

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 157

Introduced by McCollister, 20.

Read first time January 12, 2015

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to corporations; to amend sections 21-245,
2 21-2,127, 21-2,128, 21-2,133, 21-2,134, 21-2,143, 21-2,145,
3 21-2,230, and 21-2,231, Revised Statutes Cumulative Supplement,
4 2014, and Laws 2014, LB 749, section 295; to change operative date
5 provisions relating to the Nebraska Model Business Corporation Act;
6 to provide operative dates; and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 21-245, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 21-245 (MBCA 6.24) (a) A corporation may issue rights, options, or
4 warrants for the purchase of shares or other securities of the
5 corporation. The board of directors shall determine (1) the terms upon
6 which the rights, options, or warrants are issued and (2) the terms,
7 including the consideration for which the shares or other securities are
8 to be issued. The authorization by the board of directors for the
9 corporation to issue such rights, options, or warrants constitutes
10 authorization of the issuance of the shares or other securities for which
11 the rights, options, or warrants are exercisable.

12 (b) The terms and conditions of such rights, options, or warrants,
13 including those outstanding on January 1, 2017 ~~2016~~, may include, without
14 limitation, restrictions or conditions that:

15 (1) Preclude or limit the exercise, transfer, or receipt of such
16 rights, options, or warrants by any person or persons owning or offering
17 to acquire a specified number or percentage of the outstanding shares or
18 other securities of the corporation or by any transferee or transferees
19 of any such person or persons; or

20 (2) Invalidate or void such rights, options, or warrants held by any
21 such person or persons or any such transferee or transferees.

22 (c) The board of directors may authorize one or more officers to (1)
23 designate the recipients of rights, options, warrants, or other equity
24 compensation awards that involve the issuance of shares and (2)
25 determine, within an amount and subject to any other limitations
26 established by the board and, if applicable, the stockholders, the number
27 of such rights, options, warrants, or other equity compensation awards
28 and the terms thereof to be received by the recipients, except that an
29 officer may not use such authority to designate himself or herself or any
30 other persons as the board of directors may specify as a recipient of
31 such rights, options, warrants, or other equity compensation awards.

1 Sec. 2. Section 21-2,127, Revised Statutes Cumulative Supplement,
2 2014, is amended to read:

3 21-2,127 (MBCA 9.20) (a) A foreign business corporation may become a
4 domestic business corporation only if the domestication is permitted by
5 the organic law of the foreign corporation.

6 (b) A domestic business corporation may become a foreign business
7 corporation if the domestication is permitted by the laws of the foreign
8 jurisdiction. Regardless of whether the laws of the foreign jurisdiction
9 require the adoption of a plan of domestication, the domestication shall
10 be approved by the adoption by the corporation of a plan of domestication
11 in the manner provided in sections 21-2,127 to 21-2,132.

12 (c) The plan of domestication must include:

13 (1) A statement of the jurisdiction in which the corporation is to
14 be domesticated;

15 (2) The terms and conditions of the domestication;

16 (3) The manner and basis of reclassifying the shares of the
17 corporation following its domestication into shares or other securities,
18 obligations, rights to acquire shares or other securities, cash, other
19 property, or any combination of the foregoing; and

20 (4) Any desired amendments to the articles of incorporation of the
21 corporation following its domestication.

22 (d) The plan of domestication may also include a provision that the
23 plan may be amended prior to filing the document required by the laws of
24 this state or the other jurisdiction to consummate the domestication,
25 except that subsequent to approval of the plan by the shareholders the
26 plan may not be amended to change:

27 (1) The amount or kind of shares or other securities, obligations,
28 rights to acquire shares or other securities, cash, or other property to
29 be received by the shareholders under the plan;

30 (2) The articles of incorporation as they will be in effect
31 immediately following the domestication, except for changes permitted by

1 section 21-2,154 or by comparable provisions of the laws of the other
2 jurisdiction; or

3 (3) Any of the other terms or conditions of the plan if the change
4 would adversely affect any of the shareholders in any material respect.

5 (e) Terms of a plan of domestication may be made dependent upon
6 facts objectively ascertainable outside the plan in accordance with
7 subsection (k) of section 21-203.

8 (f) If any debt security, note, or similar evidence of indebtedness
9 for money borrowed, whether secured or unsecured, or a contract of any
10 kind, issued, incurred, or signed by a domestic business corporation
11 before January 1, 2017 ~~2016~~, contains a provision applying to a merger of
12 the corporation and the document does not refer to a domestication of the
13 corporation, the provision shall be deemed to apply to a domestication of
14 the corporation until such time as the provision is amended subsequent to
15 that date.

16 Sec. 3. Section 21-2,128, Revised Statutes Cumulative Supplement,
17 2014, is amended to read:

18 21-2,128 (MBCA 9.21) In the case of a domestication of a domestic
19 business corporation in a foreign jurisdiction:

20 (1) The plan of domestication must be adopted by the board of
21 directors.

22 (2) After adopting the plan of domestication, the board of directors
23 must submit the plan to the shareholders for their approval. The board of
24 directors must also transmit to the shareholders a recommendation that
25 the shareholders approve the plan unless (i) the board of directors makes
26 a determination that because of conflicts of interest or other special
27 circumstances it should not make such a recommendation or (ii) section
28 21-2,101 applies. If subdivision (2)(i) or (ii) of this section applies,
29 the board must transmit to the shareholders the basis for so proceeding.

30 (3) The board of directors may condition its submission of the plan
31 of domestication to the shareholders on any basis.

1 (4) If the approval of the shareholders is to be given at a meeting,
2 the corporation must notify each shareholder, whether or not entitled to
3 vote, of the meeting of shareholders at which the plan of domestication
4 is to be submitted for approval. The notice must state that the purpose,
5 or one of the purposes, of the meeting is to consider the plan and must
6 contain or be accompanied by a copy or summary of the plan. The notice
7 shall include or be accompanied by a copy of the articles of
8 incorporation as they will be in effect immediately after the
9 domestication.

10 (5) Unless the articles of incorporation, or the board of directors
11 acting pursuant to subdivision (3) of this section, requires a greater
12 vote or a greater number of votes to be present, approval of the plan of
13 domestication requires the approval of the shareholders at a meeting at
14 which a quorum consisting of at least a majority of the votes entitled to
15 be cast on the plan exists, and if any class or series of shares is
16 entitled to vote as a separate group on the plan, the approval of each
17 such separate voting group at a meeting at which a quorum of the voting
18 group consisting of at least a majority of the votes entitled to be cast
19 on the domestication by that voting group exists.

20 (6) Subject to subdivision (7) of this section, separate voting by
21 voting groups is required by each class or series of shares that:

22 (i) Are to be reclassified under the plan of domestication into
23 other securities, obligations, rights to acquire shares or other
24 securities, cash, other property, or any combination of the foregoing;

25 (ii) Are entitled to vote as a separate group on a provision of the
26 plan that constitutes a proposed amendment to articles of incorporation
27 of the corporation following its domestication that requires action by
28 separate voting groups under section 21-2,153; or

29 (iii) Is entitled under the articles of incorporation to vote as a
30 voting group to approve an amendment of the articles.

31 (7) The articles of incorporation may expressly limit or eliminate

1 the separate voting rights provided in subdivision (6)(i) of this
2 section.

3 (8) If any provision of the articles of incorporation, bylaws, or an
4 agreement to which any of the directors or shareholders are parties,
5 adopted or entered into before January 1, 2017 ~~2016~~, applies to a merger
6 of the corporation and that document does not refer to a domestication of
7 the corporation, the provision shall be deemed to apply to a
8 domestication of the corporation until such time as the provision is
9 amended subsequent to that date.

10 Sec. 4. Section 21-2,133, Revised Statutes Cumulative Supplement,
11 2014, is amended to read:

12 21-2,133 (MBCA 9.30) (a) A domestic business corporation may become
13 a domestic nonprofit corporation pursuant to a plan of nonprofit
14 conversion.

15 (b) A domestic business corporation may become a foreign nonprofit
16 corporation if the nonprofit conversion is permitted by the laws of the
17 foreign jurisdiction. Regardless of whether the laws of the foreign
18 jurisdiction require the adoption of a plan of nonprofit conversion, the
19 foreign nonprofit conversion shall be approved by the adoption by the
20 domestic business corporation of a plan of nonprofit conversion in the
21 manner provided in sections 21-2,133 to 21-2,138.

22 (c) The plan of nonprofit conversion must include:

23 (1) The terms and conditions of the conversion;

24 (2) The manner and basis of reclassifying the shares of the
25 corporation following its conversion into memberships, if any, or
26 securities, obligations, rights to acquire memberships or securities,
27 cash, other property, or any combination of the foregoing;

28 (3) Any desired amendments to the articles of incorporation of the
29 corporation following its conversion; and

30 (4) If the domestic business corporation is to be converted to a
31 foreign nonprofit corporation, a statement of the jurisdiction in which

1 the corporation will be incorporated after the conversion.

2 (d) The plan of nonprofit conversion may also include a provision
3 that the plan may be amended prior to filing articles of nonprofit
4 conversion, except that subsequent to approval of the plan by the
5 shareholders the plan may not be amended to change:

6 (1) The amount or kind of memberships or securities, obligations,
7 rights to acquire memberships or securities, cash, or other property to
8 be received by the shareholders under the plan;

9 (2) The articles of incorporation as they will be in effect
10 immediately following the conversion, except for changes permitted by
11 section 21-2,154; or

12 (3) Any of the other terms or conditions of the plan if the change
13 would adversely affect any of the shareholders in any material respect.

14 (e) Terms of a plan of nonprofit conversion may be made dependent
15 upon facts objectively ascertainable outside the plan in accordance with
16 subsection (k) of section 21-203.

17 (f) If any debt security, note, or similar evidence of indebtedness
18 for money borrowed, whether secured or unsecured, or a contract of any
19 kind, issued, incurred, or signed by a domestic business corporation
20 before January 1, 2017 ~~2016~~, contains a provision applying to a merger of
21 the corporation and the document does not refer to a nonprofit conversion
22 of the corporation, the provision shall be deemed to apply to a nonprofit
23 conversion of the corporation until such time as the provision is amended
24 subsequent to that date.

25 Sec. 5. Section 21-2,134, Revised Statutes Cumulative Supplement,
26 2014, is amended to read:

27 21-2,134 (MBCA 9.31) In the case of a conversion of a domestic
28 business corporation to a domestic or foreign nonprofit corporation:

29 (1) The plan of nonprofit conversion must be adopted by the board of
30 directors.

31 (2) After adopting the plan of nonprofit conversion, the board of

1 directors must submit the plan to the shareholders for their approval.
2 The board of directors must also transmit to the shareholders a
3 recommendation that the shareholders approve the plan, unless (i) the
4 board of directors makes a determination that because of conflicts of
5 interest or other special circumstances it should not make such a
6 recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or
7 (ii) of this section applies, the board must transmit to the shareholders
8 the basis for so proceeding.

9 (3) The board of directors may condition its submission of the plan
10 of nonprofit conversion to the shareholders on any basis.

11 (4) If the approval of the shareholders is to be given at a meeting,
12 the corporation must notify each shareholder of the meeting of
13 shareholders at which the plan of nonprofit conversion is to be submitted
14 for approval. The notice must state that the purpose, or one of the
15 purposes, of the meeting is to consider the plan and must contain or be
16 accompanied by a copy or summary of the plan. The notice shall include or
17 be accompanied by a copy of the articles of incorporation as they will be
18 in effect immediately after the nonprofit conversion.

19 (5) Unless the articles of incorporation, or the board of directors
20 acting pursuant to subdivision (3) of this section, requires a greater
21 vote or a greater number of votes to be present, approval of the plan of
22 nonprofit conversion requires the approval of each class or series of
23 shares of the corporation voting as a separate voting group at a meeting
24 at which a quorum of the voting group consisting of at least a majority
25 of the votes entitled to be cast on the nonprofit conversion by that
26 voting group exists.

27 (6) If any provision of the articles of incorporation, bylaws, or an
28 agreement to which any of the directors or shareholders are parties,
29 adopted or entered into before January 1, 2017 ~~2016~~, applies to a merger,
30 other than a provision that eliminates or limits voting or appraisal
31 rights, and the document does not refer to a nonprofit conversion of the

1 corporation, the provision shall be deemed to apply to a nonprofit
2 conversion of the corporation until such time as the provision is amended
3 subsequent to that date.

4 Sec. 6. Section 21-2,143, Revised Statutes Cumulative Supplement,
5 2014, is amended to read:

6 21-2,143 (MBCA 9.50) (a) A domestic business corporation may become
7 a domestic unincorporated entity pursuant to a plan of entity conversion.

8 (b) A domestic business corporation may become a foreign
9 unincorporated entity if the entity conversion is permitted by the laws
10 of the foreign jurisdiction.

11 (c) A domestic unincorporated entity may become a domestic business
12 corporation. If the organic law of a domestic unincorporated entity does
13 not provide procedures for the approval of an entity conversion, the
14 conversion shall be adopted and approved, and the entity conversion
15 effectuated, in the same manner as a merger of the unincorporated entity.
16 If the organic law of a domestic unincorporated entity does not provide
17 procedures for the approval of either an entity conversion or a merger, a
18 plan of entity conversion shall be adopted and approved, the entity
19 conversion effectuated, and appraisal rights exercised in accordance with
20 the procedures in sections 21-2,143 to 21-2,149 and sections 21-2,171 to
21 21-2,183. Without limiting the provisions of this subsection, a domestic
22 unincorporated entity whose organic law does not provide procedures for
23 the approval of an entity conversion shall be subject to subsection (e)
24 of this section and subdivision (7) of section 21-2,145. For purposes of
25 applying sections 21-2,143 to 21-2,149 and 21-2,171 to 21-2,183:

26 (1) The unincorporated entity, its interest holders, interests, and
27 organic documents taken together, shall be deemed to be a domestic
28 business corporation, shareholders, shares, and articles of
29 incorporation, respectively and vice versa, as the context may require;
30 and

31 (2) If the business and affairs of the unincorporated entity are

1 managed by a group of persons that is not identical to the interest
2 holders, that group shall be deemed to be the board of directors.

3 (d) A foreign unincorporated entity may become a domestic business
4 corporation if the organic law of the foreign unincorporated entity
5 authorizes it to become a corporation in another jurisdiction.

6 (e) If any debt security, note, or similar evidence of indebtedness
7 for money borrowed, whether secured or unsecured, or a contract of any
8 kind, issued, incurred, or signed by a domestic business corporation
9 before January 1, 2017 ~~2016~~, applies to a merger of the corporation and
10 the document does not refer to an entity conversion of the corporation,
11 the provision shall be deemed to apply to an entity conversion of the
12 corporation until such time as the provision is amended subsequent to
13 that date.

14 (f) As used in sections 21-2,143 to 21-2,149:

15 (1) Converting entity means the domestic business corporation or
16 domestic unincorporated entity that adopts a plan of entity conversion or
17 the foreign unincorporated entity converting to a domestic business
18 corporation; and

19 (2) Surviving entity means the corporation or unincorporated entity
20 that is in existence immediately after consummation of an entity
21 conversion pursuant to sections 21-2,143 to 21-2,149.

22 Sec. 7. Section 21-2,145, Revised Statutes Cumulative Supplement,
23 2014, is amended to read:

24 21-2,145 (MBCA 9.52) In the case of an entity conversion of a
25 domestic business corporation to a domestic or foreign unincorporated
26 entity:

27 (1) The plan of entity conversion must be adopted by the board of
28 directors.

29 (2) After adopting the plan of entity conversion, the board of
30 directors must submit the plan to the shareholders for their approval.
31 The board of directors must also transmit to the shareholders a

1 recommendation that the shareholders approve the plan unless (i) the
2 board of directors makes a determination that because of conflicts of
3 interest or other special circumstances it should not make such a
4 recommendation or (ii) section 21-2,101 applies. If subdivision (2)(i) or
5 (ii) of this section applies, the board must transmit to the shareholders
6 the basis for so proceeding.

7 (3) The board of directors may condition its submission of the plan
8 of entity conversion to the shareholders on any basis.

9 (4) If the approval of the shareholders is to be given at a meeting,
10 the corporation must notify each shareholder, whether or not entitled to
11 vote, of the meeting of shareholders at which the plan of entity
12 conversion is to be submitted for approval. The notice must state that
13 the purpose, or one of the purposes, of the meeting is to consider the
14 plan and must contain or be accompanied by a copy or summary of the plan.
15 The notice shall include or be accompanied by a copy of the organic
16 documents as they will be in effect immediately after the entity
17 conversion.

18 (5) Unless the articles of incorporation, or the board of directors
19 acting pursuant to subdivision (3) of this section, requires a greater
20 vote or a greater number of votes to be present, approval of the plan of
21 entity conversion requires the approval of each class or series of shares
22 of the corporation voting as a separate voting group at a meeting at
23 which a quorum of the voting group consisting of at least a majority of
24 the votes entitled to be cast on the conversion by that voting group
25 exists.

26 (6) If any provision of the articles of incorporation, bylaws, or an
27 agreement to which any of the directors or shareholders are parties,
28 adopted or entered into before January 1, 2017 ~~2016~~, applies to a merger
29 of the corporation, other than a provision that limits or eliminates
30 voting or appraisal rights, and the document does not refer to an entity
31 conversion of the corporation, the provision shall be deemed to apply to

1 an entity conversion of the corporation until such time as the provision
2 is subsequently amended.

3 (7) If as a result of the conversion one or more shareholders of the
4 corporation would become subject to owner liability for the debts,
5 obligations, or liabilities of any other person or entity, approval of
6 the plan of conversion shall require the signing, by each such
7 shareholder, of a separate written consent to become subject to such
8 owner liability.

9 Sec. 8. Section 21-2,230, Revised Statutes Cumulative Supplement,
10 2014, is amended to read:

11 21-2,230 (MBCA 17.01) The Nebraska Model Business Corporation Act
12 applies to all domestic corporations in existence on January 1, 2017
13 ~~2016~~, that were incorporated under any general statute of this state
14 providing for incorporation of corporations for profit if power to amend
15 or repeal the statute under which the corporation was incorporated was
16 reserved.

17 Sec. 9. Section 21-2,231, Revised Statutes Cumulative Supplement,
18 2014, is amended to read:

19 21-2,231 (MBCA 17.02) A foreign corporation authorized to transact
20 business in this state on January 1, 2017 ~~2016~~, is subject to the
21 Nebraska Model Business Corporation Act but is not required to obtain a
22 new certificate of authority to transact business under the act.

23 Sec. 10. Laws 2014, LB749, section 295, is amended to read:

24 Sec. 295. This act becomes operative on January 1, 2017 ~~2016~~.

25 Sec. 11. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 12 of this act
26 become operative on January 1, 2017. The other sections of this act
27 become operative on their effective date.

28 Sec. 12. Original sections 21-245, 21-2,127, 21-2,128, 21-2,133,
29 21-2,134, 21-2,143, 21-2,145, 21-2,230, and 21-2,231, Revised Statutes
30 Cumulative Supplement, 2014, are repealed.

31 Sec. 13. Original Laws 2014, LB749, section 295, is repealed.