

## Nebraska State Statutes

### Foreign Corporations

sections excerpted from 'Business Corporation Act'

#### **Application for 'Certificate of Authority'**

All filings and correspondence to:

**Nebraska Secretary of State**

Room 1301 - State Capitol Bldg.

Lincoln, NE 68509

Phone: (402) 471-4079 FAX: (402) 471-3666

[sos.corp@nebraska.gov](mailto:sos.corp@nebraska.gov)

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#### **21-20,168 Foreign corporation; certificate of authority.**

- (1) A foreign corporation may not transact business in this state until it obtains a [certificate of authority](#) from the Secretary of State.
- (2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:
  - (a) Maintaining, defending, or settling any proceeding;
  - (b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
  - (c) Maintaining bank accounts;
  - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;
  - (e) Selling through independent contractors;
  - (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
  - (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
  - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
  - (i) Owning, without more, real or personal property;
  - (j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;
  - (k) Transacting business in interstate commerce; or
  - (l) Acting as a foreign corporate trustee to the extent authorized under section 30-3820.

(3) The list of activities in subsection (2) of this section shall not be construed as exhaustive.

(4) The requirements of the Business Corporation Act shall not be applicable to foreign or alien insurers which are subject to the requirements of Chapter 44.

**Source** Laws 1995, LB 109, § 168; Laws 2003, LB 130, § 113.

**21-20,169 Foreign corporation; transacting business without certificate of authority; effect.**

(1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court in this state may stay a proceeding commenced by a foreign corporation, its successor, or its assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If the court determines that a certificate of authority is required, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation shall be liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection and shall remit them to the State Treasurer for credit to the permanent school fund.

(5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign corporation to obtain a certificate of authority shall not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

**Source** Laws 1995, LB 109, § 169.

**Cross Reference**

**Permanent school fund**, see Article VII, section 5, Constitution of Nebraska.

**21-20,170 Foreign corporation; certificate of authority; application.**

(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-20,173;

- (b) The name of the state or country under whose law the foreign corporation is incorporated;
  - (c) The date of incorporation and period of duration;
  - (d) The street address of its principal office;
  - (e) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address; and
  - (f) The names and street addresses of its current directors and officers.
- (2) The foreign corporation shall deliver with the completed application a [certificate of existence](#), or a document of similar import, duly authenticated by the official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

**Source** Laws 1995, LB 109, § 170; Laws 2008, LB379, § 17. July 18, 2008

#### **21-20,171 Foreign corporation; amended certificate of authority.**

- (1) A foreign corporation authorized to transact business in this state shall obtain an [amended certificate of authority](#) from the Secretary of State if it changes:
- (a) Its corporate name;
  - (b) The period of its duration; or
  - (c) The state or country of its incorporation.
- (2) The requirements of section 21-20,170 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.

**Source** Laws 1995, LB 109, § 171.

#### **21-20,172 Foreign corporation; certificate of authority; effect.**

- (1) A certificate of authority shall authorize the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Business Corporation Act.
- (2) A foreign corporation with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by the act, shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.
- (3) The act shall not be construed to authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

**Source** Laws 1995, LB 109, § 172.

#### **Cross Reference**

**Foreign corporation**, authority in state, see Chapter XII, article 1, Constitution of Nebraska.

### **21-20,173 Corporate name of foreign corporation.**

(1) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-2028, the foreign corporation, in order to obtain or maintain a certificate of authority to transact business in this state, may:

- (a) Add the word corporation, incorporated, company, or limited, or the abbreviation corp., inc., co., or ltd., to its corporate name for use in this state; or
- (b) Use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4) of this section, the corporate name, including a fictitious name, of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (2)(a) through (f) of this section:

- (a) The corporate name of a corporation incorporated or authorized to transact business in this state;
- (b) A corporate name reserved or registered under section 21-2029 or 21-2030;
- (c) The fictitious name of another foreign corporation authorized to transact business in this state;
- (d) The corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;
- (e) A trade name registered in this state pursuant to sections 87-208 to 87-220; and
- (f) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(3) A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity, incorporated or authorized to transact business in this state, that is the same as or deceptively similar to, upon his or her records, the name applied for. The Secretary of State shall authorize use of the name applied for if:

- (a) The other corporation or business entity consents to the use in writing; or
- (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:

- (a) Has merged with the other corporation or business entity;

(b) Has been formed by reorganization of the other corporation or business entity; or

(c) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-2028, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-2028 and obtains an amended certificate of authority under section 21-20,171.

**Source** Laws 1995, LB 109, § 173; Laws 1997, LB 44, § 6; Laws 1997, LB 453, § 4; Laws 2003, LB 464, § 6.

**21-20,174 Foreign corporation; registered office and registered agent.**

Each foreign corporation authorized to transact business in this state shall continuously maintain in this state:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(a) An individual who resides in this state and whose business office is identical with the registered office;

(b) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(c) A foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

**Source** Laws 1995, LB 109, § 174.

**21-20,175 Foreign corporation; change of registered office or registered agent.**

(1) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(a) Its name;

(b) The street address of its current registered office;

(c) If the current registered office is to be changed, the street address of its new registered office;

(d) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;

(e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(f) After any change or changes are made, that the street addresses of its registered office and the business office of its registered agent will be identical.

(2) If a registered agent changes the street address or post office box number of his or her business office, he or she may change the street address or post office box number of the registered office of any foreign corporation for which he or she is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the corporation has been notified of the change.

**Source** Laws 1995, LB 109, § 175; Laws 2008, LB379, § 18. July 18, 2008

**21-20,176 Foreign corporation; resignation of registered agent.**

(1) The registered agent of a foreign corporation may resign his or her agency appointment by signing and delivering to the Secretary of State for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(3) The agency appointment shall be terminated and the registered office discontinued if so provided on the thirty-first day after the date on which the statement was filed.

**Source** Laws 1995, LB 109, § 176.

**21-20,177 Foreign corporation; service; consent to service of search warrant or subpoena.**

(1) The registered agent of a foreign corporation authorized to transact business in this state shall be the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation. By being authorized to transact business in this state, the foreign corporation's agent for service of process shall also consent to service of process directed to the foreign corporation's agent in Nebraska for a search warrant issued pursuant to sections 28-807 to 28-829, or for any other validly issued and properly served subpoena, including those authorized under section 86-2,112, for records or documents that are in the possession of the foreign corporation and are located inside or outside of this state. The consent to service of a subpoena or search warrant applies to a

foreign corporation that is a party or nonparty to the matter for which the search warrant is sought.

(2) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation or the designated custodian of records at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation has:

(a) No registered agent or its registered agent cannot with reasonable diligence be served;

(b) Withdrawn from transacting business in this state under section 21-20,178; or

(c) Had its certificate of authority revoked under section 21-20,180.

(3) Service shall be perfected under subsection (2) of this section at the earliest of:

(a) The date the foreign corporation receives the mail;

(b) The date shown on the return receipt if signed on behalf of the foreign corporation; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark if mailed postage prepaid and correctly addressed.

(4) This section shall not be construed to prescribe the only means or necessarily the required means of serving a foreign corporation.

**Source** Laws 1995, LB 109, § 177; Laws 2009, LB97, § 1. May 21, 2009

### **21-20,178 Foreign corporation; withdrawal.**

(1) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(2) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application shall set forth:

(a) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(b) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state may thereafter be made on such corporation outside this state; and

(d) A mailing address at which process against the corporation may be served.

**Source** Laws 1995, LB 109, § 178.

**21-20,179 Foreign corporation; revocation of certificate of authority; grounds.**

The Secretary of State may commence a proceeding under section 21-20,180 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;
- (2) The foreign corporation does not inform the Secretary of State under section 21-20,175 or 21-20,176 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;
- (3) An incorporator, director, officer, or agent of the foreign corporation signed a document he or she knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;
- (4) The foreign corporation or its agent for service of process does not comply with section 21-20,177; or
- (5) The Secretary of State receives a duly authenticated certificate from the official having custody of the corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

**Source** Laws 1995, LB 109, § 179; Laws 2009, LB97, § 2. May 21, 2009

**21-20,180 Foreign corporation; revocation of certificate of authority; procedure and effect.**

- (1) If the Secretary of State determines that one or more grounds exist under section 21-20,179 for revocation of a certificate of authority, he or she shall serve the foreign corporation with written notice of his or her determination under section 21-20,177.
- (2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty days after service of the notice is perfected under section 21-20,177, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation under section 21-20,177.
- (3) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.
- (4) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

Source Laws 1995, LB 109, § 180.

**21-20,180.01 Foreign corporation; revocation of certificate of authority; reinstatement; procedure; effect.**

(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.

Source Laws 1996, LB 1036, § 6.

**Cross Reference**

**Biennial report,** see section 21-304.  
**Occupation tax,** see Chapter 21, article 3.

**21-20,181 Foreign corporation; revocation of certificate of authority; reinstatement denied; appeal.**

(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 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.

**Source** Laws 1995, LB 109, § 181; Laws 1996, LB 1036, § 7.

### **21-20,181.01 Foreign corporation; domestication; procedure.**

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 and street address and, if one exists, a post office box number, of its current 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.

**Source** Laws 1996, LB 1036, § 8; Laws 2008, LB379, § 19. July 18, 2008

### **21-20,181.02 Foreign corporation; cessation of domestication.**

Any foreign corporation which has so domesticated pursuant to section 21-20,181.01 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 21-20,181.01.

**Source** Laws 1996, LB 1036, § 9.

### **21-20,181.03 Foreign corporation; surrender of foreign charter; effect.**

If a foreign corporation which has domesticated pursuant to section 21-20,181.01 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.

**Source** Laws 1996, LB 1036, § 10.