

LEGISLATIVE BILL 95

Approved by the Governor February 14, 1975

Introduced by Luedtke, 28

AN ACT to amend sections 21-2063, 21-20,125, 33-101, 87-114, 87-115, 87-210, and 87-211, Reissue Revised Statutes of Nebraska, 1943, and sections 21-2012, 21-2064, and 21-20,113, Revised Statutes Supplement, 1974, relating to the Secretary of State; to change procedures for making certain corporation filings; to increase fees; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 21-2012, Revised Statutes Supplement, 1974, be amended to read as follows:

21-2012. A corporation may change its registered office or change its registered agent, or both, upon filing and recording in the office of the Secretary of State a statement setting forth:

- (1) The name of the corporation;
- (2) The street address of its previously designated registered office;
- (3) If the street address of its registered office is to be changed, the street address to which the registered office is to be changed;
- (4) The name of its previously designated registered agent;
- (5) If its registered agent is to be changed, the name of its successor registered agent;
- (6) That the street address of its registered office and the street address of the office of its registered agent, as changed, will be identical; and
- (7) That the change of registered agent or registered office is authorized by the board of directors and the date on which the resolution authorizing such change was approved.

Such statement shall be executed by the corporation by its president or a vice president and

delivered to the Secretary of State in duplicate on forms furnished by the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of sections 21-2001 to 21-20,144, he shall file such statement in his office. The duplicate statement, bearing the date of filing in the office of the Secretary of State shall be recorded in the office of the county clerk of the county where the registered office of the corporation is located in Nebraska. If the statement changes the location of the registered office to another county, the statement bearing the date of the filing in the office of the Secretary of State shall be filed in both counties.

The location of the registered office of any registered agent of such corporation, and the registered office of such corporation, in any city or village of this state may be transferred from one street address to another in the same city or village upon the making and executing by such registered agent of a statement, setting forth the correct corporate names of--all--the corporations in alphabetical order represented by such registered agent, and the street address at which such registered agent has maintained the registered office for each of such corporations, and further certifying to the new street address and ZIP code to which such registered agent and registered office will be transferred on a given day, and at which new street address and ZIP code such registered agent will thereafter maintain the registered office for each of the corporations recited in said statement. Upon the filing of the original and a duplicate copy of such statement with the Secretary of State, the registered office in this state of each of the corporations recited in said statement and the registered office of their registered agent shall be located at the new street address of the registered agent thereof as given in the statement. The statement shall be accompanied by payment to the Secretary of State of the required filing-fee fees. The Secretary of State shall file the original in his office and return the duplicate copy, stamped with the date of filing in the office of the Secretary of State, to the registered agent. The registered agent shall record such returned duplicate copy in the office of the county clerk in the county where the registered office of the corporation is located.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary of State, who shall forthwith mail a copy thereof to the corporation at its last-known street address. The appointment of such agent shall terminate upon the expiration of thirty days

after receipt of such notice of resignation by the Secretary of State.

Failure to comply with the provisions of this section shall result in the suspension of such corporation. A registered agent must be appointed to remove such suspension of the corporation.

If the corporation is suspended, the annual report and tax cannot be filed and paid in the office of the Secretary of State until a registered agent is appointed. If the report is not filed, the tax paid, and the registered agent appointed by August 2 of the current year, when the report and tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323.

Sec. 2. That section 21-2063, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-2063. (1) The articles of incorporation may be revised in their entirety to supersede the existing articles of incorporation as theretofore amended by an amendment to the articles of incorporation if the amendment so revising the articles of incorporation is set forth in its entirety in the notice to shareholders entitled to vote on such amendment, and if the amendment contains the following provisions:

- (a) The name of the corporation;
- (b) The period of its duration;
- (c) The purpose or purposes which the corporation is authorized to pursue;
- (d) The aggregate number of shares which the corporation has authority to issue; if such shares consist of one class only, the par value of each of such shares, or, if such shares are divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class;
- (e) If the shares are divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
- (f) If the shares of any preferred or special class are issuable in series, the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the

same have been fixed, and a statement of any authority vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) Any provision limiting or denying to shareholders the preemptive right to acquire additional shares of the corporation;

(h) Any provisions, not inconsistent with law, for the regulation of the internal affairs of the corporation, including any provision restricting the transfer of shares and any provisions which under sections 21-2001 to 21-20,134 is required or permitted to be set forth in the by-laws;

(i) A statement that the revised articles of incorporation supersede the original articles of incorporation and all amendments thereto; and

(j) Name of registered agent and street address and ZIP code of its registered office in--the--revised articles and registered agent, which addresses shall be identical.

The revised articles of incorporation shall be executed by the president or vice president and attested by the secretary or assistant secretary.

(2) The original and a duplicate copy of the revised articles of incorporation shall be delivered to the Secretary of State, who shall when all fees provided by law shall have been paid:

(a) File the original in his office; and

(b) Return to the corporation or its representative the duplicate copy, stamped with the date of filing in the office of the Secretary of State.

The duplicate copy of the revised articles of incorporation bearing the date of filing in the office of the Secretary of State shall be recorded in the office of the county clerk of the county where the registered office of the corporation is located in this state.

Upon the filing and recording in the office of the Secretary of State of the original of the revised articles of incorporation, the revised articles of incorporation shall become effective and shall supersede the original or previously revised articles of incorporation as theretofore amended. No revision made as a result of the adoption of revised articles of

incorporation shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights of persons other than shareholders, and, in the event the corporate name shall be changed by such revised articles of incorporation, no suit brought by or against such corporation under its former name shall abate for that reason.

Sec. 3. That section 21-2064, Revised Statutes Supplement, 1974, be amended to read as follows:

21-2064. A domestic corporation may at any time restate its articles of incorporation as theretofore amended by a resolution adopted by the board of directors.

Upon the adoption of such resolution, restated articles of incorporation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or assistant secretary and shall set forth all of the operative provisions of the articles of incorporation as theretofore amended together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

The original and a duplicate copy of the restated articles of incorporation shall be delivered to the Secretary of State. If the Secretary of State finds that such restated articles of incorporation conform to law, he shall, when all fees and occupation taxes have been paid as in this act prescribed:

- (1) Endorse on the duplicate copy the word Filed, and the month, day and year of the filing thereof;
- (2) File the original in his office; and
- (3) Return to the corporation or its representative the duplicate copy, stamped with the date of filing in the office of the Secretary of State.

The duplicate copy of the restated articles of incorporation bearing the date of filing in the office of the Secretary of State shall be recorded in the office of the county clerk in the county where the registered office of the corporation is located.

When the original copy of the restated articles of incorporation has been filed in the office of the Secretary of State, such restated articles of incorporation shall become effective and may be used for all purposes as articles of incorporation and all amendments thereto.

Sec. 4. That section 21-20,113, Revised Statutes Supplement, 1974, be amended to read as follows:

21-20,113. A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the Secretary of State a statement setting forth:

- (1) The name of the corporation;
- (2) The street address of its then registered office;
- (3) If the address of its registered office be changed, the street address to which the registered office is to be changed;
- (4) The name of its then registered agent;
- (5) If its registered agent be changed, the name and street address of its successor registered agent;
- (6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (7) That such change was authorized by resolution duly adopted by its board of directors and the date the resolution was approved.

Such statement shall be executed by the corporation by its president or a vice president, and delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to the provisions of sections 21-2001 to 21-20,134, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the Secretary of State, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or

country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the Secretary of State. If the foreign corporation, at the expiration of thirty days after receipt of notice of resignation of such registered agent, has not appointed another registered agent, the certificate of authority of such foreign corporation to transact business in Nebraska may be revoked in the manner provided in sections 21-20,118 and 21-20,119.

The location of the registered office of any registered agent of such foreign corporation, and the registered office of such foreign corporation, in any city or village of this state may be transferred from one street address to another in the same city or village upon the making and executing by such registered agent of a statement, setting forth the correct corporate names in alphabetical order represented by such registered agent, and the street address at which such registered agent has maintained the registered office for each of such corporations, and further certifying to the new street address and ZIP code to which such registered agent and registered office will be transferred on a given day, and at which new street address and ZIP code such registered agent will thereafter maintain the registered office for each of the corporations recited in such statement. Upon the filing of an original and a duplicate copy of such statement with the Secretary of State, the registered office in this state of each of the corporations recited in such statement and the registered office of their registered agent shall be located at the new street address of the registered agent thereof as given in the statement. The statement shall be accompanied by payment to the Secretary of State of the required fees.

Sec. 5. That section 21-20,125, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

21-20,125. Notice of incorporation, amendment, merger, consolidation, statement of intent to dissolve with consent, or ~~voluntary--dissolution statement of intent to dissolve~~ by act of the corporation of a domestic corporation subject to sections 21-2001 to 21-20,134 must be published three successive weeks in some legal newspaper of general circulation near the registered office of the corporation. Such notice of incorporation must show (1) the name of the corporation; (2) the address of the registered office; (3) the general nature of the business to be transacted; (4) the amount of capital stock authorized, and the time and conditions on which it is to be paid in; (5) the time of

commencement and termination of the corporation; and if the corporation is to have a perpetual existence, such fact must be stated; and (6) by what officers the affairs of the corporation are to be conducted. A brief resume of any amendment, merger, or consolidation of the corporation shall be published in the same manner and for the same period of time as notice of incorporation is required to be published. Whenever any such corporation is voluntarily dissolved, notice of the dissolution thereof and the terms and conditions of such dissolution and the names of the persons who are to manage the corporate affairs and distribute its assets and their official title, with a statement of assets and liabilities of the corporation, shall be published three successive weeks in some legal newspaper of general circulation within the county in which the registered office of the corporation is located. Proof of publication of any of the foregoing required notices shall be filed in the office of the Secretary of State and in the office of the county clerk of the county where the registered office of the corporation is located. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the publication thereof is filed in the office of the Secretary of State and in the office of the county clerk of the county where the registered office of the corporation is located, the acts of such corporation prior to, as well as after, such publication shall be valid.

Sec. 6. That section 33-101, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

33-101. There shall be paid to the Secretary of State the following fees:

(1) For certificate or exemplification with seal, ~~one-dollar~~ five dollars;

(2) For copies of records, whether typewritten or by photographic or other copying process, for each page, a fee of ~~not-to-exceed-thirty~~ fifty cents;

(3) For filing articles of association, incorporation or consolidation, domestic or foreign, if the capital stock is ten thousand dollars or less, ten ~~twenty~~ dollars; if the capital stock is more than ten thousand dollars, but does not exceed twenty-five thousand dollars, twenty thirty-five ~~twenty~~ dollars; if the capital stock is more than twenty-five thousand dollars but does not exceed one-hundred fifty ~~one-hundred~~ thousand dollars, fifty ~~one-hundred~~ dollars; if the capital stock is more than fifty

thousand dollars but does not exceed seventy-five thousand dollars, seventy-five dollars; if the capital stock is more than seventy-five thousand dollars but does not exceed one hundred thousand dollars, one hundred dollars; and if the capital stock is over one hundred thousand dollars, fifty-cents one dollar additional for each one thousand dollars in excess of one hundred thousand dollars; Provided, that for the purpose of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share;

(4) For recording articles of association or incorporation, amendments, revised or restated articles, changes of registered office or registered agent, increase or decrease of capital stock, merger or consolidation, statement of intent to dissolve, and consent to dissolution, revocation of dissolution, articles of dissolution, domestic or foreign, profit or nonprofit, one-dollar two dollars per page;

(5) For receiving and filing articles of incorporation of corporations formed for religious, benevolent, or literary purposes, not for profit, conducting no business for profit, with no right to declare dividends and not mutual in character, or religious or secret societies, or societies or associations composed exclusively of any class of mechanics, express, telegraph, or other employees formed for mutual protection, and not for profit, detective associations, and other nonprofit corporations organized under Chapter 21, two five dollars, plus recording fee;

(6) For filing certificate of increase of capital stock of any corporation for profit, association, or consolidation, domestic or foreign, five dollars, and fifty-cents one dollar for each one thousand dollars of increase of capital stock so certified, plus recording fee;

(7) For filing certificate of decrease of capital stock of any corporation for profit, five dollars, plus recording fee;

(8) For filing decree of court changing the name of any corporation or association, five dollars, plus recording fee;

(9) For filing amendment to articles of incorporation of any corporation for profit, five dollars, plus recording fee;

(10) For issuing license, one dollar;

(11) For filing amendment to articles of incorporation of nonprofit corporation, one dollar, plus recording fee;

(12) For taking acknowledgment, one dollar;

(13) For administering oath, one dollar;

(14) For reservation of name, five dollars;

(15) For transfer of reserved name, five dollars;

(16) For registration of name, ten dollars;

(17) For renewal of registered name, ten dollars;

(18) For change of registered agent or registered office for domestic or foreign corporations, or both, five dollars, plus recording fee;

(19) For change of registered agent or registered office for nonprofit corporations, or both, filing one dollar, plus recording fee;

(20) Fee for filing regarding shares divided and issued into series, revised articles, restated articles, statement of redeemable shares or shares other than redeemable, merger, consolidation, statement of intent to dissolve and consent to dissolution, revocation of dissolution and articles of dissolution of any corporation for profit shall be five dollars, plus recording fee;

(21) Fee for filing notice of merger or consolidation, or articles of dissolution for nonprofit corporations shall be one dollar, plus recording fee;

(22) Fee for filing certificates pertaining to foreign corporations regarding mergers, consolidation and existence, five dollars, plus recording fee;

(23) Fee for filing foreign application for certificate of authority, fifty seventy-five dollars, plus recording fee;

(24) Fee for filing foreign amended application for certificate of authority, five dollars, plus

recording fee; and

(25) Fee for filing withdrawal of a foreign corporation, five dollars, plus recording fee; and -

(26) For filing a change of street address in any city or village in this state of the registered office of any registered agent, who serves as registered agent for more than one corporation, fifty dollars, plus recording fee.

The fees for filing articles of association, incorporation, or consolidation, domestic or foreign, shall be based on the authorized capital stock, and all fees set forth herein shall be paid to the Secretary of State and by him paid into the state treasury and shall by the State Treasurer be placed in the General Fund.

Sec. 7. That section 87-114, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-114. The application shall be signed by the applicant or an officer of the corporation or association applying, whose signature shall be acknowledged before a notary public. The application shall be accompanied by a specimen or facsimile of such trade-mark in duplicate and by a filing fee of ten fifty dollars, payable to the Secretary of State. Upon compliance by the applicant with the requirements of sections 87-111 to 87-125, the Secretary of State shall return the duplicate copy stamped with the date of filing to the applicant or the representative submitting the applications for filing.

Sec. 8. That section 87-115, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-115. (1) Registration of a mark under sections 87-111 to 87-125 shall be effective for a term of ten years from the date of registration and, upon application filed in duplicate, within six months prior to the expiration of such term, on a form to be furnished by the Secretary of State, the registration may be renewed for a like term. A renewal fee of ten fifty dollars, payable to the Secretary of State, shall accompany the application for renewal of the registration.

(2) A mark registration may be renewed for successive periods of ten years in like manner.

(3) The Secretary of State shall notify registrants of marks under sections 87-111 to 87-125 of the necessity of renewal within the year next preceding the expiration of the ten years from the date of registration or of last renewal, by writing to the last-known address of the registrants.

(4) Any registration in force on August 27, 1971 shall expire ten years from the date of the registration or of the last renewal thereof, and may be renewed by filing an application with the Secretary of State on a form furnished by him and paying the renewal fee, as provided in this section, within six months prior to the expiration of the registration.

(5) All applications for renewals under sections 87-111 to 87-125, whether of registrations made under sections 87-111 to 87-125 or of registrations effected under any prior act, shall include a statement that the mark is still in use in this state.

Sec. 9. That section 87-210, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-210. (1) Subject to the limitations set forth in sections 87-208 to 87-219, any person who adopts a trade name for use in this state may file in the office of the Secretary of State on a form furnished by the Secretary of State an application, in duplicate, for registration of the trade name setting forth, but not limited to, the following information:

(a) The name and street address of the applicant for registration; and, if a corporation, the state of incorporation;

(b) The trade name sought to be registered;

(c) The general nature of the business in fact conducted by the applicant;

(d) The length of time during which the trade name has been used in this state;

(e) The signature of the applicant, which must be acknowledged before a notary public; and

(f) A filing fee of ~~ten~~ fifty dollars.

(2) Upon compliance by the applicant with the requirements of sections 87-208 to 87-219, the Secretary of State shall return the duplicate copy stamped with the

date of filing to the applicant or the representative submitting the applications for filing.

Sec. 10. That section 87-211, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

87-211. Registration of a trade name under sections 87-208 to 87-219 shall be effective for a term of ten years from the date of registration and, upon application filed in duplicate within six months prior to the expiration of such term, on a form to be furnished by the Secretary of State, the registration may be renewed for a like term. A renewal fee of ten fifty dollars, payable to the Secretary of State, shall accompany the application for renewal of the registration.

A trade name registration may be renewed for successive periods of ten years in like manner.

The Secretary of State shall notify registrants of trade names under sections 87-208 to 87-219 of the necessity of renewal within the year next preceding the expiration of the ten years from the date of registration or of last renewal, by writing to the last-known street address of the registrants.

Any registration in force on the date on which sections 87-208 to 87-211 shall become effective shall expire ten years from the date of the registration or of the last renewal thereof, whichever is later, and may be renewed by filing an application with the Secretary of State on a form furnished by him and paying the renewal fee, as provided in this section, within six months prior to the expiration of the registration.

All applications for renewals under sections 87-208 to 87-219, whether of registrations made under sections 87-208 to 87-219 or of registrations effected under any prior act, shall include a statement that the trade name is still in use in this state.

Sec. 11. That original sections 21-2063, 21-20,125, 33-101, 87-114, 87-115, 87-210, and 87-211, Reissue Revised Statutes of Nebraska, 1943, and sections 21-2012, 21-2064, and 21-20,113, Revised Statutes Supplement, 1974, are repealed.