

## LEGISLATIVE BILL 1025

Approved by the Governor April 16, 1986

Introduced by DeCamp, 40

AN ACT relating to corporations; to adopt the Name Protection Act.

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

Section 1. This act shall be known and may be cited as the Name Protection Act.

Sec. 2. (1) Any corporation which has done business under a corporate name in the State of Nebraska for a period of twenty-five years or more may register such name with the Secretary of State by filing in the office of the Secretary of State, in duplicate, on a form to be furnished by the Secretary of State, an application for registration of that name setting forth the following information:

(a) The name and street address of the corporation applying for such registration and the state of incorporation;

(b) The date the name was first used anywhere and the date such name was first used in this state by the applicant; and

(c) A statement that the applicant is the owner of the name and that no other person has the right to use such name in this state either in the identical form or in such near resemblance as might be calculated to deceive or to be mistaken therefor.

(2) The application shall be signed by an officer of the corporation applying, whose signature shall be acknowledged before a notary public. The application shall be accompanied by a filing fee of two hundred dollars payable to the Secretary of State. The Secretary of State shall return a duplicate stamped copy with the date of filing to the applicant or the representative submitting the application for filing.

(3) Registration of the corporate name under this section shall be effective for ten years from the date of registration and shall not be renewable by the registrant.

Sec. 3. Any corporation may be dissolved or may change its name from the name registered in accordance with the Name Protection Act, and such dissolution or change of name shall not be deemed an abandonment of any name registered pursuant to such act.

Continued use of a registered name shall not be a prerequisite to protection of a registered name under such act.

Sec. 4. Any corporate name and its registration shall be assignable by instruments in writing duly executed. The instruments shall include the street address, city, and state of the assignee and shall be recorded with the Secretary of State, in duplicate, upon the payment of a fee of five dollars payable to the Secretary of State who, upon recording the assignment, shall return the duplicate copy, stamped with the date of filing, to the applicant or the representative submitting the assignment for filing.

Sec. 5. The Secretary of State shall keep for public information a record of all names registered under the Name Protection Act.

Sec. 6. The Secretary of State shall cancel from the register:

(1) Any registration for which the Secretary of State receives a voluntary request for cancellation from the registrant or the assignee of record;

(2) All registrations granted under the Name Protection Act upon completion of the term of ten years from the date of registration;

(3) Any registration concerning which a court of competent jurisdiction finds:

(a) That the registration was granted improperly; or

(b) That the registration was obtained fraudulently; or

(4) Any registration which a court of competent jurisdiction orders canceled on any ground.

Sec. 7. Any person who for himself or herself or on behalf of any other person files or registers any name in the office of the Secretary of State under the Name Protection Act by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured in any court of competent jurisdiction.

Sec. 8. Any person shall be liable in a civil action by the owner of a registered name for a wrongful use of such name, and any owner of a name registered under the Name Protection Act may enjoin the wrongful use of the registered name. Any court of competent jurisdiction may grant an injunction to restrain such use and may require the defendant to pay to such owner

all profits derived from and all damages suffered by reason of such wrongful use. Proof of monetary damage, loss of profits, competition between the parties, or intent to deceive shall not be required. Costs shall be allowed to the prevailing party unless the court otherwise directs. The court, in its discretion, may award attorney's fees to the prevailing party if (1) the party complaining of the improper or unauthorized use of a registered name has brought an action which he or she knew to be groundless or (2) the party charged with the improper or unauthorized use of a registered name has willfully engaged in the improper or unauthorized use of the registered name. The relief provided in this section is in addition to remedies otherwise available for the same conduct under the common law or other statutes of this state.