

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 886

Final Reading

Introduced by Schumacher, 22.

Read first time January 09, 2012

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to trade practices; to amend sections 87-130,
2 87-132, and 87-134, Reissue Revised Statutes of Nebraska,
3 and sections 87-210 and 87-211, Revised Statutes
4 Supplement, 2011; to change provisions relating to
5 trademarks and trade names; and to repeal the original
6 sections.

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

1 Section 1. Section 87-130, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 87-130 Subject to the limitations set forth in the
4 Trademark Registration Act, any person who uses a mark may file in
5 the office of the secretary, in a manner complying with the
6 requirements of the secretary, an application for registration of
7 that mark including, but not limited to, the following information:

8 (1) The name and business address of the person applying
9 for such registration and, if a corporation or other type of business
10 entity except a partnership, the state of incorporation or
11 organization, or if a partnership, the state in which the partnership
12 is organized and the names of the general partners, as specified by
13 the secretary;

14 (2) The goods or services on or in connection with which
15 the mark is used and the mode or manner in which the mark is used on
16 or in connection with such goods or services and the class in which
17 such goods or services fall;

18 (3) The date when the mark was first used anywhere and
19 the date when it was first used in this state by the applicant or a
20 predecessor in interest; and

21 (4) A statement that the applicant is the owner of the
22 mark, that the mark is in use, and that, to the knowledge of the
23 person verifying the application, no other person has registered,
24 either federally or in this state, or has the right to use such mark
25 either in the identical form or in such near resemblance as to be

1 likely, when applied to the goods or services of such other person,
2 to cause confusion or mistake or to deceive.

3 The secretary may also require a statement as to whether
4 an application to register the mark, or portions or a composite
5 thereof, has been filed by the applicant or a predecessor in interest
6 in the United States Patent and Trademark Office, and if so, the
7 applicant shall provide full particulars with respect thereto,
8 including the filing date and serial number of each application, the
9 status of each application, and if any application was finally
10 refused registration or has otherwise not resulted in a registration,
11 the reasons for the refusal or rejection. The secretary may also
12 require that a drawing of the mark, complying with such requirements
13 as the secretary may specify, accompany the application. The
14 application shall be signed and verified, by oath, affirmation, or
15 declaration subject to perjury laws, by the applicant or by a member
16 of the firm or an officer of the corporation or association applying.
17 The application shall be submitted in duplicate and shall be
18 accompanied by three specimens showing the mark as actually used and
19 by the application fee of one hundred dollars payable to the
20 secretary.

21 Sec. 2. Section 87-132, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 87-132 Upon compliance by the applicant with the
24 requirements of the Trademark Registration Act, the secretary shall
25 return the duplicate copy of the application stamped with the filing

1 date to the applicant. The certificate of registration shall be
2 issued under the signature of the secretary and the seal of the
3 state, and it shall show the name and business address and, if a
4 corporation or other type of business entity except a partnership,
5 the state of incorporation or organization, or if a partnership, the
6 state in which the partnership is organized and the names of the
7 general partners, as specified by the secretary, of the person
8 claiming ownership of the mark, the date claimed for the first use of
9 the mark anywhere and the date claimed for the first use of the mark
10 in this state, the class of goods or services and a description of
11 the goods or services on or in connection with which the mark is
12 used, a reproduction of the mark, the registration date, and the term
13 of the registration. An original, a duplicate original, or a
14 certified copy of an application for trademark which has the file
15 stamp and date of the secretary shall be admissible in evidence as
16 competent and sufficient proof of the registration of such mark in
17 any actions or judicial proceedings in any court of this state.
18 Registration of a mark with the secretary shall be prima facie
19 evidence of the right to use the mark shown in the registration on or
20 in connection with the class or classes of goods or services
21 designated in the registration.

22 Sec. 3. Section 87-134, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 87-134 (1) Any mark and its registration under the
25 Trademark Registration Act is assignable with the good will of the

1 business in which the mark is used or with that part of the good will
2 of the business connected with the use of and symbolized by the mark.
3 Assignment shall be by instruments in writing duly executed and may
4 be recorded with the secretary upon the payment of the recording fee
5 payable to the secretary who, upon recording of the assignment, shall
6 issue in the name of the assignee a new certificate for the remainder
7 of the term of the registration or of the last renewal thereof. An
8 assignment of any registration under the Trademark Registration Act
9 is void as against any subsequent purchaser for valuable
10 consideration without notice unless it is recorded with the secretary
11 within three months after the date of the assignment or prior to such
12 subsequent purchase.

13 (2)(a) Any registrant or applicant effecting a change of
14 the name of the person to whom the mark was issued or for whom an
15 application was filed or a change of address or state of
16 incorporation or organization may record a certificate of such change
17 ~~of name of the registrant or applicant~~ with the secretary upon the
18 payment of the recording fee. A registrant or an applicant may be
19 required to submit documented proof of its name change at the
20 discretion of the secretary.

21 (b) The secretary may issue in the name of the assignee a
22 certificate of registration of an assigned application. The secretary
23 may issue in the name of the assignee a new certificate of
24 registration for the remainder of the term of the registration or
25 last renewal of the registration.

1 (3) Other instruments which relate to a mark registered
2 or application pending pursuant to the act, such as licenses,
3 security interests, or mortgages, may be recorded in the discretion
4 of the secretary if the instrument is in writing and duly executed.

5 (4) Acknowledgment shall be prima facie evidence of the
6 execution of an assignment or other instrument and, when recorded by
7 the secretary, the record shall be prima facie evidence of execution.

8 (5) A photocopy of any instrument referred to in this
9 section shall be accepted for recording if it is certified by any of
10 the parties to the instrument, or their successors, to be a true and
11 correct copy of the original.

12 (6) In a registration that resulted from an application
13 that was filed before the effective date of a change to the Trademark
14 Registration Act or any rules or regulations adopted and promulgated
15 pursuant to the act, the registrant may be allowed to file an
16 amendment to the registration in order to comply with the current
17 requirements of the act and the rules and regulations. The registrant
18 shall pay a recording fee for such amendment.

19 Sec. 4. Section 87-210, Revised Statutes Supplement,
20 2011, is amended to read:

21 87-210 (1) Subject to the limitations set forth in
22 sections 87-208 to 87-219.01, any person who adopts a trade name for
23 use in this state may file in the office of the Secretary of State on
24 a form furnished by the Secretary of State an application, in
25 duplicate, for registration of the trade name setting forth, but not

1 limited to, the following information:

2 (a) The name and street address of the applicant for
3 registration; and, if a corporation or other type of business entity,
4 the state of incorporation or organization;

5 (b) The trade name sought to be registered;

6 (c) The general nature of the business in fact conducted
7 by the applicant;

8 (d) The length of time during which the trade name has
9 been used in this state;

10 (e) The signature of the applicant; and

11 (f) A filing fee of one hundred dollars.

12 (2) Upon compliance by the applicant with the
13 requirements of sections 87-208 to 87-219.01, the Secretary of State
14 shall return the duplicate copy stamped with the date of filing to
15 the applicant or the representative submitting the applications for
16 filing.

17 Sec. 5. Section 87-211, Revised Statutes Supplement,
18 2011, is amended to read:

19 87-211 (1) Registration of a trade name under sections
20 87-208 to 87-219.01 shall be effective for a term of ten years from
21 the date of registration and, upon application filed in duplicate
22 within six months prior to the expiration of such term on a form to
23 be furnished by the Secretary of State, the registration may be
24 renewed for a like term. A renewal fee of one hundred dollars payable
25 to the Secretary of State shall accompany the application for renewal

1 of the registration.

2 (2) A trade name registration may be renewed for
3 successive periods of ten years in like manner.

4 (3) The Secretary of State shall notify registrants of
5 trade names under sections 87-208 to 87-219.01 of the necessity of
6 renewal within the year next preceding the expiration of the ten
7 years from the date of registration or of last renewal by writing to
8 the last-known street address of the registrants.

9 (4) Any registration in force on August 27, 1971, shall
10 expire ten years from the date of the registration or of the last
11 renewal thereof, whichever is later, and may be renewed by filing an
12 application with the Secretary of State on a form furnished by him or
13 her and paying the renewal fee as provided in this section within six
14 months prior to the expiration of the registration.

15 (5) All applications for renewals under sections 87-208
16 to 87-219.01 whether of registrations made under sections 87-208 to
17 87-219.01 or of registrations effected under any prior act shall
18 include a statement that the trade name is still in use in this
19 state.

20 (6) A registrant may change its name, street address,
21 and, if the registrant is a corporation or other type of business
22 entity, its state of incorporation or organization by filing a
23 statement of change with the Secretary of State on a form to be
24 furnished by the Secretary of State and paying a fee of ten dollars.
25 A registrant may be required to submit documented proof of its name

1 change at the discretion of the Secretary of State.

2 Sec. 6. Original sections 87-130, 87-132, and 87-134,
3 Reissue Revised Statutes of Nebraska, and sections 87-210 and 87-211,
4 Revised Statutes Supplement, 2011, are repealed.