

LEGISLATIVE BILL 528

Approved by the Governor May 26, 2009

Introduced by Fulton, 29.

FOR AN ACT relating to the Business Corporation Act; to amend sections 21-2003, 21-2014, 21-2015, 21-2060, and 21-20,186, Reissue Revised Statutes of Nebraska; to define and redefine terms; to change provisions relating to notice, appointment of proxies, and delivery of documents under the act; to authorize electronic transmissions as a means of notice, delivery, and appointment; and to repeal the original sections.

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

Section 1. Section 21-2003, Reissue Revised Statutes of Nebraska, is amended to read:

21-2003 (1) A document shall satisfy the requirements of this section and of any other provision of law that adds to or varies these requirements to be entitled to filing by the Secretary of State.

(2) The Business Corporation Act shall require or permit filing the document in the office of the Secretary of State.

(3) The document shall contain the information required by the act. It may contain other information as well.

(4) The document shall be typewritten or printed.

(5) The document shall be in the English language. A corporate name shall not be required to be in English if written in English letters or Arabic or Roman numerals. The certificate of existence required of foreign corporations shall not be required to be in English if accompanied by a reasonably authenticated English translation.

(6) The document shall be executed:

(a) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(7) The person executing the document shall sign it and state beneath or opposite his or her signature his or her name and the capacity in which he or she signs. The document may, but shall not be required to, contain (a) the corporate seal, (b) an attestation by the secretary or an assistant secretary, and (c) an acknowledgment, verification, or proof.

(8) If the Secretary of State has prescribed a mandatory form for the document under section 21-2004, the document shall be in or on the prescribed form.

(9) The document shall be delivered to the Secretary of State for filing and shall be accompanied by one exact or conformed copy, except as provided in sections 21-2033 and 21-20,176, the correct filing fee, and any tax, license fee, or penalty required by law. For purposes of this subsection, delivered means physical delivery of the document by hand, mail, or commercial delivery and does not include delivery by electronic transmission.

Sec. 2. Section 21-2014, Reissue Revised Statutes of Nebraska, is amended to read:

21-2014 For purposes of the Business Corporation Act, unless the context otherwise requires:

(1) Articles of incorporation shall include amended and restated articles of incorporation and articles of merger;

(2) Authorized shares shall mean the shares of all classes a domestic or foreign corporation is authorized to issue;

(3) Conspicuous shall mean so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, shall be considered conspicuous;

(4) Corporation or domestic corporation shall mean a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act;

(5) Deliver shall include mail, or delivery shall mean any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;

(6) Distribution shall mean a direct or indirect transfer of money or other property, except a corporation's own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders

in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend, a purchase, redemption, or other acquisition of shares, a distribution of indebtedness, or otherwise;

(7) Effective date of notice shall have the same meaning as in section 21-2015;

(8) Electronic transmission or electronically transmitted shall mean any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;

~~(8)~~ (9) Employee shall include an officer but not a director. A director may accept duties that make him or her also an employee;

~~(9)~~ (10) Entity shall include corporation and foreign corporation, not-for-profit corporation, limited liability company, profit and not-for-profit unincorporated association, business trust, estate, partnership, trust, two or more persons having a joint or common economic interest, state, United States, and foreign government;

~~(10)~~ (11) Foreign corporation shall mean a corporation for profit incorporated under a law other than the law of this state;

~~(11)~~ (12) Governmental subdivision shall include authority, county, district, and municipality;

~~(12)~~ (13) Individual shall include the estate of an incompetent or deceased individual;

~~(13)~~ (14) Notice shall have the same meaning as in section 21-2015;

~~(14)~~ (15) Person shall include individual and entity;

~~(15)~~ (16) Principal office shall mean the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;

~~(16)~~ (17) Proceeding shall include civil suit or action and criminal, administrative, and investigatory action;

~~(17)~~ (18) Record date shall mean the date established under sections 21-2035 to 21-2050 or 21-2051 to 21-2077 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the act. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;

~~(18)~~ (19) Secretary shall mean the corporate officer to whom the board of directors has delegated responsibility under subsection (3) of section 21-2097 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;

~~(19)~~ (20) Share shall mean the unit into which the proprietary interests in a corporation are divided;

~~(20)~~ (21) Shareholder shall mean the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;

~~(21)~~ (22) State, when referring to a part of the United States, shall include a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States;

~~(22)~~ (23) Subscriber shall mean a person who subscribes for shares in a corporation, whether before or after incorporation;

~~(23)~~ (24) United States shall include district, authority, bureau, commission, department, and any other agency of the United States; and

~~(24)~~ (25) Voting group shall mean all shares of one or more classes or series that under the articles of incorporation or the act are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or the act to vote generally on the matter are for that purpose a single voting group.

Sec. 3. Section 21-2015, Reissue Revised Statutes of Nebraska, is amended to read:

21-2015 (1) Notice under the Business Corporation Act shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.

(2) Notice may be communicated in person, by mail or other method of delivery, or by telephone, telegraph, teletype, or other form of wire or wireless communication, or by mail or private carrier, or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published or by radio, television, or other form of public broadcast communication.

(3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective (a) when mailed,

if mailed postage prepaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, or (b) when electronically transmitted to the shareholder in a manner authorized by the shareholder. Notice by a public corporation to its shareholder shall be effective if the notice is addressed to the shareholder or group of shareholders in a manner permitted by rules and regulations adopted and promulgated under the federal Securities Exchange Act of 1934 if the public corporation has first received affirmative written consent or implied consent required under such rules and regulations.

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office, shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(5) Except as provided in subsection (3) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:

(a) When received;

(b) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed; or

(c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice shall be effective when communicated if communicated in a comprehensible manner.

(7) If the act prescribes notice requirements for particular circumstances, those requirements shall govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of the act, those requirements shall govern.

Sec. 4. Section 21-2060, Reissue Revised Statutes of Nebraska, is amended to read:

21-2060 (1) A shareholder may vote his or her shares in person or by proxy.

(2) A shareholder or the shareholder's agent or attorney in fact may appoint a proxy to vote or otherwise act for ~~him or her~~ the shareholder by signing an appointment form ~~either personally or by his or her attorney in fact.~~ an electronic transmission. An electronic transmission shall contain or be accompanied by information from which one can determine that the shareholder or the shareholder's agent or attorney in fact authorized the transmission.

(3) An appointment of a proxy shall be effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the secretary or other officer or agent of the corporation authorized to tabulate votes. An appointment shall be valid for eleven months unless a longer period is expressly provided in the appointment form or electronic transmission.

(4) An appointment of a proxy shall be revocable by the shareholder unless the appointment form or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest shall include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended it credit under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under section 21-2068.

(5) The death or incapacity of the shareholder appointing a proxy shall not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises his or her authority under the appointment.

(6) An appointment made irrevocable under subsection (4) of this section shall be revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if he or she did not know of its existence when he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without

certificates.

(8) Subject to section 21-2062 and to any express limitation on the proxy's authority appearing on the face of the appointment form or electronic transmission, a corporation shall be entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Sec. 5. Section 21-20,186, Reissue Revised Statutes of Nebraska, is amended to read:

21-20,186 (1) A corporation shall furnish its shareholders annual financial statements which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of changes in shareholders' equity for that year unless such information appears elsewhere in the financial statements. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements shall also be prepared on that basis.

(2) If the annual financial statements are reported upon by a public accountant, the accountant's report shall accompany the financial statements. If not, the financial statements shall be accompanied by a statement of the president or the person responsible for the corporation's accounting records:

(a) Stating his or her reasonable belief whether the financial statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

(3) A corporation shall ~~mail~~ deliver the annual financial statements to each shareholder within one hundred twenty days after the close of each fiscal year. Thereafter, on written request from a shareholder who was not ~~mailed~~ delivered the statements, the corporation shall ~~mail~~ deliver to him or her the latest financial statements.

Sec. 6. Original sections 21-2003, 21-2014, 21-2015, 21-2060, and 21-20,186, Reissue Revised Statutes of Nebraska, are repealed.