

LEGISLATIVE BILL 157

Approved by the Governor February 26, 1973

Introduced by Luedtke, 28

AN ACT to amend sections 21-2002, 21-20107, 21-20,113, 21-2216, and 21-2217, Revised Statutes Supplement, 1972, relating to corporations; to redefine a term; to change requirements; to provide for suspensions; to repeal the original sections, and also section 21-2209, and Chapter 21, article 18, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

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

Section 1. That section 21-2002, Revised Statutes Supplement, 1972, be amended to read as follows:

21-2002. As used in sections 21-2001 to 21-20,134, unless the context otherwise requires:

(1) Corporation or domestic corporation shall mean a corporation for profit subject to the provisions of sections 21-2001 to 21-20,134, except a foreign corporation;

(2) Foreign corporation shall mean a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under sections 21-2001 to 21-20,134;

(3) Domesticated foreign corporation shall mean a foreign corporation that has qualified to transact business in Nebraska under sections 21-20,122 to 21-20,124;

(4) Articles of incorporation shall mean the original or restated articles of incorporation or revised articles of incorporation and all amendments thereto and includes articles of merger or consolidation;

(5) Shares shall mean the units into which the proprietary interests in a corporation are divided;

(6) Subscriber shall mean one who subscribes for shares in a corporation, whether before or after incorporation;

(7) Shareholder shall mean one who is a holder of record of shares in a corporation;

(8) Authorized shares shall mean the shares of all classes which the corporation is authorized to issue;

(9) Treasury shares shall mean shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be issued shares, but not outstanding shares;

(10) Net assets shall mean the amount by which the total assets of a corporation exceed the total debts of the corporation;

(11) Stated capital shall mean, at any particular time, the sum of the par value of all shares of the corporation that have been issued, and such amounts not included in such par value as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been affected in a manner permitted by law. For the purpose of computing fees and other charges imposed by the laws of this state, the stated capital of a foreign corporation shall be the sum of (a) the par value of all shares of the corporation having a par value that have been issued, (b) the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and (c) such additional amounts as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law;

(12) Surplus shall mean the excess of the net assets of a corporation over its stated capital;

(13) Earned surplus shall mean the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus;

(14) Capital surplus shall mean the entire surplus of a corporation other than its earned surplus;

(15) Insolvent shall mean inability of a corporation to pay its debts as they become due in the usual course of its business, or an excess of liabilities of the corporation over its assets at a fair valuation; and

(16) Registered agent shall extend and be applied to ~~one or more than one registered agent; an individual resident in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state if the domestic or foreign corporation is in good standing with the office of the Secretary of State.~~

Sec. 2. That section 21-20,107, Revised Statutes Supplement, 1972, be amended to read as follows:

21-20,107. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

~~{1} Shall contain the word corporation, company, incorporated, or limited, or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof;~~

{2} {1} Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance; and

{3} {2} Shall not be the same as, or deceptively similar to, a registered trade name, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in sections 21-2001 to 21-20,144, or the name of a corporation which has in effect a registration of its name as provided in sections 21-2001 to 21-20,144, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the Secretary of State any one of the following:

(a) A resolution of its board of directors adopting a fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to any trade name registered with the

Secretary of State or the name of any domestic corporation or of any foreign corporation authorized to transact business in this state or to any name reserved or registered as provided in this act;

(b) The written consent of such other corporation or holder of a reserved or registered name or holder of trade name registration to use the same or deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(c) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of such foreign corporation to the use of such name in this state.

Sec. 3. That section 21-20,113, Revised Statutes Supplement, 1972, 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.

~~If a registered agent changes his business address to another place within the same county, he may change such address and the address of the registered office of any corporation of which he is the registered agent by filing a statement as required in this section except that it may be signed only by the registered agent and may not be responsive to subdivision (5) or (7) of this section and shall recite that a copy of the statement has been mailed to the corporation:~~

Sec. 4. That section 21-2216, Revised Statutes Supplement, 1972, be amended to read as follows:

21-2216. No corporation shall open, operate or maintain an establishment or do business for any purposes set forth in sections 21-2201 to 21-2222 without filing with the Secretary of State a certificate of registration from the regulating board of the particular profession for which the professional corporation is organized to do business, which certificate shall set forth the name and residence addresses of all shareholders as of the last day of the month preceding such filing, and certifying that all shareholders, directors, and officers except the secretary and the assistant secretary are duly licensed to render the same professional services as those for which the corporation was organized. Application for a certificate of registration shall be made by the professional corporation to the regulating board in writing and shall contain the name or names of all officers, directors, shareholders, and professional employees of the professional corporation, the street address or street addresses at which the applicant proposes to perform professional services, and such other

information as may be required by the regulating board. If it appears to the regulating board that each shareholder, officer, director, and professional employee of the applicant, except the secretary and the assistant secretary, is licensed to practice the profession of the applicant, and that each of such officers, shareholders, directors, and professional employees is not a shareholder, officer, director, or professional employee of any other professional corporation in this or any other state, and that each shareholder, officer, director, or professional employee is not otherwise disqualified from performing the professional services of the applicant, then and in that event, such regulating board shall certify in duplicate upon a form prescribed by such regulating board, which form shall bear the date of its issuance and state that such proposed or existing professional corporation complies with the provisions of sections 21-2201 to 21-2222 and of the applicable rules and regulations of such regulating board. Each applicant for such registration certificate shall pay such regulating board a fee of ten dollars for the issuance of such duplicate certificate. One copy of such certificate shall be prominently exposed to public view upon the premises of the principal place of business of each professional corporation organized hereunder, and one copy shall be filed by the professional corporation with the Secretary of State who shall charge a fee of five dollars for filing the same. The certificate from the regulating board shall be filed in the office of the Secretary of State ~~within thirty days after the articles of incorporation are filed in the office of the Secretary of State or the corporation shall be suspended until such certificate is filed with the Secretary of State. If the corporation is suspended, the annual report and tax cannot be filed and paid in the office of the Secretary of State until the certificate from the regulating board is filed in the office of the Secretary of State. If the report is not filed, the tax paid and the certificate filed 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.~~ together with the articles of incorporation. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

Sec. 5. That section 21-2217, Revised Statutes Supplement, 1972, be amended to read as follows:

21-2217. Each registration certificate issued to each applicant shall expire by its own terms one year from the date of issuance and may not be renewed. Each professional corporation must annually apply to its

regulating board for a registration certificate in the manner provided in section 21-2216. A certificate from the regulating board as provided in section 21-2216 must annually be filed with the Secretary of State within thirty days after of the expiration date of the last certificate on file in the office of the Secretary of State, or such corporation shall be suspended, ~~as provided in section 21-2216.~~ If the corporation is suspended, the annual report and tax cannot be filed and paid in the office of the Secretary of State until the certificate from the regulating board is filed in the office of the Secretary of State. If the report is not filed, the tax paid, and the certificate filed 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. Registration certificates shall not be transferable or assignable.

Sec. 6. That original sections 21-2002, 21-20,107, 21-20,113, 21-2216, and 21-2217, Revised Statutes Supplement, 1972, and also section 21-2209, and Chapter 21, article 18, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 7. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.