

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 890

Introduced by Pirsch, 4.

Read first time January 09, 2012

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Nebraska Nonprofit Corporation Act; to
2 amend sections 21-1914 and 21-1915, Reissue Revised
3 Statutes of Nebraska; to provide for the electronic
4 transmission of notice as prescribed; to define a term;
5 and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 21-1914, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 21-1914 For purposes of the Nebraska Nonprofit
4 Corporation Act, unless the context otherwise requires:

5 (1) Approved by (or approval by) the members means
6 approved or ratified by the affirmative vote of a majority of the
7 votes represented and voting at a duly held meeting at which a quorum
8 is present (which affirmative votes also constitute a majority of the
9 required quorum) or by a written ballot, or written consent in
10 conformity with the act or by the affirmative vote, written ballot,
11 or written consent of such greater proportion, including the votes of
12 all the members of any class, unit, or grouping as may be provided in
13 the articles, bylaws, or the act for any specified member action;

14 (2) Articles of incorporation or articles include amended
15 and restated articles of incorporation and articles of merger;

16 (3) Board or board of directors means the board of
17 directors except that no person or group of persons are the board of
18 directors because of powers delegated to that person or group
19 pursuant to section 21-1968;

20 (4) Bylaws means the code or codes of rules (other than
21 the articles) adopted pursuant to the act for the regulation or
22 management of the affairs of the corporation irrespective of the name
23 or names by which such rules are designated;

24 (5) Class means a group of memberships which have the
25 same rights with respect to voting, dissolution, redemption, and

1 transfer. For purposes of this section, rights shall be considered
2 the same if they are determined by a formula applied uniformly;

3 (6) Corporation means a public benefit, a mutual benefit,
4 or a religious corporation;

5 (7) Delegate means a person elected or appointed to vote
6 in a representative assembly for the election of a director or
7 directors or on other matters;

8 (8) Deliver includes mail;

9 (9) Director means an individual, designated in the
10 articles or bylaws or elected by the incorporators, and his or her
11 successor and an individual elected or appointed by any other name or
12 title to act as a member of the board;

13 (10) Distribution means the payment of a dividend or any
14 part of the income or profit of a corporation to its members,
15 directors, or officers;

16 (11) Domestic corporation means a corporation;

17 (12) Effective date of notice has the same meaning as in
18 section 21-1915;

19 (13) Electronic transmission or electronically
20 transmitted means any process of communication not directly involving
21 the physical transfer of paper that is suitable for the retention,
22 retrieval, and reproduction of information by the recipient;

23 ~~(13)~~—(14) Employee does not include an officer or
24 director who is not otherwise employed by the corporation;

25 ~~(14)~~—(15) Entity includes corporation and foreign

1 corporation; business corporation and foreign business corporation;
2 profit and nonprofit unincorporated association; corporation sole;
3 business trust, estate, partnership, limited liability company,
4 registered limited liability partnership, trust, and two or more
5 persons having a joint or common economic interest; state or the
6 United States; and foreign government;

7 ~~(15)~~—(16) File, filed, or filing means filed in the
8 office of the Secretary of State;

9 ~~(16)~~—(17) Foreign corporation means a corporation
10 organized under a law other than the law of this state which would be
11 a nonprofit corporation if formed under the laws of this state;

12 ~~(17)~~—(18) Governmental subdivision includes authority,
13 county, district, and municipality;

14 ~~(18)~~—(19) Individual includes the estate of an
15 incompetent individual;

16 ~~(19)~~—(20) Member means (without regard to what a person
17 is called in the articles or bylaws) any person or persons who on
18 more than one occasion, pursuant to a provision of a corporation's
19 articles or bylaws, have the right to vote for the election of a
20 director or directors. The definition of member does not apply to a
21 corporation created for the collection of assessments under federally
22 mandated programs if the articles of such corporation provide that
23 the corporation shall not have members. A person is not a member by
24 virtue of any of the following:

25 (i) Any rights such person has as a delegate;

1 (ii) Any rights such person has to designate a director
2 or directors; or

3 (iii) Any rights such person has as a director;

4 ~~(20)~~(21) Membership means the rights and obligations a
5 member or members have pursuant to a corporation's articles, bylaws,
6 and the act;

7 ~~(21)~~(22) Mutual benefit corporation means a domestic
8 corporation which is formed as a mutual benefit corporation pursuant
9 to sections 21-1920 to 21-1926 or is required to be a mutual benefit
10 corporation pursuant to section 21-19,177;

11 ~~(22)~~(23) Notice has the same meaning as in section
12 21-1915;

13 ~~(23)~~(24) Person includes any individual or entity;

14 ~~(24)~~(25) Principal office means the office (in or out of
15 this state) so designated in the biennial report filed pursuant to
16 section 21-19,172 where the principal offices of a domestic or
17 foreign corporation is located;

18 ~~(25)~~(26) Proceeding includes civil, criminal,
19 administrative, and investigatory actions;

20 ~~(26)~~(27) Public benefit corporation means a domestic
21 corporation which is formed as a public benefit corporation pursuant
22 to sections 21-1920 to 21-1926 or is required to be a public benefit
23 corporation pursuant to section 21-19,177;

24 ~~(27)~~(28) Record date means the date established under
25 sections 21-1938 to 21-1950 or 21-1951 to 21-1967 on which a

1 corporation determines the identity of its members for the purposes
2 of the act;

3 ~~(28)~~—(29) Religious corporation means a domestic
4 corporation which is formed as a religious corporation pursuant to
5 sections 21-1920 to 21-1926 or is required to be a religious
6 corporation pursuant to section 21-19,177;

7 ~~(29)~~—(30) Secretary means the corporate officer to whom
8 the board of directors has delegated responsibility under subsection
9 (b) of section 21-1990 for custody of the minutes of the directors'
10 and members' meetings and for authenticating the records of the
11 corporation;

12 ~~(30)~~—(31) State, when referring to a part of the United
13 States, includes a state and commonwealth (and their agencies and
14 governmental subdivisions) and a territory and insular possession
15 (and their agencies and governmental subdivisions) of the United
16 States;

17 ~~(31)~~—(32) United States includes district, authority,
18 bureau, commission, department, and any other agency of the United
19 States;

20 ~~(32)~~—(33) Vote includes authorization by written ballot
21 and written consent; and

22 ~~(33)~~—(34) Voting power means the total number of votes
23 entitled to be cast for the election of directors at the time the
24 determination of voting power is made, excluding a vote which is
25 contingent upon the happening of a condition or event that has not

1 occurred at the time. Where a class is entitled to vote as a class
2 for directors, the determination of voting power of the class shall
3 be based on the percentage of the number of directors the class is
4 entitled to elect out of the total number of authorized directors.

5 Sec. 2. Section 21-1915, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 21-1915 (a) Notice may be oral or written.

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

16 (c) Oral notice is effective when communicated if
17 communicated in a comprehensible manner.

18 (d) Written notice, if in a comprehensible form, is
19 effective at the earliest of the following:

20 (1) When received;

21 (2) Five days after its deposit in the United States
22 mail, as evidenced by the postmark, if mailed correctly addressed and
23 with first-class postage affixed;

24 (3) On the date shown on the return receipt, if sent by
25 registered or certified mail, return receipt requested, and the

1 receipt is signed by or on behalf of the addressee; or

2 (4) Thirty days after its deposit in the United States
3 mail, as evidenced by the postmark, if mailed correctly addressed and
4 with other than first class, registered or certified postage affixed.

5 (e) Written notice is correctly addressed to a member of
6 a domestic or foreign corporation if addressed to the member's
7 address shown in the corporation's current list of members.

8 (f) A written notice or report delivered as part of a
9 newsletter, magazine, or other publication regularly sent to members
10 shall constitute a written notice or report (1) if addressed or
11 delivered to the member's address shown in the corporation's current
12 list of members, ~~or~~ (2) in the case of members who are residents of
13 the same household and who have the same address in the corporation's
14 current list of members, if addressed or delivered to one of such
15 members at the address appearing on the current list of members, or
16 (3) if electronically transmitted to a member in a manner authorized
17 by the member.

18 (g) Written notice is correctly addressed to a domestic
19 or foreign corporation (authorized to transact business in this
20 state), other than in its capacity as a member, if addressed to its
21 registered agent or to its secretary at its principal office shown in
22 its most recent biennial report or, in the case of a foreign
23 corporation that has not yet delivered a biennial report, in its
24 application for a certificate of authority.

25 (h) If any other provision of the Nebraska Nonprofit

1 Corporation Act prescribes notice requirements for particular
2 circumstances, such as subsection (b) of section 21-1955, those
3 requirements govern. If articles or bylaws prescribe notice
4 requirements not inconsistent with this section or other provisions
5 of the Nebraska Nonprofit Corporation Act, those requirements govern.

6 Sec. 3. Original sections 21-1914 and 21-1915, Reissue
7 Revised Statutes of Nebraska, are repealed.