-1-308, 35-1-311, 35-1-1031, 35-2-305, 35-2-307, 35-2-826, 35-4-206, 35-7-106, 35-7-112, 35-8-103, 35-8-108, 35-12-505, 35-12-1304, MCA

REASON: It is reasonably necessary for the Secretary of State to adopt this rule so that the public is advised of the name availability standards utilized by the Secretary of State to register business names. These standards conform to the American Bar Association's Official Comments that give guidance for determining whether a name is distinguishable.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail [jquintana@mt.gov](mailto:jquintana@mt.gov), and must be received no later than 5:00 p.m., December 23, 2011.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

6. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its

web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Jorge Quintana  
JORGE QUINTANA  
Rule Reviewer

/s/ Linda McCulloch  
LINDA MCCULLOCH  
Secretary of State

Dated this 14th day of November, 2011.