

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 854

Introduced by McCoy, 39.

Read first time January 06, 2012

Committee:

A BILL

1 FOR AN ACT relating to business entities; to amend sections
2 21-323.01, 21-325.01, 21-19,139, 21-19,159, 21-20,160,
3 21-20,180.01, and 21-2995, Reissue Revised Statutes of
4 Nebraska, and sections 21-152 and 21-2611, Revised
5 Statutes Cumulative Supplement, 2010; to change
6 provisions relating to dissolution and reinstatement; to
7 provide an operative date; and to repeal the original
8 sections.

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

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

3 21-152 (ULLCA 706) (a) A limited liability company that
4 has been administratively dissolved may apply to the Secretary of
5 State for reinstatement ~~at any time~~ within three years after the
6 effective date of the dissolution. The application must be delivered
7 to the Secretary of State for filing and state:

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

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

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

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

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

25 Sec. 2. Section 21-323.01, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 21-323.01 (1) A corporation automatically dissolved under
3 section 21-323 may apply to the Secretary of State for reinstatement
4 within three years after the effective date of the dissolution. The
5 application shall:

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

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

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

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

15 (2) If the Secretary of State determines (a) that the
16 application contains the information required by subsection (1) of
17 this section and that the information is correct and (b) that the
18 corporation has complied with subsection (4) of this section, he or
19 she shall cancel the certificate of dissolution, prepare a
20 certificate of reinstatement that recites his or her determination
21 and the effective date of reinstatement, file the original of the
22 certificate, and serve a copy on the corporation under section
23 21-2034.

24 (3) When the reinstatement is effective, it shall relate
25 back to and take effect as of the effective date of the automatic

1 dissolution and the corporation shall resume carrying on its business
2 as if the automatic dissolution had never occurred.

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

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

12 (b) Pay to the Secretary of State an additional amount
13 derived by multiplying the rate specified in section 45-104.02, as
14 such rate may from time to time be adjusted, times the amount of
15 occupation taxes required to be paid by it for each year that such
16 corporation was automatically dissolved.

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

19 21-325.01 (1) A foreign corporation, the certificate of
20 authority of which has been revoked under section 21-325, may apply
21 to the Secretary of State for reinstatement within three years after
22 the effective date of the dissolution. The application shall:

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

25 (b) State that the ground or grounds for revocation

1 either did not exist or have been eliminated;

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

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

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

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

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

22 (a)(i) Pay to the Secretary of State a sum equal to all
23 occupation taxes delinquent as of the effective date of the
24 revocation, plus a sum equal to all occupation taxes which would
25 otherwise have been due for the years the foreign corporation's

1 certificate of authority was revoked; and (ii) forward to the
2 Secretary of State a properly executed and signed biennial report for
3 the most recent even-numbered year; and

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

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

11 21-19,139 (a) A corporation administratively dissolved
12 under section 21-19,138 may apply to the Secretary of State for
13 reinstatement within three years after the effective date of the
14 dissolution. The application must:

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

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

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

21 (b) If the Secretary of State determines that the
22 application contains the information required by subsection (a) of
23 this section and that the information is correct, the Secretary of
24 State shall cancel the certificate of dissolution and prepare a
25 certificate of reinstatement reciting that determination and the

1 effective date of reinstatement, file the original of the
2 certificate, and serve a copy on the corporation under section
3 21-1937.

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

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

10 21-19,159 (a) A foreign corporation the certificate of
11 authority of which has been revoked under section 21-19,158 may apply
12 to the Secretary of State for reinstatement within three years after
13 the effective date of the dissolution. The application must:

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

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

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

20 (b) If the Secretary of State determines that the
21 application contains the information required by subsection (a) of
22 this section and that the information is correct, the Secretary of
23 State shall cancel the certificate of revocation and prepare a
24 certificate of reinstatement reciting that determination and the
25 effective date of reinstatement, file the original of the

1 certificate, and serve a copy on the foreign corporation under
2 section 21-19,155.

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

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

9 21-20,160 (1) A corporation administratively dissolved
10 under section 21-20,159 may apply to the Secretary of State for
11 reinstatement within three years after the effective date of the
12 dissolution. The application shall:

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

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

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

19 (2) If the Secretary of State determines (a) that the
20 application contains the information required by subsection (1) of
21 this section and that the information is correct, and (b) that the
22 corporation has paid to the Secretary of State all delinquent
23 occupation taxes and has forwarded to the Secretary of State a
24 properly executed and signed annual report for the current year, he
25 or she shall cancel the certificate of dissolution and prepare a

1 certificate of reinstatement that recites his or her determination
2 and the effective date of reinstatement, file the original of the
3 certificate, and serve a copy on the corporation under section
4 21-2034.

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

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

12 21-20,180.01 (1) A foreign corporation, the certificate
13 of authority of which has been revoked under section 21-20,180, may
14 apply to the Secretary of State for reinstatement within three years
15 after the effective date of the dissolution. The application shall:

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

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

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

22 (2) If the Secretary of State determines (a) that the
23 application contains the information required by subsection (1) of
24 this section and that the information is correct and (b) that the
25 foreign corporation has paid to the Secretary of State all delinquent

1 occupation taxes and has forwarded to the Secretary of State a
2 properly executed and signed annual report for the current year, he
3 or she shall cancel the certificate of revocation, prepare a
4 certificate of reinstatement that recites his or her determination
5 and the effective date of reinstatement, file the original of the
6 certificate, and serve a copy on the foreign corporation under
7 section 21-20,177.

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

12 Sec. 8. Section 21-2611, Revised Statutes Cumulative
13 Supplement, 2010, is amended to read:

14 21-2611 If a limited liability company has failed for
15 ninety days to appoint and maintain a registered agent in this state,
16 has failed for ninety days after change of its registered office or
17 registered agent to file with the Secretary of State a statement of
18 the change, or has failed to pay any fee required by section 21-2634,
19 it shall be deemed to be transacting business within this state
20 without authority and to have forfeited any franchises, rights, or
21 privileges acquired under the laws of this state. The Secretary of
22 State shall mail a notice of failure to comply to the limited
23 liability company at its registered office by certified mail. Unless
24 the limited liability company comes into compliance within thirty
25 days after the delivery of notice, the limited liability company

1 shall be deemed to be defunct and to have forfeited its certificate
2 of organization. A defunct limited liability company may at any time
3 after the forfeiture of its certificate be revived and reinstated by
4 filing any necessary documents, paying any fees, and paying an
5 additional fee of one hundred dollars within three years after the
6 effective date of the dissolution. A revived and reinstated limited
7 liability company shall have the same force and effect as if its
8 existence had not been defunct.

9 Sec. 9. Section 21-2995, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 21-2995 (1) A limited cooperative association that has
12 been administratively dissolved may apply to the Secretary of State
13 for reinstatement within three years after the effective date of the
14 dissolution. The application shall be delivered to the Secretary of
15 State for filing and state:

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

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

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

22 (2) If the Secretary of State determines that (a) the
23 application contains the information required by subsection (1) of
24 this section and that the information is correct and (b) the limited
25 cooperative association has paid to the Secretary of State all

1 delinquent occupation taxes and has forwarded to the Secretary of
2 State a properly executed and signed biennial report for the current
3 year, the Secretary of State shall:

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

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

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

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

15 Sec. 10. This act becomes operative on January 1, 2013.

16 Sec. 11. Original sections 21-323.01, 21-325.01,
17 21-19,139, 21-19,159, 21-20,160, 21-20,180.01, and 21-2995, Reissue
18 Revised Statutes of Nebraska, and sections 21-152 and 21-2611,
19 Revised Statutes Cumulative Supplement, 2010, are repealed.