

## LEGISLATIVE BILL 628

Approved by the Governor February 13, 2024

Introduced by Jacobson, 42.

A BILL FOR AN ACT relating to corporations and other companies; to amend sections 21-102, 21-185, 21-186, 21-188, 21-2202, and 21-2216, Reissue Revised Statutes of Nebraska; to redefine terms; to change provisions relating to limited liability companies and professional corporations; to harmonize provisions; and to repeal the original sections.  
Be it enacted by the people of the State of Nebraska,

Section 1. Section 21-102, Reissue Revised Statutes of Nebraska, is amended to read:

21-102 (RULLCA 102) In the Nebraska Uniform Limited Liability Company Act:

(1) Certificate of organization means the certificate required by section 21-117. The term includes the certificate as amended or restated.

(2) Certificate of registration means either (a) a document prepared and issued by a regulatory body or (b) verification, by the Secretary of State, that all of those members, managers, professional employees, and agents who are required by law to do so are duly licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders, through the electronic accessing of the regulatory body's licensing records or through compacts or other certifying organizations recognized by the regulatory body by the Secretary of State.

(3) Contribution means any benefit provided by a person to a limited liability company:

(A) in order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(B) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(C) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(4) Debtor in bankruptcy means a person that is the subject of:

(A) an order for relief under Title 11 of the United States Code or a successor statute of general application; or

(B) a comparable order under federal, state, or foreign law governing insolvency.

(5) Designated office means:

(A) the office that a limited liability company is required to designate and maintain under section 21-113; or

(B) the principal office of a foreign limited liability company.

(6) Distribution, except as otherwise provided in subsection (g) of section 21-134, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(7) Effective, with respect to a record required or permitted to be delivered to the Secretary of State for filing under the Nebraska Uniform Limited Liability Company Act, means effective under subsection (c) of section 21-121.

(8) Foreign limited liability company means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(9) Limited liability company, except in the phrase foreign limited liability company, means an entity formed under the Nebraska Uniform Limited Liability Company Act.

(10) Manager means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in subsection (c) of section 21-136.

(11) Manager-managed limited liability company means a limited liability company that qualifies under subsection (a) of section 21-136.

(12) Member means a person that has become a member of a limited liability company under section 21-130 and has not dissociated under section 21-145.

(13) Member-managed limited liability company means a limited liability company that is not a manager-managed limited liability company.

(14) Operating agreement means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member. The term includes the agreement as amended or restated.

(15) Organizer means a person that acts under section 21-117 to form a limited liability company.

(16) Person means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(17) Principal office means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(18) Professional service means any personal service rendered by an attorney, a certified public accountant, a public accountant, a dentist, an osteopathic physician, a physician and surgeon, a real estate broker, an associate real estate broker, a real estate salesperson, or a veterinarian. ~~type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law.~~ For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession.

(19) Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(20) Regulatory body means a board, commission, court, or governmental authority which is charged with licensing or regulating the rendering of a professional service in this state.

(21) Sign means, with the present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(22) State means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(23) Transfer includes an assignment, conveyance, deed, bill of sale, lease, mortgage, trust deed, security interest, encumbrance, gift, and transfer by operation of law.

(24) Transferable interest means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

(25) Transferee means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

Sec. 2. Section 21-185, Reissue Revised Statutes of Nebraska, is amended to read:

21-185 (1) Each member, manager, professional employee, or agent of a limited liability company who renders a professional service shall hold a valid license or otherwise be duly authorized to render that professional service under the law of this state if such member, manager, professional employee, or agent renders a professional service within this state or under the law of the state or other jurisdiction in which such person renders the professional service.

(2) Before rendering a professional service, a limited liability company shall (a)(i) deliver to the Secretary of State for filing a certificate of registration issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and ~~residence~~ address of every member, manager, professional employee, and agent of the limited liability company who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders as of the last day of the month preceding the date of delivery of the certificate, and (ii) certify that all of those members, managers, professional employees, and agents of the limited liability company who are required by law to do so are duly licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders or (b) comply with and qualify under the procedures set forth in subsection (2) of section 21-186.

(3) The registration certificate requirements of this section and sections 21-186 to 21-188 shall apply to both limited liability companies and foreign limited liability companies.

(4) Any limited liability company that, prior to the effective date of this act, has a certificate of registration pursuant to subsection (1) or (2) of section 21-186 may continue to render professional service if the certificate of registration is maintained continuously on and after the effective date of this act.

Sec. 3. Section 21-186, Reissue Revised Statutes of Nebraska, is amended to read:

21-186 (1)(a) An application for issuance of a certificate of registration shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all of those members, managers, professional employees, and agents of the limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders, the street address at which the applicant proposes to render a professional service, and such other information as may be required by the

regulatory body. If it appears to the regulatory body that each member, manager, professional employee, and agent of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession for which the applicant is organized to do business and that each member, manager, professional employee, or agent required by law to be licensed or otherwise authorized to practice the profession for which the applicant is organized to do business is not otherwise disqualified from rendering the professional service of the applicant, such regulatory body shall issue a certificate in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body certifying that the proposed or existing limited liability company complies with the provisions of the Nebraska Uniform Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

(b) One copy of a certificate of registration issued pursuant to this subsection shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and, except as provided in subsection (2) of this section, one copy shall be delivered for filing to the Secretary of State who shall charge a fee as specified in section 21-192 for filing the same. The certificate shall be delivered to the Secretary of State for filing with the certificate of organization. A certificate of registration bearing an issuance date more than twelve months old shall not be eligible for filing by the Secretary of State.

(2) When licensing records of regulatory bodies are electronically accessible to the Secretary of State, the regulatory body, in conjunction with the Secretary of State, shall develop an automated process to allow the Secretary of State to electronically access and verify the records. The access of the records shall be made in lieu of a certificate of registration being prepared and issued by the regulatory body for delivery to the Secretary of State for filing. The limited liability company shall deliver to the Secretary of State for filing an application setting forth the names of all of those members, managers, professional employees, and agents of such limited liability company who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, or a service ancillary to those which the limited liability company renders, as of the last day of the month preceding the date of application and shall deliver to the Secretary of State for filing an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee as specified in section 21-192.

The Secretary of State shall verify that all of those members, managers, professional employees, and agents who are required by law to do so are duly licensed or otherwise legally authorized to render the professional service for which the applicant is organized to do business or a service ancillary to ancillary service as those which the limited liability company renders through electronic accessing of the regulatory body's records or through compacts or other certifying organizations recognized by the regulatory body. If any member, manager, professional employee, or agent who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, or a service ancillary to those which the limited liability company renders, is not licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders, the limited liability company shall be suspended. The suspension shall remain in effect and a biennial report shall not be delivered to the Secretary of State for filing or filed by the Secretary of State until the limited liability company attests in writing that all of those members, managers, professional employees, or agents who are required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business, or a service ancillary to those which the limited liability company renders, are duly licensed or otherwise legally authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, professional employees, or agents are no longer members, managers, professional employees, or agents of the limited liability company.

Sec. 4. Section 21-188, Reissue Revised Statutes of Nebraska, is amended to read:

21-188 A regulatory body may, upon a form prescribed by it, suspend or revoke any certificate of registration issued to any limited liability company pursuant to subsection (1) of section 21-186 upon the suspension or revocation of the license or other authorization to render a professional service by any member, manager, professional employee, or agent of the limited liability company who is required by law to be licensed or otherwise authorized to render the professional service for which the limited liability company is organized to do business or a service ancillary to those which the limited liability company renders. Notice of such suspension or revocation shall be provided to the limited liability company affected by sending by certified or registered mail a certified copy of such suspension or revocation to the limited liability company at its principal place of business set forth in the certificate so

suspended or revoked. At the same time, the regulatory body shall forward by regular mail a certified copy of such suspension or revocation to the Secretary of State who shall remove the suspended or revoked registration certificate from his or her files and deliver it to the regulatory body.

Sec. 5. Section 21-2202, Reissue Revised Statutes of Nebraska, is amended to read:

21-2202 For purposes of the Nebraska Professional Corporation Act, unless the context otherwise requires:

(1) Certificate of registration or registration certificate from or by the regulating board means either (a) a document prepared and issued by the regulating board or (b) verification, by the Secretary of State, that all of those directors, officers, shareholders, and professional employees listed on the application filed with the Secretary of State, except for the secretary and assistant secretary, are duly licensed or otherwise legally authorized to render the professional service for which the professional corporation is organized or a service ancillary to those which the professional corporation renders, through the electronic accessing of the regulating board's licensing records or through compacts or other certifying organizations recognized by the regulating board by the Secretary of State;

(2) Professional corporation means a corporation which is organized under the act for the specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation;

(3) Professional service means any personal service services rendered by an attorney ~~at law~~, a certified public accountant, a public accountant, a dentist, an osteopathic physician, a physician and surgeon, a real estate broker, an associate real estate broker, a real estate salesperson, or a veterinarian. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and

(4) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the professional corporation is organized to render.

Sec. 6. Section 21-2216, Reissue Revised Statutes of Nebraska, is amended to read:

21-2216 (1) No corporation shall open, operate, or maintain an establishment or do business for any purposes set forth in the Nebraska Professional Corporation Act without (a) filing with the Secretary of State a certificate of registration from the regulating board of the particular profession for which the professional corporation is organized to do business, which certificate shall set forth the name and ~~residence~~ addresses of all shareholders as of the last day of the month preceding such filing, and (b) certifying that all shareholders, directors, and officers, except the secretary and the assistant secretary, are duly licensed to render the same professional services as those for which the corporation was organized. Application for a certificate of registration shall be made by the professional corporation to the regulating board in writing and shall contain the names of all officers, directors, shareholders, and professional employees of the professional corporation, the street address at which the applicant proposes to perform professional services, and such other information as may be required by the regulating board.

(2) If it appears to the regulating board that each shareholder, officer, director, and professional employee of the applicant, except the secretary and the assistant secretary, is licensed to practice the profession of the applicant and that each shareholder, officer, director, or professional employee is not otherwise disqualified from performing the professional services of the applicant, such regulating board shall certify, in duplicate upon a form bearing its date of issuance and prescribed by such regulating board, that such proposed or existing professional corporation complies with the provisions of the act and of the applicable rules and regulations of such regulating board. Each applicant for such registration certificate shall pay such regulating board a fee of twenty-five dollars for the issuance of such duplicate certificate.

(3) One copy of such certificate shall be prominently exposed to public view upon the premises of the principal place of business of each professional corporation organized under the act, and one copy shall be filed by the professional corporation with the Secretary of State who shall charge a fee as specified in section 21-205. The certificate from the regulating board shall be filed in the office of the Secretary of State together with the articles of incorporation. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(4) When licensing records of regulating boards are electronically accessible, the regulating board, in conjunction with the Secretary of State, shall develop an automated process to allow the Secretary of State to electronically access and verify the records. The access shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The professional corporation shall file with the Secretary of State an application setting forth the name and residence addresses of all officers, directors, shareholders, and professional employees as of the last day of the month preceding the date of the application and shall file with the Secretary of State an annual update thereafter. Each application shall be accompanied by a licensure verification fee as specified in section

21-205. The Secretary of State shall verify that all of the directors, officers, shareholders, and professional employees listed on the application, except for the secretary and assistant secretary, are duly licensed or otherwise legally authorized to render the same professional service ~~or an ancillary service as those~~ for which the professional corporation was organized or a service ancillary to those which the professional corporation renders. Verification shall be done by electronically accessing the regulating board's licensing records or through compacts or other certifying organizations recognized by the regulating board. If any director, officer, shareholder, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the professional corporation was organized to render, or a service ancillary to those which the professional corporation renders, the corporation will be suspended. The biennial report and tax cannot be filed and paid in the office of the Secretary of State until the corporation attests in writing that the director, officer, shareholder, or professional employee is licensed or otherwise legally authorized to practice, which shall be verified by the Secretary of State, or is no longer a director, officer, shareholder, or professional employee of the corporation. When the biennial report and the tax become delinquent, the corporation shall be dissolved for nonpayment of taxes in compliance with section 21-323.

Sec. 7. Original sections 21-102, 21-185, 21-186, 21-188, 21-2202, and 21-2216, Reissue Revised Statutes of Nebraska, are repealed.