

ONE HUNDRED FOURTH LEGISLATURE - SECOND SESSION - 2016
COMMITTEE STATEMENT
LB794

Hearing Date: Tuesday February 09, 2016
Committee On: Banking, Commerce and Insurance
Introducer: Harr
One Liner: Change provisions relating to the Nebraska Model Business Corporation Act and corporate occupation taxes

Roll Call Vote - Final Committee Action:
Advanced to General File

Vote Results:

Aye:	7	Senators Campbell, Fox, Gloor, Lindstrom, Scheer, Schumacher, Williams
Nay:		
Absent:	1	Senator Craighead
Present Not Voting:		

Verbal Testimony:

Proponents:

Senator Burke Harr
Dennis Fogland
Robert Hallstrom
Ron Sedlacek

Representing:

Introducer
NE State Bar Association
NE Bankers Association
NE Chamber of Commerce

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

This bill, introduced at the request of the Nebraska State Bar Association, would make clean-up changes in the Nebraska Model Business Corporation Act (NMBCA) ("new act") (sections 21-201 to 21-2,232) before it becomes operative on January 1, 2017.

The NMBCA was enacted by LB749 (Harr) (Laws 2014). It repealed and replaced the Business Corporation Act (sections 21-2001 to 21-20,197) ("old act") enacted by LB109 (Kristensen) (Laws 1995). Each act was based on the then-current version of the Model Business Corporation Act as approved and promulgated by the Committee on Corporate Laws of the Section of Business Law of the American Bar Association (ABA). The ABA committee makes frequent changes in its model act.

As enacted, the new act contained an operative date of January 1, 2016. However, LB157 (McCollister) (Laws 2015), introduced on behalf of the Nebraska State Bar Association, delayed the operative date of the new act to January 1, 2017, in order to afford an additional interim and legislative session during which amendments could be considered before the new act becomes operative. Pursuant to 2015 interim study resolution LR263 (Harr) the bar association compiled the recommendations found in this bill.

Sections 2 to 4, 8, and 9 would amend sections 21-214, 21-216, 21-227, 21-21,110, and 21-2,117 of the new act to add

"limited liability company" among references of other kinds of entities. These provisions had been included in corresponding places in the old act, but were missed for inclusion in the new act.

Section 5 would amend section 21-250 of the new act to preserve the grandfathering of pre-emptive rights of shareholders of pre-1996 corporations whose articles of incorporation were silent as to pre-emptive rights. These provisions had been included in the old act, but were missed for inclusion in the new act.

Section 6 would amend section 21-253 of the new act to repeal language which provides that "directors may not be elected by less than unanimous consent." This language appears erroneously in this section. It is the latter portion of a sentence of model act language which needed to be omitted in its entirety from LB749 because it conflicts with non-model language in section 21-270 based on state constitutional provisions regarding cumulative voting.

Section 7 would amend section 21-256 of the new act which provides that a corporation may amend its articles of incorporation to provide that any action required by the act to be taken at a shareholders meeting may be taken without a meeting, and without prior notice, if consents in writing are signed by the holders of outstanding shares having not less than the minimum vote required. This model language conflicts with non-model language in section 21-270 based on state constitutional provisions regarding cumulative voting so, accordingly, the bill would add language to this section to provide that the use of written consent to elect directors must be unanimous.

Section 10 would amend section 21-2,172 of the new act which regards dissenting shareholder appraisal rights in certain events (such as merger, sale of substantially all of the assets of the corporation, etc.). The bill would add language to this section to provide that the right to dissent and obtain payment for shares shall not apply to shareholders of a bank, trust company, stock-owned savings and loan association, or the holding company of any such bank, trust company, or stock-owned savings and loan association. These amendatory provisions had been included in the old act, but were missed for inclusion in the new act.

Sections 11 to 14 would enact new sections in the new act to allow a foreign corporation, in lieu of obtaining a certificate of authority in Nebraska, to file with the Secretary of State to become a body corporate of this state as a foreign domesticated corporation. These sections had been included in the old act, but were missed for inclusion in the new act.

Section 15 would amend section 21-303 to correct internal references regarding foreign domesticated corporations.

The bill would become operative on January 1, 2017.

Jim Scheer, Chairperson