

## LEGISLATIVE BILL 1036

Approved by the Governor March 13, 1996

Introduced by Kristensen, 37

AN ACT relating to corporations; to amend sections 21-323.01, 21-325.01, 21-2001, 21-2005, and 21-20,181, Revised Statutes Supplement, 1995; to change provisions relating to dissolution, reinstatement, and domestication of corporations and certificates of authority; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 21-323.01, Revised Statutes Supplement, 1995, 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. 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, following administrative dissolution.

(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, 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 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 annual report for the current 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. 2. Section 21-325.01, Revised Statutes Supplement, 1995, is amended to read:

21-325.01. (1) A foreign corporation automatically dissolved under section 21-325 may appeal the Secretary of State's revocation of its certificate of authority to the district court of Lancaster County within thirty days after service of the certificate of revocation is perfected under section 21-20,177. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.

(2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings. (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. 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 annual report for the current 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. 3. (1) If the Secretary of State denies a foreign corporation's application for reinstatement following revocation of its certificate of authority under section 21-325, he or she shall serve the foreign corporation under section 21-20.177 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after service of the notice of denial is perfected under section 21-20.177. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Sec. 4. Section 21-2001, Revised Statutes Supplement, 1995, is amended to read:

21-2001. Sections 21-2001 to 21-20.192 and sections 6 and 8 to 11 of this act shall be known and may be cited as the Business Corporation Act.

Sec. 5. Section 21-2005, Revised Statutes Supplement, 1995, is amended to read:

21-2005. (1) The Secretary of State shall collect the fees prescribed by this section when the documents described in this subsection are delivered to him or her for filing:

(a) Articles of incorporation or documents relating to domestication:

(i) If the capital stock is \$10,000 or less, the fee shall be \$60;  
(ii) If the capital stock is more than \$10,000 but does not exceed \$25,000, the fee shall be \$100;

(iii) If the capital stock is more than \$25,000 but does not exceed \$50,000, the fee shall be \$150;

(iv) If the capital stock is more than \$50,000 but does not exceed \$75,000, the fee shall be \$225;

(v) If the capital stock is more than \$75,000 but does not exceed \$100,000, the fee shall be \$300; and

(vi) If the capital stock is more than \$100,000, the fee shall be \$300, plus \$3 additional for each \$1,000 in excess of \$100,000.

For purposes of computing this fee, the capital stock of a corporation organized under the laws of any other state that domesticates in this state, and which stock does not have a par value, shall be deemed to have

a par value of an amount per share equal to the amount paid in as capital for each of such shares as are then issued and outstanding, and in no event less than one dollar per share.

- (b) Application for use of indistinguishable name ..... \$25
  - (c) Application for reserved name ..... \$25
  - (d) Notice of transfer of reserved name ..... \$25
  - (e) Application for registered name ..... \$25
  - (f) Application for renewal of registered name ..... \$25
  - (g) Corporation's statement of change of registered agent or registered office or both ..... \$25
  - (h) Agent's statement of change of registered office for each affected corporation ..... \$25  
not to exceed a total of ..... \$1,000
  - (i) Agent's statement of resignation ..... No fee
  - (j) Amendment of articles of incorporation ..... \$25
  - (k) Restatement of articles of incorporation ..... \$25  
with amendment of articles ..... \$25
  - (l) Articles of merger or share exchange ..... \$25
  - (m) Articles of dissolution ..... \$45
  - (n) Articles of revocation of dissolution ..... \$25
  - (o) Certificate of administrative dissolution ..... No fee
  - (p) Application for reinstatement ..... \$25
  - (p) Application for reinstatement following administrative dissolution ..... \$25
  - (q) Certificate of reinstatement ..... No fee
  - (r) Certificate of judicial dissolution ..... No fee
  - (s) Application for certificate of authority ..... \$130
  - (t) Application for amended certificate of authority ..... \$25
  - (u) Application for certificate of withdrawal ..... \$25
  - (v) Certificate of revocation of authority to transact business ..... No fee
  - (w) Articles of correction ..... \$25
  - (x) Application for certificate of existence or authorization ..... \$25
  - (y) Any other document required or permitted to be filed by the Business Corporation Act ..... \$25.
- (2) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (1) of this section.

(3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (a) One dollar per page for copying; and
- (b) Ten dollars for the certificate.

(4) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

Sec. 6. (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. 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. 7. Section 21-20,181, Revised Statutes Supplement, 1995, is amended to read:

21-20,181. A (1) If the Secretary of State denies a foreign

corporation's application for reinstatement following revocation of its certificate of authority under section 21-20,180, he or she shall serve the foreign corporation under section 21-20,177 with a written notice that explains the reason or reasons for denial.

(2) The foreign corporation may appeal the Secretary of State's revocation of its certificate of authority denial of reinstatement to the district court of Lancaster County within thirty days after service of the certificate of revocation notice of denial is perfected under section 21-20,177. The foreign corporation shall appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.

(2) (3) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) (4) The court's final decision may be appealed as in other civil proceedings.

Sec. 8. In lieu of compliance with section 21-20,168, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states which has heretofore filed, or which may hereafter file, with the Secretary of State of this state a copy, certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date, the street address of its registered office in this state and the name of its registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Business Corporation Act with respect to its property and business operations within this state shall become and be a body corporate of this state. If the stock is no par, a resolution of the corporation, signed by an officer of the corporation, shall state the book value of the no par stock, which in no event shall be less than one dollar per share.

Sec. 9. Any foreign corporation which has so domesticated pursuant to section 8 of this act may cease to be a domesticated corporation by filing with the Secretary of State a certified copy of a resolution adopted by its board of directors renouncing its domestication and withdrawing its acceptance and agreement provided for in section 8 of this act.

Sec. 10. If a foreign corporation which has domesticated pursuant to section 8 of this act surrenders its foreign corporate charter, and files, records, and publishes notice of amended articles of incorporation in the manner, time, and places required by sections 21-2017, 21-2018, and 21-20,189, such foreign corporation shall thereupon become and be a domestic corporation organized under the Business Corporation Act.

Sec. 11. Any corporation organized under the laws of any other state or territory which had become, in accordance with section 21-20,122, as such section existed prior to January 1, 1996, a body corporate of this state, shall retain such status for all purposes notwithstanding the repeal of such section.

Sec. 12. Original sections 21-323.01, 21-325.01, 21-2001, 21-2005, and 21-20,181, Revised Statutes Supplement, 1995, are repealed.

Sec. 13. Since an emergency exists, this act takes effect when passed and approved according to law.