

LEGISLATIVE BILL 854

Approved by the Governor March 7, 2012

Introduced by McCoy, 39.

FOR AN ACT relating to business entities; to amend sections 21-323.01, 21-325.01, 21-19,139, 21-19,159, 21-20,160, 21-20,180.01, and 21-2995, Reissue Revised Statutes of Nebraska, and section 21-152, Revised Statutes Cumulative Supplement, 2010; to change provisions relating to dissolution, revocation, and reinstatement; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 21-152, Revised Statutes Cumulative Supplement, 2010, is amended to read:

21-152 (ULLCA 706) (a) A limited liability company that has been administratively dissolved may apply to the Secretary of State for reinstatement ~~at any time~~ within five years after the effective date of its dissolution. The application must be delivered to the Secretary of State for filing and state:

(1) the name of the company and the effective date of its dissolution;

(2) that the grounds for dissolution did not exist or have been eliminated; and

(3) that the company's name satisfies the requirements of section 21-108.

(b) If the Secretary of State determines that an application under subsection (a) of this section contains the required information and that the information is correct, the Secretary of State shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Sec. 2. Section 21-323.01, Reissue Revised Statutes of Nebraska, is amended to read:

21-323.01 (1) A corporation automatically dissolved under section 21-323 may apply to the Secretary of State for reinstatement within five years after the effective date of its automatic dissolution. The application shall:

(a) Recite the name of the corporation and the effective date of its automatic dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated;

(c) State that the corporation's name satisfies the requirements of section 21-2028; and

(d) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the automatic dissolution and the corporation shall resume carrying on its business as if the automatic dissolution had never occurred.

(4) A corporation applying for reinstatement under this section shall:

(a)(i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent at the time the corporation was automatically dissolved, plus a sum equal to all occupation taxes which would otherwise have been due for the years the corporation was automatically dissolved; and (ii) forward to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from

time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such corporation was automatically dissolved.

Sec. 3. Section 21-325.01, Reissue Revised Statutes of Nebraska, is amended to read:

21-325.01 (1) A foreign corporation, the certificate of authority of which has been revoked under section 21-325, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated;

(c) State that the foreign corporation's name satisfies the requirements of section 21-20,173; and

(d) Be accompanied by a fee in the amount prescribed in section 21-2005, as such section may from time to time be amended, for an application for reinstatement.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the foreign corporation has complied with subsection (4) of this section, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

(4) A foreign corporation applying for reinstatement under this section shall:

(a) (i) Pay to the Secretary of State a sum equal to all occupation taxes delinquent as of the effective date of the revocation, plus a sum equal to all occupation taxes which would otherwise have been due for the years the foreign corporation's certificate of authority was revoked; and (ii) forward to the Secretary of State a properly executed and signed biennial report for the most recent even-numbered year; and

(b) Pay to the Secretary of State an additional amount derived by multiplying the rate specified in section 45-104.02, as such rate may from time to time be adjusted, times the amount of occupation taxes required to be paid by it for each year that such foreign corporation's certificate of authority was revoked.

Sec. 4. Section 21-19,139, Reissue Revised Statutes of Nebraska, is amended to read:

21-19,139 (a) A corporation administratively dissolved under section 21-19,138 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;

(2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(3) State that the corporation's name satisfies the requirements of section 21-1931.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

Sec. 5. Section 21-19,159, Reissue Revised Statutes of Nebraska, is amended to read:

21-19,159 (a) A foreign corporation the certificate of authority of which has been revoked under section 21-19,158 may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application must:

(1) Recite the name of the foreign corporation and the effective date of the revocation;

(2) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(3) State that the foreign corporation's name satisfies the requirements of section 21-19,151.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its activities as if the revocation had never occurred.

Sec. 6. Section 21-20,160, Reissue Revised Statutes of Nebraska, is amended to read:

21-20,160 (1) A corporation administratively dissolved under section 21-20,159 may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall:

(a) Recite the name of the corporation and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the corporation's name satisfies the requirements of section 21-2028.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct, and (b) that the corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed annual report for the current year, he or she shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-2034.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its business as if the administrative dissolution had never occurred.

Sec. 7. Section 21-20,180.01, Reissue Revised Statutes of Nebraska, is amended to read:

21-20,180.01 (1) A foreign corporation, the certificate of authority of which has been revoked under section 21-20,180, may apply to the Secretary of State for reinstatement within five years after the effective date of the revocation. The application shall:

(a) Recite the name of the foreign corporation and the effective date of the revocation;

(b) State that the ground or grounds for revocation either did not exist or have been eliminated; and

(c) State that the foreign corporation's name satisfies the requirements of section 21-20,173.

(2) If the Secretary of State determines (a) that the application contains the information required by subsection (1) of this section and that the information is correct and (b) that the foreign corporation has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed annual report for the current year, he or she shall cancel the certificate of revocation, prepare a certificate of reinstatement that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-20,177.

(3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its business as if the revocation had never occurred.

Sec. 8. Section 21-2995, Reissue Revised Statutes of Nebraska, is amended to read:

21-2995 (1) A limited cooperative association that has been administratively dissolved may apply to the Secretary of State for reinstatement within five years after the effective date of its administrative dissolution. The application shall be delivered to the Secretary of State for filing and state:

(a) The name of the limited cooperative association and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited cooperative association's name satisfies the requirements of sections 21-2906 to 21-2908.

(2) If the Secretary of State determines that (a) the application contains the information required by subsection (1) of this section and that the information is correct and (b) the limited cooperative association has paid to the Secretary of State all delinquent occupation taxes and has forwarded to the Secretary of State a properly executed and signed biennial report for the current year, the Secretary of State shall:

(a) Prepare a declaration of reinstatement that states this determination;

(b) Sign and file the original of the declaration of reinstatement; and

(c) Serve the limited cooperative association with a copy.

(3) When reinstatement becomes effective it relates back to and takes effect as of the effective date of the administrative dissolution and the limited cooperative association may resume or continue its activities as if the administrative dissolution had never occurred.

Sec. 9. This act becomes operative on January 1, 2013.

Sec. 10. Original sections 21-323.01, 21-325.01, 21-19,139, 21-19,159, 21-20,160, 21-20,180.01, and 21-2995, Reissue Revised Statutes of Nebraska, and section 21-152, Revised Statutes Cumulative Supplement, 2010, are repealed.