

LEGISLATIVE BILL 35

Approved by the Governor April 27, 2017

Introduced by Harr, 8.

A BILL FOR AN ACT relating to corporations; to amend sections 21-201, 21-214, 21-217, 21-220, 21-254, 21-255, 21-264, 21-265, 21-266, 21-271, 21-275, 21-283, 21-285, 21-2,103, 21-2,113, 21-2,114, 21-2,120, 21-2,123, 21-2,124, 21-2,171, 21-2,172, 21-2,173, 21-2,197, 21-2,201, and 21-2,222, Revised Statutes Cumulative Supplement, 2016; to change provisions relating to the Nebraska Model Business Corporation Act; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. Section 21-201, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-201 (MBCA 1.01) Sections 21-201 to 21-2,232 and section 11 of this act shall be known and may be cited as the Nebraska Model Business Corporation Act.

Sec. 2. Section 21-214, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-214 (MBCA 1.40) In the Nebraska Model Business Corporation Act:

(1) Articles of incorporation means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the Secretary of State under any provision of the act except section 21-2,228. If an amendment of the articles or any other document filed under the act restates the articles in their entirety, thenceforth the articles shall not include any prior documents.

(2) Authorized shares means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) Beneficial shareholder means a person who owns the beneficial interest in shares, which may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(4) ~~(3)~~ Conspicuous means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text in italics, boldface, contrasting color, capitals, or underlined, is conspicuous.

(5) ~~(4)~~ Corporation, domestic corporation, or domestic business corporation means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of the act.

(6) ~~(5)~~ Deliver or delivery means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in accordance with section 21-215, by electronic transmission.

(7) ~~(6)~~ Distribution means a direct or indirect transfer of money or other property, except its own shares, or incurrance 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.

(8) ~~(7)~~ Document means (i) any tangible medium on which information is inscribed, and includes any writing or written instrument, or (ii) an electronic record.

(9) ~~(8)~~ Domestic unincorporated entity means an unincorporated entity whose internal affairs are governed by the laws of this state.

(10) ~~(9)~~ Effective date of notice is defined in section 21-215.

(11) ~~(10)~~ Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(12) ~~(11)~~ Electronic record means information that is stored in an electronic or other medium and is retrievable in paper form through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection (k) of section 21-215.

(13) ~~(12)~~ Electronic transmission or electronically transmitted means any form or process of communication not directly involving the physical transfer of paper or another tangible medium, which (i) is suitable for the retention, retrieval, and reproduction of information by the recipient and (ii) is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized in accordance with subsection (k) of section 21-215.

(14) ~~(13)~~ Eligible entity means a domestic or foreign unincorporated entity or a domestic or foreign nonprofit corporation.

(15) ~~(14)~~ Eligible interests means interests or memberships.

(16) ~~(15)~~ Employee includes an officer but not a director. A director may accept duties that make the director also an employee.

(17) ~~(16)~~ Entity includes domestic and foreign business corporation; domestic and foreign nonprofit corporation; limited liability company; estate; trust; domestic and foreign unincorporated entity; and state, United States,

and foreign government.

~~(18)~~ ~~(17)~~ The phrase facts objectively ascertainable outside of a filed document or plan is defined in subsection (k) of section 21-203.

~~(19)~~ ~~(18)~~ Expenses means reasonable expenses of any kind that are incurred in connection with a matter.

~~(20)~~ ~~(19)~~ Filing entity means an unincorporated entity that is of a type that is created by filing a public organic document.

~~(21)~~ ~~(20)~~ Foreign corporation means a corporation incorporated under a law other than the law of this state which would be a business corporation if incorporated under the laws of this state.

~~(22)~~ ~~(21)~~ Foreign nonprofit corporation means a corporation incorporated under a law other than the law of this state which would be a nonprofit corporation if incorporated under the laws of this state.

~~(23)~~ ~~(22)~~ Foreign unincorporated entity means an unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state.

~~(24)~~ ~~(23)~~ Governmental subdivision includes authority, county, district, and municipality.

~~(25)~~ ~~(24)~~ Includes denotes a partial definition.

~~(26)~~ ~~(25)~~ Individual means a natural person.

~~(27)~~ ~~(26)~~ Interest means either or both of the following rights under the organic law of an unincorporated entity:

(i) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or

(ii) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs.

~~(28)~~ ~~(27)~~ Interest holder means a person who holds of record an interest.

~~(29)~~ ~~(28)~~ Means denotes an exhaustive definition.

~~(30)~~ ~~(29)~~ Membership means the rights of a member in a domestic or foreign nonprofit corporation.

~~(31)~~ ~~(30)~~ Nonfiling entity means an unincorporated entity that is of a type that is not created by filing a public organic document.

~~(32)~~ ~~(31)~~ Nonprofit corporation or domestic nonprofit corporation means a corporation incorporated under the laws of this state and subject to the provisions of the Nebraska Nonprofit Corporation Act.

~~(33)~~ ~~(32)~~ Notice is defined in section 21-215.

~~(34)~~ ~~(33)~~ Organic document means a public organic document or a private organic document.

~~(35)~~ ~~(34)~~ Organic law means the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity.

~~(36)~~ ~~(35)~~ Owner liability means personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:

(i) Solely by reason of the person's status as a shareholder, member, or interest holder; or

(ii) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity.

~~(37)~~ ~~(36)~~ Person includes an individual and an entity.

~~(38)~~ ~~(37)~~ Principal office means the office, in or out of this state, so designated in the biennial report where the principal executive offices of a domestic or foreign corporation are located.

~~(39)~~ ~~(38)~~ Private organic document means any document, other than the public organic document, if any, that determines the internal governance of an unincorporated entity. Where a private organic document has been amended or restated, the term means the private organic document as last amended or restated.

~~(40)~~ ~~(39)~~ Public organic document means the document, if any, that is filed of public record to create an unincorporated entity. Where a public organic document has been amended or restated, the term means the public organic document as last amended or restated.

~~(41)~~ ~~(40)~~ Proceeding includes civil suit and criminal, administrative, and investigatory action.

~~(42)~~ ~~(41)~~ Public corporation means a corporation that has shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities association.

~~(43)~~ ~~(42)~~ Qualified director is defined in section 21-217.

~~(44)~~ ~~(43)~~ Record date means the date established under sections 21-237 to 21-252 or 21-253 to 21-283 on which a corporation determines the identity of its shareholders and their shareholdings for purposes of the Nebraska Model Business Corporation 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.

~~(45)~~ Record shareholder means (i) the person in whose name shares are registered in the records of the corporation or (ii) the person identified as the beneficial owner of shares in a beneficial ownership certificate pursuant to section 21-265 on file with the corporation to the extent of the rights granted by such certificate.

(46) ~~(44)~~ Secretary means the corporate officer to whom the board of directors has delegated responsibility under subsection (c) of section 21-2,105 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(47) ~~(45)~~ Shareholder means, unless varied for purposes of a specific provision, a record shareholder 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.

(48) ~~(46)~~ Shares means the units into which the proprietary interests in a corporation are divided.

(49) ~~(47)~~ Sign or signature means, with present intent to authenticate or adopt a document:

(i) To execute or adopt a tangible symbol to a document, and includes any manual, facsimile, or conformed signature; or

(ii) To attach to or logically associate with an electronic transmission an electronic sound, symbol, or process, and includes an electronic signature in an electronic transmission.

(50) ~~(48)~~ State, when referring to a part of the United States, includes 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.

(51) ~~(49)~~ Subscriber means a person who subscribes for shares in a corporation, whether before or after incorporation.

(52) ~~(50)~~ Unincorporated entity means an organization or artificial legal person that either has a separate legal existence or has the power to acquire an estate in real property in its own name and that is not any of the following: A domestic or foreign business or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign government. The term includes a general partnership, limited liability company, limited partnership, business trust, joint stock association, and unincorporated nonprofit association.

(53) ~~(51)~~ United States includes district, authority, bureau, commission, department, and any other agency of the United States.

(54) ~~(52)~~ Voting group means 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.

(55) ~~(53)~~ Voting power means the current power to vote in the election of directors.

(56) Voting trust beneficial owner means an owner of a beneficial interest in shares of the corporation held in a voting trust established pursuant to subsection (a) of section 21-272. Unrestricted voting trust beneficial owner means, with respect to any shareholder rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in question is not inconsistent with the voting trust agreement.

(57) ~~(54)~~ Writing or written means any information in the form of a document.

Sec. 3. Section 21-217, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-217 (MBCA 1.43) (a) A qualified director is a director who, at the time action is to be taken under:

(1) Section 21-279, does not have (i) a material interest in the outcome of the proceeding or (ii) a material relationship with a person who has such an interest;

(2) Section 21-2,113 or 21-2,115, (i) is not a party to the proceeding, (ii) is not a director as to whom a transaction is a director's conflicting interest transaction or who sought a disclaimer of the corporation's interest in a business opportunity under section 21-2,124, which transaction or disclaimer is challenged in the proceeding, and (iii) does not have a material relationship with a director described in either subdivision (a)(2)(i) or (ii) of this section;

(3) Section 21-2,122, is not a director (i) as to whom the transaction is a director's conflicting interest transaction or (ii) who has a material relationship with another director as to whom the transaction is a director's conflicting interest transaction; ~~or~~

(4) Section 21-2,124, would be a qualified director under subdivision (a) (3) of this section if the business opportunity were a director's conflicting interest transaction; ~~or~~

(5) Subdivision (b)(6) of section 21-220, is not a director (i) to whom the limitation or elimination of the duty of an officer to offer potential business opportunities to the corporation would apply or (ii) who has a material relationship with another officer to whom the limitation or elimination would apply.

(b) For purposes of this section:

(1) Material relationship means a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken; and

(2) Material interest means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

(c) The presence of one or more of the following circumstances shall not

automatically prevent a director from being a qualified director:

(1) Nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter or by any person that has a material relationship with that director, acting alone or participating with others;

(2) Service as a director of another corporation of which a director who is not a qualified director with respect to the matter, or any individual who has a material relationship with that director, is or was also a director; or

(3) With respect to action to be taken under section 21-279, status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

Sec. 4. Section 21-220, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-220 (MBCA 2.02) (a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 21-230;

(2) The number of shares the corporation is authorized to issue and, if such shares are to consist of one class only, the par value of each of such shares or, if such shares are to be divided into classes, the number of shares of each class and a statement of the par value of the shares of each such class;

(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office. A post office box number may be provided in addition to the street address;

(4) The name and address of each incorporator; and

(5) Any provision limiting or eliminating the requirement to hold an annual meeting of the shareholders if the corporation is registered or intends to register as an investment company under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq. The provision is not effective if such corporation does not become or ceases to be so registered.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;

(2) Provisions not inconsistent with law regarding:

(i) The purpose or purposes for which the corporation is organized;

(ii) Managing the business and regulating the affairs of the corporation;

(iii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(iv) A par value for authorized shares or classes of shares; or

(v) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;

(3) Any provision that under the Nebraska Model Business Corporation Act is required or permitted to be set forth in the bylaws;

(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, except liability for (i) the amount of a financial benefit received by a director to which the director is not entitled, (ii) an intentional infliction of harm on the corporation or the shareholders, (iii) a violation of section 21-2,104, or (iv) an intentional violation of criminal law; ~~and~~

(5) A provision permitting or making obligatory indemnification of a director for liability, as defined in subdivision (3) of section 21-2,110, to any person for any action taken, or any failure to take any action, as a director, except liability for (i) receipt of a financial benefit to which the director is not entitled, (ii) an intentional infliction of harm on the corporation or its shareholders, (iii) a violation of section 21-2,104, or (iv) an intentional violation of criminal law; ~~and~~

(6) A provision limiting or eliminating any duty of a director or any other person to offer the corporation the right to have or participate in any, or one or more classes or categories of, business opportunities, prior to the pursuit or taking of the opportunity by the director or other person. Any application of such a provision to an officer or a related person of that officer (i) also requires a determination by the board of directors by action of qualified directors taken in compliance with the same procedures as are set forth in section 21-2,122 subsequent to the effective date of the provision applying the provision to a particular officer or any related person of that officer, and (ii) may be limited by the authorizing action of the board.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in the Nebraska Model Business Corporation Act.

(d) Provisions of the articles of incorporation may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with subsection (k) of section 21-203.

(e) As used in this section, related person has the meaning specified in section 21-2,120.

Sec. 5. Section 21-254, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-254 (MBCA 7.02) (a) A corporation shall hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) If shareholders holding the holders of at least ten percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation one or more written

demands for the meeting describing the purpose or purposes for which it is to be held, except that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding twenty-five percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(b) If not otherwise fixed under section 21-255 or 21-259, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by subsection (c) of section 21-257 may be conducted at a special shareholders' meeting.

Sec. 6. Section 21-255, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-255 (MBCA 7.03) (a) The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation, ~~entitled to participate in an annual meeting~~ if an annual meeting was not held or action by written consent in lieu thereof did not become effective within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) On application of a shareholder who signed a demand for a special meeting valid under section 21-254, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date or dates for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

(c) For purposes of subdivision (a)(1) of this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Sec. 7. Section 21-264, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-264 (MBCA 7.22) (a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) A shareholder, or the shareholder's agent or attorney-in-fact, may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which the recipient can determine the date of the transmission and that the transmission was authorized by the sender or the sender's agent or attorney-in-fact.

(c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to count tabulate votes. An appointment is valid for the term eleven months unless a longer period is expressly provided in the appointment form and, if no term is provided, is valid for eleven months unless the appointment is irrevocable under subsection (d) of this section.

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

(1) A pledgee;

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

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

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

(5) A party to a voting agreement created under section 21-273.

(e) The death or incapacity of the shareholder appointing a proxy does 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 count tabulate votes before the proxy exercises authority under the appointment.

(f) An appointment made irrevocable under subsection (d) of this section is revoked when the interest with which it is coupled is extinguished.

(g) Unless it otherwise provides, an appointment made irrevocable under subsection (d) of this section continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a A transferee for value of shares subject to an irrevocable appointment may revoke

the appointment if the transferee did not know of its existence when acquiring 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.

(h) Subject to section 21-266 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Sec. 8. Section 21-265, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-265 (MBCA 7.23) (a) A corporation's board of directors corporation may establish a procedure under by which a person on whose behalf the beneficial owner of shares that are registered in the name of an intermediary or a nominee may elect to be treated is recognized by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The extent, terms, conditions, and limitations of this treatment shall be specified in the procedure. To the extent such person is treated under such procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder shall not have those rights or privileges of this recognition may be determined in the procedure.

(b) The procedure shall specify may set forth:

(1) The types of intermediaries or nominees to which it applies;

(2) The rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed owner;

(3) The manner in which the procedure is selected, which shall include that the beneficial ownership certificate be signed or assented to by or on behalf of the record shareholder and the person or persons on whose behalf the shares are held by the nominee;

(4) The information that must be provided when the procedure is selected;

(5) The period for which selection of the procedure is effective; and

(6) Requirements for notice to the corporation with respect to the arrangement; and other

(7) The form and contents of the beneficial ownership certificate.

(c) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

Sec. 9. Section 21-266, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-266 (MBCA 7.24) (a) If the name signed on a vote, ballot, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

(b) If the name signed on a vote, ballot, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, ballot, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;

(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment;

(4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, or proxy appointment; or

(5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(c) The corporation is entitled to reject a vote, ballot, consent, waiver, or proxy appointment if the person secretary or other officer or agent authorized to count tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(d) Neither the corporation nor the person authorized to count votes, including an inspector of election under section 21-271, that The corporation and its officer or agent who accepts or rejects a vote, ballot, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or subsection (b) of section 21-264 is are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(f) If an inspector of election has been appointed under section 21-271, the inspector of election also has the authority to request information and make determinations under subsections (a), (b), and (c) of this section. Any

determination made by the inspector of election under those subsections is controlling.

Sec. 10. Section 21-271, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-271 (MBCA 7.29) (a) A public corporation shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results and make a written report of the inspectors' determinations. Each inspector shall certify in writing that the inspector will take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may appoint or retain other persons to assist the inspectors in the performance of the duties of inspector under subsection (b) of this section, and may rely on information provided by such persons and other persons, including those appointed to count votes, unless the inspectors believe reliance is unwarranted.

(b) The inspectors shall:

(1) Ascertain the number of shares outstanding and the voting power of each;

(2) Determine the shares represented at a meeting;

(3) Determine the validity of proxy appointments proxies and ballots;

(4) Count the all votes; and

(5) Make a written report of the results Determine the result.

(c) In performing their duties, the inspectors may examine (1) the proxy appointment forms and any other information provided in accordance with subsection (b) of section 21-264, (2) any envelope or related writing submitted with those appointment forms, (3) any ballots, (4) any evidence or other information specified in section 21-266, and (5) the relevant books and records of the corporation relating to its shareholders and their entitlement to vote, including any securities position list provided by a depository clearing agency. An inspector may be an officer or employee of the corporation.

(d) The inspectors also may consider other information that they believe is relevant and reliable for the purpose of performing any of the duties assigned to them pursuant to subsection (b) of this section, including for the purpose of evaluating inconsistent, incomplete, or erroneous information and reconciling information submitted on behalf of banks, brokers, their nominees, or similar persons that indicates more votes being cast than a proxy is authorized by the record shareholder to cast or more votes being cast than the record shareholder is entitled to cast. If the inspectors consider other information allowed by this subsection, they shall, in their report under subsection (b) of this section, specify the information considered by them, including the purpose or purposes for which the information was considered, the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is relevant and reliable.

(e) Determinations of law by the inspectors of election are subject to de novo review by a court in a proceeding under section 11 of this act or other judicial proceeding.

Sec. 11. (MBCA 7.29A) (a) Upon application of or in a proceeding commenced by a person specified in subsection (b) of this section, the district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may determine:

(1) The validity of the election, appointment, removal, or resignation of a director or officer of the corporation;

(2) The right of an individual to hold the office of director or officer of the corporation;

(3) The result or validity of an election or vote by the shareholders of the corporation;

(4) The right of a director to membership on a committee of the board of directors; and

(5) The right of a person to nominate or an individual to be nominated as a candidate for election or appointment as a director of the corporation, and any right under a bylaw adopted pursuant to subsection (c) of section 21-224 or any comparable right under any provision of the articles of incorporation, contract, or applicable law.

(b) An application or proceeding pursuant to subsection (a) of this section may be filed or commenced by any of the following persons:

(1) The corporation;

(2) Any record shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner of the corporation;

(3) A director of the corporation, an individual claiming the office of director, or a director whose membership on a committee of the board of directors is contested, in each case who is seeking a determination of his or her right to such office or membership;

(4) An officer of the corporation or an individual claiming to be an officer of the corporation, in each case who is seeking a determination of his or her right to such office; and

(5) A person claiming a right covered by subdivision (a)(5) of this section and who is seeking a determination of such right.

(c) In connection with any application or proceeding under subsection (a) of this section, the following shall be named as defendants, unless such person made the application or commenced the proceeding:

(1) The corporation;

(2) Any individual whose right to office or membership on a committee of the board of directors is contested;

(3) Any individual claiming the office or membership at issue; and

(4) Any person claiming a right covered by subdivision (a)(5) of this section that is at issue.

(d) In connection with any application or proceeding under subsection (a) of this section, service of process may be made upon each of the persons specified in subsection (c) of this section either by:

(1) Serving on the corporation process addressed to such person in any manner provided by statute of this state or by rule of the applicable court for service on the corporation; or

(2) Service of process on such person in any manner provided by statute of this state or by rule of the applicable court.

(e) When service of process is made upon a person other than the corporation by service upon the corporation pursuant to subdivision (d)(1) of this section, the plaintiff and the corporation or its registered agent shall promptly provide written notice of such service, together with copies of all process and the application or complaint, to such person at the person's last-known residence or business address, or as permitted by statute of this state or by rule of the applicable court.

(f) In connection with any application or proceeding under subsection (a) of this section, the court shall dispose of the application or proceeding on an expedited basis and also may:

(1) Order such additional or further notice as the court deems proper under the circumstances;

(2) Order that additional persons be joined as parties to the proceeding if the court determines that such joinder is necessary for a just adjudication of matters before the court;

(3) Order an election or meeting be held in accordance with the provisions of subsection (b) of section 21-255 or otherwise;

(4) Appoint a master to conduct an election or meeting;

(5) Enter temporary, preliminary, or permanent injunctive relief;

(6) Resolve solely for the purpose of this proceeding any legal or factual issues necessary for the resolution of any of the matters specified in subsection (a) of this section, including the right and power of persons claiming to own shares to vote at any meeting of the shareholders; and

(7) Order such other relief as the court determines is equitable, just, and proper.

(g) It is not necessary to make shareholders parties to a proceeding or application pursuant to this section unless the shareholder is a required defendant under subdivision (c)(4) of this section, relief is sought against the shareholder individually, or the court orders joinder pursuant to subdivision (f)(2) of this section.

(h) Nothing in this section limits, restricts, or abolishes the subject matter jurisdiction or powers of the court as they existed prior to the enactment of this section, and an application or proceeding pursuant to this section is not the exclusive remedy or proceeding available with respect to the matters specified in subsection (a) of this section.

Sec. 12. Section 21-275, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-275 (MBCA 7.40) In sections 21-275 to 21-282:

(1) Derivative proceeding means a civil suit in the right of a domestic corporation or, to the extent provided in section 21-282, in the right of a foreign corporation.

(2) Shareholder means includes a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

Sec. 13. Section 21-283, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-283 (MBCA 7.48) (a) The court may appoint one or more persons to be custodians, or, if the corporation is insolvent, to be receivers, of and for a corporation in a proceeding by a shareholder when it is established that:

(1) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered; or

(2) The directors or those in control of the corporation are acting fraudulently and irreparable injury to the corporation is threatened or being suffered.

(b) The court:

(1) May issue injunctions, appoint a temporary custodian or temporary receiver with all the powers and duties the court directs, take other action to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing is held;

(2) Shall hold a full hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a custodian or receiver; and

(3) Has jurisdiction over the corporation and all of its property, wherever located.

(c) The court may appoint an individual or domestic or foreign corporation, authorized to transact business in this state, as a custodian or receiver and may require the custodian or receiver to post bond, with or without sureties, in an amount the court directs.

(d) The court shall describe the powers and duties of the custodian or receiver in its appointing order, which may be amended from time to time. Among other powers:

(1) A custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the business and affairs of the corporation; and

(2) A receiver (i) may dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court and (ii) may sue and defend in the receiver's own name as receiver in all courts of this state.

(e) The court during a custodianship may redesignate the custodian a receiver, and during a receivership may redesignate the receiver a custodian, if doing so is in the best interests of the corporation.

(f) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to the custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

(g) In this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner.

Sec. 14. Section 21-285, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-285 (MBCA 8.02)(a) The articles of incorporation or bylaws may prescribe qualifications for directors or for nominees for directors. Qualifications must be reasonable as applied to the corporation and must be lawful.

(b) A requirement that is based on a past, current, or prospective action, or expression of an opinion, by a nominee or director that could limit the ability of a nominee or director to discharge his or her duties as a director is not a permissible qualification under this section. Notwithstanding the foregoing, qualifications may include not being or having been subject to specified criminal, civil, or regulatory sanctions or not having been removed as a director by judicial action or for cause.

(c) A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

(d) A qualification for nomination for director prescribed before a person's nomination shall apply to such person at the time of nomination. A qualification for nomination for director prescribed after a person's nomination shall not apply to such person with respect to such nomination.

(e) A qualification for director prescribed before the start of a director's term may apply only at the time an individual becomes a director or may apply during a director's term. A qualification prescribed during a director's term shall not apply to that director before the end of that term.

Sec. 15. Section 21-2,103, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,103 (MBCA 8.31) (a) A director shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as a director unless the party asserting liability in a proceeding establishes that:

(1) No defense interposed by the director based on (i) any provision in the articles of incorporation authorized by subdivision (b)(4) or (6) of section 21-220, (ii) the protection afforded by section 21-2,121 for action taken in compliance with section 21-2,122 or 21-2,123, or (iii) the protection afforded by section 21-2,124, precludes liability; and

(2) The challenged conduct consisted or was the result of:

(i) Action not in good faith;

(ii) A decision:

(A) Which the director did not reasonably believe to be in the best interests of the corporation; or

(B) As to which the director was not informed to an extent the director reasonably believed appropriate in the circumstances;

(iii) A lack of objectivity due to the director's familial, financial, or business relationship with, or a lack of independence due to the director's domination or control by, another person having a material interest in the challenged conduct:

(A) Which relationship or which domination or control could reasonably be expected to have affected the director's judgment respecting the challenged conduct in a manner adverse to the corporation; and

(B) After a reasonable expectation to such effect has been established, the director shall not have established that the challenged conduct was reasonably believed by the director to be in the best interests of the corporation;

(iv) A sustained failure of the director to devote attention to ongoing oversight of the business and affairs of the corporation or a failure to devote timely attention by making, or causing to be made, appropriate inquiry when particular facts and circumstances of significant concern materialize that would alert a reasonably attentive director to the need therefor; or

(v) Receipt of a financial benefit to which the director was not entitled or any other breach of the director's duties to deal fairly with the corporation and its shareholders that is actionable under applicable law.

(b) The party seeking to hold the director liable:

(1) For money damages shall also have the burden of establishing that:

(i) Harm to the corporation or its shareholders has been suffered; and

(ii) The harm suffered was proximately caused by the director's challenged

conduct;

(2) For other money payment under a legal remedy, such as compensation for the unauthorized use of corporate assets, shall also have whatever persuasion burden may be called for to establish that the payment sought is appropriate in the circumstances; or

(3) For other money payment under an equitable remedy, such as profit recovery by or disgorgement to the corporation, shall also have whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate in the circumstances.

(c) Nothing contained in this section shall (1) in any instance where fairness is at issue, such as consideration of the fairness of a transaction to the corporation under subdivision (b)(3) of section 21-2,121, alter the burden of proving the fact or lack of fairness otherwise applicable, (2) alter the fact or lack of liability of a director under another section of the Nebraska Model Business Corporation Act, such as the provisions governing the consequences of an unlawful distribution under section 21-2,104 or a transactional interest under section 21-2,121, or (3) affect any rights to which the corporation or a shareholder may be entitled under another statute of this state or the United States.

Sec. 16. Section 21-2,113, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,113 (MBCA 8.53) (a) A corporation may, before final disposition of a proceeding, advance funds to pay for or reimburse expenses incurred in connection with the proceeding by an individual who is a party to the proceeding because that individual is a member of the board of directors if the director delivers to the corporation a ÷

~~(1) A signed written affirmation of the director's good faith belief that the relevant standard of conduct described in section 21-2,111 has been met by the director or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by subdivision (b)(4) of section 21-220; and~~

~~(2) A signed written undertaking of the director to repay any funds advanced (1) if the director is not entitled to mandatory indemnification under section 21-2,112 and (2) it is ultimately determined under section 21-2,114 or 21-2,115 that the director is not entitled to indemnification has not met the relevant standard of conduct described in section 21-2,111.~~

(b) The undertaking required by subdivision (a) ~~(a)(2)~~ of this section must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(i) If there are two or more qualified directors, by a majority vote of all the qualified directors, a majority of whom shall for such purpose constitute a quorum, or by a majority of the members of a committee consisting solely of two or more qualified directors appointed by such a vote; or

(ii) If there are fewer than two qualified directors, by the vote necessary for action by the board in accordance with subsection (c) of section 21-299, in which authorization directors who are not qualified directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

Sec. 17. Section 21-2,114, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,114 (MBCA 8.54) (a) A director who is a party to a proceeding because he or she is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(1) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section 21-2,112;

(2) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by subsection (a) of section 21-2,118; or

(3) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(i) To indemnify the director; or

(ii) To advance expenses to the director, even if, in the case of subdivision (a)(3)(i) or (ii) of this section he or she has not met the relevant standard of conduct set forth in subsection (a) of section 21-2,111, failed to comply with section 21-2,113, or was adjudged liable in a proceeding referred to in subdivision (d)(1) or (2) of section 21-2,111, but if the director was adjudged so liable indemnification shall be limited to expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification under subdivision (a)(1) of this section or to indemnification or advance for expenses under subdivision (a)(2) of this section, it shall also order the corporation to pay the director's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subdivision (a)(3) of this section, it may also order the corporation to pay the director's expenses to obtain court-ordered

indemnification or advance for expenses.

Sec. 18. Section 21-2,120, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,120 (MBCA 8.60) In sections 21-2,120 to 21-2,123:

(1) Director's conflicting interest transaction means a transaction effected or proposed to be effected by the corporation or by an entity controlled by the corporation:

(i) To which, at the relevant time, the director is a party;

(ii) Respecting which, at the relevant time, the director had knowledge and a material financial interest known to the director; or

(iii) Respecting which, at the relevant time, the director knew that a related person was a party or had a material financial interest.

(2) Control, including the term controlled by, means (i) having the power, directly or indirectly, to elect or remove a majority of the members of the board of directors or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or (ii) being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

(3) Relevant time means (i) the time at which directors' action respecting the transaction is taken in compliance with section 21-2,122, or (ii) if the transaction is not brought before the board of directors of the corporation, or its committee, for action under section 21-2,122, at the time the corporation, or an entity controlled by the corporation, becomes legally obligated to consummate the transaction.

(4) Material financial interest means a financial interest in a transaction that would reasonably be expected to impair the objectivity of the director's judgment when participating in action on the authorization of the transaction.

(5) Related person means:

(i) The individual's director's spouse;

(ii) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half-sibling, aunt, uncle, niece, or nephew, or spouse of any thereof, of the individual director or of the individual's director's spouse;

(iii) A natural person An ~~individual~~ living in the same home as the individual director;

(iv) An entity, other than the corporation or an entity controlled by the corporation, controlled by the individual director or any person specified in subdivisions (5)(i) through (iii) of this section;

(v) A domestic or foreign (A) business or nonprofit corporation, other than the corporation or an entity controlled by the corporation, of which the individual director is a director, (B) unincorporated entity of which the individual director is a general partner or a member of the governing body, or (C) individual, trust, or estate for whom or of which the individual director is a trustee, guardian, personal representative, or like fiduciary; or

(vi) A person that is, or an entity that is controlled by, an employer of the individual director.

(6) Fair to the corporation means, for purposes of subdivision (b)(3) of section 21-2,121, that the transaction as a whole was beneficial to the corporation, taking into appropriate account whether it was (i) fair in terms of the director's dealings with the corporation and (ii) comparable to what might have been obtainable in an arm's length transaction, given the consideration paid or received by the corporation.

(7) Required disclosure means disclosure of (i) the existence and nature of the director's conflicting interest and (ii) all facts known to the director respecting the subject matter of the transaction that a director free of such conflicting interest would reasonably believe to be material in deciding whether to proceed with the transaction.

Sec. 19. Section 21-2,123, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,123 (MBCA 8.63) (a) Shareholders' action respecting a director's conflicting interest transaction is effective for purposes of subdivision (b) (2) of section 21-2,121 if a majority of the votes cast by the holders of all qualified shares are in favor of the transaction after (1) notice to shareholders describing the action to be taken respecting the transaction, (2) provision to the corporation of the information referred to in subsection (b) of this section, and (3) communication to the shareholders entitled to vote on the transaction of the information that is the subject of required disclosure to the extent the information is not known by them. In the case of shareholders' action at a meeting, the shareholders entitled to vote shall be determined as of the record date for notice of the meeting.

(b) A director who has a conflicting interest respecting the transaction shall, before the shareholders' vote, inform the secretary or other officer or agent of the corporation authorized to count ~~tabulate~~ votes, in writing, of the number of shares that the director knows are not qualified shares under subsection (c) of this section and the identity of the holders of those shares.

(c) For purposes of this section: (1) Holder means and held by refers to shares held by both a record shareholder, as ~~defined in subdivision (8) of section 21-2,171,~~ and a beneficial shareholder, and an unrestricted voting trust beneficial owner as ~~defined in subdivision (2) of section 21-2,171;~~ and (2) qualified shares means all shares entitled to be voted with respect to the transaction except for shares that the secretary or other officer or agent of the corporation authorized to count ~~tabulate~~ votes either knows, or under

subsection (b) of this section is notified, are held by (i) a director who has a conflicting interest respecting the transaction or (ii) a related person of the director, excluding a person described in subdivision (5)(vi) of section 21-2,120.

(d) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of compliance with this section. Subject to subsection (e) of this section, shareholders' action that otherwise complies with this section is not affected by the presence of holders, or by the voting, of shares that are not qualified shares.

(e) If a shareholders' vote does not comply with subsection (a) of this section solely because of a director's failure to comply with subsection (b) of this section and if the director establishes that the failure was not intended to influence and did not in fact determine the outcome of the vote, the court may take such action respecting the transaction and the director and may give such effect, if any, to the shareholders' vote as the court considers appropriate in the circumstances.

(f) When shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by reason of the articles of incorporation or the bylaws or a provision of law, independent action to satisfy those authorization requirements must be taken by the shareholders in which action shares that are not qualified shares may participate.

Sec. 20. Section 21-2,124, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,124 (MBCA 8.70) (a) If a director or officer pursues or takes A director's taking advantage, directly or indirectly, of a business opportunity, directly, or indirectly through or on behalf of another person, that action may not be the subject of equitable relief or give rise to an award of damages or other sanctions against the director, officer, or other person in a proceeding by or in the right of the corporation on the ground that the such opportunity should have first been offered to the corporation if:

(1) Before the director, officer, or other person becomes before becoming legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either:

(i) (1) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 21-2,122, as if the decision being made concerned a director's conflicting interest transaction; or

(ii) (2) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in section 21-2,123; in either case, as if the decision being made concerned a director's conflicting interest transaction, except that, rather than making required disclosure as defined in section 21-2,120, in each case the director or officer shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director or officer; or

(2) The duty to offer the corporation the business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted, and where required, made effective by action of qualified directors, in accordance with subdivision (b)(6) of section 21-220.

(b) In any proceeding seeking equitable relief or other remedies based upon an alleged improper pursuit or taking advantage of a business opportunity by a director or officer, directly, or indirectly through or on behalf of another person, the fact that the director or officer did not employ the procedure described in subdivision (a)(1)(i) or (ii) subsection (a) of this section before pursuing or taking advantage of the opportunity shall not create an implication inference that the opportunity should have been first presented to the corporation or alter the burden of proof otherwise applicable to establish that the director or officer breached a duty to the corporation in the circumstances.

Sec. 21. Section 21-2,171, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,171 (MBCA 13.01) In sections 21-2,171 to 21-2,183:

(1) Affiliate means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of subdivision (5) (6) of this section, a person is deemed to be an affiliate of its senior executives.

~~(2) Beneficial shareholder means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.~~

(2) (3) Corporation means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in sections 21-2,176 to 21-2,182, includes the surviving entity in a merger.

(3) (4) Fair value means the value of the corporation's shares determined:
(i) Immediately before the effectuation of the corporate action to which the shareholder objects;

(ii) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal; and

(iii) Without discounting for lack of marketability or minority status except, if appropriate, for amendments to the articles pursuant to subdivision (a)(5) of section 21-2,172.

(4) (5) Interest means interest from the effective date of the corporate

action until the date of payment at the rate of interest specified in section 45-104, as such rate may from time to time be adjusted by the Legislature.

(5) ~~(6)~~ Interested transaction means a corporate action described in subsection (a) of section 21-2,172, other than a merger pursuant to section 21-2,165, involving an interested person in which any of the shares or assets of the corporation are being acquired or converted. As used in this definition:

(i) Interested person means a person or an affiliate of a person who at any time during the one-year period immediately preceding approval by the board of directors of the corporate action:

(A) Was the beneficial owner of twenty percent or more of the voting power of the corporation, other than as owner of excluded shares;

(B) Had the power, contractually or otherwise, other than as owner of excluded shares, to cause the appointment or election of twenty-five percent or more of the directors to the board of directors of the corporation; or

(C) Was a senior executive or director of the corporation or a senior executive of any affiliate thereof and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

(I) Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

(II) Employment, consulting, retirement, or similar benefits established in contemplation of or as part of the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in section 21-2,122; or

(III) In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate;

(ii) Beneficial owner means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote or to direct the voting of shares; except that a member of a national securities exchange is not deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because the member is the record holder of the securities if the member is precluded by the rules of the exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby is deemed to have acquired beneficial ownership, as of the date of the agreement, of all voting shares of the corporation beneficially owned by any member of the group; and

(iii) Excluded shares means shares acquired pursuant to an offer for all shares having voting power if the offer was made within one year prior to the corporate action for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action.

(6) ~~(7)~~ Preferred shares means a class or series of shares whose holders have preference over any other class or series with respect to distributions.

~~(8) Record shareholder means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.~~

(7) ~~(9)~~ Senior executive means the chief executive officer, chief operating officer, chief financial officer, and anyone in charge of a principal business unit or function.

(8) ~~(10)~~ Shareholder means both a record shareholder, and a beneficial shareholder, and a voting trust beneficial owner.

Sec. 22. Section 21-2,172, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,172 (MBCA 13.02) (a) A shareholder is entitled to appraisal rights and to obtain payment of the fair value of that shareholder's shares in the event of any of the following corporate actions:

(1) Consummation of a merger to which the corporation is a party (i) if shareholder approval is required for the merger by section 21-2,164, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series that remain outstanding after consummation of the merger or (ii) if the corporation is a subsidiary and the merger is governed by section 21-2,165;

(2) Consummation of a share exchange to which the corporation is a party as the corporation whose shares will be acquired, except that appraisal rights shall not be available to any shareholder of the corporation with respect to any class or series of shares of the corporation that is not exchanged;

(3) Consummation of a disposition of assets pursuant to section 21-2,170 if the shareholder is entitled to vote on the disposition, except that appraisal rights shall not be available to any shareholder of the corporation with respect to shares of any class or series if (i) under the terms of the corporate action approved by the shareholders there is to be distributed to shareholders in cash its net assets, in excess of a reasonable amount reserved to meet claims of the type described in sections 21-2,189 and 21-2,190, (A) within one year after the shareholders' approval of the action and (B) in accordance with their respective interests determined at the time of distribution and (ii) the disposition of assets is not an interested

transaction;

(4) An amendment of the articles of incorporation with respect to a class or series of shares that reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or right to repurchase the fractional share so created;

(5) Any other amendment to the articles of incorporation, merger, share exchange, or disposition of assets to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors;

(6) Consummation of a domestication if the shareholder does not receive shares in the foreign corporation resulting from the domestication that have terms as favorable to the shareholder in all material respects and represent at least the same percentage interest of the total voting rights of the outstanding shares of the corporation as the shares held by the shareholder before the domestication;

(7) Consummation of a conversion of the corporation to nonprofit status pursuant to sections 21-2,133 to 21-2,138; or

(8) Consummation of a conversion of the corporation to an unincorporated entity pursuant to sections 21-2,143 to 21-2,149.

(b) Notwithstanding subsection (a) of this section, the availability of appraisal rights under subdivisions (a)(1), (2), (3), (4), (6), and (8) of this section shall be limited in accordance with the following provisions:

(1) Appraisal rights shall not be available for the holders of shares of any class or series of shares which is:

(i) A covered security under section 18(b)(1)(A) or (B) of the federal Securities Act of 1933, as amended, 15 U.S.C. 77r(b)(1)(A) or (B);

(ii) Traded in an organized market and has at least two thousand shareholders and a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, ~~and~~ beneficial shareholders, and voting trust beneficial owners owning more than ten percent of such shares; or

(iii) Issued by an open-end management investment company registered with the Securities and Exchange Commission under the federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq., and may be redeemed at the option of the holder at net asset value;

(2) The applicability of subdivision (b)(1) of this section shall be determined as of:

(i) The record date fixed to determine the shareholders entitled to receive notice of the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

(ii) The day before the effective date of such corporate action if there is no meeting of shareholders;

(3) Subdivision (b)(1) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares (i) who are required by the terms of the corporate action requiring appraisal rights to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation or any other proprietary interest of any other entity that satisfies the standards set forth in subdivision (b)(1) of this section at the time the corporate action becomes effective or (ii) in the case of the consummation of a disposition of assets pursuant to section 21-2,170, unless such cash, shares, or proprietary interests are, under the terms of the corporate action approved by the shareholders as part of a distribution to shareholders of the net assets of the corporation in excess of a reasonable amount to meet claims of the type described in sections 21-2,189 and 21-2,190, (A) within one year after the shareholders' approval of the action and (B) in accordance with their respective interests determined at the time of the distribution; and

(4) Subdivision (b)(1) of this section shall not be applicable and appraisal rights shall be available pursuant to subsection (a) of this section for the holders of any class or series of shares where the corporate action is an interested transaction.

(c) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, except that (1) no such limitation or elimination shall be effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a nonprofit conversion under sections 21-2,133 to 21-2,138, or a conversion to an unincorporated entity under sections 21-2,143 to 21-2,149, or a merger having a similar effect and (2) any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within one year after that date if such action would otherwise afford appraisal rights.

(d) The right to dissent and obtain payment under sections 20-2,171 to 20-2,183 shall not apply to shareholders of a bank, trust company, stock-owned savings and loan association, or the holding company of any such bank, trust company, or stock-owned savings and loan association.

Sec. 23. Section 21-2,173, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,173 (MBCA 13.03) (a) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder or the voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(b) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(1) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in subdivision (b)(2)(ii) of section 21-2,176; and

(2) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

Sec. 24. Section 21-2,197, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,197 (MBCA 14.30) (a) Except as provided in subdivision (2)(ii) of this subsection, the court may dissolve a corporation:

(1) In a proceeding by the Attorney General if it is established that:

(i) The corporation obtained its articles of incorporation through fraud; or

(ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;

(2)(i) In a proceeding by a shareholder if it is established that:

(A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock;

(B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or

(D) The corporate assets are being misapplied or wasted; and

(ii) The right to bring a proceeding under this subdivision does not apply to shareholders of a bank, trust company, or stock-owned savings and loan associations;

(3) In a proceeding by a creditor if it is established that:

(i) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

(ii) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent;

(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(5) In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable time to liquidate and distribute its assets and dissolve.

(b) Subdivision (a)(2) of this section shall not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares which are:

(1) A covered security under section (18)(b)(1)(A) or (B) of the Securities Act of 1933, as amended listed on the New York Stock Exchange, the American Stock Exchange, or on any exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted on a system owned or operated by the National Association of Securities Dealers, Inc.; or

(2) Not a covered security so listed or quoted, but are held by at least three hundred shareholders and the shares outstanding have a market value of at least twenty million dollars, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders, and voting trust beneficial owners owning more than ten percent of such shares.

(c) In subsection (a) of this section, beneficial shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner; in subsection (b) of this section, shareholder means a record shareholder, a beneficial shareholder, and a voting trust beneficial owner has the meaning specified in subdivision (2) of section 21-2,171.

Sec. 25. Section 21-2,201, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,201 (MBCA 14.34) (a) In a proceeding under subdivision (a)(2) of section 21-2,197 to dissolve a corporation, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the

court at any time within ninety days after the filing of the petition under subdivision (a)(2) of section 21-2,197 or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within ten days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under subdivision (a)(2) of section 21-2,197 may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(c) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c) of this section, the court, upon application of any party, shall stay the proceedings under subdivision (a)(2) of section 21-2,197 and determine the fair value of the petitioner's shares as of the day before the date on which the petition under subdivision (a)(2) of section 21-2,197 was filed or as of such other date as the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate specified in section 45-104, as such rate may from time to time be adjusted by the Legislature, and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under subdivision (a)(2)(i)(B) or (D) of section 21-2,197, it may award expenses to the petitioning shareholder.

(f) Upon entry of an order under subsection (c) or (e) of this section, the court shall dismiss the petition to dissolve the corporation under subdivision (a)(2) of section 21-2,197, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded by the order of the court which shall be enforceable in the same manner as any other judgment.

(g) ~~The purchase ordered pursuant to subsection (e) of this section shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections 21-2,185 and 21-2,186, which articles must then be adopted and filed within fifty days thereafter. Upon filing of such articles of dissolution, the corporation shall be dissolved in accordance with the provisions of sections 21-2,188 to 21-2,190, and the order entered pursuant to subsection (e) of this section shall no longer be of any force or effect, except that the court may award the petitioning shareholder expenses in accordance with the provisions of the last sentence of subsection (e) of this section and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.~~

(h) Any payment by the corporation pursuant to an order under subsection (c) or (e) of this section, other than an award of expenses pursuant to subsection (e) of this section, is subject to the provisions of section 21-252.

Sec. 26. Section 21-2,222, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,222 (MBCA 16.02) (a) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in subsection (e) of section 21-2,221 if the shareholder gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(b) For any meeting of shareholders for which the record date for determining shareholders entitled to vote at the meeting is different than the record date for notice of the meeting, any person who becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote

at the meeting is entitled to obtain from the corporation upon request the notice and any other information provided by the corporation to shareholders in connection with the meeting unless the corporation has made such information generally available to shareholders by posting it on its web site or by other generally recognized means. Failure of a corporation to provide such information does not affect the validity of action taken at the meeting.

(c) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (d) of this section and gives the corporation a signed written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(1) Excerpts from minutes of any meeting of the board of directors or a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders, board of directors, or a committee of the board without a meeting, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) The record of shareholders.

(d) A shareholder may inspect and copy the records described in subsection (c) of this section only if:

(1) The shareholder's demand is made in good faith and for a proper purpose;

(2) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(3) The records are directly connected with the shareholder's purpose.

(e) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(f) This section does not affect:

(1) The right of a shareholder to inspect records under section 21-262 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(2) The power of a court, independently of the Nebraska Model Business Corporation Act, to compel the production of corporate records for examination.

(g) For purposes of this section, shareholder means a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner ~~includes a beneficial owner whose shares are held in a voting trust or by a nominee on the shareholder's behalf.~~

Sec. 27. This act becomes operative on January 1, 2018.

Sec. 28. Original sections 21-201, 21-214, 21-217, 21-220, 21-254, 21-255, 21-264, 21-265, 21-266, 21-271, 21-275, 21-283, 21-285, 21-2,103, 21-2,113, 21-2,114, 21-2,120, 21-2,123, 21-2,124, 21-2,171, 21-2,172, 21-2,173, 21-2,197, 21-2,201, and 21-2,222, Revised Statutes Cumulative Supplement, 2016, are repealed.