

LEGISLATIVE BILL 890

Approved by the Governor March 7, 2012

Introduced by Pirsch, 4.

FOR AN ACT relating to the Nebraska Nonprofit Corporation Act; to amend sections 21-1914 and 21-1915, Reissue Revised Statutes of Nebraska; to provide for the electronic transmission of notice as prescribed; to define a term; and to repeal the original sections.

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

Section 1. Section 21-1914, Reissue Revised Statutes of Nebraska, is amended to read:

21-1914 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) Electronic transmission or electronically transmitted means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;

~~(13)~~ (14) Employee does not include an officer or director who is not otherwise employed by the corporation;

~~(14)~~ (15) 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)~~ (16) File, filed, or filing means filed in the office of the Secretary of State;

~~(16)~~ (17) 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)~~ (18) Governmental subdivision includes authority, county, district, and municipality;

~~(18)~~ (19) Individual includes the estate of an incompetent

individual;

~~(19)~~ (20) 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)~~ (21) Membership means the rights and obligations a member or members have pursuant to a corporation's articles, bylaws, and the act;

~~(21)~~ (22) 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)~~ (23) Notice has the same meaning as in section 21-1915;

~~(23)~~ (24) Person includes any individual or entity;

~~(24)~~ (25) 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)~~ (26) Proceeding includes civil, criminal, administrative, and investigatory actions;

~~(26)~~ (27) 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)~~ (28) 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)~~ (29) 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)~~ (30) 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)~~ (31) 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)~~ (32) United States includes district, authority, bureau, commission, department, and any other agency of the United States;

~~(32)~~ (33) Vote includes authorization by written ballot and written consent; and

~~(33)~~ (34) 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.

Sec. 2. Section 21-1915, Reissue Revised Statutes of Nebraska, is amended to read:

21-1915 (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.~~ mail or other method of delivery, or by telephone or other electronic means. 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 (1) if addressed or delivered to the member's address shown in the corporation's current list of members, ~~or~~ (2) 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, or (3) if electronically transmitted to a member in a manner authorized by the member.

(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.

Sec. 3. Original sections 21-1914 and 21-1915, Reissue Revised Statutes of Nebraska, are repealed.