

## LEGISLATIVE BILL 464

Approved by the Governor April 30, 2003

Introduced by Bromm, 23

AN ACT relating to business entities; to amend sections 21-1931, 21-1933, 21-19,151, 21-2030, 21-20,173, 67-283, and 70-706, Reissue Revised Statutes of Nebraska, and sections 21-2028, 67-234, and 67-455, Revised Statutes Supplement, 2002; to change provisions relating to naming business entities; and to repeal the original sections.

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

Section 1. Section 21-1931, Reissue Revised Statutes of Nebraska, 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~~ shall not be the same as or ~~deceptively similar to,~~ upon the records of the Secretary of State, ~~from any of the names referenced in subdivisions (b)(1) through (5) of this section:~~

(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;

(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 deceptively similar to,~~ 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 name, of the other corporation or business entity.

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

Sec. 2. Section 21-1933, Reissue Revised Statutes of Nebraska, 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~~ not the same as or deceptively similar to, 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 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. 3. Section 21-19,151, Reissue Revised Statutes of Nebraska, 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 shall not be the same as or deceptively similar to, upon the records of the Secretary of State, ~~from any of the names referenced in subdivisions (b) (1) through (5) of this section:~~

(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;

(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~~ deceptively similar to, 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 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. 4. Section 21-2028, Revised Statutes Supplement, 2002, 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 the Nebraska Banking Act may use a name which includes the word bank without using any such words or abbreviations; and

(b) ~~May~~ Shall 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~~ not be the same as or deceptively similar to, upon the records of the Secretary of State, from any of the names referenced in subdivisions (2) (a) through (f) of this section:

(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;

(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~~ deceptively similar to, 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 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. 5. Section 21-2030, Reissue Revised Statutes of Nebraska, is amended to read:

21-2030. (1) A foreign corporation may register its corporate name or its corporate name with any addition required by section 21-20,173 if the name is ~~distinguishable~~ not the same as or deceptively similar to, upon the records of the Secretary of State, from the corporate names that are not available under subdivision (2) (c) of section 21-2028.

(2) A foreign corporation shall register its corporate name or its corporate name with any addition required by section 21-20,173 by delivering to the Secretary of State for filing an application:

(a) Setting forth its corporate name or its corporate name with any addition required by section 21-20,173, the state or country and date of its incorporation, and a brief description of the nature of the business in which

it is engaged; and

(b) 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.

(3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.

(4) 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 (2) of this section between October 1 and December 31 of the preceding year. The renewal application shall renew the registration for the following calendar year.

(5) 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 thereafter incorporated under the Business Corporation Act or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Sec. 6. Section 21-20,173, Reissue Revised Statutes of Nebraska, 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 not be the same as or deceptively similar to, upon the records of the Secretary of State, from any of the names referenced in subdivisions (2)(a) through (f) of this section:

(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;

(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 the same as or deceptively similar to, 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 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 67-234, Revised Statutes Supplement, 2002, 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 not be ~~distinguishable~~ the same as or deceptively similar to, 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 not be ~~distinguishable~~ the same as or deceptively similar to, 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, except that a limited partnership may register under any name which is ~~not distinguishable~~ deceptively similar to, 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 with the consent of the other business entity or with the transfer of such name by the other business entity, which written consent or transfer shall be filed with the Secretary of State; and

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

Sec. 8. Section 67-283, Reissue Revised Statutes of Nebraska, is amended to read:

67-283. (a) A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state or country of organization, that includes the words limited partnership or limited or the abbreviations L.P. or Ltd. and that could be registered by a domestic limited partnership. A foreign limited partnership may register under any name which is ~~not distinguishable~~ deceptively similar to, upon the records in the office of the Secretary of State, ~~from~~ 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 or with the transfer of such name by the other corporation, limited liability company, or limited partnership, which written consent or transfer shall be filed with the Secretary of State.

(b) Each foreign limited partnership shall have and maintain in this state an agent for service of process on the limited partnership, which agent may be either an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company authorized to do business in this state. The appointment of the Secretary of State as agent for service of process pursuant to subdivision (a)(3) of section 67-281 shall not relieve a foreign limited partnership from its obligations pursuant to this section or from the consequences of failure to discharge its obligations under this section.

(c) An agent may change his, her, or its address for service of process to another address in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the foreign limited partnerships represented by the agent, the address at which such agent has maintained his, her, or its office as agent for each of such foreign limited partnerships, and the new address to which his, her, or its office will be changed on a given day, at which new address the agent will thereafter maintain his, her, or its office as agent for each of the foreign limited partnerships recited in the

certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a copy of the same, and thereafter or until further change of address, as authorized by law, the office of the agent in this state for each of the foreign limited partnerships recited in the certificate shall be located at the new address. Filing of the certificate shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration. Any agent filing a certificate under this section shall promptly, upon filing, deliver a copy of such certificate to each foreign limited partnership affected thereby.

(d) The agent of one or more foreign limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and address of the successor agent. There shall be attached to such certificate a statement executed by each affected foreign limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such foreign limited partnerships as have ratified and approved such substitution. The Secretary of State shall furnish to the successor agent a copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration.

(e) The agent of one or more foreign limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the foreign limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to such certificate an affidavit of such agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, or of the manager or a member, if a limited liability company, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of such agent was sent, by certified or registered mail, to each foreign limited partnership for which such agent is resigning as agent, at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request such agent was appointed for such foreign limited partnership. After receipt of the notice of the resignation of its agent, the foreign limited partnership for which such agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If such foreign limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, such foreign limited partnership shall not be permitted to do business in this state and its registration shall be deemed to be canceled.

Sec. 9. Section 67-455, Revised Statutes Supplement, 2002, is amended to read:

67-455. (1) The name of a limited liability partnership shall:

(a) End with "registered limited liability partnership", "limited liability partnership", "R.L.L.P.", "RLLP", "L.L.P.", or "LLP";

(b) ~~Be distinguishable~~ Not be the same as or deceptively similar to, 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) ~~Be distinguishable~~ Not be the same as or deceptively similar to, 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.

(2) A limited liability partnership may register under any name which is ~~not distinguishable~~ deceptively similar to, 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 with the written consent of the other business entity or with the transfer of the name by the other 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. 10. Section 70-706, Reissue Revised Statutes of Nebraska, is amended to read:

70-706. The articles of incorporation shall state (1) the name of the corporation, which name shall include the words electric cooperative and the word corporation, incorporated, inc., association or company, and the name shall be such as to ~~distinguish it from~~ not be deceptively similar to any

other corporation organized and existing under the laws of this state; (2) the purpose for which the corporation is formed; (3) the names and addresses of the incorporators who shall serve as directors and manage the affairs of the corporation until its first annual meeting of members, or until their successors are elected and qualify; (4) the number of directors, not less than five, to be elected at the annual meetings of members; (5) the address of its principal office; (6) the period of duration of the corporation, which may be perpetual; (7) the terms and conditions upon which persons shall be admitted to membership and retain membership in the corporation, but, if expressly so stated, the determination of such matter may be reserved to the directors by the bylaws; and (8) any provisions, not inconsistent with law, which the incorporators may choose to insert for the regulation of the business and the conduct of the affairs of the corporation. It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in section 70-704.

Sec. 11. Original sections 21-1931, 21-1933, 21-19,151, 21-2030, 21-20,173, 67-283, and 70-706, Reissue Revised Statutes of Nebraska, and sections 21-2028, 67-234, and 67-455, Revised Statutes Supplement, 2002, are repealed.