

LEGISLATIVE BILL 486

Approved by the Governor April 5, 1971

Introduced by Roland A. Luedtke, 28th District

AN ACT to amend sections 87-208, 87-209, 87-210, and 87-211, Revised Statutes Supplement, 1969, relating to trade names; to redefine terms; to provide when a trade name shall not be used except as provided; to require additional information on application for registration; to restate the term of registration as prescribed and provisions for renewal; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. That section 87-208, Revised Statutes Supplement, 1969, be amended to read as follows:

87-208. As used in sections 87-208 to 87-219, unless the context otherwise requires:

(1) Applicant shall mean a person filing an application for registration of a trade name under sections 87-208 to 87-219, his legal representatives, successors, or assigns;

(2) Person shall mean an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of the foregoing having a joint or common interest, or any other legal or commercial entity;

(3) Registrant shall mean a person to whom registration of a trade name under sections 87-208 to 87-219 is issued, his legal representatives, successors, or assigns; and

~~(4) Trade name shall mean a word, or a name, or any combination of the foregoing in any form or arrangement used by a person to identify his business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others;~~

(4) Trade name shall mean every name under which any person does or transacts any business in this state, other than the true name of such person.

Sec. 2. That section 87-209, Revised Statutes Supplement, 1969, be amended to read as follows:

87-209. A trade name shall not be registered if it:

(1) Consists of or comprises immoral, deceptive, or scandalous matter;

(2) Consists of or comprises matter which may disparage, bring into contempt or disrepute, or falsely suggest a connection with, persons living or dead, institutions, beliefs, or national symbols;

(3) Consists of, comprises, or simulates the flag or coat of arms or other insignia of the United States, any state or municipality, or any foreign nation;

(4) Consists of or comprises the name, signature, or portrait of any living individual without his consent;

(5) (a) Is merely descriptive or misdescriptive, or is primarily geographically descriptive or geographically misdescriptive as applied to the business of the applicant, or (b) is primarily merely a surname, but nothing in this subdivision shall prevent the registration of a trade name which has become distinctive of the applicant's business in this state. The Secretary of State may accept as evidence that a trade name has become distinctive proof of continuous use by the applicant as a trade name in this state or elsewhere for five years preceding the date of the filing of the application for registration; or

(6) Consists of or comprises a trade name which so resembles a trade name registered under sections 87-208 to 87-219, registered in this state, or the name of a corporation incorporated or authorized to do business in this state as a foreign corporation as to be likely to cause confusion, mistake, or deception of purchasers, except that a name, although similar, may be used if the corporation affected shall consent in writing and such writing is filed with the Secretary of State. The words incorporated, inc., or corporation shall not be a part of the trade name being registered unless the firm is duly incorporated in the State of Nebraska or some other state.

Sec. 3. That section 87-210, Revised Statutes Supplement, 1969, 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 business 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 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. 4. That section 87-211, Revised Statutes Supplement, 1969, 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, commencing January 4, 1970, and within six months prior to the expiration of a term registration may be renewed for successive ten-year periods. A renewal fee of ten dollars shall accompany an application for renewal of registration. Application for renewal shall be made in duplicate, on a form furnished by the Secretary of State and shall include a statement that the trade name is still in use in this state. Any such registration shall remain in force until January 4, 1980. All registrations made prior to January 4, 1970, shall be renewable six months prior to January 4, 1970. These renewals, if filed, shall expire on January 4, 1980.~~ 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 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 this act 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. 5. That original sections 87-208, 87-209, 87-210, and 87-211, Revised Statutes Supplement, 1969, are repealed.