

## **Nebraska Nonprofit Corporation Act**

All filings and correspondence to:  
**Nebraska Secretary of State**  
**Corporations Office**  
**State Capitol, 1<sup>st</sup> Floor, Room 1301**  
**Lincoln, NE 68509**

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### **21-1901 Act, how cited.**

Sections 21-1901 to 21-19,177 shall be known and may be cited as the Nebraska Nonprofit Corporation Act.

**Source**     Laws 1996, LB 681, § 1.

### **21-1902 Legislative power.**

The Legislature shall have the power to amend or repeal all or part of the Nebraska Nonprofit Corporation Act at any time and all domestic and foreign corporations subject to the act are governed by the amendment or repeal.

**Source**     Laws 1996, LB 681, § 2.

### **21-1903 Filing requirements.**

(a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.

(b) The Nebraska Nonprofit Corporation Act must require or permit filing the document in the office of the Secretary of State.

(c) The document must contain the information required by the act. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. However, a corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be executed:

(1) By the presiding officer of its board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing a document shall sign it and state beneath or opposite the signature his or her name and the capacity in which he or she signs. The document may, but need not, contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary; or

(3) An acknowledgment, verification, or proof.

(h) If the Secretary of State has prescribed a mandatory form for a document under section 21-1904, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the Secretary of State for filing and must be accompanied by one exact or conformed copy (except as provided in sections 21-1936 and 21-19,154), the correct filing fee, and any tax, license fee, or penalty required by the Nebraska Nonprofit Corporation Act or other law.

**Source**     Laws 1996, LB 681, § 3.

### **21-1904 Forms.**

(a) The Secretary of State may prescribe and furnish, on request, forms for: (1) An application for a certificate of existence; (2) a foreign corporation's application for a certificate of authority to transact business in this state; (3) a

foreign corporation's application for a certificate of withdrawal; and (4) the biennial report. If the Secretary of State so requires, use of these forms is mandatory.

(b) The Secretary of State may prescribe and furnish, on request, forms for other documents required or permitted to be filed by the Nebraska Nonprofit Corporation Act but their use is not mandatory.

**Source** Laws 1996, LB 681, § 4.

#### **21-1905 Fees.**

(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:

- (1)(i) Articles of incorporation or (ii) documents relating to domestication...\$10.00
- (2) Application for reserved name...\$25.00
- (3) Notice of transfer of reserved name...\$25.00
- (4) Application for registered name...\$25.00
- (5) Application for renewal of registered name...\$25.00
- (6) Corporation's statement of change of registered agent or registered office or both...\$5.00
- (7) Agent's statement of change of registered office for each affected corporation...\$25.00 (not to exceed a total of \$1,000)
- (8) Agent's statement of resignation...no fee
- (9) Amendment of articles of incorporation...\$5.00
- (10) Restatement of articles of incorporation with amendments...\$5.00
- (11) Articles of merger...\$5.00
- (12) Articles of dissolution...\$5.00
- (13) Articles of revocation of dissolution...\$5.00
- (14) Certificate of administrative dissolution...no fee
- (15) Application for reinstatement following administrative dissolution...\$5.00
- (16) Certificate of reinstatement...no fee
- (17) Certificate of judicial dissolution...no fee
- (18) Certificate of authority...\$10.00
- (19) Application for amended certificate of authority...\$5.00
- (20) Application for certificate of withdrawal...\$5.00
- (21) Certificate of revocation of authority to transact business...no fee
- (22) Biennial report...\$20.00
- (23) Articles of correction...\$5.00
- (24) Application for certificate of good standing...\$10.00
- (25) Any other document required or permitted to be filed by the Nebraska Nonprofit Corporation Act...\$5.00
- (i) Amendments...\$5.00
- (ii) Mergers...\$5.00

(b) The Secretary of State shall collect a recording fee of five dollars per page in addition to the fees set forth in subsection (a) of this section.

(c) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

- (1) \$1.00 per page; and
- (2) \$10.00 for the certificate.

(d) All fees set forth in this section shall be collected by the Secretary of State and remitted to the State Treasurer and credited two-thirds to the General Fund and one-third to the Corporation Cash Fund.

**Source** Laws 1996, LB 681, § 5; Laws 2008, LB907, § 1. July 18, 2008

#### **21-1906 Effective date of document.**

(a) Except as provided in subsection (b) of this section, a document is effective:

- (1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's endorsement on the original document; or
- (2) At the time specified in the document as its effective time on the date it is filed.

(b) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close

of business on that date. A delayed effective date for a document may not be later than the ninetieth day after the date filed.

**Source** Laws 1996, LB 681, § 6.

**21-1907 Correcting filed document.**

(a) A domestic or foreign corporation may correct a document filed by the Secretary of State if the document: (1) Contains an incorrect statement or (2) was defectively executed, attested to, sealed, verified, or acknowledged.

(b) A document is corrected:

(1) By preparing articles of correction that (i) describe the document (including its filing date) or attach a copy of it to the articles, (ii) specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective, and (iii) correct the incorrect statement or defective execution; and

(2) By delivering the articles of correction to the Secretary of State.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and who are adversely affected by the correction. As to those persons, articles of correction are effective when filed.

**Source** Laws 1996, LB 681, § 7.

**21-1908 Secretary of State; duties.**

(a) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of section 21-1903, the Secretary of State shall file it.

(b) The Secretary of State files a document by stamping or otherwise endorsing "Filed," together with the Secretary of State's name and official title and the date and the time of receipt, on both the original and the document copy. After filing a document, except as provided in sections 21-1936 and 21-19,154, the Secretary of State shall deliver the document copy, with the acknowledgment of receipt of the filing fee, if a fee is required, to the domestic or foreign corporation or its representative.

(c) Upon refusing to file a document, the Secretary of State shall return it to the domestic or foreign corporation or its representative within five days after the document was delivered, together with a brief, written explanation of the reason or reasons for the refusal.

(d) The Secretary of State's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

(1) Affect the validity or invalidity of the document in whole or in part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

**Source** Laws 1996, LB 681, § 8.

**21-1909 Refusal to file document; appeal.**

(a) If the Secretary of State refuses to file a document delivered for filing to the Secretary of State's office, the domestic or foreign corporation may appeal the refusal to the district court of Lancaster County. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Secretary of State's explanation for the refusal to file.

(b) The district court may summarily order the Secretary of State to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

**Source** Laws 1996, LB 681, § 9.

**21-1910 Filed document; evidentiary effect.**

A certificate attached to a copy of a document bearing the Secretary of State's signature (which may be in facsimile) and the seal of this state is conclusive evidence that the original document is on file with the Secretary of State.

**Source** Laws 1996, LB 681, § 10.

**21-1911 Certificate of existence.**

(a) Any person may apply to the Secretary of State to furnish a certificate of existence for a domestic or foreign corporation.

(b) The certificate of existence shall set forth:

- (1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;
- (2) That (i) the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual or (ii) the foreign corporation is authorized to transact business in this state;
- (3) That all fees, taxes, and penalties owed to this state have been paid, if (i) payment is reflected in the records of the Secretary of State and (ii) nonpayment affects the good standing of the domestic or foreign corporation;
- (4) That its most recent biennial report required by section 21-19,172 has been delivered to the Secretary of State; and
- (5) That articles of dissolution have not been filed.

(c) Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this state.

**Source** Laws 1996, LB 681, § 11.

**21-1912 Signing false document; penalty.**

(a) A person commits an offense by signing a document such person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.

(b) Any person who violates this section is guilty of a Class I misdemeanor.

**Source** Laws 1996, LB 681, § 12.

**21-1913 Secretary of State; powers.**

The Secretary of State has the power reasonably necessary to perform the duties required of his or her office by the Nebraska Nonprofit Corporation Act.

**Source** Laws 1996, LB 681, § 13.

**21-1914 Terms, defined.**

For purposes of the Nebraska Nonprofit Corporation Act, unless the context otherwise requires:

- (1) Approved by (or approval by) the members means approved or ratified by the affirmative vote of a majority of the votes represented and voting at a duly held meeting at which a quorum is present (which affirmative votes also constitute a majority of the required quorum) or by a written ballot, or written consent in conformity with the act or by the affirmative vote, written ballot, or written consent of such greater proportion, including the votes of all the members of any class, unit, or grouping as may be provided in the articles, bylaws, or the act for any specified member action;
- (2) Articles of incorporation or articles include amended and restated articles of incorporation and articles of merger;
- (3) Board or board of directors means the board of directors except that no person or group of persons are the board of directors because of powers delegated to that person or group pursuant to section 21-1968;
- (4) Bylaws means the code or codes of rules (other than the articles) adopted pursuant to the act for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;
- (5) Class means a group of memberships which have the same rights with respect to voting, dissolution, redemption, and transfer. For purposes of this section, rights shall be considered the same if they are determined by a formula applied uniformly;
- (6) Corporation means a public benefit, a mutual benefit, or a religious corporation;
- (7) Delegate means a person elected or appointed to vote in a representative assembly for the election of a director or directors or on other matters;
- (8) Deliver includes mail;
- (9) Director means an individual, designated in the articles or bylaws or elected by the incorporators, and his or her successor and an individual elected or appointed by any other name or title to act as a member of the board;
- (10) Distribution means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers;
- (11) Domestic corporation means a corporation;
- (12) Effective date of notice has the same meaning as in section 21-1915;
- (13) Employee does not include an officer or director who is not otherwise employed by the corporation;
- (14) Entity includes corporation and foreign corporation; business corporation and foreign business corporation; profit and nonprofit unincorporated association; corporation sole; business trust, estate, partnership, limited liability

company, registered limited liability partnership, trust, and two or more persons having a joint or common economic interest; state or the United States; and foreign government;

(15) File, filed, or filing means filed in the office of the Secretary of State;

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

(17) Governmental subdivision includes authority, county, district, and municipality;

(18) Individual includes the estate of an incompetent individual;

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

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

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

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

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

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

(22) Notice has the same meaning as in section 21-1915;

(23) Person includes any individual or entity;

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

(25) Proceeding includes civil, criminal, administrative, and investigatory actions;

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

(27) Record date means the date established under sections 21-1938 to 21-1950 or 21-1951 to 21-1967 on which a corporation determines the identity of its members for the purposes of the act;

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

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

(30) 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;

(31) United States includes district, authority, bureau, commission, department, and any other agency of the United States;

(32) Vote includes authorization by written ballot and written consent; and

(33) Voting power means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote which is contingent upon the happening of a condition or event that has not occurred at the time. Where a class is entitled to vote as a class for directors, the determination of voting power of the class shall be based on the percentage of the number of directors the class is entitled to elect out of the total number of authorized directors.

**Source** Laws 1996, LB 681, § 14; Laws 1997, LB 285, § 1.

### **21-1915 Notice.**

(a) Notice may be oral or written.

(b) Notice may be communicated in person, by telephone, by telegraph, by teletype, by other form of wire or wireless communication, or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published, by radio, by television, or by other form of public broadcast communication.

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

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

(1) When received;

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

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

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

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

(f) A written notice or report delivered as part of a newsletter, magazine, or other publication regularly sent to members shall constitute a written notice or report if addressed or delivered to the member's address shown in the corporation's current list of members, or in the case of members who are residents of the same household and who have the same address in the corporation's current list of members, if addressed or delivered to one of such members at the address appearing on the current list of members.

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

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

**Source** Laws 1996, LB 681, § 15.

#### **21-1916 Private foundations; requirements.**

Except when otherwise determined by a court of competent jurisdiction, a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code:

(a) Shall distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax under section 4942 of the Internal Revenue Code;

(b) Shall not engage in any act of self-dealing as defined in section 4941(d) of the Internal Revenue Code;

(c) Shall not retain any excess business holdings as defined in section 4943(c) of the Internal Revenue Code;

(d) Shall not make any investments subjecting it to taxation under section 4944 of the Internal Revenue Code; and

(e) Shall not make any taxable expenditures as defined in section 4945(d) of the Internal Revenue Code.

**Source** Laws 1996, LB 681, § 16; Laws 1998, LB 1015, § 1.

#### **21-1917 Meetings and votes; court order.**

(a) If for any reason it is impractical or impossible for any corporation to call or conduct a meeting of its members, delegates, or directors, or otherwise obtain their consent, in the manner prescribed by its articles, bylaws, or the Nebraska Nonprofit Corporation Act, then upon petition of a director, officer, delegate, member, or the Attorney General, the district court may order that such a meeting be called or that a written ballot or other form of obtaining the vote of members, delegates, or directors be authorized in such a manner it finds fair and equitable under the circumstances.

(b) The district court shall, in an order issued pursuant to this section, provide for a method of notice reasonably designed to give actual notice to all persons who would be entitled to notice of a meeting held pursuant to the articles, bylaws and the act, whether or not the method results in actual notice to all such persons or conforms to the notice requirements that would otherwise apply. In a proceeding under this section the district court may determine who the members or directors are.

(c) The order issued pursuant to this section may dispense with any requirement relating to the holding of or voting at meetings or obtaining votes, including any requirement as to quorums or as to the number or percentage of votes needed for approval, that would otherwise be imposed by the articles, bylaws, or the act.

(d) Whenever practical, any order issued pursuant to this section shall limit the subject matter of meetings or other forms of consent authorized to items, including amendments to the articles or bylaws, the resolution of which will or may enable the corporation to continue managing its affairs without further resort to this section. An order under this

section may also authorize the obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of assets.

(e) Any meeting or other method of obtaining the vote of members, delegates, or directors conducted pursuant to an order issued under this section, and that complies with all the provisions of such order, is for all purposes a valid meeting or vote, as the case may be, and shall have the same force and effect as if it complied with every requirement imposed by the articles, bylaws, and the act.

**Source** Laws 1996, LB 681, § 17.

#### **21-1918 Attorney General; notice; powers.**

(a) The Attorney General shall be given notice of the commencement of any proceeding that the Nebraska Nonprofit Corporation Act authorizes him or her to bring but that has been commenced by another person.

(b) Whenever any provision of the act requires that notice be given to the Attorney General before or after commencing a proceeding or permits him or her to commence a proceeding:

(1) If no proceeding has been commenced, the Attorney General may take appropriate action including, but not limited to, seeking injunctive relief; or

(2) If a proceeding has been commenced by a person other than the Attorney General, the Attorney General, as of right, may intervene in such proceeding.

**Source** Laws 1996, LB 681, § 18.

#### **21-1919 Religious corporations; constitutional protections.**

If religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of the Nebraska Nonprofit Corporation Act on the same subject, the religious doctrine shall control to the extent required by the Constitution of the United States or the Constitution of the State of Nebraska or both.

**Source** Laws 1996, LB 681, § 19.

#### **21-1920 Incorporators.**

One or more persons may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the Secretary of State for filing.

**Source** Laws 1996, LB 681, § 20.

#### **21-1921 Articles of incorporation.**

(a) The articles of incorporation shall set forth:

(1) A corporate name for the corporation that satisfies the requirements of section 21-1931;

(2) One of the following statements:

(i) This corporation is a public benefit corporation;

(ii) This corporation is a mutual benefit corporation; or

(iii) This corporation is a religious corporation;

(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 street address of each incorporator;

(5) Whether or not the corporation will have members; and

(6) Provisions not inconsistent with law regarding the distribution of assets on dissolution.

(b) The articles of incorporation may set forth:

(1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;

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

(3) Provisions not inconsistent with law regarding:

(i) Managing and regulating the affairs of the corporation;

(ii) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members); and

(iii) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members.

(4) Any provision that under the Nebraska Nonprofit Corporation Act is required or permitted to be set forth in the bylaws.

(c) Each incorporator and director named in the articles must sign the articles.

(d) The articles of incorporation need not set forth any of the corporate powers enumerated in the act.

**Source** Laws 1996, LB 681, § 21; Laws 2008, LB379, § 7. July 18, 2008

#### **21-1922 Incorporation.**

(a) Unless a delayed effective date is specified, the corporate existence begins when the articles of incorporation are filed.

(b) The Secretary of State's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

**Source** Laws 1996, LB 681, § 22.

#### **21-1923 Liability for preincorporation transactions.**

All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under the Nebraska Nonprofit Corporation Act, are jointly and severally liable for all liabilities created while so acting.

**Source** Laws 1996, LB 681, § 23.

#### **21-1924 Organization of corporation.**

(a) After incorporation:

(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting; or

(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by the Nebraska Nonprofit Corporation Act to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this state in accordance with section 21-1981.

**Source** Laws 1996, LB 681, § 24.

#### **21-1925 Bylaws.**

(a) The incorporators or board of directors of a corporation shall adopt bylaws for the corporation.

(b) The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

**Source** Laws 1996, LB 681, § 25.

#### **21-1926 Emergency bylaws and powers.**

(a) Unless the articles provide otherwise the directors of a corporation may adopt, amend, or repeal bylaws to be effective only in an emergency defined in subsection (d) of this section. The emergency bylaws, which are subject to amendment or repeal by the members, may provide special procedures necessary for managing the corporation during the emergency, including:

(1) How to call a meeting of the board;

(2) Quorum requirements for the meeting; and

(3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

**Source** Laws 1996, LB 681, § 26.

**21-1927 Purposes.**

(a)(1) Every corporation incorporated under the Nebraska Nonprofit Corporation Act has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of incorporation.

(2) A corporation engaging in an activity that is subject to regulation under another statute of this state may incorporate under the act only if incorporation under the act is not prohibited by the other statute. The corporation shall be subject to all limitations of the other statute.

(b) Corporations may be incorporated under the Nebraska Nonprofit Corporation Act for any one or more of, but not limited to, the following lawful purposes: Charitable; benevolent; eleemosynary; educational; civic; patriotic; political; religious; social; fraternal; literary; cultural; athletic; scientific; agricultural; horticultural; animal husbandry; and professional, commercial, industrial, or trade association. Corporations may also be incorporated under the act for the purpose of providing for, erecting, owning, leasing, furnishing, and managing any building, hall, dormitory or apartments, lands, or grounds for the use or benefit in whole or in part of any governmental, religious, social, educational, scientific, fraternal, or charitable society or societies, body or bodies, institution or institutions, incorporated or unincorporated, or for the purpose of holding property of any nature in trust for such society, body, or institution or for the purpose of assisting any governmental body in obtaining grants from the federal government, the performance of any requirements necessary to obtain a federal grant, or carrying out the purpose for which a federal grant is obtained.

**Source** Laws 1996, LB 681, § 27; Laws 1999, LB 271, § 1.

**21-1928 General powers.**

Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs including, without limitation, the power:

- (1) To sue and be sued, complain, and defend in its corporate name;
- (2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing or in any other manner reproducing it;
- (3) To make and amend bylaws not inconsistent with its articles of incorporation or with the laws of this state, for regulating and managing the affairs of the corporation;
- (4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;
- (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (6) To purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of, any entity;
- (7) To make contracts and guaranties, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment, except as limited by section 21-1988;
- (9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
- (10) To conduct its activities, locate offices, and exercise the powers granted by the Nebraska Nonprofit Corporation Act within or without this state;
- (11) To elect or appoint directors, officers, employees, and agents of the corporation, define their duties, and fix their compensation;
- (12) To pay pensions and establish pension plans, pension trusts, and other benefit and incentive plans for any or all of its current or former directors, officers, employees, and agents;
- (13) To make donations not inconsistent with law for the public welfare or for charitable, religious, scientific, or educational purposes and for other purposes that further the corporate interest;
- (14) To impose dues, assessments, admission, and transfer fees upon its members;
- (15) To establish conditions for admission of members, admit members, and issue memberships;
- (16) To carry on a business; and
- (17) To do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the corporation.

**Source** Laws 1996, LB 681, § 28.

**21-1929 Emergency powers.**

(a) In anticipation of or during an emergency defined in subsection (d) of this section, the board of directors of a corporation may:

- (1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and
- (2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officer to do so.

(b) During an emergency defined in subsection (d) of this section, unless emergency bylaws provide otherwise:

- (1) Notice of a meeting of the board of directors need be given only to those directors it is practicable to reach and may be given in any practicable manner, including by publication and radio; and
- (2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary affairs of the corporation:

- (1) Binds the corporation; and
- (2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

**Source** Laws 1996, LB 681, § 29.

### **21-1930 Ultra vires.**

(a) Except as provided in subsection (b) of this section, the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged in a proceeding against the corporation to enjoin an act when a third party has not acquired rights. The proceeding may be brought by the Attorney General, a director, or by a member or members in a derivative proceeding.

(c) A corporation's power to act may be challenged in a proceeding against an incumbent or former director, officer, employee, or agent of the corporation. The proceeding may be brought by a director, the corporation (directly, derivatively, or through a receiver, a trustee, or other legal representative), or in the case of a public benefit corporation, by the Attorney General.

**Source** Laws 1996, LB 681, § 30.

### **21-1931 Corporate name.**

(a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 21-1927 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

- (1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;
- (2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;
- (3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;
- (4) A trade name registered in this state pursuant to sections 87-208 to 87-220; and
- (5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(c) A corporation may apply to the Secretary of State for authorization to use a name that is deceptively similar to, upon the Secretary of State's records, one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

- (1) The other corporation or business entity consents to the use in writing; or
- (2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to do business in this state and the proposed user corporation:

- (1) Has merged with the other corporation or business entity;
- (2) Has been formed by reorganization of the other corporation or business entity; or
- (3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.

(e) The Nebraska Nonprofit Corporation Act does not control the use of fictitious names.

**Source** Laws 1996, LB 681, § 31; Laws 1997, LB 44, § 2; Laws 1997, LB 453, § 1; Laws 2003, LB 464, § 1.

**21-1932 Reserved name.**

(a) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. Upon finding that the corporate name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for a nonrenewable one-hundred-twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

**Source** Laws 1996, LB 681, § 32.

**21-1933 Registered name.**

(a) A foreign corporation may register its corporate name, or its corporate name with any change required by section 21-19,151, if the name is not the same as or deceptively similar to, upon the records of the Secretary of State:

- (1) The corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;
- (2) A corporate name reserved under section 21-1932 or 21-2029 or registered under this section; and
- (3) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.

(b) A foreign corporation registers its corporate name, or its corporate name with any change required by section 21-19,151, by delivering to the Secretary of State an application:

(1) Setting forth its corporate name, or its corporate name with any change required by section 21-19,151, the state or country and date of its incorporation, and a brief description of the nature of the activities in which it is engaged; and

(2) Accompanied by a certificate of existence (or a document of similar import) from the state or country of incorporation. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

(c) The corporate name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under that name or consent in writing to the use of that name by a corporation or other business entity thereafter incorporated under the Nebraska Nonprofit Corporation Act or authorized to transact business in this state or by another foreign corporation or business entity thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation or business entity qualifies or consents to the qualification of another foreign corporation or business entity under the registered name.

**Source** Laws 1996, LB 681, § 33; Laws 1997, LB 44, § 3; Laws 2003, LB 464, § 2.

**21-1934 Registered office; registered agent.**

Each corporation must continuously maintain in this state:

(1) A registered office with the same street address as that of the registered agent. A post office box number may be provided in addition to the street address of the registered agent; and

(2) A registered agent, who may be:

(i) An individual who resides in this state and whose office is identical with the registered office;

(ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or

(iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

**Source** Laws 1996, LB 681, § 34; Laws 2008, LB379, § 8. July 18, 2008

**21-1935 Change of registered office or registered agent.**

(a) A corporation may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) The name of the corporation;

- (2) The street address of its current registered office;
  - (3) If the current registered office is to be changed, the street address of the new registered office;
  - (4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;
  - (5) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
  - (6) That after the change or changes are made, the addresses of its registered office and the office of its registered agent will be identical.
- (b) If the street address or post office box number of a registered agent's office is changed, the registered agent may change the street address, or, if one exists, the post office box number, of the registered office of any corporation for which the registered agent is the registered agent by notifying the corporation in writing of the change and by signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

**Source** Laws 1996, LB 681, § 35; Laws 2008, LB379, § 9. July 18, 2008

**21-1936 Resignation of registered agent.**

- (a) A registered agent may resign as the registered agent by signing and delivering to the Secretary of State the original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.
- (b) After filing the statement the Secretary of State shall mail one copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office as shown in the most recent biennial report filed pursuant to section 21-19,172.
- (c) The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**Source** Laws 1996, LB 681, § 36.

**21-1937 Service on corporation.**

- (a) A corporation's registered agent is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the corporation.
- (b) If a corporation has no registered agent, or the agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office shown in the most recent biennial report filed pursuant to section 21-19,172. Service is perfected under this subsection on the earliest of:
  - (1) The date the corporation receives the mail;
  - (2) The date shown on the return receipt, if signed on behalf of the corporation; or
  - (3) Five days after its deposit in the United States mail, if mailed and correctly addressed with first-class postage affixed.
- (c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.

**Source** Laws 1996, LB 681, § 37.

**21-1938 Admission of members.**

- (a) The articles or bylaws may establish criteria or procedures for admission of members.
- (b) No person shall be admitted as a member without his or her consent.

**Source** Laws 1996, LB 681, § 38.

**21-1939 Consideration.**

Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for such consideration as is determined by the board.

**Source** Laws 1996, LB 681, § 39.

**21-1940 No requirement of members.**

A corporation is not required to have members.

**Source** Laws 1996, LB 681, § 40.

**21-1941 Differences in rights and obligations.**

All members shall have the same rights and obligations with respect to voting, dissolution, redemption, and transfer, unless the articles or bylaws establish classes of membership with different rights or obligations. All members shall have the same rights and obligations with respect to any other matters, except as set forth in or authorized by the articles or bylaws.

**Source** Laws 1996, LB 681, § 41.

**21-1942 Transfers.**

(a) Except as set forth in or authorized by the articles or bylaws, no member of a mutual benefit corporation may transfer a membership or any right arising therefrom.

(b) No member of a public benefit or religious corporation may transfer a membership or any right arising therefrom.

(c) When transfer rights have been provided, no restriction on them shall be binding with respect to a member holding a membership issued prior to the adoption of the restriction unless the restriction is approved by the members and the affected member.

**Source** Laws 1996, LB 681, § 42.

**21-1943 Member's liability to third parties.**

A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

**Source** Laws 1996, LB 681, § 43.

**21-1944 Member's liability for dues, assessments, and fees.**

A member may become liable to the corporation for dues, assessments, or fees. However, an article or bylaw provision or a resolution adopted by the board authorizing or imposing dues, assessments, or fees does not, of itself, create liability.

**Source** Laws 1996, LB 681, § 44.

**21-1945 Creditor's action against member.**

(a) No proceeding may be brought by a creditor to reach the liability, if any, of a member to the corporation unless final judgment has been rendered in favor of the creditor against the corporation and execution has been returned unsatisfied in whole or in part or unless such proceeding would be useless.

(b) All creditors of the corporation, with or without reducing their claims to judgment, may intervene in any creditor's proceeding brought under subsection (a) of this section to reach and apply unpaid amounts due the corporation. Any or all members who owe amounts to the corporation may be joined in such proceeding.

**Source** Laws 1996, LB 681, § 45.

**21-1946 Resignation.**

(a) A member may resign at any time.

(b) The resignation of a member does not relieve the member from any obligations the member may have to the corporation as a result of obligations incurred or commitments made prior to resignation.

**Source** Laws 1996, LB 681, § 46.

**21-1947 Termination, expulsion, and suspension.**

(a) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(1) The articles or bylaws set forth a procedure that provides:

(i) Not less than fifteen days' prior written notice of the expulsion, suspension, or termination and the reasons therefor; and

- (ii) An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person or persons authorized to decide that the proposed expulsion, suspension, or termination not take place; or
- (2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.
- (c) Any written notice given by mail must be given by first-class or certified mail sent to the last-known address of the member shown on the corporation's records.
- (d) Any proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.
- (e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

**Source** Laws 1996, LB 681, § 47.

#### **21-1948 Purchase of memberships.**

- (a) A public benefit or religious corporation may not purchase any of its memberships or any right arising therefrom.
- (b) A mutual benefit corporation may purchase the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions set forth in or authorized by its articles or bylaws, but no payment shall be made in violation of sections 21-19,127 and 21-19,128.

**Source** Laws 1996, LB 681, § 48.

#### **21-1949 Derivative suits.**

- (a) A proceeding may be brought in the right of a domestic or foreign corporation to procure a judgment in its favor by: (i) Any member or members having five percent or more of the voting power or by fifty members, whichever is less; or (ii) any director.
- (b) In any such proceeding, each complainant shall be a member or director at the time of bringing the proceeding.
- (c) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made, if any, to obtain action by the directors and either why the complainants could not obtain the action or why they did not make the demand. If a demand for action was made and the corporation's investigation of the demand is in progress when the proceeding is filed, the district court may stay the proceeding until the investigation is completed.
- (d) On termination of the proceeding the district court may require the complainants to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the suit if it finds that the proceeding was commenced frivolously or in bad faith.
- (e) If the proceeding on behalf of the corporation results in the corporation taking some action requested by the complainants or otherwise was successful, in whole or in part, or if anything was received by the complainants as the result of a judgment, compromise, or settlement of an action or claim, the district court may award the complainants reasonable expenses (including counsel fees).
- (f) The complainants shall notify the Attorney General within ten days after commencing any proceeding under this section if the proceeding involves a public benefit corporation or assets held in charitable trust by a mutual benefit corporation.

**Source** Laws 1996, LB 681, § 49.

#### **21-1950 Delegates.**

- (a) A corporation may provide in its articles or bylaws for delegates having some or all of the authority of members.
- (b) The articles or bylaws may set forth provisions relating to:
  - (1) The characteristics, qualifications, rights, limitations, and obligations of delegates including their selection and removal;
  - (2) Calling, noticing, holding, and conducting meetings of delegates; and
  - (3) Carrying on corporate activities during and between meetings of delegates.

**Source** Laws 1996, LB 681, § 50.

#### **21-1951 Annual and regular meetings.**

- (a) A corporation with members shall hold a membership meeting annually at a time stated in or fixed in accordance with the bylaws.

(b) A corporation with members may hold regular membership meetings at the times stated in or fixed in accordance with the bylaws.

(c) Annual and regular membership 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 in or fixed in accordance with the bylaws, annual and regular meetings shall be held at the corporation's principal office. Unless the articles or bylaws provide otherwise, members may participate in an annual or regular meeting of the members or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present at the meeting.

(d) At the annual meeting:

(1) The president and chief financial officer shall report on the activities and financial condition of the corporation; and

(2) The members shall consider and act upon such other matters as may be raised consistent with the notice requirements of section 21-1955 and subsection (b) of section 21-1962.

(e) At regular meetings the members shall consider and act upon such matters as may be raised consistent with (i) the notice requirements of section 21-1955 and (ii) subsection (b) of section 21-1962.

(f) The failure to hold an annual or regular meeting at a time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

**Source** Laws 1996, LB 681, § 51.

### **21-1952 Special meeting.**

(a) A corporation with members shall hold a special meeting of members:

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

(2) Except as provided in the articles or bylaws of a religious corporation if the holders of at least five percent of the voting power of any corporation sign, date, and deliver to any corporate officer one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) The close of business on the thirtieth day before delivery of the demand or demands for a special meeting to any corporate officer is the record date for the purpose of determining whether the five percent requirement of subsection (a) of this section has been met.

(c) If a notice for a special meeting demanded under subdivision (a)(2) of this section is not given pursuant to section 21-1955 within thirty days after the date the written demand or demands are delivered to a corporate officer, regardless of the requirements of subsection (d) of this section, a person signing the demand or demands may set the time and place of the meeting and give notice pursuant to section 21-1955.

(d) Special meetings of members 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. Unless the articles or bylaws provide otherwise, members may participate in a special meeting of the members or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present at the meeting.

(e) Only those matters that are within the purpose or purposes described in the meeting notice required by section 21-1955 may be conducted at a special meeting of members.

**Source** Laws 1996, LB 681, § 52.

### **21-1953 Court-ordered meeting.**

(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 member or other person entitled to participate in an annual or regular meeting, and in the case of a public benefit corporation, the Attorney General, if an annual meeting was not held 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 any member or other person entitled to participate in a regular meeting, and in the case of a public benefit corporation, the Attorney General, if a regular meeting is not held within forty days after the date it was required to be held; or

(3) On application of a member who signed a demand for a special meeting valid under section 21-1952, a person or persons entitled to call a special meeting, and, in the case of a public benefit corporation, the Attorney General, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer; or

- (ii) The special meeting was not held in accordance with the notice.
- (b) The district court may fix the time and place of the meeting, specify a record date for determining members 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) If the district court orders a meeting, it may also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

**Source** Laws 1996, LB 681, § 53.

#### **21-1954 Action by written consent.**

- (a) Unless limited or prohibited by the articles or bylaws, action required or permitted by the Nebraska Nonprofit Corporation Act to be approved by the members may be approved without a meeting of members if the action is approved by members holding at least eighty percent of the voting power. The action must be evidenced by one or more written consents describing the action taken, signed by those members representing at least eighty percent of the voting power, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.
- (b) If not otherwise determined under section 21-1953 or 21-1957, the record date for determining members entitled to take action without a meeting is the date the first member signs the consent under subsection (a) of this section.
- (c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document filed with the Secretary of State.
- (d) Written notice of member approval pursuant to this section shall be given to all members who have not signed the written consent. If written notice is required, member approval pursuant to this section shall be effective ten days after such written notice is given.

**Source** Laws 1996, LB 681, § 54.

#### **21-1955 Notice of meeting.**

- (a) A corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner.
- (b) Any notice that conforms to the requirements of subsection (c) of this section is fair and reasonable, but other means of giving notice may also be fair and reasonable when all the circumstances are considered. Notice of matters referred to in subdivision (c)(2) of this section, however, must be given as provided in subsection (c) of this section.
- (c) Notice is fair and reasonable if:
  - (1) The corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than ten (or if notice is mailed by other than first-class or registered mail, thirty) nor more than sixty days before the meeting date;
  - (2) Notice of an annual or regular meeting includes a description of any matter or matters that must be approved by the members under section 21-1987, 21-19,102, 21-19,107, 21-19,114, 21-19,121, 21-19,126, 21-19,129, or 21-19,130; and
  - (3) Notice of a special meeting includes a description of the matter or matters for which the meeting is called.
- (d) Unless the bylaws require otherwise, if an annual, regular, or special meeting of members is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 21-1957, however, notice of the adjourned meeting must be given under this section to the members of record as of the new record date.
- (e) When giving notice of an annual, regular, or special meeting of members, a corporation shall give notice of a matter a member intends to raise at the meeting if: (1) Requested in writing to do so by a person entitled to call a special meeting; and (2) the request is received by the secretary or president of the corporation at least ten days before the corporation gives notice of the meeting.

**Source** Laws 1996, LB 681, § 55.

#### **21-1956 Waiver of notice.**

- (a) A member may waive any notice required by the Nebraska Nonprofit Corporation Act, the articles, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the member entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A member's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

**Source** Laws 1996, LB 681, § 56.

**21-1957 Record date; determining members entitled to notice and vote.**

(a) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to notice of a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members at the close of business on the business day preceding the day on which notice is given, or if notice is waived, at the close of business on the business day preceding the day on which the meeting is held, are entitled to notice of the meeting.

(b) The bylaws of a corporation may fix or provide the manner of fixing a date as the record date for determining the members entitled to vote at a members' meeting. If the bylaws do not fix or provide for fixing such a record date, the board may fix a future date as such a record date. If no such record date is fixed, members on the date of the meeting who are otherwise eligible to vote are entitled to vote at the meeting.

(c) The bylaws may fix or provide the manner for determining a date as the record date for the purpose of determining the members entitled to exercise any rights in respect of any other lawful action. If the bylaws do not fix or provide for fixing such a record date, the board may fix in advance such a record date. If no such record date is fixed, members at the close of business on the day on which the board adopts the resolution relating thereto, or the sixtieth day prior to the date of such other action, whichever is later, are entitled to exercise such rights.

(d) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of members occurs.

(e) A determination of members entitled to notice of or to vote at a membership meeting is effective for any adjournment of the meeting unless the board fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than seventy days after the record date for determining members entitled to notice of the original meeting.

(f) If the district court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date for notice or voting continues in effect or it may fix a new record date for notice or voting.

**Source** Laws 1996, LB 681, § 57.

**21-1958 Action by written ballot.**

(a) Unless prohibited or limited by the articles or bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the corporation delivers a written ballot to every member entitled to vote on the matter.

(b) A written ballot shall:

(1) Set forth each proposed action; and

(2) Provide an opportunity to vote for or against each proposed action.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(d) All solicitations for votes by written ballot shall:

(1) Indicate the number of responses needed to meet the quorum requirements;

(2) State the percentage of approvals necessary to approve each matter other than election of directors; and

(3) Specify the time by which a ballot must be received by the corporation in order to be counted.

(e) Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

**Source** Laws 1996, LB 681, § 58.

**21-1959 Members' list for meeting.**

(a) After fixing a record date for a notice of a meeting, a corporation shall prepare an alphabetical list of the names of all its members who are entitled to notice of the meeting. The list must show the address and number of votes each member is entitled to vote at the meeting. The corporation shall prepare on a current basis through the time of

the membership meeting a list of members, if any, who are entitled to vote at the meeting, but who are not entitled to notice of the meeting. This list shall be prepared on the same basis as and be part of the list of members.

(b) The list of members must be available for inspection by any member for the purpose of communication with other members concerning the meeting, beginning two business days after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a reasonable place identified in the meeting notice in the city where the meeting will be held. A member, a member's agent, or attorney is entitled on written demand to inspect and, subject to the limitations of subsection (c) of section 21-19,166 and section 21-19,169, to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection.

(c) The corporation shall make the list of members available at the meeting, and any member, a member's agent, or a member's attorney is entitled to inspect the list at any time during the meeting or upon adjournment.

(d) If the corporation refuses to allow a member, a member's agent, or a member's attorney to inspect the list of members before or at the meeting (or copy the list as permitted by 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, on application of the member, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete and may order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order.

(e) Unless a written demand to inspect and copy a membership list has been made under subsection (b) of this section prior to the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

(f) The articles or bylaws of a religious corporation may limit or abolish the rights of a member under this section to inspect and copy any corporate record.

**Source** Laws 1996, LB 681, § 59.

#### **21-1960 Voting entitlement generally.**

(a) Unless the articles or bylaws provide otherwise, each member is entitled to one vote on each matter voted on by the members.

(b) Unless the articles or bylaws provide otherwise, if a membership stands of record in the names of two or more persons, their acts with respect to voting shall have the following effect:

(1) If only one votes, such act binds all; and

(2) If more than one votes, the vote shall be divided on a pro rata basis.

**Source** Laws 1996, LB 681, § 60.

#### **21-1961 Quorum requirements.**

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, or bylaws provide for a higher or lower quorum, ten percent of the votes entitled to be cast on a matter must be represented at a meeting of members to constitute a quorum on that matter.

(b) A bylaw amendment to decrease the quorum for any member action may be approved by the members or, unless prohibited by the bylaws, by the board.

(c) A bylaw amendment to increase the quorum required for any member action must be approved by the members.

(d) Unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.

**Source** Laws 1996, LB 681, § 61.

#### **21-1962 Voting requirements.**

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, or the bylaws require a greater vote or voting by class, if a quorum is present, the affirmative vote of the votes represented and voting (which affirmative votes also constitute a majority of the required quorum) is the act of the members.

(b) A bylaw amendment to increase or decrease the vote required for any member action must be approved by the members.

**Source** Laws 1996, LB 681, § 62.

#### **21-1963 Proxies.**

- (a) Unless the articles or bylaws prohibit or limit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney in fact.
- (b) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment form. No proxy shall be valid for more than three years from its date of execution.
- (c) An appointment of a proxy is revocable by the member.
- (d) The death or incapacity of the member 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 tabulate votes before the proxy exercises authority under the appointment.
- (e) Appointment of a proxy is revoked by the person appointing the proxy:
  - (1) Attending any meeting and voting in person; or
  - (2) Signing and delivering to the secretary or other officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form.
- (f) Subject to section 21-1966 and any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the member making the appointment.

**Source** Laws 1996, LB 681, § 63.

**21-1964 Cumulative voting for directors.**

- (a) If the articles or bylaws provide for cumulative voting by members, members may so vote, by multiplying the number of votes the members are entitled to cast by the number of directors for whom they are entitled to vote, and cast the product for a single candidate or distribute the product among two or more candidates.
- (b) Cumulative voting is not authorized at a particular meeting unless:
  - (1) The meeting notice or statement accompanying the notice states that cumulative voting will take place; or
  - (2) A member gives notice during the meeting and before the vote is taken of the member's intent to cumulate votes, and if one member gives this notice all other members participating in the election are entitled to cumulate their votes without giving further notice.
- (c) A director elected by cumulative voting may be removed by the members without cause if the requirements of section 21-1975 are met unless the votes cast against removal, or not consenting in writing to such removal, would be sufficient to elect such director if voted cumulatively at an election at which the same total number of votes were cast (or, if such action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.
- (d) Members may not cumulatively vote if the directors and members are identical.

**Source** Laws 1996, LB 681, § 64.

**Cumulative voting for directors,** see **Cross Reference** Chapter XII, article 1, Constitution of Nebraska.

**21-1965 Other methods of electing directors.**

A corporation may provide in its articles or bylaws for the election of directors by members or delegates (1) on the basis of chapter or other organizational unit, (2) by region or other geographic unit, (3) by preferential voting, or (4) by any other reasonable method.

**Source** Laws 1996, LB 681, § 65.

**Cumulative voting for directors,** see **Cross Reference** Chapter XII, article 1, Constitution of Nebraska.

**21-1966 Corporation's acceptance of votes.**

- (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a member, the corporation, if acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.
- (b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation, if acting in good faith, is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member if:
  - (1) The member 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 attorney in fact of the member and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment;

(3) Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders; and

(4) In the case of a mutual benefit corporation:

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

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

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to 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 member.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the member for the consequences of the acceptance or rejection.

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

**Source** Laws 1996, LB 681, § 66.

#### **21-1967 Voting agreements.**

(a) Two or more members may provide for the manner in which they will vote by signing an agreement for that purpose. Such agreements may be valid for a period of up to ten years. For public benefit corporations such agreements must have a reasonable purpose not inconsistent with the corporation's public or charitable purposes.

(b) A voting agreement created under this section is specifically enforceable.

**Source** Laws 1996, LB 681, § 67.

#### **21-1968 Requirement for and duties of board of directors.**

(a) Each corporation must have a board of directors.

(b) Except as provided in the Nebraska Nonprofit Corporation Act or subsection (c) of this section, all corporate powers shall be exercised by or under the authority of, and the affairs of the corporation managed under the direction of, its board.

(c) The articles may authorize a person or persons to exercise some or all of the powers which would otherwise be exercised by a board. To the extent so authorized any such person or persons shall have the duties and responsibilities of the directors, and the directors shall be relieved to that extent from such duties and responsibilities.

**Source** Laws 1996, LB 681, § 68.

#### **21-1969 Qualifications of directors.**

All directors must be individuals. The articles or bylaws may prescribe other qualifications for directors.

**Source** Laws 1996, LB 681, § 69.

#### **21-1970 Number of directors.**

(a) A board of directors must consist of three or more individuals, with the number specified in or fixed in accordance with the articles or bylaws.

(b) The number of directors may be increased or decreased (but to no fewer than three) from time to time by amendment to or in the manner prescribed in the articles or bylaws.

**Source** Laws 1996, LB 681, § 70.

#### **21-1971 Election, designation, and appointment of directors.**

(a) If the corporation has members, all the directors (except the initial directors) shall be elected at the first annual meeting of members, and at each annual meeting thereafter, unless the articles or bylaws provide some other time or method of election or provide that some of the directors are appointed by some other person or designated.

(b) If the corporation does not have members, all the directors (except the initial directors) shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors (other than the initial directors) shall be elected by the board.

**Source** Laws 1996, LB 681, § 71.

**21-1972 Terms of directors generally.**

(a) The articles or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.

(b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the articles or bylaws:

(1) The term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) The term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated, or appointed and qualifies, or until there is a decrease in the number of directors.

**Source** Laws 1996, LB 681, § 72.

**21-1973 Staggered terms for directors.**

The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the several groups need not be uniform.

**Source** Laws 1996, LB 681, § 73.

**21-1974 Resignation of directors.**

(a) A director may resign at any time by delivering written notice to the board of directors, its presiding officer, or to the president or secretary.

(b) A resignation is effective when the notice is effective unless the notice specifies a later effective date. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

**Source** Laws 1996, LB 681, § 74.

**21-1975 Removal of directors elected by members or directors.**

(a) The members may remove one or more directors elected by them without cause.

(b) If a director is elected by a class, chapter, or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit, or grouping.

(c) Except as provided in subsection (i) of this section, a director may be removed under subsection (a) or (b) of this section only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes (or if the director was elected by a class, chapter, unit, or grouping of members, the number of votes of that class, chapter, unit, or grouping) sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting called for the purpose of removing the director. The meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b) through (d) of this section, it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) through (e) of this section.

(h) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws. A director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend

the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(j) The articles or bylaws of a religious corporation may:

(1) Limit the application of this section; and

(2) Set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

**Source** Laws 1996, LB 681, § 75.

#### **21-1976 Removal of designated or appointed directors.**

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b)(1) An appointed director may be removed without cause by the person appointing the director except as otherwise provided in the articles or bylaws;

(2) The person removing the appointed director shall do so by giving written notice of the removal to the appointed director and either the presiding officer of the board or the corporation's president or secretary; and

(3) A removal of an appointed director is effective when the notice is effective unless the notice specifies a future effective date.

**Source** Laws 1996, LB 681, § 76.

#### **21-1977 Removal of directors by judicial proceeding.**

(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 remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent of the voting power of any class, or the Attorney General in the case of a public benefit corporation, if it finds that (1)(i) the director engaged in fraudulent or dishonest conduct, (ii) the director engaged in a gross abuse of authority or discretion, with respect to the corporation, or (iii) a final judgment has been entered finding that the director has violated a duty set forth in sections 21-1986 to 21-1989 and (2) removal is in the best interest of the corporation.

(b) The district court may bar the removed director from serving on the board for a period prescribed by the court.

(c) If members or the Attorney General commence a proceeding under subsection (a) of this section the corporation shall be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a) of this section, they shall give the Attorney General written notice of the proceeding.

(e) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

**Source** Laws 1996, LB 681, § 77.

#### **21-1978 Vacancy on board.**

(a) Unless the articles or bylaws provide otherwise, and except as provided in subsections (b) and (c) of this section, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The members, if any, may fill the vacancy. If the vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy if it is filled by the members;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) Unless the articles or bylaws provide otherwise, if a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

(c) If a vacant office was held by a designated director, the vacancy shall be filled as provided in the articles or bylaws. In the absence of an applicable article or bylaw provision, the vacancy may not be filled by the board.

(d) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under subsection (b) of section 21-1974 or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

**Source** Laws 1996, LB 681, § 78.

**21-1979 Compensation of directors.**

Unless the articles or bylaws provide otherwise, a board of directors may fix the compensation of directors.

**Source** Laws 1996, LB 681, § 79.

**21-1980 Regular and special meetings.**

(a) If the time and place of a directors' meeting is fixed by the bylaws or the board, the meeting is a regular meeting. All other meetings are special meetings.

(b) A board of directors may hold regular or special meetings in or out of this state.

(c) Unless the articles or bylaws provide otherwise, members of the board of directors may participate in a regular or special meeting of the board or conduct the meeting through the use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**Source** Laws 1996, LB 681, § 80.

**21-1981 Action without meeting.**

(a) Unless the articles or bylaws provide otherwise, action required or permitted by the Nebraska Nonprofit Corporation Act to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

**Source** Laws 1996, LB 681, § 81.

**21-1982 Call and notice of meeting.**

(a) Unless the articles, bylaws, or subsection (c) of this section provide otherwise, regular meetings of the board may be held without notice.

(b) Unless the articles, bylaws, or subsection (c) of this section provide otherwise, special meetings of the board must be preceded by at least two days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(c) In corporations without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members shall not be valid unless each director is given at least seven days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to section 21-1983.

(d) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or twenty percent of the directors then in office may call and give notice of a meeting of the board.

**Source** Laws 1996, LB 681, § 82.

**21-1983 Waiver of notice.**

(a) A director may at any time waive any notice required by the Nebraska Nonprofit Corporation Act, the articles, or bylaws. Except as provided in subsection (b) of this section, the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or the corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice of the meeting unless the director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with the act, the articles, or bylaws, objects to lack of notice and does not thereafter vote for or assent to the objected to action.

**Source** Laws 1996, LB 681, § 83.

**21-1984 Quorum; voting.**

(a) Except as otherwise provided in the Nebraska Nonprofit Corporation Act, the articles, or bylaws, a quorum of a board of directors consists of a majority of the directors in office immediately before a meeting begins. In no event may the articles or bylaws authorize a quorum of fewer than the greater of one-third of the number of directors in office or two directors.

(b) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board unless the act, the articles, or bylaws require the vote of a greater number of directors.

**Source** Laws 1996, LB 681, § 84.

#### **21-1985 Committees of the board.**

(a) Unless prohibited or limited by the articles or bylaws, a board of directors may create one or more committees of the board and appoint members of the board to serve on them. Each committee shall have two or more directors who serve at the pleasure of the board.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:

(1) A majority of all the directors in office when the action is taken; or

(2) The number of directors required by the articles or bylaws to take action under section 21-1984.

(c) Sections 21-1980 to 21-1984, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board, shall apply to committees of the board and their members. Unless the articles or bylaws provide otherwise, members of a committee may participate in a meeting of the committee or conduct the meeting through the use of any means of communication by which all members participating may simultaneously hear each other during the meeting. A member participating in a meeting by this means is deemed to be present at the meeting.

(d) To the extent specified by the board of directors or in the articles or bylaws, each committee of the board may exercise the board's authority under section 21-1968.

(e) A committee of the board may not:

(1) Authorize distributions;

(2) Approve or recommend to members the dissolution, the merger, or the sale, pledge, or transfer of all or substantially all of the corporation's assets;

(3) Elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or

(4) Adopt, amend, or repeal the articles or bylaws.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section 21-1986.

**Source** Laws 1996, LB 681, § 85.

#### **21-1986 General standards for directors.**

(a) A director shall discharge his or her duties as a director, including his or her duties as a member of a committee:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner he or she reasonably believes to be in the best interests of the corporation.

(b) In discharging his or her duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence;

(3) A committee of the board of which the director is not a member as to matters within its jurisdiction if the director reasonably believes the committee merits confidence; or

(4) In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented.

(c) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.

(d) A director is not liable to the corporation, any member, or any other person for any action taken or not taken as a director, if the director acted in compliance with this section.

(e) A director shall not be deemed to be a trustee with respect to the corporation or with respect to any property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of such property.

**Source** Laws 1996, LB 681, § 86.

#### **21-1987 Director; conflict of interest.**

(a) A conflict of interest transaction is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction was fair at the time it was entered into or is approved as provided in subsection (b) or (c) of this section.

(b) A transaction in which a director of a public benefit or religious corporation has a conflict of interest may be approved:

(1) In advance by the vote of the board of directors or a committee of the board if:

(i) The material facts of the transaction and the director's interest are disclosed or known to the board or committee of the board; and

(ii) The directors approving the transaction in good faith reasonably believe that the transaction is fair to the corporation; or

(2) Before or after it is consummated by obtaining approval of the:

(i) Attorney General; or

(ii) The district court in an action in which the Attorney General is joined as a party.

(c) A transaction in which a director of a mutual benefit corporation has a conflict of interest may be approved if:

(1) The material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board and the board or committee of the board authorized, approved, or ratified the transaction; or

(2) The material facts of the transaction and the director's interest were disclosed or known to the members and they authorized, approved, or ratified the transaction.

(d) For purposes of this section, a director of the corporation has an indirect interest in a transaction if (1) another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction or (2) another entity of which the director is a director, officer, or trustee is a party to the transaction.

(e) For purposes of subsections (b) and (c) of this section, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board or on the committee who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors on the board who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action taken under subdivision (b)(1) or (c)(1) of this section if the transaction is otherwise approved as provided in subsection (b) or (c) of this section.

(f) For purposes of subdivision (c)(2) of this section, a conflict of interest transaction is authorized, approved, or ratified by the members if it receives a majority of the votes entitled to be counted under this subsection. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction and votes cast by or voted under the control of an entity described in subdivision (d)(1) of this section may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subdivision (c)(2) of this section. The vote of these members, however, is counted in determining whether the transaction is approved under other sections of the Nebraska Nonprofit Corporation Act. A majority of the voting power, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

(g) The articles, bylaws, or a resolution of the board may impose additional requirements on conflict of interest transactions.

**Source** Laws 1996, LB 681, § 87.

#### **21-1988 Loans to or guaranties for directors and officers.**

(a) A corporation may not lend money to or guaranty the obligation of a director or officer of the corporation.

(b) The fact that a loan or guaranty is made in violation of this section does not affect the borrower's liability on the loan.

**Source** Laws 1996, LB 681, § 88.

#### **21-1989 Liability for unlawful distributions.**

(a) Unless a director complies with the applicable standards of conduct described in section 21-1986, a director who votes for or assents to a distribution made in violation of the Nebraska Nonprofit Corporation Act is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating the act.

- (b) A director held liable for an unlawful distribution under subsection (a) of this section is entitled to contribution:
- (1) From every other director who voted for or assented to the distribution without complying with the applicable standards of conduct described in section 21-1986; and
  - (2) From each person who received an unlawful distribution for the amount of the distribution whether or not the person receiving the distribution knew it was made in violation of the act.

**Source** Laws 1996, LB 681, § 89.

#### **21-1990 Required officers.**

- (a) Unless otherwise provided in the articles or bylaws, a corporation shall have a president, a secretary, a treasurer, and such other officers as are appointed by the board.
- (b) The bylaws or the board shall delegate to one of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.
- (c) The same individual may simultaneously hold more than one office in a corporation.

**Source** Laws 1996, LB 681, § 90.

#### **21-1991 Duties and authority of officers.**

Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties and authority prescribed in a resolution of the board or by direction of an officer authorized by the board to prescribe the duties and authority of other officers.

**Source** Laws 1996, LB 681, § 91.

#### **21-1992 Standards of conduct for officers.**

- (a) An officer with discretionary authority shall discharge his or her duties under that authority:
  - (1) In good faith;
  - (2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
  - (3) In a manner the officer reasonably believes to be in the best interests of the corporation and its members, if any.
- (b) In discharging his or her duties an officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
  - (1) One or more officers or employees of the corporation who the officer reasonably believes to be reliable and competent in the matters presented;
  - (2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence; or
  - (3) In the case of religious corporations, religious authorities and ministers, priests, rabbis, or other persons whose position or duties in the religious organization the officer believes justify reliance and confidence and who the officer believes to be reliable and competent in the matters presented.
- (c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) of this section unwarranted.
- (d) An officer is not liable to the corporation, any member, or other person for any action taken or not taken as an officer, if the officer acted in compliance with this section.

**Source** Laws 1996, LB 681, § 92.

#### **21-1993 Resignation and removal of officers.**

- (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is effective unless the notice specifies a future effective date. If a resignation is made effective at a future date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.
- (b) A board may remove any officer at any time with or without cause.

**Source** Laws 1996, LB 681, § 93.

#### **21-1994 Contract rights of officers.**

- (a) The appointment of an officer does not itself create contract rights.
- (b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

**Source** Laws 1996, LB 681, § 94.

**21-1995 Officers' authority to execute documents.**

Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in Category 1 or by one officer in Category 1 and one officer in Category 2. Category 1 and Category 2 are defined as:

Category 1 - The presiding officer of the board and the president; and

Category 2 - A vice president, the secretary, treasurer and executive director.

**Source** Laws 1996, LB 681, § 95.

**21-1996 Terms, defined.**

For purposes of sections 21-1996 to 21-19,104:

(1) Corporation includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction;

(2) Director means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. Director includes, unless the context requires otherwise, the estate or personal representative of a director;

(3) Expenses include counsel fees;

(4) Liability means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses actually incurred with respect to a proceeding;

(5) Official capacity means: (i) When used with respect to a director, the office of director in a corporation; and (ii) when used with respect to an individual other than a director, as contemplated in section 21-19,102, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. Official capacity does not include service for any other foreign or domestic business or nonprofit corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise;

(6) Party includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding; and

(7) Proceeding means any threatened, pending, or completed action, suit, or proceeding whether civil, criminal, administrative, or investigative and whether formal or informal.

**Source** Laws 1996, LB 681, § 96.

**21-1997 Authority to indemnify.**

(a) Except as provided in subsection (d) of this section a corporation may indemnify an individual made a party to a proceeding because the individual is or was a director against liability incurred in the proceeding if the individual:

(1) Conducted himself or herself in good faith; and

(2) Reasonably believed:

(i) In the case of conduct in his or her official capacity with the corporation, that his or her conduct was in its best interests; and

(ii) In all other cases, that his or her conduct was at least not opposed to its best interests; and

(3) In the case of any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the best interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirements of subdivision (a)(2)(ii) of this section.

(c) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this section.

(d) A corporation may not indemnify a director under this section:

(1) In connection with a proceeding by or in the right of the corporation in which the director was adjudged liable to the corporation; or

(2) In connection with any other proceeding charging improper personal benefit to the director, whether or not involving action in his or her official capacity, in which the director was adjudged liable on the basis that personal benefit was improperly received by the director.

(e) Indemnification permitted under this section in connection with a proceeding by or in the right of the corporation is limited to reasonable expenses incurred in connection with the proceeding.

**Source** Laws 1996, LB 681, § 97.

#### **21-1998 Mandatory indemnification.**

Unless limited by its articles of incorporation, a corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because he or she is or was a director of the corporation against reasonable expenses actually incurred by the director in connection with the proceeding.

**Source** Laws 1996, LB 681, § 98.

#### **21-1999 Advance for expenses.**

(a) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes the corporation a written affirmation of his or her good faith belief that he or she has met the standard of conduct described in section 21-1997;

(2) The director furnishes the corporation a written undertaking, executed personally or on the director's behalf, to repay the advance if it is ultimately determined that the director did not meet the standard of conduct; and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under sections 21-1996 to 21-19,104.

(b) The undertaking required by subdivision (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 financial ability to make repayment.

(c) Determinations and authorizations of payments under this section shall be made in the manner specified in section 21-19,101.

**Source** Laws 1996, LB 681, § 99.

#### **21-19,100 Court-ordered indemnification.**

Unless limited by a corporation's articles of incorporation, a director of the corporation who is a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the district court, after giving any notice it considers necessary, may order indemnification in the amount it considers proper if it determines:

(1) The director is entitled to mandatory indemnification under section 21-1998, in which case the district court shall also order the corporation to pay the director's reasonable expenses incurred to obtain court-ordered indemnification; or

(2) The director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in subsection (a) of section 21-1997 or was adjudged liable as described in subsection (d) of section 21-1997, but if the director was adjudged so liable indemnification is limited to reasonable expenses incurred.

**Source** Laws 1996, LB 681, § 100.

#### **21-19,101 Determination and authorization of indemnification.**

(a) A corporation may not indemnify a director under section 21-1997 unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in section 21-1997.

(b) The determination shall be made:

(1) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(2) If a quorum cannot be obtained under subdivision (1) of this section by majority vote of a committee duly designated by the board of directors (in which designation directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;

(3) By special legal counsel:

- (i) Selected by the board of directors or its committee in the manner prescribed in subdivision (1) or (2) of this subsection; or
- (ii) If a quorum of the board cannot be obtained under subdivision (1) of this subsection and a committee cannot be designated under subdivision (2) of this subsection, selected by majority vote of the full board (in which selection directors who are parties may participate); or
- (4) By the members of a mutual benefit corporation, but directors who are at the time parties to the proceeding may not vote on the determination.
- (c) Authorization of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, authorization of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subdivision (b)(3) of this section to select counsel.
- (d) A director of a public benefit corporation may not be indemnified until twenty days after the effective date of written notice to the Attorney General of the proposed indemnification.

**Source** Laws 1996, LB 681, § 101.

### **21-19,102 Indemnification of officers, employees, and agents.**

Unless limited by a corporation's articles of incorporation:

- (1) An officer of a corporation who is not a director is entitled to mandatory indemnification under section 21-1998, and is entitled to apply for court-ordered indemnification under section 21-19,100 in each case, to the same extent as a director;
- (2) The corporation may indemnify and advance expenses under sections 21-1996 to 21-19,104 to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director; and
- (3) A corporation may also indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with public policy, that may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

**Source** Laws 1996, LB 681, § 102.

### **21-19,103 Insurance.**

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic business or nonprofit corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, or agent, whether or not the corporation would have power to indemnify the person against the same liability under section 21-1997 or 21-1998.

**Source** Laws 1996, LB 681, § 103.

### **21-19,104 Applicability of sections.**

- (a) A provision treating a corporation's indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with the provisions of sections 21-1996 to 21-19,104. If articles of incorporation limit indemnification or advance for expenses, indemnification and advance for expenses are valid only to the extent consistent with the articles.
- (b) Sections 21-1996 to 21-19,104 do not limit a corporation's power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

**Source** Laws 1996, LB 681, § 104.

### **21-19,105 Authority to amend.**

A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles or to delete a provision not required in the articles. Whether a provision is required or permitted in the articles is determined as of the effective date of the amendment.

**Source** Laws 1996, LB 681, § 105.

**21-19,106 Amendment of articles of incorporation by directors.**

(a) Unless the articles provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles without member approval:

- (1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;
- (2) To delete the names and addresses of the initial directors;
- (3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Secretary of State;
- (4) To change the corporate name by substituting the word "corporation," "incorporated," "company," "limited," or the abbreviation "corp.," "inc.," "co.," or "ltd." for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution to the name; or
- (5) To make any other change expressly permitted by the Nebraska Nonprofit Corporation Act to be made by director action.

(b) If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's articles subject to any approval required pursuant to section 21-19,116. The corporation shall provide notice of any meeting at which an amendment is to be voted upon. The notice shall be in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the articles and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

**Source** Laws 1996, LB 681, § 106.

**21-19,107 Amendment of articles of incorporation by directors and members.**

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, an amendment to a corporation's articles to be adopted must be approved:

- (1) By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of directors, or the method or way in which directors are elected or selected;
- (2) Except as provided in subsection (a) of section 21-19,106, by the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116.

(b) The members may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.

(c) If the board initiates an amendment to the articles or board approval is required by subsection (a) of this section to adopt an amendment to the articles, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or any other basis.

(d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 21-1955. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.

**Source** Laws 1996, LB 681, § 107.

**21-19,108 Class voting by members on amendments.**

(a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.

(b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the articles if the amendment would:

- (1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class;

- (2) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.
- (3) Increase or decrease the number of memberships authorized for that class;
- (4) Increase the number of memberships authorized for another class;
- (5) Effect an exchange, reclassification, or termination of the memberships of that class; or
- (6) Authorize a new class of memberships.
- (c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the articles only if a class vote is provided for in the articles or bylaws.
- (d) If a class is to be divided into two or more classes as a result of an amendment to the articles of a public benefit or mutual benefit corporation, the amendment must be approved by the members of each class that would be created by the amendment.
- (e) Except as provided in the articles or bylaws of a religious corporation, if a class vote is required to approve an amendment to the articles of a corporation, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.
- (f) A class of members of a public benefit or mutual benefit corporation is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

**Source** Laws 1996, LB 681, § 108.

#### **21-19,109 Articles of amendment.**

A corporation amending its articles shall deliver to the Secretary of State articles of amendment setting forth:

- (1) The name of the corporation;
- (2) The text of each amendment adopted;
- (3) The date of each amendment's adoption;
- (4) If approval of members was not required, a statement to that effect and a statement that the amendment was approved by a sufficient vote of the board of directors or incorporators;
- (5) If approval by members was required:
  - (i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the amendment, and number of votes of each class indisputably voting on the amendment; and
  - (ii) Either the total number of votes cast for and against the amendment by each class entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each class and a statement that the number cast for the amendment by each class was sufficient for approval by that class; and
- (6) If approval of the amendment by some person or persons other than the members, the board, or the incorporators is required pursuant to section 21-19,116, a statement that the approval was obtained.

**Source** Laws 1996, LB 681, § 109.

#### **21-19,110 Restated articles of incorporation.**

- (a) A corporation's board of directors may restate its articles of incorporation at any time with or without approval by members or any other person.
- (b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in section 21-19,107.
- (c) If the restatement includes an amendment requiring approval by members, the board must submit the restatement to the members for their approval.
- (d) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.
- (e) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval shall contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.
- (f) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under section 21-19,107.
- (g) If the restatement includes an amendment requiring approval pursuant to section 21-19,116, the board must submit the restatement for such approval.

- (h) A corporation restating its articles shall deliver to the Secretary of State articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:
- (1) Whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or
  - (2) If the restatement contains an amendment to the articles requiring approval by the members, the information required by section 21-19,109; and
  - (3) If the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to section 21-19,116, a statement that such approval was obtained.
- (i) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.
- (j) The Secretary of State may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificate information required by subsection (h) of this section.

**Source** Laws 1996, LB 681, § 110.

**21-19,111 Amendment pursuant to judicial reorganization.**

- (a) A corporation's articles may be amended without board approval or approval by the members or approval required pursuant to section 21-19,116 to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles after amendment contain only provisions required or permitted by section 21-19,116.
- (b) The individual or individuals designated by the court shall deliver to the Secretary of State articles of amendment setting forth:
- (1) The name of the corporation;
  - (2) The text of each amendment approved by the court;
  - (3) The date of the court's order or decree approving the articles of amendment;
  - (4) The title of the reorganization proceeding in which the order or decree was entered; and
  - (5) A statement that the court had jurisdiction of the proceeding under federal statute.
- (c) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

**Source** Laws 1996, LB 681, § 111.

**21-19,112 Effect of amendment and restatement.**

An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, any requirement or limitation imposed upon the corporation, or any property held by it by virtue of any trust upon which such property is held by the corporation, or the existing rights of persons other than members of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

**Source** Laws 1996, LB 681, § 112.

**21-19,113 Amendment to bylaws by directors.**

If a corporation has no members, its incorporators, until directors have been chosen, and thereafter its board of directors, may adopt one or more amendments to the corporation's bylaws subject to any approval required pursuant to section 21-19,116. The corporation shall provide notice of any meeting of directors at which an amendment is to be approved. The notice shall be in accordance with subsection (c) of section 21-19,116. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to the bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment. The amendment must be approved by a majority of the directors in office at the time the amendment is adopted.

**Source** Laws 1996, LB 681, § 113.

**21-19,114 Amendment to bylaws by directors and members.**

- (a) Unless the Nebraska Nonprofit Corporation Act, the articles, bylaws, the members (acting pursuant to subsection (b) of this section), or the board of directors (acting pursuant to subsection (c) of this section) require a greater vote or voting class, an amendment to a corporation's bylaws to be adopted must be approved:

- (1) (i) By the board if the corporation is a public benefit or religious corporation and the amendment does not relate to the number of directors, the composition of the board, the term of office of the directors, or the method or way in which directors are elected or selected;
- (ii) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (iii) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116; or
- (2) If the articles authorize:
- (i)(A) By the board if the amendment does not relate to the number of directors, the composition of the board, the term of office of the directors, or the method or way in which directors are elected or selected; or
- (B) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (ii) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116.
- (b) The members may condition the amendment's adoption on its receipt of a higher percentage of affirmative votes or on any other basis.
- (c) If the board initiates an amendment to the bylaws or board approval is required or authorized by subsection (a) of this section to adopt an amendment to the bylaws, the board may condition the amendment's adoption on receipt of a higher percentage of affirmative votes or on any other basis.
- (d) If the board or the members seek to have the amendment approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in writing in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.
- (e) If the board or the members seek to have the amendment approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the amendment.
- Source** Laws 1996, LB 681, § 114; Laws 1999, LB 422, § 1.

#### **21-19,115 Class voting by members on amendments.**

- (a) The members of a class in a public benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would change the rights of that class as to voting in a manner different than such amendment affects another class or members of another class.
- (b) The members of a class in a mutual benefit corporation are entitled to vote as a class on a proposed amendment to the bylaws if the amendment would:
- (1) Affect the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer of memberships in a manner different than such amendment would affect another class;
  - (2) Change the rights, privileges, preferences, restrictions, or conditions of that class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class;
  - (3) Increase or decrease the number of memberships authorized for that class;
  - (4) Increase the number of memberships authorized for another class;
  - (5) Effect an exchange, reclassification, or termination of all or part of the memberships of that class; or
  - (6) Authorize a new class of memberships.
- (c) The members of a class of a religious corporation are entitled to vote as a class on a proposed amendment to the bylaws only if a class vote is provided for in the articles or bylaws.
- (d) If a class is to be divided into two or more classes as a result of an amendment to the bylaws, the amendment must be approved by the members of each class that would be created by the amendment; and
- (e) If a class vote is required to approve an amendment to the bylaws, the amendment must be approved by the members of the class by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.
- (f) A class of members is entitled to the voting rights granted by this section although the articles and bylaws provide that the class may not vote on the proposed amendment.

**Source** Laws 1996, LB 681, § 115.

#### **21-19,116 Approval by third persons.**

The articles may require an amendment to the articles or bylaws to be approved in writing by a specified person or persons other than the board. Such an article provision may only be amended with the approval in writing of such person or persons.

**Source** Laws 1996, LB 681, § 116.

**21-19,117 Amendment terminating members or redeeming or canceling memberships.**

- (a) Any amendment to the articles or bylaws of a public benefit or mutual benefit corporation that would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships must meet the requirements of the Nebraska Nonprofit Corporation Act and this section.
- (b) Before adopting a resolution proposing such an amendment, the board of a mutual benefit corporation shall give notice of the general nature of the amendment to the members.
- (c) After adopting a resolution proposing such an amendment, the notice to members proposing such amendment shall include one statement of up to five hundred words opposing the proposed amendment if such statement is submitted by any five members or members having three percent or more of the voting power, whichever is less, not later than twenty days after the board has voted to submit such amendment to the members for their approval. In public benefit corporations the production and mailing costs shall be paid by the requesting members. In mutual benefit corporations the production and mailing costs shall be paid by the corporation.
- (d) Any such amendment shall be approved by the members by two-thirds of the votes cast by each class.
- (e) The provisions of section 21-1947 shall not apply to any amendment meeting the requirements of the act and this section.

**Source** Laws 1996, LB 681, § 117.

**21-19,118 Approval of plan of merger.**

- (a) Subject to the limitations set forth in section 21-19,119, one or more nonprofit corporations may merge into a business or nonprofit corporation, if the plan of merger is approved as provided in section 21-19,120.
- (b) The plan of merger must set forth:
  - (1) The name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;
  - (2) The terms and conditions of the planned merger;
  - (3) The manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and
  - (4) If the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or in part.
- (c) The plan of merger may set forth:
  - (1) Any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and
  - (2) Other provisions relating to the planned merger.

**Source** Laws 1996, LB 681, § 118.

**21-19,119 Mergers by public benefit or religious corporations; procedure.**

- (a)(1) Without the prior approval of the district court in a proceeding in which the Attorney General has been given written notice, a public benefit or religious corporation may merge only with:
  - (i) A public benefit or religious corporation;
  - (ii) A foreign corporation that would qualify under the Nebraska Nonprofit Corporation Act as a public benefit or religious corporation;
  - (iii) A wholly-owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger; or
  - (iv) A business or mutual benefit corporation, if: (A) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern, are transferred or conveyed to one or more persons who would have received its assets under subdivisions (a)(5) and (6) of section 21-19,134 had it dissolved; (B) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and (C) the merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

(2) An application for prior approval of a merger for which prior approval is required by this subsection shall be made jointly by all corporations planning to merge and shall set forth by affidavit;

(i) The plan of merger;

(ii) If approval by the members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(iii) If approval by members was required;

(A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and the number of votes of each class indisputably voting on the plan; and

(B) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class; and

(iv) If approval of the plan by some person or persons other than the members or the board is required pursuant to subdivision (a)(3) of section 21-19,120, a statement that the approval was obtained.

(3) Upon the filing of the application, the district court shall fix a time for hearing thereon and shall direct that written notice thereof be given to the Attorney General. If it shall appear to the satisfaction of the district court that the provisions of this subsection have been complied with and the interests of the corporations planning to merge and the public interest will not be adversely affected by the merger, the district court shall issue an order approving the merger upon such terms and conditions as it may prescribe.

(b) At least twenty days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subdivision (a)(1)(iv) of this section, notice, including a copy of the proposed plan of merger, must be delivered to the Attorney General.

(c) Without the prior written consent of the Attorney General or of the district court in a proceeding in which the Attorney General has been given notice, no member of a public benefit or religious corporation may receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. If it shall appear to the satisfaction of the district court that the interests of the corporations planning to merge and the public interest will not be adversely affected by the transaction, the district court shall issue an order approving the transaction upon such terms and conditions as it may prescribe.

(d) Venue for a proceeding to obtain prior approval of a merger for which prior approval is required by subsection (a) of this section and for a proceeding to obtain prior written consent of a transaction for which prior written consent is required by subsection (c) of this section lies in the district court in the county where the surviving corporation's principal office, or, if none in this state, its registered office, is located or where one of the corporations planning to merge is located.

**Source** Laws 1996, LB 681, § 119; Laws 1997, LB 121, § 1.

### **21-19,120 Action on plan by board, members, and third persons.**

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, the bylaws, or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, a plan of merger to be adopted must be approved:

(1) By the board;

(2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, the merger must be approved by a majority of the directors in office at the time the merger is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed merger.

(c) The board may condition its submission of the proposed merger, and the members may condition their approval of the merger, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have the plan approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger and contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provision that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the

merging corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(e) If the board seeks to have the plan approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan. The copy or summary of the plan for members of the surviving corporation shall include any provisions that, if contained in a proposed amendment to the articles of incorporation or bylaws, would entitle members to vote on the provision. The copy or summary of the plan for members of the disappearing corporation shall include a copy or summary of the articles and bylaws that will be in effect immediately after the merger takes effect.

(f) Voting by a class of members is required on a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation or bylaws, would entitle the class of members to vote as a class on the proposed amendment under section 21-19,108 or 21-19,115. The plan is approved by a class of members by two-thirds of the votes cast by the class or a majority of the voting power of the class, whichever is less.

(g) After a merger is adopted, and at any time before articles of merger are filed, the planned merger may be abandoned (subject to any contractual rights) without further action by members or other persons who approved the plan in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner determined by the board of directors.

**Source** Laws 1996, LB 681, § 120.

### **21-19,121 Articles of merger.**

After a plan of merger is approved by the board of directors, and if required by section 21-19,119 or 21-19,120, by the district court or the members and any other persons, the surviving corporation shall deliver to the Secretary of State articles of merger setting forth:

(1) The plan of merger;

(2) If approval by the members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;

(3) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and

(ii) Either the total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;

(4) If approval of the plan by some person or persons other than the members or the board is required pursuant to subdivision (a)(3) of section 21-19,120, a statement that the approval was obtained; and

(5) If prior approval of the district court is required pursuant to section 21-19,119, a certified copy of the order of the district court.

**Source** Laws 1996, LB 681, § 121; Laws 1997, LB 121, § 2.

### **21-19,122 Effect of merger.**

When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment subject to any and all conditions to which the property was subject prior to the merger;

(3) The surviving corporation has all liabilities and obligations of each corporation party to the merger;

(4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased; and

(5) The articles of incorporation and bylaws of the surviving corporation are amended to the extent provided in the plan of merger.

**Source** Laws 1996, LB 681, § 122.

### **21-19,123 Merger with foreign corporation.**

(a) Except as provided in section 21-19,119, one or more foreign business or nonprofit corporations may merge with one or more domestic nonprofit corporations if:

(1) The merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) The foreign corporation complies with section 21-19,121 if it is the surviving corporation of the merger; and

(3) Each domestic nonprofit corporation complies with the provisions of sections 21-19,118 to 21-19,120 and, if it is the surviving corporation of the merger, with section 21-19,121.

(b) Upon the merger taking effect, the surviving foreign business or nonprofit corporation is deemed to agree that it may be served with process within or without this state in any proceeding in the courts of this state brought against it.

**Source** Laws 1996, LB 681, § 123.

**21-19,124 Bequests, devises, and gifts.**

Any bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance that is made to a constituent corporation and that takes effect or remains payable after the merger, inures to the surviving corporation unless the will or other instrument otherwise specifically provides.

**Source** Laws 1996, LB 681, § 124.

**21-19,125 Sale of assets in regular course of activities and mortgage of assets.**

(a) A corporation may on the terms and conditions and for the consideration determined by the board of directors:

(1) Sell, lease, exchange, or otherwise dispose of all or substantially all of its property in the usual and regular course of its activities; or

(2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of its activities.

(b) Unless the articles require it, approval of the members or any other person of a transaction described in subsection (a) of this section is not required.

**Source** Laws 1996, LB 681, § 125.

**21-19,126 Sale of assets other than in regular course of activities.**

(a) A corporation may sell, lease, exchange, or otherwise dispose of all or substantially all of its property (with or without the goodwill) other than in the usual and regular course of its activities on the terms and conditions and for the consideration determined by the corporation's board if the proposed transaction is authorized by subsection (b) of this section.

(b) Unless the Nebraska Nonprofit Corporation Act, the articles, or bylaws or the board of directors or members (acting pursuant to subsection (d) of this section) require a greater vote or voting by class, the proposed transaction to be authorized must be approved:

(1) By the board;

(2) By the members by two-thirds of the votes cast or a majority of the voting power, whichever is less; and

(3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116 for an amendment to the articles or bylaws.

(c) If the corporation does not have members the transaction must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(d) The board may condition its submission of the proposed transaction and the members may condition their approval of the transaction on receipt of a higher percentage of affirmative votes or on any other basis.

(e) If the corporation seeks to have the transaction approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all or substantially all of the property or assets of the corporation and contain or be accompanied by a copy or summary of a description of the transaction.

(f) If the board needs to have the transaction approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of a description of the transaction.

(g) A public benefit or religious corporation must give written notice to the Attorney General twenty days before it sells, leases, exchanges, or otherwise disposes of all or substantially all of its property if the transaction is not in the usual and regular course of its activities unless the Attorney General has given the corporation a written waiver of this subsection.

(h) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further action by the members or any other person who approved the transaction in accordance with the procedure set forth in the resolution proposing the transaction or, if none is set forth, in the manner determined by the board of directors.

**Source** Laws 1996, LB 681, § 126.

**21-19,127 Prohibited distributions.**

Except as authorized by section 21-19,128, a corporation shall not make any distributions.

**Source** Laws 1996, LB 681, § 127.

**21-19,128 Authorized distributions.**

(a) A mutual benefit corporation may purchase its memberships if after the purchase is completed:

- (1) The corporation would be able to pay its debts as they become due in the usual course of its activities; and
- (2) The corporation's total assets would at least equal the sum of its total liabilities.

(b) Corporations may make distributions upon dissolution in conformity with sections 21-19,129 to 21-19,145.

**Source** Laws 1996, LB 681, § 128.

**21-19,129 Dissolution by incorporators or directors; notice of dissolution; plan.**

(a) A majority of the incorporators or directors of a corporation that has no members may, subject to any approval required by the articles or bylaws, dissolve the corporation by delivering to the Secretary of State articles of dissolution.

(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation.

(c) The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

**Source** Laws 1996, LB 681, § 129.

**21-19,130 Dissolution by directors, members, and third persons; plan.**

(a) Unless the Nebraska Nonprofit Corporation Act, the articles, or bylaws or the board of directors or members (acting pursuant to subsection (c) of this section) require a greater vote or voting by class, dissolution is authorized if it is approved:

- (1) By the board;
- (2) By the members, if any, by two-thirds of the votes cast or a majority of the voting power, whichever is less; and
- (3) In writing by any person or persons whose approval is required by a provision of the articles authorized by section 21-19,116 for an amendment to the articles or bylaws.

(b) If the corporation does not have members, dissolution must be approved by a vote of a majority of the directors in office at the time the transaction is approved. In addition, the corporation shall provide notice of any directors' meeting at which such approval is to be obtained in accordance with subsection (c) of section 21-1982. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(c) The board may condition its submission of the proposed dissolution, and the members may condition their approval of the dissolution, on receipt of a higher percentage of affirmative votes or on any other basis.

(d) If the board seeks to have dissolution approved by the members at a membership meeting, the corporation shall give notice to its members of the proposed membership meeting in accordance with section 21-1955. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation and contain or be accompanied by a copy or summary of the plan of dissolution.

(e) If the board seeks to have dissolution approved by the members by written consent or written ballot, the material soliciting the approval shall contain or be accompanied by a copy or summary of the plan of dissolution.

(f) The plan of dissolution shall indicate to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.

**Source** Laws 1996, LB 681, § 130.

**21-19,131 Notice to the Attorney General.**

(a) A public benefit or religious corporation shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution.

(b) No assets shall be transferred or conveyed by a public benefit or religious corporation as part of the dissolution process until twenty days after it has given the written notice required by subsection (a) of this section to the Attorney General or until the Attorney General has consented in writing to the dissolution or indicated in writing that he or she will take no action with respect to the transfer or conveyance, whichever is earlier.

(c) When all or substantially all of the assets of a public benefit corporation have been transferred or conveyed following approval of dissolution, the board shall deliver to the Attorney General a list showing those (other than creditors) to whom the assets were transferred or conveyed. The list shall indicate the addresses of each person (other than creditors) who received assets and indicate what assets each received.

**Source** Laws 1996, LB 681, § 131.

**21-19,132 Articles of dissolution.**

(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State articles of dissolution setting forth:

(1) The name of the corporation;

(2) The date dissolution was authorized;

(3) A statement that dissolution was approved by a sufficient vote of the board;

(4) If approval of members was not required, a statement to that effect and a statement that dissolution was approved by a sufficient vote of the board of directors or incorporators;

(5) If approval by members was required:

(i) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on dissolution, and number of votes of each class indisputably voting on dissolution; and

(ii) Either the total number of votes cast for and against dissolution by each class entitled to vote separately on dissolution or the total number of undisputed votes cast for dissolution by each class and a statement that the number cast for dissolution by each class was sufficient for approval by that class;

(6) If approval of dissolution by some person or persons other than the members, the board, or the incorporators is required pursuant to subdivision (a)(3) of section 21-19,130, a statement that the approval was obtained; and

(7) If the corporation is a public benefit or religious corporation, that the notice to the Attorney General required by subsection (a) of section 21-19,131 has been given.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

**Source** Laws 1996, LB 681, § 132.

**21-19,133 Revocation of dissolution.**

(a) A corporation may revoke its dissolution within one hundred twenty days after its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without action by the members or any other person.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the Secretary of State for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;

(2) The effective date of the dissolution that was revoked;

(3) The date that the revocation of dissolution was authorized;

(4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;

(5) If the corporation's board of directors revoked a dissolution authorized by the members alone or in conjunction with another person or persons, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

- (6) If member or third person action was required to revoke the dissolution, the information required by subdivisions (a)(5) and (6) of section 21-19,132.
- (d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.
- (e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its activities as if dissolution had never occurred.

**Source** Laws 1996, LB 681, § 133.

**21-19,134 Effect of dissolution.**

- (a) A dissolved corporation continues its corporate existence but may not carry on any activities except those appropriate to wind up and liquidate its affairs, including:
- (1) Preserving and protecting its assets and minimizing its liabilities;
  - (2) Discharging or making provision for discharging its liabilities and obligations;
  - (3) Disposing of its properties that will not be distributed in kind;
  - (4) Returning, transferring, or conveying assets held by the corporation upon a condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, in accordance with such condition;
  - (5) Transferring, subject to any contractual or legal requirements, its assets as provided in or authorized by its articles of incorporation or bylaws;
  - (6) If the corporation is a public benefit or religious corporation and no provision has been made in its articles or bylaws for the distribution of assets on dissolution, transferring, subject to any contractual or legal requirement, its assets: (i) To one or more persons described in section 501(c)(3) of the Internal Revenue Code engaged in activities substantially similar to those of the dissolved corporation; or (ii) if the dissolved corporation is not described in section 501(c)(3) of the Internal Revenue Code, to one or more public benefit or religious corporations;
  - (7) If the corporation is a mutual benefit corporation and no provision has been made in its articles or bylaws for distribution of assets on dissolution, transferring its assets to its members or, if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving; and
  - (8) Doing every other act necessary to wind up and liquidate its assets and affairs.
- (b) Dissolution of a corporation does not:
- (1) Transfer title of the corporation's property;
  - (2) Subject its directors or officers to standards of conduct different from those prescribed in sections 21-1968 to 21-19,104;
  - (3) Change quorum or voting requirements for its board or members, change provisions for selection, resignation, or removal of its directors or officers or both, or change provisions for amending its bylaws;
  - (4) Prevent commencement of a proceeding by or against the corporation in its corporate name;
  - (5) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
  - (6) Terminate the authority of the registered agent.

**Source** Laws 1996, LB 681, § 134.

**21-19,135 Known claims against dissolved corporations; notice.**

- (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.
- (b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:
- (1) Describe information that must be included in a claim;
  - (2) Provide a mailing address where a claim may be sent;
  - (3) State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
  - (4) State that the claim will be barred if not received by the deadline.
- (c) A claim against the dissolved corporation is barred:
- (1) If a claimant who was given written notice under subsection (b) of this section does not deliver the claim to the dissolved corporation by the deadline;
  - (2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.
- (d) For purposes of this section, claim does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

**Source** Laws 1996, LB 681, § 135.

**21-19,136 Unknown claims against dissolved corporation; notice.**

(a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located;

(2) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:

(1) A claimant who did not receive written notice under section 21-19,135;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on; and

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against any person, other than a creditor of the corporation, to whom the corporation distributed its property to the extent of the distributee's pro rata share of the claim or the corporate assets distributed to such person in liquidation, whichever is less, but the distributee's total liability for all claims under this section may not exceed the total amount of assets distributed to the distributee.

**Source** Laws 1996, LB 681, § 136.

**21-19,137 Grounds for administrative dissolution.**

The Secretary of State may commence a proceeding under section 21-19,138 to administratively dissolve a corporation if:

(1) The corporation does not pay any fees, taxes, or penalties imposed by the Nebraska Nonprofit Corporation Act or other law when they are due;

(2) The corporation does not deliver its biennial report to the Secretary of State when it is due;

(3) The corporation is without a registered agent or registered office in this state for sixty days or more;

(4) The corporation does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued within one hundred twenty days; or

(5) The corporation's period of duration, if any, stated in its articles of incorporation expires.

**Source** Laws 1996, LB 681, § 137.

**21-19,138 Procedure for and effect of administrative dissolution.**

(a) Upon determining that one or more grounds exist under section 21-19,137 for dissolving a corporation, the Secretary of State shall serve the corporation with written notice of that determination under section 21-1937, and in the case of a public benefit corporation shall notify the Attorney General in writing.

(b) If the corporation does not, within sixty days after service of the notice is perfected under section 21-1937, correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist, the Secretary of State may administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation under section 21-1937 and in the case of a public benefit corporation shall notify the Attorney General in writing.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any activities except those necessary to wind up and liquidate its affairs under section 21-19,134 and notify its claimants under sections 21-19,135 and 21-19,136.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

**Source** Laws 1996, LB 681, § 138.

**21-19,139 Reinstatement following administrative dissolution.**

(a) A corporation administratively dissolved under section 21-19,138 may apply to the Secretary of State for reinstatement. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
- (3) State that the corporation's name satisfies the requirements of section 21-1931.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 21-1937.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

**Source** Laws 1996, LB 681, § 139.

**21-19,140 Appeal from denial of reinstatement.**

(a) The Secretary of State, upon denying a corporation's application for reinstatement following administrative dissolution, shall serve the corporation under section 21-1937 with a written notice that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the district court of Lancaster County within ninety days after service of the notice of denial is perfected. The corporation appeals by petitioning the district court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the corporation's application for reinstatement, and the Secretary of State's notice of denial.

(c) The district court may summarily order the Secretary of State to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The district court's final decision may be appealed as in other civil proceedings.

**Source** Laws 1996, LB 681, § 140.

**21-19,141 Grounds for judicial dissolution.**

(a) The district 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;
- (ii) The corporation has continued to exceed or abuse the authority conferred upon it by law;
- (iii) The corporation is a public benefit corporation and the corporate assets are being misapplied or wasted; or
- (iv) The corporation is a public benefit corporation and is no longer able to carry out its purposes;

(2) Except as provided in the articles or bylaws of a religious corporation, in a proceeding by fifty members or members holding five percent of the voting power, whichever is less, or by a director or any person specified in the articles, if it is established that:

- (i) The directors are deadlocked in the management of the corporate affairs, and the members, if any, are unable to breach the deadlock;
- (ii) 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;
- (iii) The members 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, or would otherwise have, expired;
- (iv) The corporate assets are being misapplied or wasted; or
- (v) The corporation is a public benefit or religious corporation and is no longer able to carry out its purposes;

(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; or

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

(b) Prior to dissolving a corporation, the district court shall consider whether:

- (1) There are reasonable alternatives to dissolution;
- (2) Dissolution is in the public interest, if the corporation is a public benefit corporation; and

(3) Dissolution is the best way of protecting the interests of members if the corporation is a mutual benefit corporation.

**Source** Laws 1996, LB 681, § 141.

**21-19,142 Procedure for judicial dissolution.**

(a) Venue for a proceeding by the Attorney General to dissolve a corporation lies in the district court in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located or the district court of Lancaster County. Venue for a proceeding brought by any other party named in section 21-19,141 lies in the county where a corporation's principal office (or, if none in this state, its registered office) is or was last located.

(b) It is not necessary to make directors or members parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) The district court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the activities of the corporation until a full hearing can be held.

(d) A person other than the Attorney General who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall forthwith give written notice of the proceeding to the Attorney General who may intervene.

**Source** Laws 1996, LB 681, § 142.

**21-19,143 Receivership or custodianship.**

(a) The district court in a proceeding brought to dissolve a public benefit or mutual benefit corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The district court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

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

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

(1) The 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 district court. The receiver's power to dispose of the assets of the corporation is subject to any trust and any other restrictions that would be applicable to the corporation; and (ii) may sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all courts of this state;

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of its members and creditors.

(d) The district court during a receivership may redesignate the receiver as a custodian, and during a custodianship may redesignate the custodian as a receiver, if doing so is in the best interests of the corporation, its members, and creditors.

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

**Source** Laws 1996, LB 681, § 143.

**21-19,144 Decree of dissolution.**

(a) If after a hearing the district court determines that one or more grounds for judicial dissolution described in section 21-19,141 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the district court shall deliver a certified copy of the decree to the Secretary of State, who shall file it.

(b) After entering the decree of dissolution, the district court shall direct the winding up and liquidation of the corporation's affairs in accordance with section 21-19,134 and the notification of its claimants in accordance with sections 21-19,135 and 21-19,136.

**Source** Laws 1996, LB 681, § 144.

**21-19,145 Assets; deposit with State Treasurer; when.**

Assets of a dissolved corporation that should be transferred to a creditor, claimant, or member of the corporation who cannot be found or who is not competent to receive them, shall be reduced to cash, subject to known trust restrictions, and deposited with the State Treasurer for safekeeping in accordance with the Uniform Disposition of Unclaimed Property Act. In the State Treasurer's discretion the property may be received and held in kind. When the creditor, claimant, or member furnishes satisfactory proof of entitlement to the amount deposited or property held in kind, the State Treasurer shall deliver to the creditor, claimant, or member, or his or her representative, that amount or property in accordance with the act.

**Source** Laws 1996, LB 681, § 145.

<b>Uniform</b>	<b>Disposition</b>	<b>of</b>	<b>Unclaimed</b>	<b>Cross Reference</b>	<b>Property</b>	<b>Act,</b>	<b>see</b>	<b>section</b>	<b>69-1329.</b>
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**21-19,146 Foreign corporation; authority to transact business required.**

(a) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the Secretary of State.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a) of this section:

- (1) Maintaining, defending, or settling any proceeding;
- (2) Holding meetings of the board of directors or members or carrying on other activities concerning internal corporate affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of memberships or securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (9) Owning, without more, real or personal property;
- (10) Conducting an isolated transaction which is completed within thirty days and which is not one in the course of repeated transactions of a like nature; or
- (11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) of this section is not exhaustive.

**Source** Laws 1996, LB 681, § 146.

**21-19,147 Foreign corporation; transacting business without authority; consequences; civil penalty.**

(a) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation is liable for a civil penalty of five hundred dollars for each day, but not to exceed a total of ten thousand dollars for each year, it transacts business in this state without a certificate of authority. The Attorney General may collect all penalties due under this subsection. All civil penalties collected under this subsection shall be remitted by the Attorney General for credit to the permanent school fund.

(e) Notwithstanding subsections (a) and (b) of this section, the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this state.

**Source** Laws 1996, LB 681, § 147.

**21-19,148 Foreign corporation; application for certificate of authority.**

(a) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of State. The application must set forth:

- (1) The name of the foreign corporation or, if its name is unavailable for use in this state, a corporate name that satisfies the requirements of section 21-19,151;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation and period of duration;
- (4) The street address of its principal office;
- (5) The street address of its registered office in this state and the name of its current registered agent at that office. A post office box number may be provided in addition to the street address;
- (6) The names and street addresses of its current directors and officers;
- (7) Whether the foreign corporation has members; and
- (8) Whether the corporation, if it had been incorporated in this state, would be a public benefit, mutual benefit, or religious corporation.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the Secretary of State or other official having custody of corporate records in the state or country under whose law it is incorporated. Such certificate or document shall not bear a date of more than sixty days prior to the date the application is filed in this state.

**Source** Laws 1996, LB 681, § 148; Laws 2008, LB379, § 10. July 18, 2008

**21-19,149 Foreign corporation; amended certificate of authority.**

(a) A foreign corporation authorized to transact business in this state must obtain an amended certificate of authority from the Secretary of State if it changes:

- (1) Its corporate name;
- (2) The period of its duration; or
- (3) The state or country of its incorporation.

(b) The requirements of section 21-19,148 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

**Source** Laws 1996, LB 681, § 149.

**21-19,150 Foreign corporation; effect of certificate of authority.**

(a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in the Nebraska Nonprofit Corporation Act.

(b) A foreign corporation with a valid certificate of authority has the same rights and enjoys the same privileges as a domestic corporation of like character. A foreign corporation is also, except as otherwise provided by the act, subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic corporation of like character.

(c) The act does not authorize this state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.

**Source** Laws 1996, LB 681, § 150.

**21-19,151 Foreign corporation; corporate name.**

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section 21-1931, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (including a fictitious name) of a foreign corporation shall not be the same as or deceptively similar to, upon the records of the Secretary of State, any of the names referenced in subdivisions (b)(1) through (5) of this section:

- (1) The corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;
- (2) A corporate name reserved or registered under section 21-1932, 21-1933, 21-2029, or 21-2030;
- (3) The fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

- (4) A trade name registered in this state pursuant to sections 87-208 to 87-220; and
  - (5) Any other business entity name registered or filed with the Secretary of State pursuant to Nebraska law.
- © A foreign corporation may apply to the Secretary of State for authorization to use in this state the name of another corporation or business entity (incorporated or authorized to transact business in this state) that is deceptively similar to, upon the records of the Secretary of State, the name applied for. The Secretary of State shall authorize use of the name applied for if:
- (1) The other corporation or business entity consents in writing to the use; or
  - (2) The applying corporation delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing its right to use the name applied for in this state.
- (d) A foreign corporation may use in this state the name (including the fictitious name) of another domestic or foreign business or nonprofit corporation or business entity that is used in this state if the other corporation or business entity is incorporated or authorized to transact business in this state and the foreign corporation:
- (1) Has merged with the other corporation or business entity;
  - (2) Has been formed by a reorganization of the other corporation or business entity; or
  - (3) Has acquired all or substantially all of the assets, including the name, of the other corporation or business entity.
- (e) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of section 21-1931, it shall not transact business in this state under the changed name until it adopts a name satisfying the requirements of section 21-1931 and obtains an amended certificate of authority under section 21-19,149.

**Source** Laws 1996, LB 681, § 151; Laws 1997, LB 44, § 4; Laws 1997, LB 453, § 2; Laws 2003, LB 464, § 3.

**21-19,152 Foreign corporation; registered office; registered agent.**

Each foreign corporation authorized to transact business in this state must continuously maintain in this state:

- (1) A registered office with the same address as that of its current registered agent. A post office box number may be provided in addition to the street address of the registered agent; and
- (2) A registered agent, who may be:
  - (i) An individual who resides in this state and whose office is identical with the registered office;
  - (ii) A domestic business or nonprofit corporation whose office is identical with the registered office; or
  - (iii) A foreign business or nonprofit corporation authorized to transact business in this state whose office is identical with the registered office.

**Source** Laws 1996, LB 681, § 152; Laws 2008, LB379, § 11. July 18, 2008

**21-19,153 Foreign corporation; change of registered office or registered agent.**

- (a) A foreign corporation authorized to transact business in this state may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:
  - (1) Its name;
  - (2) The street address of its current registered office;
  - (3) If the current registered office is to be changed, the street address of its new registered office;
  - (4) The name and street address of its current registered agent. A post office box number may be provided in addition to the street address;
  - (5) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment; and
  - (6) That after the change or changes are made, the street addresses of its registered office and the office of its registered agent will be identical.
- (b) If a registered agent changes the street address of its business office, the agent may change the address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (a) of this section and recites that the corporation has been notified of the change.

**Source** Laws 1996, LB 681, § 153; Laws 2008, LB379, § 12. July 18, 2008

**21-19,154 Foreign corporation; resignation of registered agent.**

- (a) The registered agent of a foreign corporation may resign as agent by signing and delivering to the Secretary of State for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) After filing the statement, the Secretary of State shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The Secretary of State shall mail the other copy to the foreign corporation at its principal office address shown in its most recent biennial report.

(c) The agency is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

**Source** Laws 1996, LB 681, § 154.

**21-19,155 Foreign corporation; service.**

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent biennial report filed under section 21-19,172 if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;

(2) Has withdrawn from transacting business in this state under section 21-19,156; or

(3) Has had its certificate of authority revoked under section 21-19,158.

(c) Service is perfected under subsection (b) of this section at the earliest of:

(1) The date the foreign corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

**Source** Laws 1996, LB 681, § 155.

**21-19,156 Foreign corporation; withdrawal.**

(a) A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Secretary of State.

(b) A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;

(2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That it revokes the authority of its registered agent to accept service on its behalf and consents that service of process in any proceeding based on a cause of action arising during the time it was authorized to do business in this state may thereafter be made on such corporation outside this state; and

(4) A mailing address at which process against the corporation may be served.

**Source** Laws 1996, LB 681, § 156.

**21-19,157 Foreign corporation; grounds for revocation of certificate of authority.**

(a) The Secretary of State may commence a proceeding under section 21-19,158 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver the biennial report to the Secretary of State when it is due;

(2) The foreign corporation does not pay any fees, taxes, or penalties imposed by the Nebraska Nonprofit Corporation Act or other law when they are due;

(3) The foreign corporation is without a registered agent or registered office in this state for sixty days or more;

(4) The foreign corporation does not inform the Secretary of State under section 21-19,153 or 21-19,154 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within ninety days after the change, resignation, or discontinuance;

(5) An incorporator, director, officer, or agent of the foreign corporation signed a document such person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or

(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or has disappeared as the result of a merger.

(b) The Attorney General may commence a proceeding under section 21-19,158 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The corporation has continued to exceed or abuse the authority conferred upon it by law;
- (2) The corporation would have been a public benefit corporation had it been incorporated in this state and that its corporate assets in this state are being misapplied or wasted; or
- (3) The corporation would have been a public benefit corporation had it been incorporated in this state and it is no longer able to carry out its purposes.

**Source** Laws 1996, LB 681, § 157.

**21-19,158 Foreign corporation; procedure and effect of revocation.**

- (a) The Secretary of State upon determining that one or more grounds exist under section 21-19,157 for revocation of a certificate of authority shall serve the foreign corporation with written notice of that determination under section 21-19,155.
- (b) The Attorney General, upon determining that one or more grounds exist under subsection (b) of section 21-19,157 for revocation of a certificate of authority, shall request the Secretary of State to serve, and the Secretary of State shall serve the foreign corporation with written notice of that determination under section 21-19,155.
- (c) If the foreign corporation does not, within sixty days after service of the notice is perfected under section 21-19,155, correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State or Attorney General that each ground for revocation determined by the Secretary of State or Attorney General does not exist, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate of revocation and serve a copy on the foreign corporation under section 21-19,155.
- (d) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate of revocation revoking its certificate of authority.
- (e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

**Source** Laws 1996, LB 681, § 158.

**21-19,159 Foreign corporation; revoked certificate; application for reinstatement.**

- (a) A foreign corporation the certificate of authority of which has been revoked under section 21-19,158 may apply to the Secretary of State for reinstatement. The application must:
  - (1) Recite the name of the foreign corporation and the effective date of the revocation;
  - (2) State that the ground or grounds for revocation either did not exist or have been eliminated; and
  - (3) State that the foreign corporation's name satisfies the requirements of section 21-19,151.
- (b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the foreign corporation under section 21-19,155.
- (c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the revocation and the foreign corporation shall resume carrying on its activities as if the revocation had never occurred.

**Source** Laws 1996, LB 681, § 159.

**21-19,160 Foreign corporation; denial of reinstatement; appeal.**

- (a) The Secretary of State, upon denying a foreign corporation's application for reinstatement following revocation of its certificate of authority, shall serve the foreign corporation under section 21-19,155 with a written notice that explains the reason or reasons for denial.
- (b) The foreign corporation may appeal the denial of reinstatement to the district court of Lancaster County within thirty days after the service of the notice of denial is perfected under section 21-19,155. The foreign corporation appeals by petitioning the district court to set aside the revocation and attaching to the petition copies of the Secretary of State's certificate of revocation, the foreign corporation's application for reinstatement, and the Secretary of State's notice of denial.
- (c) The district court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action it considers appropriate.
- (d) The district court's final decision may be appealed as in other civil proceedings.

**Source** Laws 1996, LB 681, § 160.

**21-19,161 Foreign corporation; domestication procedure.**

In lieu of compliance with section 21-19,146, relating to the authorization of foreign corporations to transact business in this state, any corporation organized under the laws of any other state or states, which has heretofore filed, or which may hereafter file, with the Secretary of State of this state, a copy certified by the Secretary of State or other proper officer of the state or country under the laws of which such foreign corporation is formed, of its charter or articles of association or incorporation, together with all amendments to such date and the street address of its registered office in this state and the name and street address and, if one exists, a post office box number, of its current registered agent at that office, on filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, including the date the resolution was adopted, accepting and agreeing to be bound by the provisions of the Nebraska Nonprofit Corporation Act, with respect to its property and business operations within this state, shall become and be a body corporate of this state.

**Source** Laws 1996, LB 681, § 161; Laws 2008, LB379, § 13. July 18, 2008

**21-19,162 Foreign corporation; renouncing domestication.**

Any foreign corporation, which has domesticated pursuant to section 21-19,161, may cease to be a domesticated corporation by filing with the Secretary of State a certified copy of a resolution adopted by its board of directors, renouncing its domestication and withdrawing its acceptance and agreement provided for in section 21-19,161.

**Source** Laws 1996, LB 681, § 162.

**21-19,163 Foreign corporation; domestication; procedure.**

If a foreign corporation, which has domesticated pursuant to section 21-19,161, surrenders its foreign corporate charter and files, records, and publishes notice of amended articles of incorporation in the manner, time, and places required by sections 21-19,20, 21-19,21, and 21-19,173, such foreign corporation shall thereupon become and be a domestic corporation organized under the Nebraska Nonprofit Corporation Act.

**Source** Laws 1996, LB 681, § 163.

**21-19,164 Foreign corporation organized prior to January 1, 1997; status.**

Any corporation organized under the laws of any other state or territory which had become, in accordance with section 21-19,164.01, as such section existed prior to January 1, 1997, a body corporate of this state, shall retain such status for all purposes notwithstanding the repeal of such section.

**Source** Laws 1996, LB 681, § 164.

**21-19,165 Corporate records.**

(a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by subsection (d) of section 21-19,165.

(b) A corporation shall maintain appropriate accounting records.

(c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(e) A corporation shall keep a copy of the following records at its principal office:

(1) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(2) Its bylaws or restated bylaws and all amendments to them currently in effect;

(3) Resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(4) The minutes of all meetings of members and records of all actions approved by the members for the past three years;

(5) All written communications to members generally within the past three years, including the financial statements furnished for the past three years under section 21-19,170;

(6) A list of the names and business or home addresses of its current directors and officers; and

(7) Its most recent biennial report delivered to the Secretary of State under section 21-19,172.

**Source** Laws 1996, LB 681, § 165.

**21-19,166 Inspection of records by members.**

(a) Subject to subsection (e) of this section and subsection (c) of section 21-19,167, a member is entitled to inspect and copy, at a reasonable time and location specified by the corporation, any of the records of the corporation described in subsection (e) of section 21-19,165 if the member gives the corporation written notice or a written demand at least five business days before the date on which the member wishes to inspect and copy.

(b) Subject to subsection (e) of this section, a member is entitled to inspect and copy, at a reasonable time and reasonable location specified by the corporation, any of the following records of the corporation if the member meets the requirements of subsection (c) of this section and gives the corporation written notice at least five business days before the date on which the member wishes to inspect and copy:

(1) Excerpts from any records required to be maintained under subsection (a) of section 21-19,165, to the extent not subject to inspection under subsection (a) of this section;

(2) Accounting records of the corporation; and

(3) Subject to section 21-19,169, the membership list.

(c) A member may inspect and copy the records identified in subsection (b) of this section only if:

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

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

(3) The records are directly connected with this purpose.

(d) This section does not affect:

(1) The right of a member to inspect records under section 21-1959 or, if the member is in litigation with the corporation, to the same extent as any other litigant; or

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

(e) The articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.

**Source** Laws 1996, LB 681, § 166.

**21-19,167 Scope of inspection rights.**

(a) A member's agent or attorney has the same inspection and copying rights as the member the agent or attorney represents.

(b) The right to copy records under section 21-19,166 includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(c) The corporation may impose a reasonable charge, covering the costs of labor and material, for copies of any documents provided to the member. The charge may not exceed the estimated cost of production or reproduction of the records.

(d) The corporation may comply with a member's demand to inspect the record of members under subdivision (b)(3) of section 21-19,166 by providing the member with a list of its members that was compiled no earlier than the date of the member's demand.

**Source** Laws 1996, LB 681, § 167.

**21-19,168 Court-ordered inspection.**

(a) If a corporation does not allow a member who complies with subsection (a) of section 21-19,166 to inspect and copy any records required by that subsection to be available for inspection, the district court in the county where the corporation's principal office (or, if none in this state, its registered office) is located may summarily order inspection and copying of the records demanded at the corporation's expense upon application of the member.

(b) If a corporation does not within a reasonable time allow a member to inspect and copy any other record, the member who complies with subsections (b) and (c) of section 21-19,166 may apply to the district court in the county where the corporation's principal office (or, if none in this state, its registered office) is located for an order to permit inspection and copying of the records demanded. The district court shall dispose of an application under this subsection on an expedited basis.

(c) If the district court orders inspection and copying of the records demanded, it shall also order the corporation to pay the member's costs (including reasonable counsel fees) incurred to obtain the order unless the corporation proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the member to inspect the records demanded.

(d) If the district court orders inspection and copying of the records demanded, it may impose reasonable restrictions on the use or distribution of the records by the demanding member.

**Source** Laws 1996, LB 681, § 168.

**21-19,169 Limitations on use of membership list.**

Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

- (1) Used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the corporation;
- (2) Used for any commercial purpose; or
- (3) Sold to or purchased by any person.

**Source** Laws 1996, LB 681, § 169.

**21-19,170 Financial statements for members.**

(a) Except as provided in the articles or bylaws of a religious corporation, a corporation, upon written demand from a member, shall furnish that member its latest annual financial statements, which may be consolidated or combined statements of the corporation and one or more of its subsidiaries or affiliates, as appropriate, that include a balance sheet as of the end of the fiscal year and a statement of operations for that year. If financial statements are prepared for the corporation on the basis of generally accepted accounting principles, the annual financial statements must also be prepared on that basis.

(b) If annual financial statements are reported upon by a public accountant, the accountant's report must accompany the statements. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's financial accounting records:

- (1) Stating the president's or other person's reasonable belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and
- (2) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

**Source** Laws 1996, LB 681, § 170.

**21-19,171 Report of indemnification to members.**

If a corporation indemnifies or advances expenses to a director under section 21-1997, 21-1998, 21-1999, or 21-19,100 in connection with a proceeding by or in the right of the corporation, the corporation shall report the indemnification or advance in writing to the members with or before the notice of the next meeting of members.

**Source** Laws 1996, LB 681, § 171.

**21-19,172 Biennial report; contents.**

(a) Commencing in 1999 and each odd-numbered year thereafter, each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State that sets forth:

- (1) The name of the corporation and the state or country under whose law it is incorporated;
- (2) The street address of its registered office and the name of its current registered agent at the office in this state. A post office box number may be provided in addition to the street address;
- (3) The street address of its principal office;
- (4) The names and business or residence addresses of its directors and principal officers;
- (5) A brief description of the nature of its activities;
- (6) Whether or not it has members;
- (7) If it is a domestic corporation, whether it is a public benefit, mutual benefit, or religious corporation; and
- (8) If it is a foreign corporation, whether it would be a public benefit, mutual benefit, or religious corporation had it been incorporated in this state.

(b) The information in the biennial report must be current on the date the biennial report is executed on behalf of the corporation.

(c) The first biennial report must be delivered to the Secretary of State between January 1 and April 1 of the odd-numbered year following the calendar year in which a domestic corporation was incorporated or a foreign

corporation was authorized to transact business. Subsequent biennial reports must be delivered to the Secretary of State between January 1 and April 1 of the following odd-numbered years. For purposes of the Nebraska Nonprofit Corporation Act, the biennial report is due on April 1 of the odd-numbered year in which it must be delivered to the Secretary of State as required by this section.

(d) If a biennial report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the Secretary of State within thirty days after the effective date of notice, it is deemed to be timely filed.

(e) Upon the delivery of the biennial report as provided in this section, the Secretary of State shall charge and collect a fee as prescribed in section 21-1905. For purposes of the Nebraska Nonprofit Corporation Act, the fee is due on April 1 of the odd-numbered year in which the biennial report must be delivered to the Secretary of State as required by this section.

(f) Biennial reports shall be filed in 1997 pursuant to sections 21-1981 and 21-1982 (Reissue 1991) as if such sections had not been repealed by Laws 1996, LB 681. Fees, including penalties, due or delinquent prior to 1999 shall be paid pursuant to section 21-1982 (Reissue 1991) as if such section had not been repealed by Laws 1996, LB 681.

**Source** Laws 1996, LB 681, § 172; Laws 2008, LB379, § 14. July 18, 2008

### **21-19,173 Notice of incorporation, amendment, merger, or dissolution; publication.**

(a) Notice of incorporation, amendment, or merger of a domestic corporation subject to the Nebraska Nonprofit Corporation Act shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office or, if none in this state, its registered office is located.

A notice of incorporation shall show (1) the corporate name of the corporation, (2) whether the corporation is a public benefit, mutual benefit, or religious corporation, (3) the street address of the corporation's initial registered office and the name of its initial registered agent at that office, (4) the name and street address of each incorporator, and (5) whether or not the corporation will have members.

A brief resume of any amendment or merger of the corporation shall be published in the same manner for the same period of time as a notice of incorporation is required to be published.

(b) Notice of dissolution of a domestic corporation shall be published for three successive weeks in some legal newspaper of general circulation in the county where the corporation's principal office or, if none in this state, its registered office is located. A notice of dissolution shall show (1) the terms and conditions of such dissolution, (2) the names of the persons who are to wind up and liquidate its affairs and their official titles, and (3) a statement of assets and liabilities of the corporation.

(c) Proof of publication of any of the notices required to be published under this section shall be filed in the office of the Secretary of State. In the event any notice required to be given pursuant to this section is not given, but is subsequently published for the required time, and proof of the subsequent publication thereof is filed in the office of the Secretary of State, the acts of such corporation prior to, as well as after, such publication shall be valid.

**Source** Laws 1996, LB 681, § 173.

### **21-19,174 Applicability of act.**

The Nebraska Nonprofit Corporation Act applies to all domestic corporations in existence on January 1, 1997, that were incorporated under Chapter 21, article 19 and to any not-for-profit corporations in existence on January 1, 1997, that were heretofore organized under any laws repealed by Laws 1959, LB 349.

**Source** Laws 1996, LB 681, § 174.

### **21-19,175 Foreign corporation; subject to act; effect.**

A foreign corporation authorized to transact business in this state on January 1, 1997, is subject to the Nebraska Nonprofit Corporation Act, but is not required to obtain a new certificate of authority to transact business under the act.

**Source** Laws 1996, LB 681, § 175.

### **21-19,176 Repeal of former law; effect.**

(a) Except as provided in subsection (b) of this section, the repeal of a statute by Laws 1996, LB 681, shall not affect:

- (1) The operation of the statute or any action taken under it before its repeal;
  - (2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
  - (3) Any violation of the statute or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
  - (4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed; or
  - (5) Any meeting of members or directors or action by written consent noticed or any action taken before its repeal as a result of a meeting of members or directors or action by written consent.
- (b) If a penalty or punishment imposed for violation of a statute repealed by Laws 1996, LB 681, is reduced by the Nebraska Nonprofit Corporation Act, the penalty or punishment, if not already imposed, shall be imposed in accordance with the act.

**Source** Laws 1996, LB 681, § 176.

**21-19,177 Public benefit, mutual benefit, and religious corporation; designation.**

Each domestic corporation existing on January 1, 1997, that is or becomes subject to the Nebraska Nonprofit Corporation Act shall be designated as a public benefit, mutual benefit, or religious corporation as follows:

- (1) Any corporation designated by statute as a public benefit corporation, a mutual benefit corporation, or a religious corporation is the type of corporation designated by statute;
- (2) Any corporation that does not come within subdivision (1) of this section, but is organized primarily or exclusively for religious purposes, is a religious corporation;
- (3) Any corporation that does not come within subdivision (1) or (2) of this section, but is recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation;
- (4) Any corporation that does not come within subdivision (1), (2), or (3) of this section, but is organized for a public or charitable purpose, and upon dissolution must distribute its assets to a public benefit corporation, the United States, a state, or a person recognized as exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section, is a public benefit corporation; and
- (5) Any corporation that does not come within subdivision (1), (2), (3), or (4) of this section is a mutual benefit corporation.

**Source** Laws 1996, LB 681, § 177.