

LEGISLATIVE BILL 44

Approved by the Governor February 13, 1997

Introduced by Kristensen, 37

AN ACT relating to business names; to amend sections 67-101, 67-234, 67-345, and 87-209, Reissue Revised Statutes of Nebraska, and sections 8-226, 21-1931, 21-1933, 21-19, 151, 21-2028, 21-20, 173, and 21-2601, Revised Statutes Supplement, 1996; to change provisions relating to the registration or filing of corporate or other business entity names, the registration of trade names, and filings by other associations; to provide for the reservation of limited liability company names; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 8-226, Revised Statutes Supplement, 1996, is amended to read:

8-226. (1) No individual, firm, corporation, or association doing business directly or indirectly in the State of Nebraska shall use the words trust, trust company, trust association, or trust fund as any part of its title except:

- (a) A trust company as defined in section 8-230;
- (b) A trust company chartered and supervised under the laws of the United States or any other state;
- (c) A bank or savings association chartered and supervised under the laws of the United States or any other state, if such bank or savings association has been further chartered to conduct a trust company business;
- (d) A limited partnership to the extent authorized by subdivision (4) (5) of section 67-234;
- (e) An entity required by any other law to use such words; or
- (f) Except as provided in subsection (2) of this section.

(2) Notwithstanding the provisions of subsection (1) of this section:

(a) An organization described in section 501(c)(3) of the Internal Revenue Code and exempt from taxation under section 501(a) of the code may use the words trust or trust fund;

(b) A trust created by a testamentary or fiduciary document may use the word trust; and

(c) An account in a financial institution established by or on behalf of trusts referenced in subdivision (b) of this subsection may use the words trust or trust fund.

(3) A violation of this section is a Class V misdemeanor.

Sec. 2. Section 21-1931, Revised Statutes Supplement, 1996, is amended to read:

21-1931. (a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-1927 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;

(3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable; and

(4) A trade name registered in this state pursuant to sections 87-208 to 87-220; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of

the Secretary of State from the name of the applying corporation; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to do business in this state and the proposed user corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation or business entity.

(e) The Nebraska Nonprofit Corporation Act does not control the use of fictitious names.

Sec. 3. Section 21-1933, Revised Statutes Supplement, 1996, is amended to read:

21-1933. (a) A foreign corporation may register its corporate name, or its corporate name with any change required by section 21-19,151, if the name is distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state; and

(2) A corporate name reserved under section 21-1932 or 21-2029 or registered under this section; and

(3) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by section 21-19,151, by delivering to the Secretary of State an application:

(1) Setting forth its corporate name, or its corporate name with any change required by section 21-19,151, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(c) The corporate name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation or other business entity thereafter incorporated under the Nebraska Nonprofit Corporation Act or authorized to transact business in this state or by another foreign corporation or business entity thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation or business entity qualifies or consents to the qualification of another foreign corporation or business entity under the registered name.

Sec. 4. Section 21-19,151, Revised Statutes Supplement, 1996, is amended to read:

21-19,151. (a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-1931, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (including a fictitious name) of a foreign corporation must be distinguishable upon the records of the Secretary of State from:

(1) The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;

(3) The fictitious name of another foreign business or nonprofit

corporation authorized to transact business in this state; and

(4) A trade name registered in this state pursuant to sections 87-208 to 87-220; and

(5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity (incorporated or authorized to transact business in this state) that is not distinguishable upon the records of the Secretary of State from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(1) The other corporation or business entity consents in writing to the use and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(2) The applying corporation delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing its right to use the name applied for in this state.

(d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(1) Has merged with the other corporation or business entity;

(2) Has been formed by a reorganization of the other corporation or business entity; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation or business entity.

(e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-1931, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-1931 and obtains an amended certificate of authority under section 21-19,149.

Sec. 5. Section 21-2028, Revised Statutes Supplement, 1996, is amended to read:

21-2028. (1) A corporate name:

(a) Shall contain the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., or words or abbreviations of like import in another language, except that a corporation organized to conduct a banking business under sections 8-101 to 8-1,121 may use a name which includes the word bank without using any such words or abbreviations; and

(b) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-2024 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4) of this section, a corporate name shall be distinguishable upon the records of the Secretary of State from:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under section 21-2029 or 21-2030;

(c) The fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(e) A trade name registered in this state pursuant to sections 87-208 to 87-220; and

(f) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon his or her records from one or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation or business entity consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing

the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the proposed user corporation has:

(a) Merged with the other corporation or business entity;

(b) Been formed by reorganization of the other corporation or business entity; or

(c) Acquired all or substantially all of the assets, including the corporate name, of the other corporation or business entity.

(5) The Business Corporation Act shall not be construed to control the use of fictitious names.

Sec. 6. Section 21-20,173, Revised Statutes Supplement, 1996, is amended to read:

21-20,173. (1) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-2028, the foreign corporation, in order to obtain or maintain a certificate of authority to transact business in this state, may:

(a) Add the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., to its corporate name for use in this state; or

(b) Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4) of this section, the corporate name, including a fictitious name, of a foreign corporation shall be distinguishable upon the records of the Secretary of State from:

(a) The corporate name of a corporation incorporated or authorized to transact business in this state;

(b) A corporate name reserved or registered under section 21-2029 or 21-2030;

(c) The fictitious name of another foreign corporation authorized to transact business in this state;

(d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(e) A trade name registered in this state pursuant to sections 87-208 to 87-220; and

(f) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(3) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity, incorporated or authorized to transact business in this state, that is not distinguishable upon his or her records from the name applied for. The Secretary of State shall authorize use of the name applied for if:

(a) The other corporation or business entity consents to the use in writing and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or

(b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

(a) Has merged with the other corporation or business entity;

(b) Has been formed by reorganization of the other corporation or business entity; or

(c) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation or business entity.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-2028, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-2028 and obtains an amended certificate of authority under section 21-20,171.

Sec. 7. Section 21-2601, Revised Statutes Supplement, 1996, is amended to read:

21-2601. Sections 21-2601 to 21-2653 and section 8 of this act

shall be known and may be cited as the Limited Liability Company Act.

Sec. 8. (1) The exclusive right to the use of a name may be reserved by:

(a) Any person intending to organize a limited liability company under the Limited Liability Company Act and to adopt that name;

(b) Any domestic limited liability company or any foreign limited liability company registered in this state which, in either case, intends to adopt that name;

(c) Any foreign limited liability company intending to register in this state and currently using or intending to adopt that name; and

(d) Any person intending to organize a foreign limited liability company and intending to have it registered in this state and adopt that name.

(2) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, he or she shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days. Such reservation may be renewed or canceled by filing a notice of such fact on forms prescribed by the Secretary of State. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

(3) A fee as set forth in section 21-2634 shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation, and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

Sec. 9. Section 67-101, Reissue Revised Statutes of Nebraska, is amended to read:

67-101. Any association of persons doing business in any county of this state under a firm, partnership, or corporate name, and not incorporated, organized, or registered under the laws of this state as a domestic or foreign corporation, nonprofit corporation, limited liability company, limited liability partnership, or limited partnership, or any other business entity required by law to organize or register to do business in Nebraska by filing articles of incorporation, organization, or registration with the Secretary of State, shall have recorded in the office of the county clerk of the county where the place of business of such association is located, a certificate signed by each member of such association, showing (1) the firm, partnership, or corporate name of such association; (2) the general nature of the business thereof and the principal place of doing business; and (3) the full name and residence of each individual member of such association.

Sec. 10. Section 67-234, Reissue Revised Statutes of Nebraska, is amended to read:

67-234. The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words limited partnership or limited or the abbreviations L.P. or Ltd.;

(2) May not contain the name of a limited partner unless (i) it is also the name of a general partner, the corporate name of a corporate general partner, or the company name of a limited liability company general partner, (ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner, or (iii) the use of the name of a limited partner in the name of the limited partnership is merely coincidental and not intended to mislead the public to believe that such limited partner is a general partner;

(3) Shall be distinguishable upon the records in the office of the Secretary of State from a trade name registered in this state pursuant to sections 87-208 to 87-220;

(4) Shall be distinguishable upon the records in the office of the Secretary of State from the name of any corporation, limited liability company, or limited partnership reserved, registered, or organized under the laws of this state or qualified to do business or registered as a foreign corporation, foreign limited liability company, or foreign limited partnership in this state any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law, except that a limited partnership may register under any name which is not distinguishable upon the records in the office of the Secretary of State from a business entity name registered or on file with the Secretary of State pursuant to Nebraska law the name of any domestic or foreign corporation, limited liability company, or limited partnership reserved, registered, or organized under the laws of this state with the consent of the other corporation, limited liability company, or

limited partnership business entity or with the transfer of such name by the other corporation, limited liability company, or limited partnership business entity, which written consent or transfer shall be filed with the Secretary of State; and

(5) (4) May contain the following words or abbreviations of like import: Company; association; club; foundation; fund; institute; society; union; syndicate; or trust.

Sec. 11. Section 67-345, Reissue Revised Statutes of Nebraska, is amended to read:

67-345. (1) The name of a registered limited liability partnership or a foreign registered limited liability partnership:

(a) Shall contain the words "registered limited liability partnership" or the abbreviations "L.L.P." or "LLP" as the last words or letters of the limited liability partnership's name or, in the case of a foreign registered limited liability partnership, may contain similar words or abbreviations as may be required or authorized by the laws of the jurisdiction under which the foreign limited liability partnership is formed and registered, as the last words or letters of the foreign limited liability partnership's name; and

(b) Shall be distinguishable upon the records in the office of the Secretary of State from a trade name registered in this state pursuant to sections 87-208 to 87-220; and

(c) Shall be distinguishable upon the records in the office of the Secretary of State from the name of any corporation, limited liability company, limited partnership, or limited liability partnership reserved, registered, or organized under the laws of this state or qualified to do business or registered as a foreign corporation, foreign limited liability company, foreign limited partnership, or foreign registered limited liability partnership in this state any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law.

(2) A limited liability partnership may register under any name which is not distinguishable upon the records in the office of the Secretary of State from any other business entity name registered or on file with the Secretary of State pursuant to Nebraska law the name of any domestic or foreign corporation, limited liability company, limited partnership, or registered limited liability partnership reserved, registered, or organized under the laws of this state with the written consent of the other corporation, limited liability company, limited partnership, or registered limited liability partnership business entity or with the transfer of the name by the other corporation, limited liability company, limited partnership, or registered limited liability partnership business entity. Written consent to the use of the name or written consent to the transfer of the name shall be filed with the Secretary of State.

Sec. 12. Section 87-209, Reissue Revised Statutes of Nebraska, is amended to read:

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 or her 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 business entity on file or registered with the Secretary of State pursuant to Nebraska law as to be likely to cause confusion, mistake, or deception of purchasers, except that a name, although similar, may be used if the corporation business entity affected shall consent

consents in writing and such writing is filed with the Secretary of State. The ~~words~~ word 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. 13. Original sections 67-101, 67-234, 67-345, and 87-209, Reissue Revised Statutes of Nebraska, and sections 8-226, 21-1931, 21-1933, 21-19,151, 21-2028, 21-20,173, and 21-2601, Revised Statutes Supplement, 1996, are repealed.