

LEGISLATIVE BILL 886

Approved by the Governor March 7, 2012

Introduced by Schumacher, 22.

FOR AN ACT relating to trade practices; to amend sections 87-130, 87-132, and 87-134, Reissue Revised Statutes of Nebraska, and sections 87-210 and 87-211, Revised Statutes Supplement, 2011; to change provisions relating to trademarks and trade names; and to repeal the original sections.

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

Section 1. Section 87-130, Reissue Revised Statutes of Nebraska, is amended to read:

87-130 Subject to the limitations set forth in the Trademark Registration Act, any person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark including, but not limited to, the following information:

(1) The name and business address of the person applying for such registration and, if a corporation or other type of business entity except a partnership, the state of incorporation or organization, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

(2) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest; and

(4) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake or to deceive.

The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office, and if so, the applicant shall provide full particulars with respect thereto, including the filing date and serial number of each application, the status of each application, and if any application was finally refused registration or has otherwise not resulted in a registration, the reasons for the refusal or rejection. The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application. The application shall be signed and verified, by oath, affirmation, or declaration subject to perjury laws, by the applicant or by a member of the firm or an officer of the corporation or association applying. The application shall be submitted in duplicate and shall be accompanied by three specimens showing the mark as actually used and by the application fee of one hundred dollars payable to the secretary.

Sec. 2. Section 87-132, Reissue Revised Statutes of Nebraska, is amended to read:

87-132 Upon compliance by the applicant with the requirements of the Trademark Registration Act, the secretary shall return the duplicate copy of the application stamped with the filing date to the applicant. The certificate of registration shall be issued under the signature of the secretary and the seal of the state, and it shall show the name and business address and, if a corporation or other type of business entity except a partnership, the state of incorporation or organization, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary, of the person claiming ownership of the mark, the date claimed for the first use of the mark anywhere and the date claimed for the first use of the mark in this state, the class of goods or services and a description of the goods or services on or in connection with which the mark is used, a reproduction of the mark, the registration date, and the term of the registration. An original, a duplicate original, or a certified copy of an application for trademark which has the file stamp and date of the secretary shall be admissible in evidence as competent and sufficient proof of the registration of such mark in any actions or judicial proceedings in any

court of this state. Registration of a mark with the secretary shall be prima facie evidence of the right to use the mark shown in the registration on or in connection with the class or classes of goods or services designated in the registration.

Sec. 3. Section 87-134, Reissue Revised Statutes of Nebraska, is amended to read:

87-134 (1) Any mark and its registration under the Trademark Registration Act is assignable with the good will of the business in which the mark is used or with that part of the good will of the business connected with the use of and symbolized by the mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary upon the payment of the recording fee payable to the secretary who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under the Trademark Registration Act is void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary within three months after the date of the assignment or prior to such subsequent purchase.

(2)(a) Any registrant or applicant effecting a change of the name of the person to whom the mark was issued or for whom an application was filed or a change of address or state of incorporation or organization may record a certificate of such change of name of the registrant or applicant with the secretary upon the payment of the recording fee. A registrant or an applicant may be required to submit documented proof of its name change at the discretion of the secretary.

(b) The secretary may issue in the name of the assignee a certificate of registration of an assigned application. The secretary may issue in the name of the assignee a new certificate of registration for the remainder of the term of the registration or last renewal of the registration.

(3) Other instruments which relate to a mark registered or application pending pursuant to the act, such as licenses, security interests, or mortgages, may be recorded in the discretion of the secretary if the instrument is in writing and duly executed.

(4) Acknowledgment shall be prima facie evidence of the execution of an assignment or other instrument and, when recorded by the secretary, the record shall be prima facie evidence of execution.

(5) A photocopy of any instrument referred to in this section shall be accepted for recording if it is certified by any of the parties to the instrument, or their successors, to be a true and correct copy of the original.

(6) In a registration that resulted from an application that was filed before the effective date of a change to the Trademark Registration Act or any rules or regulations adopted and promulgated pursuant to the act, the registrant may be allowed to file an amendment to the registration in order to comply with the current requirements of the act and the rules and regulations. The registrant shall pay a recording fee for such amendment.

Sec. 4. Section 87-210, Revised Statutes Supplement, 2011, is amended to read:

87-210 (1) Subject to the limitations set forth in sections 87-208 to 87-219.01, 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 or other type of business entity, the state of incorporation or organization;

(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; and

(f) A filing fee of one hundred dollars.

(2) Upon compliance by the applicant with the requirements of sections 87-208 to 87-219.01, 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. 5. Section 87-211, Revised Statutes Supplement, 2011, is amended to read:

87-211 (1) Registration of a trade name under sections 87-208 to 87-219.01 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 one hundred dollars payable to the Secretary of State shall accompany the application for renewal of the registration.

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

(3) The Secretary of State shall notify registrants of trade names under sections 87-208 to 87-219.01 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.

(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, whichever is later, and may be renewed by filing an application with the Secretary of State on a form furnished by him or her 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 87-208 to 87-219.01 whether of registrations made under sections 87-208 to 87-219.01 or of registrations effected under any prior act shall include a statement that the trade name is still in use in this state.

(6) A registrant may change its name, street address, and, if the registrant is a corporation or other type of business entity, its state of incorporation or organization by filing a statement of change with the Secretary of State on a form to be furnished by the Secretary of State and paying a fee of ten dollars. A registrant may be required to submit documented proof of its name change at the discretion of the Secretary of State.

Sec. 6. Original sections 87-130, 87-132, and 87-134, Reissue Revised Statutes of Nebraska, and sections 87-210 and 87-211, Revised Statutes Supplement, 2011, are repealed.