

ONE HUNDRED SIXTH LEGISLATURE - SECOND SESSION - 2020
COMMITTEE STATEMENT
LB808

Hearing Date: Monday February 10, 2020
Committee On: Banking, Commerce and Insurance
Introducer: La Grone
One Liner: Provide for ratification of defective corporate actions under the Nebraska Model Business Corporation Act

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 8 Senators Gragert, Howard, Kolterman, La Grone, Lindstrom, McCollister, Quick, Williams
Nay:
Absent:
Present Not Voting:

Oral Testimony:

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| Proponents: Senator Tom Brewer Tim Hruza | Representing: Introducer Nebraska State Bar Association |
| Opponents: | Representing: |
| Neutral: | Representing: |

Summary of purpose and/or changes:

This bill would enact eight new sections in the Nebraska Model Business Corporation Act that are based on Subchapter E. Ratification of Defective Corporate Actions of the Model Business Corporation Act as approved and promulgated by the Committee on Corporate Laws of the Section of Business Law of the American Bar Association.

Section 1 would amend section 21-201 to provide for assignments of new section 2 to 9 of the bill within the Nebraska Model Business Corporation Act.

Section 2 would enact a new section to provide for definitions applicable to new sections 2 to 9 of the bill: (1) "Corporate Action;" (2) "Date of defective corporate action;" (3) "Defective corporate action" ((i) any corporate action purported by taken that is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization, (ii) an overissue); (4) "Failure of authorization;" (5) "Overissue;" (6) "Putative shares;" (7) "Valid shares;" and (8) "Validation effective time with respect to any defective corporate action ratified under sections 2 to 9 of" the bill.

Section 3 would enact a new section to provide that a defective corporate action shall not be void or voidable if ratified in accordance with section 4 of the bill or validated in accordance with section 9 of the bill.

Section 4 would enact a new section to provide for ratification of defective corporate actions.

Section 5 would enact a new section to provide for action on ratification.

Section 6 would enact a new section to provide for shareholder notice requirements.

Section 7 would enact a new section to provide for effect of ratification.

Section 8 would enact a new section to provide for filings of articles of validation.

Section 9 would enact a new section to provide for judicial proceedings regarding validity of corporate actions.

Explanation of amendments:

The committee amendments (AM2559) contain the original provisions of LB808 and also the provisions of five other bills relating to the subject of commerce that were heard and advanced by the Banking, Commerce and Insurance Committee and made a part of these committee amendments on an 8-0 vote of the members of the committee.

Those five bills are as follows:

1.LB775 (Williams) Change Real Property Appraiser Act provisions (Sections 41 to 80, and 86 to 88 of AM2559)

The purpose of LB775 is to update the Nebraska Real Property Appraiser Act ("Act") for compliance with Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("Title XI"), the Uniform Standards of Professional Appraisal Practice ("USPAP"), and the Policy Statements of the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC Policy Statements"). Title XI requires each state to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions. In addition, real estate appraisals are to be performed in accordance with generally accepted uniform appraisal standards, and are to be performed by an individual whose competency has been demonstrated and whose professional conduct is subject to effective state supervision. If the State of Nebraska is found not to be compliance with Title XI by the Appraisal Subcommittee, the Appraisal Subcommittee may remove all Nebraska credentialed appraisers from the Federal Registry, resulting in no appraisers qualified to appraise real property in connection with federally related transactions. Such action would have a substantial negative impact on the mortgage loan activity in Nebraska. Along with the changes required by the Appraisal Subcommittee, USPAP, and the ASC Policy Statements, LB775 also includes minor changes to address administration of the Act.

The following language changes are included in LB775:

"Real property" is added before the word "appraiser" where only "appraiser" exists to harmonize provisions throughout the Act, and to utilize the definition of "real property appraiser" as defined in Neb. Rev. Stat. Sec. 76-2216.

The phrase "must be" is stricken and replaced with word "is" in the definition of "appraisal" found in Neb. Rev. Stat. Sec.76-2204 to reflect the language in the 2020-2021 edition of USPAP.

The phrase "not limited to value," is added to the definition of "assignment results" found in Neb. Rev. Stat. Sec.76-2207.17 to reflect the language in the 2020-2021 edition of USPAP.

The phrase "a real property appraiser" is moved from after to before "by employment or contract," the word "whether" is added, and the phrase "The client may engage and communicate with the appraiser" is stricken in the definition of "client" found in Neb. Rev. Stat. Sec. 76-2207.22 to reflect the language in the 2020-2021 edition of USPAP.

The word "permit" is replaced with "credential" to utilize the definition of "credential" found in Neb. Rev. Stat. Sec.76-2207.25 for clarity and consistency in the definition of "credential holder" found in Neb. Rev. Stat. Sec. 76-2207.26

"2019" is updated to "2020" in the definition of "Financial Institutions Reform, Recovery, and Enforcement Act of 1989" in Neb. Rev. Stat. Sec. 76-2207.30.

The word "activity" is replaced with "practice" to establish the harmonized definition "real property appraisal practice" from the repealed definition "appraisal practice" and the modified definition "real property appraisal activity" in Neb. Rev. Stat. Sec. 76-2215. The intent and meaning of the definitions "appraisal practice" and "real property appraisal activity" are substantially similar, but used both separately and in unison throughout the Act. The intent of the harmonized definition, "real property appraisal practice," is to provide clarity and consistency throughout the Act. The phrases "performed by a real property appraiser," "and reporting," and "or an appraisal review" are added, and the word "identified" is stricken.

Terms and phrases "appraisal practice," "real property appraisal activity," "appraisal practice or real property appraisal activity," "a valuation assignment, evaluation assignment, or appraisal review assignment," "an assignment not limited to value for an appraisal assignment, and not limited to an opinion about the quality of another appraiser's work for an appraisal review assignment," "appraising," "the appraisal of, and review of appraisal of," "the appraisal of," "appraise," "real property appraisal activities or other related activities," "the making of an appraisal," and "practice" are modified to harmonize provisions throughout the Act, and to utilize the defined term "real property appraisal practice" found in Neb. Rev. Stat. Sec. 76-2215 for clarity and consistency throughout the Act.

The phrase "is a credential holder" is added, and subdivisions (1), (2), (3) are stricken from the definition of "real property appraiser" found in Neb. Rev. Stat. Sec. 76-2216 to provide clarity and simplify the definition. The language found in subdivision (1), "engages in real property appraisal activity;" subdivision (2), "advertises or holds himself or herself out to the general public as a real property appraiser;" and subdivision (3), "offers, attempts, or agrees to perform or performs real property appraisal activity" stricken from Neb. Rev. Stat. Sec. 76-2216 is incorporated into Neb. Rev. Stat. Sec. 76-2220(2), Neb. Rev. Stat. Sec. 76-2233.02(3), and Neb. Rev. Stat. Sec. 76-2246 as the language pertains directly to these provisions.

"An appraisal or appraisal review" is replaced by "assignment results" to utilize the definition of "assignment results" found in Neb. Rev. Stat. Sec. 76-2207.17 for clarity and consistency in the definition of "report" found in Neb. Rev. Stat. Sec. 76-2216.02.

"An appraisal is" and "analyses, opinions, or conclusions concerning real estate or real property" is replaced by "assignment results" to utilize the definition of "assignment results" found in Neb. Rev. Stat. Sec. 76-2207.17 for clarity and consistency in Neb. Rev. Stat. Sec. 76-2221(3) regarding a person who provides assistance exempt from the Act.

The internal reference to the Uniform Standards of Professional Appraisal Practice is updated to the 2020-21 edition of USPAP as of January 1, 2020 in Neb. Rev. Stat. Sec. 76-2218.02.

The word "all" is stricken and the words "aspects" and "services" were changed to the singular form in the definition of "valuation services" found in Neb. Rev. Stat. Sec. 76-2219.01 to reflect the language in the 2020-2021 edition of USPAP.

The words "analyses" and "opinion," along with the phrase "as it applies to an assignment" is stricken, and the phrases "data, information, and" and "and to show compliance with the Uniform Standards of Professional Appraisal Practice" are added in the definition of "workfile" found in Neb. Rev. Stat. Sec. 76-2219.02 to reflect the language in the 2020-2021 edition of USPAP.

The phrase "by performing any action described in section 76-2216 without the appropriate credential" was stricken from Neb. Rev. Stat. Sec. 76-2220(3) due to the modification of the definition of "real property appraiser".

"Real property appraisal practice" is added before "assignments" in Neb. Rev. Stat. Sec. 76-2227(5) to clarify the nature of such assignment being performed by a person.

"Assignment" is added after "real property appraisal practice", and "appraise" is replaced by "engage in" for clarity and

consistency in Neb. Rev. Stat. Sec. 76-2228.01(7) pertaining to the scope of practice for the trainee real property appraiser.

"An appraiser holding a valid" is stricken before and "credential" is stricken after "certified residential real property appraiser," as the stricken language serves no purpose in Neb. Rev. Stat. Sec. 76-2231.01(4).

"An appraiser holding a valid" is stricken before and "credential" is stricken after "certified general real property appraiser," as the stricken language serves no purpose in Neb. Rev. Stat. Sec. 76-2232(2).

Subdivisions (13), (14), (15), and (16) are stricken from Neb. Rev. Stat. Sec. 76-2238 as these specific acts are included in the Uniform Standards of Professional Appraisal Practice.

"Valuation" is added before "services" in Neb. Rev. Stat. Sec. 76-2228(9) to clarify the nature of such service being performed by a real property appraiser.

Neb. Rev. Stat. Sec. 76-2205.01 is outright repealed as the definition of "appraisal practice" is incorporated into the definition of "real property appraisal practice" found in Neb. Rev. Stat. Sec. 76-2215.

Neb. Rev. Stat. Sec. 76-2216.03 is outright repealed as the definition of "scope of work" no longer appears in the Act.

Neb. Rev. Stat. Secs. 76-3202, 76-3203.01, 76-3207, 76-3210 of the Appraisal Management Company Registration Act are amended to incorporate the changes listed above.

Oral Testimony:

Proponents:

Senator Matt Williams, Introducer

Tyler Kohtz, Nebraska Real Property Appraiser Board

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Gragert, Howard, Kolterman, LaGrone, Lindstrom, McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

2.LB782 (Stinner) Change certified public accountant examination provisions (sections 1, 83, and 85 of AM2559)

This bill would amend section 1-116 of the Public Accountancy Act which currently provides that a person who expects to complete the postsecondary academic credit and earn the degree (as required elsewhere in this section) within sixty days following when the CPA examination is held shall be eligible to take such examination, but such person shall not receive any credit for such examination unless evidence satisfactory to the Nebraska Board of Public Accountancy showing that such person has completed the academic credit and earned the degree is received by the board within ninety days following when the examination is held.

The bill would amend these provisions to provide that such a person may take test sections of the examination within one hundred twenty days prior to completing the academic credit and earning the degree, but such person shall not receive any credit for such test sections unless evidence satisfactory to the board

showing that such person has completed the academic credit and earned the degree is received by the board within one hundred fifty days following when the first test section of the examination is taken

Oral Testimony:

Proponents:

Senator John Stinner, Introducer

Shari Munro, Nebraska Society of CPA's

Dr. Tom Purcell, Nebraska State Board of Public Accountancy

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Gragert, Howard, Kolterman, LaGrone, Lindstrom, McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

3.LB902 (Pansing Brooks) Adopt the Uniform Trust Decanting Act (sections 11 to 30, 84, and 85 of AM2559)

This bill would enact a Nebraska version of the Uniform Trust Decanting Act (UTDA), which was promulgated by the National Conference of Commissioners on Uniform State Law (NCCUSL) in 2015. The UTDA provides a method for reforming or modernizing the terms of an irrevocable trust.

"Decanting" is the terms used to describe the distribution of assets from one trust into a second trust, like wine is decanted from the bottle to another vessel. Decanting can be a tool for adopting to unforeseen circumstances. THE UDTA allows a trustee to reform an irrevocable trust document within reasonable limits that ensure the trust will achieve the settlor's original intent. The act prevents decanting when it would defeat a charitable or tax-related purpose of the settlor.

Sections 1 through 6 (sections 11 to 16 of AM2559) of the act deal with the scope and application of the act, fiduciary duty, and definitions. Section 1(section 11 of AM2559) names the act. Section 2 (section 12 of AM2559) contains definitions. Definitions of terms used only in one section are found within that section.

Section 3 (section 13 of AM2559) addresses the types of trusts to which the act applies (or does not apply) and Section 5 (section 15 of AM2559) describes the connections to Nebraska that are sufficient for a trust to utilize the act. Section 4 (section 14 of AM2559) addresses fiduciary duty in exercising or not exercising the decanting power. Section 6 (section 16 of AM2559) addresses reliance on prior decantings, including decantings performed under other states' laws.

Sections 7 through 10 (sections 17 through 20 of AM2559) of the act deal with the procedures for exercising the decanting power. Section 7 (section 17 of AM2559) sets forth the notice requirements for decanting. Section 8 (section 18 of AM2559) deals with representation of beneficiaries, including the representation of certain charitable interests by the Attorney General or other appropriate official. Section 9 (section 19 of AM2559) describes the authority of the court with respect to decanting. Section 10 (section 20 of AM2559) describes the formalities for decanting.

Sections 11 through 23 (sections 21 through 33 of AM2559) contain the heart of the decanting power and

describe what modifications can be made by decanting. Section 11 (section 21 of AM2559) delineates the decanting power when the authorized fiduciary has expanded distributive discretion and section 12 (section 22 of AM2559) delineates the decanting power when the authorized fiduciary has limited distributive discretion. Section 13 (section 23 of AM2559) contains special rules to facilitate decanting into a special-needs trust for a beneficiary with a disability. The Uniform Trust Decanting Act permits a trust to be decanted to modify the interest of the beneficiary with a disability even if the trustee does not have expanded distributive discretion. When a trust has a beneficiary with a disability, it may not be in the beneficiary's interest to make mandatory distributions to the beneficiary. Further, it may be in the beneficiary's interest to restructure the trust as a special-needs trust so that the trust does not adversely affect the beneficiary's qualification for governmental benefits. This carries out the settlor's probable intent if the settlor had known of the beneficiary's disability. Section 14 (section 24 of AM2559) provides special rules to protect charitable interests.

Sections 15 through 20 (sections 25 through 30 of AM2559) generally provide limitations on the exercise of the decanting power. Section 15 (section 25 of AM2559) addresses how express restrictions contained within the first-trust instrument may limit the decanting power. Sections 16, 17, and 18 (sections 26, 27, and 28 of AM2559) impose limitations on an authorized fiduciary exercising the decanting power in ways that might be considered self-dealing. Section 16 (section 26 of AM2559) restricts decanting to increase the authorized fiduciary's compensation. Section 17 (section 27 of AM2559) restricts decanting to increase the authorized fiduciary's protection from liability. Section 18 (section 28 of AM2559) restricts the modification or elimination of a provision permitting a person to remove or replace the authorized fiduciary. Section 19 (section 29 of AM2559) imposes limitations on the decanting power that may be necessary to avoid disqualifying a trust for a particular tax benefit. Section 20 (section 30 of AM2559) addresses limits on the duration of a trust, such as the rule against perpetuities.

Section 21 (section 31 of AM2559) makes clear that even though the extent of the authorized fiduciary's power to decant is generally determined based upon the degree of discretion over principal distributions, the authorized fiduciary may exercise the decanting power even if the authorized fiduciary would not have made a discretionary distribution at such time.

Section 22 (section 32 of AM2559) contains the remediation provision that is intended to salvage imperfect decantings. Section 23 (section 33 of AM2559) authorizes under certain circumstances decanting of trusts for the care of an animal.

Sections 24 through 29 (sections 34 to 39 of AM2559) and section 31 (section 84 of AM2559) contain miscellaneous provisions. These provisions include section 25 (section 35 of AM2559), which recognizes that when a trust has been decanted it may no longer be obvious who the settlor is for different purposes and addresses who should be treated as the settlor for different purposes. Section 26 (section 36 of AM2559) provides a default rule for determining whether the first trust or second trust owns later-discovered property. Section 27 (section 37 of AM2559) makes clear that liabilities of the first trust are also liabilities of the second trust to the extent it received property from the first trust.

Section 30 (section 40 of AM2559) would amend Section 76-902 to provide that the documentary stamp tax does not apply to deeds transferring property pursuant to the Uniform Trust Decanting Act.

Oral Testimony:

Proponents:

Senator Patty Pansing Brooks, Introducer
Ben Orzeske, Uniform Law Commission
Kim Robak, Nebraska State Bar Association

Opponents: None

Neutral: None

Vote Results:

Aye: Senators Gragert, Howard, Kolterman, LaGrone, Lindstrom, McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

4.LB929 (Lindstrom) Provide an exemption to the Nebraska Real Estate License Act (Sections 82 and 86 of AM2559)

This bill would amend section 81-885.04 of the Nebraska Real Estate License Act to provide that the act does not apply to any unlicensed person who only provides a list or lists of potential purchases to a broker or salesperson on who makes calls or facilitates the initial contact between a potential client or customer and a broker or salesperson.

The unlicensed person is not permitted to discuss with a potential client or customer the services to be offered by the broker or salesperson. The unlicensed person does not have authority to obligate a potential client or customer to work with a particular broker or salesperson or a particular broker's or salesperson's place of business. The unlicensed person shall not perform any activity of a broker or salesperson.

Oral Testimony:

Proponents:

Senator Brett Lindstrom, Introducer

Andy Alloway, Nebraska Realtors Association

Greg Lemon, Nebraska Real Estate Commission

Opponents:

Neutral:

Vote Results:

Aye: Senator Gragert, Howard, Kolterman, LaGrone, Lindstrom, McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

5.LB1123 (Lindstrom) Redefine the term security to include certain student loans under the Public Funds Deposit Security Act (Sections 81 and 85 of AM2559)

This bill would amend section 77-2387 of the Public Funds Deposit Security to expand the definition of "securities" for purposes of the act.

The Public Funds Deposit Security Act provides that a depository financial institution subject to a requirement by law to secure the deposit of public funds of a governmental unit (the state or a political subdivision) in excess of the amount insured or guaranteed by the Federal Deposit Insurance Corporation may give security by (1) furnishing securities or (2) providing a deposit guaranty bond, or any combination thereof, pursuant to the act in satisfaction of the requirement.

The bill would provide that, for this purpose, "securities" include "student loans backed or partially guaranteed by the United States Department of Education."

Oral Testimony:

Proponents:

Senator Brett Lindstrom, Introducer

Roy Miller, Nebraska Bankers Association

Bob Hallstrom, Nebraska Bankers Association

Opponents:

Neutral:

Mark Quandahl, Nebraska Department of Banking and Finance

Vote Results:

Aye: Senators Gragert, Howard, Kolterman, LaGrone, Lindstrom, McCollister, Quick, Williams

Nay:

Absent:

Present Not Voting:

Matt Williams, Chairperson