

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 528

Introduced by Fulton, 29.

Read first time January 21, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to the Business Corporation Act; to amend
2 sections 21-2014, 21-2015, and 21-2060, Reissue Revised
3 Statutes of Nebraska; to define and redefine terms; to
4 authorize electronic transmissions as a means of notice,
5 delivery, and appointment; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 21-2014, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 21-2014 For purposes of the Business Corporation Act,
4 unless the context otherwise requires:

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

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

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

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

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

21 (6) Distribution shall mean a direct or indirect transfer
22 of money or other property, except a corporation's own shares,
23 or incurrence of indebtedness by a corporation to or for the
24 benefit of its shareholders in respect of any of its shares. A
25 distribution may be in the form of a declaration or payment of a

1 dividend, a purchase, redemption, or other acquisition of shares, a
2 distribution of indebtedness, or otherwise;

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

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

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

12 ~~(9)~~ (10) Entity shall include corporation and foreign
13 corporation, not-for-profit corporation, limited liability company,
14 profit and not-for-profit unincorporated association, business
15 trust, estate, partnership, trust, two or more persons having
16 a joint or common economic interest, state, United States, and
17 foreign government;

18 ~~(10)~~ (11) Foreign corporation shall mean a corporation
19 for profit incorporated under a law other than the law of this
20 state;

21 ~~(11)~~ (12) Governmental subdivision shall include
22 authority, county, district, and municipality;

23 ~~(12)~~ (13) Individual shall include the estate of an
24 incompetent or deceased individual;

25 ~~(13)~~ (14) Notice shall have the same meaning as in

1 section 21-2015;

2 ~~(14)~~ (15) Person shall include individual and entity;

3 ~~(15)~~ (16) Principal office shall mean the office, in or
4 out of this state, so designated in the annual report where the
5 principal executive offices of a domestic or foreign corporation
6 are located;

7 ~~(16)~~ (17) Proceeding shall include civil suit or action
8 and criminal, administrative, and investigatory action;

9 ~~(17)~~ (18) Record date shall mean the date established
10 under sections 21-2035 to 21-2050 or 21-2051 to 21-2077 on which a
11 corporation determines the identity of its shareholders and their
12 shareholdings for purposes of the act. The determinations shall be
13 made as of the close of business on the record date unless another
14 time for doing so is specified when the record date is fixed;

15 ~~(18)~~ (19) Secretary shall mean the corporate officer to
16 whom the board of directors has delegated responsibility under
17 subsection (3) of section 21-2097 for custody of the minutes of the
18 meetings of the board of directors and of the shareholders and for
19 authenticating records of the corporation;

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

22 ~~(20)~~ (21) Shareholder shall mean the person in whose
23 name shares are registered in the records of a corporation or the
24 beneficial owner of shares to the extent of the rights granted by a
25 nominee certificate on file with a corporation;

1 ~~(21)~~ (22) State, when referring to a part of the
2 United States, shall include a state and commonwealth, and their
3 agencies and governmental subdivisions, and a territory and insular
4 possession, and their agencies and governmental subdivisions, of
5 the United States;

6 ~~(22)~~ (23) Subscriber shall mean a person who subscribes
7 for shares in a corporation, whether before or after incorporation;

8 ~~(23)~~ (24) United States shall include district,
9 authority, bureau, commission, department, and any other agency of
10 the United States; and

11 ~~(24)~~ (25) Voting group shall mean all shares of one or
12 more classes or series that under the articles of incorporation or
13 the act are entitled to vote and be counted together collectively
14 on a matter at a meeting of shareholders. All shares entitled by
15 the articles of incorporation or the act to vote generally on the
16 matter are for that purpose a single voting group.

17 Sec. 2. Section 21-2015, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 21-2015 (1) Notice under the Business Corporation Act
20 shall be in writing unless oral notice is reasonable under the
21 circumstances. Notice by electronic transmission is written notice.

22 (2) Notice may be communicated in person, by mail or
23 other method of delivery, or by telephone, telegraph, teletype, or
24 other form of wire or wireless communication, or by mail or private
25 carrier. voice mail, or other electronic means. If these forms of

1 personal notice are impracticable, notice may be communicated by a
2 newspaper of general circulation in the area where published or by
3 radio, television, or other form of public broadcast communication.

4 (3) Written notice by a domestic or foreign corporation
5 to its shareholder, if in a comprehensible form, shall be effective
6 (a) when mailed, if mailed postage prepaid and correctly addressed
7 to the shareholder's address shown in the corporation's current
8 record of shareholders or (b) when electronically transmitted
9 to the shareholder in a manner authorized by the shareholder.
10 Notice by a public corporation to its shareholder shall be
11 effective if the notice is addressed to the shareholder or group
12 of shareholders in a manner permitted by rules and regulations
13 adopted and promulgated under the federal Securities Exchange Act
14 of 1934, if the public corporation has first received affirmative
15 written consent or implied consent required under such rules and
16 regulations.

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

24 (5) Except as provided in subsection (3) of this section,
25 written notice, if in a comprehensible form, shall be effective at

1 the earliest of the following:

2 (a) When received;

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

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

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

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

16 Sec. 3. Section 21-2060, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 21-2060 (1) A shareholder may vote his or her shares in
19 person or by proxy.

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

1 or the shareholder's agent or attorney in fact authorized the
2 transmission.

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

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

15 (a) A pledgee;

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

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

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

22 (e) A party to a voting agreement created under section
23 21-2068.

24 (5) The death or incapacity of the shareholder appointing
25 a proxy shall not affect the right of the corporation to accept

1 the proxy's authority unless notice of the death or incapacity
2 is received by the secretary or other officer or agent authorized
3 to tabulate votes before the proxy exercises his or her authority
4 under the appointment.

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

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

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

19 Sec. 4. Original sections 21-2014, 21-2015, and 21-2060,
20 Reissue Revised Statutes of Nebraska, are repealed.