

LEGISLATURE OF NEBRASKA  
 ONE HUNDRED THIRD LEGISLATURE  
 SECOND SESSION  
**LEGISLATIVE BILL 749**

Introduced by Harr, 8.

Read first time January 09, 2014

Committee:

A BILL

1 FOR AN ACT relating to corporations; to amend sections 8-1401,  
 2 8-2104, 8-2306, 8-2311, 21-301, 21-302, 21-303, 21-304,  
 3 21-305, 21-306, 21-311, 21-312, 21-313, 21-314, 21-315,  
 4 21-317, 21-318, 21-319, 21-321, 21-322, 21-323,  
 5 21-323.01, 21-323.02, 21-325, 21-325.01, 21-325.02,  
 6 21-328, 21-329, 21-330, 21-1301, 21-1931, 21-1933,  
 7 21-19,151, 21-2103, 21-2105, 21-2110, 21-2115, 21-2203,  
 8 21-2204, 21-2209, 21-2212, 21-2439, 21-2971, 21-2976,  
 9 30-3214, 33-101, 44-205.01, 44-206, 44-208.02, 44-211,  
 10 44-224.01, 44-224.04, 44-301, 44-2128, 44-2916, 44-3112,  
 11 44-32,115, 44-3312, and 44-3812, Reissue Revised Statutes  
 12 of Nebraska, and sections 9-614, 28-1354, 67-248.02, and  
 13 84-511, Revised Statutes Supplement, 2013; to adopt the  
 14 Nebraska Model Business Corporation Act; to eliminate the  
 15 Business Corporation Act; to harmonize provisions; to  
 16 provide an operative date; to provide severability; to  
 17 repeal the original sections; and to outright repeal

1 sections 21-317, 21-2001, 21-2002, 21-2003, 21-2004,  
2 21-2005, 21-2006, 21-2007, 21-2008, 21-2009, 21-2010,  
3 21-2011, 21-2012, 21-2013, 21-2014, 21-2015, 21-2016,  
4 21-2017, 21-2018, 21-2019, 21-2020, 21-2021, 21-2022,  
5 21-2023, 21-2024, 21-2025, 21-2026, 21-2027, 21-2028,  
6 21-2029, 21-2030, 21-2031, 21-2032, 21-2033, 21-2034,  
7 21-2035, 21-2036, 21-2037, 21-2038, 21-2039, 21-2040,  
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10 21-2053, 21-2054, 21-2055, 21-2056, 21-2057, 21-2058,  
11 21-2059, 21-2060, 21-2061, 21-2062, 21-2063, 21-2064,  
12 21-2065, 21-2066, 21-2067, 21-2068, 21-2069, 21-2070,  
13 21-2071, 21-2072, 21-2073, 21-2074, 21-2075, 21-2076,  
14 21-2077, 21-2078, 21-2079, 21-2080, 21-2081, 21-2082,  
15 21-2083, 21-2084, 21-2085, 21-2086, 21-2087, 21-2088,  
16 21-2089, 21-2090, 21-2091, 21-2092, 21-2093, 21-2094,  
17 21-2095, 21-2096, 21-2097, 21-2098, 21-2099, 21-20,100,  
18 21-20,101, 21-20,102, 21-20,103, 21-20,104, 21-20,105,  
19 21-20,106, 21-20,107, 21-20,108, 21-20,109, 21-20,110,  
20 21-20,111, 21-20,112, 21-20,113, 21-20,114, 21-20,115,  
21 21-20,116, 21-20,117, 21-20,118, 21-20,119, 21-20,120,  
22 21-20,121, 21-20,122, 21-20,123, 21-20,124, 21-20,125,  
23 21-20,126, 21-20,127, 21-20,128, 21-20,129, 21-20,130,  
24 21-20,131, 21-20,132, 21-20,133, 21-20,134, 21-20,135,  
25 21-20,135.01, 21-20,136, 21-20,137, 21-20,138, 21-20,139,

1                   21-20,140, 21-20,141, 21-20,142, 21-20,143, 21-20,144,  
2                   21-20,145, 21-20,146, 21-20,147, 21-20,148, 21-20,149,  
3                   21-20,150, 21-20,151, 21-20,152, 21-20,153, 21-20,154,  
4                   21-20,155, 21-20,156, 21-20,157, 21-20,158, 21-20,159,  
5                   21-20,160, 21-20,161, 21-20,162, 21-20,163, 21-20,164,  
6                   21-20,165, 21-20,166, 21-20,167, 21-20,168, 21-20,169,  
7                   21-20,170, 21-20,171, 21-20,172, 21-20,173, 21-20,174,  
8                   21-20,175, 21-20,176, 21-20,177, 21-20,178, 21-20,179,  
9                   21-20,180,    21-20,180.01,    21-20,181,    21-20,181.01,  
10                  21-20,181.02,    21-20,181.03,    21-20,182,    21-20,183,  
11                  21-20,184, 21-20,185, 21-20,186, 21-20,187, 21-20,188,  
12                  21-20,189, 21-20,190, 21-20,191, 21-20,192, 21-20,193,  
13                  21-20,194, 21-20,195, 21-20,196, and 21-20,197, Reissue  
14                  Revised Statutes of Nebraska.

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

1           Section 1. (MBCA 1.01) Sections 1 to 232 of this act  
2 shall be known and may be cited as the Nebraska Model Business  
3 Corporation Act.

4           Sec. 2. (MBCA 1.02) The Legislature has power to amend or  
5 repeal all or part of the Nebraska Model Business Corporation Act at  
6 any time and all domestic and foreign corporations subject to the act  
7 are governed by the amendment or repeal.

8           Sec. 3. (MBCA 1.20) (a) A document must satisfy the  
9 requirements of this section, and of any other section that adds to  
10 or varies these requirements, to be entitled to filing by the  
11 Secretary of State.

12           (b) The Nebraska Model Business Corporation Act must  
13 require or permit filing the document in the office of the Secretary  
14 of State.

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

17           (d) The document must be typewritten or printed or, if  
18 electronically transmitted, it must be in a format that can be  
19 retrieved or reproduced in typewritten or printed form.

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

25           (f) The document must be signed:

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

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

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

8           (g) The person executing the document shall sign it and  
9 state beneath or opposite the person's signature the person's name  
10 and the capacity in which the document is signed. The document may  
11 but need not contain a corporate seal, attestation, acknowledgement,  
12 or verification.

13           (h) If the Secretary of State has prescribed a mandatory  
14 form for the document under section 4 of this act, the document must  
15 be in or on the prescribed form.

16           (i) The document must be delivered to the office of the  
17 Secretary of State for filing. Delivery may be made by electronic  
18 transmission if and to the extent permitted by the Secretary of  
19 State. If it is filed in typewritten or printed form and not  
20 transmitted electronically, the Secretary of State may require one  
21 exact or conformed copy to be delivered with the document, except as  
22 provided in sections 35 and 211 of this act.

23           (j) When the document is delivered to the office of the  
24 Secretary of State for filing, the correct filing fee, and any tax,  
25 license fee, or penalty required to be paid therewith by the Nebraska

1 Model Business Corporation Act or other law must be paid or provision  
2 for payment made in a manner permitted by the Secretary of State.

3 (k) Whenever a provision of the Nebraska Model Business  
4 Corporation Act permits any of the terms of a plan or a filed  
5 document to be dependent on facts objectively ascertainable outside  
6 the plan or filed document, the following provisions apply:

7 (1) The manner in which the facts will operate upon the  
8 terms of the plan or filed document shall be set forth in the plan or  
9 filed document;

10 (2) The facts may include, but are not limited to:

11 (i) Any of the following that is available in a  
12 nationally recognized news or information medium either in print or  
13 electronically: statistical or market indices, market prices of any  
14 security or group of securities, interest rates, currency exchange  
15 rates, or similar economic or financial data;

16 (ii) A determination or action by any person or body,  
17 including the corporation or any other party to a plan or filed  
18 document; or

19 (iii) The terms of, or actions taken under, an agreement  
20 to which the corporation is a party, or any other agreement or  
21 document;

22 (3) As used in this subsection (k):

23 (i) Filed document means a document filed with the  
24 Secretary of State under any provision of the act except sections 203  
25 to 220 or section 228 of this act; and

1           (ii) Plan means a plan of domestication, nonprofit  
2 conversion, entity conversion, merger, or share exchange;

3           (4) The following provisions of a plan or filed document  
4 may not be made dependent on facts outside the plan or filed  
5 document:

6           (i) The name and address of any person required in a  
7 filed document;

8           (ii) The registered office of any entity required in a  
9 filed document;

10          (iii) The registered agent of any entity required in a  
11 filed document;

12          (iv) The number of authorized shares and designation of  
13 each class or series of shares;

14          (v) The effective date of a filed document; or

15          (vi) Any required statement in a filed document of the  
16 date on which the underlying transaction was approved or the manner  
17 in which that approval was given; and

18          (5) If a provision of a filed document is made dependent  
19 on a fact ascertainable outside of the filed document, and that fact  
20 is not ascertainable by reference to a source described in  
21 subdivision (k)(2)(i) of this section or a document that is a matter  
22 of public record, or the affected shareholders have not received  
23 notice of the fact from the corporation, then the corporation shall  
24 file with the Secretary of State articles of amendment setting forth  
25 the fact promptly after the time when the fact referred to is first

1 ascertainable or thereafter changes. Articles of amendment under this  
2 subdivision (k)(5) of this section are deemed to be authorized by the  
3 authorization of the original filed document or plan to which they  
4 relate and may be filed by the corporation without further action by  
5 the board of directors or the shareholders.

6           Sec. 4. (MBCA 1.21) (a) The Secretary of State may  
7 prescribe and furnish on request forms for: (1) an application for a  
8 certificate of existence, (2) a foreign corporation's application for  
9 a certificate of authority to transact business in this state, and  
10 (3) a foreign corporation's application for a certificate of  
11 withdrawal. If the Secretary of State so requires, use of these forms  
12 is mandatory.

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

17           Sec. 5. (MBCA 1.22) (a) The Secretary of State shall  
18 collect the following fees when the documents described in this  
19 subsection are delivered to the Secretary of State for filing:

20           (1) Articles of incorporation, articles of domestication,  
21 or articles of domestication and conversion:

22           (i) If the capital stock is \$10,000 or less, the fee  
23 shall be \$60;

24           (ii) If the capital stock is more than \$10,000 but does  
25 not exceed \$25,000, the fee shall be \$100;



1           (iii) If the capital stock is more than \$25,000 but does  
2 not exceed \$50,000, the fee shall be \$150;

3           (iv) If the capital stock is more than \$50,000 but does  
4 not exceed \$75,000, the fee shall be \$225;

5           (v) If the capital stock is more than \$75,000 but does  
6 not exceed \$100,000, the fee shall be \$300; and

7           (vi) If the capital stock is more than \$100,000, the fee  
8 shall be \$300, plus \$3 additional for each \$1,000 in excess of  
9 \$100,000.

10           For purposes of computing this fee, the capital stock of  
11 a corporation organized under the laws of any other state that  
12 domesticates in this state, and which stock does not have a par  
13 value, shall be deemed to have a par value of an amount per share  
14 equal to the amount paid in as capital for each of such shares as are  
15 then issued and outstanding, and in no event less than one dollar per  
16 share;

17           (2) Articles of incorporation or articles of  
18 domestication if filed by an insurer holding a certificate of  
19 authority issued by the Director of Insurance, the fee shall be \$300;

20           (3) Application for use of deceptively similar name...  
21 \$25;

22           (4) Application for reserved name...\$25;

23           (5) Notice of transfer of reserved name...\$25;

24           (6) Application for registered name...\$25;

25           (7) Application for renewal of registered name...\$25;

- 1           (8) Corporation's statement of change of registered agent  
2 or registered office or both...\$25;
- 3           (9) Agent's statement of change of registered office for  
4 each affected corporation...\$25 not to exceed a total of...\$1,000;
- 5           (10) Agent's statement of resignation...No fee;
- 6           (11) Articles of charter surrender...\$25;
- 7           (12) Articles of nonprofit conversion...\$25;
- 8           (13) Articles of entity conversion...\$25;
- 9           (14) Amendment of articles of incorporation...\$25;
- 10          (15) Restatement of articles of incorporation...\$25  
11 with amendment of articles...\$25;
- 12          (16) Articles of merger or share exchange...\$25;
- 13          (17) Articles of dissolution...\$45;
- 14          (18) Articles of revocation of dissolution...\$25;
- 15          (19) Certificate of administrative dissolution...No fee;
- 16          (20) Application for reinstatement following  
17 administrative dissolution or revocation...\$25;
- 18          (21) Certificate of reinstatement...No fee;
- 19          (22) Certificate of judicial dissolution...No fee;
- 20          (23) Application for certificate of authority...\$130;
- 21          (24) Application for amended certificate of authority...  
22 \$25;
- 23          (25) Application for certificate of withdrawal...\$25;
- 24          (26) Application for transfer of authority...\$25;
- 25          (27) Certificate of revocation of authority to transact

1 business...No fee;

2 (28) Articles of correction...\$25;

3 (29) Application for certificate of existence or  
4 authorization...\$25; and

5 (30) Any other document required or permitted to be filed  
6 by the Nebraska Model Business Corporation Act...\$25.

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

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

13 (1) One dollar per page for copying; and

14 (2) Ten dollars for the certificate.

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

19 Sec. 6. (MBCA 1.23) (a) Except as provided in subsection  
20 (b) of this section and subsection (c) of section 7 of this act, a  
21 document accepted for filing is effective:

22 (1) At the date and time of filing, as evidenced by such  
23 means as the Secretary of State may use for the purpose of recording  
24 the date and time of filing; or

25 (2) At the time specified in the document as its

1 effective time on the date it is filed.

2 (b) A document may specify a delayed effective time and  
3 date, and if it does so the document becomes effective at the time  
4 and date specified. If a delayed effective date but no time is  
5 specified, the document is effective at the close of business on that  
6 date. A delayed effective date for a document may not be later than  
7 the ninetieth day after the date it is filed.

8 Sec. 7. (MBCA 1.24) (a) A domestic or foreign corporation  
9 may correct a document filed with the Secretary of State if (1) the  
10 document contains an inaccuracy, or (2) the document was defectively  
11 signed, attested, sealed, verified, or acknowledged, or (3) the  
12 electronic transmission was defective.

13 (b) A document is corrected:

14 (1) By preparing articles of correction that:

15 (i) Describe the document, including its filing date, or  
16 attach a copy of it to the articles;

17 (ii) Specify the inaccuracy or defect to be corrected;

18 and

19 (iii) Correct the inaccuracy or defect; and

20 (2) By delivering the articles to the Secretary of State  
21 for filing.

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

1           Sec. 8. (MBCA 1.25) (a) If a document delivered to the  
2 office of the Secretary of State for filing satisfies the  
3 requirements of section 3 of this act, the Secretary of State shall  
4 file it.

5           (b) The Secretary of State files a document by recording  
6 it as filed on the date and at the time of receipt. After filing a  
7 document, except as provided in sections 35 and 211 of this act, the  
8 Secretary of State shall deliver to the domestic or foreign  
9 corporation or its representative a copy of the document with an  
10 acknowledgement of the date and time of filing.

11           (c) If the Secretary of State refuses to file a document,  
12 it shall be returned to the domestic or foreign corporation or its  
13 representative within five days after the document was delivered,  
14 together with a brief, written explanation of the reason for refusal.

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

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

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

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

25           Sec. 9. (MBCA 1.26) (a) If the Secretary of State refuses

1 to file a document delivered for filing, the domestic or foreign  
2 corporation may appeal the refusal within thirty days after the  
3 return of the document to the district court of Lancaster County. The  
4 appeal is commenced by petitioning the court to compel filing the  
5 document and by attaching to the petition the document and the  
6 Secretary of State's explanation of his or her refusal to file.

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

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

12 Sec. 10. (MBCA 1.27) A certificate from the Secretary of  
13 State delivered with a copy of a document filed by the Secretary of  
14 State, is conclusive evidence that the original document is on file  
15 with the Secretary of State.

16 Sec. 11. (MBCA 1.28) (a) Anyone may apply to the  
17 Secretary of State to furnish a certificate of existence for a  
18 domestic corporation or a certificate of authorization for a foreign  
19 corporation.

20 (b) A certificate of existence or authorization sets  
21 forth:

22 (1) The domestic corporation's corporate name or the  
23 foreign corporation's corporate name used in this state;

24 (2) That:

25 (i) The domestic corporation is duly incorporated under

1 the law of this state, the date of its incorporation, and the period  
2 of its duration if less than perpetual; or

3 (ii) That the foreign corporation is authorized to  
4 transact business in this state;

5 (3) That all fees, taxes, and penalties owed to this  
6 state have been paid, if:

7 (i) Payment is reflected in the records of the Secretary  
8 of State; and

9 (ii) Nonpayment affects the existence or authorization of  
10 the domestic or foreign corporation;

11 (4) That its most recent biennial report required by  
12 section 228 of this act has been filed with the Secretary of State;

13 (5) That articles of dissolution have not been filed; and

14 (6) Other facts of record in the office of the Secretary  
15 of State that may be requested by the applicant.

16 (c) Subject to any qualification stated in the  
17 certificate, a certificate of existence or authorization issued by  
18 the Secretary of State may be relied upon as conclusive evidence that  
19 the domestic or foreign corporation is in existence or is authorized  
20 to transact business in this state.

21 Sec. 12. (MBCA 1.29) (a) A person commits an offense by  
22 signing a document that the person knows is false in any material  
23 respect with intent that the document be delivered to the Secretary  
24 of State for filing.

25 (b) An offense under this section is a Class I

1 misdemeanor.

2           Sec. 13. (MBCA 1.30) The Secretary of State has the power  
3 reasonably necessary to perform the duties required of the Secretary  
4 of State by the Nebraska Model Business Corporation Act.

5           Sec. 14. (MBCA 1.40) In the Nebraska Model Business  
6 Corporation Act:

7           (1) Articles of incorporation means the original articles  
8 of incorporation, all amendments thereof, and any other documents  
9 permitted or required to be filed by a domestic business corporation  
10 with the Secretary of State under any provision of the act except  
11 section 228 of this act. If an amendment of the articles or any other  
12 document filed under the act restates the articles in their entirety,  
13 thenceforth the articles shall not include any prior documents.

14           (2) Authorized shares means the shares of all classes a  
15 domestic or foreign corporation is authorized to issue.

16           (3) Conspicuous means so written, displayed, or presented  
17 that a reasonable person against whom the writing is to operate  
18 should have noticed it. For example, text in italics, boldface,  
19 contrasting color, capitals or underlined, is conspicuous.

20           (4) Corporation, domestic corporation, or domestic  
21 business corporation means a corporation for profit, which is not a  
22 foreign corporation, incorporated under or subject to the provisions  
23 of the act.

24           (5) Deliver or delivery means any method of delivery used  
25 in conventional commercial practice, including delivery by hand,



1 mail, commercial delivery, and, if authorized in accordance with  
2 section 15 of this act, by electronic transmission.

3 (6) Distribution means a direct or indirect transfer of  
4 money or other property, except its own shares, or incurrence of  
5 indebtedness by a corporation to or for the benefit of its  
6 shareholders in respect of any of its shares. A distribution may be  
7 in the form of a declaration or payment of a dividend; a purchase,  
8 redemption, or other acquisition of shares; a distribution of  
9 indebtedness; or otherwise.

10 (7) Document means (i) any tangible medium on which  
11 information is inscribed, and includes any writing or written  
12 instrument, or (ii) an electronic record.

13 (8) Domestic unincorporated entity means an  
14 unincorporated entity whose internal affairs are governed by the laws  
15 of this state.

16 (9) Effective date of notice is defined in section 15 of  
17 this act.

18 (10) Electronic means relating to technology having  
19 electrical, digital, magnetic, wireless, optical, electromagnetic, or  
20 similar capabilities.

21 (11) Electronic record means information that is stored  
22 in an electronic or other medium and is retrievable in paper form  
23 through an automated process used in conventional commercial  
24 practice, unless otherwise authorized in accordance with subsection  
25 (k) of section 15 of this act.

1           (12) Electronic transmission or electronically  
2 transmitted means any form or process of communication not directly  
3 involving the physical transfer of paper or another tangible medium,  
4 which (a) is suitable for the retention, retrieval, and reproduction  
5 of information by the recipient and (b) is retrievable in paper form  
6 by the recipient through an automated process used in conventional  
7 commercial practice, unless otherwise authorized in accordance with  
8 subsection (k) of section 15 of this act.

9           (13) Eligible entity means a domestic or foreign  
10 unincorporated entity or a domestic or foreign nonprofit corporation.

11           (14) Eligible interests means interests or memberships.

12           (15) Employee includes an officer but not a director. A  
13 director may accept duties that make the director also an employee.

14           (16) Entity includes domestic and foreign business  
15 corporation; domestic and foreign nonprofit corporation; estate;  
16 trust; domestic and foreign unincorporated entity; and state, United  
17 States, and foreign government.

18           (17) The phrase facts objectively ascertainable outside  
19 of a filed document or plan is defined in subsection (k) of section 3  
20 of this act.

21           (18) Expenses means reasonable expenses of any kind that  
22 are incurred in connection with a matter.

23           (19) Filing entity means an unincorporated entity that is  
24 of a type that is created by filing a public organic document.

25           (20) Foreign corporation means a corporation incorporated

1 under a law other than the law of this state which would be a  
2 business corporation if incorporated under the laws of this state.

3 (21) Foreign nonprofit corporation means a corporation  
4 incorporated under a law other than the law of this state which would  
5 be a nonprofit corporation if incorporated under the laws of this  
6 state.

7 (22) Foreign unincorporated entity means an  
8 unincorporated entity whose internal affairs are governed by an  
9 organic law of a jurisdiction other than this state.

10 (23) Governmental subdivision includes authority, county,  
11 district, and municipality.

12 (24) Includes denotes a partial definition.

13 (25) Individual means a natural person.

14 (26) Interest means either or both of the following  
15 rights under the organic law of an unincorporated entity:

16 (i) The right to receive distributions from the entity  
17 either in the ordinary course or upon liquidation; or

18 (ii) The right to receive notice or vote on issues  
19 involving its internal affairs, other than as an agent, assignee,  
20 proxy, or person responsible for managing its business and affairs.

21 (27) Interest holder means a person who holds of record  
22 an interest.

23 (28) Means denotes an exhaustive definition.

24 (29) Membership means the rights of a member in a  
25 domestic or foreign nonprofit corporation.

1           (30) Nonfiling entity means an unincorporated entity that  
2 is of a type that is not created by filing a public organic document.

3           (31) Nonprofit corporation or domestic nonprofit  
4 corporation means a corporation incorporated under the laws of this  
5 state and subject to the provisions of the Nebraska Nonprofit  
6 Corporation Act.

7           (32) Notice is defined in section 15 of this act.

8           (33) Organic document means a public organic document or  
9 a private organic document.

10           (34) Organic law means the statute governing the internal  
11 affairs of a domestic or foreign business or nonprofit corporation or  
12 unincorporated entity.

13           (35) Owner liability means personal liability for a debt,  
14 obligation, or liability of a domestic or foreign business or  
15 nonprofit corporation or unincorporated entity that is imposed on a  
16 person:

17           (i) Solely by reason of the person's status as a  
18 shareholder, member, or interest holder; or

19           (ii) By the articles of incorporation, bylaws or an  
20 organic document under a provision of the organic law of an entity  
21 authorizing the articles of incorporation, bylaws or an organic  
22 document to make one or more specified shareholders, members or  
23 interest holders liable in their capacity as shareholders, members,  
24 or interest holders for all or specified debts, obligations, or  
25 liabilities of the entity.

1           (36) Person includes an individual and an entity.

2           (37) Principal office means the office, in or out of this  
3 state, so designated in the biennial report where the principal  
4 executive offices of a domestic or foreign corporation are located.

5           (38) Private organic document means any document, other  
6 than the public organic document, if any, that determines the  
7 internal governance of an unincorporated entity. Where a private  
8 organic document has been amended or restated, the term means the  
9 private organic document as last amended or restated.

10           (39) Public organic document means the document, if any,  
11 that is filed of public record to create an unincorporated entity.  
12 Where a public organic document has been amended or restated, the  
13 term means the public organic document as last amended or restated.

14           (40) Proceeding includes civil suit and criminal,  
15 administrative, and investigatory action.

16           (41) Public corporation means a corporation that has  
17 shares listed on a national securities exchange or regularly traded  
18 in a market maintained by one or more members of a national  
19 securities association.

20           (42) Qualified director is defined in section 17 of this  
21 act.

22           (43) Record date means the date established under  
23 sections 37 to 52 of this act on which a corporation determines the  
24 identity of its shareholders and their shareholdings for purposes of  
25 the act. The determinations shall be made as of the close of business

1 on the record date unless another time for doing so is specified when  
2 the record date is fixed.

3 (44) Secretary means the corporate officer to whom the  
4 board of directors has delegated responsibility under subsection (c)  
5 of section 105 of this act for custody of the minutes of the meetings  
6 of the board of directors and of the shareholders and for  
7 authenticating records of the corporation.

8 (45) Shareholder means the person in whose name shares  
9 are registered in the records of a corporation or the beneficial  
10 owner of shares to the extent of the rights granted by a nominee  
11 certificate on file with a corporation.

12 (46) Shares means the units into which the proprietary  
13 interests in a corporation are divided.

14 (47) Sign or signature means, with present intent to  
15 authenticate or adopt a document:

16 (i) To execute or adopt a tangible symbol to a document,  
17 and includes any manual, facsimile, or conformed signature; or

18 (ii) To attach to or logically associate with an  
19 electronic transmission an electronic sound, symbol, or process, and  
20 includes an electronic signature in an electronic transmission.

21 (48) State, when referring to a part of the United  
22 States, includes a state and commonwealth, and their agencies and  
23 governmental subdivisions, and a territory and insular possession,  
24 and their agencies and governmental subdivisions, of the United  
25 States.

1           (49) Subscriber means a person who subscribes for shares  
2 in a corporation, whether before or after incorporation.

3           (50) Unincorporated entity means an organization or  
4 artificial legal person that either has a separate legal existence or  
5 has the power to acquire an estate in real property in its own name  
6 and that is not any of the following: a domestic or foreign business  
7 or nonprofit corporation, an estate, a trust, a state, the United  
8 States, or a foreign government. The term includes a general  
9 partnership, limited liability company, limited partnership, business  
10 trust, joint stock association, and unincorporated nonprofit  
11 association.

12           (51) United States includes district, authority, bureau,  
13 commission, department, and any other agency of the United States.

14           (52) Voting group means all shares of one or more classes  
15 or series that under the articles of incorporation or the act are  
16 entitled to vote and be counted together collectively on a matter at  
17 a meeting of shareholders. All shares entitled by the articles of  
18 incorporation or the act to vote generally on the matter are for that  
19 purpose a single voting group.

20           (53) Voting power means the current power to vote in the  
21 election of directors.

22           (54) Writing or written means any information in the form  
23 of a document.

24           Sec. 15. (MBCA 1.41) (a) Notice under the Nebraska Model  
25 Business Corporation Act must be in writing unless oral notice is

1 reasonable in the circumstances. Unless otherwise agreed between the  
2 sender and the recipient, words in a notice or other communication  
3 under the act must be in English.

4 (b) A notice or other communication may be given or sent  
5 by any method of delivery, except that electronic transmissions must  
6 be in accordance with this section. If these methods of delivery are  
7 impractical, a notice or other communication may be communicated by a  
8 newspaper of general circulation in the area where published, or by  
9 radio, television, or other form of public broadcast communication.

10 (c) Written notice by a domestic or foreign corporation  
11 to its shareholder, if in a comprehensible form, is effective (1)  
12 when mailed, if mailed postage prepaid and correctly addressed to the  
13 shareholder's address shown in the corporation's current record of  
14 shareholders or (2) when electronically transmitted to the  
15 shareholder in a manner authorized by the shareholder. Notice by a  
16 public corporation to its shareholder is effective if the notice is  
17 addressed to the shareholder or group of shareholders in a manner  
18 permitted by rules and regulations adopted and promulgated under the  
19 federal Securities Exchange Act of 1934, as amended, 15 U.S.C. 78a et  
20 seq., if the public corporation has first received affirmative  
21 written consent or implied consent required under such rules and  
22 regulations.

23 (d) Notice or other communication to a domestic or  
24 foreign corporation authorized to transact business in this state may  
25 be delivered to its registered agent at its registered office or to



1 the secretary of the corporation at its principal office shown in its  
2 most recent biennial report or, in the case of a foreign corporation  
3 that has not yet delivered a biennial report, in its application for  
4 a certificate of authority.

5 (e) Notice or other communications may be delivered by  
6 electronic transmission if consented to by the recipient or if  
7 authorized by subsection (k) of this section.

8 (f) Any consent under subsection (e) of this section may  
9 be revoked by the person who consented by written or electronic  
10 notice to the person to whom the consent was delivered. Any such  
11 consent is deemed revoked if (1) the corporation is unable to deliver  
12 two consecutive electronic transmissions given by the corporation in  
13 accordance with such consent and (2) such inability becomes known to  
14 the secretary or an assistant secretary of the corporation or to the  
15 transfer agent, or other person responsible for the giving of notice  
16 or other communications, except that the inadvertent failure to treat  
17 such inability as a revocation shall not invalidate any meeting or  
18 other action.

19 (g) Unless otherwise agreed between the sender and the  
20 recipient, an electronic transmission is received when:

21 (1) It enters an information processing system that the  
22 recipient has designated or uses for the purposes of receiving  
23 electronic transmissions or information of the type sent and from  
24 which the recipient is able to retrieve the electronic transmission;  
25 and

1           (2) It is in a form capable of being processed by that  
2 system.

3           (h) Receipt of an electronic acknowledgement from an  
4 information processing system described in subdivision (g)(1) of this  
5 section establishes that an electronic transmission was received but,  
6 by itself, does not establish that the content sent corresponds to  
7 the content received.

8           (i) An electronic transmission is received under this  
9 section even if no individual is aware of its receipt.

10           (j) Notice or other communication, if in a comprehensible  
11 form or manner, is effective at the earliest of the following:

12           (1) If in a physical form, the earliest of when it is  
13 actually received or when it is left at:

14           (i) A shareholder's address shown on the corporation's  
15 record of shareholders maintained by the corporation under subsection  
16 (c) of section 221 of this act;

17           (ii) A director's residence or usual place of business;  
18 or

19           (iii) The corporation's principal place of business;

20           (2) If mailed postage prepaid and correctly addressed to  
21 a shareholder, upon deposit in the United States mail;

22           (3) If mailed by United States mail postage prepaid and  
23 correctly addressed to a recipient other than a shareholder, the  
24 earliest of when it is actually received, or:

25           (i) If sent by registered or certified mail, return

1 receipt requested, the date shown on the return receipt signed by or  
2 on behalf of the addressee; or

3 (ii) Five days after it is deposited in the United States  
4 mail;

5 (4) If an electronic transmission, when it is received as  
6 provided in subsection (f) of this section; and

7 (5) If oral, when communicated.

8 (k) A notice or other communication may be in the form of  
9 an electronic transmission that cannot be directly reproduced in  
10 paper form by the recipient through an automated process used in  
11 conventional commercial practice only if (1) the electronic  
12 transmission is otherwise retrievable in perceivable form and (2) the  
13 sender and the recipient have consented in writing to the use of such  
14 form of electronic transmission.

15 (l) If the Nebraska Model Business Corporation Act  
16 prescribes requirements for notices or other communications in  
17 particular circumstances, those requirements govern. If articles of  
18 incorporation or bylaws prescribe requirements for notices or other  
19 communications, not inconsistent with this section or other  
20 provisions of the act, those requirements govern. The articles of  
21 incorporation or bylaws may authorize or require delivery of notices  
22 of meetings of directors by electronic transmission.

23 Sec. 16. (MBCA 1.42) (a) For purposes of the Nebraska  
24 Model Business Corporation Act, the following identified as a  
25 shareholder in a corporation's current record of shareholders

1 constitutes one shareholder:

2 (1) Three or fewer co-owners;

3 (2) A corporation, partnership, trust, estate, or other  
4 entity; or

5 (3) The trustees, guardians, custodians, or other  
6 fiduciaries of a single trust, estate, or account.

7 (b) For purposes of the act, shareholdings registered in  
8 substantially similar names constitute one shareholder if it is  
9 reasonable to believe that the names represent the same person.

10 Sec. 17. (MBCA 1.43) (a) A qualified director is a  
11 director who, at the time action is to be taken under:

12 (1) Section 79 of this act, does not have (i) a material  
13 interest in the outcome of the proceeding or (ii) a material  
14 relationship with a person who has such an interest;

15 (2) Section 113 or 115 of this act, (i) is not a party to  
16 the proceeding, (ii) is not a director as to whom a transaction is a  
17 director's conflicting interest transaction or who sought a  
18 disclaimer of the corporation's interest in a business opportunity  
19 under section 124 of this act, which transaction or disclaimer is  
20 challenged in the proceeding, and (iii) does not have a material  
21 relationship with a director described in either subdivision (a)(2)  
22 (i) or (ii);

23 (3) Section 122 of this act, is not a director (i) as to  
24 whom the transaction is a director's conflicting interest transaction  
25 or (ii) who has a material relationship with another director as to

1 whom the transaction is a director's conflicting interest  
2 transaction; or

3 (4) Section 124 of this act, would be a qualified  
4 director under subdivision (a)(3) of this section if the business  
5 opportunity were a director's conflicting interest transaction.

6 (b) For purposes of this section:

7 (1) Material relationship means a familial, financial,  
8 professional, employment, or other relationship that would reasonably  
9 be expected to impair the objectivity of the director's judgment when  
10 participating in the action to be taken; and

11 (2) Material interest means an actual or potential  
12 benefit or detriment, other than one which would devolve on the  
13 corporation or the shareholders generally, that would reasonably be  
14 expected to impair the objectivity of the director's judgment when  
15 participating in the action to be taken.

16 (c) The presence of one or more of the following  
17 circumstances shall not automatically prevent a director from being a  
18 qualified director:

19 (1) Nomination or election of the director to the current  
20 board by any director who is not a qualified director with respect to  
21 the matter or by any person that has a material relationship with  
22 that director, acting alone or participating with others;

23 (2) Service as a director of another corporation of which  
24 a director who is not a qualified director with respect to the  
25 matter, or any individual who has a material relationship with that

1 director, is or was also a director; or

2 (3) With respect to action to be taken under section 79  
3 of this act, status as a named defendant, as a director against whom  
4 action is demanded or as a director who approved the conduct being  
5 challenged.

6 Sec. 18. (MBCA 1.44) (a) A corporation has delivered  
7 written notice or any other report or statement under the Nebraska  
8 Model Business Corporation Act, the articles of incorporation, or the  
9 bylaws to all shareholders who share a common address if:

10 (1) The corporation delivers one copy of the notice,  
11 report, or statement to the common address;

12 (2) The corporation addresses the notice, report, or  
13 statement to those shareholders as a group, to each of those  
14 shareholders individually, or to the shareholders in a form to which  
15 each of those shareholders has consented; and

16 (3) Each of those shareholders consents to delivery of a  
17 single copy of such notice, report, or statement to the shareholders'  
18 common address. Any such consent shall be revocable by any of such  
19 shareholders who deliver written notice of revocation to the  
20 corporation. If such written notice of revocation is delivered, the  
21 corporation shall begin providing individual notices, reports, or  
22 other statements to the revoking shareholder no later than thirty  
23 days after delivery of the written notice of revocation.

24 (b) Any shareholder who fails to object by written notice  
25 to the corporation, within sixty days of written notice by the

1 corporation of its intention to send single copies of notices,  
2 reports, or statements to shareholders who share a common address as  
3 permitted by subsection (a) of this section, shall be deemed to have  
4 consented to receiving such single copy at the common address.

5           Sec. 19. (MBCA 2.01) One or more persons may act as the  
6 incorporator or incorporators of a corporation by delivering articles  
7 of incorporation to the Secretary of State for filing.

8           Sec. 20. (MBCA 2.02) (a) The articles of incorporation  
9 must set forth:

10           (1) A corporate name for the corporation that satisfies  
11 the requirements of section 30 of this act;

12           (2) The number of shares the corporation is authorized to  
13 issue and, if such shares are to consist of one class only, the par  
14 value of each of such shares or, if such shares are to be divided  
15 into classes, the number of shares of each class and a statement of  
16 the par value of the shares of each such class;

17           (3) The street address of the corporation's initial  
18 registered office and the name of its initial registered agent at  
19 that office. A post office box number may be provided in addition to  
20 the street address;

21           (4) The name and address of each incorporator; and

22           (5) Any provision limiting or eliminating the requirement  
23 to hold an annual meeting of the shareholders if the corporation is  
24 registered or intends to register as an investment company under the  
25 federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1

1 et seq. The provision is not effective if such corporation does not  
2 become or ceases to be so registered.

3 (b) The articles of incorporation may set forth:

4 (1) The names and addresses of the individuals who are to  
5 serve as the initial directors;

6 (2) Provisions not inconsistent with law regarding:

7 (i) The purpose or purposes for which the corporation is  
8 organized;

9 (ii) Managing the business and regulating the affairs of  
10 the corporation;

11 (iii) Defining, limiting, and regulating the powers of  
12 the corporation, its board of directors, and shareholders;

13 (iv) A par value for authorized shares or classes of  
14 shares; or

15 (v) The imposition of personal liability on shareholders  
16 for the debts of the corporation to a specified extent and upon  
17 specified conditions;

18 (3) Any provision that under the Nebraska Model Business  
19 Corporation Act is required or permitted to be set forth in the  
20 bylaws;

21 (4) A provision eliminating or limiting the liability of  
22 a director to the corporation or its shareholders for money damages  
23 for any action taken, or any failure to take any action, as a  
24 director, except liability for (i) the amount of a financial benefit  
25 received by a director to which the director is not entitled, (ii) an



1 intentional infliction of harm on the corporation or the  
2 shareholders, (iii) a violation of section 104 of this act, or (iv)  
3 an intentional violation of criminal law; and

4 (5) A provision permitting or making obligatory  
5 indemnification of a director for liability, as defined in  
6 subdivision (3) of section 110 of this act, to any person for any  
7 action taken, or any failure to take any action, as a director,  
8 except liability for (i) receipt of a financial benefit to which the  
9 director is not entitled, (ii) an intentional infliction of harm on  
10 the corporation or its shareholders, (iii) a violation of section 104  
11 of this act, or (iv) an intentional violation of criminal law.

12 (c) The articles of incorporation need not set forth any  
13 of the corporate powers enumerated in the Nebraska Model Business  
14 Corporation Act.

15 (d) Provisions of the articles of incorporation may be  
16 made dependent upon facts objectively ascertainable outside the  
17 articles of incorporation in accordance with subsection (k) of  
18 section 3 of this act.

19 Sec. 21. (MBCA 2.03) (a) Unless a delayed effective date  
20 is specified, the corporate existence begins when the articles of  
21 incorporation are filed.

22 (b) The Secretary of State's filing of the articles of  
23 incorporation is conclusive proof that the incorporators satisfied  
24 all conditions precedent to incorporation except in a proceeding by  
25 the state to cancel or revoke the incorporation or involuntary

1 dissolve the corporation.

2           Sec. 22. (MBCA 2.04) All persons purporting to act as or  
3 on behalf of a corporation, knowing there was no incorporation under  
4 the Nebraska Model Business Corporation Act, are jointly and  
5 severally liable for all liabilities created while so acting.

6           Sec. 23. (MBCA 2.05) (a) After incorporation:

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

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

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

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

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

25           (c) An organizational meeting may be held in or out of

1 this state.

2           Sec. 24. (MBCA 2.06) (a) The incorporators or board of  
3 directors of a corporation shall adopt initial bylaws for the  
4 corporation.

5           (b) The bylaws of a corporation may contain any provision  
6 that is not inconsistent with law or the articles of incorporation.

7           (c) The bylaws may contain one or both of the following  
8 provisions:

9           (1) A requirement that if the corporation solicits  
10 proxies or consents with respect to an election of directors, the  
11 corporation include in its proxy statement and any form of its proxy  
12 or consent, to the extent and subject to such procedures or  
13 conditions as are provided in the bylaws, one or more individuals  
14 nominated by a shareholder in addition to individuals nominated by  
15 the board of directors; and

16           (2) A requirement that the corporation reimburse the  
17 expenses incurred by a shareholder in soliciting proxies or consents  
18 in connection with an election of directors, to the extent and  
19 subject to such procedures and conditions as are provided in the  
20 bylaws, except that no bylaw so adopted shall apply to elections for  
21 which any record date precedes its adoption.

22           (d) Notwithstanding subdivision (b)(2) of section 159 of  
23 this act, the shareholders in amending, repealing, or adopting a  
24 bylaw described in subsection (c) of this section may not limit the  
25 authority of the board of directors to amend or repeal any condition

1 or procedure set forth in or to add any procedure or condition to  
2 such a bylaw in order to provide for a reasonable, practicable, and  
3 orderly process.

4           Sec. 25. (MBCA 2.07) (a) Unless the articles of  
5 incorporation provide otherwise, the board of directors of a  
6 corporation may adopt bylaws to be effective only in an emergency  
7 defined in subsection (d) of this section. The emergency bylaws,  
8 which are subject to amendment or repeal by the shareholders, may  
9 make all provisions necessary for managing the corporation during the  
10 emergency, including:

11                   (1) Procedures for calling a meeting of the board of  
12 directors;

13                   (2) Quorum requirements for the meeting; and

14                   (3) Designation of additional or substitute directors.

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

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

20                           (1) Binds the corporation; and

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

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

1           Sec. 26. (MBCA 3.01) (a) Every corporation incorporated  
2 under the Nebraska Model Business Corporation Act has the purpose of  
3 engaging in any lawful business unless a more limited purpose is set  
4 forth in the articles of incorporation.

5           (b) A corporation engaging in a business that is subject  
6 to regulation under another statute of this state may incorporate  
7 under the Nebraska Model Business Corporation Act only if permitted  
8 by, and subject to all limitations of, the other statute.

9           (c) Corporations shall not be organized under the act to  
10 perform any professional services as specified in section 21-2202  
11 except for professional services rendered by a designated broker as  
12 defined in section 81-885.01.

13           (d) A designated broker as defined in section 81-885.01  
14 may be organized as a corporation under the Nebraska Model Business  
15 Corporation Act.

16           Sec. 27. (MBCA 3.02) Unless its articles of incorporation  
17 provide otherwise, every corporation has perpetual duration and  
18 succession in its corporate name and has the same powers as an  
19 individual to do all things necessary or convenient to carry out its  
20 business and affairs, including without limitation power:

21           (1) To sue and be sued, complain, and defend in its  
22 corporate name;

23           (2) To have a corporate seal, which may be altered at  
24 will, and to use it, or a facsimile of it, by impressing or affixing  
25 it or in any other manner reproducing it;

1           (3) To make and amend bylaws, not inconsistent with its  
2 articles of incorporation or with the laws of this state, for  
3 managing the business and regulating the affairs of the corporation;

4           (4) To purchase, receive, lease, or otherwise acquire and  
5 own, hold, improve, use, and otherwise deal with real or personal  
6 property or any legal or equitable interest in property, wherever  
7 located;

8           (5) To sell, convey, mortgage, pledge, lease, exchange,  
9 and otherwise dispose of all or any part of its property. A  
10 corporation may transfer any interest in real estate by instrument,  
11 with or without a corporate seal, signed by the president, a vice  
12 president, or the presiding officer of the board of directors of the  
13 corporation. Such instrument, when acknowledged by such officer to be  
14 an act of the corporation, is presumed to be valid and may be  
15 recorded in the proper office of the county in which the real estate  
16 is located in the same manner as other such instruments;

17           (6) To purchase, receive, subscribe for, or otherwise  
18 acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or  
19 otherwise dispose of; and deal in and with shares or other interests  
20 in, or obligations of, any other entity;

21           (7) To make contracts and guarantees, incur liabilities,  
22 borrow money, issue its notes, bonds, and other obligations, which  
23 may be convertible into or include the option to purchase other  
24 securities of the corporation, and secure any of its obligations by  
25 mortgage or pledge of any of its property, franchises, or income;

1           (8) To lend money, invest and reinvest its funds, and  
2 receive and hold real and personal property as security for  
3 repayment;

4           (9) To be a promoter, partner, member, associate, or  
5 manager of any partnership, joint venture, trust, or other entity;

6           (10) To conduct its business, locate offices, and  
7 exercise the powers granted by the Nebraska Model Business  
8 Corporation Act within or without this state;

9           (11) To elect directors and appoint officers, employees,  
10 and agents of the corporation, define their duties, fix their  
11 compensation, and lend them money and credit;

12           (12) To pay pensions and establish pension plans, pension  
13 trusts, profit-sharing plans, share bonus plans, share option plans,  
14 and benefit or incentive plans for any or all of its current or  
15 former directors, officers, employees, and agents;

16           (13) To make donations for the public welfare or for  
17 charitable, scientific, or educational purposes;

18           (14) To transact any lawful business that will aid  
19 governmental policy; and

20           (15) To make payments or donations, or do any other act,  
21 not inconsistent with law, that furthers the business and affairs of  
22 the corporation.

23           Sec. 28. (MBCA 3.03) (a) In anticipation of or during an  
24 emergency defined in subsection (d) of this section, the board of  
25 directors of a corporation may:

1           (1) Modify lines of succession to accommodate the  
2 incapacity of any director, officer, employee, or agent; and

3           (2) Relocate the principal office, designate alternative  
4 principal offices or regional offices, or authorize the officers to  
5 do so.

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

8           (1) Notice of a meeting of the board of directors need be  
9 given only to those directors whom it is practicable to reach and may  
10 be given in any practicable manner, including by publication and  
11 radio; and

12           (2) One or more officers of the corporation present at a  
13 meeting of the board of directors may be deemed to be directors for  
14 the meeting, in order of rank and within the same rank in order of  
15 seniority, as necessary to achieve a quorum.

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

19           (1) Binds the corporation; and

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

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

25           Sec. 29. (MBCA 3.04) (a) Except as provided in subsection



1 (b) of this section, the validity of corporate action may not be  
2 challenged on the ground that the corporation lacks or lacked power  
3 to act.

4 (b) A corporation's power to act may be challenged:

5 (1) In a proceeding by a shareholder against the  
6 corporation to enjoin the act;

7 (2) In a proceeding by the corporation, directly,  
8 derivatively, or through a receiver, trustee, or other legal  
9 representative, against an incumbent or former director, officer,  
10 employee, or agent of the corporation; or

11 (3) In a proceeding by the Attorney General under section  
12 197 of this act.

13 (c) In a shareholder's proceeding under subdivision (b)  
14 (1) of this section to enjoin an unauthorized corporate act, the  
15 court may enjoin or set aside the act, if equitable and if all  
16 affected persons are parties to the proceeding, and may award damages  
17 for loss, other than anticipated profits, suffered by the corporation  
18 or another party because of enjoining the unauthorized act.

19 (d) Venue for a proceeding under subdivision (b)(1) or  
20 (b)(2) of this section lies in the district court of the county where  
21 the corporation's principal office, or, if none in this state, its  
22 registered office, is located.

23 Sec. 30. (MBCA 4.01) (a) A corporate name:

24 (1) Must contain the word corporation, incorporated,  
25 company, or limited, or the abbreviation corp., inc., co., or ltd.,

1 or words or abbreviations of like import in another language, except  
2 that a corporation organized to conduct a banking business under the  
3 Nebraska Banking Act may use a name which includes the word bank  
4 without using any such words or abbreviations; and

5 (2) May not contain language stating or implying that the  
6 corporation is organized for a purpose other than that permitted by  
7 section 26 of this act and its articles of incorporation.

8 (b) Except as authorized by subsections (c) and (d) of  
9 this section, a corporate name must not be the same as or deceptively  
10 similar to, upon the records of the Secretary of State:

11 (1) The corporate name of a corporation incorporated or  
12 authorized to transact business in this state;

13 (2) A corporate name reserved or registered under section  
14 31 or 32 of this act;

15 (3) The fictitious name adopted by a foreign corporation  
16 authorized to transact business in this state because its real name  
17 is unavailable;

18 (4) The corporate name of a not-for-profit corporation  
19 incorporated or authorized to transact business in this state;

20 (5) A trade name registered in this state pursuant to  
21 sections 87-208 to 87-219.01; and

22 (6) Any other business entity name registered or filed  
23 with the Secretary of State pursuant to the law of this state.

24 (c) A corporation may apply to the Secretary of State for  
25 authorization to use a name that is deceptively similar to, upon the

1 records of the Secretary of State, one or more of the names described  
2 in subsection (b) of this section. The Secretary of State shall  
3 authorize use of the name applied for if:

4 (1) The other corporation or business entity consents to  
5 the use in writing; or

6 (2) The applicant delivers to the Secretary of State a  
7 certified copy of the final judgment of a court of competent  
8 jurisdiction establishing the applicant's right to use the name  
9 applied for in this state.

10 (d) A corporation may use the name, including the  
11 fictitious name, of another domestic or foreign corporation or  
12 business entity that is used in this state if the other corporation  
13 or business entity is incorporated or authorized to transact business  
14 in this state and the proposed user corporation:

15 (1) Has merged with the other corporation or business  
16 entity;

17 (2) Has been formed by reorganization of the other  
18 corporation or business entity; or

19 (3) Has acquired all or substantially all of the assets,  
20 including the corporate name, of the other corporation or business  
21 entity.

22 (e) The Nebraska Model Business Corporation Act does not  
23 control the use of fictitious names.

24 Sec. 31. (MBCA 4.02) (a) A person may reserve the  
25 exclusive use of a corporate name, including a fictitious name for a

1 foreign corporation whose corporate name is not available, by  
2 delivering an application to the Secretary of State for filing. The  
3 application must set forth the name and address of the applicant and  
4 the name proposed to be reserved. If the Secretary of State finds  
5 that the corporate name applied for is available, the Secretary of  
6 State shall reserve the name for the applicant's exclusive use for a  
7 nonrenewable one hundred twenty-day period.

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

12 Sec. 32. (MBCA 4.03) (a) A foreign corporation may  
13 register its corporate name, or its corporate name with any addition  
14 required by section 208 of this act, if the name is not the same as  
15 or deceptively similar to, upon the records of the Secretary of  
16 State, the corporate names that are not available under subsection  
17 (b) of section 30 of this act.

18 (b) A foreign corporation registers its corporate name,  
19 or its corporate name with any addition required by section 208 of  
20 this act, by delivering to the Secretary of State for filing an  
21 application:

22 (1) Setting forth its corporate name, or its corporate  
23 name with any addition required by section 208 of this act, the state  
24 or country and date of its incorporation, and a brief description of  
25 the nature of the business in which it is engaged; and

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

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

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

13           (e) A foreign corporation whose registration is effective  
14 may thereafter qualify as a foreign corporation under the registered  
15 name or consent in writing to the use of that name by a corporation  
16 thereafter incorporated under the Nebraska Model Business Corporation  
17 Act or by another foreign corporation thereafter authorized to  
18 transact business in this state. The registration terminates when the  
19 domestic corporation is incorporated or the foreign corporation  
20 qualifies or consents to the qualification of another foreign  
21 corporation under the registered name.

22           Sec. 33. (MBCA 5.01) Each corporation must continuously  
23 maintain in this state:

24           (1) A registered office that may be the same as any of  
25 its places of business; and

- 1           (2) A registered agent, who may be:
- 2           (i) An individual who resides in this state and whose  
3 business office is identical with the registered office; or
- 4           (ii) A domestic or foreign corporation or other eligible  
5 entity whose business office is identical with the registered office  
6 and, in the case of a foreign corporation or foreign eligible entity,  
7 is authorized to transact business in the state.
- 8           Sec. 34. (MBCA 5.02) (a) A corporation may change its  
9 registered office or registered agent by delivering to the Secretary  
10 of State for filing a statement of change that sets forth:
- 11           (1) The name of the corporation;
- 12           (2) The street address of its current registered office;
- 13           (3) If the current registered office is to be changed,  
14 the street address of the new registered office;
- 15           (4) The name and street address of its current registered  
16 agent. A post office box number may be provided in addition to the  
17 street address;
- 18           (5) If the current registered agent is to be changed, the  
19 name of the new registered agent and the new agent's written consent,  
20 either on the statement or attached to it, to the appointment; and
- 21           (6) That after the change or changes are made, the street  
22 addresses of its registered office and the business office of its  
23 registered agent will be identical.
- 24           (b) If the street address or post office box number of a  
25 registered agent's business office changes, the agent may change the

1 street address or, if one exists, the post office box number, of the  
2 registered office of any corporation for which the agent is the  
3 registered agent by delivering a signed written notice of the change  
4 to the corporation and signing, either manually or in facsimile, and  
5 delivering to the Secretary of State for filing a signed statement  
6 that complies with the requirements of subsection (a) of this section  
7 and recites that the corporation has been notified of the change.

8           Sec. 35. (MBCA 5.03) (a) A registered agent may resign  
9 the agent's appointment by signing and delivering to the Secretary of  
10 State for filing the signed original and two exact or conformed  
11 copies of a statement of resignation. The statement may include a  
12 statement that the registered office is also discontinued.

13           (b) After filing the statement the Secretary of State  
14 shall mail one copy to the registered office, if not discontinued,  
15 and the other copy to the corporation at its principal office.

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

19           Sec. 36. (MBCA 5.04) (a) A corporation's registered agent  
20 is the corporation's agent for service of process, notice, or demand  
21 required or permitted by law to be served on the corporation.

22           (b) If a corporation has no registered agent, or the  
23 agent cannot with reasonable diligence be served, the corporation may  
24 be served by registered or certified mail, return receipt requested,  
25 addressed to the secretary of the corporation at its principal

1 office. Service is perfected under this subsection at the earliest  
2 of:

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

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

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

9 (c) This section does not prescribe the only means, or  
10 necessarily the required means, of serving a corporation.

11 Sec. 37. (MBCA 6.01) (a) The articles of incorporation  
12 must set forth any classes of shares and series of shares within a  
13 class, and the number of shares of each class and series, that the  
14 corporation is authorized to issue. If more than one class or series  
15 of shares is authorized, the articles of incorporation must prescribe  
16 a distinguishing designation for each class or series and must  
17 describe, prior to the issuance of shares of a class or series, the  
18 terms, including the preferences, rights, and limitations, of that  
19 class or series. Except to the extent varied as permitted by this  
20 section, all shares of a class or series must have terms, including  
21 preferences, rights, and limitations that are identical with those of  
22 other shares of the same class or series.

23 (b) The articles of incorporation must authorize:

24 (1) One or more classes or series of shares that together  
25 have unlimited voting rights; and



1           (2) One or more classes or series of shares, which may be  
2 the same class or classes as those with voting rights, that together  
3 are entitled to receive the net assets of the corporation upon  
4 dissolution.

5           (c) The articles of incorporation may authorize one or  
6 more classes or series of shares that:

7           (1) Have special, conditional, or limited voting rights,  
8 or no right to vote, except to the extent otherwise provided by the  
9 Nebraska Model Business Corporation Act;

10           (2) Are redeemable or convertible as specified in the  
11 articles of incorporation:

12           (i) At the option of the corporation, the shareholder, or  
13 another person or upon the occurrence of a specified event;

14           (ii) For cash, indebtedness, securities, or other  
15 property; and

16           (iii) At prices and in amounts specified or determined in  
17 accordance with a formula;

18           (3) Entitle the holders to distributions calculated in  
19 any manner, including dividends that may be cumulative,  
20 noncumulative, or partially cumulative; or

21           (4) Have preference over any other class or series of  
22 shares with respect to distributions, including distributions upon  
23 the dissolution of the corporation.

24           (d) Terms of shares may be made dependent upon facts  
25 objectively ascertainable outside the articles of incorporation in

1 accordance with subsection (k) of section 3 of this act.

2 (e) Any of the terms of shares may vary among holders of  
3 the same class or series so long as such variations are expressly set  
4 forth in the articles of incorporation.

5 (f) The description of the preferences, rights, and  
6 limitations of classes or series of shares in subsection (c) of this  
7 section is not exhaustive.

8 Sec. 38. (MBCA 6.02) (a) If the articles of incorporation  
9 so provide, the board of directors is authorized, without shareholder  
10 approval, to:

11 (1) Classify any unissued shares into one or more classes  
12 or into one or more series within a class;

13 (2) Reclassify any unissued shares of any class into one  
14 or more classes or into one or more series within one or more  
15 classes; or

16 (3) Reclassify any unissued shares of any series of any  
17 class into one or more classes or into one or more series within a  
18 class.

19 (b) If the board of directors acts pursuant to subsection  
20 (a) of this section, it must determine the terms, including the  
21 preferences, rights, and limitations, to the same extent permitted  
22 under section 37 of this act, of:

23 (1) Any class of shares before the issuance of any shares  
24 of that class; or

25 (2) Any series within a class before the issuance of any

1 shares of that series.

2 (c) Before issuing any shares of a class or series  
3 created under this section, the corporation must deliver to the  
4 Secretary of State for filing articles of amendment setting forth the  
5 terms determined under subsection (a) of this section.

6 Sec. 39. (MBCA 6.03) (a) A corporation may issue the  
7 number of shares of each class or series authorized by the articles  
8 of incorporation. Shares that are issued are outstanding shares until  
9 they are reacquired, redeemed, converted, or cancelled.

10 (b) The reacquisition, redemption, or conversion of  
11 outstanding shares is subject to the limitations of subsection (c) of  
12 this section and to section 52 of this act.

13 (c) At all times that shares of the corporation are  
14 outstanding, one or more shares that together have unlimited voting  
15 rights and one or more shares that together are entitled to receive  
16 the net assets of the corporation upon dissolution must be  
17 outstanding.

18 Sec. 40. (MBCA 6.04) (a) A corporation may:

19 (1) Issue fractions of a share or pay in money the value  
20 of fractions of a share;

21 (2) Arrange for disposition of fractional shares by the  
22 shareholders; and

23 (3) Issue scrip in registered or bearer form entitling  
24 the holder to receive a full share upon surrendering enough scrip to  
25 equal a full share.

1           (b) Each certificate representing scrip must be  
2 conspicuously labeled scrip and must contain the information required  
3 by subsection (b) of section 46 of this act.

4           (c) The holder of a fractional share is entitled to  
5 exercise the rights of a shareholder, including the right to vote, to  
6 receive dividends, and to participate in the assets of the  
7 corporation upon liquidation. The holder of scrip is not entitled to  
8 any of these rights unless the scrip provides for them.

9           (d) The board of directors may authorize the issuance of  
10 scrip subject to any condition considered desirable, including:

11           (1) That the scrip will become void if not exchanged for  
12 full shares before a specified date; and

13           (2) That the shares for which the scrip is exchangeable  
14 may be sold and the proceeds paid to the scripholders.

15           Sec. 41. (MBCA 6.20) (a) A subscription for shares  
16 entered into before incorporation is irrevocable for six months  
17 unless the subscription agreement provides a longer or shorter period  
18 or all the subscribers agree to revocation.

19           (b) The board of directors may determine the payment  
20 terms of subscription for shares that were entered into before  
21 incorporation, unless the subscription agreement specifies them. A  
22 call for payment by the board of directors must be uniform so far as  
23 practicable as to all shares of the same class or series, unless the  
24 subscription agreement specifies otherwise.

25           (c) Shares issued pursuant to subscriptions entered into

1 before incorporation are fully paid and nonassessable when the  
2 corporation receives the consideration specified in the subscription  
3 agreement.

4 (d) If a subscriber defaults in payment of money or  
5 property under a subscription agreement entered into before  
6 incorporation, the corporation may collect the amount owed as any  
7 other debt. Alternatively, unless the subscription agreement provides  
8 otherwise, the corporation may rescind the agreement and may sell the  
9 shares if the debt remains unpaid for more than twenty days after the  
10 corporation sends written demand for payment to the subscriber.

11 (e) A subscription agreement entered into after  
12 incorporation is a contract between the subscriber and the  
13 corporation subject to section 42 of this act.

14 Sec. 42. (MBCA 6.21) (a) The powers granted in this  
15 section to the board of directors may be reserved to the shareholders  
16 by the articles of incorporation.

17 (b) The board of directors may authorize shares to be  
18 issued for consideration consisting of any tangible or intangible  
19 property or benefit to the corporation, including cash, promissory  
20 notes, services performed, contracts for services to be performed, or  
21 other securities of the corporation.

22 (c) Before the corporation issues shares, the board of  
23 directors must determine that the consideration received or to be  
24 received for shares to be issued is adequate. That determination by  
25 the board of directors is conclusive insofar as the adequacy of

1 consideration for the issuance of shares relates to whether the  
2 shares are validly issued, fully paid, and nonassessable.

3 (d) When the corporation receives the consideration for  
4 which the board of directors authorized the issuance of shares, the  
5 shares issued therefor are fully paid and nonassessable.

6 (e) The corporation may place in escrow shares issued for  
7 a contract for future services or benefits or a promissory note, or  
8 make other arrangements to restrict the transfer of the shares, and  
9 may credit distributions in respect of the shares against their  
10 purchase price until the services are performed, the note is paid, or  
11 the benefits received. If the services are not performed, the note is  
12 not paid, or the benefits are not received, the shares escrowed or  
13 restricted and the distributions credited may be cancelled in whole  
14 or part.

15 (f)(1) An issuance of shares or other securities  
16 convertible into or rights exercisable for shares, in a transaction  
17 or a series of integrated transactions, requires approval of the  
18 shareholders at a meeting at which a quorum consisting of at least a  
19 majority of the votes entitled to be cast on the matter exists if:

20 (i) The shares, other securities, or rights are issued  
21 for consideration other than cash or cash equivalents; and

22 (ii) The voting power of shares that are issued and  
23 issuable as a result of the transaction or series of integrated  
24 transactions will comprise more than twenty percent of the voting  
25 power of the shares of the corporation that were outstanding

1 immediately before the transaction.

2 (2) In this subsection:

3 (i) For purposes of determining the voting power of  
4 shares issued and issuable as a result of a transaction or series of  
5 integrated transactions, the voting power of shares shall be the  
6 greater of (A) the voting power of the shares to be issued or (B) the  
7 voting power of the shares that would be outstanding after giving  
8 effect to the conversion of convertible shares and other securities  
9 and the exercise of rights to be issued; and

10 (ii) A series of transactions is integrated if  
11 consummation of one transaction is made contingent on consummation of  
12 one or more of the other transactions.

13 Sec. 43. (MBCA 6.22) (a) A purchaser from a corporation  
14 of its own shares is not liable to the corporation or its creditors  
15 with respect to the shares except to pay the consideration for which  
16 the shares were authorized to be issued under section 42 of this act  
17 or specified in the subscription agreement under section 41 of this  
18 act.

19 (b) Unless otherwise provided in the articles of  
20 incorporation, a shareholder of a corporation is not personally  
21 liable for the acts or debts of the corporation except that he or she  
22 may become personally liable by reason of his or her own acts or  
23 conduct.

24 Sec. 44. (MBCA 6.23) (a) Unless the articles of  
25 incorporation provide otherwise, shares may be issued pro rata and

1 without consideration to the corporation's shareholders or to the  
2 shareholders of one or more classes or series. An issuance of shares  
3 under this subsection is a share dividend.

4 (b) Shares of one class or series may not be issued as a  
5 share dividend in respect of shares of another class or series unless  
6 (1) the articles of incorporation so authorize, (2) a majority of the  
7 votes entitled to be cast by the class or series to be issued approve  
8 the issue, or (3) there are no outstanding shares of the class or  
9 series to be issued.

10 (c) If the board of directors does not fix the record  
11 date for determining shareholders entitled to a share dividend, it is  
12 the date the board of directors authorizes the share dividend.

13 Sec. 45. (MBCA 6.24) (a) A corporation may issue rights,  
14 options, or warrants for the purchase of shares or other securities  
15 of the corporation. The board of directors shall determine (1) the  
16 terms upon which the rights, options, or warrants are issued and (2)  
17 the terms, including the consideration for which the shares or other  
18 securities are to be issued. The authorization by the board of  
19 directors for the corporation to issue such rights, options, or  
20 warrants constitutes authorization of the issuance of the shares or  
21 other securities for which the rights, options, or warrants are  
22 exercisable.

23 (b) The terms and conditions of such rights, options, or  
24 warrants, including those outstanding on the operative date of this  
25 act, may include, without limitation, restrictions or conditions



1 that:

2 (1) Preclude or limit the exercise, transfer, or receipt  
3 of such rights, options, or warrants by any person or persons owning  
4 or offering to acquire a specified number or percentage of the  
5 outstanding shares or other securities of the corporation or by any  
6 transferee or transferees of any such person or persons; or

7 (2) Invalidate or void such rights, options, or warrants  
8 held by any such person or persons or any such transferee or  
9 transferees.

10 (c) The board of directors may authorize one or more  
11 officers to (1) designate the recipients of rights, options,  
12 warrants, or other equity compensation awards that involve the  
13 issuance of shares and (2) determine, within an amount and subject to  
14 any other limitations established by the board and, if applicable,  
15 the stockholders, the number of such rights, options, warrants, or  
16 other equity compensation awards and the terms thereof to be received  
17 by the recipients, except that an officer may not use such authority  
18 to designate himself or herself or any other persons as the board of  
19 directors may specify as a recipient of such rights, options,  
20 warrants, or other equity compensation awards.

21 Sec. 46. (MBCA 6.25) (a) Shares may but need not be  
22 represented by certificates. Unless the Nebraska Model Business  
23 Corporation Act or another statute expressly provides otherwise, the  
24 rights and obligations of shareholders are identical whether or not  
25 their shares are represented by certificates.

1                   (b) At a minimum each share certificate must state on its  
2 face:

3                   (1) The name of the issuing corporation and that it is  
4 organized under the law of this state;

5                   (2) The name of the person to whom issued; and

6                   (3) The number and class of shares and the designation of  
7 the series, if any, the certificate represents.

8                   (c) If the issuing corporation is authorized to issue  
9 different classes of shares or different series within a class, the  
10 designations, relative rights, preferences, and limitations  
11 applicable to each class and the variations in rights, preferences,  
12 and limitations determined for each series, and the authority of the  
13 board of directors to determine variations for future series, must be  
14 summarized on the front or back of each certificate. Alternatively,  
15 each certificate may state conspicuously on its front or back that  
16 the corporation will furnish the shareholder this information on  
17 request in writing and without charge.

18                   (d) Each share certificate (1) must be signed, either  
19 manually or in facsimile, by two officers designated in the bylaws or  
20 by the board of directors and (2) may bear the corporate seal or its  
21 facsimile.

22                   (e) If the person who signed, either manually or in  
23 facsimile, a share certificate no longer holds office when the  
24 certificate is issued, the certificate is nevertheless valid.

25                   Sec. 47. (MBCA 6.26) (a) Unless the articles of

1 incorporation or bylaws provide otherwise, the board of directors of  
2 a corporation may authorize the issue of some or all of the shares of  
3 any or all of its classes or series without certificates. The  
4 authorization does not affect shares already represented by  
5 certificates until they are surrendered to the corporation.

6 (b) Within a reasonable time after the issue or transfer  
7 of shares without certificates, the corporation shall send the  
8 shareholder a written statement of the information required on  
9 certificates by subsections (b) and (c) of section 46 of this act,  
10 and, if applicable, section 48 of this act.

11 Sec. 48. (MBCA 6.27) (a) The articles of incorporation,  
12 bylaws, an agreement among shareholders, or an agreement between  
13 shareholders and the corporation may impose restrictions on the  
14 transfer or registration of transfer of shares of the corporation. A  
15 restriction does not affect shares issued before the restriction was  
16 adopted unless the holders of the shares are parties to the  
17 restriction agreement or voted in favor of the restriction.

18 (b) A restriction on the transfer or registration of  
19 transfer of shares is valid and enforceable against the holder or a  
20 transferee of the holder if the restriction is authorized by this  
21 section and its existence is noted conspicuously on the front or back  
22 of the certificate or is contained in the information statement  
23 required by subsection (b) of section 47 of this act. Unless so noted  
24 or contained, a restriction is not enforceable against a person  
25 without knowledge of the restriction.

1           (c) A restriction on the transfer or registration of  
2 transfer of shares is authorized:

3           (1) To maintain the corporation's status when it is  
4 dependent on the number or identity of its shareholders;

5           (2) To preserve exemptions under federal or state  
6 securities law or under the Internal Revenue Code; or

7           (3) For any other reasonable purpose.

8           (d) A restriction on the transfer or registration of  
9 transfer of shares may:

10           (1) Obligate the shareholder first to offer the  
11 corporation or other persons, separately, consecutively, or  
12 simultaneously, an opportunity to acquire the restricted shares;

13           (2) Obligate the corporation or other persons,  
14 separately, consecutively, or simultaneously, to acquire the  
15 restricted shares;

16           (3) Require the corporation, the holders of any class of  
17 its shares, or another person to approve the transfer of the  
18 restricted shares, if the requirement is not manifestly unreasonable;  
19 or

20           (4) Prohibit the transfer of the restricted shares to  
21 designated persons or classes of persons, if the prohibition is not  
22 manifestly unreasonable.

23           (e) For purposes of this section, shares includes a  
24 security convertible into or carrying a right to subscribe for or  
25 acquire shares.

1           Sec. 49. (MBCA 6.28) A corporation may pay the expenses  
2 of selling or underwriting its shares and of organizing or  
3 reorganizing the corporation from the consideration received for  
4 shares.

5           Sec. 50. (MBCA 6.30) (a) The shareholders of a  
6 corporation do not have a preemptive right to acquire the  
7 corporation's unissued shares except to the extent the articles of  
8 incorporation so provide.

9           (b) A statement included in the articles of incorporation  
10 that the corporation elects to have preemptive rights, or words of  
11 similar import, means that the following principles apply except to  
12 the extent the articles of incorporation expressly provide otherwise:

13           (1) The shareholders of the corporation have a preemptive  
14 right, granted on uniform terms and conditions prescribed by the  
15 board of directors to provide a fair and reasonable opportunity to  
16 exercise the right, to acquire proportional amounts of the  
17 corporation's unissued shares upon the decision of the board of  
18 directors to issue them;

19           (2) A shareholder may waive his or her preemptive right.  
20 A waiver evidenced by a writing is irrevocable even though it is not  
21 supported by consideration;

22           (3) There is no preemptive right with respect to:

23           (i) Shares issued as compensation to directors, officers,  
24 agents, or employees of the corporation, its subsidiaries or  
25 affiliates;

1           (ii) Shares issued to satisfy conversion or option rights  
2 created to provide compensation to directors, officers, agents, or  
3 employees of the corporation, its subsidiaries or affiliates;

4           (iii) Shares authorized in articles of incorporation that  
5 are issued within six months from the effective date of  
6 incorporation; and

7           (iv) Shares sold otherwise than for money;

8           (4) Holders of shares of any class without general voting  
9 rights but with preferential rights to distributions or assets have  
10 no preemptive rights with respect to shares of any class;

11           (5) Holders of shares of any class with general voting  
12 rights but without preferential rights to distributions or assets  
13 have no preemptive rights with respect to shares of any class with  
14 preferential rights to distributions or assets unless the shares with  
15 preferential rights are convertible into or carry a right to  
16 subscribe for or acquire shares without preferential rights; and

17           (6) Shares subject to preemptive rights that are not  
18 acquired by shareholders may be issued to any person for a period of  
19 one year after being offered to shareholders at a consideration set  
20 by the board of directors that is not lower than the consideration  
21 set for the exercise of preemptive rights. An offer at a lower  
22 consideration or after the expiration of one year is subject to the  
23 shareholders' preemptive rights.

24           (c) For purposes of this section, shares includes a  
25 security convertible into or carrying a right to subscribe for or

1 acquire shares.

2           Sec. 51. (MBCA 6.31) (a) A corporation may acquire its  
3 own shares, and shares so acquired constitute authorized but unissued  
4 shares.

5           (b) If the articles of incorporation prohibit the reissue  
6 of the acquired shares, the number of authorized shares is reduced by  
7 the number of shares acquired.

8           Sec. 52. (MBCA 6.40) (a) A board of directors may  
9 authorize and the corporation may make distributions to its  
10 shareholders subject to restriction by the articles of incorporation  
11 and the limitation in subsection (c) of this section.

12           (b) If the board of directors does not fix the record  
13 date for determining shareholders entitled to a distribution, other  
14 than one involving a purchase, redemption, or other acquisition of  
15 the corporation's shares, it is the date the board of directors  
16 authorizes the distribution.

17           (c) No distribution may be made if, after giving it  
18 effect:

19           (1) The corporation would not be able to pay its debts as  
20 they become due in the usual course of business; or

21           (2) The corporation's total assets would be less than the  
22 sum of its total liabilities plus, unless the articles of  
23 incorporation permit otherwise, the amount that would be needed, if  
24 the corporation were to be dissolved at the time of the distribution,  
25 to satisfy the preferential rights upon dissolution of shareholders

1 whose preferential rights are superior to those receiving the  
2 distribution.

3 (d) The board of directors may base a determination that  
4 a distribution is not prohibited under subsection (c) of this section  
5 either on financial statements prepared on the basis of accounting  
6 practices and principles that are reasonable in the circumstances or  
7 on a fair valuation or other method that is reasonable in the  
8 circumstances.

9 (e) Except as provided in subsection (g) of this section,  
10 the effect of a distribution under subsection (c) of this section is  
11 measured:

12 (1) In the case of distribution by purchase, redemption,  
13 or other acquisition of the corporation's shares, as of the earlier  
14 of (i) the date money or other property is transferred or debt  
15 incurred by the corporation or (ii) the date the shareholder ceases  
16 to be a shareholder with respect to the acquired shares;

17 (2) In the case of any other distribution of  
18 indebtedness, as of the date the indebtedness is distributed; and

19 (3) In all other cases, as of (i) the date the  
20 distribution is authorized if the payment occurs within one hundred  
21 twenty days after the date of authorization or (ii) the date the  
22 payment is made if it occurs more than one hundred twenty days after  
23 the date of authorization.

24 (f) A corporation's indebtedness to a shareholder  
25 incurred by reason of a distribution made in accordance with this



1 section is at parity with the corporation's indebtedness to its  
2 general, unsecured creditors except to the extent subordinated by  
3 agreement.

4 (g) Indebtedness of a corporation, including indebtedness  
5 issued as a distribution, is not considered a liability for purposes  
6 of determinations under subsection (c) of this section if its terms  
7 provide that payment of principal and interest are made only if and  
8 to the extent that payment of a distribution to shareholders could  
9 then be made under this section. If the indebtedness is issued as a  
10 distribution, each payment of principal or interest is treated as a  
11 distribution, the effect of which is measured on the date the payment  
12 is actually made.

13 (h) This section shall not apply to distributions in  
14 liquidation under sections 184 to 202 of this act.

15 Sec. 53. (MBCA 7.01) (a) Unless directors are elected by  
16 written consent in lieu of an annual meeting as permitted by section  
17 56 of this act, a corporation shall hold a meeting of shareholders  
18 annually at a time stated in or fixed in accordance with the bylaws,  
19 except that directors may not be elected by less than unanimous  
20 consent.

21 (b) Annual shareholders' meetings may be held in or out  
22 of this state at the place stated in or fixed in accordance with the  
23 bylaws. If no place is stated in or fixed in accordance with the  
24 bylaws, annual meetings shall be held at the corporation's principal  
25 office.

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

4           (d) Notwithstanding the provisions of this section, a  
5 corporation registered as an investment company under the federal  
6 Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1 et seq.,  
7 which, pursuant to section 20 of this act, has included in its  
8 articles of incorporation a provision limiting or eliminating the  
9 requirement to hold an annual meeting of the shareholders, is not  
10 required to hold an annual meeting of the shareholders except as  
11 provided in such articles of incorporation or as otherwise required  
12 by such act and the rules and regulations adopted and promulgated  
13 under such act.

14           Sec. 54. (MBCA 7.02) (a) A corporation shall hold a  
15 special meeting of shareholders:

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

19           (2) If the holders of at least ten percent of all the  
20 votes entitled to be cast on an issue proposed to be considered at  
21 the proposed special meeting sign, date, and deliver to the  
22 corporation one or more written demands for the meeting describing  
23 the purpose or purposes for which it is to be held, except that the  
24 articles of incorporation may fix a lower percentage or a higher  
25 percentage not exceeding twenty-five percent of all the votes

1 entitled to be cast on any issue proposed to be considered. Unless  
2 otherwise provided in the articles of incorporation, a written demand  
3 for a special meeting may be revoked by a writing to that effect  
4 received by the corporation prior to the receipt by the corporation  
5 of demands sufficient in number to require the holding of a special  
6 meeting.

7 (b) If not otherwise fixed under section 55 or 59 of this  
8 act, the record date for determining shareholders entitled to demand  
9 a special meeting is the date the first shareholder signs the demand.

10 (c) Special shareholders' meetings may be held in or out  
11 of this state at the place stated in or fixed in accordance with the  
12 bylaws. If no place is stated or fixed in accordance with the bylaws,  
13 special meetings shall be held at the corporation's principal office.

14 (d) Only business within the purpose or purposes  
15 described in the meeting notice required by subsection (c) of section  
16 57 of this act may be conducted at a special shareholders' meeting.

17 Sec. 55. (MBCA 7.03) (a) The district court of the county  
18 where a corporation's principal office, or, if none in this state,  
19 its registered office, is located may summarily order a meeting to be  
20 held:

21 (1) On application of any shareholder of the corporation  
22 entitled to participate in an annual meeting if an annual meeting was  
23 not held or action by written consent in lieu thereof did not become  
24 effective within the earlier of six months after the end of the  
25 corporation's fiscal year or fifteen months after its last annual

1 meeting; or

2 (2) On application of a shareholder who signed a demand  
3 for a special meeting valid under section 54 of this act, if:

4 (i) Notice of the special meeting was not given within  
5 thirty days after the date the demand was delivered to the  
6 corporation's secretary; or

7 (ii) The special meeting was not held in accordance with  
8 the notice.

9 (b) The court may fix the time and place of the meeting,  
10 determine the shares entitled to participate in the meeting, specify  
11 a record date or dates for determining shareholders entitled to  
12 notice of and to vote at the meeting, prescribe the form and content  
13 of the meeting notice, fix the quorum required for specific matters  
14 to be considered at the meeting, or direct that the votes represented  
15 at the meeting constitute a quorum for action on those matters, and  
16 enter other orders necessary to accomplish the purpose or purposes of  
17 the meeting.

18 Sec. 56. (MBCA 7.04) (a) Action required or permitted by  
19 the Nebraska Model Business Corporation Act to be taken at a  
20 shareholders' meeting may be taken without a meeting if the action is  
21 taken by all the shareholders entitled to vote on the action. The  
22 action must be evidenced by one or more written consents bearing the  
23 date of signature and describing the action taken, signed by all the  
24 shareholders entitled to vote on the action and delivered to the  
25 corporation for inclusion in the minutes or filing with the

1 corporation records.

2 (b) The articles of incorporation may provide that any  
3 action required or permitted by the Nebraska Model Business  
4 Corporation Act to be taken at a shareholders' meeting may be taken  
5 without a meeting, and without prior notice, if consents in writing  
6 setting forth the action so taken are signed by the holders of  
7 outstanding shares having not less than the minimum number of votes  
8 that would be required to authorize or take the action at a meeting  
9 at which all shares entitled to vote on the action were present and  
10 voted. The written consent shall bear the date of signature of the  
11 shareholder who signs the consent and be delivered to the corporation  
12 for inclusion in the minutes or filing with the corporation records.

13 (c) If not otherwise fixed under section 59 of this act  
14 and if prior board action is not required respecting the action to be  
15 taken without a meeting, the record date for determining the  
16 shareholders entitled to take action without a meeting shall be the  
17 first date on which a signed written consent is delivered to the  
18 corporation. If not otherwise fixed under section 59 of this act and  
19 if prior board action is required respecting the action to be taken  
20 without a meeting, the record date shall be the close of business on  
21 the day the resolution of the board taking such prior action is  
22 adopted. No written consent shall be effective to take the corporate  
23 action referred to therein unless, within sixty days of the earliest  
24 date on which a consent delivered to the corporation as required by  
25 this section was signed, written consents signed by sufficient

1 shareholders to take the action have been delivered to the  
2 corporation. A written consent may be revoked by a writing to that  
3 effect delivered to the corporation before unrevoked written consents  
4 sufficient in number to take the corporate action are delivered to  
5 the corporation.

6 (d) A consent signed pursuant to the provisions of this  
7 section has the effect of a vote taken at a meeting and may be  
8 described as such in any document. Unless the articles of  
9 incorporation, bylaws, or a resolution of the board of directors  
10 provides for a reasonable delay to permit tabulation of written  
11 consents, the action taken by written consent shall be effective when  
12 written consents signed by sufficient shareholders to take the action  
13 are delivered to the corporation.

14 (e) If the Nebraska Model Business Corporation Act  
15 requires that notice of a proposed action be given to nonvoting  
16 shareholders and the action is to be taken by written consent of the  
17 voting shareholders, the corporation must give its nonvoting  
18 shareholders written notice of the action not more than ten days  
19 after (1) written consents sufficient to take the action have been  
20 delivered to the corporation or (2) such later date that tabulation  
21 of consents is completed pursuant to an authorization under  
22 subsection (d) of this section. The notice must reasonably describe  
23 the action taken and contain or be accompanied by the same material  
24 that, under any provision of the act, would have been required to be  
25 sent to nonvoting shareholders in a notice of a meeting at which the

1 proposed action would have been submitted to the shareholders for  
2 action.

3 (f) If action is taken by less than unanimous written  
4 consent of the voting shareholders, the corporation must give its  
5 nonconsenting voting shareholders written notice of the action not  
6 more than ten days after (1) written consents sufficient to take the  
7 action have been delivered to the corporation or (2) such later date  
8 that tabulation of consents is completed pursuant to an authorization  
9 under subsection (d) of this section. The notice must reasonably  
10 describe the action taken and contain or be accompanied by the same  
11 material that, under any provision of the Nebraska Model Business  
12 Corporation Act, would have been required to be sent to voting  
13 shareholders in a notice of a meeting at which the action would have  
14 been submitted to the shareholders for action.

15 (g) The notice requirements in subsections (e) and (f) of  
16 this section shall not delay the effectiveness of actions taken by  
17 written consent, and a failure to comply with such notice  
18 requirements shall not invalidate actions taken by written consent,  
19 except that this subsection shall not be deemed to limit judicial  
20 power to fashion any appropriate remedy in favor of a shareholder  
21 adversely affected by a failure to give such notice within the  
22 required time period.

23 Sec. 57. (MBCA 7.05) (a) A corporation shall notify  
24 shareholders of the date, time, and place of each annual and special  
25 shareholders' meeting no fewer than ten nor more than sixty days

1 before the meeting date. If the board of directors has authorized  
2 participation by means of remote communication pursuant to section 61  
3 of this act for any class or series of shareholders, the notice to  
4 such class or series of shareholders shall describe the means of  
5 remote communication to be used. The notice shall include the record  
6 date for determining the shareholders entitled to vote at the  
7 meeting, if such date is different than the record date for  
8 determining shareholders entitled to notice of the meeting. Unless  
9 the Nebraska Model Business Corporation Act or the articles of  
10 incorporation require otherwise, the corporation is required to give  
11 notice only to shareholders entitled to vote at the meeting as of the  
12 record date for determining the shareholders entitled to notice of  
13 the meeting.

14 (b) Unless the Nebraska Model Business Corporation Act or  
15 the articles of incorporation require otherwise, notice of an annual  
16 meeting need not include a description of the purpose or purposes for  
17 which the meeting is called.

18 (c) Notice of a special meeting must include a  
19 description of the purpose or purposes for which the meeting is  
20 called.

21 (d) If not otherwise fixed under section 55 or 59 of this  
22 act, the record date for determining shareholders entitled to notice  
23 of and to vote at an annual or special shareholders' meeting is the  
24 day before the first notice is delivered to shareholders.

25 (e) Unless the bylaws require otherwise, if an annual or



1 special shareholders' meeting is adjourned to a different date, time,  
2 or place, notice need not be given of the new date, time, or place if  
3 the new date, time, or place is announced at the meeting before  
4 adjournment. If a new record date for the adjourned meeting is or  
5 must be fixed under section 59 of this act, however, notice of the  
6 adjourned meeting must be given under this section to shareholders  
7 entitled to vote at such adjourned meeting as of the record date  
8 fixed for notice of such adjourned meeting.

9           Sec. 58. (MBCA 7.06) (a) A shareholder may waive any  
10 notice required by the Nebraska Model Business Corporation Act, the  
11 articles of incorporation, or bylaws before or after the date and  
12 time stated in the notice. The waiver must be in writing, be signed  
13 by the shareholder entitled to the notice, and be delivered to the  
14 corporation for inclusion in the minutes or filing with the corporate  
15 records.

16                   (b) A shareholder's attendance at a meeting:

17                   (1) Waives objection to lack of notice or defective  
18 notice of the meeting, unless the shareholder at the beginning of the  
19 meeting objects to holding the meeting or transacting business at the  
20 meeting; and

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

25           Sec. 59. (MBCA 7.07) (a) The bylaws may fix or provide

1 the manner of fixing the record date or dates for one or more voting  
2 groups in order to determine the shareholders entitled to notice of a  
3 shareholders' meeting, to demand a special meeting, to vote, or to  
4 take any other action. If the bylaws do not fix or provide for fixing  
5 a record date, the board of directors of the corporation may fix a  
6 future date as the record date.

7 (b) A record date fixed under this section may not be  
8 more than seventy days before the meeting or action requiring a  
9 determination of shareholders.

10 (c) A determination of shareholders entitled to notice of  
11 or to vote at a shareholders' meeting is effective for any  
12 adjournment of the meeting unless the board of directors fixes a new  
13 record date or dates which it must do if the meeting is adjourned to  
14 a date more than one hundred twenty days after the date fixed for the  
15 original meeting.

16 (d) If a court orders a meeting adjourned to a date more  
17 than one hundred twenty days after the date fixed for the original  
18 meeting, it may provide that the original record date or dates  
19 continues in effect or it may fix a new record date or dates.

20 (e) The record dates for a shareholders' meeting fixed by  
21 or in the manner provided in the bylaws or by the board of directors  
22 shall be the record date for determining shareholders entitled both  
23 to notice of and to vote at the shareholders' meeting, unless in the  
24 case of a record date fixed by the board of directors and to the  
25 extent not prohibited by the bylaws, the board, at the time it fixes

1 the record date for shareholders entitled to notice of the meeting,  
2 fixes a later record date on or before the date of the meeting to  
3 determine the shareholders entitled to vote at the meeting.

4           Sec. 60. (MBCA 7.08) (a) At each meeting of shareholders,  
5 a chairperson shall preside. The chairperson shall be appointed as  
6 provided in the bylaws or, in the absence of such provision, by the  
7 board.

8           (b) The chairperson, unless the articles of incorporation  
9 or bylaws provide otherwise, shall determine the order of business  
10 and shall have the authority to establish rules for the conduct of  
11 the meeting.

12           (c) Any rules adopted for, and the conduct of, the  
13 meeting shall be fair to shareholders.

14           (d) The chairperson of the meeting shall announce at the  
15 meeting when the polls close for each matter voted upon. If no  
16 announcement is made, the polls shall be deemed to have closed upon  
17 the final adjournment of the meeting. After the polls close, no  
18 ballots, proxies, or votes nor any revocations or changes thereto may  
19 be accepted.

20           Sec. 61. (MBCA 7.09) (a) Shareholders of any class or  
21 series may participate in any meeting of shareholders by means of  
22 remote communication to the extent the board of directors authorizes  
23 such participation for such class or series. Participation by means  
24 of remote communication shall be subject to such guidelines and  
25 procedures as the board of directors adopts and shall be in

1 conformity with subsection (b) of this section.

2 (b) Shareholders participating in a shareholders' meeting  
3 by means of remote communication shall be deemed present and may vote  
4 at such a meeting if the corporation has implemented reasonable  
5 measures:

6 (1) To verify that each person participating remotely is  
7 a shareholder; and

8 (2) To provide such shareholders a reasonable opportunity  
9 to participate in the meeting and to vote on matters submitted to the  
10 shareholders, including an opportunity to communicate and to read or  
11 hear the proceedings of the meeting substantially concurrently with  
12 such proceedings.

13 Sec. 62. (MBCA 7.20) (a) After fixing a record date for a  
14 meeting, a corporation shall prepare in alphabetical list of the  
15 names of all its shareholders who are entitled to notice of a  
16 shareholders' meeting. If the board of directors fixes a different  
17 record date under subsection (e) of section 59 of this act to  
18 determine the shareholders entitled to vote at the meeting, a  
19 corporation also shall prepare an alphabetical list of the names of  
20 all its shareholders who are entitled to vote at the meeting. A list  
21 must be arranged by voting group, and within each voting group by  
22 class or series of shares, and show the address of and number of  
23 shares held by each shareholder.

24 (b) The shareholders' list for notice must be available  
25 for inspection by any shareholder, beginning two business days after

1 notice of the meeting is given for which the list was prepared and  
2 continuing through the meeting, at the corporation's principal office  
3 or at a place identified in the meeting notice in the city where the  
4 meeting will be held. A shareholders' list for voting must be  
5 similarly available for inspection promptly after the record date for  
6 voting. A shareholder, or the shareholders's agent or attorney, is  
7 entitled upon written demand to inspect and, subject to the  
8 requirements of subsection (c) of section 222 of this act, to copy a  
9 list, during regular business hours and at the shareholder's expense,  
10 during the period it is available for inspection.

11 (c) The corporation shall make the list of shareholders  
12 entitled to vote available at the meeting, and any shareholder, or  
13 the shareholder's agent or attorney, is entitled to inspect the list  
14 at any time during the meeting or any adjournment.

15 (d) If the corporation refuses to allow a shareholder, or  
16 the shareholder's agent or attorney to inspect a shareholders' list  
17 before or at the meeting or copy a list as permitted by subsection  
18 (b) of this section, the district court of the county where a  
19 corporation's principal office, or, if none in this state, its  
20 registered office, is located, on application of the shareholder, may  
21 summarily order the inspection or copying at the corporation's  
22 expense and may postpone the meeting for which the list was prepared  
23 until the inspection or copying is complete.

24 (e) Refusal or failure to prepare or make available the  
25 shareholders' list does not affect the validity of action taken at

1 the meeting.

2           Sec. 63. (MBCA 7.21) (a) Except as provided in  
3 subsections (b) and (d) of this section or unless the articles of  
4 incorporation provide otherwise, each outstanding share, regardless  
5 of class, is entitled to one vote on each matter voted on at a  
6 shareholders' meeting. Only shares are entitled to vote.

7           (b) Absent special circumstances, the shares of a  
8 corporation are not entitled to vote if they are owned, directly or  
9 indirectly, by a second corporation, domestic or foreign, and the  
10 first corporation owns, directly or indirectly, a majority of the  
11 shares entitled to vote for directors of the second corporation.

12           (c) Subsection (b) of this section does not limit the  
13 power of a corporation to vote any shares, including its own shares,  
14 held by it in a fiduciary capacity.

15           (d) Redeemable shares are not entitled to vote after  
16 notice of redemption is mailed to the holders and a sum sufficient to  
17 redeem the shares has been deposited with a bank, trust company, or  
18 other financial institution under an irrevocable obligation to pay  
19 the holders the redemption price on surrender of the shares.

20           Sec. 64. (MBCA 7.22) (a) A shareholder may vote the  
21 shareholder's shares in person or by proxy.

22           (b) A shareholder, or the shareholder's agent or  
23 attorney-in-fact, may appoint a proxy to vote or otherwise act for  
24 the shareholder by signing an appointment form or by an electronic  
25 transmission. An electronic transmission must contain or be

1 accompanied by information from which the recipient can determine the  
2 date of the transmission and that the transmission was authorized by  
3 the sender or the sender's agent or attorney-in-fact.

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

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

14 (1) A pledgee;

15 (2) A person who purchased or agreed to purchase the  
16 shares;

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

19 (4) An employee of the corporation whose employment  
20 contract requires the appointment; or

21 (5) A party to a voting agreement created under section  
22 73 of this act.

23 (e) The death or incapacity of the shareholder appointing  
24 a proxy does not affect the right of the corporation to accept the  
25 proxy's authority unless notice of the death or incapacity is

1 received by the secretary or other officer or agent authorized to  
2 tabulate votes before the proxy exercises authority under the  
3 appointment.

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

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

13 (h) Subject to section 66 of this act and to any express  
14 limitation on the proxy's authority stated in the appointment form or  
15 electronic transmission, a corporation is entitled to accept the  
16 proxy's vote or other action as that of the shareholder making the  
17 appointment.

18 Sec. 65. (MBCA 7.23) (a) A corporation may establish a  
19 procedure by which the beneficial owner of shares that are registered  
20 in the name of a nominee is recognized by the corporation as the  
21 shareholder. The extent of this recognition may be determined in the  
22 procedure.

23 (b) The procedure may set forth:

24 (1) The types of nominees to which it applies;

25 (2) The rights or privileges that the corporation



1 recognizes in a beneficial owner;

2 (3) The manner in which the procedure is selected by the  
3 nominee;

4 (4) The information that must be provided when the  
5 procedure is selected;

6 (5) The period for which selection of the procedure is  
7 effective; and

8 (6) Other aspects of the rights and duties created.

9 Sec. 66. (MBCA 7.24) (a) If the name signed on a vote,  
10 consent, waiver, or proxy appointment corresponds to the name of a  
11 shareholder, the corporation if acting in good faith is entitled to  
12 accept the vote, consent, waiver, or proxy appointment and give it  
13 effect as the act of the shareholder.

14 (b) If the name signed on a vote, consent, waiver, or  
15 proxy appointment does not correspond to the name of its shareholder,  
16 the corporation if acting in good faith is nevertheless entitled to  
17 accept the vote, consent, waiver, or proxy appointment and give it  
18 effect as the act of the shareholder if:

19 (1) The shareholder is an entity and the name signed  
20 purports to be that of an officer or agent of the entity;

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

1           (3) The name signed purports to be that of a receiver or  
2 trustee in bankruptcy of the shareholder and, if the corporation  
3 requests, evidence of this status acceptable to the corporation has  
4 been presented with respect to the vote, consent, waiver, or proxy  
5 appointment;

6           (4) The name signed purports to be that of a pledgee,  
7 beneficial owner, or attorney-in-fact of the shareholder and, if the  
8 corporation requests, evidence acceptable to the corporation of the  
9 signatory's authority to sign for the shareholder has been presented  
10 with respect to the vote, consent, waiver, or proxy appointment; or

11           (5) Two or more persons are the shareholder as cotenants  
12 or fiduciaries and the name signed purports to be the name of at  
13 least one of the co-owners and the person signing appears to be  
14 acting on behalf of all the co-owners.

15           (c) The corporation is entitled to reject a vote,  
16 consent, waiver, or proxy appointment if the secretary or other  
17 officer or agent authorized to tabulate votes, acting in good faith,  
18 has reasonable basis for doubt about the validity of the signature on  
19 it or about the signatory's authority to sign for the shareholder.

20           (d) The corporation and its officer or agent who accepts  
21 or rejects a vote, consent, waiver, or proxy appointment in good  
22 faith and in accordance with the standards of this section or  
23 subsection (b) of section 64 of this act are not liable in damages to  
24 the shareholder for the consequences of the acceptance or rejection.

25           (e) Corporate action based on the acceptance or rejection

1 of a vote, consent, waiver, or proxy appointment under this section  
2 is valid unless a court of competent jurisdiction determines  
3 otherwise.

4           Sec. 67. (MBCA 7.25) (a) Shares entitled to vote as a  
5 separate voting group may take action on a matter at a meeting only  
6 if a quorum of those shares exists with respect to that matter.  
7 Unless the articles of incorporation provide otherwise, a majority of  
8 the votes entitled to be cast on the matter by the voting group  
9 constitutes a quorum of that voting group for action on that matter.

10           (b) Once a share is represented for any purpose at a  
11 meeting, it is deemed present for quorum purposes for the remainder  
12 of the meeting and for any adjournment of that meeting unless a new  
13 record date is or must be set for that adjourned meeting.

14           (c) If a quorum exists, action on a matter, other than  
15 the election of directors, by a voting group is approved if the votes  
16 cast within the voting group favoring the action exceed the votes  
17 cast opposing the action, unless the articles of incorporation  
18 require a greater number of affirmative votes.

19           (d) An amendment of articles of incorporation adding,  
20 changing, or deleting a quorum or voting requirement for a voting  
21 group greater than specified in subsection (a) or (c) of this section  
22 is governed by section 69 of this act.

23           (e) The election of directors is governed by section 70  
24 of this act.

25           (f) Whenever a provision of the Nebraska Model Business

1 Corporation Act provides for voting of classes or series as separate  
2 voting groups, the rules provided in subsection (c) of section 153 of  
3 this act for amendments of articles of incorporation apply to that  
4 provision.

5           Sec. 68. (MBCA 7.26) (a) If the articles of incorporation  
6 or the Nebraska Model Business Corporation Act provide for voting by  
7 a single voting group on a matter, action on that matter is taken  
8 when voted upon by that voting group as provided in section 67 of  
9 this act.

10           (b) If the articles of incorporation or the act provide  
11 for voting by two or more voting groups on a matter, action on that  
12 matter is taken only when voted upon by each of those voting groups  
13 counted separately as provided in section 67 of this act. Action may  
14 be taken by one voting group on a matter even though no action is  
15 taken by another voting group entitled to vote on the matter.

16           Sec. 69. (MBCA 7.27) (a) The articles of incorporation  
17 may provide for a greater quorum or voting requirement for  
18 shareholders, or voting groups of shareholders, than is provided for  
19 by the Nebraska Model Business Corporation Act.

20           (b) An amendment to the articles of incorporation that  
21 adds, changes, or deletes a greater quorum or voting requirement must  
22 meet the same quorum requirement and be adopted by the same vote and  
23 voting groups required to take action under the quorum and voting  
24 requirements then in effect or proposed to be adopted, whichever is  
25 greater.

1           Sec. 70. (MBCA 7.28) (a) Unless otherwise provided in the  
2 articles of incorporation, directors are elected by a plurality of  
3 the votes cast by the shares entitled to vote in the election at a  
4 meeting at which a quorum is present.

5           (b) In all elections for directors, every shareholder  
6 entitled to vote at such elections shall have the right to vote in  
7 person or by proxy for the number of shares owned by him or her, for  
8 as many persons as there are directors to be elected or to cumulate  
9 such shares and give one candidate as many votes as the number of  
10 directors multiplied by the number of his or her shares shall equal,  
11 or to distribute them upon the same principle among as many  
12 candidates as he or she thinks fit, and such directors shall not be  
13 elected in any other manner.

14           Sec. 71. (MBCA 7.29) (a) A public corporation shall, and  
15 any other corporation may, appoint one or more inspectors to act at a  
16 meeting of shareholders and make a written report of the inspectors'  
17 determinations. Each inspector shall take and sign an oath faithfully  
18 to execute the duties of inspector with strict impartiality and  
19 according to the best of the inspector's ability.

20           (b) The inspectors shall:

21           (1) Ascertain the number of shares outstanding and the  
22 voting power of each;

23           (2) Determine the shares represented at a meeting;

24           (3) Determine the validity of proxies and ballots;

25           (4) Count all votes; and

1                   (5) Determine the result.

2                   (c) An inspector may be an officer or employee of the  
3 corporation.

4                   Sec. 72. (MBCA 7.30) (a) One or more shareholders may  
5 create a voting trust, conferring on a trustee the right to vote or  
6 otherwise act for them, by signing an agreement setting out the  
7 provisions of the trust, which may include anything consistent with  
8 its purpose, and transferring their shares to the trustee. When a  
9 voting trust agreement is signed, the trustee must prepare a list of  
10 the names and addresses of all voting trust beneficial owners,  
11 together with the number and class of shares each transferred to the  
12 trust, and deliver copies of the list and agreement to the  
13 corporation's principal office.

14                   (b) A voting trust becomes effective on the date the  
15 first shares subject to the trust are registered in the trustee's  
16 name.

17                   (c) Limits, if any, on the duration of a voting trust  
18 shall be as set forth in the voting trust. A voting trust that became  
19 effective when the business corporation statutes repealed by this  
20 legislative bill provided a ten-year limit on its duration remains  
21 governed by the provisions of such statutes then in effect, unless  
22 the voting trust is amended to provide otherwise by unanimous  
23 agreement of the parties to the voting trust.

24                   Sec. 73. (MBCA 7.31) (a) Two or more shareholders may  
25 provide for the manner in which they will vote their shares by

1 signing an agreement for that purpose. A voting agreement created  
2 under this section is not subject to the provisions of section 72 of  
3 this act.

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

6 Sec. 74. (MBCA 7.32) (a) An agreement among the  
7 shareholders of a corporation that complies with this section is  
8 effective among the shareholders and the corporation even though it  
9 is inconsistent with one or more other provisions of the Nebraska  
10 Model Business Corporation Act in that it:

11 (1) Eliminates the board of directors or restricts the  
12 discretion or powers of the board of directors;

13 (2) Governs the authorization or making of distributions  
14 whether or not in proportion to ownership of shares, subject to the  
15 limitations in section 52 of this act;

16 (3) Establishes who shall be directors or officers of the  
17 corporation or their terms of office or manner of selection or  
18 removal;

19 (4) Governs, in general or in regard to specific matters,  
20 the exercise or division of voting power by or between the  
21 shareholders and directors or by or among any of them, including use  
22 of weighted voting rights or director proxies;

23 (5) Establishes the terms and conditions of any agreement  
24 for the transfer or use of property or the provision of services  
25 between the corporation and any shareholder, director, officer, or

1 employee of the corporation or among any of them;

2 (6) Transfers to one or more shareholders or other  
3 persons all or part of the authority to exercise the corporate powers  
4 or to manage the business and affairs of the corporation, including  
5 the resolution of any issue about which there exists a deadlock among  
6 directors or shareholders;

7 (7) Requires dissolution of the corporation at the  
8 request of one or more of the shareholders or upon the occurrence of  
9 a specified event or contingency; or

10 (8) Otherwise governs the exercise of the corporate  
11 powers or the management of the business and affairs of the  
12 corporation or the relationship among the shareholders, the  
13 directors, and the corporation, or among any of them, and is not  
14 contrary to public policy.

15 (b) An agreement authorized by this section shall be:

16 (1) As set forth (i) in the articles of incorporation or  
17 bylaws and approved by all persons who are shareholders at the time  
18 of the agreement or (ii) in a written agreement that is signed by all  
19 persons who are shareholders at the time of the agreement and is made  
20 known to the corporation; and

21 (2) Subject to amendment only by all persons who are  
22 shareholders at the time of the amendment, unless the agreement  
23 provides otherwise;

24 (c) The existence of an agreement authorized by this  
25 section shall be noted conspicuously on the front or back of each



1 certificate for outstanding shares or on the information statement  
2 required by subsection (b) of section 47 of this act. If at the time  
3 of the agreement the corporation has shares outstanding represented  
4 by certificates, the corporation shall recall the outstanding  
5 certificates and issue substitute certificates that comply with this  
6 subsection. The failure to note the existence of the agreement on the  
7 certificate or information statement shall not affect the validity of  
8 the agreement or any action taken pursuant to it. Any purchaser of  
9 shares who, at the time of purchase, did not have knowledge of the  
10 existence of the agreement shall be entitled to rescission of the  
11 purchase. A purchaser shall be deemed to have knowledge of the  
12 existence of the agreement if its existence is noted on the  
13 certificate or information statement for the shares in compliance  
14 with this subsection and, if the shares are not represented by a  
15 certificate, the information statement is delivered to the purchaser  
16 at or prior to the time of purchase of the shares. An action to  
17 enforce the right of rescission authorized by this subsection must be  
18 commenced within the earlier of ninety days after discovery of the  
19 existence of the agreement or two years after the time of purchase of  
20 the shares.

21 (d) An agreement authorized by this section shall cease  
22 to be effective when the corporation becomes a public corporation. If  
23 the agreement ceases to be effective for any reason, the board of  
24 directors may, if the agreement is contained or referred to in the  
25 corporation's articles of incorporation or bylaws, adopt an amendment

1 to the articles of incorporation or bylaws without shareholder action  
2 to delete the agreement and any references to it.

3 (e) An agreement authorized by this section that limits  
4 the discretion or powers of the board of directors shall relieve the  
5 directors of, and impose upon the person or persons in whom such  
6 discretion or powers are vested, liability for acts or omissions  
7 imposed by law on directors to the extent that the discretion or  
8 powers of the directors are limited by the agreement.

9 (f) The existence or performance of an agreement  
10 authorized by this section shall not be a ground for imposing  
11 personal liability on any shareholder for the acts or debts of the  
12 corporation even if the agreement or its performance treats the  
13 corporation as if it were a partnership or results in failure to  
14 observe the corporate formalities otherwise applicable to the matters  
15 governed by the agreement.

16 (g) Incorporators or subscribers for shares may act as  
17 shareholders with respect to an agreement authorized by this section  
18 if no shares have been issued when the agreement is made.

19 (h) Limits, if any, on the duration of an agreement  
20 authorized by this section shall be as set forth in the agreement. An  
21 agreement that became effective when the business corporation  
22 statutes repealed by this legislative bill provided for a ten-year  
23 limit on duration of shareholder agreements, unless the agreement  
24 provided otherwise, remains governed by the provisions of such  
25 statutes then in effect.

1           Sec. 75. (MBCA 7.40) In sections 75 to 82 of this act:

2           (1) Derivative proceeding means a civil suit in the right  
3 of a domestic corporation or, to the extent provided in section 82 of  
4 this act, in the right of a foreign corporation.

5           (2) Shareholder includes a beneficial owner whose shares  
6 are held in a voting trust or held by a nominee on the beneficial  
7 owner's behalf.

8           Sec. 76. (MBCA 7.41) A shareholder may not commence or  
9 maintain a derivative proceeding unless the shareholder:

10           (1) Was a shareholder of the corporation at the time of  
11 the act or omission complained of or became a shareholder through  
12 transfer by operation of law from one who was a shareholder at that  
13 time; and

14           (2) Fairly and adequately represents the interests of the  
15 corporation in enforcing the right of the corporation.

16           Sec. 77. (MBCA 7.42) (a) No shareholder may commence a  
17 derivative proceeding until:

18           (1) A written demand has been made upon the corporation  
19 to take suitable action; and

20           (2) Ninety days have expired from the date delivery of  
21 the demand was made unless the shareholder has earlier been notified  
22 that the demand has been rejected by the corporation or unless  
23 irreparable injury to the corporation would result by waiting for the  
24 expiration of the ninety-day period.

25           (b) Venue for a proceeding under this section lies in the

1 district court of the county where the corporation's principal  
2 office, or, if none in this state, its registered office is located.

3           Sec. 78. (MBCA 7.43) If the corporation commences an  
4 inquiry into the allegations made in the demand or complaint, the  
5 court may stay any derivative proceeding for such period as the court  
6 deems appropriate.

7           Sec. 79. (MBCA 7.44) (a) A derivative proceeding shall be  
8 dismissed by the court on motion by the corporation if one of the  
9 groups specified in subsection (b) or (e) of this section has  
10 determined in good faith, after conducting a reasonable inquiry upon  
11 which its conclusions are based, that the maintenance of the  
12 derivative proceeding is not in the best interests of the  
13 corporation.

14           (b) Unless a panel is appointed pursuant to subsection  
15 (e) of this section, the determination in subsection (a) of this  
16 section shall be made by:

17           (1) A majority vote of qualified directors present at a  
18 meeting of the board of directors if the qualified directors  
19 constitute a quorum; or

20           (2) A majority vote of a committee consisting of two or  
21 more qualified directors appointed by majority vote of qualified  
22 directors present at a meeting of the board of directors regardless  
23 of whether such qualified directors constitute a quorum.

24           (c) If a derivative proceeding is commenced after a  
25 determination has been made rejecting a demand by a shareholder, the

1 complaint shall allege with particularity facts establishing either  
2 (1) that a majority of the board of directors did not consist of  
3 qualified directors at the time the determination was made or (2)  
4 that the requirements of subsection (a) of this section have not been  
5 met.

6 (d) If a majority of the board of directors consisted of  
7 qualified directors at the time the determination was made, the  
8 plaintiff shall have the burden of proving that the requirements of  
9 subsection (a) of this section have not been met, and if not, the  
10 corporation shall have the burden of proving that the requirements of  
11 subsection (a) of this section have been met.

12 (e) Upon motion by the corporation, the court may appoint  
13 a panel of one or more individuals to make a determination whether  
14 the maintenance of the derivative proceeding is in the best interests  
15 of the corporation. In such case, the plaintiff shall have the burden  
16 of proving that the requirements of subsection (a) of this section  
17 have not been met.

18 Sec. 80. (MBCA 7.45) A derivative proceeding may not be  
19 discontinued or settled without the court's approval. If the court  
20 determinates that a proposed discontinuance or settlement will  
21 substantially affect the interests of the corporation's shareholders  
22 or a class of shareholders, the court shall direct that notice be  
23 given to the shareholders affected.

24 Sec. 81. (MBCA 7.46) On termination of the derivative  
25 proceeding the court may:

1           (1) Order the corporation to pay the plaintiff's  
2 reasonable expenses, including attorney's fees, incurred in the  
3 proceeding if it finds that the proceeding has resulted in a  
4 substantial benefit to the corporation;

5           (2) Order the plaintiff to pay any defendant's reasonable  
6 expenses, including attorney's fees, incurred in defending the  
7 proceeding if it finds that the proceeding was commenced or  
8 maintained without reasonable cause or for an improper purpose; or

9           (3) Order a party to pay an opposing party's reasonable  
10 expenses, including attorney's fees, incurred because of the filing  
11 of a pleading, motion or other paper, if it finds that the pleading,  
12 motion, or other paper was not well grounded in fact, after  
13 reasonable inquiry, or warranted by existing law or a good faith  
14 argument for the extension, modification, or reversal of existing law  
15 and was interposed for an improper purpose, such as to harass or  
16 cause unnecessary delay or needless increase in the cost of  
17 litigation.

18           Sec. 82. (MBCA 7.47) In any derivative proceeding in the  
19 right of a foreign corporation, the matters covered by sections 75 to  
20 82 of this act shall be governed by the laws of the jurisdiction of  
21 incorporation of the foreign corporation except for sections 78, 80,  
22 and 81 of this act.

23           Sec. 83. (MBCA 7.48) (a) The court may appoint one or  
24 more persons to be custodians, or, if the corporation is insolvent,  
25 to be receivers, of and for a corporation in a proceeding by a

1 shareholder when it is established that:

2 (1) The directors are deadlocked in the management of the  
3 corporate affairs, the shareholders are unable to break the deadlock,  
4 and irreparable injury to the corporation is threatened or being  
5 suffered; or

6 (2) The directors or those in control of the corporation  
7 are acting fraudulently and irreparable injury to the corporation is  
8 threatened or being suffered.

9 (b) The court:

10 (1) May issue injunctions, appoint a temporary custodian  
11 or temporary receiver with all the powers and duties the court  
12 directs, take other action to preserve the corporate assets wherever  
13 located, and carry on the business of the corporation until a full  
14 hearing is held;

15 (2) Shall hold a full hearing, after notifying all  
16 parties to the proceeding and any interested persons designated by  
17 the court, before appointing a custodian or receiver; and

18 (3) Has jurisdiction over the corporation and all of its  
19 property, wherever located.

20 (c) The court may appoint an individual or domestic or  
21 foreign corporation, authorized to transact business in this state,  
22 as a custodian or receiver and may require the custodian or receiver  
23 to post bond, with or without sureties, in an amount the court  
24 directs.

25 (d) The court shall describe the powers and duties of the

1 custodian or receiver in its appointing order, which may be amended  
2 from time to time. Among other powers:

3 (1) A custodian may exercise all of the powers of the  
4 corporation, through or in place of its board of directors, to the  
5 extent necessary to manage the business and affairs of the  
6 corporation; and

7 (2) A receiver (i) may dispose of all or any part of the  
8 assets of the corporation wherever located, at a public or private  
9 sale, if authorized by the court and (ii) may sue and defend in the  
10 receiver's own name as receiver in all courts of this state.

11 (e) The court during a custodianship may redesignate the  
12 custodian a receiver, and during a receivership may redesignate the  
13 receiver a custodian, if doing so is in the best interests of the  
14 corporation.

15 (f) The court from time to time during the custodianship  
16 or receivership may order compensation paid and expense disbursements  
17 or reimbursements made to the custodian or receiver from the assets  
18 of the corporation or proceeds from the sale of its assets.

19 Sec. 84. (MBCA 8.01) (a) Except as provided in section 74  
20 of this act, each corporation must have a board of directors.

21 (b) All corporate powers shall be exercised by or under  
22 the authority of the board of directors of the corporation, and the  
23 business and affairs of the corporation shall be managed by or under  
24 the direction and subject to the oversight of its board of directors,  
25 subject to any limitation set forth in the articles of incorporation



1 or in an agreement authorized under section 74 of this act.

2 (c) In the case of a public corporation, the board's  
3 oversight responsibilities include attention to:

4 (1) Business performance and plans;

5 (2) Major risks to which the corporation is or may be  
6 exposed;

7 (3) The performance and compensation of senior officers;

8 (4) Policies and practices to foster the corporation's  
9 compliance with law and ethical conduct;

10 (5) Preparation of the corporation's financial  
11 statements;

12 (6) The effectiveness of the corporation's internal  
13 controls;

14 (7) Arrangements for providing adequate and timely  
15 information to directors; and

16 (8) The composition of the board and its committees,  
17 taking into account the important role of independent directors.

18 Sec. 85. (MBCA 8.02) The articles of incorporation or  
19 bylaws may prescribe qualifications for directors. A director need  
20 not be a resident of this state or a shareholder of the corporation  
21 unless the articles of incorporation or bylaws so prescribe.

22 Sec. 86. (MBCA 8.03) (a) A board of directors must  
23 consist of one or more individuals, with the number specified in or  
24 fixed in accordance with the articles of incorporation or bylaws.

25 (b) The number of directors may be increased or decreased

1 from time to time by amendment to, or in the manner provided in, the  
2 articles of incorporation or the bylaws.

3 (c) Directors are elected at the first annual  
4 shareholders' meeting and at each annual meeting thereafter unless  
5 their terms are staggered under section 89 of this act.

6 (d) If a corporation is registered as an investment  
7 company under the federal Investment Company Act of 1940, as amended,  
8 15 U.S.C. 80a-1 et seq., and, pursuant to section 20 of this act, has  
9 included in its articles of incorporation a provision limiting or  
10 eliminating the requirement to hold an annual meeting of the  
11 shareholders, the initial directors shall be elected at the first  
12 meeting of the shareholders after such provision limiting or  
13 eliminating such meeting is included in the articles of  
14 incorporation, and thereafter the election of directors by  
15 shareholders is not required unless required by such federal act or  
16 the rules and regulations under such act or otherwise required by the  
17 Nebraska Model Business Corporation Act.

18 Sec. 87. (MBCA 8.04) If the articles of incorporation  
19 authorize dividing the shares into classes, the articles may also  
20 authorize the election of all or a specified number of directors by  
21 the holders of one or more authorized classes of shares. A class, or  
22 classes, of shares entitled to elect one or more directors is a  
23 separate voting group for purposes of the election of directors.

24 Sec. 88. (MBCA 8.05) (a) The terms of the initial  
25 directors of a corporation expire at the first shareholders' meeting

1 at which directors are elected.

2 (b) The terms of all other directors expire at the next  
3 or, if their terms are staggered in accordance with section 89 of  
4 this act, at the applicable second or third annual shareholders'  
5 meeting following their election, except to the extent a shorter term  
6 is specified in the articles of incorporation in the event of a  
7 director nominee failing to receive a specified vote for election.

8 (c) A decrease in the number of directors does not  
9 shorten an incumbent director's term.

10 (d) The term of a director elected to fill a vacancy  
11 expires at the next shareholders' meeting at which directors are  
12 elected.

13 (e) Except to the extent otherwise provided in the  
14 articles of incorporation, despite the expiration of a director's  
15 term, the director continues to serve until the director's successor  
16 is elected and qualifies or there is a decrease in the number of  
17 directors.

18 Sec. 89. (MBCA 8.06) The articles of incorporation may  
19 provide for staggering the terms of directors by dividing the total  
20 number of directors into two or three groups, with each group  
21 containing one-half or one-third of the total, as near as may be  
22 practicable. In that event, the terms of directors in the first group  
23 expire at the first annual shareholders' meeting after their  
24 election, the terms of the second group expire at the second annual  
25 shareholders' meeting after their election, and the terms of the

1 third group, if any, expire at the third annual shareholders' meeting  
2 after their election. At each annual shareholders' meeting held  
3 thereafter, directors shall be chosen for a term of two years or  
4 three years, as the case may be, to succeed those whose terms expire.

5           Sec. 90. (MBCA 8.07) (a) A director may resign at any  
6 time by delivering a written resignation to the board of directors or  
7 its chair or to the secretary of the corporation.

8           (b) A resignation is effective when the resignation is  
9 delivered unless the resignation specifies a later effective date or  
10 an effective date determined upon the happening of an event or  
11 events. A resignation that is conditioned upon failing to receive a  
12 specified vote for election as a director may provide that it is  
13 irrevocable.

14           Sec. 91. (MBCA 8.08) (a) The shareholders may remove one  
15 or more directors with or without cause unless the articles of  
16 incorporation provide that directors may be removed only for cause.

17           (b) If a director is elected by a voting group of  
18 shareholders, only the shareholders of that voting group may  
19 participate in the vote to remove that director.

20           (c) A director may not be removed if the number of votes  
21 sufficient to elect the director under cumulative voting is voted  
22 against removal.

23           (d) A director may be removed by the shareholders only at  
24 a meeting called for the purpose of removing the director and the  
25 meeting notice must state that the purpose, or one of the purposes,

1 of the meeting is removal of the director.

2           Sec. 92. (MBCA 8.09) (a) The district court of the county  
3 where a corporation's principal office, or, if none in this state,  
4 its registered office, is located may remove a director of the  
5 corporation from office in a proceeding commenced by or in the right  
6 of the corporation if the court finds that (1) the director engaged  
7 in fraudulent conduct with respect to the corporation or its  
8 shareholders, grossly abused the position of director, or  
9 intentionally inflicted harm on the corporation and (2) considering  
10 the director's course of conduct and the inadequacy of other  
11 available remedies, removal would be in the best interest of the  
12 corporation.

13           (b) A shareholder proceeding on behalf of the corporation  
14 under subsection (a) of this section shall comply with all of the  
15 requirements of sections 75 to 82 of this act, except subdivision (1)  
16 of section 76 of this act.

17           (c) The court, in addition to removing the director, may  
18 bar the director from reelection for a period prescribed by the  
19 court.

20           (d) Nothing in this section limits the equitable powers  
21 of the court to order other relief.

22           Sec. 93. (MBCA 8.10) (a) Unless the articles of  
23 incorporation provide otherwise, if a vacancy occurs on a board of  
24 directors, including a vacancy resulting from an increase in the  
25 number of directors:

1           (1) The shareholders may fill the vacancy;  
2           (2) The board of directors may fill the vacancy; or  
3           (3) If the directors remaining in office constitute fewer  
4 than a quorum of the board, they may fill the vacancy by the  
5 affirmative vote of a majority of all the directors remaining in  
6 office.

7           (b) If the vacant office was held by a director elected  
8 by a voting group of shareholders, only the holders of shares of that  
9 voting group are entitled to vote to fill the vacancy if it is filled  
10 by the shareholders, and only the directors elected by that voting  
11 group are entitled to fill the vacancy if it is filled by the  
12 directors.

13           (c) A vacancy that will occur at a specific later date,  
14 by reason of a resignation effective at a later date under subsection  
15 (b) of section 90 of this act or otherwise, may be filled before the  
16 vacancy occurs but the new director may not take office until the  
17 vacancy occurs.

18           Sec. 94. (MBCA 8.11) Unless the articles of incorporation  
19 or bylaws provide otherwise, the board of directors may fix the  
20 compensation of directors.

21           Sec. 95. (MBCA 8.20) (a) The board of directors may hold  
22 regular or special meetings in or out of this state.

23           (b) Unless the articles of incorporation or bylaws  
24 provide otherwise, the board of directors may permit any or all  
25 directors to participate in a regular or special meeting by, or

1 conduct the meeting through the use of, any means of communication by  
2 which all directors participating may simultaneously hear each other  
3 during the meeting. A director participating in a meeting by this  
4 means is deemed to be present in person at the meeting.

5           Sec. 96. (MBCA 8.21) (a) Except to the extent that the  
6 articles of incorporation or bylaws require that action by the board  
7 of directors be taken at a meeting, action required or permitted by  
8 the Nebraska Model Business Corporation Act to be taken by the board  
9 of directors may be taken without a meeting if each director signs a  
10 consent describing the action to be taken and delivers it to the  
11 corporation.

12           (b) Action taken under this section is the act of the  
13 board of directors when one or more consents signed by all the  
14 directors are delivered to the corporation. The consent may specify  
15 the time at which the action taken thereunder is to be effective. A  
16 director's consent may be withdrawn by a revocation signed by the  
17 director and delivered to the corporation prior to delivery to the  
18 corporation of unrevoked written consents signed by all the  
19 directors.

20           (c) A consent signed under this section has the effect of  
21 action taken at a meeting of the board of directors and may be  
22 described as such in any document.

23           Sec. 97. (MBCA 8.22) (a) Unless the articles of  
24 incorporation or bylaws provide otherwise, regular meetings of the  
25 board of directors may be held without notice of the date, time,

1 place, or purpose of the meeting.

2 (b) Unless the articles of incorporation or bylaws  
3 provide for a longer or shorter period, special meetings of the board  
4 of directors must be preceded by at least two days' notice of the  
5 date, time, and place of the meeting. The notice need not describe  
6 the purpose of the special meeting unless required by the articles of  
7 incorporation or bylaws.

8 Sec. 98. (MBCA 8.23) (a) A director may waive any notice  
9 required by the Nebraska Model Business Corporation Act, the articles  
10 of incorporation, or bylaws before or after the date and time stated  
11 in the notice. Except as provided by subsection (b) of this section,  
12 the waiver must be in writing, signed by the director entitled to the  
13 notice, and filed with the minutes or corporate records.

14 (b) A director's attendance at or participation in a  
15 meeting waives any required notice to the director of the meeting  
16 unless the director at the beginning of the meeting, or promptly upon  
17 arrival, objects to holding the meeting or transacting business at  
18 the meeting and does not thereafter vote for or assent to action  
19 taken at the meeting.

20 Sec. 99. (MBCA 8.24) (a) Unless the articles of  
21 incorporation or bylaws require a greater number or unless otherwise  
22 specifically provided in the Nebraska Model Business Corporation Act,  
23 a quorum of a board of directors consists of:

24 (1) A majority of the fixed number of directors if the  
25 corporation has a fixed board size; or



1           (2) A majority of the number of directors prescribed, or  
2 if no number is prescribed the number in office immediately before  
3 the meeting begins if the corporation has a variable-range size  
4 board.

5           (b) The articles of incorporation or bylaws may authorize  
6 a quorum of a board of directors to consist of no fewer than one-  
7 third of the fixed or prescribed number of directors determined under  
8 subsection (a) of this section.

9           (c) If a quorum is present when a vote is taken, the  
10 affirmative vote of a majority of directors present is the act of the  
11 board of directors unless the articles of incorporation or bylaws  
12 require the vote of a greater number of directors.

13           (d) A director who is present at a meeting of the board  
14 of directors or a committee of the board of directors when corporate  
15 action is taken is deemed to have assented to the action taken  
16 unless: (1) the director objects at the beginning of the meeting, or  
17 promptly upon arrival, to holding it or transacting business at the  
18 meeting; (2) the dissent or abstention from the action taken is  
19 entered in the minutes of the meeting; or (3) the director delivers  
20 written notice of the director's dissent or abstention to the  
21 presiding officer of the meeting before its adjournment or to the  
22 corporation immediately after adjournment of the meeting. The right  
23 of dissent or abstention is not available to a director who votes in  
24 favor of the action taken.

25           Sec. 100. (MBCA 8.25) (a) Unless the Nebraska Model

1 Business Corporation Act or the articles of incorporation or bylaws  
2 provide otherwise, a board of directors may create one or more  
3 committees and appoint one or more members of the board of directors  
4 to serve on any such committee.

5 (b) Unless the Nebraska Model Business Corporation Act  
6 otherwise provides, the creation of a committee and appointment of  
7 members to it must be approved by the greater of (1) a majority of  
8 all the directors in office when the action is taken or (2) the  
9 number of directors required by the articles of incorporation or  
10 bylaws to take action under section 99 of this act.

11 (c) Sections 95 to 99 of this act apply both to  
12 committees of the board and to their members.

13 (d) To the extent specified by the board of directors or  
14 in the articles of incorporation or bylaws, each committee may  
15 exercise the powers of the board of directors under section 84 of  
16 this act.

17 (e) A committee may not, however:

18 (1) Authorize or approve distributions, except according  
19 to a formula or method, or within limits, prescribed by the board of  
20 directors;

21 (2) Approve or propose to shareholders action that the  
22 Nebraska Model Business Corporation Act requires be approved by  
23 shareholders;

24 (3) Fill vacancies on the board of directors or, subject  
25 to subsection (g) of this section, on any of its committees; or

1           (4) Adopt, amend, or repeal bylaws.

2           (f) The creation of, delegation of authority to, or  
3 action by a committee does not alone constitute compliance by a  
4 director with the standards of conduct described in section 102 of  
5 this act.

6           (g) The board of directors may appoint one or more  
7 directors as alternate members of any committee to replace any absent  
8 or disqualified member during the member's absence or  
9 disqualification. Unless the articles of incorporation or the bylaws  
10 or the resolution creating the committee provide otherwise, in the  
11 event of the absence or disqualification of a member of a committee,  
12 the member or members present at any meeting and not disqualified  
13 from voting, unanimously, may appoint another director to act in  
14 place of the absent or disqualified member.

15           Sec. 101. (MBCA 8.26) A corporation may agree to submit a  
16 matter to a vote of its shareholders even if, after approving the  
17 matter, the board of directors determines it no longer recommends the  
18 matter.

19           Sec. 102. (MBCA 8.30) (a)(1) Each member of the board of  
20 directors, when discharging the duties of a director, shall act (i)  
21 in good faith and (ii) in a manner the director reasonably believes  
22 to be in the best interests of the corporation.

23           (2) A director may, but need not, in considering the best  
24 interests of the corporation, consider, among other things, the  
25 effects of any action on employees, suppliers, creditors, and

1 customers of the corporation and communities in which offices or  
2 other facilities of the corporation are located.

3 (b) The members of the board of directors or a committee  
4 of the board, when becoming informed in connection with their  
5 decisionmaking function or devoting attention to their oversight  
6 function, shall discharge their duties with the care that a person in  
7 a like position would reasonably believe appropriate under similar  
8 circumstances.

9 (c) In discharging board or committee duties, a director  
10 shall disclose, or cause to be disclosed, to the other board or  
11 committee members information not already known by them but known by  
12 the director to be material to the discharge of their decisionmaking  
13 or oversight functions, except that disclosure is not required to the  
14 extent that the director reasonably believes that doing so would  
15 violate a duty imposed under law, a legally enforceable obligation of  
16 confidentiality, or a professional ethics rule.

17 (d) In discharging board or committee duties, a director  
18 who does not have knowledge that makes reliance unwarranted is  
19 entitled to rely on the performance by any of the persons specified  
20 in subdivision (f)(1) or (f)(3) of this section to whom the board may  
21 have delegated, formally or informally by course of conduct, the  
22 authority or duty to perform one or more of the board's functions  
23 that are delegable under applicable law.

24 (e) In discharging board or committee duties a director  
25 who does not have knowledge that makes reliance unwarranted is

1 entitled to rely on information, opinions, reports, or statements,  
2 including financial statements and other financial data, prepared or  
3 presented by any of the persons specified in subsection (f) of this  
4 section.

5 (f) A director is entitled to rely, in accordance with  
6 subsection (d) or (e) of this section, on:

7 (1) One or more officers or employees of the corporation  
8 whom the director reasonably believes to be reliable and competent in  
9 the functions performed or the information, opinions, reports, or  
10 statements provided;

11 (2) Legal counsel, public accountants, or other persons  
12 retained by the corporation as to matters involving skills or  
13 expertise the director reasonably believes are matters (i) within the  
14 particular person's professional or expert competence or (ii) as to  
15 which the particular person merits confidence; or

16 (3) A committee of the board of directors of which the  
17 director is not a member if the director reasonably believes the  
18 committee merits confidence.

19 Sec. 103. (MBCA 8.31) (a) A director shall not be liable  
20 to the corporation or its shareholders for any decision to take or  
21 not to take action, or any failure to take any action, as a director  
22 unless the party asserting liability in a proceeding establishes  
23 that:

24 (1) No defense interposed by the director based on (i)  
25 any provision in the articles of incorporation authorized by

1 subdivision (b)(4) of section 20 of this act, (ii) the protection  
2 afforded by section 121 of this act for action taken in compliance  
3 with section 122 or 123 of this act, or (iii) the protection afforded  
4 by section 124 of this act, precludes liability; and

5 (2) The challenged conduct consisted or was the result  
6 of:

7 (i) Action not in good faith;

8 (ii) A decision:

9 (A) Which the director did not reasonably believe to be  
10 in the best interests of the corporation; or

11 (B) As to which the director was not informed to an  
12 extent the director reasonably believed appropriate in the  
13 circumstances;

14 (iii) A lack of objectivity due to the director's  
15 familial, financial, or business relationship with, or a lack of  
16 independence due to the director's domination or control by, another  
17 person having a material interest in the challenged conduct:

18 (A) Which relationship or which domination or control  
19 could reasonably be expected to have affected the director's judgment  
20 respecting the challenged conduct in a manner adverse to the  
21 corporation; and

22 (B) After a reasonable expectation to such effect has  
23 been established, the director shall not have established that the  
24 challenged conduct was reasonably believed by the director to be in  
25 the best interests of the corporation;

1           (iv) A sustained failure of the director to devote  
2 attention to ongoing oversight of the business and affairs of the  
3 corporation or a failure to devote timely attention by making, or  
4 causing to be made, appropriate inquiry when particular facts and  
5 circumstances of significant concern materialize that would alert a  
6 reasonably attentive director to the need therefor; or

7           (v) Receipt of a financial benefit to which the director  
8 was not entitled or any other breach of the director's duties to deal  
9 fairly with the corporation and its shareholders that is actionable  
10 under applicable law.

11           (b) The party seeking to hold the director liable:

12           (1) For money damages shall also have the burden of  
13 establishing that:

14           (i) Harm to the corporation or its shareholders has been  
15 suffered; and

16           (ii) The harm suffered was proximately caused by the  
17 director's challenged conduct;

18           (2) For other money payment under a legal remedy, such as  
19 compensation for the unauthorized use of corporate assets, shall also  
20 have whatever persuasion burden may be called for to establish that  
21 the payment sought is appropriate in the circumstances; or

22           (3) For other money payment under an equitable remedy,  
23 such as profit recovery by or disgorgement to the corporation, shall  
24 also have whatever persuasion burden may be called for to establish  
25 that the equitable remedy sought is appropriate in the circumstances.

1           (c) Nothing contained in this section shall (1) in any  
2 instance where fairness is at issue, such as consideration of the  
3 fairness of a transaction to the corporation under subdivision (b)(3)  
4 of section 121 of this act, alter the burden of proving the fact or  
5 lack of fairness otherwise applicable, (2) alter the fact or lack of  
6 liability of a director under another section of the Nebraska Model  
7 Business Corporation Act, such as the provisions governing the  
8 consequences of an unlawful distribution under section 104 of this  
9 act or a transactional interest under section 121 of this act, or (3)  
10 affect any rights to which the corporation or a shareholder may be  
11 entitled under another statute of this state or the United States.

12           Sec. 104. (MBCA 8.33) (a) A director who votes for or  
13 assents to a distribution in excess of what may be authorized and  
14 made pursuant to subsection (a) of section 52 of this act or  
15 subsection (a) of section 192 of this act is personally liable to the  
16 corporation for the amount of the distribution that exceeds what  
17 could have been distributed without violating subsection (a) of  
18 section 52 of this act or subsection (a) of section 192 of this act  
19 if the party asserting liability establishes that when taking the  
20 action the director did not comply with section 102 of this act.

21           (b) A director held liable under subsection (a) of this  
22 section for an unlawful distribution is entitled to:

23           (1) Contribution from every other director who could be  
24 held liable under subsection (a) of this section for the unlawful  
25 distribution; and



1           (2) Recoupment from each shareholder of the pro rata  
2 portion of the amount of the unlawful distribution the shareholder  
3 accepted, knowing the distribution was made in violation of  
4 subsection (a) of section 52 of this act or subsection (a) of section  
5 192 of this act.

6           (c) A proceeding to enforce:

7           (1) The liability of a director under subsection (a) of  
8 this section is barred unless it is commenced within two years after  
9 the date (i) on which the effect of the distribution was measured  
10 under subsection (e) or (g) of section 52 of this act, (ii) as of  
11 which the violation of subsection (a) of section 52 of this act  
12 occurred as the consequence of disregard of a restriction in the  
13 articles of incorporation or (iii) on which the distribution of  
14 assets to shareholders under subsection (a) of section 192 of this  
15 act was made; or

16           (2) Contribution or recoupment under subsection (b) of  
17 this section is barred unless it is commenced within one year after  
18 the liability of the claimant has been finally adjudicated under  
19 subsection (a) of this section.

20           Sec. 105. (MBCA 8.40) (a) A corporation has the officers  
21 described in its bylaws or appointed by the board of directors in  
22 accordance with the bylaws.

23           (b) The board of directors may elect individuals to fill  
24 one or more offices of the corporation. An officer may appoint one or  
25 more officers if authorized by the bylaws or the board of directors.

1           (c) The bylaws or the board of directors shall assign to  
2 one of the officers responsibility for preparing the minutes of the  
3 directors' and shareholders' meetings and for maintaining and  
4 authenticating the records of the corporation required to be kept  
5 under subsections (a) and (e) of section 221 of this act.

6           (d) The same individual may simultaneously hold more than  
7 one office in a corporation.

8           Sec. 106. (MBCA 8.41) Each officer has the authority and  
9 shall perform the functions set forth in the bylaws or, to the extent  
10 consistent with the bylaws, the functions prescribed by the board of  
11 directors or by direction of an officer authorized by the board of  
12 directors to prescribe the functions of other officers.

13           Sec. 107. (MBCA 8.42) (a) An officer, when performing in  
14 such capacity, has the duty to act:

15                 (1) In good faith;

16                 (2) With the care that a person in a like position would  
17 reasonably exercise under similar circumstances; and

18                 (3) In a manner the officer reasonably believes to be in  
19 the best interests of the corporation.

20           (b) The duty of an officer includes the obligation:

21                 (1) To inform the superior officer to whom, or the board  
22 of directors or the committee thereof to which, the officer reports  
23 of information about the affairs of the corporation known to the  
24 officer, within the scope of the officer's functions, and known to  
25 the officer to be material to such superior officer, board, or

1 committee; and

2 (2) To inform his or her superior officer, or another  
3 appropriate person within the corporation or the board of directors  
4 or a committee thereof, of any actual or probable material violation  
5 of law involving the corporation or material breach of duty to the  
6 corporation by an officer, employee, or agent of the corporation that  
7 the officer believes has occurred or is likely to occur.

8 (c) In discharging his or her duties, an officer who does  
9 not have knowledge that makes reliance unwarranted is entitled to  
10 rely on:

11 (1) The performance of properly delegated  
12 responsibilities by one or more employees of the corporation whom the  
13 officer reasonably believes to be reliable and competent in  
14 performing the responsibilities delegated; or

15 (2) Information, opinions, reports or statements,  
16 including financial statements and other financial data, prepared or  
17 presented by one or more employees of the corporation whom the  
18 officer reasonably believes to be reliable and competent in the  
19 matters presented or by legal counsel, public accountants, or other  
20 persons retained by the corporation as to matters involving skills or  
21 expertise the officer reasonably believes are matters (i) within the  
22 particular person's professional or expert competence or (ii) as to  
23 which the particular person merits confidence.

24 (d) An officer shall not be liable to the corporation or  
25 its shareholders for any decision to take or not to take action or

1 any failure to take any action as an officer if the duties of the  
2 office are performed in compliance with this section. Whether an  
3 officer who does not comply with this section shall have liability  
4 will depend in such instance on applicable law, including those  
5 principles of section 103 of this act that have relevance.

6           Sec. 108. (MBCA 8.43) (a) An officer may resign at any  
7 time by delivering notice to the corporation. A resignation is  
8 effective when the notice is delivered unless the notice specifies a  
9 later effective time. If a resignation is made effective at a later  
10 time and the board or the appointing officer accepts the future  
11 effective time, the board or the appointing officer may fill the  
12 pending vacancy before the effective time if the board or the  
13 appointing officer provides that the successor does not take office  
14 until the effective time.

15           (b) An officer may be removed at any time with or without  
16 cause by (1) the board of directors, (2) the officer who appointed  
17 such officer, unless the bylaws or the board of directors provide  
18 otherwise, or (3) any other officer if authorized by the bylaws or  
19 the board of directors.

20           (c) In this section, appointing officer means the  
21 officer, including any successor to that officer, who appointed the  
22 officer resigning or being removed.

23           Sec. 109. (MBCA 8.44) (a) The appointment of an officer  
24 does not itself create contract rights.

25           (b) An officer's removal does not affect the officer's

1 contract rights, if any, with the corporation. An officer's  
2 resignation does not affect the corporation's contract rights, if  
3 any, with the officer.

4 Sec. 110. (MBCA 8.50) In sections 110 to 119 of this act:

5 (1) Corporation includes any domestic or foreign  
6 predecessor entity of a corporation in a merger.

7 (2) Director or officer means an individual who is or was  
8 a director or officer, respectively, of a corporation or who, while a  
9 director or officer of the corporation, is or was serving at the  
10 corporation's request as a director, officer, manager, partner,  
11 trustee, employee, or agent of another entity or employee benefit  
12 plan. A director or officer is considered to be serving an employee  
13 benefit plan at the corporation's request if the individual's duties  
14 to the corporation also impose duties on, or otherwise involve  
15 services by, the individual to the plan or to participants in or  
16 beneficiaries of the plan. Director or officer includes, unless the  
17 context requires otherwise, the estate or personal representative of  
18 a director or officer.

19 (3) Liability means the obligation to pay a judgment,  
20 settlement, penalty, fine, including an excise tax assessed with  
21 respect to an employee benefit plan, or reasonable expenses incurred  
22 with respect to a proceeding.

23 (4) Official capacity means (i) when used with respect to  
24 a director, the office of director in a corporation and (ii) when  
25 used with respect to an officer, as contemplated in section 116 of

1 this act, the office in a corporation held by the officer. Official  
2 capacity does not include service for any other domestic or foreign  
3 corporation or any partnership, joint venture, trust, employee  
4 benefit plan, or other entity.

5 (5) Party means an individual who was, is, or is  
6 threatened to be made, a defendant or respondent in a proceeding.

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

11 Sec. 111. (MBCA 8.51) (a) Except as otherwise provided in  
12 this section, a corporation may indemnify an individual who is a  
13 party to a proceeding because the individual is a director against  
14 liability incurred in the proceeding if:

15 (1)(i) The director conducted himself or herself in good  
16 faith; and

17 (ii) Reasonably believed:

18 (A) In the case of conduct in an official capacity, that  
19 his or her conduct was in the best interests of the corporation; and

20 (B) In all other cases, that the director's conduct was  
21 at least not opposed to the best interests of the corporation; and

22 (iii) In the case of any criminal proceeding, the  
23 director had no reasonable cause to believe his or her conduct was  
24 unlawful; or

25 (2) The director engaged in conduct for which broader

1 indemnification has been made permissible or obligatory under a  
2 provision of the articles of incorporation, as authorized by  
3 subdivision (b)(5) of section 20 of this act.

4 (b) A director's conduct with respect to an employee  
5 benefit plan for a purpose the director reasonably believed to be in  
6 the interests of the participants in, and the beneficiaries of, the  
7 plan is conduct that satisfies the requirement of subdivision (a)(1)  
8 (ii)(B) of this section.

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

13 (d) Unless ordered by a court under subdivision (a)(3) of  
14 section 114 of this act, a corporation may not indemnify a director:

15 (1) In connection with a proceeding by or in the right of  
16 the corporation, except for expenses incurred in connection with the  
17 proceeding if it is determined that the director has met the relevant  
18 standard of conduct under subsection (a) of this section; or

19 (2) In connection with any proceeding with respect to  
20 conduct for which the director was adjudged liable on the basis of  
21 receiving a financial benefit to which he or she was not entitled,  
22 whether or not involving action in the director's official capacity.

23 Sec. 112. (MBCA 8.52) A corporation shall indemnify a  
24 director who was wholly successful, on the merits or otherwise, in  
25 the defense of any proceeding to which the director was a party

1 because he or she was a director of the corporation against expenses  
2 incurred by the director in connection with the proceeding.

3 Sec. 113. (MBCA 8.53) (a) A corporation may, before final  
4 disposition of a proceeding, advance funds to pay for or reimburse  
5 expenses incurred in connection with the proceeding by an individual  
6 who is a party to the proceeding because that individual is a member  
7 of the board of directors if the director delivers to the  
8 corporation:

9 (1) A signed written affirmation of the director's good  
10 faith belief that the relevant standard of conduct described in  
11 section 111 of this act has been met by the director or that the  
12 proceeding involves conduct for which liability has been eliminated  
13 under a provision of the articles of incorporation as authorized by  
14 subdivision (b)(4) of section 20 of this act; and

15 (2) A signed written undertaking of the director to repay  
16 any funds advanced if the director is not entitled to mandatory  
17 indemnification under section 112 of this act and it is ultimately  
18 determined under section 114 or 115 of this act that the director has  
19 not met the relevant standard of conduct described in section 111 of  
20 this act.

21 (b) The undertaking required by subdivision (a)(2) of  
22 this section must be an unlimited general obligation of the director  
23 but need not be secured and may be accepted without reference to the  
24 financial ability of the director to make repayment.

25 (c) Authorizations under this section shall be made:



1           (1) By the board of directors:

2           (i) If there are two or more qualified directors, by a  
3 majority vote of all the qualified directors, a majority of whom  
4 shall for such purpose constitute a quorum, or by a majority of the  
5 members of a committee of two or more qualified directors appointed  
6 by such a vote; or

7           (ii) If there are fewer than two qualified directors, by  
8 the vote necessary for action by the board in accordance with  
9 subsection (c) of section 99 of this act, in which authorization  
10 directors who are not qualified directors may participate; or

11           (2) By the shareholders, but shares owned by or voted  
12 under the control of a director who at the time is not a qualified  
13 director may not be voted on the authorization.

14           Sec. 114. (MBCA 8.54) (a) A director who is a party to a  
15 proceeding because he or she is a director may apply for  
16 indemnification or an advance for expenses to the court conducting  
17 the proceeding or to another court of competent jurisdiction. After  
18 receipt of an application and after giving any notice it considers  
19 necessary, the court shall:

20           (1) Order indemnification if the court determines that  
21 the director is entitled to mandatory indemnification under section  
22 112 of this act;

23           (2) Order indemnification or advance for expenses if the  
24 court determines that the director is entitled to indemnification or  
25 advance for expenses pursuant to a provision authorized by subsection

1 (a) of section 118 of this act; or

2 (3) Order indemnification or advance for expenses if the  
3 court determines, in view of all the relevant circumstances, that it  
4 is fair and reasonable:

5 (i) To indemnify the director; or

6 (ii) To advance expenses to the director, even if he or  
7 she has not met the relevant standard of conduct set forth in  
8 subsection (a) of section 111 of this act, failed to comply with  
9 section 113 of this act, or was adjudged liable in a proceeding  
10 referred to in subdivision (d)(1) or (2) of section 111 of this act,  
11 but if the director was adjudged so liable indemnification shall be  
12 limited to expenses incurred in connection with the proceeding.

13 (b) If the court determines that the director is entitled  
14 to indemnification under subdivision (a)(1) of this section or to  
15 indemnification or advance for expenses under subdivision (a)(2) of  
16 this section, it shall also order the corporation to pay the  
17 director's expenses incurred in connection with obtaining court-  
18 ordered indemnification or advance for expenses. If the court  
19 determines that the director is entitled to indemnification or  
20 advance for expenses under subdivision (a)(3) of this section, it may  
21 also order the corporation to pay the director's expenses to obtain  
22 court-ordered indemnification or advance for expenses.

23 Sec. 115. (MBCA 8.55) (a) A corporation may not indemnify  
24 a director under section 111 of this act unless authorized for a  
25 specific proceeding after a determination has been made that

1 indemnification is permissible because the director has met the  
2 relevant standard of conduct set forth in section 111 of this act.

3 (b) The determination shall be made:

4 (1) If there are two or more qualified directors, by the  
5 board of directors by a majority vote of all the qualified directors,  
6 a majority of whom shall for such purpose constitute a quorum, or by  
7 a majority of the members of a committee of two or more qualified  
8 directors appointed by such a vote;

9 (2) By special legal counsel:

10 (i) Selected in the manner prescribed in subdivision (1)  
11 of this subsection; or

12 (ii) If there are fewer than two qualified directors,  
13 selected by the board of directors in which selection directors who  
14 are not qualified directors may participate; or

15 (3) By the shareholders, but shares owned by or voted  
16 under the control of a director who at the time is not a qualified  
17 director may not be voted on the determination.

18 (c) Authorization of indemnification shall be made in the  
19 same manner as the determination that indemnification is permissible  
20 except that if there are fewer than two qualified directors, or if  
21 the determination is made by special legal counsel, authorization of  
22 indemnification shall be made by those entitled to select special  
23 legal counsel under subdivision (b)(2)(ii) of this section.

24 Sec. 116. (MBCA 8.56) (a) A corporation may indemnify and  
25 advance expenses under sections 110 to 119 of this act to an officer

1 of the corporation who is a party to a proceeding because he or she  
2 is an officer of the corporation:

3 (1) To the same extent as a director; and

4 (2) If he or she is an officer but not a director, to  
5 such further extent as may be provided by the articles of  
6 incorporation, the bylaws, a resolution of the board of directors, or  
7 contract except for:

8 (i) Liability in connection with a proceeding by or in  
9 the right of the corporation other than for expenses incurred in  
10 connection with the proceeding; or

11 (ii) Liability arising out of conduct that constitutes:

12 (A) Receipt by the officer of a financial benefit to  
13 which he or she is not entitled;

14 (B) An intentional infliction of harm on the corporation  
15 or the shareholders; or

16 (C) An intentional violation of criminal law.

17 (b) The provisions of subdivision (a)(2) of this section  
18 shall apply to an officer who is also a director if the basis on  
19 which he or she is made a party to the proceeding is an act or  
20 omission solely as an officer.

21 (c) An officer of a corporation who is not a director is  
22 entitled to mandatory indemnification under section 112 of this act  
23 and may apply to a court under section 114 of this act for  
24 indemnification or an advance for expenses, in each case to the same  
25 extent to which a director may be entitled to indemnification or

1 advance for expenses under such provisions.

2           Sec. 117. (MBCA 8.57) A corporation may purchase and  
3 maintain insurance on behalf of an individual who is a director or  
4 officer of the corporation, or who, while a director or officer of  
5 the corporation, serves at the corporation's request as a director,  
6 officer, partner, trustee, employee, or agent of another domestic or  
7 foreign corporation, partnership, joint venture, trust, employee  
8 benefit plan, or other entity against liability asserted against or  
9 incurred by the individual in that capacity or arising from his or  
10 her status as a director or officer whether or not the corporation  
11 would have power to indemnify or advance expenses to the individual  
12 against the same liability under sections 110 to 119 of this act.

13           Sec. 118. (MBCA 8.58) (a) A corporation may, by a  
14 provision in its articles of incorporation or bylaws or in a  
15 resolution adopted or a contract approved by its board of directors  
16 or shareholders, obligate itself in advance of the act or omission  
17 giving rise to a proceeding to provide indemnification in accordance  
18 with section 111 of this act or advance funds to pay for or reimburse  
19 expenses in accordance with section 113 of this act. Any such  
20 obligatory provision shall be deemed to satisfy the requirements for  
21 authorization referred to in subsection (c) of section 113 of this  
22 act and in subsection (c) of section 115 of this act. Any such  
23 provision that obligates the corporation to provide indemnification  
24 to the fullest extent permitted by law shall be deemed to obligate  
25 the corporation to advance funds to pay for or reimburse expenses in

1 accordance with section 113 of this act to the fullest extent  
2 permitted by law, unless the provision specifically provides  
3 otherwise.

4 (b) A right of indemnification or to advances for  
5 expenses created by sections 110 to 119 of this act or under  
6 subsection (a) of this section and in effect at the time of an act or  
7 omission shall not be eliminated or impaired with respect to such act  
8 or omission by an amendment of the articles of incorporation or  
9 bylaws or a resolution of the directors or shareholders, adopted  
10 after the occurrence of such act or omission, unless, in the case of  
11 a right created under subsection (a) of this section, the provision  
12 creating such right and in effect at the time of such act or omission  
13 explicitly authorizes such elimination or impairment after such act  
14 or omission has occurred.

15 (c) Any provision pursuant to subsection (a) of this  
16 section shall not obligate the corporation to indemnify or advance  
17 expenses to a director of a predecessor of the corporation,  
18 pertaining to conduct with respect to the predecessor, unless  
19 otherwise specifically provided. Any provision for indemnification or  
20 advance for expenses in the articles of incorporation, bylaws, or a  
21 resolution of the board of directors or shareholders of a predecessor  
22 of the corporation in a merger or in a contract to which the  
23 predecessor is a party existing at the time the merger takes effect  
24 shall be governed by subdivision (a)(4) of section 167 of this act.

25 (d) Subject to subsection (b) of this section, a

1 corporation may, by a provision in its articles of incorporation,  
2 limit any of the rights to indemnification or advance for expenses  
3 created by or pursuant to sections 110 to 119 of this act.

4 (e) Sections 110 to 119 of this act do not limit a  
5 corporation's power to pay or reimburse expenses incurred by a  
6 director or an officer in connection with appearing as a witness in a  
7 proceeding at a time when he or she is not a party.

8 (f) Sections 110 to 119 of this act do not limit a  
9 corporation's power to indemnify, advance expenses to, or provide or  
10 maintain insurance on behalf of an employee or agent.

11 Sec. 119. (MBCA 8.59) A corporation may provide  
12 indemnification or advance expenses to a director or an officer only  
13 as permitted by sections 110 to 119 of this act.

14 Sec. 120. (MBCA 8.60) In sections 120 to 123 of this act:

15 (1) Director's conflicting interest transaction means a  
16 transaction effected or proposed to be effected by the corporation or  
17 by an entity controlled by the corporation:

18 (i) To which, at the relevant time, the director is a  
19 party;

20 (ii) Respecting which, at the relevant time, the director  
21 had knowledge and a material financial interest known to the  
22 director; or

23 (iii) Respecting which, at the relevant time, the  
24 director knew that a related person was a party or had a material  
25 financial interest.

1           (2) Control, including the term controlled by, means (i)  
2 having the power, directly or indirectly, to elect or remove a  
3 majority of the members of the board of directors or other governing  
4 body of an entity, whether through the ownership of voting shares or  
5 interests, by contract, or otherwise, or (ii) being subject to a  
6 majority of the risk of loss from the entity's activities or entitled  
7 to receive a majority of the entity's residual returns.

8           (3) Relevant time means (i) the time at which directors'  
9 action respecting the transaction is taken in compliance with section  
10 122 of this act, or (ii) if the transaction is not brought before the  
11 board of directors of the corporation, or its committee, for action  
12 under section 122 of this act, at the time the corporation, or an  
13 entity controlled by the corporation, becomes legally obligated to  
14 consummate the transaction.

15           (4) Material financial interest means a financial  
16 interest in a transaction that would reasonably be expected to impair  
17 the objectivity of the director's judgment when participating in  
18 action on the authorization of the transaction.

19           (5) Related person means:

20           (i) The director's spouse;

21           (ii) A child, stepchild, grandchild, parent, stepparent,  
22 grandparent, sibling, step sibling, half sibling, aunt, uncle, niece  
23 or nephew, or spouse of any thereof, of the director or of the  
24 director's spouse;

25           (iii) An individual living in the same home as the



1 director;

2 (iv) An entity, other than the corporation or an entity  
3 controlled by the corporation, controlled by the director or any  
4 person specified in subdivisions (5)(i) through (iii) of this  
5 section;

6 (v) A domestic or foreign (A) business or nonprofit  
7 corporation, other than the corporation or an entity controlled by  
8 the corporation, of which the director is a director, (B)  
9 unincorporated entity of which the director is a general partner or a  
10 member of the governing body, or (C) individual, trust, or estate for  
11 whom or of which the director is a trustee, guardian, personal  
12 representative, or like fiduciary; or

13 (vi) A person that is, or an entity that is controlled  
14 by, an employer of the director.

15 (6) Fair to the corporation means, for purposes of  
16 subdivision (b)(3) of section 121 of this act, that the transaction  
17 as a whole was beneficial to the corporation, taking into appropriate  
18 account whether it was (i) fair in terms of the director's dealings  
19 with the corporation and (ii) comparable to what might have been  
20 obtainable in an arm's length transaction, given the consideration  
21 paid or received by the corporation.

22 (7) Required disclosure means disclosure of (i) the  
23 existence and nature of the director's conflicting interest and (ii)  
24 all facts known to the director respecting the subject matter of the  
25 transaction that a director free of such conflicting interest would

1 reasonably believe to be material in deciding whether to proceed with  
2 the transaction.

3           Sec. 121. (MBCA 8.61) (a) A transaction effected or  
4 proposed to be effected by the corporation, or by an entity  
5 controlled by the corporation, may not be the subject of equitable  
6 relief, or give rise to an award of damages or other sanctions  
7 against a director of the corporation, in a proceeding by a  
8 shareholder or by or in the right of the corporation on the ground  
9 that the director has an interest respecting the transaction if it is  
10 not a director's conflicting interest transaction.

11           (b) A director's conflicting interest transaction may not  
12 be the subject of equitable relief, or give rise to an award of  
13 damages or other sanctions against a director of the corporation, in  
14 a proceeding by a shareholder or by or in the right of the  
15 corporation on the ground that the director has an interest  
16 respecting the transaction if:

17           (1) Directors' action respecting the transaction was  
18 taken in compliance with section 122 of this act at any time;

19           (2) Shareholders' action respecting the transaction was  
20 taken in compliance with section 123 of this act at any time; or

21           (3) The transaction, judged according to the  
22 circumstances at the relevant time, is established to have been fair  
23 to the corporation.

24           Sec. 122. (MBCA 8.62) (a) Directors' action respecting a  
25 director's conflicting interest transaction is effective for purposes

1 of subdivision (b)(1) of section 121 of this act if the transaction  
2 has been authorized by the affirmative vote of a majority, but no  
3 fewer than two, of the qualified directors who voted on the  
4 transaction after required disclosure by the conflicted director of  
5 information not already known by such qualified directors or after  
6 modified disclosure in compliance with subsection (b) of this section  
7 if:

8 (1) The qualified directors have deliberated and voted  
9 outside the presence of and without the participation by any other  
10 director; and

11 (2) When the action has been taken by a committee, all  
12 members of the committee were qualified directors and either (i) the  
13 committee was composed of all the qualified directors on the board of  
14 directors or (ii) the members of the committee were appointed by the  
15 affirmative vote of a majority of the qualified directors on the  
16 board.

17 (b) Notwithstanding subsection (a) of this section, when  
18 a transaction is a director's conflicting interest transaction only  
19 because a related person described in subdivision (5)(v) or (vi) of  
20 section 120 of this act is a party to or has a material financial  
21 interest in the transaction, the conflicted director is not obligated  
22 to make required disclosure to the extent that the director  
23 reasonably believes that doing so would violate a duty imposed under  
24 law, a legally enforceable obligation of confidentiality, or a  
25 professional ethics rule if the conflicted director discloses to the

1 qualified directors voting on the transaction:

2 (1) All information required to be disclosed that is not  
3 so violative;

4 (2) The existence and nature of the director's  
5 conflicting interest; and

6 (3) The nature of the conflicted director's duty not to  
7 disclose the confidential information.

8 (c) A majority, but no fewer than two, of all the  
9 qualified directors on the board of directors, or on the committee,  
10 constitutes a quorum for purposes of action that complies with this  
11 section.

12 (d) Where directors' action under this section does not  
13 satisfy a quorum or voting requirement applicable to the  
14 authorization of the transaction by reason of the articles of  
15 incorporation, the bylaws, or a provision of law, independent action  
16 to satisfy those authorization requirements must be taken by the  
17 board of directors or a committee in which action directors who are  
18 not qualified directors may participate.

19 Sec. 123. (MBCA 8.63) (a) Shareholders' action respecting  
20 a director's conflicting interest transaction is effective for  
21 purposes of subdivision (b)(2) of section 121 of this act if a  
22 majority of the votes cast by the holders of all qualified shares are  
23 in favor of the transaction after (1) notice to shareholders  
24 describing the action to be taken respecting the transaction, (2)  
25 provision to the corporation of the information referred to in

1 subsection (b) of this section, and (3) communication to the  
2 shareholders entitled to vote on the transaction of the information  
3 that is the subject of required disclosure to the extent the  
4 information is not known by them. In the case of shareholders' action  
5 at a meeting, the shareholders entitled to vote shall be determined  
6 as of the record date for notice of the meeting.

7 (b) A director who has a conflicting interest respecting  
8 the transaction shall, before the shareholders' vote, inform the  
9 secretary or other officer or agent of the corporation authorized to  
10 tabulate votes, in writing, of the number of shares that the director  
11 knows are not qualified shares under subsection (c) of this section  
12 and the identity of the holders of those shares.

13 (c) For purposes of this section: (1) holder means and  
14 held by refers to shares held by both a record shareholder, as  
15 defined in subdivision (8) of section 171 of this act and a  
16 beneficial shareholder, as defined in subdivision (2) of section 171  
17 of this act; and (2) qualified shares means all shares entitled to be  
18 voted with respect to the transaction except for shares that the  
19 secretary or other officer or agent of the corporation authorized to  
20 tabulate votes either knows, or under subsection (b) of this section  
21 is notified, are held by (i) a director who has a conflicting  
22 interest respecting the transaction or (ii) a related person of the  
23 director, excluding a person described in subdivision (5)(vi) of  
24 section 120 of this act.

25 (d) A majority of the votes entitled to be cast by the

1 holders of all qualified shares constitutes a quorum for purposes of  
2 compliance with this section. Subject to subsection (e) of this  
3 section, shareholders' action that otherwise complies with this  
4 section is not affected by the presence of holders, or by the voting,  
5 of shares that are not qualified shares.

6 (e) If a shareholders' vote does not comply with  
7 subsection (a) of this section solely because of a director's failure  
8 to comply with subsection (b) of this section and if the director  
9 establishes that the failure was not intended to influence and did  
10 not in fact determine the outcome of the vote, the court may take  
11 such action respecting the transaction and the director and may give  
12 such effect, if any, to the shareholders' vote as the court considers  
13 appropriate in the circumstances.

14 (f) When shareholders' action under this section does not  
15 satisfy a quorum or voting requirement applicable to the  
16 authorization of the transaction by reason of the articles of  
17 incorporation or the bylaws or a provision of law, independent action  
18 to satisfy those authorization requirements must be taken by the  
19 shareholders in which action shares that are not qualified shares may  
20 participate.

21 Sec. 124. (MBCA 8.70) (a) A director's taking advantage,  
22 directly or indirectly, of a business opportunity may not be the  
23 subject of equitable relief or give rise to an award of damages or  
24 other sanctions against the director in a proceeding by or in the  
25 right of the corporation on the ground that such opportunity should

1 have first been offered to the corporation if before becoming legally  
2 obligated respecting the opportunity the director brings it to the  
3 attention of the corporation and:

4 (1) Action by qualified directors disclaiming the  
5 corporation's interest in the opportunity is taken in compliance with  
6 the procedures set forth in section 122 of this act, as if the  
7 decision being made concerned a director's conflicting interest  
8 transaction; or

9 (2) Shareholders' action disclaiming the corporation's  
10 interest in the opportunity is taken in compliance with the  
11 procedures set forth in section 123 of this act, as if the decision  
12 being made concerned a director's conflicting interest transaction,  
13 except that rather than making required disclosure as defined in  
14 section 120 of this act, in each case the director shall have made  
15 prior disclosure to those acting on behalf of the corporation of all  
16 material facts concerning the business opportunity that are then  
17 known to the director.

18 (b) In any proceeding seeking equitable relief or other  
19 remedies based upon an alleged improper taking advantage of a  
20 business opportunity by a director, the fact that the director did  
21 not employ the procedure described in subsection (a) of this section  
22 before taking advantage of the opportunity shall not create an  
23 inference that the opportunity should have been first presented to  
24 the corporation or alter the burden of proof otherwise applicable to  
25 establish that the director breached a duty to the corporation in the

1 circumstances.

2           Sec. 125. (MBCA 9.01) Sections 125 to 149 of this act may  
3 not be used to effect a transaction that converts an insurance  
4 company organized on the mutual principle to one organized on a  
5 stock-share basis.

6           Sec. 126. (MBCA 9.02) (a) If a domestic or foreign  
7 business corporation or eligible entity may not be a party to a  
8 merger without the approval of the Attorney General, the Department  
9 of Banking and Finance, the Department of Insurance, or the Public  
10 Service Commission, the corporation or eligible entity shall not be a  
11 party to a transaction under section 125 of this act and this section  
12 without the prior approval of that agency.

13           (b) Property held in trust or for charitable purposes  
14 under the laws of this state by a domestic or foreign eligible entity  
15 shall not, by any transaction under section 125 of this act and this  
16 section, be diverted from the objects for which it was donated,  
17 granted, or devised unless and until the eligible entity obtains an  
18 order of the court specifying the disposition of the property to the  
19 extent required by and pursuant to cy pres or other nondiversion law  
20 of this state.

21           Sec. 127. (MBCA 9.20) (a) A foreign business corporation  
22 may become a domestic business corporation only if the domestication  
23 is permitted by the organic law of the foreign corporation.

24           (b) A domestic business corporation may become a foreign  
25 business corporation if the domestication is permitted by the laws of



1 the foreign jurisdiction. Regardless of whether the laws of the  
2 foreign jurisdiction require the adoption of a plan of domestication,  
3 the domestication shall be approved by the adoption by the  
4 corporation of a plan of domestication in the manner provided in  
5 sections 127 to 132 of this section.

6 (c) The plan of domestication must include:

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

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

10 (3) The manner and basis of reclassifying the shares of  
11 the corporation following its domestication into shares or other  
12 securities, obligations, rights to acquire shares or other  
13 securities, cash, other property, or any combination of the  
14 foregoing; and

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

17 (d) The plan of domestication may also include a  
18 provision that the plan may be amended prior to filing the document  
19 required by the laws of this state or the other jurisdiction to  
20 consummate the domestication, except that subsequent to approval of  
21 the plan by the shareholders the plan may not be amended to change:

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

25 (2) The articles of incorporation as they will be in

1 effect immediately following the domestication, except for changes  
2 permitted by section 154 of this act or by comparable provisions of  
3 the laws of the other jurisdiction; or

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

7 (e) Terms of a plan of domestication may be made  
8 dependent upon facts objectively ascertainable outside the plan in  
9 accordance with subsection (k) of section 3 of this act.

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

18 Sec. 128. (MBCA 9.21) In the case of a domestication of a  
19 domestic business corporation in a foreign jurisdiction:

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

22 (2) After adopting the plan of domestication, the board  
23 of directors must submit the plan to the shareholders for their  
24 approval. The board of directors must also transmit to the  
25 shareholders a recommendation that the shareholders approve the plan

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

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

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

17 (5) Unless the articles of incorporation, or the board of  
18 directors acting pursuant to subdivision (3) of this section, require  
19 a greater vote or a greater number of votes to be present, approval  
20 of the plan of domestication requires the approval of the  
21 shareholders at a meeting at which a quorum consisting of at least a  
22 majority of the votes entitled to be cast on the plan exists, and if  
23 any class or series of shares is entitled to vote as a separate group  
24 on the plan, the approval of each such separate voting group at a  
25 meeting at which a quorum of the voting group consisting of at least

1 a majority of the votes entitled to be cast on the domestication by  
2 that voting group exists.

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

6 (i) Are to be reclassified under the plan of  
7 domestication into other securities, obligations, rights to acquire  
8 shares or other securities, cash, other property, or any combination  
9 of the foregoing;

10 (ii) Are entitled to vote as a separate group on a  
11 provision of the plan that constitutes a proposed amendment to  
12 articles of incorporation of the corporation following its  
13 domestication that requires by separate voting groups under section  
14 153 of this act; or

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

17 (7) The articles of incorporation may expressly limit or  
18 eliminate the separate voting rights provided in subdivision (6)(i)  
19 of this section.

20 (8) If any provision of the articles of incorporation,  
21 bylaws, or an agreement to which any of the directors or shareholders  
22 are parties, adopted or entered into before the operative date of  
23 this act, applies to a merger of the corporation and that document  
24 does not refer to a domestication of the corporation, the provision  
25 shall be deemed to apply to a domestication of the corporation until

1 such time as the provision is amended subsequent to that date.

2           Sec. 129. (MBCA 9.22) (a) After the domestication of a  
3 foreign business corporation has been authorized as required by the  
4 laws of the foreign jurisdiction, articles of domestication shall be  
5 signed by any officer or other duly authorized representative. The  
6 articles shall set forth:

7           (1) The name of the corporation immediately before the  
8 filing of the articles of domestication and, if that name is  
9 unavailable for use in this state or the corporation desires to  
10 change its name in connection with the domestication, a name that  
11 satisfies the requirements of section 30 of this act;

12           (2) The jurisdiction of incorporation of the corporation  
13 immediately before the filing of the articles of domestication and  
14 the date the corporation was incorporated in that jurisdiction; and

15           (3) A statement that the domestication of the corporation  
16 in this state was duly authorized as required by the laws of the  
17 jurisdiction in which the corporation was incorporated immediately  
18 before its domestication in this state.

19           (b) The articles of domestication shall either contain  
20 all of the provisions that subsection (a) of section 20 of this act  
21 requires to be set forth in articles of incorporation and any other  
22 desired provisions that subsection (b) of section 20 of this act  
23 permits to be included in articles of incorporation or shall have  
24 attached articles of incorporation. In either case, provisions that  
25 would not be required to be included in restated articles of

1 incorporation may be omitted.

2 (c) The articles of domestication shall be delivered to  
3 the Secretary of State for filing, and shall take effect at the  
4 effective time provided in section 6 of this act.

5 (d) If the foreign corporation is authorized to transact  
6 business in this state under sections 203 to 220 of this act, its  
7 certificate of authority shall be cancelled automatically on the  
8 effective date of its domestication.

9 Sec. 130. (MBCA 9.23) (a) Whenever a domestic business  
10 corporation has adopted and approved, in the manner required by  
11 sections 127 to 132 of this act, a plan of domestication providing  
12 for the corporation to be domesticated in a foreign jurisdiction,  
13 articles of charter surrender shall be signed on behalf of the  
14 corporation by any officer or other duly authorized representative.  
15 The articles of charter surrender shall set forth:

16 (1) The name of the corporation;

17 (2) A statement that the articles of charter surrender  
18 are being filed in connection with the domestication of the  
19 corporation in a foreign jurisdiction;

20 (3) A statement that the domestication was duly approved  
21 by the shareholders and, if voting by any separate voting group was  
22 required, by each such separate voting group, in the manner required  
23 by the Nebraska Model Business Corporation Act and the articles of  
24 incorporation; and

25 (4) The corporation's new jurisdiction of incorporation.

1           (b) The articles of charter surrender shall be delivered  
2 by the corporation to the Secretary of State for filing. The articles  
3 of charter surrender shall take effect at the effective time provided  
4 in section 6 of this act.

5           Sec. 131. (MBCA 9.24) (a) When a domestication becomes  
6 effective:

7           (1) The title to all real and personal property, both  
8 tangible and intangible, of the corporation remains in the  
9 corporation without reversion or impairment;

10          (2) The liabilities of the corporation remain the  
11 liabilities of the corporation;

12          (3) An action or proceeding pending against the  
13 corporation continues against the corporation as if the domestication  
14 had not occurred;

15          (4) The articles of domestication, or the articles of  
16 incorporation attached to the articles of domestication, constitute  
17 the articles of incorporation of a foreign corporation domesticating  
18 in this state;

19          (5) The shares of the corporation are reclassified into  
20 shares, other securities, obligations, rights to acquire shares or  
21 other securities, or into cash or other property in accordance with  
22 the terms of the domestication, and the shareholders are entitled  
23 only to the rights provided by those terms and to any appraisal  
24 rights they may have under the organic law of the domesticating  
25 corporation; and

- 1           (6) The corporation is deemed to:
- 2           (i) Be incorporated under and subject to the organic law  
3 of the domesticated corporation for all purposes;
- 4           (ii) Be the same corporation without interruption as the  
5 domesticating corporation; and
- 6           (iii) Have been incorporated on the date the  
7 domesticating corporation was originally incorporated.
- 8           (b) When a domestication of a domestic business  
9 corporation in a foreign jurisdiction becomes effective, the foreign  
10 business corporation is deemed to agree that it will promptly pay the  
11 amount, if any, to which such shareholders are entitled under  
12 sections 171 to 183 of this act.
- 13           (c) The owner liability of a shareholder in a foreign  
14 corporation that is domesticated in this state shall be as follows:
- 15           (1) The domestication does not discharge any owner  
16 liability under the laws of the foreign jurisdiction to the extent  
17 any such owner liability arose before the effective time of the  
18 articles of domestication;
- 19           (2) The shareholder shall not have owner liability under  
20 the laws of the foreign jurisdiction for any debt, obligation, or  
21 liability of the corporation that arises after the effective time of  
22 the articles of domestication;
- 23           (3) The provisions of the laws of the foreign  
24 jurisdiction shall continue to apply to the collection or discharge  
25 of any owner liability preserved by subdivision (1) of this



1 subsection, as if the domestication had not occurred; and

2 (4) The shareholder shall have whatever rights of  
3 contribution from other shareholders are provided by the laws of the  
4 foreign jurisdiction with respect to any owner liability preserved by  
5 subdivision (1) of this subsection, if the domestication had not  
6 occurred.

7 (d) A shareholder who becomes subject to owner liability  
8 for some or all of the debts, obligations, or liabilities of the  
9 corporation as a result of its domestication in this state shall have  
10 owner liability only for those debts, obligations, or liabilities of  
11 the corporation that arise after the effective time of the articles  
12 of domestication.

13 Sec. 132. (MBCA 9.25) (a) Unless otherwise provided in a  
14 plan of domestication of a domestic business corporation, after the  
15 plan has been adopted and approved as required by sections 127 to 132  
16 of this act, and at any time before the domestication has become  
17 effective, it may be abandoned by the board of directors without  
18 action by the shareholders.

19 (b) If a domestication is abandoned under subsection (a)  
20 of this section after articles of charter surrender have been filed  
21 with the Secretary of State but before the domestication has become  
22 effective, a statement that the domestication has been abandoned in  
23 accordance with this section, signed by an officer or other duly  
24 authorized representative, shall be delivered to the Secretary of  
25 State for filing prior to the effective date of the domestication.

1 The statement shall take effect upon filing and the domestication  
2 shall be deemed abandoned and shall not become effective.

3 (c) If the domestication of a foreign business  
4 corporation in this state is abandoned in accordance with the laws of  
5 the foreign jurisdiction after articles of domestication have been  
6 filed with the Secretary of State, a statement that the domestication  
7 has been abandoned, signed by an officer or other duly authorized  
8 representative, shall be delivered to the Secretary of State for  
9 filing. The statement shall take effect upon filing and the  
10 domestication shall be deemed abandoned and shall not become  
11 effective.

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

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

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

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

24 (2) The manner and basis of reclassifying the shares of  
25 the corporation following its conversion into memberships, if any, or

1 securities, obligations, rights to acquire memberships or securities,  
2 cash, other property, or any combination of the foregoing;

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

5 (4) If the domestic business corporation is to be  
6 converted to a foreign nonprofit corporation, a statement of the  
7 jurisdiction in which the corporation will be incorporated after the  
8 conversion.

9 (d) The plan of nonprofit conversion may also include a  
10 provision that the plan may be amended prior to filing articles of  
11 nonprofit conversion, except that subsequent to approval of the plan  
12 by the shareholders the plan may not be amended to change:

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

16 (2) The articles of incorporation as they will be in  
17 effect immediately following the conversion, except for changes  
18 permitted by section 154 of this act; or

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

22 (e) Terms of a plan of nonprofit conversion may be made  
23 dependent upon facts objectively ascertainable outside the plan in  
24 accordance with subsection (k) of section 3 of this act.

25 (f) If any debt security, note or similar evidence of

1 indebtedness for money borrowed, whether secured or unsecured, or a  
2 contract of any kind, issued, incurred, or signed by a domestic  
3 business corporation before the operative date of this act contains a  
4 provision applying to a merger of the corporation and the document  
5 does not refer to a nonprofit conversion of the corporation, the  
6 provision shall be deemed to apply to a nonprofit conversion of the  
7 corporation until such time as the provision is amended subsequent to  
8 that date.

9           Sec. 134. (MBCA 9.31) In the case of a conversion of a  
10 domestic business corporation to a domestic or foreign nonprofit  
11 corporation:

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

14           (2) After adopting the plan of nonprofit conversion, the  
15 board of directors must submit the plan to the shareholders for their  
16 approval. The board of directors must also transmit to the  
17 shareholders a recommendation that the shareholders approve the plan,  
18 unless (i) the board of directors makes a determination that because  
19 of conflicts of interest or other special circumstances it should not  
20 make such a recommendation or (ii) section 101 of this act applies.  
21 If subdivision (2)(i) or (ii) of this section applies, the board must  
22 transmit to the shareholders the basis for so proceeding.

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

25           (4) If the approval of the shareholders is to be given at

1 a meeting, the corporation must notify each shareholder of the  
2 meeting of shareholders at which the plan of nonprofit conversion is  
3 to be submitted for approval. The notice must state that the purpose,  
4 or one of the purposes, of the meeting is to consider the plan and  
5 must contain or be accompanied by a copy or summary of the plan. The  
6 notice shall include or be accompanied by a copy of the articles of  
7 incorporation as they will be in effect immediately after the  
8 nonprofit conversion.

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

17 (6) If any provision of the articles of incorporation,  
18 bylaws, or an agreement to which any of the directors or shareholders  
19 are parties, adopted or entered into before the operative date of  
20 this act, applies to a merger, other than a provision that eliminates  
21 or limits voting or appraisal rights and the document does not refer  
22 to a nonprofit conversion of the corporation, the provision shall be  
23 deemed to apply to a nonprofit conversion of the corporation until  
24 such time as the provision is amended subsequent to that date.

25 Sec. 135. (MBCA 9.32) (a) After a plan of nonprofit

1 conversion providing for the conversion of a domestic business  
2 corporation to a domestic nonprofit corporation has been adopted and  
3 approved as required by the Nebraska Model Business Corporation Act,  
4 articles of nonprofit conversion shall be signed on behalf of the  
5 corporation by any officer or other duly authorized representative.

6 The articles shall set forth:

7 (1) The name of the corporation immediately before the  
8 filing of the articles of nonprofit conversion and if that name does  
9 not satisfy the requirements of the Nebraska Nonprofit Corporation  
10 Act, or the corporation desires to change its name in connection with  
11 the conversion, a name that satisfies the requirements of the  
12 Nebraska Nonprofit Corporation Act; and

13 (2) A statement that the plan of nonprofit conversion was  
14 duly approved by the shareholders in the manner required by the  
15 Nebraska Model Business Corporation Act and the articles of  
16 incorporation.

17 (b) The articles of nonprofit conversion shall either  
18 contain all of the provisions that the Nebraska Nonprofit Corporation  
19 Act requires to be set forth in articles of incorporation of a  
20 domestic nonprofit corporation and any other desired provisions  
21 permitted by the Nebraska Nonprofit Corporation Act or shall have  
22 attached articles of incorporation that satisfy the requirements of  
23 the Nebraska Nonprofit Corporation Act. In either case, provisions  
24 that would not be required to be included in restated articles of  
25 incorporation of a domestic nonprofit corporation may be omitted.

1           (c) The articles of nonprofit conversion shall be  
2 delivered to the Secretary of State for filing and shall take effect  
3 at the effective time provided in section 6 of this act.

4           Sec. 136. (MBCA 9.33) (a) Whenever a domestic business  
5 corporation has adopted and approved, in the manner required by  
6 sections 133 to 138 of this act, a plan of nonprofit conversion  
7 providing for the corporation to be converted to a foreign nonprofit  
8 corporation, articles of charter surrender shall be signed on behalf  
9 of the corporation by any officer or other duly authorized  
10 representative. The articles of charter surrender shall set forth:

11           (1) The name of the corporation;

12           (2) A statement that the articles of charter surrender  
13 are being filed in connection with the conversion of the corporation  
14 to a foreign nonprofit corporation;

15           (3) A statement that the foreign nonprofit conversion was  
16 duly approved by the shareholders in the manner required by the  
17 Nebraska Model Business Corporation Act and the articles of  
18 incorporation; and

19           (4) The corporation's new jurisdiction of incorporation.

20           (b) The articles of charter surrender shall be delivered  
21 by the corporation to the Secretary of State for filing. The articles  
22 of charter surrender shall take effect on the effective time provided  
23 in section 6 of this act.

24           Sec. 137. (MBCA 9.34) (a) When a conversion of a domestic  
25 business corporation to a domestic nonprofit corporation becomes

1 effective:

2 (1) The title to all real and personal property, both  
3 tangible and intangible, of the corporation remains in the  
4 corporation without reversion or impairment;

5 (2) The liabilities of the corporation remain the  
6 liabilities of the corporation;

7 (3) An action or proceeding pending against the  
8 corporation continues against the corporation as if the conversion  
9 had not occurred;

10 (4) The articles of incorporation of the domestic or  
11 foreign nonprofit corporation become effective;

12 (5) The shares of the corporation are reclassified into  
13 memberships, securities, obligations, rights to acquire memberships  
14 or securities or into cash or other property in accordance with the  
15 plan of conversion, and the shareholders are entitled only to the  
16 rights provided in the plan of nonprofit conversion or to any rights  
17 they may have under sections 171 to 183 of this act; and

18 (6) The corporation is deemed to:

19 (i) Be a domestic nonprofit corporation for all purposes;

20 (ii) Be the same corporation without interruption as the  
21 corporation that existed prior to the conversion; and

22 (iii) Have been incorporated on the date that it was  
23 originally incorporated as a domestic business corporation.

24 (b) When a conversion of a domestic business corporation  
25 to a foreign nonprofit corporation becomes effective, the foreign



1 nonprofit corporation is deemed to agree that it will promptly pay  
2 the amount, if any, to which such shareholders are entitled under  
3 sections 171 to 183 of this act.

4 (c) The owner liability of a shareholder in a domestic  
5 business corporation that converts to a domestic nonprofit  
6 corporation shall be as follows:

7 (1) The conversion does not discharge any owner liability  
8 of the shareholder as a shareholder of the business corporation to  
9 the extent any such owner liability arose before the effective time  
10 of the articles of nonprofit conversion;

11 (2) The shareholder shall not have owner liability for  
12 any debt, obligation, or liability of the nonprofit corporation that  
13 arises after the effective time of the articles of nonprofit  
14 conversion;

15 (3) The laws of this state shall continue to apply to the  
16 collection or discharge of any owner liability preserved by  
17 subdivision (1) of this subsection as if the conversion had not  
18 occurred and the nonprofit corporation was still a business  
19 corporation; and

20 (4) The shareholders shall have whatever rights of  
21 contribution from other shareholders that are provided by the laws of  
22 this state with respect to any owner liability preserved by  
23 subdivision (1) of this subsection as if the conversion had not  
24 occurred and the nonprofit corporation were still a business  
25 corporation.

1           (d) A shareholder who becomes subject to owner liability  
2 for some or all of the debts, obligations, or liabilities of the  
3 nonprofit corporation shall have owner liability only for those  
4 debts, obligations, or liabilities of the nonprofit corporation that  
5 arise after the effective time of the articles of nonprofit  
6 conversion.

7           Sec. 138. (MBCA 9.35) (a) Unless otherwise provided in a  
8 plan of nonprofit conversion of a domestic business corporation,  
9 after the plan has been adopted and approved as required by sections  
10 133 to 138 of this act, and at any time before the nonprofit  
11 conversion has become effective, it may be abandoned by the board of  
12 directors without action by the shareholders.

13           (b) If a nonprofit conversion is abandoned under  
14 subsection (a) of this section after articles of nonprofit conversion  
15 or articles of charter surrender have been filed with the Secretary  
16 of State but before the nonprofit conversion has become effective, a  
17 statement that the nonprofit conversion has been abandoned in  
18 accordance with this section, signed by an officer or other duly  
19 authorized representative, shall be delivered to the Secretary of  
20 State for filing prior to the effective date of the nonprofit  
21 conversion. The statement shall take effect upon filing and the  
22 nonprofit conversion shall be deemed abandoned and shall not become  
23 effective.

24           Sec. 139. (MBCA 9.40) A foreign nonprofit corporation may  
25 become a domestic business corporation if the domestication and

1 conversion is permitted by the organic law of the foreign nonprofit  
2 corporation.

3           Sec. 140. (MBCA 9.41) (a) After the conversion of a  
4 foreign nonprofit corporation to a domestic business corporation has  
5 been authorized as required by the laws of the foreign jurisdiction,  
6 articles of domestication and conversion shall be signed by any  
7 officer or other duly authorized representative. The articles shall  
8 set forth:

9           (1) The name of the corporation immediately before the  
10 filing of the articles of domestication and conversion and, if that  
11 name is unavailable for use in this state or the corporation desires  
12 to change its name in connection with the domestication and  
13 conversion, a name that satisfies the requirements of section 30 of  
14 this act;

15           (2) The jurisdiction of incorporation of the corporation  
16 immediately before the filing of the articles of domestication and  
17 conversion and the date the corporation was incorporated in that  
18 jurisdiction; and

19           (3) A statement that the domestication and conversion of  
20 the corporation in this state was duly authorized as required by the  
21 laws of the jurisdiction in which the corporation was incorporated  
22 immediately before its domestication and conversion in this state.

23           (b) The articles of domestication and conversion shall  
24 either contain all of the provisions that subsection (a) of section  
25 20 of this act requires to be set forth in articles of incorporation

1 and any other desired provisions that subsection (b) of section 20 of  
2 this act permits to be included in articles of incorporation or shall  
3 have attached articles of incorporation. In either case, provisions  
4 that would not be required to be included in restated articles of  
5 incorporation may be omitted.

6 (c) The articles of domestication and conversion shall be  
7 delivered to the Secretary of State for filing and shall take effect  
8 at the effective time provided in section 6 of this act.

9 (d) If the foreign nonprofit corporation is authorized to  
10 transact business in this state under the foreign qualification  
11 provision of the Nebraska Nonprofit Corporation Act, its certificate  
12 of authority shall be cancelled automatically on the effective date  
13 of its domestication and conversion.

14 Sec. 141. (MBCA 9.42) (a) When a domestication and  
15 conversion of a foreign nonprofit corporation to a domestic business  
16 corporation becomes effective:

17 (1) The title to all real and personal property, both  
18 tangible and intangible, of the corporation remains in the  
19 corporation without reversion or impairment;

20 (2) The liabilities of the corporation remain the  
21 liabilities of the corporation;

22 (3) An action or proceeding pending against the  
23 corporation continues against the corporation as if the domestication  
24 and conversion had not occurred;

25 (4) The articles of domestication and conversion, or the

1 articles of incorporation attached to the articles of domestication  
2 and conversion, constitute the articles of incorporation of the  
3 corporation;

4 (5) Shares, other securities, obligations, rights to  
5 acquire shares or other securities of the corporation, or cash or  
6 other property shall be issued or paid as provided pursuant to the  
7 laws of the foreign jurisdiction so long as at least one share is  
8 outstanding immediately after the effective time; and

9 (6) The corporation is deemed to:

10 (i) Be a domestic corporation for all purposes;

11 (ii) Be the same corporation without interruption as the  
12 foreign nonprofit corporation; and

13 (iii) Have been incorporated on the date the foreign  
14 nonprofit corporation was originally incorporated.

15 (b) The owner liability of a member of a foreign  
16 nonprofit corporation that domesticates and converts to a domestic  
17 business corporation shall be as follows:

18 (1) The domestication and conversion does not discharge  
19 any owner liability under the laws of the foreign jurisdiction to the  
20 extent any such owner liability arose before the effective time of  
21 the articles of domestication and conversion;

22 (2) The member shall not have owner liability under the  
23 laws of the foreign jurisdiction for any debt, obligation, or  
24 liability of the corporation that arises after the effective time of  
25 the articles of domestication and conversion;

1           (3) The provisions of the laws of the foreign  
2 jurisdiction shall continue to apply to the collection or discharge  
3 of any owner liability preserved by subdivision (1) of this  
4 subsection, as if the domestication and conversion had not occurred;  
5 and

6           (4) The member shall have whatever rights of contribution  
7 from other members are provided by the laws of the foreign  
8 jurisdiction with respect to any owner liability preserved by  
9 subdivision (1) of this subsection as if the domestication and  
10 conversion had not occurred.

11           (c) A member of a foreign nonprofit corporation who  
12 becomes subject to owner liability for some or all of the debts,  
13 obligations, or liabilities of the corporation as a result of its  
14 domestication and conversion in this state shall have owner liability  
15 only for those debts, obligations, or liabilities of the corporation  
16 that arise after the effective time of the articles of domestication  
17 and conversion.

18           Sec. 142. (MBCA 9.43) If the domestication and conversion  
19 of a foreign nonprofit corporation to a domestic business corporation  
20 is abandoned in accordance with the laws of the foreign jurisdiction  
21 after articles of domestication and conversion have been filed with  
22 the Secretary of State, a statement that the domestication and  
23 conversion has been abandoned, signed by an officer or other duly  
24 authorized representative, shall be delivered to the Secretary of  
25 State for filing. The statement shall take effect upon filing and the

1 domestication and conversion shall be deemed abandoned and shall not  
2 become effective.

3           Sec. 143. (MBCA 9.50) (a) A domestic business corporation  
4 may become a domestic unincorporated entity pursuant to a plan of  
5 entity conversion.

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

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

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

6           (2) If the business and affairs of the unincorporated  
7 entity are managed by a group of persons that is not identical to the  
8 interest holders, that group shall be deemed to be the board of  
9 directors.

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

13           (e) If any debt security, note, or similar evidence of  
14 indebtedness for money borrowed, whether secured or unsecured, or a  
15 contract of any kind, issued, incurred, or signed by a domestic  
16 business corporation before the operative date of this act applies to  
17 a merger of the corporation and the document does not refer to an  
18 entity conversion of the corporation, the provision shall be deemed  
19 to apply to an entity conversion of the corporation until such time  
20 as the provision is amended subsequent to that date.

21           (f) As used in sections 143 to 149 of this act:

22           (1) Converting entity means the domestic business  
23 corporation or domestic unincorporated entity that adopts a plan of  
24 entity conversion or the foreign unincorporated entity converting to  
25 a domestic business corporation; and



1           (2) Surviving entity means the corporation or  
2 unincorporated entity that is in existence immediately after  
3 consummation of an entity conversion pursuant to sections 143 to 149  
4 of this act.

5           Sec. 144. (MBCA 9.51) (a) A plan of entity conversion  
6 must include:

7           (1) A statement of the type of other entity the surviving  
8 entity will be and, if it will be a foreign other entity, its  
9 jurisdiction of organization;

10           (2) The terms and conditions of the conversion;

11           (3) The manner and basis of converting the shares of the  
12 domestic business corporation following its conversion into interests  
13 or other securities, obligations, rights to acquire interests or  
14 other securities, cash, other property, or any combination of the  
15 foregoing; and

16           (4) The full text, as they will be in effect immediately  
17 after consummation of the conversion, of the organic documents of the  
18 surviving entity.

19           (b) The plan of entity conversion may also include a  
20 provision that the plan may be amended prior to filing articles of  
21 entity conversion, except that subsequent to approval of the plan by  
22 the shareholders the plan may not be amended to change:

23           (1) The amount or kind of shares or other securities,  
24 interests, obligations, rights to acquire shares, other securities or  
25 interests, cash, or other property to be received under the plan by

1 the shareholders;

2 (2) The organic documents that will be in effect  
3 immediately following the conversion, except for changes permitted by  
4 a provision of the organic law of the surviving entity comparable to  
5 section 154 of this act; or

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

9 (c) Terms of a plan of entity conversion may be made  
10 dependent upon facts objectively ascertainable outside the plan in  
11 accordance with subsection (k) of section 3 of this act.

12 Sec. 145. (MBCA 9.52) In the case of an entity conversion  
13 of a domestic business corporation to a domestic or foreign  
14 unincorporated entity:

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

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

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

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

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

20           (6) If any provision of the articles of incorporation,  
21 bylaws, or an agreement to which any of the directors or shareholders  
22 are parties, adopted or entered into before the operative date of  
23 this act, applies to a merger of the corporation, other than a  
24 provision that limits or eliminates voting or appraisal rights, and  
25 the document does not refer to an entity conversion of the

1 corporation, the provision shall be deemed to apply to an entity  
2 conversion of the corporation until such time as the provision is  
3 subsequently amended.

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

10 Sec. 146. (MBCA 9.53) (a) After the conversion of a  
11 domestic business corporation to a domestic unincorporated entity has  
12 been adopted and approved as required by the Nebraska Model Business  
13 Corporation Act, articles of entity conversion shall be signed on  
14 behalf of the corporation by any officer or other duly authorized  
15 representative. The articles shall:

16 (1) Set forth the name of the corporation immediately  
17 before the filing of the articles of entity conversion and the name  
18 to which the name of the corporation is to be changed, which shall be  
19 a name that satisfies the organic law of the surviving entity;

20 (2) State the type of unincorporated entity that the  
21 surviving entity will be;

22 (3) Set forth a statement that the plan of entity  
23 conversion was duly approved by the shareholders in the manner  
24 required by the act and the articles of incorporation; and

25 (4) If the surviving entity is a filing entity, either

1 contain all of the provisions required to be set forth in its public  
2 organic document and any other desired provisions that are permitted  
3 or have attached a public organic document; except that, in either  
4 case, provisions that would not be required to be included in a  
5 restated public organic document may be omitted.

6 (b) After the conversion of a domestic unincorporated  
7 entity to a domestic business corporation has been adopted and  
8 approved as required by the organic law of the unincorporated entity,  
9 articles of entity conversion shall be signed on behalf of the  
10 unincorporated entity by any officer or other duly authorized  
11 representative. The articles shall:

12 (1) Set forth the name of the unincorporated entity  
13 immediately before the filing of the articles of entity conversion  
14 and the name to which the name of the unincorporated entity is to be  
15 changed which shall be a name that satisfies the requirements of  
16 section 30 of this act;

17 (2) Set forth a statement that the plan of entity  
18 conversion was duly approved in accordance with the organic law of  
19 the unincorporated entity; and

20 (3) Either contain all of the provisions that subsection  
21 (a) of section 20 of this act requires to be set forth in articles of  
22 incorporation and any other desired provisions that subsection (b) of  
23 section 20 of this act permits to be included in articles of  
24 incorporation or have attached articles of incorporation; except  
25 that, in either case, provisions that would not be required to be

1 included in restated articles of incorporation of a domestic business  
2 corporation may be omitted.

3 (c) After the conversion of a foreign unincorporated  
4 entity to a domestic business corporation has been authorized as  
5 required by the laws of the foreign jurisdiction, articles of entity  
6 conversion shall be signed on behalf of the foreign unincorporated  
7 entity by any officer or other duly authorized representative. The  
8 articles shall:

9 (1) Set forth the name of the unincorporated entity  
10 immediately before the filing of the articles of entity conversion  
11 and the name to which the name of the unincorporated entity is to be  
12 changed which shall be a name that satisfies the requirements of  
13 section 30 of this act;

14 (2) Set forth the jurisdiction under the laws of which  
15 the unincorporated entity was organized immediately before the filing  
16 of the articles of entity conversion and the date on which the  
17 unincorporated entity was organized in that jurisdiction;

18 (3) Set forth a statement that the conversion of the  
19 unincorporated entity was duly approved in the manner required by its  
20 organic law; and

21 (4) Either contain all of the provisions that subsection  
22 (a) of section 20 of this act requires to be set forth in articles of  
23 incorporation and any other desired provisions that subsection (b) of  
24 section 20 of this act permits to be included in articles of  
25 incorporation or have attached articles of incorporation; except

1 that, in either case, provisions that would not be required to be  
2 included in restated articles of incorporation of a domestic business  
3 corporation may be omitted.

4 (d) The articles of entity conversion shall be delivered  
5 to the Secretary of State for filing and shall take effect at the  
6 effective time provided in section 6 of this act. Articles of entity  
7 conversion under subsection (a) or (b) of this section may be  
8 combined with any required conversion filing under the organic law of  
9 the domestic unincorporated entity if the combined filing satisfies  
10 the requirements of both this section and the other organic law.

11 (e) If the converting entity is a foreign unincorporated  
12 entity that is authorized to transact business in this state under a  
13 provision of law similar to sections 203 to 220 of this act, its  
14 certificate of authority or other type of foreign qualification shall  
15 be cancelled automatically on the effective date of its conversion.

16 Sec. 147. (MBCA 9.54) (a) Whenever a domestic business  
17 corporation has adopted and approved, in the manner required by  
18 sections 143 to 149 of this act, a plan of entity conversion  
19 providing for the corporation to be converted to a foreign  
20 unincorporated entity, articles of charter surrender shall be signed  
21 on behalf of the corporation by any officer or other duly authorized  
22 representative. The articles of charter surrender shall set forth:

23 (1) The name of the corporation;

24 (2) A statement that the articles of charter surrender  
25 are being filed in connection with the conversion of the corporation

1 to a foreign unincorporated entity;

2 (3) A statement that the conversion was duly approved by  
3 the shareholders in the manner required by the Nebraska Model  
4 Business Corporation Act and the articles of incorporation;

5 (4) The jurisdiction under the laws of which the  
6 surviving entity will be organized; and

7 (5) If the surviving entity will be a nonfiling entity,  
8 the address of its executive office immediately after the conversion.

9 (b) The articles of charter surrender shall be delivered  
10 by the corporation to the Secretary of State for filing. The articles  
11 of charter surrender shall take effect on the effective time provided  
12 in section 6 of this act.

13 Sec. 148. (MBCA 9.55) (a) When a conversion under  
14 sections 143 to 149 of this act becomes effective:

15 (1) The title to all real and personal property, both  
16 tangible and intangible, of the converting entity remains in the  
17 surviving entity without reversion or impairment;

18 (2) The liabilities of the converting entity remain the  
19 liabilities of the surviving entity;

20 (3) An action or proceeding pending against the  
21 converting entity continues against the surviving entity as if the  
22 conversion had not occurred;

23 (4) In the case of a surviving entity that is a filing  
24 entity, its articles of incorporation or public organic document and  
25 its private organic document become effective;



1           (5) In the case of a surviving entity that is a nonfiling  
2 entity, its private organic document becomes effective;

3           (6) The shares or interests of the converting entity are  
4 reclassified into shares, interests, other securities, obligations,  
5 rights to acquire shares, interests or other securities, or into cash  
6 or other property in accordance with the plan of conversion, and the  
7 shareholders or interest holders of the converting entity are  
8 entitled only to the rights provided to them under the terms of the  
9 conversion and to any appraisal rights they may have under the  
10 organic law of the converting entity; and

11           (7) The surviving entity is deemed to:

12           (i) Be incorporated or organized under and subject to the  
13 organic law of the converting entity for all purposes;

14           (ii) Be the same corporation or unincorporated entity  
15 without interruption as the converting entity; and

16           (iii) Have been incorporated or otherwise organized on  
17 the date that the converting entity was originally incorporated or  
18 organized.

19           (b) When a conversion of a domestic business corporation  
20 to a foreign other entity becomes effective, the surviving entity is  
21 deemed to agree that it will promptly pay the amount, if any, to  
22 which such shareholders are entitled under sections 171 to 183 of  
23 this act.

24           (c) A shareholder who becomes subject to owner liability  
25 for some or all of the debts, obligations, or liabilities of the

1 surviving entity shall be personally liable only for those debts,  
2 obligations, or liabilities of the surviving entity that arise after  
3 the effective time of the articles of entity conversion.

4 (d) The owner liability of an interest holder in an  
5 unincorporated entity that converts to a domestic business  
6 corporation shall be as follows:

7 (1) The conversion does not discharge any owner liability  
8 under the organic law of the unincorporated entity to the extent any  
9 such owner liability arose before the effective time of the articles  
10 of entity conversion;

11 (2) The interest holder shall not have owner liability  
12 under the organic law of the unincorporated entity for any debt,  
13 obligation, or liability of the corporation that arises after the  
14 effective time of the articles of entity conversion;

15 (3) The provisions of the organic law of the  
16 unincorporated entity shall continue to apply to the collection or  
17 discharge of any owner liability preserved by subdivision (1) of this  
18 subsection as if the conversion had not occurred; and

19 (4) The interest holder shall have whatever rights of  
20 contribution from other interest holders that are provided by the  
21 organic law of the unincorporated entity with respect to any owner  
22 liability preserved by subdivision (1) of this subsection as if the  
23 conversion had not occurred.

24 Sec. 149. (MBCA 9.56) (a) Unless otherwise provided in a  
25 plan of entity conversion of a domestic business corporation, after

1 the plan has been adopted and approved as required by sections 143 to  
2 149 of this act and at any time before the entity conversion has  
3 become effective, it may be abandoned by the board of directors  
4 without action by the shareholders.

5 (b) If an entity conversion is abandoned after articles  
6 of entity conversion or articles of charter surrender have been filed  
7 with the Secretary of State but before the entity conversion has  
8 become effective, a statement that the entity conversion has been  
9 abandoned in accordance with this section, signed by an officer or  
10 other duly authorized representative, shall be delivered to the  
11 Secretary of State for filing prior to the effective date of the  
12 entity conversion. Upon filing, the statement shall take effect and  
13 the entity conversion shall be deemed abandoned and shall not become  
14 effective.

15 Sec. 150. (MBCA 10.01) (a) A corporation may amend its  
16 articles of incorporation at any time to add or change a provision  
17 that is required or permitted in the articles of incorporation as of  
18 the effective date of the amendment or to delete a provision that is  
19 not required to be contained in the articles of incorporation.

20 (b) A shareholder of the corporation does not have a  
21 vested property right resulting from any provision in the articles of  
22 incorporation, including provisions relating to management, control,  
23 capital structure, dividend entitlement, or purpose or duration of  
24 the corporation.

25 Sec. 151. (MBCA 10.02) If a corporation has not yet

1 issued shares, its board of directors or its incorporators if it has  
2 no board of directors may adopt one or more amendments to the  
3 corporation's articles of incorporation.

4           Sec. 152. (MBCA 10.03) If a corporation has issued  
5 shares, an amendment to the articles of incorporation shall be  
6 adopted in the following manner:

7           (1) The proposed amendment must be adopted by the board  
8 of directors.

9           (2) Except as provided in sections 154, 156, and 157 of  
10 this act, after adopting the proposed amendment the board of  
11 directors must submit the amendment to the shareholders for their  
12 approval. The board of directors must also transmit to the  
13 shareholders a recommendation that the shareholders approve the  
14 amendment unless (i) the board of directors makes a determination  
15 that because of conflicts of interest or other special circumstances  
16 it should not make such a recommendation or (ii) section 101 of this  
17 act applies. If subdivision (2)(i) or (ii) of this section applies,  
18 the board must transmit to the shareholders the basis for so  
19 proceeding.

20           (3) The board of directors may condition its submission  
21 of the amendment to the shareholders on any basis.

22           (4) If the amendment is required to be approved by the  
23 shareholders and the approval is to be given at a meeting, the  
24 corporation must notify each shareholder, whether or not entitled to  
25 vote, of the meeting of shareholders at which the amendment is to be

1 submitted for approval. The notice must state that the purpose, or  
2 one of the purposes, of the meeting is to consider the amendment and  
3 must contain or be accompanied by a copy of the amendment.

4 (5) Unless the articles of incorporation or the board of  
5 directors acting pursuant to subdivision (3) of this section,  
6 requires a greater vote or a greater number of shares to be present,  
7 approval of the amendment requires the approval of the shareholders  
8 at a meeting at which a quorum consisting of at least a majority of  
9 the votes entitled to be cast on the amendment exists, and, if any  
10 class or series of shares is entitled to vote as a separate group on  
11 the amendment, except as provided in subsection (c) of section 153 of  
12 this act, the approval of each such separate voting group at a  
13 meeting at which a quorum of the voting group consisting of at least  
14 a majority of the votes entitled to be cast on the amendment by that  
15 voting group exists.

16 Sec. 153. (MBCA 10.04) (a) If a corporation has more than  
17 one class of shares outstanding, the holders of the outstanding  
18 shares of a class are entitled to vote as a separate voting group, if  
19 shareholder voting is otherwise required by the Nebraska Model  
20 Business Corporation Act, on a proposed amendment to the articles of  
21 incorporation if the amendment would:

22 (1) Effect an exchange or reclassification of all or part  
23 of the shares of the class into shares of another class;

24 (2) Effect an exchange or reclassification or create the  
25 right of exchange of all or part of the shares of another class into

1 shares of the class;

2 (3) Change the rights, preferences, or limitations of all  
3 or part of the shares of the class;

4 (4) Change the shares of all or part of the class into a  
5 different number of shares of the same class;

6 (5) Create a new class of shares having rights or  
7 preferences with respect to distributions that are prior or superior  
8 to the shares of the class;

9 (6) Increase the rights, preferences, or number of  
10 authorized shares of any class that, after giving effect to the  
11 amendment, have rights or preferences with respect to distributions  
12 that are prior or superior to the shares of the class;

13 (7) Limit or deny an existing preemptive right of all or  
14 part of the shares of the class; or

15 (8) Cancel or otherwise affect rights to distributions  
16 that have accumulated but not yet been authorized on all or part of  
17 the shares of the class.

18 (b) If a proposed amendment would affect a series of a  
19 class of shares in one or more of the ways described in subsection  
20 (a) of this section, the holders of shares of that series are  
21 entitled to vote as a separate voting group on the proposed  
22 amendment.

23 (c) If a proposed amendment that entitles the holders of  
24 two or more classes or series of shares to vote as separate voting  
25 groups under this section would affect those two or more classes or

1 series in the same or substantially similarly way, the holders of  
2 shares of all the classes or series so affected must vote together as  
3 a single voting group on the proposed amendment unless otherwise  
4 provided in the articles of incorporation or required by the board of  
5 directors.

6 (d) A class or series of shares is entitled to the voting  
7 rights granted by this section although the articles of incorporation  
8 provide that the shares are nonvoting shares.

9 Sec. 154. (MBCA 10.05) Unless the articles of  
10 incorporation provide otherwise, a corporation's board of directors  
11 may adopt amendments to the corporation's articles of incorporation  
12 without shareholder approval:

13 (1) To extend the duration of the corporation if it was  
14 incorporated at a time when limited duration was required by law;

15 (2) To delete the names and addresses of the initial  
16 directors;

17 (3) To delete the name and address of the initial  
18 registered agent or registered office, if a statement of change is on  
19 file with the Secretary of State;

20 (4) If the corporation has only one class of shares  
21 outstanding:

22 (i) To change each issued and unissued authorized share  
23 of the class into a greater number of whole shares of that class; or

24 (ii) To increase the number of authorized shares of the  
25 class to the extent necessary to permit the issuance of shares as a

1 share dividend;

2 (5) To change the corporate name by substituting the word  
3 corporation, incorporated, company, limited, or the abbreviation  
4 corp., inc., co., or ltd., for a similar word or abbreviation in the  
5 name or by adding, deleting, or changing a geographical attribution  
6 for the name;

7 (6) To reflect a reduction in authorized shares, as a  
8 result of the operation of subsection (b) of section 51 of this act,  
9 when the corporation has acquired its own shares and the articles of  
10 incorporation prohibit the reissue of the acquired shares;

11 (7) To delete a class of shares from the articles of  
12 incorporation, as a result of the operation of subsection (b) of  
13 section 51 of this act, when there are no remaining shares of the  
14 class because the corporation has acquired all shares of the class  
15 and the articles of incorporation prohibit the reissue of the  
16 acquired shares; or

17 (8) To make any change expressly permitted by subsections  
18 (a) or (b) of section 38 of this act to be made without shareholder  
19 approval.

20 Sec. 155. (MBCA 10.06) After an amendment to the articles  
21 of incorporation has been adopted and approved in the manner required  
22 by the Nebraska Model Business Corporation Act and by the articles of  
23 incorporation, the corporation shall deliver to the Secretary of  
24 State, for filing, articles of amendment, which shall set forth:

25 (1) The name of the corporation;



1           (2) The text of each amendment adopted, or the  
2 information required by subdivision (k)(5) of section 3 of this act;

3           (3) If an amendment provides for an exchange,  
4 reclassification, or cancellation of issued shares, provisions for  
5 implementing the amendment if not contained in the amendment itself,  
6 which may be made dependent upon facts objectively ascertainable  
7 outside the articles of amendment in accordance with subdivision (k)  
8 (5) of section 3 of this act;

9           (4) The date of each amendment's adoption; and

10          (5) If an amendment:

11          (i) Was adopted by the incorporators or board of  
12 directors without shareholder approval, a statement that the  
13 amendment was duly approved by the incorporators or by the board of  
14 directors, as the case may be, and that shareholder approval was not  
15 required;

16          (ii) Required approval by the shareholders, a statement  
17 that the amendment was duly approved by the shareholders in the  
18 manner required by the act and by the articles of incorporation; or

19          (iii) Is being filed pursuant to subdivision (k)(5) of  
20 section 3 of this act, a statement to that effect.

21          Sec. 156. (MBCA 10.07) (a) A corporation's board of  
22 directors may restate its articles of incorporation at any time, with  
23 or without shareholder approval, to consolidate all amendments into a  
24 single document.

25          (b) If the restated articles include one or more new

1 amendments that require shareholder approval, the amendments must be  
2 adopted and approved as provided in section 152 of this act.

3 (c) A corporation that restates its articles of  
4 incorporation shall deliver to the Secretary of State for filing  
5 articles of restatement setting forth the name of the corporation and  
6 the text of the restated articles of incorporation together with a  
7 certificate which states that the restated articles consolidate all  
8 amendments into a single document and, if a new amendment is included  
9 in the restated articles, also includes the statements required under  
10 section 155 of this act.

11 (d) Duly adopted restated articles of incorporation  
12 supersede the original articles of incorporation and all amendments  
13 thereto.

14 (e) The Secretary of State may certify restated articles  
15 of incorporation as the articles of incorporation currently in effect  
16 without including the certificate information required by subsection  
17 (c) of this section.

18 Sec. 157. (MBCA 10.08) (a) A corporation's articles of  
19 incorporation may be amended without action by the board of directors  
20 or shareholders to carry out a plan of reorganization ordered or  
21 decreed by a court of competent jurisdiction under the authority of a  
22 law of the United States.

23 (b) The individual or individuals designated by the court  
24 shall deliver to the Secretary of State for filing articles of  
25 amendment setting forth:

- 1           (1) The name of the corporation;  
2           (2) The text of each amendment approved by the court;  
3           (3) The date of the court's order or decree approving the  
4 articles of amendment;  
5           (4) The title of the reorganization proceeding in which  
6 the order or decree was entered; and  
7           (5) A statement that the court had jurisdiction of the  
8 proceeding under federal statute.

9           (c) This section does not apply after entry of a final  
10 decree in the reorganization proceeding even though the court retains  
11 jurisdiction of the proceeding for limited purposes unrelated to  
12 consummation of the reorganization plan.

13           Sec. 158. (MBCA 10.09) An amendment to the articles of  
14 incorporation does not affect a cause of action existing against or  
15 in favor of the corporation, a proceeding to which the corporation is  
16 a party, or the existing rights of persons other than shareholders of  
17 the corporation. An amendment changing a corporation's name does not  
18 abate a proceeding brought by or against the corporation in its  
19 former name.

20           Sec. 159. (MBCA 10.20) (a) A corporation's shareholders  
21 may amend or repeal the corporation's bylaws.

22           (b) A corporation's board of directors may amend or  
23 repeal the corporation's bylaws, unless:

24           (1) The articles of incorporation or section 160 of this  
25 act reserve that power exclusively to the shareholders in whole or

1 part; or

2 (2) Except as provided in subsection (d) of section 24 of  
3 this act, the shareholders in amending, repealing, or adopting a  
4 bylaw expressly provide that the board of directors may not amend,  
5 repeal, or reinstate that bylaw.

6 Sec. 160. (MBCA 10.21) (a) A bylaw that increases a  
7 quorum or voting requirement for the board of directors may be  
8 amended or repealed:

9 (1) If originally adopted by the shareholders, only by  
10 the shareholders unless the bylaw otherwise provides; or

11 (2) If adopted by the board of directors, either by the  
12 shareholders or by the board of directors.

13 (b) A bylaw adopted or amended by the shareholders that  
14 increases a quorum or voting requirement for the board of directors  
15 may provide that it can be amended or repealed only by a specified  
16 vote of either the shareholders or the board of directors.

17 (c) Action by the board of directors under subsection (a)  
18 of this section to amend or repeal a bylaw that changes the quorum or  
19 voting requirement for the board of directors must meet the same  
20 quorum requirement and be adopted by the same vote required to take  
21 action under the quorum and voting requirement then in effect or  
22 proposed to be adopted, whichever is greater.

23 Sec. 161. (MBCA 11.01) As used in sections 161 to 168 of  
24 this act:

25 (1) Merger means a business combination pursuant to

1 section 162 of this act.

2 (2) Party to a merger or party to a share exchange means  
3 any domestic or foreign corporation or eligible entity that will:

4 (i) Merge under a plan of merger;

5 (ii) Acquire shares or eligible interests of another  
6 corporation or an eligible entity in a share exchange; or

7 (iii) Have all of its shares or eligible interests or all  
8 of one or more classes or series of its shares or eligible interests  
9 acquired in a share exchange.

10 (3) Share exchange means a business combination pursuant  
11 to section 163 of this act.

12 (4) Survivor in a merger means the corporation or  
13 eligible entity into which one or more other corporations or eligible  
14 entities are merged. A survivor of a merger may preexist the merger  
15 or be created by the merger.

16 Sec. 162. (MBCA 11.02) (a) One or more domestic business  
17 corporations may merge with one or more domestic or foreign business  
18 corporations or eligible entities pursuant to a plan of merger or two  
19 or more foreign business corporations or domestic or foreign eligible  
20 entities may merge into a new domestic business corporation to be  
21 created in the merger in the manner provided in sections 161 to 168  
22 of this act.

23 (b) A foreign business corporation, or a foreign eligible  
24 entity, may be a party to a merger with a domestic business  
25 corporation or may be created by the terms of the plan of merger only

1 if the merger is permitted by the organic law of the foreign business  
2 corporation or eligible entity.

3 (c) If the organic law of a domestic eligible entity does  
4 not provide procedures for the approval of a merger, a plan of merger  
5 may be adopted and approved, the merger effectuated, and appraisal  
6 rights exercised in accordance with the procedures in sections 161 to  
7 168 and 171 to 183 of this act. For the purposes of applying sections  
8 161 to 168 and 171 to 183 of this act:

9 (1) The eligible entity, its members or interest holders,  
10 eligible interests, and organic documents taken together shall be  
11 deemed to be a domestic business corporation, shareholders, shares  
12 and articles of incorporation, respectively and vice versa as the  
13 context may require; and

14 (2) If the business and affairs of the eligible entity  
15 are managed by a group of persons that is not identical to the  
16 members or interest holders, that group shall be deemed to be the  
17 board of directors.

18 (d) The plan of merger must include:

19 (1) The name of each domestic or foreign business  
20 corporation or eligible entity that will merge and the name of the  
21 domestic or foreign business corporation or eligible entity that will  
22 be the survivor of the merger;

23 (2) The terms and conditions of the merger;

24 (3) The manner and basis of converting the shares of each  
25 merging domestic or foreign business corporation and eligible

1 interests of each merging domestic or foreign eligible entity into  
2 shares or other securities, eligible interests, obligations, rights  
3 to acquire shares, other securities or eligible interests, cash,  
4 other property, or any combination of the foregoing;

5 (4) The articles of incorporation of any domestic or  
6 foreign business or nonprofit corporation or the organic documents of  
7 any domestic or foreign unincorporated entity to be created by the  
8 merger or, if a new domestic or foreign business or nonprofit  
9 corporation or unincorporated entity is not to be created by the  
10 merger, any amendments to the survivor's articles of incorporation or  
11 organic documents; and

12 (5) Any other provisions required by the laws under which  
13 any party to the merger is organized or by which it is governed or by  
14 the articles of incorporation or organic document of any such party.

15 (e) Terms of a plan of merger may be made dependent on  
16 facts objectively ascertainable outside the plan in accordance with  
17 subsection (k) of section 3 of this act.

18 (f) The plan of merger may also include a provision that  
19 the plan may be amended prior to filing articles of merger, but if  
20 the shareholders of a domestic corporation that is a party to the  
21 merger are required or permitted to vote on the plan, the plan must  
22 provide that subsequent to approval of the plan by such shareholders  
23 the plan may not be amended to change:

24 (1) The amount or kind of shares or other securities,  
25 eligible interests, obligations, rights to acquire shares, other

1 securities or eligible interests, cash, or other property to be  
2 received under the plan by the shareholders of or owners of eligible  
3 interests in any party to the merger;

4 (2) The articles of incorporation of any corporation or  
5 the organic documents of any unincorporated entity that will survive  
6 or be created as a result of the merger, except for changes permitted  
7 by section 154 of this act or by comparable provisions of the organic  
8 laws of any such foreign corporation or domestic or foreign  
9 unincorporated entity; or

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

13 (g) Property held in trust or for charitable purposes  
14 under the laws of this state by a domestic or foreign eligible entity  
15 shall not be diverted by a merger from the objects for which it was  
16 donated, granted, or devised unless and until the eligible entity  
17 obtains an order of the court specifying the disposition of the  
18 property to the extent required by and pursuant to cy pres or other  
19 nondiversion law of this state.

20 Sec. 163. (MBCA 11.03) (a) Through a share exchange:

21 (1) A domestic corporation may acquire all of the shares  
22 of one or more classes or series of shares of another domestic or  
23 foreign corporation, or all of the interests of one or more classes  
24 or series of interests of a domestic or foreign other entity, in  
25 exchange for shares or other securities, interests, obligations,



1 rights to acquire shares or other securities, cash, other property,  
2 or any combination of the foregoing pursuant to a plan of share  
3 exchange; or

4 (2) All of the shares of one or more classes or series of  
5 shares of a domestic corporation may be acquired by another domestic  
6 or foreign corporation or other entity in exchange for shares or  
7 other securities, interests, obligations, rights to acquire shares or  
8 other securities, cash, other property, or any combination of the  
9 foregoing pursuant to a plan of share exchange.

10 (b) A foreign corporation or eligible entity may be a  
11 party to a share exchange only if the share exchange is permitted by  
12 the organic law of the corporation or other entity.

13 (c) If the organic law of a domestic other entity does  
14 not provide procedures for the approval of a share exchange, a plan  
15 of share exchange may be adopted and approved and the share exchange  
16 effectuated in accordance with the procedures, if any, for a merger.  
17 If the organic law of a domestic other entity does not provide  
18 procedures for the approval of either a share exchange or a merger, a  
19 plan of share exchange may be adopted and approved the share exchange  
20 effectuated and appraisal rights exercised in accordance with the  
21 procedures in sections 161 to 168 and 171 to 183 of this act. For the  
22 purposes of applying sections 161 to 168 and 171 to 183 of this act:

23 (1) The other entity, its interest holders, interests and  
24 organic documents taken together shall be deemed to be a domestic  
25 business corporation, shareholders, shares, and articles of

1 incorporation, respectively and vice versa as the context may  
2 require; and

3 (2) If the business and affairs of the other entity are  
4 managed by a group of persons that is not identical to the interest  
5 holders, that group shall be deemed to be the board of directors.

6 (d) The plan of share exchange must include:

7 (1) The name of each corporation or other entity whose  
8 shares or interests will be acquired and the name of the corporation  
9 or other entity that will acquire those shares or interests;

10 (2) The terms and conditions of the share exchange;

11 (3) The manner and basis of exchanging shares of a  
12 corporation or interests in an other entity whose shares or interests  
13 will be acquired under the share exchange into shares or other  
14 securities, interests, obligations, rights to acquire shares, other  
15 securities or interests, cash, other property, or any combination of  
16 the foregoing; and

17 (4) Any other provisions required by the laws under which  
18 any party to the share exchange is organized or by the articles of  
19 incorporation or organic document of any such party.

20 (e) Terms of a plan of share exchange may be made  
21 dependent on facts objectively ascertainable outside the plan in  
22 accordance with subsection (k) of section 3 of this act.

23 (f) The plan of share exchange may also include a  
24 provision that the plan may be amended prior to filing articles of  
25 share exchange, but if the shareholders of a domestic corporation

1 that is a party to the share exchange are required or permitted to  
2 vote on the plan, the plan must provide that subsequent to approval  
3 of the plan by such shareholders the plan may not be amended to  
4 change:

5 (1) The amount or kind of shares or other securities,  
6 interests, obligations, rights to acquire shares, other securities or  
7 interests, cash, or other property to be issued by the corporation or  
8 to be received under the plan by the shareholders of or owners of  
9 interests in any party to the share exchange; or

10 (2) Any of the other terms or conditions of the plan if  
11 the change would adversely affect such shareholders in any material  
12 respect.

13 (g) Section 163 of this act does not limit the power of a  
14 domestic corporation to acquire shares of another corporation or  
15 interests in another entity in a transaction other than a share  
16 exchange.

17 Sec. 164. (MBCA 11.04) In the case of a domestic  
18 corporation that is a party to a merger or share exchange:

19 (1) The plan of merger or share exchange must be adopted  
20 by the board of directors.

21 (2) Except as provided in subdivision (8) of this section  
22 and in section 165 of this act, after adopting the plan of merger or  
23 share exchange the board of directors must submit the plan to the  
24 shareholders for their approval. The board of directors must also  
25 transmit to the shareholders a recommendation that the shareholders

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

7 (3) The board of directors may condition its submission  
8 of the plan of merger or share exchange to the shareholders on any  
9 basis.

10 (4) If the plan of merger or share exchange is required  
11 to be approved by the shareholders and if the approval is to be given  
12 at a meeting, the corporation must notify each shareholder, whether  
13 or not entitled to vote, of the meeting of shareholders at which the  
14 plan is to be submitted for approval. The notice must state that the  
15 purpose or one of the purposes of the meeting is to consider the plan  
16 and must contain or be accompanied by a copy or summary of the plan.  
17 If the corporation is to be merged into an existing corporation or  
18 other entity, the notice shall also include or be accompanied by a  
19 copy or summary of the articles of incorporation or organizational  
20 documents of that corporation or other entity. If the corporation is  
21 to be merged into a corporation or other entity that is to be created  
22 pursuant to the merger, the notice shall include or be accompanied by  
23 a copy or a summary of the articles of incorporation or  
24 organizational documents of the new corporation or other entity.

25 (5) Unless the articles of incorporation or the board of

1 directors acting pursuant to subdivision (3) of this section requires  
2 a greater vote or a greater number of votes to be present, approval  
3 of the plan of merger or share exchange requires the approval of the  
4 shareholders at a meeting at which a quorum consisting of at least a  
5 majority of the votes entitled to be cast on the plan exists, and if  
6 any class or series of shares is entitled to vote as a separate group  
7 on the plan of merger or share exchange, the approval of each such  
8 separate voting group at a meeting at which a quorum of the voting  
9 group consisting of at least a majority of the votes entitled to be  
10 cast on the merger or share exchange by that voting group is present.

11 (6) Subject to subdivision (7) of this section, separate  
12 voting by voting groups is required:

13 (i) On a plan of merger, by each class or series of  
14 shares that:

15 (A) Are to be converted under the plan of merger into  
16 other securities, interests, obligations, rights to acquire shares or  
17 other securities or interests, cash, other property, or any  
18 combination of the foregoing; or

19 (B) Are entitled to vote as a separate group on a  
20 provision in the plan that constitutes a proposed amendment to  
21 articles of incorporation of a surviving corporation that requires  
22 action by separate voting groups under section 153 of this act;

23 (ii) On a plan of share exchange, by each class or series  
24 of shares included in the exchange with each class or series  
25 constituting a separate voting group; and

1           (iii) On a plan of merger or share exchange, if the  
2 voting group is entitled under the articles of incorporation to vote  
3 as a voting group to approve a plan of merger or share exchange.

4           (7) The articles of incorporation may expressly limit or  
5 eliminate the separate voting rights provided in subdivisions (6)(i)  
6 (A) and (6)(ii) of this section as to any class or series of shares,  
7 except for a transaction that (i) includes what is or would be, if  
8 the corporation were the surviving corporation, an amendment subject  
9 to subdivision (6)(i)(B) of this section and (ii) will effect no  
10 significant change in the assets of the resulting entity including  
11 all parents and subsidiaries on a consolidated basis.

12           (8) Unless the articles of incorporation otherwise  
13 provide, approval by the corporation's shareholders of a plan of  
14 merger or share exchange is not required if:

15           (i) The corporation will survive the merger or is the  
16 acquiring corporation in a share exchange;

17           (ii) Except for amendments permitted by section 154 of  
18 this act, its articles of incorporation will not be changed;

19           (iii) Each shareholder of the corporation whose shares  
20 were outstanding immediately before the effective date of the merger  
21 or share exchange will hold the same number of shares, with identical  
22 preferences, limitations, and relative rights, immediately after the  
23 effective date of change; and

24           (iv) The issuance in the merger or share exchange of  
25 shares or other securities convertible into or rights exercisable for

1 shares does not require a vote under subsection (f) of section 42 of  
2 this act.

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

9 Sec. 165. (MBCA 11.05) (a) A domestic parent corporation  
10 that owns shares of a domestic or foreign subsidiary corporation that  
11 carry at least ninety percent of the voting power of each class and  
12 series of the outstanding shares of the subsidiary that have voting  
13 power may merge the subsidiary into itself or into another such  
14 subsidiary, or merge itself into the subsidiary, without the approval  
15 of the board of directors or shareholders of the subsidiary unless  
16 the articles of incorporation of any of the corporations otherwise  
17 provide, and unless, in the case of a foreign subsidiary, approval by  
18 the subsidiary's board of directors or shareholders is required by  
19 the laws under which the subsidiary is organized.

20 (b) If under subsection (a) of this section approval of a  
21 merger by the subsidiary's shareholders is not required, the parent  
22 corporation shall within ten days after the effective date of the  
23 merger notify each of the subsidiary's shareholders that the merger  
24 has become effective.

25 (c) Except as provided in subsections (a) and (b) of this

1 section, a merger between a parent and a subsidiary shall be governed  
2 by the provisions of sections 161 to 168 of this act applicable to  
3 mergers generally.

4           Sec. 166. (MBCA 11.06) (a) After a plan of merger or  
5 share exchange has been adopted and approved as required by the  
6 Nebraska Model Business Corporation Act, articles of merger or share  
7 exchange shall be signed on behalf of each party to the merger or  
8 share exchange by any officer or other duly authorized  
9 representative. The articles shall set forth:

10           (1) The names of the parties to the merger or share  
11 exchange;

12           (2) If the articles of incorporation of the survivor of a  
13 merger are amended, or if a new corporation is created as a result of  
14 a merger, the amendments to the survivor's articles of incorporation  
15 or the articles of incorporation of the new corporation;

16           (3) If the plan of merger or share exchange required  
17 approval by the shareholders of a domestic corporation that was a  
18 party to the merger or share exchange, a statement that the plan was  
19 duly approved by the shareholders and, if voting by any separate  
20 voting group was required, by each such separate voting group in the  
21 manner required by the act and the articles of incorporation;

22           (4) If the plan of merger or share exchange did not  
23 require approval by the shareholders of a domestic corporation that  
24 was a party to the merger or share exchange, a statement to that  
25 effect; and



1           (5) As to each foreign corporation or eligible entity  
2 that was a party to the merger or share exchange, a statement that  
3 the participation of the foreign corporation or eligible entity was  
4 duly authorized as required by the organic law of the corporation or  
5 eligible entity.

6           (b) Articles of merger or share exchange shall be  
7 delivered to the Secretary of State for filing by the survivor of the  
8 merger or the acquiring corporation in a share exchange and shall  
9 take effect at the effective time provided in section 6 of this act.  
10 Articles of merger or share exchange filed under this section may be  
11 combined with any filing required under the organic law of any  
12 domestic eligible entity involved in the transaction if the combined  
13 filing satisfies the requirements of both this section and the other  
14 organic law.

15           Sec. 167. (MBCA 11.07) (a) When a merger becomes  
16 effective:

17           (1) The corporation or eligible entity that is designated  
18 in the plan of merger as the survivor continues or comes into  
19 existence, as the case may be;

20           (2) The separate existence of every corporation or  
21 eligible entity that is merged into the survivor ceases;

22           (3) All property owned by and every contract right  
23 possessed by each corporation or eligible entity that merges into the  
24 survivor is vested in the survivor without reversion or impairment;

25           (4) All liabilities of each corporation or eligible

1 entity that is merged into the survivor are vested in the survivor;

2 (5) The name of the survivor may, but need not be,  
3 substituted in any pending proceeding for the name of any party to  
4 the merger whose separate existence ceased in the merger;

5 (6) The articles of incorporation or organic documents of  
6 the survivor are amended to the extent provided in the plan of  
7 merger;

8 (7) The articles of incorporation or organic documents of  
9 a survivor that is created by the merger become effective; and

10 (8) The shares of each corporation that is a party to the  
11 merger and the interests in an eligible entity that is a party to a  
12 merger that are to be converted under the plan of merger into shares,  
13 eligible interests, obligations, rights to acquire securities or  
14 other securities or eligible interests, cash, other property, or any  
15 combination of the foregoing, are converted, and the former holders  
16 of such shares or eligible interests are entitled only to the rights  
17 provided to them in the plan of merger or to any rights they may have  
18 under sections 171 to 183 of this act or the organic law of the  
19 eligible entity.

20 (b) When a share exchange becomes effective, the shares  
21 of each domestic corporation that are to be exchanged for shares or  
22 other securities, interests, obligations, rights to acquire shares or  
23 other securities, cash, other property, or any combination of the  
24 foregoing are entitled only to the rights provided to them in the  
25 plan of share exchange or to any rights they may have under sections

1 171 to 183 of this act.

2 (c) A person who becomes subject to owner liability for  
3 some or all of the debts, obligations, or liabilities of any entity  
4 as a result of a merger or share exchange shall have owner liability  
5 only to the extent provided in the organic law of the entity and only  
6 for those debts, obligations, and liabilities that arise after the  
7 effective time of the articles of merger or share exchange.

8 (d) Upon a merger becoming effective, a foreign  
9 corporation or a foreign eligible entity that is the survivor of the  
10 merger is deemed to agree that it will promptly pay the amount, if  
11 any, to which such shareholders are entitled under sections 171 to  
12 183 of this act.

13 (e) The effect of a merger or share exchange on the owner  
14 liability of a person who had owner liability for some or all of the  
15 debts, obligations, or liabilities of a party to the merger or share  
16 exchange shall be as follows:

17 (1) The merger or share exchange does not discharge any  
18 owner liability under the organic law of the entity in which the  
19 person was a shareholder or interest holder to the extent any such  
20 owner liability arose before the effective time of the articles of  
21 merger or share exchange;

22 (2) The person shall not have owner liability under the  
23 organic law of the entity in which the person was a shareholder or  
24 interest holder prior to the merger or share exchange for any debt,  
25 obligation, or liability that arises after the effective time of the

1 articles of merger or share exchange;

2 (3) The provisions of the organic law of any entity for  
3 which the person had owner liability before the merger or share  
4 exchange shall continue to apply to the collection or discharge of  
5 any owner liability preserved by subdivision (1) of this subsection  
6 as if the merger or share exchange had not occurred; and

7 (4) The person shall have whatever rights of contribution  
8 from other persons provided by the organic law of the entity for  
9 which the person had owner liability with respect to any owner  
10 liability preserved by subdivision (1) of this subsection as if the  
11 merger or share exchange had not occurred.

12 Sec. 168. (MBCA 11.08) (a) Unless otherwise provided in a  
13 plan of merger or share exchange or in the laws under which a foreign  
14 business corporation or a domestic or foreign eligible entity that is  
15 a party to a merger or a share exchange is organized or by which it  
16 is governed, after the plan has been adopted and approved as required  
17 by sections 161 to 168 of this act, and at any time before the merger  
18 or share exchange has become effective, it may be abandoned by a  
19 domestic business corporation that is a party thereto without action  
20 by its shareholders in accordance with any procedures set forth in  
21 the plan of merger or share exchange or, if no such procedures are  
22 set forth in the plan, in the manner determined by the board of  
23 directors, subject to any contractual rights of other parties to the  
24 merger or share exchange.

25 (b) If a merger or share exchange is abandoned under

1 subsection (a) of this section after articles of merger or share  
2 exchange have been filed with the Secretary of State but before the  
3 merger or share exchange has become effective, a statement that the  
4 merger or share exchange has been abandoned in accordance with this  
5 section, signed on behalf of a party to the merger or share exchange  
6 by an officer or other duly authorized representative, shall be  
7 delivered to the Secretary of State for filing prior to the effective  
8 date of the merger or share exchange. Upon filing, the statement  
9 shall take effect and the merger or share exchange shall be deemed  
10 abandoned and shall not become effective.

11 Sec. 169. (MBCA 12.01) No approval of the shareholders of  
12 a corporation is required, unless the articles of incorporation  
13 otherwise provide:

14 (1) To sell, lease, exchange, or otherwise dispose of any  
15 or all of the corporation's assets in the usual and regular course of  
16 business;

17 (2) To mortgage, pledge, dedicate to the repayment of  
18 indebtedness, whether with or without recourse, or otherwise encumber  
19 any or all of the corporation's assets, whether or not in the usual  
20 and regular course of business;

21 (3) To transfer any or all of the corporation's assets to  
22 one or more corporations or other entities all of the shares or  
23 interests of which are owned by the corporation; or

24 (4) To distribute assets pro rata to the holders of one  
25 or more classes or series of the corporation's shares.

1           Sec. 170. (MBCA 12.02) (a) A sale, lease, exchange, or  
2 other disposition of assets, other than a disposition described in  
3 section 169 of this act, requires approval of the corporation's  
4 shareholders if the disposition would leave the corporation without a  
5 significant continuing business activity. If a corporation retains a  
6 business activity that represented at least twenty-five percent of  
7 total assets at the end of the most recently completed fiscal year,  
8 and twenty-five percent of either income from continuing operations  
9 before taxes or revenues from continuing operations for that fiscal  
10 year, in each case of the corporation and its subsidiaries on a  
11 consolidated basis, the corporation will conclusively be deemed to  
12 have retained a significant continuing business activity.

13           (b) A disposition that requires approval of the  
14 shareholders under subsection (a) of this section shall be initiated  
15 by a resolution by the board of directors authorizing the  
16 disposition. After adoption of such a resolution, the board of  
17 directors shall submit the proposed disposition to the shareholders  
18 for their approval. The board of directors shall also transmit to the  
19 shareholders a recommendation that the shareholders approve the  
20 proposed disposition, unless (i) the board of directors makes a  
21 determination that because of conflicts of interest or other special  
22 circumstances it should not make such a recommendation or (ii)  
23 section 101 of this act applies. If either subdivision (b)(i) or (ii)  
24 of this section applies, the board of directors shall transmit to the  
25 shareholders the basis for so proceeding.

1           (c) The board of directors may condition its submission  
2 of a disposition to the shareholders under subsection (b) of this  
3 section on any basis.

4           (d) If a disposition is required to be approved by the  
5 shareholders under subsection (a) of this section and if the approval  
6 is to be given at a meeting, the corporation shall notify each  
7 shareholder, whether or not entitled to vote, of the meeting of  
8 shareholders at which the disposition is to be submitted for  
9 approval. The notice shall state that the purpose or one of the  
10 purposes of the meeting is to consider the disposition and shall  
11 contain a description of the disposition including the terms and  
12 conditions thereof and the consideration to be received by the  
13 corporation.

14           (e) Unless the articles of incorporation or the board of  
15 directors acting pursuant to subsection (c) of this section requires  
16 a greater vote or a greater number of votes to be present, the  
17 approval of a disposition by the shareholders shall require the  
18 approval of the shareholders at a meeting at which a quorum  
19 consisting of at least a majority of the votes entitled to be cast on  
20 the disposition exists.

21           (f) After a disposition has been approved by the  
22 shareholders under subsection (b) of this section and at any time  
23 before the disposition has been consummated, it may be abandoned by  
24 the corporation without action by the shareholders subject to any  
25 contractual rights of other parties to the disposition.

1           (g) A disposition of assets in the course of dissolution  
2 under sections 184 to 202 of this act is not governed by this  
3 section.

4           (h) The assets of a direct or indirect consolidated  
5 subsidiary shall be deemed the assets of the parent corporation for  
6 the purposes of this section.

7           Sec. 171. (MBCA 13.01) In sections 171 to 183 of this  
8 act:

9           (1) Affiliate means a person that directly or indirectly  
10 through one or more intermediaries controls, is controlled by, or is  
11 under common control with another person or is a senior executive  
12 thereof. For purposes of subdivision (6) of this section, a person is  
13 deemed to be an affiliate of its senior executives.

14           (2) Beneficial shareholder means a person who is the  
15 beneficial owner of shares held in a voting trust or by a nominee on  
16 the beneficial owner's behalf.

17           (3) Corporation means the issuer of the shares held by a  
18 shareholder demanding appraisal and, for matters covered in sections  
19 176 to 182 of this act, includes the surviving entity in a merger.

20           (4) Fair value means the value of the corporation's  
21 shares determined:

22           (i) Immediately before the effectuation of the corporate  
23 action to which the shareholder objects;

24           (ii) Using customary and current valuation concepts and  
25 techniques generally employed for similar businesses in the context



1 of the transaction requiring appraisal; and

2 (iii) Without discounting for lack of marketability or  
3 minority status except, if appropriate, for amendments to the  
4 articles pursuant to subdivision (a)(5) of section 172 of this act.

5 (5) Interest means interest from the effective date of  
6 the corporate action until the date of payment at the rate of  
7 interest specified in section 45-104, as such rate may from time to  
8 time be adjusted by the Legislature.

9 (6) Interested transaction means a corporate action  
10 described in subsection (a) of section 172 of this act, other than a  
11 merger pursuant to section 165 of this act, involving an interested  
12 person in which any of the shares or assets of the corporation are  
13 being acquired or converted. As used in this definition:

14 (i) Interested person means a person or an affiliate of a  
15 person who at any time during the one-year period immediately  
16 preceding approval by the board of directors of the corporate action:

17 (A) Was the beneficial owner of twenty percent or more of  
18 the voting power of the corporation, other than as owner of excluded  
19 shares;

20 (B) Had the power, contractually or otherwise, other than  
21 as owner of excluded shares, to cause the appointment or election of  
22 twenty-five percent or more of the directors to the board of  
23 directors of the corporation; or

24 (C) Was a senior executive or director of the corporation  
25 or a senior executive of any affiliate thereof and that senior

1 executive or director will receive, as a result of the corporate  
2 action, a financial benefit not generally available to other  
3 shareholders as such, other than:

4 (I) Employment, consulting, retirement, or similar  
5 benefits established separately and not as part of or in  
6 contemplation of the corporate action;

7 (II) Employment, consulting, retirement, or similar  
8 benefits established in contemplation of or as part of the corporate  
9 action that are not more favorable than those existing before the  
10 corporate action or, if more favorable, that have been approved on  
11 behalf of the corporation in the same manner as is provided in  
12 section 122 of this act; or

13 (III) In the case of a director of the corporation who  
14 will, in the corporate action, become a director of the acquiring  
15 entity in the corporate action or one of its affiliates, rights and  
16 benefits as a director that are provided on the same basis as those  
17 afforded by the acquiring entity generally to other directors of such  
18 entity or such affiliate;

19 (ii) Beneficial owner means any person who, directly or  
20 indirectly, through any contract, arrangement, or understanding,  
21 other than a revocable proxy, has or shares the power to vote or to  
22 direct the voting of shares; except that a member of a national  
23 securities exchange is not deemed to be a beneficial owner of  
24 securities held directly or indirectly by it on behalf of another  
25 person solely because the member is the record holder of the

1 securities if the member is precluded by the rules of the exchange  
2 from voting without instruction on contested matters or matters that  
3 may affect substantially the rights or privileges of the holders of  
4 the securities to be voted. When two or more persons agree to act  
5 together for the purpose of voting their shares of the corporation,  
6 each member of the group formed thereby is deemed to have acquired  
7 beneficial ownership, as of the date of the agreement, of all voting  
8 shares of the corporation beneficially owned by any member of the  
9 group; and

10 (iii) Excluded shares means shares acquired pursuant to  
11 an offer for all shares having voting power if the offer was made  
12 within one year prior to the corporate action for consideration of  
13 the same kind and of a value equal to or less than that paid in  
14 connection with the corporate action;

15 (7) Preferred shares means a class or series of shares  
16 whose holders have preference over any other class or series with  
17 respect to distributions.

18 (8) Record shareholder means the person in whose name  
19 shares are registered in the records of the corporation or the  
20 beneficial owner of shares to the extent of the rights granted by a  
21 nominee certificate on file with the corporation.

22 (9) Senior executive means the chief executive officer,  
23 chief operating officer, chief financial officer, and anyone in  
24 charge of a principal business unit or function.

25 (10) Shareholder means both a record shareholder and a

1 beneficial shareholder.

2           Sec. 172. (MBCA 13.02) (a) A shareholder is entitled to  
3 appraisal rights and to obtain payment of the fair value of that  
4 shareholder's shares in the event of any of the following corporate  
5 actions:

6           (1) Consummation of a merger to which the corporation is  
7 a party (i) if shareholder approval is required for the merger by  
8 section 164 of this act, except that appraisal rights shall not be  
9 available to any shareholder of the corporation with respect to  
10 shares of any class or series that remain outstanding after  
11 consummation of the merger or (ii) if the corporation is a subsidiary  
12 and the merger is governed by section 165 of this act;

13           (2) Consummation of a share exchange to which the  
14 corporation is a party as the corporation whose shares will be  
15 acquired, except that appraisal rights shall not be available to any  
16 shareholder of the corporation with respect to any class or series of  
17 shares of the corporation that is not exchanged;

18           (3) Consummation of a disposition of assets pursuant to  
19 section 170 of this act if the shareholder is entitled to vote on the  
20 disposition, except that appraisal rights shall not be available to  
21 any shareholder of the corporation with respect to shares of any  
22 class or series if (i) under the terms of the corporate action  
23 approved by the shareholders there is to be distributed to  
24 shareholders in cash its net assets, in excess of a reasonable amount  
25 reserved to meet claims of the type described in sections 189 and 190

1 of this act, (A) within one year after the shareholders' approval of  
2 the action and (B) in accordance with their respective interests  
3 determined at the time of distribution and (ii) the disposition of  
4 assets is not an interested transaction;

5 (4) An amendment of the articles of incorporation with  
6 respect to a class or series of shares that reduces the number of  
7 shares of a class or series owned by the shareholder to a fraction of  
8 a share if the corporation has the obligation or right to repurchase  
9 the fractional share so created;

10 (5) Any other amendment to the articles of incorporation,  
11 merger, share exchange, or disposition of assets to the extent  
12 provided by the articles of incorporation, bylaws, or a resolution of  
13 the board of directors;

14 (6) Consummation of a domestication if the shareholder  
15 does not receive shares in the foreign corporation resulting from the  
16 domestication that have terms as favorable to the shareholder in all  
17 material respects and represent at least the same percentage interest  
18 of the total voting rights of the outstanding shares of the  
19 corporation as the shares held by the shareholder before the  
20 domestication;

21 (7) Consummation of a conversion of the corporation to  
22 nonprofit status pursuant to sections 133 to 138 of this act; or

23 (8) Consummation of a conversion of the corporation to an  
24 unincorporated entity pursuant to sections 143 to 149 of this act.

25 (b) Notwithstanding subsection (a) of this section, the

1 availability of appraisal rights under subdivisions (a)(1), (2), (3),  
2 (4), (6), and (8) of this section shall be limited in accordance with  
3 the following provisions:

4 (1) Appraisal rights shall not be available for the  
5 holders of shares of any class or series of shares which is:

6 (i) A covered security under section 18(b)(1)(A) or (B)  
7 of the federal Securities Act of 1933, as amended, 15 U.S.C. 77r(b)  
8 (1)(A) or (B); or

9 (ii) Traded in an organized market and has at least two  
10 thousand shareholders and a market value of at least twenty million  
11 dollars, exclusive of the value of such shares held by the  
12 corporation's subsidiaries, senior executives, directors, and  
13 beneficial shareholders owning more than ten percent of such shares;  
14 or

15 (iii) Issued by an open end management investment company  
16 registered with the Securities and Exchange Commission under the  
17 federal Investment Company Act of 1940, as amended, 15 U.S.C. 80a-1  
18 et seq., and may be redeemed at the option of the holder at net asset  
19 value;

20 (2) The applicability of subdivision (b)(1) of this  
21 section shall be determined as of:

22 (i) The record date fixed to determine the shareholders  
23 entitled to receive notice of the meeting of shareholders to act upon  
24 the corporate action requiring appraisal rights; or

25 (ii) The day before the effective date of such corporate

1 action if there is no meeting of shareholders;

2 (3) Subdivision (b)(1) of this section shall not be  
3 applicable and appraisal rights shall be available pursuant to  
4 subsection (a) of this section for the holders of any class or series  
5 of shares (i) who are required by the terms of the corporate action  
6 requiring appraisal rights to accept for such shares anything other  
7 than cash or shares of any class or any series of shares of any  
8 corporation or any other proprietary interest of any other entity  
9 that satisfies the standards set forth in subdivision (b)(1) of this  
10 section at the time the corporate action becomes effective or (ii) in  
11 the case of the consummation of a disposition of assets pursuant to  
12 section 170 of this act, unless such cash, shares, or proprietary  
13 interests are, under the terms of the corporate action approved by  
14 the shareholders as part of a distribution to shareholders of the net  
15 assets of the corporation in excess of a reasonable amount to meet  
16 claims of the type described in sections 189 and 190 of this act, (A)  
17 within one year after the shareholders' approval of the action and  
18 (B) in accordance with their respective interests determined at the  
19 time of the distribution; and

20 (4) Subdivision (b)(1) of this section shall not be  
21 applicable and appraisal rights shall be available pursuant to  
22 subsection (a) of this section for the holders of any class or series  
23 of shares where the corporate action is an interested transaction.

24 (c) Notwithstanding any other provision of this section,  
25 the articles of incorporation as originally filed or any amendment

1 thereto may limit or eliminate appraisal rights for any class or  
2 series of preferred shares, except that (1) no such limitation or  
3 elimination shall be effective if the class or series does not have  
4 the right to vote separately as a voting group, alone or as part of a  
5 group, on the action or if the action is a nonprofit conversion under  
6 sections 133 to 138 of this act, or a conversion to an unincorporated  
7 entity under sections 143 to 149 of this act, or a merger having a  
8 similar effect and (2) any such limitation or elimination contained  
9 in an amendment to the articles of incorporation that limits or  
10 eliminates appraisal rights for any of such shares that are  
11 outstanding immediately prior to the effective date of such amendment  
12 or that the corporation is or may be required to issue or sell  
13 thereafter pursuant to any conversion, exchange, or other right  
14 existing immediately before the effective date of such amendment  
15 shall not apply to any corporate action that becomes effective within  
16 one year after that date if such action would otherwise afford  
17 appraisal rights.

18           Sec. 173. (MBCA 13.03) (a) A record shareholder may  
19 assert appraisal rights as to fewer than all the shares registered in  
20 the record shareholder's name but owned by a beneficial shareholder  
21 only if the record shareholder objects with respect to all shares of  
22 the class or series owned by the beneficial shareholder and notifies  
23 the corporation in writing of the name and address of each beneficial  
24 shareholder on whose behalf appraisal rights are being asserted. The  
25 rights of a record shareholder who asserts appraisal rights for only



1 part of the shares held of record in the record shareholder's name  
2 under this subsection shall be determined as if the shares as to  
3 which the record shareholder objects and the record shareholder's  
4 other shares were registered in the names of different record  
5 shareholders.

6 (b) A beneficial shareholder may assert appraisal rights  
7 as to shares of any class or series held on behalf of the shareholder  
8 only if such shareholder:

9 (1) Submits to the corporation the record shareholder's  
10 written consent to the assertion of such rights no later than the  
11 date referred to in subdivision (b)(2)(ii) of section 176 of this  
12 act; and

13 (2) Does so with respect to all shares of the class or  
14 series that are beneficially owned by the beneficial shareholder.

15 Sec. 174. (MBCA 13.20) (a) When any corporate action  
16 specified in subsection (a) of section 172 of this act is to be  
17 submitted to a vote at a shareholders' meeting, the meeting notice  
18 must state that the corporation has concluded that the shareholders  
19 are, are not, or may be entitled to assert appraisal rights under  
20 sections 171 to 183 of this act. If the corporation concludes that  
21 appraisal rights are or may be available, a copy of sections 171 to  
22 183 of this act must accompany the meeting notice sent to those  
23 record shareholders entitled to exercise appraisal rights.

24 (b) In a merger pursuant to section 165 of this act, the  
25 parent corporation must notify in writing all record shareholders of

1 the subsidiary who are entitled to assert appraisal rights that the  
2 corporate action became effective. Such notice must be sent within  
3 ten days after the corporate action became effective and include the  
4 materials described in section 176 of this act.

5 (c) When any corporate action specified in subsection (a)  
6 of section 172 of this act is to be approved by written consent of  
7 the shareholders pursuant to section 56 of this act:

8 (1) Written notice that appraisal rights are, are not, or  
9 may be available must be sent to each record shareholder from whom a  
10 consent is solicited at the time consent of such shareholder is first  
11 solicited and, if the corporation has concluded that appraisal rights  
12 are or may be available, must be accompanied by a copy of sections  
13 171 to 183 of this act; and

14 (2) Written notice that appraisal rights are, are not, or  
15 may be available must be delivered together with the notice to  
16 nonconsenting and nonvoting shareholders required by subsections (e)  
17 and (f) of section 56 of this act, may include the materials  
18 described in section 176 of this act, and, if the corporation has  
19 concluded that appraisal rights are or may be available, must be  
20 accompanied by a copy of sections 171 to 183 of this act.

21 (d) When corporate action described in subsection (a) of  
22 section 172 of this act is proposed or a merger pursuant to section  
23 165 of this act is effected, the notice referred to in subsection (a)  
24 or (c) of this section, if the corporation concludes that appraisal  
25 rights are or may be available, and in subsection (b) of this section

1 shall be accompanied by:

2 (1) The annual financial statements specified in  
3 subsection (a) of section 227 of this act of the corporation that  
4 issued the shares that may be subject to appraisal, which shall be as  
5 of a date ending not more than sixteen months before the date of the  
6 notice and shall comply with subsection (b) of section 227 of this  
7 act, except if such annual financial statements are not reasonably  
8 available, the corporation shall provide reasonably equivalent  
9 financial information; and

10 (2) The latest available quarterly financial statements  
11 of such corporation, if any.

12 (e) The right to receive the information described in  
13 subsection (d) of this section may be waived in writing by a  
14 shareholder before or after the corporate action.

15 Sec. 175. (MBCA 13.21) (a) If a corporate action  
16 specified in subsection (a) of section 172 of this act is submitted  
17 to a vote at a shareholders' meeting, a shareholder who wishes to  
18 assert appraisal rights with respect to any class or series of  
19 shares:

20 (1) Must deliver to the corporation, before the vote is  
21 taken, written notice of the shareholder's intent to demand payment  
22 if the proposed action is effectuated; and

23 (2) Must not vote, or cause or permit to be voted, any  
24 shares of such class or series in favor of the proposed action.

25 (b) If a corporate action specified in subsection (a) of

1 section 172 of this act is to be approved by less than unanimous  
2 written consent, a shareholder who wishes to assert appraisal rights  
3 with respect to any class or series of shares must not sign a consent  
4 in favor of the proposed action with respect to that class or series  
5 of shares.

6 (c) A shareholder who fails to satisfy the requirements  
7 of subsection (a) or (b) of this section is not entitled to payment  
8 under sections 171 to 183 of this act.

9 Sec. 176. (MBCA 13.22) (a) If a corporate action  
10 requiring appraisal rights under subsection (a) of section 172 of  
11 this act becomes effective, the corporation must send a written  
12 appraisal notice and form required by subdivision (b)(1) of this  
13 section to all shareholders who satisfy the requirements of  
14 subsection (a) or (b) of section 175 of this act. In the case of a  
15 merger under section 165 of this act, the parent must deliver an  
16 appraisal notice and form to all record shareholders who may be  
17 entitled to assert appraisal rights.

18 (b) The appraisal notice must be delivered no earlier  
19 than the date the corporate action specified in subsection (a) of  
20 section 172 of this act became effective, and no later than ten days  
21 after such date, and must:

22 (1) Supply a form that (i) specifies the first date of  
23 any announcement to shareholders made prior to the date the corporate  
24 action became effective of the principal terms of the proposed  
25 corporate action, (ii) if such announcement was made, requires the

1 shareholder asserting appraisal rights to certify whether beneficial  
2 ownership of those shares for which appraisal rights are asserted was  
3 acquired before that date, and (iii) requires the shareholder  
4 asserting appraisal rights to certify that such shareholder did not  
5 vote for or consent to the transaction;

6 (2) State:

7 (i) Where the form must be sent and where certificates  
8 for certificated shares must be deposited and the date by which those  
9 certificates must be deposited, which date may not be earlier than  
10 the date for receiving the required form under subdivision (2)(ii) of  
11 this subsection;

12 (ii) A date by which the corporation must receive the  
13 form, which date may not be fewer than forty nor more than sixty days  
14 after the date the subsection (a) of this section appraisal notice is  
15 sent, and state that the shareholder shall have waived the right to  
16 demand appraisal with respect to the shares unless the form is  
17 received by the corporation by such specified date;

18 (iii) The corporation's estimate of the fair value of the  
19 shares;

20 (iv) That, if requested in writing, the corporation will  
21 provide, to the shareholder so requesting within ten days after the  
22 date specified in subsection (2)(ii) of this subsection, the number  
23 of shareholders who return the forms by the specified date and the  
24 total number of shares owned by them; and

25 (v) The date by which the notice to withdraw under

1 section 177 of this act must be received, which date must be within  
2 twenty days after the date specified in subsection (2)(ii) of this  
3 subsection; and

4 (3) Be accompanied by a copy of sections 171 to 183 of  
5 this act.

6 Sec. 177. (MBCA 13.23) (a) A shareholder who receives  
7 notice pursuant to section 176 of this act and who wishes to exercise  
8 appraisal rights must sign and return the form sent by the  
9 corporation and, in the case of certificated shares, deposit the  
10 shareholder's certificates in accordance with the terms of the notice  
11 by the date referred to in the notice pursuant to subdivision (b)(2)  
12 (ii) of section 176 of this act. In addition, if applicable, the  
13 shareholder must certify on the form whether the beneficial owner of  
14 such shares acquired beneficial ownership of the shares before the  
15 date required to be set forth in the notice pursuant to subdivision  
16 (b)(1) of section 176 of this act. If a shareholder fails to make  
17 this certification, the corporation may elect to treat the  
18 shareholder's shares as after-acquired shares under section 179 of  
19 this act. Once a shareholder deposits that shareholder's certificates  
20 or, in the case of uncertificated shares, returns the signed forms,  
21 that shareholder loses all rights as a shareholder unless the  
22 shareholder withdraws pursuant to subsection (b) of this section.

23 (b) A shareholder who has complied with subsection (a) of  
24 this section may nevertheless decline to exercise appraisal rights  
25 and withdraw from the appraisal process by so notifying the

1 corporation in writing by the date set forth in the appraisal notice  
2 pursuant to subdivision (b)(2)(v) of section 176 of this act. A  
3 shareholder who fails to so withdraw from the appraisal process may  
4 not thereafter withdraw without the corporation's written consent.

5 (c) A shareholder who does not sign and return the form  
6 and, in the case of certificated shares, deposit that shareholder's  
7 share certificates where required, each by the date set forth in the  
8 notice described in subsection (b) of section 176 of this act, shall  
9 not be entitled to payment under sections 171 to 183 of this act.

10 Sec. 178. (MBCA 13.24) (a) Except as provided in section  
11 179 of this act, within thirty days after the form required by  
12 subdivision (b)(2)(ii) of section 176 of this act is due, the  
13 corporation shall pay in cash to those shareholders who complied with  
14 subsection (a) of section 177 of this act the amount the corporation  
15 estimates to be the fair value of their shares, plus interest.

16 (b) The payment to each shareholder pursuant to  
17 subsection (a) of this section must be accompanied by:

18 (1)(i) The annual financial statements specified in  
19 subsection (a) of section 227 of this act of the corporation that  
20 issued the shares to be appraised, which shall be of a date ending  
21 not more than sixteen months before the date of payment and shall  
22 comply with subsection (b) of section 227 of this act, except that if  
23 such annual financial statements are not reasonably available, the  
24 corporation shall provide reasonably equivalent financial information  
25 and (ii) the latest available quarterly financial statements of such

1 corporation, if any;

2 (2) A statement of the corporation's estimate of the fair  
3 value of the shares, which estimate must equal or exceed the  
4 corporation's estimate given pursuant to subdivision (b)(2)(iii) of  
5 section 176 of this act; and

6 (3) A statement that shareholders described in subsection  
7 (a) of this section have the right to demand further payment under  
8 section 180 of this act and that if any such shareholder does not do  
9 so within the time period specified therein, such shareholder shall  
10 be deemed to have accepted such payment in full satisfaction of the  
11 corporation's obligations under sections 171 to 183 of this act.

12 Sec. 179. (MBCA 13.25) (a) A corporation may elect to  
13 withhold payment required by section 178 of this act from any  
14 shareholder who was required to, but did not certify that beneficial  
15 ownership of all the shareholder's shares for which appraisal rights  
16 are asserted was acquired before the date set forth in the appraisal  
17 notice sent pursuant to subdivision (b)(1) of section 176 of this  
18 act.

19 (b) If the corporation elected to withhold payment under  
20 subsection (a) of this section, it must, within thirty days after the  
21 form required by subdivision (b)(2)(ii) of section 176 of this act is  
22 due, notify all shareholders who are described in subsection (a) of  
23 this section:

24 (1) Of the information required by subdivision (b)(1) of  
25 section 178 of this act;



1           (2) Of the corporation's estimate of fair value pursuant  
2 to subdivision (b)(2) of section 178 of this act;

3           (3) That they may accept the corporation's estimate of  
4 fair value, plus interest, in full satisfaction of their demands or  
5 demand appraisal under section 180 of this act;

6           (4) That those shareholders who wish to accept such offer  
7 must so notify the corporation of their acceptance of the  
8 corporation's offer within thirty days after receiving the offer; and

9           (5) That those shareholders who do not satisfy the  
10 requirements for demanding appraisal under section 180 of this act  
11 shall be deemed to have accepted the corporation's offer.

12           (c) Within ten days after receiving the shareholder's  
13 acceptance pursuant to subsection (b) of this section, the  
14 corporation must pay in cash the amount it offered under subdivision  
15 (b)(2) of this section to each shareholder who agreed to accept the  
16 corporation's offer in full satisfaction of the shareholder's demand.

17           (d) Within forty days after sending the notice described  
18 in subsection (b) of this section, the corporation must pay in cash  
19 the amount it offered to pay under subdivision (b)(2) of this section  
20 to each shareholder described in subdivision (b)(5) of this section.

21           Sec. 180. (MBCA 13.26) (a) A shareholder paid pursuant to  
22 section 178 of this act who is dissatisfied with the amount of the  
23 payment must notify the corporation in writing of that shareholder's  
24 estimate of the fair value of the shares and demand payment of that  
25 estimate plus interest, less any payment under section 178 of this

1 act. A shareholder offered payment under section 179 of this act who  
2 is dissatisfied with that offer must reject the offer and demand  
3 payment of the shareholder's stated estimate of the fair value of the  
4 shares plus interest.

5 (b) A shareholder who fails to notify the corporation in  
6 writing of that shareholder's demand to be paid the shareholder's  
7 stated estimate of the fair value plus interest under subsection (a)  
8 of this section within thirty days after receiving the corporation's  
9 payment or offer of payment under section 178 or 179 of this act,  
10 respectively, waives the right to demand payment under this section  
11 and shall be entitled only to the payment made or offered pursuant to  
12 those respective sections.

13 Sec. 181. (MBCA 13.30) (a) If a shareholder makes demand  
14 for payment under section 180 of this act which remains unsettled,  
15 the corporation shall commence a proceeding within sixty days after  
16 receiving the payment demand and petition the court to determine the  
17 fair value of the shares and accrued interest. If the corporation  
18 does not commence the proceeding within the sixty-day period, it  
19 shall pay in cash to each shareholder the amount the shareholder  
20 demanded pursuant to section 180 of this act plus interest.

21 (b) The corporation shall commence the proceeding in the  
22 district court of the county where the corporation's principal  
23 office, or, if none in this state, its registered office, is located.  
24 If the corporation is a foreign corporation without a registered  
25 office in this state, it shall commence the proceeding in the county

1 in this state where the principal office or registered office of the  
2 domestic corporation merged with the foreign corporation was located  
3 at the time of the transaction.

4 (c) The corporation shall make all shareholders, whether  
5 or not residents of this state, whose demands remain unsettled  
6 parties to the proceeding as in an action against their shares, and  
7 all parties must be served with a copy of the petition. Nonresidents  
8 may be served by registered or certified mail or by publication as  
9 provided by law.

10 (d) The jurisdiction of the court in which the proceeding  
11 is commenced under subsection (b) of this section is plenary and  
12 exclusive. The court may appoint one or more persons as appraisers to  
13 receive evidence and recommend a decision on the question of fair  
14 value. The appraisers shall have the powers described in the order  
15 appointing them or in any amendment to it. The shareholders demanding  
16 appraisal rights are entitled to the same discovery rights as parties  
17 in other civil proceedings. There shall be no right to a jury trial.

18 (e) Each shareholder made a party to the proceeding is  
19 entitled to judgment (i) for the amount, if any, by which the court  
20 finds the fair value of the shareholder's shares, plus interest,  
21 exceeds the amount paid by the corporation to the shareholder for  
22 such shares or (ii) for the fair value, plus interest, of the  
23 shareholder's shares for which the corporation elected to withhold  
24 payment under section 179 of this act.

25 Sec. 182. (MBCA 13.31) (a) The court in an appraisal

1 proceeding commenced under section 181 of this act shall determine  
2 all court costs of the proceeding, including the reasonable  
3 compensation and expenses of appraisers appointed by the court. The  
4 court shall assess the court costs against the corporation, except  
5 that the court may assess court costs against all or some of the  
6 shareholders demanding appraisal, in amounts which the court finds  
7 equitable, to the extent the court finds such shareholders acted  
8 arbitrarily, vexatiously, or not in good faith with respect to the  
9 rights provided by sections 171 to 183 of this act.

10 (b) The court in an appraisal proceeding may also assess  
11 the expenses of the respective parties in amounts the court finds  
12 equitable:

13 (1) Against the corporation and in favor of any or all  
14 shareholders demanding appraisal if the court finds the corporation  
15 did not substantially comply with the requirements of sections 174,  
16 176, 178, or 179 of this act; or

17 (2) Against either the corporation or a shareholder  
18 demanding appraisal, in favor of any other party, if the court finds  
19 the party against whom expenses are assessed acted arbitrarily,  
20 vexatiously, or not in good faith with respect to the rights provided  
21 by sections 171 to 183 of this act.

22 (c) If the court in an appraisal proceeding finds that  
23 the expenses incurred by any shareholder were of substantial benefit  
24 to other shareholders similarly situated and that such expenses  
25 should not be assessed against the corporation, the court may direct

1 that such expenses be paid out of the amounts awarded the  
2 shareholders who were benefited.

3 (d) To the extent the corporation fails to make a  
4 required payment pursuant to sections 178, 179, or 180 of this act,  
5 the shareholder may sue directly for the amount owed and, to the  
6 extent successful, shall be entitled to recover from the corporation  
7 all expenses of the suit.

8 Sec. 183. (MBCA 13.40) (a) The legality of a proposed or  
9 completed corporate action described in subsection (a) of section 172  
10 may not be contested, nor may the corporate action be enjoined, set  
11 aside, or rescinded in a legal or equitable proceeding by a  
12 shareholder after the shareholders have approved the corporate  
13 action.

14 (b) Subsection (a) of this section does not apply to a  
15 corporate action that:

16 (1) Was not authorized and approved in accordance with  
17 the applicable provisions of:

18 (i) Sections 125 to 170 of this act;

19 (ii) The articles of incorporation or bylaws; or

20 (iii) The resolution of the board of directors  
21 authorizing the corporate action;

22 (2) Was procured as a result of fraud, a material  
23 misrepresentation, or an omission of a material fact necessary to  
24 make statements made, in light of the circumstances in which they  
25 were made, not misleading;

1           (3) Is an interested transaction, unless it has been  
2 recommended by the board of directors in the same manner as is  
3 provided in section 122 of this act and has been approved by the  
4 shareholders in the same manner as is provided in section 123 of this  
5 act as if the interested transaction were a director's conflicting  
6 interest transaction; or

7           (4) Is approved by less than unanimous consent of the  
8 voting shareholders pursuant to section 56 of this act if:

9           (i) The challenge to the corporate action is brought by a  
10 shareholder who did not consent and as to whom notice of the approval  
11 of the corporate action was not effective at least ten days before  
12 the corporate action was effected; and

13           (ii) The proceeding challenging the corporate action is  
14 commenced within ten days after notice of the approval of the  
15 corporate action is effective as to the shareholder bringing the  
16 proceeding.

17           Sec. 184. (MBCA 14.01) A majority of the incorporators or  
18 initial directors of a corporation that has not issued shares or has  
19 not commenced business may dissolve the corporation by delivering to  
20 the Secretary of State for filing articles of dissolution that set  
21 forth:

22           (1) The name of the corporation;

23           (2) The date of its incorporation;

24           (3) Either (i) that none of the corporation's shares has  
25 been issued or (ii) that the corporation has not commenced business;

1           (4) That no debt of the corporation remains unpaid;

2           (5) That the net assets of the corporation remaining  
3 after winding up have been distributed to the shareholders, if shares  
4 were issued; and

5           (6) That a majority of the incorporators or initial  
6 directors authorized the dissolution.

7           Sec. 185. (MBCA 14.02) (a) A corporation's board of  
8 directors may propose dissolution for submission to the shareholders.

9           (b) For a proposal to dissolve to be adopted:

10           (1) the board of directors must recommend dissolution to  
11 the shareholders unless (i) the board of directors determines that  
12 because of conflict of interest or other special circumstances it  
13 should make no recommendation or (ii) section 101 of this act  
14 applies. If either subdivision (1)(i) or (ii) of this subsection  
15 applies, it must communicate the basis for so proceeding; and

16           (2) the shareholders entitled to vote must approve the  
17 proposal to dissolve as provided in subsection (e) of this section.

18           (c) The board of directors may condition its submission  
19 of the proposal for dissolution on any basis.

20           (d) The corporation shall notify each shareholder,  
21 whether or not entitled to vote, of the proposed shareholders'  
22 meeting. The notice must also state that the purpose or one of the  
23 purposes of the meeting is to consider dissolving the corporation.

24           (e) Unless the articles of incorporation or the board of  
25 directors acting pursuant to subsection (c) of this section require a

1 greater vote, a greater number of shares to be present, or a vote by  
2 voting groups, adoption of the proposal to dissolve shall require the  
3 approval of the shareholders at a meeting at which a quorum  
4 consisting of at least a majority of the votes entitled to be cast  
5 exists.

6           Sec. 186. (MBCA 14.03) (a) At any time after dissolution  
7 is authorized, the corporation may dissolve by delivering to the  
8 Secretary of State for filing articles of dissolution setting forth:

9                   (1) The name of the corporation;

10                   (2) The date dissolution was authorized; and

11                   (3) If dissolution was approved by the shareholders, a  
12 statement that the proposal to dissolve was duly approved by the  
13 shareholders in the manner required by the Nebraska Model Business  
14 Corporation Act and by the articles of incorporation.

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

17                   (c) For purposes of sections 184 to 192 of this act,  
18 dissolved corporation means a corporation whose articles of  
19 dissolution have become effective and includes a successor entity to  
20 which the remaining assets of the corporation are transferred subject  
21 to its liabilities for purposes of liquidation.

22           Sec. 187. (MBCA 14.04) (a) A corporation may revoke its  
23 dissolution within one hundred twenty days of its effective date.

24                   (b) Revocation of dissolution must be authorized in the  
25 same manner as the dissolution was authorized unless that



1 authorization permitted revocation by action of the board of  
2 directors alone, in which event the board of directors may revoke the  
3 dissolution without shareholder action.

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

8 (1) The name of the corporation;

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

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

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

15 (5) If the corporation's board of directors revoked a  
16 dissolution authorized by the shareholders, a statement that  
17 revocation was permitted by action by the board of directors alone  
18 pursuant to that authorization; and

19 (6) If shareholder action was required to revoke the  
20 dissolution, the information required by subdivision (a)(3) of  
21 section 186 of this act.

22 (d) Revocation of dissolution is effective upon the  
23 effective date of the articles of revocation of dissolution.

24 (e) When the revocation of dissolution is effective, it  
25 relates back to and takes effect as of the effective date of the

1 dissolution and the corporation resumes carrying on its business as  
2 if dissolution had never occurred.

3           Sec. 188. (MBCA 14.05) (a) A dissolved corporation  
4 continues its corporate existence but may not carry on any business  
5 except that appropriate to wind up and liquidate its business and  
6 affairs, including:

7                   (1) Collecting its assets;

8                   (2) Disposing of its properties that will not be  
9 distributed in kind to its shareholders;

10                   (3) Discharging or making provision for discharging its  
11 liabilities;

12                   (4) Distributing its remaining property among its  
13 shareholders according to their interests; and

14                   (5) Doing every other act necessary to wind up and  
15 liquidate its business and affairs.

16                   (b) Dissolution of a corporation does not:

17                   (1) Transfer title to the corporation's property;

18                   (2) Prevent transfer of its shares or securities,  
19 although the authorization to dissolve may provide for closing the  
20 corporation's share transfer records;

21                   (3) Subject its directors or officers to standards of  
22 conduct different from those prescribed in sections 84 to 124 of this  
23 act;

24                   (4) Change quorum or voting requirements for its board of  
25 directors or shareholders; change provisions for selection,

1 resignation, or removal of its directors or officers or both; or  
2 change provisions for amending its bylaws;

3 (5) Prevent commencement of a proceeding by or against  
4 the corporation in its corporate name;

5 (6) Abate or suspend a proceeding pending by or against  
6 the corporation on the effective date of dissolution; or

7 (7) Terminate the authority of the registered agent of  
8 the corporation.

9 Sec. 189. (MBCA 14.06) (a) A dissolved corporation may  
10 dispose of the known claims against it by notifying its known  
11 claimants in writing of the dissolution at any time after its  
12 effective date.

13 (b) The written notice must:

14 (1) Describe information that must be included in a  
15 claim;

16 (2) Provide a mailing address where a claim may be sent;

17 (3) State the deadline, which may not be fewer than one  
18 hundred twenty days after the effective date of the written notice,  
19 by which the dissolved corporation must receive the claim; and

20 (4) State that the claim will be barred if not received  
21 by the deadline.

22 (c) A claim against the dissolved corporation is barred:

23 (1) If a claimant who was given written notice under  
24 subsection (b) of this section does not deliver the claim to the  
25 dissolved corporation by the deadline; or

1           (2) If a claimant whose claim was rejected by the  
2 dissolved corporation does not commence a proceeding to enforce the  
3 claim within ninety days after the effective date of the rejection  
4 notice.

5           (d) For purposes of this section, claim does not include  
6 a contingent liability or a claim based on an event occurring after  
7 the effective date of dissolution.

8           Sec. 190. (MBCA 14.07) (a) A dissolved corporation may  
9 also publish notice of its dissolution and request that persons with  
10 claims against the dissolved corporation present them in accordance  
11 with the notice.

12           (b) The notice must:

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

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

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

22           (c) If the dissolved corporation publishes a newspaper  
23 notice in accordance with subsection (b) of this section, the claim  
24 of each of the following claimants is barred unless the claimant  
25 commences a proceeding to enforce the claim against the dissolved

1 corporation within three years after the publication date of the  
2 newspaper notice:

3 (1) A claimant who was not given written notice under  
4 section 189 of this act;

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

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

9 (d) A claim that is not barred by subsection (b) of  
10 section 189 of this act or subsection (c) of this section may be  
11 enforced:

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

14 (2) Except as provided in subsection (d) of section 191  
15 of this act, if the assets have been distributed in liquidation,  
16 against a shareholder of the dissolved corporation to the extent of  
17 the shareholder's pro rata share of the claim or the corporate assets  
18 distributed to the shareholder in liquidation, whichever is less, but  
19 a shareholder's total liability for all claims under this section may  
20 not exceed the total amount of assets distributed to the shareholder.

21 Sec. 191. (MBCA 14.08) (a) A dissolved corporation that  
22 has published a notice under section 190 of this act may file an  
23 application with the district court of the county where the dissolved  
24 corporation's principal office, or, if none in this state, its  
25 registered office, is located for a determination of the amount and

1 form of security to be provided for payment of claims that are  
2 contingent or have not been made known to the dissolved corporation  
3 or that are based on an event occurring after the effective date of  
4 dissolution but that, based on the facts known to the dissolved  
5 corporation, are reasonably estimated to arise after the effective  
6 date of dissolution. Provision need not be made for any claim that is  
7 or is reasonably anticipated to be barred under subsection (c) of  
8 section 190 of this act.

9 (b) Within ten days after the filing of the application,  
10 notice of the proceeding shall be given by the dissolved corporation  
11 to each claimant holding a contingent claim whose contingent claim is  
12 shown on the records of the dissolved corporation.

13 (c) The court may appoint a guardian ad litem to  
14 represent all claimants whose identities are unknown in any  
15 proceeding brought under this section. The reasonable fees and  
16 expenses of such guardian, including all reasonable expert witness  
17 fees, shall be paid by the dissolved corporation.

18 (d) Provision by the dissolved corporation for security  
19 in the amount and the form ordered by the court under subsection (a)  
20 of this section shall satisfy the dissolved corporation's obligations  
21 with respect to claims that are contingent, have not been made known  
22 to the dissolved corporation, or are based on an even occurring after  
23 the effective date of dissolution, and such claims may not be  
24 enforced against a shareholder who received assets in liquidation.

25 Sec. 192. (MBCA 14.09) (a) Directors shall cause the

1 dissolved corporation to discharge or make reasonable provision for  
2 the payment of claims and make distributions of assets to  
3 shareholders after payment or provision for claims.

4 (b) Directors of a dissolved corporation which has  
5 disposed of claims under sections 189, 190, or 191 of this act shall  
6 not be liable for breach of subsection (a) of this section with  
7 respect to claims against the dissolved corporation that are barred  
8 or satisfied under sections 189, 190, or 191 of this act.

9 Sec. 193. (MBCA 14.20) The Secretary of State may  
10 commence a proceeding under section 194 of this act to  
11 administratively dissolve a corporation if:

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

14 (2) The corporation does not notify the Secretary of  
15 State within sixty days that its registered agent or registered  
16 office has been changed, that its registered agent has resigned, or  
17 that its registered office has been discontinued; or

18 (3) The corporation's period of duration stated in its  
19 articles of incorporation expires.

20 Sec. 194. (MBCA 14.21) (a) If the Secretary of State  
21 determines that one or more grounds exist under section 193 of this  
22 act for dissolving a corporation, the Secretary of State shall serve  
23 the corporation with written notice of such determination under  
24 section 36 of this act.

25 (b) If the corporation does not correct each ground for

1 dissolution or demonstrate to the reasonable satisfaction of the  
2 Secretary of State that each ground determined by the Secretary of  
3 State does not exist within sixty days after service of the notice is  
4 perfected under section 36 of this act, the Secretary of State shall  
5 administratively dissolve the corporation by signing a certificate of  
6 dissolution that recites the ground or grounds for dissolution and  
7 its effective date. The Secretary of State shall file the original of  
8 the certificate and serve a copy on the corporation under section 36  
9 of this act.

10 (c) A corporation administratively dissolved continues  
11 its corporate existence but may not carry on any business except that  
12 necessary to wind up and liquidate its business and affairs under  
13 section 188 of this act and notify claimants under sections 189 and  
14 190 of this act.

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

17 Sec. 195. (MBCA 14.22) (a) A corporation administratively  
18 dissolved under section 194 of this act may apply to the Secretary of  
19 State for reinstatement within five years after the effective date of  
20 dissolution. The application must:

21 (1) Recite the name of the corporation and the effective  
22 date of its administrative dissolution;

23 (2) State that the ground or grounds for dissolution  
24 either did not exist or have been eliminated; and

25 (3) State that the corporation's name satisfies the



1 requirements of section 30 of this act.

2 (b) If the Secretary of State determines (1) that the  
3 application contains the information required by subsection (a) and  
4 that the information is correct and (2) that the corporation has paid  
5 to the Secretary of State all delinquent fees and has delivered to  
6 the Secretary of State a properly executed and signed biennial  
7 report, the Secretary of State shall cancel the certificate of  
8 dissolution and prepare a certificate of reinstatement that recites  
9 such determination and the effective date of reinstatement, file the  
10 original of the certificate, and serve a copy on the corporation  
11 under section 36 of this act.

12 (c) When the reinstatement is effective, it relates back  
13 to and takes effect as of the effective date of the administrative  
14 dissolution and the corporation resumes carrying on its business as  
15 if the administrative dissolution had never occurred.

16 Sec. 196. (MBCA 14.23) (a) If the Secretary of State  
17 denies a corporation's application for reinstatement following  
18 administrative dissolution, the Secretary of State shall serve the  
19 corporation under section 36 of this act with a written notice that  
20 explains the reason or reasons for denial.

21 (b) The corporation may appeal the denial of  
22 reinstatement to the district court of Lancaster County within thirty  
23 days after service of the notice of denial is perfected. The  
24 corporation appeals by petitioning the court to set aside the  
25 dissolution and attaching to the petition copies of the Secretary of

1 State's certificate of dissolution, the corporation's application for  
2 reinstatement, and the Secretary of State's notice of denial.

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

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

8 Sec. 197. (MBCA 14.30) (a) Except as provided in  
9 subdivision (2)(ii) of this section, the court may dissolve a  
10 corporation:

11 (1) In a proceeding by the Attorney General if it is  
12 established that:

13 (i) The corporation obtained its articles of  
14 incorporation through fraud; or

15 (ii) The corporation has continued to exceed or abuse the  
16 authority conferred upon it by law;

17 (2)(i) In a proceeding by a shareholder if it is  
18 established that:

19 (A) The directors are deadlocked in the management of the  
20 corporate affairs, the shareholders are unable to break the deadlock,  
21 and irreparable injury to the corporation is threatened or being  
22 suffered or the business and affairs of the corporation can no longer  
23 be conducted to the advantage of the shareholders generally because  
24 of the deadlock;

25 (B) The directors or those in control of the corporation

1 have acted, are acting, or will act in a manner that is illegal,  
2 oppressive, or fraudulent;

3 (C) The shareholders are deadlocked in voting power and  
4 have failed, for a period that includes at least two consecutive  
5 annual meeting dates, to elect successors to directors whose terms  
6 have expired; or

7 (D) The corporate assets are being misapplied or wasted;  
8 and

9 (ii) The right to bring a proceeding under this  
10 subdivision does not apply to shareholders of a bank, trust company,  
11 or stock-owned savings and loan associations;

12 (3) In a proceeding by a creditor if it is established  
13 that:

14 (i) The creditor's claim has been reduced to judgment,  
15 the execution on the judgment returned unsatisfied, and the  
16 corporation is insolvent; or

17 (ii) The corporation has admitted in writing that the  
18 creditor's claim is due and owing and the corporation is insolvent;

19 (4) In a proceeding by the corporation to have its  
20 voluntary dissolution continued under court supervision; or

21 (5) In a proceeding by a shareholder if the corporation  
22 has abandoned its business and has failed within a reasonable time to  
23 liquidate and distribute its assets and dissolve.

24 (b) Subdivision (a)(2) of this section shall not apply in  
25 the case of a corporation that, on the date of the filing of the

1 proceeding, has shares which are:

2 (1) Listed on the New York Stock Exchange, the American  
3 Stock Exchange, or on any exchange owned or operated by the NASDAQ  
4 Stock Market LLC, or listed or quoted on a system owned or operated  
5 by the National Association of Securities Dealers, Inc.; or

6 (2) Not so listed or quoted, but are held by at least  
7 three hundred shareholders and the shares outstanding have a market  
8 value of at least twenty million dollars, exclusive of the value of  
9 such shares held by the corporation's subsidiaries, senior  
10 executives, directors, and beneficial shareholders owning more than  
11 ten percent of such shares.

12 (c) In this section, beneficial shareholder has the  
13 meaning specified in subdivision (2) of section 171 of this act.

14 Sec. 198. (MBCA 14.31) (a) Venue for a proceeding by the  
15 Attorney General to dissolve a corporation lies in the district court  
16 of Lancaster County. Venue for a proceeding brought by any other  
17 party named in subsection (a) of section 197 of this act lies in the  
18 district court of the county where a corporation's principal office,  
19 or, if none in this state, its registered office, is or was last  
20 located.

21 (b) It is not necessary to make shareholders parties to a  
22 proceeding to dissolve a corporation unless relief is sought against  
23 them individually.

24 (c) A court in a proceeding brought to dissolve a  
25 corporation may issue injunctions, appoint a receiver or custodian

1 pendente lite with all powers and duties the court directs, take  
2 other action required to preserve the corporate assets wherever  
3 located, and carry on the business of the corporation until a full  
4 hearing can be held.

5 (d) Within ten days of the commencement of a proceeding  
6 to dissolve a corporation under subdivision (a)(2) of section 197 of  
7 this act, the corporation must send to all shareholders, other than  
8 the petitioner, a notice stating that the shareholders are entitled  
9 to avoid the dissolution of the corporation by electing to purchase  
10 the petitioner's shares under section 201 of this act and accompanied  
11 by a copy of section 201 of this act.

12 Sec. 199. (MBCA 14.32) (a) Unless an election to purchase  
13 has been filed under section 201 of this act, a court in a judicial  
14 proceeding brought to dissolve a corporation may appoint one or more  
15 receivers to wind up and liquidate, or one or more custodians to  
16 manage, the business and affairs of the corporation. The court shall  
17 hold a hearing, after notifying all parties to the proceeding and any  
18 interested persons designated by the court, before appointing a  
19 receiver or custodian. The court appointing a receiver or custodian  
20 has jurisdiction over the corporation and all of its property  
21 wherever located.

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

1 court directs.

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

5 (1) The receiver (i) may dispose of all or any part of  
6 the assets of the corporation wherever located, at a public or  
7 private sale, if authorized by the court, and (ii) may sue and defend  
8 in his or her own name as receiver of the corporation in all courts  
9 of this state; and

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

14 (d) The court during a receivership may redesignate the  
15 receiver a custodian, and during a custodianship may redesignate the  
16 custodian a receiver, if doing so is in the best interests of the  
17 corporation, its shareholders, and creditors.

18 (e) The court from time to time during the receivership  
19 or custodianship may order compensation paid and expenses paid or  
20 reimbursed to the receiver or custodian from the assets of the  
21 corporation or proceeds from the sale of the assets.

22 Sec. 200. (MBCA 14.33) (a) If after a hearing the court  
23 determines that one or more grounds for judicial dissolution  
24 described in section 197 of this act exist, it may enter a decree  
25 dissolving the corporation and specifying the effective date of the

1 dissolution, and the clerk of the court shall deliver a certified  
2 copy of the decree to the Secretary of State who shall file it.

3 (b) After entering the decree of dissolution, the court  
4 shall direct the winding-up and liquidation of the corporation's  
5 business and affairs in accordance with section 188 of this act and  
6 the notification of claimants in accordance with sections 189 and 190  
7 of this act.

8 Sec. 201. (MBCA 14.34) (a) In a proceeding under  
9 subdivision (a)(2) of section 197 of this act to dissolve a  
10 corporation, the corporation may elect or, if it fails to elect, one  
11 or more shareholders may elect to purchase all shares owned by the  
12 petitioning shareholder at the fair value of the shares. An election  
13 pursuant to this section shall be irrevocable unless the court  
14 determines that it is equitable to set aside or modify the election.

15 (b) An election to purchase pursuant to this section may  
16 be filed with the court at any time within ninety days after the  
17 filing of the petition under subdivision (a)(2) of section 197 of  
18 this act or at such later time as the court in its discretion may  
19 allow. If the election to purchase is filed by one or more  
20 shareholders, the corporation shall, within ten days thereafter, give  
21 written notice to all shareholders, other than the petitioner. The  
22 notice must state the name and number of shares owned by the  
23 petitioner and the name and number of shares owned by each electing  
24 shareholder and must advise the recipients of their right to join in  
25 the election to purchase shares in accordance with this section.

1 Shareholders who wish to participate must file notice of their  
2 intention to join in the purchase no later than thirty days after the  
3 effective date of the notice to them. All shareholders who have filed  
4 an election or notice of their intention to participate in the  
5 election to purchase thereby become parties to the proceeding and  
6 shall participate in the purchase in proportion to their ownership of  
7 shares as of the date the first election was filed, unless they  
8 otherwise agree or the court otherwise directs. After an election has  
9 been filed by the corporation or one or more shareholders, the  
10 proceeding under subdivision (a)(2) of section 197 of this act may  
11 not be discontinued or settled, nor may the petitioning shareholder  
12 sell or otherwise dispose of his or her shares, unless the court  
13 determines that it would be equitable to the corporation and the  
14 shareholders, other than the petitioner, to permit such  
15 discontinuance, settlement, sale, or other disposition.

16 (c) If, within sixty days of the filing of the first  
17 election, the parties reach agreement as to the fair value and terms  
18 of purchase of the petitioner's shares, the court shall enter an  
19 order directing the purchase of petitioner's shares upon the terms  
20 and conditions agreed to by the parties.

21 (d) If the parties are unable to reach an agreement as  
22 provided for in subsection (c) of this section, the court, upon  
23 application of any party, shall stay the subdivision (a)(2) of  
24 section 197 of this act proceedings and determine the fair value of  
25 the petitioner's shares as of the day before the date on which the



1 petition under subdivision (a)(2) of section 197 of this act was  
2 filed or as of such other date as the court deems appropriate under  
3 the circumstances.

4 (e) Upon determining the fair value of the shares, the  
5 court shall enter an order directing the purchase upon such terms and  
6 conditions as the court deems appropriate, which may include payment  
7 of the purchase price in installments, where necessary in the  
8 interests of equity, provision for security to assure payment of the  
9 purchase price and any additional expenses as may have been awarded,  
10 and, if the shares are to be purchased by shareholders, the  
11 allocation of shares among them. In allocating petitioner's shares  
12 among holders of different classes of shares, the court should  
13 attempt to preserve the existing distribution of voting rights among  
14 holders of different classes insofar as practicable and may direct  
15 that holders of a specific class or classes shall not participate in  
16 the purchase. Interest may be allowed at the rate specified in  
17 section 45-104, as such rate may from time to time be adjusted by the  
18 Legislature, and from the date determined by the court to be  
19 equitable, but if the court finds that the refusal of the petitioning  
20 shareholder to accept an offer of payment was arbitrary or otherwise  
21 not in good faith, no interest shall be allowed. If the court finds  
22 that the petitioning shareholder had probable grounds for relief  
23 under subdivisions (a)(2)(i)(B) and (D) of section 197 of this act,  
24 it may award expenses to the petitioning shareholder.

25 (f) Upon entry of an order under subsections (c) or (e)

1 of this section, the court shall dismiss the petition to dissolve the  
2 corporation under subdivision (a)(2) of section 197 of this act, and  
3 the petitioning shareholder shall no longer have any rights or status  
4 as a shareholder of the corporation, except the right to receive the  
5 amounts awarded by the order of the court which shall be enforceable  
6 in the same manner as any other judgment.

7 (g) The purchase ordered pursuant to subsection (e) of  
8 this section shall be made within ten days after the date the order  
9 becomes final unless before that time the corporation files with the  
10 court a notice of its intention to adopt articles of dissolution  
11 pursuant to sections 185 and 186 of this act, which articles must  
12 then be adopted and filed within fifty days thereafter. Upon filing  
13 of such articles of dissolution, the corporation shall be dissolved  
14 in accordance with the provisions of sections 188 to 190 of this act,  
15 and the order entered pursuant to subsection (e) of this section  
16 shall no longer be of any force or effect, except that the court may  
17 award the petitioning shareholder expenses in accordance with the  
18 provisions of the last sentence of subsection (e) of this section and  
19 the petitioner may continue to pursue any claims previously asserted  
20 on behalf of the corporation.

21 (h) Any payment by the corporation pursuant to an order  
22 under subsections (c) or (e) of this section, other than an award of  
23 expenses pursuant to subsection (e) of this section, is subject to  
24 the provisions of section 52 of this act.

25 Sec. 202. (MBCA 14.40) Assets of a dissolved corporation

1 that should be transferred to a creditor, claimant, or shareholder of  
2 the corporation who cannot be found or who is not competent to  
3 receive them shall be reduced to cash and deposited with the State  
4 Treasurer in accordance with the Uniform Disposition of Unclaimed  
5 Property Act. When the creditor, claimant, or shareholder furnishes  
6 satisfactory proof of entitlement to the amount deposited, the State  
7 Treasurer shall pay such person or his or her representative that  
8 amount in accordance with the act.

9           Sec. 203. (MBCA 15.01) (a) A foreign corporation may not  
10 transact business in this state until it obtains a certificate of  
11 authority from the Secretary of State.

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

15           (1) Maintaining, defending, or settling any proceeding;

16           (2) Holding meetings of the board of directors or  
17 shareholders or carrying on other activities concerning internal  
18 corporate affairs;

19           (3) Maintaining bank accounts;

20           (4) Maintaining offices or agencies for the transfer,  
21 exchange, and registration of the corporation's own securities or  
22 maintaining trustees or depositaries with respect to those  
23 securities;

24           (5) Selling through independent contractors;

25           (6) Soliciting or obtaining orders, whether by mail or

1 through employees or agents or otherwise, if the orders require  
2 acceptance outside this state before they become contracts;

3 (7) Creating or acquiring indebtedness, mortgages, and  
4 security interests in real or personal property;

5 (8) Securing or collecting debts or enforcing mortgages  
6 and security interests in property securing the debts;

7 (9) Owning, without more, real or personal property;

8 (10) Conducting an isolated transaction that is completed  
9 within thirty days and that is not one in the course of repeated  
10 transactions of a like nature;

11 (11) Transacting business in interstate commerce; or

12 (12) Acting as a foreign corporate trustee to the extent  
13 authorized under section 30-3820.

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

16 (d) The requirements of the Nebraska Model Business  
17 Corporation Act are not applicable to foreign or alien insurers which  
18 are subject to the requirements of Chapter 44.

19 Sec. 204. (MBCA 15.02) (a) A foreign corporation  
20 transacting business in this state without a certificate of authority  
21 may not maintain a proceeding in any court in this state until it  
22 obtains a certificate of authority.

23 (b) The successor to a foreign corporation that  
24 transacted business in this state without a certificate of authority  
25 and the assignee of a cause of action arising out of that business

1 may not maintain a proceeding based on that cause of action in any  
2 court in this state until the foreign corporation or its successor  
3 obtains a certificate of authority.

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

10 (d) A foreign corporation is liable for a civil penalty  
11 of five hundred dollars for each day, but not to exceed a total of  
12 ten thousand dollars for each year, it transacts business in this  
13 state without a certificate of authority. The Attorney General may  
14 collect all penalties due under this subsection and shall remit them  
15 to the State Treasurer for distribution in accordance with Article  
16 VII, section 5, of the Constitution of Nebraska.

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

21 Sec. 205. (MBCA 15.03) (a) A foreign corporation may  
22 apply for a certificate of authority to transact business in this  
23 state by delivering an application to the Secretary of State for  
24 filing. The application must set forth:

25 (1) The name of the foreign corporation or, if its name

1 is unavailable for use in this state, a corporate name that satisfies  
2 the requirements of section 208 of this act;

3 (2) The name of the state or country under whose law it  
4 is incorporated;

5 (3) Its date of incorporation and period of duration;

6 (4) The street address of its principal office;

7 (5) The street address of its registered office in this  
8 state and the name of its current registered agent at that office. A  
9 post office box number may be provided in addition to the street  
10 address; and

11 (6) The names and street addresses of its current  
12 directors and officers.

13 (b) The foreign corporation shall deliver with the  
14 completed application a certificate of existence, or a document of  
15 similar import, duly authenticated by the secretary of state or other  
16 official having custody of corporate records in the state or country  
17 under whose law it is incorporated. Such certificate or document  
18 shall not bear a date of more than sixty days prior to the date the  
19 application is delivered.

20 Sec. 206. (MBCA 15.04) (a) A foreign corporation  
21 authorized to transact business in this state must obtain an amended  
22 certificate of authority from the Secretary of State if it changes:

23 (1) Its corporate name;

24 (2) The period of its duration; or

25 (3) The state or country of its incorporation.

1           (b) The requirements of section 205 of this act for  
2 obtaining an original certificate of authority apply to obtaining an  
3 amended certificate under this section.

4           Sec. 207. (MBCA 15.05) (a) A certificate of authority  
5 authorizes the foreign corporation to which it is issued to transact  
6 business in this state subject, however, to the right of the state to  
7 revoke the certificate as provided in the Nebraska Model Business  
8 Corporation Act.

9           (b) A foreign corporation with a valid certificate of  
10 authority has the same but no greater rights and has the same but no  
11 greater privileges as and, except as otherwise provided by the  
12 Nebraska Model Business Corporation Act, is subject to the same  
13 duties, restrictions, penalties, and liabilities now or later imposed  
14 on a domestic corporation of like character.

15           (c) The Nebraska Model Business Corporation Act does not  
16 authorize this state to regulate the organization or internal affairs  
17 of a foreign corporation authorized to transact business in this  
18 state.

19           Sec. 208. (MBCA 15.06) (a) If the corporate name of a  
20 foreign corporation does not satisfy the requirements of section 30  
21 of this act, the foreign corporation to obtain or maintain a  
22 certificate of authority to transact business in this state:

23           (1) May add to its corporate name for use in this state  
24 the word corporation, incorporated, company, or limited, or the  
25 abbreviation corp., inc., co., or ltd.; or

1           (2) May use a fictitious name to transact business in  
2 this state if its real name is unavailable and it delivers to the  
3 Secretary of State for filing a copy of the resolution of its board  
4 of directors, certified by its secretary, adopting the fictitious  
5 name.

6           (b) Except as authorized by subsections (c) and (d) of  
7 this section, the corporate name, including a fictitious name, of a  
8 foreign corporation must not be deceptively similar to, upon the  
9 records of the Secretary of State:

10           (1) The corporate name of a corporation incorporated or  
11 authorized to transact business in this state;

12           (2) A corporate name reserved or registered under section  
13 31 or 32 of this act;

14           (3) The fictitious name of another foreign corporation  
15 authorized to transact business in this state;

16           (4) The corporate name of a not-for-profit corporation  
17 incorporated or authorized to transact business in this state;

18           (5) A trade name registered in this state pursuant to  
19 sections 87-208 to 87-219.01; and

20           (6) Any other business entity name registered or filed  
21 with the Secretary of State pursuant to the law of this state.

22           (c) A foreign corporation may apply to the Secretary of  
23 State for authorization to use in this state the name of another  
24 corporation or business entity, incorporated or authorized to  
25 transact business in this state, that is deceptively similar to, upon



1 the records of the Secretary of State, the name applied for. The  
2 Secretary of State shall authorize use of the name applied for if:

3 (1) The other corporation or business entity consents to  
4 the use in writing; or

5 (2) The applicant delivers to the Secretary of State a  
6 certified copy of a final judgment of a court of competent  
7 jurisdiction establishing the applicant's right to use the name  
8 applied for in this state.

9 (d) A foreign corporation may use in this state the name,  
10 including the fictitious name, of another domestic or foreign  
11 corporation or business entity that is used in this state if the  
12 other corporation or business entity is incorporated or authorized to  
13 transact business in this state and the foreign corporation:

14 (1) Has merged with the other corporation or business  
15 entity;

16 (2) Has been formed by reorganization of the other  
17 corporation or business entity; or

18 (3) Has acquired all or substantially all of the assets,  
19 including the corporate name, of the other corporation or business  
20 entity.

21 (e) If a foreign corporation authorized to transact  
22 business in this state changes its corporate name to one that does  
23 not satisfy the requirements of section 30 of this act, it may not  
24 transact business in this state under the changed name until it  
25 adopts a name satisfying the requirements of section 30 of this act

1 and obtains an amended certificate of authority under section 206 of  
2 this act.

3           Sec. 209. (MBCA 15.07) Each foreign corporation  
4 authorized to transact business in this state must continuously  
5 maintain in this state:

6           (1) A registered office that may be the same as any of  
7 its places of business; and

8           (2) A registered agent, who may be:

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

11           (ii) A domestic corporation or not-for-profit domestic  
12 corporation whose business office is identical with the registered  
13 office; or

14           (iii) A foreign corporation or foreign not-for-profit  
15 corporation authorized to transact business in this state whose  
16 business office is identical with the registered office.

17           Sec. 210. (MBCA 15.08) (a) A foreign corporation  
18 authorized to transact business in this state may change its  
19 registered office or registered agent by delivering to the Secretary  
20 of State for filing a statement of change that sets forth:

21           (1) Its name;

22           (2) The street address of its current registered office;

23           (3) If the current registered office is to be changed,  
24 the street address of its new registered office;

25           (4) The name and street address of its current registered

1 agent. A post office box number may be provided in addition to the  
2 street address;

3 (5) If the current registered agent is to be changed, the  
4 name of its new registered agent and the new agent's written consent,  
5 either on the statement or attached to it, to the appointment; and

6 (6) That after the change or changes are made, the street  
7 addresses of its registered office and the business office of its  
8 registered agent will be identical.

9 (b) If the street address or post office box number of a  
10 registered agent's business office changes, the agent may change the  
11 street address or post office box number of the registered office of  
12 any foreign corporation for which the person is the registered agent  
13 by notifying the corporation in writing of the change, and signing  
14 and delivering to the Secretary of State for filing a statement of  
15 change that complies with the requirements of subsection (a) of this  
16 section and recites that the corporation has been notified of the  
17 change.

18 Sec. 211. (MBCA 15.09) (a) The registered agent of a  
19 foreign corporation may resign the agency appointment by signing and  
20 delivering to the Secretary of State for filing the signed original  
21 and two exact or conformed copies of a statement of resignation. The  
22 statement of resignation may include a statement that the registered  
23 office is also discontinued.

24 (b) After filing the statement, the Secretary of State  
25 shall attach the filing receipt to one copy and mail the copy and

1 receipt to the registered office if not discontinued. The Secretary  
2 of State shall mail the other copy to the foreign corporation at its  
3 principal office address shown in its most recent biennial report.

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

7 Sec. 212. (MBCA 15.10) (a) The registered agent of a  
8 foreign corporation authorized to transact business in this state is  
9 the corporation's agent for service of process, notice, or demand  
10 required or permitted by law to be served on the foreign corporation.  
11 By being authorized to transact business in this state, the foreign  
12 corporation's agent for service of process also consents to service  
13 of process directed to the foreign corporation's agent in this state  
14 for a search warrant issued pursuant to sections 28-807 to 28-829, or  
15 for any other validly issued and properly served subpoena, including  
16 those authorized under section 86-2,112, for records or documents  
17 that are in the possession of the foreign corporation and are located  
18 inside or outside of this state. The consent to service of a subpoena  
19 or search warrant applies to a foreign corporation that is a party or  
20 nonparty to the matter for which the search warrant is sought.

21 (b) A foreign corporation may be served by registered or  
22 certified mail, return receipt requested, addressed to the secretary  
23 of the foreign corporation or the designated custodian of records at  
24 its principal office shown in its application for a certificate of  
25 authority or in its most recent biennial report if the foreign

1 corporation:

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

4 (2) Has withdrawn from transacting business in this state  
5 under section 213 of this act; or

6 (3) Has had its certificate of authority revoked under  
7 section 218 of this act.

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

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

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

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

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

18 Sec. 213. (MBCA 15.20) (a) A foreign corporation  
19 authorized to transact business in this state may not withdraw from  
20 this state until it obtains a certificate of withdrawal from the  
21 Secretary of State.

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

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

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

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

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

12           Sec. 214. (MBCA 15.21) A foreign corporation authorized  
13 to transact business in this state that converts to a domestic  
14 nonprofit corporation or any form of domestic filing entity shall be  
15 deemed to have withdrawn on the effective date of the conversion.

16           Sec. 215. (MBCA 15.22) (a) A foreign corporation  
17 authorized to transact business in this state that converts to a  
18 domestic or foreign nonfiling entity shall apply for a certificate of  
19 withdrawal by delivering an application to the Secretary of State for  
20 filing. The application must set forth:

21           (1) The name of the foreign corporation and the name of  
22 the state or country under whose law it was incorporated before the  
23 conversion;

24           (2) That it surrenders its authority to transact business  
25 in this state as a foreign corporation;

1           (3) The type of unincorporated entity to which it has  
2 been converted and the jurisdiction whose laws govern its internal  
3 affairs; and

4           (4) If it has been converted to a foreign unincorporated  
5 entity:

6           (i) That it revokes the authority of its registered agent  
7 to accept service on its behalf and consents that service of process  
8 in any proceeding based on a cause of action arising during the time  
9 it was authorized to transact business in this state may thereafter  
10 be made on such foreign unincorporated entity outside this state; and

11           (ii) A mailing address at which process against the  
12 foreign unincorporated entity may be served.

13           (b) After the withdrawal under this section of a  
14 corporation that has converted to a domestic unincorporated entity is  
15 effective, service of process shall be made on the unincorporated  
16 entity in accordance with the regular procedures for service of  
17 process on the form of unincorporated entity to which the corporation  
18 was converted.

19           Sec. 216. (MBCA 15.23) (a) A foreign business corporation  
20 authorized to transact business in this state that converts to a  
21 foreign nonprofit corporation or to any form of foreign  
22 unincorporated entity that is required to obtain a certificate of  
23 authority or make a similar type of filing with the Secretary of  
24 State if it transacts business in this state shall file with the  
25 Secretary of State an application for transfer of authority signed by

1 any officer or other duly authorized representative. The application  
2 shall set forth:

3 (1) The name of the corporation;

4 (2) The type of unincorporated entity to which it has  
5 been converted and the jurisdiction whose laws govern its internal  
6 affairs; and

7 (3) Any other information that would be required in a  
8 filing under the laws of this state by an unincorporated entity of  
9 the type the corporation has become seeking authority to transact  
10 business in this state.

11 (b) The application for transfer of authority shall be  
12 delivered to the Secretary of State for filing and shall take effect  
13 at the effective time provided in section 6 of this act.

14 (c) Upon the effectiveness of the application for  
15 transfer of authority, the authority of the corporation under  
16 sections 203 to 220 of this act to transact business in this state  
17 shall be transferred without interruption to the converted entity  
18 which shall thereafter hold such authority subject to the provisions  
19 of the laws of this state applicable to that type of unincorporated  
20 entity.

21 Sec. 217. (MBCA 15.30) The Secretary of State may  
22 commence a proceeding under section 218 of this act to  
23 administratively revoke the certificate of authority of a foreign  
24 corporation authorized to transact business in this state if:

25 (1) The foreign corporation is without a registered agent



1 or registered office in this state for sixty days or more;

2 (2) The foreign corporation does not inform the Secretary  
3 of State under section 210 or 211 of this act that its registered  
4 agent or registered office has changed, that its registered agent has  
5 resigned, or that its registered office has been discontinued within  
6 sixty days of the change, resignation, or discontinuance;

7 (3) An incorporator, director, officer, or agent of the  
8 foreign corporation signed a document knowing it was false in any  
9 material respect with intent that the document be delivered to the  
10 Secretary of State for filing;

11 (4) The foreign corporation or its agent for service of  
12 process does not comply with section 212 of this act; or

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

18 Sec. 218. (MBCA 15.31) (a) If the Secretary of State  
19 determines that one or more grounds exist under section 217 of this  
20 act for revocation of a certificate of authority, the Secretary of  
21 State shall serve the foreign corporation with written notice of such  
22 determination under section 212 of this act.

23 (b) If the foreign corporation does not correct each  
24 ground for revocation or demonstrate to the reasonable satisfaction  
25 of the Secretary of State that each ground determined by the

1 Secretary of State does not exist within sixty days after service of  
2 the notice is perfected under section 212 of this act, the Secretary  
3 of State shall administratively revoke the foreign corporation's  
4 certificate of authority by signing a certificate of revocation that  
5 recites the ground or grounds for revocation and its effective date.  
6 The Secretary of State shall file the original of the certificate and  
7 serve a copy on the foreign corporation under section 212 of this  
8 act.

9 (c) The authority of a foreign corporation to transact  
10 business in this state ceases on the date shown on the certificate  
11 revoking its certificate of authority.

12 (d) Revocation of a foreign corporation's certificate of  
13 authority does not terminate the authority of the registered agent of  
14 the corporation.

15 Sec. 219. (a) A foreign corporation, the certificate of  
16 authority of which has been administratively revoked under section  
17 218 of this act, may apply to the Secretary of State for  
18 reinstatement within five years after the effective date of the  
19 revocation. The application must:

20 (1) Recite the name of the foreign corporation and the  
21 effective date of the revocation;

22 (2) State that the ground or grounds for revocation  
23 either did not exist or have been eliminated; and

24 (3) State that the foreign corporation's name satisfies  
25 the requirements of section 208 of this act.

1           (b) If the Secretary of State determines (1) that the  
2 application contains the information required by subsection (a) of  
3 this section and that the information is correct and (2) that the  
4 foreign corporation has paid to the Secretary of State all delinquent  
5 fees and has delivered to the Secretary of State a properly executed  
6 and signed biennial report, he or she shall cancel the certificate of  
7 revocation, prepare a certificate of reinstatement that recites his  
8 or her determination and the effective date of reinstatement, file  
9 the original of the certificate, and serve a copy on the foreign  
10 corporation under section 212 of this act.

11           (c) When the reinstatement is effective, it relates back  
12 to and takes effect as of the effective date of the revocation and  
13 the foreign corporation shall resume carrying on its business as if  
14 the revocation had never occurred.

15           Sec. 220. (MBCA 15.32) (a) If the Secretary of State  
16 denies a foreign corporation's application for reinstatement  
17 following administrative revocation of its certificate of authority  
18 under section 218 of this act, he or she shall serve the foreign  
19 corporation under section 212 of this act with a written notice that  
20 explains the reason or reasons for denial.

21           (b) A foreign corporation may appeal the denial of  
22 reinstatement to the district court of Lancaster County within thirty  
23 days after service of the notice of denial is perfected under section  
24 212 of this act. The foreign corporation appeals by petitioning the  
25 court to set aside the revocation and attaching to the petition

1 copies of the Secretary of State's certificate of revocation, the  
2 foreign corporation's application for reinstatement, and the  
3 Secretary of State's notice of denial.

4 (c) The court may summarily order the Secretary of State  
5 to reinstate the certificate of authority or may take any other  
6 action the court considers appropriate.

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

9 Sec. 221. (MBCA 16.01) (a) A corporation shall keep as  
10 permanent records minutes of all meetings of its shareholders and  
11 board of directors, a record of all actions taken by the shareholders  
12 or board of directors without a meeting, and a record of all actions  
13 taken by a committee of the board of directors in place of the board  
14 of directors on behalf of the corporation.

15 (b) A corporation shall maintain appropriate accounting  
16 records.

17 (c) A corporation or its agent shall maintain a record of  
18 its shareholders, in a form that permits preparation of a list of the  
19 names and addresses of all shareholders, in alphabetical order by  
20 class of shares showing the number and class of shares held by each.

21 (d) A corporation shall maintain its records in the form  
22 of a document, including an electronic record or in another form  
23 capable of conversion into paper form within a reasonable time.

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

1           (1) Its articles or restated articles of incorporation,  
2 all amendments to them currently in effect, and any notices to  
3 shareholders referred to in subdivision (k)(5) of section 3 of this  
4 act regarding facts on which a filed document is dependent;

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

7           (3) Resolutions adopted by its board of directors  
8 creating one or more classes or series of shares and fixing their  
9 relative rights, preferences, and limitations if shares issued  
10 pursuant to those resolutions are outstanding;

11           (4) The minutes of all shareholders' meetings and records  
12 of all action taken by shareholders without a meeting for the past  
13 three years;

14           (5) All written communications to shareholders generally  
15 within the past three years, including the financial statements  
16 furnished for the past three years under section 227 of this act;

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

19           (7) Its most recent biennial report delivered to the  
20 Secretary of State under section 228 of this act.

21           Sec. 222. (MBCA 16.02) (a) A shareholder of a corporation  
22 is entitled to inspect and copy, during regular business hours at the  
23 corporation's principal office, any of the records of the corporation  
24 described in subsection (e) of section 221 of this act if the  
25 shareholder gives the corporation a signed written notice of the

1 shareholder's demand at least five business days before the date on  
2 which the shareholder wishes to inspect and copy.

3 (b) For any meeting of shareholders for which the record  
4 date for determining shareholders entitled to vote at the meeting is  
5 different than the record date for notice of the meeting, any person  
6 who becomes a shareholder subsequent to the record date for notice of  
7 the meeting and is entitled to vote at the meeting is entitled to  
8 obtain from the corporation upon request the notice and any other  
9 information provided by the corporation to shareholders in connection  
10 with the meeting unless the corporation has made such information  
11 generally available to shareholders by posting it on its web site or  
12 by other generally recognized means. Failure of a corporation to  
13 provide such information does not affect the validity of action taken  
14 at the meeting.

15 (c) A shareholder of a corporation is entitled to inspect  
16 and copy, during regular business hours at a reasonable location  
17 specified by the corporation, any of the following records of the  
18 corporation if the shareholder meets the requirements of subsection  
19 (d) of this section and gives the corporation a signed written notice  
20 of the shareholder's demand at least five business days before the  
21 date on which the shareholder wishes to inspect and copy:

22 (1) Excerpts from minutes of any meeting of the board of  
23 directors or a committee of the board of directors while acting in  
24 place of the board of directors on behalf of the corporation, minutes  
25 of any meeting of the shareholders, and records of action taken by

1 the shareholders, board of directors, or a committee of the board  
2 without a meeting to the extent not subject to inspection under  
3 subsection (a) of this section;

4 (2) Accounting records of the corporation; and

5 (3) The record of shareholders.

6 (d) A shareholder may inspect and copy the records  
7 described in subsection (c) of this section only if:

8 (1) The shareholder's demand is made in good faith and  
9 for a proper purpose;

10 (2) The shareholder describes with reasonable  
11 particularity the shareholder's purpose and the records the  
12 shareholder desires to inspect; and

13 (3) The records are directly connected with the  
14 shareholder's purpose.

15 (e) The right of inspection granted by this section may  
16 not be abolished or limited by a corporation's articles of  
17 incorporation or bylaws.

18 (f) This section does not affect:

19 (1) The right of a shareholder to inspect records under  
20 section 62 of this act or, if the shareholder is in litigation with  
21 the corporation, to the same extent as any other litigant; or

22 (2) The power of a court, independently of the Nebraska  
23 Model Business Corporation Act, to compel the production of corporate  
24 records for examination.

25 (g) For purposes of this section, shareholder includes a

1 beneficial owner whose shares are held in a voting trust or by a  
2 nominee on the shareholder's behalf.

3           Sec. 223. (MBCA 16.03) (a) A shareholder's agent or  
4 attorney has the same inspection and copying rights as the  
5 shareholder represented.

6           (b) The right to copy records under section 221 of this  
7 act includes, if reasonable, the right to receive copies by  
8 xerographic or other means, including copies through an electronic  
9 transmission if available and so requested by the shareholder.

10           (c) The corporation may comply at its expense with a  
11 shareholder's demand to inspect the record of shareholders under  
12 subdivision (c)(3) of section 222 of this act by providing the  
13 shareholder with a list of shareholders that was compiled no earlier  
14 than the date of the shareholder's demand.

15           (d) The corporation may impose a reasonable charge,  
16 covering the costs of labor and material, for copies of any documents  
17 provided to the shareholder. The charge may not exceed the estimated  
18 cost of production, reproduction, or transmission of the records.

19           Sec. 224. (MBCA 16.04) (a) If a corporation does not  
20 allow a shareholder who complies with subsection (a) of section 222  
21 of this act to inspect and copy any records required by that  
22 subsection to be available for inspection, the district court of the  
23 county where the corporation's principal office, or, if none in this  
24 state, its registered office, is located may summarily order  
25 inspection and copying of the records demanded at the corporation's



1 expense upon application of the shareholder.

2 (b) If a corporation does not within a reasonable time  
3 allow a shareholder to inspect and copy any other record, the  
4 shareholder who complies with subsections (b) and (c) of section 222  
5 of this act may apply to the district court of the county where the  
6 corporation's principal office, or, if none in this state, its  
7 registered office, is located for an order to permit inspection and  
8 copying of the records demanded. The court shall dispose of an  
9 application under this subsection on an expedited basis.

10 Sec. 225. (MBCA 16.05) (a) A director of a corporation is  
11 entitled to inspect and copy the books, records, and documents of the  
12 corporation at any reasonable time to the extent reasonably related  
13 to the performance of the director's duties as a director, including  
14 duties as a member of a committee, but not for any other purpose or  
15 in any manner that would violate any duty to the corporation.

16 (b) The district court of the county where the  
17 corporation's principal office, or, if none in this state, its  
18 registered office, is located may order inspection and copying of the  
19 books, records, and documents at the corporation's expense upon  
20 application of a director who has been refused such inspection  
21 rights, unless the corporation establishes that the director is not  
22 entitled to such inspection rights. The court shall dispose of an  
23 application under this subsection on an expedited basis.

24 (c) If an order is issued, the court may include  
25 provisions protecting the corporation from undue burden or expense

1 and provisions prohibiting the director from using information  
2 obtained upon exercise of the inspection rights in a manner that  
3 would violate a duty to the corporation, and the court may also order  
4 the corporation to reimburse the director for the director's expenses  
5 incurred in connection with the application.

6           Sec. 226. (MBCA 16.06) (a) Whenever notice would  
7 otherwise be required to be given under any provision of the Nebraska  
8 Model Business Corporation Act to a shareholder, such notice need not  
9 be given if:

10           (1) Notices to shareholders of two consecutive annual  
11 meetings and all notices of meetings during the period between such  
12 two consecutive annual meetings have been sent to such shareholder at  
13 such shareholder's address as shown on the records of the corporation  
14 and have been returned undeliverable or could not be delivered; or

15           (2) All, but not less than two, payments of dividends on  
16 securities during a twelve-month period, or two consecutive payments  
17 of dividends on securities during a period of more than twelve  
18 months, have been sent to such shareholder at such shareholder's  
19 address as shown on the records of the corporation and have been  
20 returned undeliverable or could not be delivered.

21           (b) If any such shareholder shall deliver to the  
22 corporation a written notice setting forth such shareholder's then-  
23 current address, the requirement that notice be given to such  
24 shareholder shall be reinstated.

25           Sec. 227. (MBCA 16.20) (a) A corporation shall deliver to

1 its shareholders annual financial statements, which may be  
2 consolidated or combined statements of the corporation and one or  
3 more of its subsidiaries, as appropriate, that include a balance  
4 sheet as of the end of the fiscal year, an income statement for that  
5 year, and a statement of changes in shareholders' equity for the year  
6 unless that information appears elsewhere in the financial  
7 statements. If financial statements are prepared for the corporation  
8 on the basis of generally accepted accounting principles, the annual  
9 financial statements must also be prepared on that basis.

10 (b) If the annual financial statements are reported upon  
11 by a public accountant, the report must accompany them. If not, the  
12 statements must be accompanied by a statement of the president or the  
13 person responsible for the corporation's accounting records:

14 (1) Stating such person's reasonable belief whether the  
15 statements were prepared on the basis of generally accepted  
16 accounting principles and, if not, describing the basis of  
17 preparation; and

18 (2) Describing any respects in which the statements were  
19 not prepared on a basis of accounting consistent with the statements  
20 prepared for the preceding year.

21 (c) Within one hundred twenty days after the close of  
22 each fiscal year, the corporation shall send the annual financial  
23 statements to each shareholder. Thereafter, on written request from a  
24 shareholder to whom the statements were not sent, the corporation  
25 shall send the shareholder the latest financial statements. A public

1 corporation may fulfill its responsibilities under this section by  
2 delivering the specified financial statements or otherwise making  
3 them available in any manner permitted by the applicable rule and  
4 regulations of the United State Securities and Exchange Commission.

5           Sec. 228. (MBCA 16.21) Each domestic corporation and each  
6 foreign corporation authorized to transact business in this state  
7 shall deliver to the Secretary of State for filing a biennial report  
8 as required under section 21-301 or 21-304.

9           Sec. 229. (a) Notice of incorporation, amendment, merger,  
10 or share exchange of a domestic corporation shall be published for  
11 three successive weeks in some legal newspaper of general circulation  
12 in the county where the corporation's principal office, or, if none  
13 in this state, its registered office, is located.

14           A notice of incorporation shall show (1) the corporate  
15 name for the corporation, (2) the number of shares the corporation is  
16 authorized to issue, (3) the street address of the corporation's  
17 initial registered office and the name of its initial registered  
18 agent at that office, and (4) the name and street address of each  
19 incorporator.

20           A brief resume of any amendment, merger, or share  
21 exchange of the corporation shall be published in the same manner and  
22 for the same period of time as a notice of incorporation is required  
23 to be published.

24           (b) Notice of the dissolution of a domestic corporation  
25 and the terms and conditions of such dissolution and the names of the

1 persons who are to wind up and liquidate its business and affairs and  
2 their official titles with a statement of assets and liabilities of  
3 the corporation shall be published for three successive weeks in some  
4 legal newspaper of general circulation in the county where the  
5 corporation's principal office, or, if none in this state, its  
6 registered office, is located.

7 (c) Proof of publication of any of the notices required  
8 to be published under this section shall be filed in the office of  
9 the Secretary of State. In the event any notice required to be given  
10 pursuant to this section is not given but is subsequently published  
11 for the required time and proof of the publication thereof is filed  
12 in the office of the Secretary of State, the acts of such corporation  
13 prior to, as well as after, such publication shall be valid.

14 Sec. 230. (MBCA 17.01) The Nebraska Model Business  
15 Corporation Act applies to all domestic corporations in existence on  
16 the operative date of this act that were incorporated under any  
17 general statute of this state providing for incorporation of  
18 corporations for profit if power to amend or repeal the statute under  
19 which the corporation was incorporated was reserved.

20 Sec. 231. (MBCA 17.02) A foreign corporation authorized  
21 to transact business in this state on the operative date of this act  
22 is subject to the Nebraska Model Business Corporation Act but is not  
23 required to obtain a new certificate of authority to transact  
24 business under the act.

25 Sec. 232. (MBCA 17.03) (a) Except as provided in

1 subsection (b) of this section, the repeal of a statute by this  
2 legislative bill does not affect:

3 (1) The operation of the statute or any action taken  
4 under it before its repeal;

5 (2) Any ratification, right, remedy, privilege,  
6 obligation, or liability acquired, accrued, or incurred under the  
7 statute before its repeal;

8 (3) Any violation of the statute, or any penalty,  
9 forfeiture, or punishment incurred because of the violation, before  
10 its repeal; or

11 (4) Any proceeding, reorganization, or dissolution  
12 commenced under the statute before its repeal, and the proceeding,  
13 reorganization, or dissolution may be completed in accordance with  
14 the statute as if it had not been repealed.

15 (b) If a penalty or punishment imposed for violation of a  
16 statute repealed by this legislative bill is reduced by this  
17 legislative bill, the penalty or punishment if not already imposed  
18 shall be imposed in accordance with this legislative bill.

19 (c) In the event that any provisions of this legislative  
20 bill are deemed to modify, limit, or supersede the federal Electronic  
21 Signatures in Global and National Commerce Act, 15 U.S.C. sections  
22 7001 et seq., as the act existed on January 1, 2014, the provisions  
23 of this legislative bill shall control to the maximum extent  
24 permitted by section 102(a)(2) of that federal act, 15 U.S.C. 7002  
25 (a)(2).

1           Sec. 233. Section 8-1401, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           8-1401 (1) No person organized under ~~the Business~~  
4 ~~Corporation Act,~~ the Credit Union Act, the Nebraska Banking Act, the  
5 Nebraska Industrial Development Corporation Act, the Nebraska Model  
6 Business Corporation Act, the Nebraska Nonprofit Corporation Act, the  
7 Nebraska Professional Corporation Act, the Nebraska Trust Company  
8 Act, or Chapter 8, article 3, or otherwise authorized to conduct  
9 business in Nebraska or organized under the laws of the United  
10 States, shall be required to disclose any records or information,  
11 financial or otherwise, that it deems confidential concerning its  
12 affairs or the affairs of any person with which it is doing business  
13 to any person, party, agency, or organization, unless:

14           (a) The disclosure relates to a lawyers trust account and  
15 is required to be made to the Counsel for Discipline of the Nebraska  
16 Supreme Court pursuant to a rule adopted by the Nebraska Supreme  
17 Court;

18           (b) The disclosure is governed by rules for discovery  
19 promulgated pursuant to section 25-1273.01;

20           (c) The request for disclosure is made by a law  
21 enforcement agency regarding a crime, a fraud, or any other unlawful  
22 activity in which the person to whom the request for disclosure is  
23 made is or may be a victim of such crime, fraud, or unlawful  
24 activity;

25           (d) The request for disclosure is made by a governmental

1 agency which is a duly constituted supervisory regulatory agency of  
2 the person to whom the request for disclosure is made and the  
3 disclosure relates to examinations, audits, investigations, or  
4 inquiries of such persons;

5 (e) The request for disclosure is made pursuant to  
6 subpoena issued under the laws of this state by a governmental agency  
7 exercising investigatory or adjudicative functions with respect to a  
8 matter within the agency's jurisdiction;

9 (f) The production of records is pursuant to a written  
10 demand of the Tax Commissioner under section 77-375;

11 (g) There is first presented to such person a subpoena,  
12 summons, or warrant issued by a court of competent jurisdiction;

13 (h) A statute by its terms or rules and regulations  
14 adopted and promulgated thereunder requires the disclosure, other  
15 than by subpoena, summons, warrant, or court order;

16 (i) There is presented to such person an order of a court  
17 of competent jurisdiction setting forth the exact nature and limits  
18 of such required disclosure and a showing that all persons to be  
19 affected by such order have had reasonable notice and an opportunity  
20 to be heard upon the merits of such order;

21 (j) The request for disclosure relates to information or  
22 records regarding the balance due, monthly payments due, payoff  
23 amounts, payment history, interest rates, due dates, or similar  
24 information for indebtedness owed by a deceased person when the  
25 request is made by a person having an ownership interest in real



1 estate or personal property which secures such indebtedness owed to  
2 the person to whom the request for disclosure is made; or

3 (k) There is first presented to such person the written  
4 permission of the person about whom records or information is being  
5 sought authorizing the release of the requested records or  
6 information.

7 (2) Any person who makes a disclosure of records or  
8 information as required by this section shall not be held civilly or  
9 criminally liable for such disclosure in the absence of malice, bad  
10 faith, intent to deceive, or gross negligence.

11 Sec. 234. Section 8-2104, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 8-2104 (1) An out-of-state bank may establish and  
14 maintain a branch or acquire a branch in this state upon compliance  
15 with any applicable requirements of the ~~Business Corporation Act~~  
16 Nebraska Model Business Corporation Act for registration or  
17 qualification to do business in this state.

18 (2) An out-of-state bank may engage in an interstate  
19 merger transaction in this state in which it is the resulting bank  
20 and establish one or more branches in this state. The out-of-state  
21 bank shall notify the department of the proposed interstate merger  
22 transaction involving a Nebraska state chartered bank within fifteen  
23 days after the date it files an application for an interstate merger  
24 transaction with its primary regulator.

25 (3) An out-of-state bank may conduct only those

1 activities at its branch or branches in this state that are  
2 permissible under the laws of Nebraska or of the United States,  
3 except that an out-of-state bank with trust powers may exercise all  
4 trust powers in this state as a Nebraska bank with trust powers  
5 subject to the requirements of section 8-209.

6 (4) All branches of an out-of-state bank shall comply  
7 with all applicable Nebraska laws and regulations in the conduct of  
8 their business in this state to the maximum extent authorized by  
9 federal law.

10 Sec. 235. Section 8-2306, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 8-2306 (1) An out-of-state trust company, in order to  
13 establish and maintain branch trust offices in Nebraska pursuant to  
14 section 8-2305, shall file written notice of the proposed transaction  
15 with the director on a form prescribed by the director on or after  
16 the date on which the out-of-state trust company applies to its home  
17 state regulator for approval to establish and maintain the branch  
18 trust office in this state. The notice shall include a copy of the  
19 application made to its home state regulator, a copy of a resolution  
20 of its board of directors authorizing the branch trust office, and  
21 the filing fee prescribed by section 8-602.

22 (2) An out-of-state trust company shall provide with the  
23 notice satisfactory evidence to the director of compliance with (a)  
24 any applicable requirements of the ~~Business Corporation Act Nebraska~~  
25 Model Business Corporation Act and (b) the applicable requirements of

1 its home state regulator for establishing and maintaining a branch  
2 trust office.

3 (3) An out-of-state trust company shall provide with the  
4 notice an affidavit from its president stating that for as long as it  
5 maintains a branch trust office in this state the trust company will  
6 comply with Nebraska law.

7 (4) An out-of-state trust company shall obtain a fidelity  
8 bond in accordance with section 8-205.01. Submission of a rider to an  
9 existing bond indicating that the required coverage is outstanding  
10 and evidencing the beneficiaries described in section 8-205.01 shall  
11 satisfy the requirements of this subsection. The bond or a substitute  
12 bond shall remain in effect during all periods in which the trust  
13 company conducts business in Nebraska.

14 Sec. 236. Section 8-2311, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 8-2311 (1) An out-of-state trust company, in order to  
17 establish and maintain representative trust offices in Nebraska  
18 pursuant to section 8-2310, shall file written notice of the proposed  
19 transaction with the director on a form prescribed by the director.  
20 The notice shall include, in addition to the information and fee  
21 prescribed in subsection (1) of section 8-2309:

22 (a) Satisfactory evidence that the out-of-state trust  
23 company is a trust company;

24 (b) Satisfactory evidence of compliance with any  
25 applicable requirements of the ~~Business Corporation Act~~; Nebraska

1 Model Business Corporation Act;

2 (c) An affidavit from its president stating that for as  
3 long as it maintains a representative trust office in this state the  
4 trust company will comply with Nebraska law; and

5 (d) Submission of a fidelity bond in accordance with  
6 section 8-205.01. Submission of a rider to an existing bond  
7 indicating that the required coverage is outstanding and evidencing  
8 the beneficiaries described in section 8-205.01 shall satisfy the  
9 requirements of this subdivision. The bond or a substitute bond shall  
10 remain in effect during all periods in which the trust company  
11 conducts business in Nebraska.

12 (2) The director shall act within ninety days after  
13 receipt of notice under subsection (1) of this section. The director  
14 may extend the ninety-day period if he or she determines that the  
15 notice raises issues that require additional information or  
16 additional time for analysis. If the ninety-day period is extended,  
17 the out-of-state trust company may establish representative trust  
18 offices only on prior written approval of the director.

19 (3) The director may deny approval of the proposed  
20 representative trust office if he or she finds that the trust company  
21 lacks sufficient financial resources to establish the representative  
22 trust office without adversely affecting its safety or soundness,  
23 that the trust company does not have adequate fidelity bond coverage,  
24 or that the proposed representative trust office would not be in the  
25 public interest.

1                   (4) If the director does not extend the ninety-day period  
2 pursuant to subsection (2) of this section and does not act within  
3 ninety days, the out-of-state trust company may, upon compliance with  
4 sections 8-209 and 8-210, establish representative trust offices on  
5 the ninety-first day following the director's receipt of notice.

6                   Sec. 237. Section 9-614, Revised Statutes Supplement,  
7 2013, is amended to read:

8                   9-614 Lottery operator shall mean any individual, sole  
9 proprietorship, partnership, limited liability company, or  
10 corporation which operates a lottery on behalf of a county, city, or  
11 village.

12                   A lottery operator shall be a resident of Nebraska or, if  
13 a partnership, limited liability company, or corporation, shall be  
14 organized under the laws of this state as a partnership, formed under  
15 the Nebraska Uniform Limited Liability Company Act, or incorporated  
16 under the ~~Business Corporation Act~~. Nebraska Model Business  
17 Corporation Act.

18                   Sec. 238. Section 21-301, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20                   21-301 (1) Each ~~domestic corporation organized under the~~  
21 ~~laws of this state, for profit, shall make a report in writing to the~~  
22 ~~Secretary of State, subject to the Nebraska Model Business~~  
23 Corporation Act shall deliver a biennial report to the Secretary of  
24 State, as of January 1<sup>7</sup>, of each even-numbered year, in such form as  
25 the Secretary of State may prescribe. The report shall be signed by

1 one of the following: The president, a vice president, a secretary,  
2 or a treasurer of the corporation. The signature may be digital or  
3 electronic if it conforms to section 86-611. The report and ~~biennial~~  
4 ~~fee shall be submitted~~ occupation tax shall be delivered to the  
5 Secretary of State. The report and ~~fee~~ occupation tax shall be due on  
6 March 1 of each even-numbered year and shall become delinquent if not  
7 filed and paid by April 15 of each even-numbered year. If the  
8 Secretary of State finds that such report and ~~biennial fee~~ occupation  
9 tax conform to the requirements of the law, the Secretary of State  
10 shall file the report. If the Secretary of State finds that the  
11 report or ~~fee~~ occupation tax does not conform, the Secretary of State  
12 shall not file the report or accept the ~~fee~~ occupation tax but shall  
13 return the report and ~~fee~~ occupation tax to the corporation for any  
14 necessary corrections. A correction or amendment to the ~~biennial~~  
15 report may be filed at any time.

16 (2) In each even-numbered year, the Secretary of State  
17 shall cause a notice to be sent either by United States mail or  
18 electronically transmitted to each corporation for which a report and  
19 ~~fee~~ occupation tax as described in this section ~~has~~ have not been  
20 received as of March 1. The notice shall state that the report has  
21 not been received, that the report and ~~fee~~ occupation tax are due on  
22 March 1, and that the corporation will be administratively dissolved  
23 if the report and proper ~~fee~~ occupation tax are not received by April  
24 15.

25 Sec. 239. Section 21-302, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2                   21-302 The biennial report required under section 21-301  
3 from a domestic corporation ~~subject to the Business Corporation Act~~  
4 shall show:

5                   (1) The exact corporate name of the corporation;

6                   (2) The street address of the corporation's registered  
7 office and the name of its current registered agent at that office in  
8 this state. A post office box number may be provided in addition to  
9 the street address;

10                   (3) The street address of the corporation's principal  
11 office;

12                   (4) The names and street addresses of the corporation's  
13 directors and principal officers, which shall include the president,  
14 secretary, and treasurer;

15                   (5) A brief description of the nature of the  
16 corporation's business;

17                   (6) The amount of paid-up capital stock; and

18                   (7) The change or changes, if any, in the above  
19 particulars made since the last biennial report.

20                   Sec. 240. Section 21-303, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22                   21-303 (1) ~~At the time of filing the report under section~~  
23 ~~21-301 each even numbered year, Upon the delivery of the biennial~~  
24 report required under section 21-301 to the Secretary of State, it  
25 shall be the duty of every domestic corporation for profit, and

1 registered in the office of the Secretary of State on January 1,  
2 whether incorporated under the laws of this state or incorporated  
3 under the laws of any other state when such corporations have  
4 domesticated in this state, to pay to the Secretary of State a  
5 ~~biennial fee for an~~ occupation tax in each even-numbered calendar  
6 year beginning January 1, which ~~fee~~ occupation tax shall be due and  
7 assessable on such date and delinquent if not paid on or before April  
8 15 of each even-numbered year.

9 (2) The ~~biennial fee~~ occupation tax shall be as follows:  
10 When the paid-up capital stock of a corporation does not exceed ten  
11 thousand dollars, ~~a fee~~ an occupation tax of twenty-six dollars; when  
12 such paid-up capital stock exceeds ten thousand dollars but does not  
13 exceed twenty thousand dollars, ~~a fee~~ an occupation tax of forty  
14 dollars; when such paid-up capital stock exceeds twenty thousand  
15 dollars but does not exceed thirty thousand dollars, ~~a fee~~ an  
16 occupation tax of sixty dollars; when such paid-up capital stock  
17 exceeds thirty thousand dollars but does not exceed forty thousand  
18 dollars, ~~a fee~~ an occupation tax of eighty dollars; when such paid-up  
19 capital stock exceeds forty thousand dollars but does not exceed  
20 fifty thousand dollars, ~~a fee~~ an occupation tax of one hundred  
21 dollars; when such paid-up capital stock exceeds fifty thousand  
22 dollars but does not exceed sixty thousand dollars, ~~a fee~~ an  
23 occupation tax of one hundred twenty dollars; when such paid-up  
24 capital stock exceeds sixty thousand dollars but does not exceed  
25 seventy thousand dollars, ~~a fee~~ an occupation tax of one hundred



1 forty dollars; when such paid-up capital stock exceeds seventy  
2 thousand dollars but does not exceed eighty thousand dollars, ~~a fee~~  
3 an occupation tax of one hundred sixty dollars; when such paid-up  
4 capital stock exceeds eighty thousand dollars but does not exceed  
5 ninety thousand dollars, ~~a fee~~ an occupation tax of one hundred  
6 eighty dollars; when such paid-up capital stock exceeds ninety  
7 thousand dollars but does not exceed one hundred thousand dollars, ~~a~~  
8 ~~fee~~ an occupation tax of two hundred dollars; when such paid-up  
9 capital stock exceeds one hundred thousand dollars but does not  
10 exceed one hundred twenty-five thousand dollars, ~~a fee~~ an occupation  
11 tax of two hundred forty dollars; when such paid-up capital stock  
12 exceeds one hundred twenty-five thousand dollars but does not exceed  
13 one hundred fifty thousand dollars, ~~a fee~~ an occupation tax of two  
14 hundred eighty dollars; when such paid-up capital stock exceeds one  
15 hundred fifty thousand dollars but does not exceed one hundred  
16 seventy-five thousand dollars, ~~a fee~~ an occupation tax of three  
17 hundred twenty dollars; when such paid-up capital stock exceeds one  
18 hundred seventy-five thousand dollars but does not exceed two hundred  
19 thousand dollars, ~~a fee~~ an occupation tax of three hundred sixty  
20 dollars; when such paid-up capital stock exceeds two hundred thousand  
21 dollars but does not exceed two hundred twenty-five thousand dollars,  
22 ~~a fee~~ an occupation tax of four hundred dollars; when such paid-up  
23 capital stock exceeds two hundred twenty-five thousand dollars but  
24 does not exceed two hundred fifty thousand dollars, ~~a fee~~ an  
25 occupation tax of four hundred forty dollars; when such paid-up

1 capital stock exceeds two hundred fifty thousand dollars but does not  
2 exceed two hundred seventy-five thousand dollars, ~~a fee~~ an occupation  
3 tax of four hundred eighty dollars; when such paid-up capital stock  
4 exceeds two hundred seventy-five thousand dollars but does not exceed  
5 three hundred thousand dollars, ~~a fee~~ an occupation tax of five  
6 hundred twenty dollars; when such paid-up capital stock exceeds three  
7 hundred thousand dollars but does not exceed three hundred twenty-  
8 five thousand dollars, ~~a fee~~ an occupation tax of five hundred sixty  
9 dollars; when such paid-up capital stock exceeds three hundred  
10 twenty-five thousand dollars but does not exceed three hundred fifty  
11 thousand dollars, ~~a fee~~ an occupation tax of six hundred dollars;  
12 when such paid-up capital stock exceeds three hundred fifty thousand  
13 dollars but does not exceed four hundred thousand dollars, ~~a fee~~ an  
14 occupation tax of six hundred sixty-six dollars; when such paid-up  
15 capital stock exceeds four hundred thousand dollars but does not  
16 exceed four hundred fifty thousand dollars, ~~a fee~~ an occupation tax  
17 of seven hundred thirty dollars; when such paid-up capital stock  
18 exceeds four hundred fifty thousand dollars but does not exceed five  
19 hundred thousand dollars, ~~a fee~~ an occupation tax of eight hundred  
20 dollars; when such paid-up capital stock exceeds five hundred  
21 thousand dollars but does not exceed six hundred thousand dollars, ~~a~~  
22 ~~fee~~ an occupation tax of nine hundred ten dollars; when such paid-up  
23 capital stock exceeds six hundred thousand dollars but does not  
24 exceed seven hundred thousand dollars, ~~a fee~~ an occupation tax of one  
25 thousand ten dollars; when such paid-up capital stock exceeds seven

1 hundred thousand dollars but does not exceed eight hundred thousand  
2 dollars, ~~a fee~~ an occupation tax of one thousand one hundred twenty  
3 dollars; when such paid-up capital stock exceeds eight hundred  
4 thousand dollars but does not exceed nine hundred thousand dollars, a  
5 ~~fee~~ an occupation tax of one thousand two hundred thirty dollars;  
6 when such paid-up capital stock exceeds nine hundred thousand dollars  
7 but does not exceed one million dollars, ~~a fee~~ an occupation tax of  
8 one thousand three hundred thirty dollars; when such paid-up capital  
9 stock exceeds one million dollars but does not exceed ten million  
10 dollars, ~~a fee~~ an occupation tax of one thousand three hundred thirty  
11 dollars, and eight hundred dollars additional for each million or  
12 fraction thereof over and above one million dollars; when such paid-  
13 up capital stock exceeds ten million dollars but does not exceed  
14 fifteen million dollars, ~~a fee~~ an occupation tax of twelve thousand  
15 dollars; when such paid-up capital stock exceeds fifteen million  
16 dollars but does not exceed twenty million dollars, ~~a fee~~ an  
17 occupation tax of fourteen thousand six hundred sixty dollars; when  
18 such paid-up capital stock exceeds twenty million dollars but does  
19 not exceed twenty-five million dollars, ~~a fee~~ an occupation tax of  
20 seventeen thousand three hundred thirty dollars; when such paid-up  
21 capital stock exceeds twenty-five million dollars but does not exceed  
22 fifty million dollars, ~~a fee~~ an occupation tax of twenty thousand six  
23 hundred sixty dollars; when such paid-up capital stock exceeds fifty  
24 million dollars but does not exceed one hundred million dollars, a  
25 ~~fee~~ an occupation tax of twenty-one thousand three hundred thirty

1 dollars; and when such paid-up capital stock exceeds one hundred  
2 million dollars, ~~a fee~~ an occupation tax of twenty-three thousand  
3 nine hundred ninety dollars. The minimum ~~biennial fee~~ occupation tax  
4 for filing such report shall be twenty-six dollars. For purposes of  
5 determining the ~~fee,~~ occupation tax, the stock of corporations  
6 incorporated under the laws of any other state, which corporations  
7 have domesticated in this state and which stock is without par value,  
8 shall be deemed to have a par value of an amount equal to the amount  
9 paid in as capital for such shares at the time of the issuance  
10 thereof.

11           Sec. 241. Section 21-304, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           21-304 (1) Each foreign corporation ~~for profit,~~ subject  
14 to the Nebraska Model Business Corporation Act, doing business in  
15 this state, owning or using a part or all of its capital or plant in  
16 this state, and subject to compliance with all other provisions of  
17 law shall, in addition to all other statements required by law, ~~make~~  
18 deliver a biennial report to the Secretary of State, as of January 1  
19 of each even-numbered year, in such form as the Secretary of State  
20 may prescribe. The report shall be signed by one of the following:  
21 The president, a vice president, a secretary, or a treasurer of the  
22 corporation. The signature may be digital or electronic if it  
23 conforms to section 86-611. The report and ~~biennial fee~~ occupation  
24 tax shall be ~~submitted~~ delivered to the Secretary of State. The  
25 report and ~~fee~~ occupation tax shall be due on March 1 of each even-

1 numbered year and shall become delinquent if not filed and paid by  
2 April 15 of each even-numbered year. If the Secretary of State finds  
3 that such report and ~~biennial fee~~ occupation tax conform to the  
4 requirements of the law, the Secretary of State shall file the  
5 report. If the Secretary of State finds that the report ~~and fee do or~~  
6 occupation tax does not conform, the Secretary of State shall not  
7 file the report or accept the ~~fee~~ occupation tax but shall return the  
8 report and ~~fee~~ occupation tax to the corporation for any necessary  
9 corrections. A correction or amendment to the ~~biennial~~ report may be  
10 filed at any time.

11 (2) In each even-numbered year, the Secretary of State  
12 shall cause a notice to be sent either by United States mail or  
13 electronically transmitted to each corporation for which a report and  
14 ~~fee~~ occupation tax as described in this section ~~has~~ have not been  
15 received as of March 1. The notice shall state that the report has  
16 not been received, that the report and ~~fee~~ occupation tax are due on  
17 March 1, and that the ~~corporation will be dissolved~~ authority of the  
18 corporation to transact business in this state will be  
19 administratively revoked if the report and proper ~~fee~~ occupation tax  
20 are not received by April 15 of each even-numbered year.

21 Sec. 242. Section 21-305, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 21-305 The biennial report required under section 21-304  
24 from a foreign corporation ~~subject to the Business Corporation Act~~  
25 shall show:

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

4           (2) The street address of the foreign corporation's  
5 registered office and the name of its current registered agent at  
6 that office in this state. A post office box number may be provided  
7 in addition to the street address;

8           (3) The street address of the foreign corporation's  
9 principal office;

10           (4) The names and street addresses of the foreign  
11 corporation's directors and principal officers which shall include  
12 the president, secretary, and treasurer;

13           (5) A brief description of the nature of the foreign  
14 corporation's business;

15           (6) The value of the property owned and used by the  
16 foreign corporation in ~~Nebraska~~ this state and where such property is  
17 situated; and

18           (7) The change or changes, if any, in the above  
19 particulars made since the last ~~annual~~ biennial report.

20           Sec. 243. Section 21-306, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22           21-306 Upon the ~~filing~~ delivery of the biennial report  
23 required under section 21-304 ~~with~~ to the Secretary of State, it  
24 shall be the duty of every foreign corporation ~~for profit,~~ doing  
25 business in this state, to pay to the Secretary of State a biennial

1 ~~fee which shall be for an occupation tax~~ each even-numbered calendar  
2 year beginning January 1 and become due and assessable on March 1 of  
3 that year and become delinquent if not paid by April 15 of each even-  
4 numbered year. The ~~fee~~ occupation tax shall be measured by the  
5 property employed by the foreign corporation in the conduct of its  
6 business in ~~the State of Nebraska.~~ this state. For such purpose the  
7 property shall consist of the sum total of the actual value of all  
8 real estate and personal property employed in ~~Nebraska~~ this state by  
9 such foreign corporation in the transaction of its business. The  
10 ~~biennial fee~~ occupation tax to be paid by such foreign corporation  
11 shall be based upon the sum so determined, and shall be considered  
12 the capital stock of such foreign corporation in this state for the  
13 purpose of the ~~biennial fee.~~ occupation tax. The schedule of payment  
14 shall be double the ~~fees~~ occupation tax set forth in section 21-303,  
15 or any amendments thereto, except that the ~~fee~~ occupation tax shall  
16 not exceed thirty thousand dollars, and the Secretary of State, or  
17 any person deputized by the Secretary of State, shall have authority  
18 to investigate and obtain information from such corporation or any  
19 state, county, or city official. Such officers are authorized by this  
20 section to furnish such information to the Secretary of State, or  
21 anyone deputized by the Secretary of State, in order to determine all  
22 facts and give effect to the collection of the ~~biennial fee.~~  
23 occupation tax.

24           Sec. 244. Section 21-311, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   21-311 The Secretary of State shall make a report monthly  
2 to the Tax Commissioner of the ~~biennial fees~~ occupation taxes  
3 collected under sections 21-301 to ~~21-325~~ and shall pay the same into  
4 ~~the state treasury to the credit of 21-330~~ and remit them to the  
5 State Treasurer for credit to the General Fund. The report shall  
6 include the amount of any refunds paid out under section 21-328.

7                   Sec. 245. Section 21-312, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9                   21-312 The ~~fees~~ occupation taxes required to be paid by  
10 sections 21-301 to ~~21-325~~ 21-330 shall be the first and best lien on  
11 all property of the corporation whether such real or personal  
12 property is employed by the corporation in the prosecution of its  
13 business or is in the hands of an assignee, trustee, or receiver for  
14 the benefit of the creditors and stockholders thereof. The Secretary  
15 of State may file notice of such lien in the office of the county  
16 clerk of the county wherein the personal property sought to be  
17 charged with such lien is situated and with the county clerk or  
18 register of deeds of the county wherein the real estate sought to be  
19 charged with such lien is situated. The lien provided for in this  
20 section shall be invalid as to any mortgagee or pledgee whose lien is  
21 filed, as against any judgment lien which attached, or as against any  
22 purchaser whose rights accrued, prior to the filing of such notice.

23                   Sec. 246. Section 21-313, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25                   21-313 ~~If a~~ (1) If a domestic corporation required to



1 ~~file~~ deliver the biennial report and pay the ~~fee~~ occupation tax  
2 prescribed in sections 21-301 to ~~21-325~~ 21-330 fails or neglects to  
3 ~~make~~ deliver such report or pay such ~~fee~~ occupation tax by April 15  
4 of each even-numbered year, such corporation shall be ~~automatically~~  
5 administratively dissolved on April 16 of such year.

6 (2) If a foreign corporation required to deliver the  
7 biennial report and pay the occupation tax prescribed in sections  
8 21-301 to 21-330 fails or neglects to deliver such report or pay such  
9 occupation tax by April 15 of each even-numbered year, the authority  
10 of such corporation to transact business in this state shall be  
11 administratively revoked on April 16 of such year.

12 Sec. 247. Section 21-314, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 21-314 ~~Such biennial fee or fees~~ Occupation tax or taxes  
15 to be paid as provided in sections 21-301 to ~~21-325~~ 21-330 may be  
16 recovered by an action in the name of the state and on collection  
17 shall be ~~paid into the treasury to the credit of~~ remitted to the  
18 State Treasurer for credit to the General Fund.

19 Sec. 248. Section 21-315, Reissue Revised Statutes of  
20 Nebraska, is amended to read:

21 21-315 The Attorney General, on request of the Secretary  
22 of State, shall institute such action to recover occupation taxes in  
23 the district court of Lancaster County<sup>7</sup>, or any other county in the  
24 state in which such corporation has an office or place of business.

25 Sec. 249. Section 21-318, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           21-318 It shall be the duty of the Secretary of State to  
3 prepare and keep a correct list of all corporations subject to  
4 sections 21-301 to ~~21-325-21-330~~ and engaged in business within ~~the~~  
5 ~~State of Nebraska.~~ this state. For the purpose of obtaining the  
6 necessary information, the Secretary of State, or other person  
7 deputized by him or her, shall have access to the records of the  
8 offices of the county clerks of the state.

9           Sec. 250. Section 21-319, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11           21-319 Any county clerk shall, upon request of the  
12 Secretary of State, furnish him or her with such information as is  
13 shown by the records of his or her office concerning corporations  
14 located within his or her county and subject to sections 21-301 to  
15 ~~21-325-21-330.~~ 21-330. The Secretary of State, or any person deputized by  
16 him or her for the purpose of determining the amount of ~~fees~~ the  
17 occupation tax due from such corporation, shall have authority to  
18 investigate and determine the facts showing the proportion of the  
19 paid-up capital stock of the company represented by its property and  
20 business in ~~Nebraska.~~ this state.

21           Sec. 251. Section 21-321, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23           21-321 All banking, insurance, and building and loan  
24 association corporations paying fees and making reports to the  
25 ~~Auditor of Public Accounts~~ Director of Insurance or the Director of

1 Banking and Finance and all other corporations paying an occupation  
2 tax to the state under any other statutory provisions than those of  
3 sections 21-301 to ~~21-325~~21-330 shall be exempt from the provisions  
4 of such sections.

5           Sec. 252. Section 21-322, Reissue Revised Statutes of  
6 Nebraska, is amended to read:

7           21-322 In case of dissolution ~~or revocation of charter of~~  
8 a corporation by action of a competent court, or the winding up of a  
9 corporation, either foreign or domestic, by proceedings in assignment  
10 or bankruptcy, a certificate shall be signed by the clerk of the  
11 court in which such proceedings were had and filed in the office of  
12 the Secretary of State. The fees for making and filing such  
13 certificate shall be taxed as costs in the proceedings and paid out  
14 of the funds of the corporation, and shall have the same priority as  
15 other costs.

16           Sec. 253. Section 21-323, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           21-323 (1) Prior to January 1 of each even-numbered year,  
19 the Secretary of State shall cause to be mailed by first-class mail  
20 to the last-named and appointed registered agent at the last-named  
21 street address of the registered office of each domestic corporation  
22 subject to sections 21-301 to ~~21-325~~21-330 a notice stating that on  
23 or before March 1 of each even-numbered year occupation taxes are due  
24 to be paid and a properly executed and signed biennial report is due  
25 to be filed. If such occupation taxes are not paid and the report is

1 not filed by April 15 of each even-numbered year, (a) such taxes and  
2 report shall become delinquent, (b) the delinquent corporation shall  
3 be ~~automatically~~administratively dissolved on April 16 of such year  
4 for nonpayment of occupation taxes and failure to file the report,  
5 and (c) the delinquent occupation tax shall be a lien upon the assets  
6 of the corporation subsequent only to state, county, and municipal  
7 taxes.

8 (2) Upon the failure of any domestic corporation to pay  
9 its occupation tax and ~~file~~deliver the biennial report within the  
10 time limited by sections 21-301 to ~~21-325, 21-330,~~ the Secretary of  
11 State shall on April 16 of such year ~~automatically~~administratively  
12 dissolve the corporation for nonpayment of taxes and make such entry  
13 and showing upon the records of his or her office.

14 (3)(a) The Secretary of State shall ~~automatically~~  
15 administratively dissolve a corporation ~~subject to the Business~~  
16 ~~Corporation Act~~ by signing a certificate of dissolution that recites  
17 the ground or grounds for dissolution and its effective date. The  
18 Secretary of State shall file the original of the certificate and  
19 serve a copy on the corporation under section ~~21-2034. 36 of this~~  
20 act.

21 (b) A corporation ~~automatically~~administratively  
22 dissolved continues its corporate existence but may not carry on any  
23 business, except that business necessary to wind up and liquidate its  
24 business and affairs under section ~~21-20,155-188 of this act~~ and  
25 notify claimants under sections ~~21-20,156 and 21-20,157. 189 and 190~~

1 of this act.

2 (c) The ~~automatic~~administrative dissolution of a  
3 corporation shall not terminate the authority of its registered  
4 agent.

5 (4) All delinquent occupation taxes of the corporation  
6 shall be a lien upon the assets of the corporation, subsequent only  
7 to state, county, and municipal taxes.

8 (5) No domestic corporation shall be voluntarily  
9 dissolved until all occupation taxes and fees due to or assessable by  
10 the state have been paid and the biennial report filed by such  
11 corporation.

12 Sec. 254. Section 21-323.01, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14 21-323.01 (1) A corporation ~~automatically~~  
15 administratively dissolved under section 21-323 may apply to the  
16 Secretary of State for reinstatement within five years after the  
17 effective date of its ~~automatic~~administrative dissolution. The  
18 application shall:

19 (a) Recite the name of the corporation and the effective  
20 date of its ~~automatic~~administrative dissolution;

21 (b) State that the ground or grounds for dissolution  
22 either did not exist or have been eliminated;

23 (c) State that the corporation's name satisfies the  
24 requirements of section ~~21-2028~~30 of this act; and

25 (d) Be accompanied by a fee in the amount prescribed in

1 section ~~21-2005, 5~~ of this act, as such section may from time to time  
2 be amended, for an application for reinstatement.

3 (2) If the Secretary of State determines (a) that the  
4 application contains the information required by subsection (1) of  
5 this section and that the information is correct and (b) that the  
6 corporation has complied with subsection (4) of this section, he or  
7 she shall cancel the certificate of dissolution, prepare a  
8 certificate of reinstatement that recites his or her determination  
9 and the effective date of reinstatement, file the original of the  
10 certificate, and serve a copy on the corporation under section  
11 ~~21-2034. 36~~ of this act.

12 (3) When the reinstatement is effective, it shall relate  
13 back to and take effect as of the effective date of the ~~automatic~~  
14 administrative dissolution and the corporation shall resume carrying  
15 on its business as if the ~~automatic-administrative~~ dissolution had  
16 never occurred.

17 (4) A corporation applying for reinstatement under this  
18 section shall:

19 (a)(i) Pay to the Secretary of State a sum equal to all  
20 occupation taxes delinquent at the time the corporation was  
21 ~~automatically-administratively~~ dissolved, plus a sum equal to all  
22 occupation taxes which would otherwise have been due for the years  
23 the corporation was ~~automatically-administratively~~ dissolved; and  
24 (ii) ~~forward-deliver~~ to the Secretary of State a properly executed  
25 and signed biennial report for the most recent even-numbered year;

1 and

2 (b) Pay to the Secretary of State an additional amount  
3 derived by multiplying the rate specified in section 45-104.02, as  
4 such rate may from time to time be adjusted, times the amount of  
5 occupation taxes required to be paid by it for each year that such  
6 corporation was ~~automatically~~ administratively dissolved.

7 Sec. 255. Section 21-323.02, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 21-323.02 (1) If the Secretary of State denies a  
10 corporation's application for reinstatement following ~~automatic~~  
11 administrative dissolution under section 21-323, he or she shall  
12 serve the corporation under section ~~21-2034-36~~ of this act with a  
13 written notice that explains the reason or reasons for denial.

14 (2) The corporation may appeal the denial of  
15 reinstatement to the district court of Lancaster County within thirty  
16 days after service of the notice of denial is perfected under section  
17 36 of this act. The corporation shall appeal by petitioning the court  
18 to set aside the dissolution and attaching to the petition copies of  
19 the Secretary of State's certificate of dissolution, the  
20 corporation's application for reinstatement, and the Secretary of  
21 State's notice of denial.

22 (3) The court may summarily order the Secretary of State  
23 to reinstate the dissolved corporation or may take other action the  
24 court considers appropriate.

25 (4) The court's final decision may be appealed as in

1 other civil proceedings.

2           Sec. 256. Section 21-325, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           21-325 (1) Prior to January 1 of each even-numbered year,  
5 the Secretary of State shall cause to be mailed by first-class mail  
6 to the last-known address of each foreign corporation subject to  
7 sections 21-301 to ~~21-325-21-330~~ a notice stating that on or before  
8 March 1 of each even-numbered year occupation taxes are due to be  
9 paid and a properly executed and signed biennial report is due to be  
10 filed. If such occupation taxes are not paid and ~~such the~~ report is  
11 not filed by April 15 of each even-numbered year, (a) such taxes and  
12 report shall become delinquent, (b) the authority of the delinquent  
13 corporation shall be automatically dissolved to transact business in  
14 this state shall be administratively revoked on April 16 of such year  
15 for nonpayment of occupation taxes and failure to file the report,  
16 and (c) the delinquent occupation tax shall be a lien upon the assets  
17 of the corporation subject only to state, county, and municipal  
18 taxes.

19           (2) Upon the failure of any foreign corporation to pay  
20 its occupation tax and ~~file deliver~~ the biennial report within the  
21 time limited by sections 21-301 to ~~21-325, 21-330,~~ the Secretary of  
22 State shall on April 16 of such year ~~automatically dissolve the~~  
23 ~~corporation~~ administratively revoke the authority of the corporation  
24 to transact business in this state for nonpayment of taxes and shall  
25 bar the corporation from doing business in ~~the State of Nebraska~~ this



1 state under the corporation laws of the state and make such entry and  
2 showing upon the records of his or her office.

3 (3)(a) The Secretary of State shall ~~automatically~~  
4 ~~dissolve~~ administratively revoke the authority of a foreign  
5 corporation ~~subject to the Business Corporation Act~~ by signing a  
6 certificate of revocation of authority to transact business in this  
7 state that recites the ground or grounds for revocation and its  
8 effective date. The Secretary of State shall file the original of the  
9 certificate and serve a copy on the foreign corporation under section  
10 ~~21-20,177.~~ 212 of this act.

11 (b) The authority of a foreign corporation to transact  
12 business in this state shall cease on the date shown on the  
13 certificate revoking its certificate of authority.

14 (c) Revocation of a foreign corporation's certificate of  
15 authority shall not terminate the authority of the registered agent  
16 of the corporation.

17 (4) All delinquent corporation occupation taxes of the  
18 foreign corporation shall be a lien upon the assets of the  
19 corporation within the state, subsequent only to state, county, and  
20 municipal taxes. Nothing in sections 21-322 to ~~21-325~~ 21-330 shall be  
21 construed to allow a foreign corporation to do business in ~~Nebraska~~  
22 this state without complying with the laws of ~~the State of Nebraska.~~  
23 this state.

24 (5) No foreign corporation shall be voluntarily withdrawn  
25 until all occupation taxes due to or assessable by the state have

1 been paid and the biennial report filed by such corporation.

2           Sec. 257. Section 21-325.01, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           21-325.01 (1) A foreign corporation, the certificate of  
5 authority of which has been administratively revoked under section  
6 21-325, may apply to the Secretary of State for reinstatement within  
7 five years after the effective date of the revocation. The  
8 application shall:

9           (a) Recite the name of the foreign corporation and the  
10 effective date of the revocation;

11           (b) State that the ground or grounds for revocation  
12 either did not exist or have been eliminated;

13           (c) State that the foreign corporation's name satisfies  
14 the requirements of section ~~21-20,173; 208~~ of this act; and

15           (d) Be accompanied by a fee in the amount prescribed in  
16 section ~~21-2005, 5~~ of this act, as such section may from time to time  
17 be amended, for an application for reinstatement.

18           (2) If the Secretary of State determines (a) that the  
19 application contains the information required by subsection (1) of  
20 this section and that the information is correct and (b) that the  
21 foreign corporation has complied with subsection (4) of this section,  
22 he or she shall cancel the certificate of revocation, prepare a  
23 certificate of reinstatement that recites his or her determination  
24 and the effective date of reinstatement, file the original of the  
25 certificate, and serve a copy on the foreign corporation under

1 section ~~21-20,177. 36~~ of this act.

2 (3) When the reinstatement is effective, it shall relate  
3 back to and take effect as of the effective date of the  
4 administrative revocation and the foreign corporation shall resume  
5 carrying on its business as if the administrative revocation had  
6 never occurred.

7 (4) A foreign corporation applying for reinstatement  
8 under this section shall:

9 (a)(i) Pay to the Secretary of State a sum equal to all  
10 occupation taxes delinquent as of the effective date of the  
11 revocation, plus a sum equal to all occupation taxes which would  
12 otherwise have been due for the years the foreign corporation's  
13 certificate of authority was revoked; and (ii) ~~forward~~ deliver to the  
14 Secretary of State a properly executed and signed biennial report for  
15 the most recent even-numbered year; and

16 (b) Pay to the Secretary of State an additional amount  
17 derived by multiplying the rate specified in section 45-104.02, as  
18 such rate may from time to time be adjusted, times the amount of  
19 occupation taxes required to be paid by it for each year that such  
20 foreign corporation's certificate of authority was revoked.

21 Sec. 258. Section 21-325.02, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 21-325.02 (1) If the Secretary of State denies a foreign  
24 corporation's application for reinstatement following administrative  
25 revocation of its certificate of authority under section 21-325, he

1 or she shall serve the foreign corporation under section ~~21-20,177~~  
2 212 of this act with a written notice that explains the reason or  
3 reasons for denial.

4 (2) The foreign corporation may appeal the denial of  
5 reinstatement to the district court of Lancaster County within thirty  
6 days after service of the notice of denial is perfected under section  
7 ~~21-20,177.~~ 212 of this act. The foreign corporation shall appeal by  
8 petitioning the court to set aside the revocation and attaching to  
9 the petition copies of the Secretary of State's certificate of  
10 revocation, the foreign corporation's application for reinstatement,  
11 and the Secretary of State's notice of denial.

12 (3) The court may summarily order the Secretary of State  
13 to reinstate the certificate of authority or may take any other  
14 action the court considers appropriate.

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

17 Sec. 259. Section 21-328, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 21-328 Any corporation paying the ~~fees~~ occupation tax  
20 imposed by section 21-303 or 21-306 may claim a refund if the payment  
21 of such ~~fee~~ occupation tax was invalid for any reason. The  
22 corporation shall file a written claim and any evidence supporting  
23 the claim within two years after payment of such ~~fee.~~ occupation tax.  
24 The Secretary of State shall either approve or deny the claim within  
25 thirty days after such filing. Any approved claims shall be paid out

1 of the General Fund. Appeal of a decision by the Secretary of State  
2 shall be in accordance with the Administrative Procedure Act.

3 Sec. 260. Section 21-329, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 21-329 For purposes of ~~Chapter 21, article 3, sections~~  
6 21-301 to 21-330, the term paid-up capital stock shall mean, at any  
7 particular time, the sum of the par value of all shares of capital  
8 stock of the corporation issued and outstanding.

9 Sec. 261. Section 21-330, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 21-330 Any corporation which has paid occupation tax in  
12 excess of the proper amount of the occupation tax imposed in sections  
13 21-301 to ~~21-325-21-330~~ shall be entitled to a refund of such excess  
14 payment. Claims for refund shall be filed with the Secretary of State  
15 or may be submitted by the Secretary of State based on his or her own  
16 investigation. If approved or submitted by the Secretary of State,  
17 the claim shall be forwarded to the State Treasurer for payment from  
18 the General Fund. The Secretary of State shall not refund any excess  
19 occupation tax payment if five years have passed from the date of the  
20 excess payment.

21 Sec. 262. Section 21-1301, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 21-1301 Any number of persons, not less than ten, or one  
24 or more cooperative companies, may form and organize a cooperative  
25 corporation for the transaction of any lawful business by the

1 adoption of articles of incorporation in the same manner and with  
2 like powers and duties as is required of other corporations except as  
3 provided in sections 21-1301 to 21-1306. Nothing in sections 21-1301  
4 and 21-1303 shall be deemed to apply to electrical cooperatives or  
5 electric member associations. If the ~~Business Corporation Act~~  
6 Nebraska Model Business Corporation Act requires an affirmative vote  
7 of a specified percentage of stockholders before action can be taken  
8 by a corporation, such percentage for a cooperative corporation shall  
9 be of the votes cast on the matter at the stockholders' meeting at  
10 which the same shall be voted upon.

11           Sec. 263. Section 21-1931, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           21-1931 (a) A corporate name may not contain language  
14 stating or implying that the corporation is organized for a purpose  
15 other than that permitted by section 21-1927 and its articles of  
16 incorporation.

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

22           (1) The corporate name of a nonprofit or business  
23 corporation incorporated or authorized to do business in this state;

24           (2) A corporate name reserved or registered under section  
25 ~~21-1932, 21-1933, 21-2029, or 21-2030;~~ 21-1932 or 21-1933 or section

1 31 or 32 of this act;

2 (3) The fictitious name of a foreign business or  
3 nonprofit corporation authorized to transact business in this state  
4 because its real name is unavailable;

5 (4) A trade name registered in this state pursuant to  
6 sections 87-208 to 87-219.01; and

7 (5) Any other business entity name registered or filed  
8 with the Secretary of State pursuant to Nebraska law.

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

14 (1) The other corporation or business entity consents to  
15 the use in writing; or

16 (2) The applicant delivers to the Secretary of State a  
17 certified copy of a final judgment of a court of competent  
18 jurisdiction establishing the applicant's right to use the name  
19 applied for in this state.

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

25 (1) Has merged with the other corporation or business

1 entity;

2 (2) Has been formed by reorganization of the other  
3 corporation or business entity; or

4 (3) Has acquired all or substantially all of the assets,  
5 including the name, of the other corporation or business entity.

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

8 Sec. 264. Section 21-1933, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 21-1933 (a) A foreign corporation may register its  
11 corporate name, or its corporate name with any change required by  
12 section 21-19,151, if the name is not the same as or deceptively  
13 similar to, upon the records of the Secretary of State:

14 (1) The corporate name of a nonprofit or business  
15 corporation incorporated or authorized to do business in this state;

16 (2) A corporate name reserved under section 21-1932 or  
17 ~~21-2029~~ section 31 of this act or registered under this section; and

18 (3) Any other business entity name registered or filed  
19 with the Secretary of State pursuant to Nebraska law.

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

23 (1) Setting forth its corporate name, or its corporate  
24 name with any change required by section 21-19,151, the state or  
25 country and date of its incorporation, and a brief description of the



1 nature of the activities in which it is engaged; and

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

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

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

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

1           Sec. 265. Section 21-19,151, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           21-19,151 (a) If the corporate name of a foreign  
4 corporation does not satisfy the requirements of section 21-1931, the  
5 foreign corporation, to obtain or maintain a certificate of authority  
6 to transact business in this state, may use a fictitious name to  
7 transact business in this state if its real name is unavailable and  
8 it delivers to the Secretary of State for filing a copy of the  
9 resolution of its board of directors, certified by its secretary,  
10 adopting the fictitious name.

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

16           (1) The corporate name of a nonprofit or business  
17 corporation incorporated or authorized to transact business in this  
18 state;

19           (2) A corporate name reserved or registered under section  
20 ~~21-1932, 21-1933, 21-2029, or 21-2030;~~ 21-1932 or 21-1933 or section  
21 31 or 32 of this act;

22           (3) The fictitious name of another foreign business or  
23 nonprofit corporation authorized to transact business in this state;

24           (4) A trade name registered in this state pursuant to  
25 sections 87-208 to 87-219.01; and

1                   (5) Any other business entity name registered or filed  
2 with the Secretary of State pursuant to Nebraska law.

3                   (c) A foreign corporation may apply to the Secretary of  
4 State for authorization to use in this state the name of another  
5 corporation or business entity (incorporated or authorized to  
6 transact business in this state) that is deceptively similar to, upon  
7 the records of the Secretary of State, the name applied for. The  
8 Secretary of State shall authorize use of the name applied for if:

9                   (1) The other corporation or business entity consents in  
10 writing to the use; or

11                   (2) The applying corporation delivers to the Secretary of  
12 State a certified copy of a final judgment of a court of competent  
13 jurisdiction establishing its right to use the name applied for in  
14 this state.

15                   (d) A foreign corporation may use in this state the name  
16 (including the fictitious name) of another domestic or foreign  
17 business or nonprofit corporation or business entity that is used in  
18 this state if the other corporation or business entity is  
19 incorporated or authorized to transact business in this state and the  
20 foreign corporation:

21                   (1) Has merged with the other corporation or business  
22 entity;

23                   (2) Has been formed by a reorganization of the other  
24 corporation or business entity; or

25                   (3) Has acquired all or substantially all of the assets,

1 including the name, of the other corporation or business entity.

2 (e) If a foreign corporation authorized to transact  
3 business in this state changes its corporate name to one that does  
4 not satisfy the requirements of section 21-1931, it shall not  
5 transact business in this state under the changed name until it  
6 adopts a name satisfying the requirements of section 21-1931 and  
7 obtains an amended certificate of authority under section 21-19,149.

8 Sec. 266. Section 21-2103, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10 21-2103 One or more business development corporations may  
11 be incorporated in this state pursuant to the ~~provisions of the~~  
12 ~~Business Corporation Act~~ Nebraska Model Business Corporation Act not  
13 in conflict with or inconsistent with the provisions of the Nebraska  
14 Business Development Corporation Act.

15 Sec. 267. Section 21-2105, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 21-2105 (1) A development corporation shall have all the  
18 powers granted to corporations organized under the ~~Business~~  
19 ~~Corporation Act~~ Nebraska Model Business Corporation Act except that  
20 it shall not give security for any loan made to it by members unless  
21 all loans to it by members are secured ratably in proportion to  
22 unpaid balances due.

23 (2) The restriction in subsection (1) of this section  
24 shall in no manner be construed so as to prohibit a development  
25 corporation from making unsecured borrowings from the federal Small

1 ~~Business Administration., an agency of the United States Government.~~

2           Sec. 268. Section 21-2110, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           21-2110 (1) Each share of stock of the corporation shall  
5 have a par value of not less than ten dollars per share, as fixed by  
6 its articles of incorporation, and shall be issued only for lawful  
7 money of the United States. At least two hundred thousand dollars  
8 shall be paid into the treasury for capital stock before a  
9 corporation shall be authorized to transact any business other than  
10 such business as relates to its organization.

11           (2) Each shareholder shall be entitled to one vote, in  
12 person or by proxy, for each share of capital stock held, and each  
13 member shall be entitled to one vote, in person or by proxy, as such  
14 member.

15           (3) The rights given by the ~~Business Corporation Act~~  
16 Nebraska Model Business Corporation Act to shareholders to attend  
17 meetings and to receive notice thereof and to exercise voting rights  
18 shall apply to members as well as to shareholders of a corporation  
19 created under the Nebraska Business Development Corporation Act. The  
20 voting rights of the members shall be the same as if they were a  
21 separate class of shareholders, and shareholders and members shall in  
22 all cases vote separately by classes. A quorum at a shareholders'  
23 meeting shall require the presence in person or by proxy of a  
24 majority of the holders of the voting rights of each class.

25           Sec. 269. Section 21-2115, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2           21-2115 A corporation shall keep, in addition to the  
3 books and records required by the ~~Business Corporation Act, Nebraska~~  
4 Model Business Corporation Act, a record showing the names and  
5 addresses of all members of the corporation and the current status of  
6 loans made by each to the corporation. Members shall have the same  
7 rights with respect to all books and records as are given to  
8 shareholders in the ~~Business Corporation Act. Nebraska Model Business~~  
9 Corporation Act.

10           Sec. 270. Section 21-2203, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12           21-2203 Except as the Nebraska Professional Corporation  
13 Act shall otherwise require, professional corporations shall enjoy  
14 all the powers, benefits, and privileges and be subject to all the  
15 duties, restrictions, and liabilities of a business corporation under  
16 the ~~Business Corporation Act~~ Nebraska Model Business Corporation Act  
17 and sections 21-301 to ~~21-325.~~ 21-325.02.

18           Sec. 271. Section 21-2204, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20           21-2204 (1) One or more individuals residing within the  
21 State of Nebraska, each of whom is licensed or otherwise legally  
22 authorized to render the same professional service, may, by filing  
23 articles of incorporation and a certificate of registration with the  
24 Secretary of State, organize and become a shareholder in a  
25 professional corporation. The articles of incorporation shall conform

1 to the requirements of section ~~21-2018~~20 of this act and the  
2 certificate of registration shall conform to the requirements of  
3 sections 21-2216 to 21-2218.

4 (2) In addition to the requirements of subsection (1) of  
5 this section, the articles of incorporation shall contain a statement  
6 of the profession to be practiced by the corporation.

7 Sec. 272. Section 21-2209, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9 21-2209 (1) A professional corporation may provide  
10 professional services in another jurisdiction if such corporation  
11 complies with all applicable laws of such jurisdiction regulating the  
12 rendering of professional services. Notwithstanding any other  
13 provision of the Nebraska Professional Corporation Act, no  
14 shareholder, director, officer, employee, or agent of a professional  
15 corporation shall be required to be licensed to render professional  
16 services in this state or to reside in this state if such  
17 shareholder, director, officer, employee, or agent does not render  
18 professional services in this state and is licensed in one or more  
19 states, territories of the United States, or the District of Columbia  
20 to render a professional service described in the professional  
21 corporation's articles of incorporation.

22 (2) A foreign professional corporation shall not transact  
23 business in this state unless it renders one of the professional  
24 services specified in subdivision (3) of section 21-2202 and complies  
25 with the provisions of the act, including, without limitation,

1 registration with the appropriate regulating board in this state as  
2 provided in sections 21-2216 to 21-2218. A foreign professional  
3 corporation shall not transact business in this state if the laws of  
4 the jurisdiction under which such foreign professional corporation is  
5 incorporated do not allow for a professional corporation incorporated  
6 under the laws of this state to transact business in such  
7 jurisdiction.

8 (3)(a) A foreign professional corporation shall (i) apply  
9 for a certificate of authority in the same manner as a foreign  
10 business corporation pursuant to sections ~~21-20,168 to 21-20,181-203~~  
11 to 220 of this act and (ii) file with the Secretary of State a  
12 current certificate of registration as provided in sections 21-2216  
13 to 21-2218.

14 (b) Except as otherwise provided in the Nebraska  
15 Professional Corporation Act, foreign professional corporations shall  
16 enjoy all the powers, benefits, and privileges and shall be subject  
17 to all the duties, restrictions, and liabilities of a foreign  
18 business corporation under sections 21-301 to ~~21-325-21-325.02~~ and  
19 the ~~Business Corporation Act~~. Nebraska Model Business Corporation  
20 Act.

21 (c) A foreign professional corporation shall not be  
22 required as a condition to obtaining a certificate of authority to  
23 have all of its shareholders, directors, and officers licensed to  
24 render professional services in this state if all of its  
25 shareholders, directors, and officers, except the secretary and



1 assistant secretary, are licensed in one or more states or  
2 territories of the United States or the District of Columbia to  
3 render a professional service described in its articles of  
4 incorporation and any shareholder, director, officer, employee, or  
5 agent who renders professional services within this state on behalf  
6 of the foreign professional corporation is licensed to render  
7 professional services in this state.

8 (d) A foreign professional corporation ~~shall not be~~ is  
9 not required to obtain a certificate of authority to transact  
10 business in this state unless it maintains or intends to maintain an  
11 office in this state for the conduct of business or professional  
12 practice.

13 (4) For purposes of this section, foreign professional  
14 corporation ~~shall mean~~ means a corporation which is organized under  
15 the law of any other state or territory of the United States or the  
16 District of Columbia for the specific purpose of rendering  
17 professional services and which has as its shareholders only  
18 individuals who are duly licensed or otherwise legally authorized to  
19 render the same professional services as the corporation.

20 Sec. 273. Section 21-2212, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 21-2212 (1) The articles of incorporation or the bylaws  
23 of the professional corporation shall provide for the purchase or  
24 redemption of the shares of any shareholder upon his or her death or  
25 disqualification to render the professional services of the

1 professional corporation within this state.

2 (2) Unless otherwise provided in the articles of  
3 incorporation or the bylaws of the professional corporation, upon the  
4 death or disqualification of the last remaining shareholder of a  
5 professional corporation, a successor in interest to such deceased or  
6 disqualified shareholder may dissolve the corporation and wind up and  
7 liquidate its business and affairs, notwithstanding the fact that  
8 such successor in interest could not have become a shareholder of the  
9 professional corporation. The successor in interest may file articles  
10 of dissolution with the Secretary of State in accordance with section  
11 ~~21-20,153-186~~ of this act. Thereafter, the successor in interest may  
12 wind up and liquidate the corporation's business and affairs in  
13 accordance with section ~~21-20,155-188~~ of this act and notify  
14 claimants in accordance with sections ~~21-20,156 and 21-20,157~~. 189  
15 and 190 of this act.

16 Sec. 274. Section 21-2439, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 21-2439 Control-share acquisition shall mean an  
19 acquisition, directly or indirectly, by an acquiring person of  
20 ownership of voting stock of an issuing public corporation that,  
21 except for the Shareholders Protection Act, would, when added to all  
22 other shares of the issuing public corporation owned by the acquiring  
23 person, entitle the acquiring person, immediately after the  
24 acquisition, to exercise or direct the exercise of a new range of  
25 voting power within any of the following ranges of voting power: (1)

1 At least twenty percent but less than thirty-three and one-third  
2 percent; (2) at least thirty-three and one-third percent but less  
3 than or equal to fifty percent; or (3) over fifty percent.

4 The acquisition of any shares of an issuing public  
5 corporation shall not constitute a control-share acquisition if the  
6 acquisition is consummated in any of the following circumstances: (a)  
7 Before April 9, 1988; (b) pursuant to a contract existing before  
8 April 9, 1988; (c) pursuant to the laws of descent and distribution;  
9 (d) pursuant to the satisfaction of a pledge or other security  
10 interest created in good faith and not for the purpose of  
11 circumventing the Shareholders Protection Act; (e) pursuant to a  
12 merger or plan of share exchange effected in compliance with sections  
13 ~~21-20,128 to 21-20,134-161 to 168 of this act~~ if the issuing public  
14 corporation is a party to the plan of merger or plan of share  
15 exchange; or (f) from a person who owns over fifty percent of the  
16 shares of an issuing public corporation and who acquired the shares  
17 prior to April 9, 1988.

18 All shares, the ownership of which is acquired within a  
19 one-hundred-twenty-day period, and all shares, the ownership of which  
20 is acquired pursuant to a plan to make a control-share acquisition,  
21 shall be deemed to have been acquired in the same acquisition.

22 Sec. 275. Section 21-2971, Reissue Revised Statutes of  
23 Nebraska, is amended to read:

24 21-2971 Except as otherwise provided in section 21-2970,  
25 the ~~Business Corporation Act~~ Nebraska Model Business Corporation Act

1 governs conflicts of interests between a director or member of a  
2 committee of the board of directors and the limited cooperative  
3 association.

4           Sec. 276. Section 21-2976, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6           21-2976 Indemnification of any individual who has  
7 incurred liability, is a party, or is threatened to be made a party  
8 because of the performance of duties to, or activity on behalf of,  
9 the limited cooperative association is governed by the ~~Business~~  
10 ~~Corporation Act.~~ Nebraska Model Business Corporation Act.

11           Sec. 277. Section 28-1354, Revised Statutes Supplement,  
12 2013, is amended to read:

13           28-1354 For purposes of the Public Protection Act:

14           (1) Enterprise means any individual, sole proprietorship,  
15 partnership, corporation, trust, association, or any legal entity,  
16 union, or group of individuals associated in fact although not a  
17 legal entity, and shall include illicit as well as licit enterprises  
18 as well as other entities;

19           (2) Pattern of racketeering activity means a cumulative  
20 loss for one or more victims or gains for the enterprise of not less  
21 than one thousand five hundred dollars resulting from at least two  
22 acts of racketeering activity, one of which occurred after August 30,  
23 2009, and the last of which occurred within ten years, excluding any  
24 period of imprisonment, after the commission of a prior act of  
25 racketeering activity;

1           (3) Person means any individual or entity, as defined in  
2 section ~~21-2014, 14~~ of this act, holding or capable of holding a  
3 legal, equitable, or beneficial interest in property;

4           (4) Prosecutor includes the Attorney General of the State  
5 of Nebraska, the deputy attorney general, assistant attorneys  
6 general, a county attorney, a deputy county attorney, or any person  
7 so designated by the Attorney General, a county attorney, or a court  
8 of the state to carry out the powers conferred by the act;

9           (5) Racketeering activity includes the commission of,  
10 criminal attempt to commit, conspiracy to commit, aiding and abetting  
11 in the commission of, aiding in the consummation of, acting as an  
12 accessory to the commission of, or the solicitation, coercion, or  
13 intimidation of another to commit or aid in the commission of any of  
14 the following:

15           (a) Offenses against the person which include: Murder in  
16 the first degree under section 28-303; murder in the second degree  
17 under section 28-304; manslaughter under section 28-305; assault in  
18 the first degree under section 28-308; assault in the second degree  
19 under section 28-309; assault in the third degree under section  
20 28-310; terroristic threats under section 28-311.01; kidnapping under  
21 section 28-313; false imprisonment in the first degree under section  
22 28-314; false imprisonment in the second degree under section 28-315;  
23 sexual assault in the first degree under section 28-319; and robbery  
24 under section 28-324;

25           (b) Offenses relating to controlled substances which

1 include: To unlawfully manufacture, distribute, deliver, dispense, or  
2 possess with intent to manufacture, distribute, deliver, or dispense  
3 a controlled substance under subsection (1) of section 28-416;  
4 possession of marijuana weighing more than one pound under subsection  
5 (12) of section 28-416; possession of money used or intended to be  
6 used to facilitate a violation of subsection (1) of section 28-416  
7 prohibited under subsection (17) of section 28-416; any violation of  
8 section 28-418; to unlawfully manufacture, distribute, deliver, or  
9 possess with intent to distribute or deliver an imitation controlled  
10 substance under section 28-445; possession of anhydrous ammonia with  
11 the intent to manufacture methamphetamine under section 28-451; and  
12 possession of ephedrine, pseudoephedrine, or phenylpropanolamine with  
13 the intent to manufacture methamphetamine under section 28-452;

14 (c) Offenses against property which include: Arson in the  
15 first degree under section 28-502; arson in the second degree under  
16 section 28-503; arson in the third degree under section 28-504;  
17 burglary under section 28-507; theft by unlawful taking or  
18 disposition under section 28-511; theft by shoplifting under section  
19 28-511.01; theft by deception under section 28-512; theft by  
20 extortion under section 28-513; theft of services under section  
21 28-515; theft by receiving stolen property under section 28-517;  
22 criminal mischief under section 28-519; and unlawfully depriving or  
23 obtaining property or services using a computer under section  
24 28-1344;

25 (d) Offenses involving fraud which include: Burning to

1 defraud an insurer under section 28-505; forgery in the first degree  
2 under section 28-602; forgery in the second degree under section  
3 28-603; criminal possession of a forged instrument under section  
4 28-604; criminal possession of forgery devices under section 28-605;  
5 criminal impersonation under section 28-638; identity theft under  
6 section 28-639; identity fraud under section 28-640; false statement  
7 or book entry under section 28-612; tampering with a publicly  
8 exhibited contest under section 28-614; issuing a false financial  
9 statement for purposes of obtaining a financial transaction device  
10 under section 28-619; unauthorized use of a financial transaction  
11 device under section 28-620; criminal possession of a financial  
12 transaction device under section 28-621; unlawful circulation of a  
13 financial transaction device in the first degree under section  
14 28-622; unlawful circulation of a financial transaction device in the  
15 second degree under section 28-623; criminal possession of a blank  
16 financial transaction device under section 28-624; criminal sale of a  
17 blank financial transaction device under section 28-625; criminal  
18 possession of a forgery device under section 28-626; unlawful  
19 manufacture of a financial transaction device under section 28-627;  
20 laundering of sales forms under section 28-628; unlawful acquisition  
21 of sales form processing services under section 28-629; unlawful  
22 factoring of a financial transaction device under section 28-630; and  
23 fraudulent insurance acts under section 28-631;

24 (e) Offenses involving governmental operations which  
25 include: Abuse of public records under section 28-911; perjury or

1 subornation of perjury under section 28-915; bribery under section  
2 28-917; bribery of a witness under section 28-918; tampering with a  
3 witness or informant or jury tampering under section 28-919; bribery  
4 of a juror under section 28-920; assault on an officer in the first  
5 degree under section 28-929; assault on an officer in the second  
6 degree under section 28-930; assault on an officer in the third  
7 degree under section 28-931; and assault on an officer using a motor  
8 vehicle under section 28-931.01;

9 (f) Offenses involving gambling which include: Promoting  
10 gambling in the first degree under section 28-1102; possession of  
11 gambling records under section 28-1105; gambling debt collection  
12 under section 28-1105.01; and possession of a gambling device under  
13 section 28-1107;

14 (g) Offenses relating to firearms, weapons, and  
15 explosives which include: Carrying a concealed weapon under section  
16 28-1202; transportation or possession of machine guns, short rifles,  
17 or short shotguns under section 28-1203; unlawful possession of a  
18 handgun under section 28-1204; unlawful transfer of a firearm to a  
19 juvenile under section 28-1204.01; using a deadly weapon to commit a  
20 felony or possession of a deadly weapon during the commission of a  
21 felony under section 28-1205; possession of a deadly weapon by a  
22 prohibited person under section 28-1206; possession of a defaced  
23 firearm under section 28-1207; defacing a firearm under section  
24 28-1208; unlawful discharge of a firearm under section 28-1212.02;  
25 possession, receipt, retention, or disposition of a stolen firearm



1 under section 28-1212.03; unlawful possession of explosive materials  
2 in the first degree under section 28-1215; unlawful possession of  
3 explosive materials in the second degree under section 28-1216;  
4 unlawful sale of explosives under section 28-1217; use of explosives  
5 without a permit under section 28-1218; obtaining an explosives  
6 permit through false representations under section 28-1219;  
7 possession of a destructive device under section 28-1220; threatening  
8 the use of explosives or placing a false bomb under section 28-1221;  
9 using explosives to commit a felony under section 28-1222; using  
10 explosives to damage or destroy property under section 28-1223; and  
11 using explosives to kill or injure any person under section 28-1224;

12 (h) Any violation of the Securities Act of Nebraska  
13 pursuant to section 8-1117;

14 (i) Any violation of the Nebraska Revenue Act of 1967  
15 pursuant to section 77-2713;

16 (j) Offenses relating to public health and morals which  
17 include: Prostitution under section 28-801; pandering under section  
18 28-802; keeping a place of prostitution under section 28-804; labor  
19 trafficking, sex trafficking, labor trafficking of a minor, or sex  
20 trafficking of a minor under section 28-831; a violation of section  
21 28-1005; and any act relating to the visual depiction of sexually  
22 explicit conduct prohibited in the Child Pornography Prevention Act;  
23 and

24 (k) A violation of the Computer Crimes Act;

25 (6) State means the State of Nebraska or any political

1 subdivision or any department, agency, or instrumentality thereof;  
2 and

3 (7) Unlawful debt means a debt of at least one thousand  
4 five hundred dollars:

5 (a) Incurred or contracted in gambling activity which was  
6 in violation of federal law or the law of the state or which is  
7 unenforceable under state or federal law in whole or in part as to  
8 principal or interest because of the laws relating to usury; or

9 (b) Which was incurred in connection with the business of  
10 gambling in violation of federal law or the law of the state or the  
11 business of lending money or a thing of value at a rate usurious  
12 under state law if the usurious rate is at least twice the  
13 enforceable rate.

14 Sec. 278. Section 30-3214, Reissue Revised Statutes of  
15 Nebraska, is amended to read:

16 30-3214 A real estate investment trust shall file its  
17 articles of agreement or of trust or any modifications thereof with  
18 the Secretary of State and with the county clerk of the county in  
19 this state in which the trust has its principal place of doing  
20 business by complying with the same procedures as set forth in  
21 sections ~~21-2015, 21-2017 to 21-2023, and 21-20,116 to 21-20,127.~~ 15,  
22 19 to 25, and 150 to 160 of this act. Such filing shall include a  
23 copy of the articles of agreement or of trust and shall name a  
24 resident agent in the State of Nebraska and the principal place of  
25 doing business in this state.

1           Sec. 279. Section 33-101, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           33-101 There shall be paid to the Secretary of State the  
4 following fees:

5           (1) For certificate or exemplification with seal, ten  
6 dollars;

7           (2) For copies of records, for each page, a fee of one  
8 dollar;

9           (3) For accessing records by electronic means:

10           (a) For batch requests of business entity information,  
11 fifteen dollars for up to one thousand business entities accessed and  
12 an additional fifteen dollars for each additional one thousand  
13 business entities accessed over one thousand;

14           (b) For information in the Secretary of State's Uniform  
15 Commercial Code Division data base, including records filed pursuant  
16 to the Uniform Commercial Code, Chapter 52, article 2, 5, 7, 9, 10,  
17 11, 12, or 14, Chapter 54, article 2, or the Uniform State Tax Lien  
18 Registration and Enforcement Act, for batch requests searched by  
19 debtor location, fifteen dollars for up to one thousand records  
20 accessed and an additional fifteen dollars for each additional one  
21 thousand records accessed over one thousand;

22           (c) For an electronically transmitted letter indicating  
23 whether a business is properly registered with the Secretary of State  
24 and authorized to do business in the state, six dollars and fifty  
25 cents;

1           (d) For the entire contents of the data base regarding  
2 corporations and the Uniform Commercial Code, but excluding  
3 electronic images, three hundred dollars weekly subscription rate,  
4 one thousand dollars monthly subscription rate for a twice-monthly  
5 service, and eight hundred dollars monthly subscription rate;

6           (e) For images of records accessed over the Internet or  
7 by other electronic means other than facsimile machine, forty-five  
8 cents for each page or image of a page, not to exceed two thousand  
9 dollars per request for batch requests; and

10           (f) For the entire contents of the image data base  
11 regarding corporations and the Uniform Commercial Code, eight hundred  
12 dollars monthly subscription rate;

13           (4) For recording articles of association or  
14 incorporation, amendments, revised or restated articles, changes of  
15 registered office or registered agent, increase or decrease of  
16 capital stock, merger or consolidation, statement of intent to  
17 dissolve, and consent to dissolution, revocation of dissolution,  
18 articles of dissolution, domestic or foreign, profit or nonprofit,  
19 five dollars per page;

20           (5) For taking acknowledgment, ten dollars;

21           (6) For administering oath, ten dollars;

22           (7) For filings by for-profit corporations and  
23 associations required or permitted by law to file articles of  
24 incorporation or organization with the Secretary of State, the fees  
25 provided in section 21-2005-5 of this act unless otherwise

1 specifically provided by law; and

2 (8) For filings by nonprofit corporations and  
3 associations required or permitted by law to file articles of  
4 incorporation or organization with the Secretary of State, the fees  
5 provided in section 21-1905 unless otherwise specifically provided by  
6 law.

7 All fees collected pursuant to subdivision (3) of this  
8 section shall be deposited in the Records Management Cash Fund and  
9 shall be distributed as provided in any agreements between the State  
10 Records Board and the Secretary of State.

11 Sec. 280. Section 44-205.01, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 44-205.01 (1) The articles of incorporation filed  
14 pursuant to section 44-205 shall state (a) the corporate name, which  
15 shall not so nearly resemble the name of an existing corporation as,  
16 in the opinion of the Director of Insurance, will mislead the public  
17 or cause confusion, (b) the place in Nebraska where the registered  
18 office and principal office will be located, (c) the purposes, which  
19 shall be restricted to the kind or kinds of insurance to be  
20 undertaken, such other kinds of business which it shall be empowered  
21 to undertake, and the powers necessary and incidental to carrying out  
22 such purposes, and (d) such other particulars as are required by the  
23 ~~Business Corporation Act~~ Nebraska Model Business Corporation Act and  
24 Chapter 44.

25 (2) The articles of incorporation may state such other

1 particulars as are permitted by the ~~Business Corporation Act~~ Nebraska  
2 Model Business Corporation Act and Chapter 44, including provisions  
3 relating to the management of the business and regulation of the  
4 affairs of the corporation and defining, limiting, and regulating the  
5 powers of the corporation, its board of directors, and the  
6 shareholders of a stock corporation or the members of a mutual or  
7 assessment corporation.

8           Sec. 281. Section 44-206, Reissue Revised Statutes of  
9 Nebraska, is amended to read:

10           44-206 Within the earlier of thirty days after receiving  
11 the certificate of authority to transact business or four months  
12 after filing its articles of incorporation, such corporation shall  
13 publish a notice in some legal newspaper, which notice shall contain  
14 the same information, as far as practicable, as that required under  
15 the ~~Business Corporation Act~~. Nebraska Model Business Corporation  
16 Act.

17           Sec. 282. Section 44-208.02, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19           44-208.02 If the Director of Insurance approves the forms  
20 of subscriptions for capital stock or the forms of application for  
21 membership or for insurance, the corporate surety on the bond  
22 required by section 44-208.01, and, in the case of stock insurers,  
23 the application to solicit subscriptions for stock, he or she shall  
24 deliver to the promoter or incorporators a permit in the name of the  
25 corporation authorizing it to complete its organization. Upon

1 receiving such permit, the corporation shall have authority to  
2 solicit subscriptions and payments for capital stock if a stock  
3 insurer and applications and premiums or advance assessments for  
4 insurance if other than a stock insurer and to exercise such powers,  
5 subject to the limitations imposed by the ~~Business Corporation Act~~  
6 Nebraska Model Business Corporation Act and Chapter 44, as may be  
7 necessary and proper in completing its organization and qualifying  
8 for a license to transact the kind or kinds of insurance proposed in  
9 its articles of incorporation. No corporation shall issue policies or  
10 enter into contracts of insurance until it receives a certificate of  
11 authority permitting it to do so.

12           Sec. 283. Section 44-211, Reissue Revised Statutes of  
13 Nebraska, is amended to read:

14           44-211 The business and affairs of an insurance  
15 corporation shall be managed by the incorporators until the first  
16 meeting of shareholders or members and then and thereafter by a board  
17 of directors elected by the shareholders or members and as otherwise  
18 provided by law. The board of directors shall consist of not less  
19 than five persons, and one of them shall be a resident of the State  
20 of Nebraska. At least one-fifth of the directors of an insurance  
21 company, which is not subject to section 44-2135, shall be persons  
22 who are not officers or employees of such company. A person convicted  
23 of a felony may not be a director, and all directors shall be of good  
24 moral character and known professional, administrative, or business  
25 ability, such business ability to include a practical knowledge of

1 insurance, finance, or investment. No person shall hold the office of  
2 director unless he or she is a policyholder, if the company is a  
3 mutual company or assessment association. Unless otherwise provided  
4 in the articles of incorporation, the board of directors shall make  
5 all bylaws. A director shall discharge his or her duties as a  
6 director in accordance with section ~~21-2095. 102~~ of this act.

7           Sec. 284. Section 44-224.01, Reissue Revised Statutes of  
8 Nebraska, is amended to read:

9           44-224.01 For purposes of sections 44-224.01 to  
10 44-224.10, unless the context otherwise requires:

11           (1) Director shall mean the Director of Insurance or his  
12 or her authorized representative;

13           (2) Policyholders shall mean the members of mutual  
14 insurance companies, the members of assessment associations, and the  
15 subscribers to reciprocal insurance exchanges;

16           (3) Merger or contract of merger shall mean a merger or  
17 consolidation agreement between stock insurance companies as  
18 authorized by the ~~Business Corporation Act~~; Nebraska Model Business  
19 Corporation Act;

20           (4) Consolidation or contract of consolidation shall mean  
21 a merger or consolidation agreement between companies operating on  
22 other than the stock plan of insurance; and

23           (5) Bulk reinsurance or contract of bulk reinsurance  
24 shall mean an agreement whereby one company cedes by an assumption  
25 reinsurance agreement fifty percent or more of its risks and business



1 to another company.

2           Sec. 285. Section 44-224.04, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           44-224.04 Any domestic stock insurance company may merge  
5 with another stock insurer after the contract of merger is approved  
6 by the director. The director shall not approve any such contract of  
7 merger unless the interests of the policyholders or shareholders of  
8 both parties thereto are properly protected. If the director does not  
9 approve the contract of merger, he or she shall issue a written order  
10 of disapproval setting forth his or her findings. After having  
11 obtained the approval of the director, the contract of merger shall  
12 be consummated in the manner set forth in the ~~Business Corporation~~  
13 ~~Act~~ Nebraska Model Business Corporation Act for the merger or  
14 consolidation of stock corporations.

15           Sec. 286. Section 44-301, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           44-301 The ~~Business Corporation Act~~, Nebraska Model  
18 Business Corporation Act, except as otherwise provided in Chapter 44,  
19 shall apply to all domestic incorporated insurance companies so far  
20 as the act is applicable or pertinent to and not in conflict with  
21 other provisions of the law relating to such companies. An assessment  
22 association that has accumulated and continues to maintain (1)  
23 reserves and (2) surplus or contingency funds at least equal to those  
24 required of a mutual insurance company shall, unless otherwise  
25 provided by law, be deemed to have all the powers and privileges in

1 transacting its business and managing its affairs as those possessed  
2 by a mutual insurance company qualified to transact the same line or  
3 lines of insurance as the assessment association.

4 Sec. 287. Section 44-2128, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6 44-2128 Section 44-2126 shall not apply to:

7 (1) Any transaction which is subject to the ~~provisions of~~  
8 ~~the Business Corporation Act~~ Nebraska Model Business Corporation Act  
9 and sections 44-224.01 to 44-224.10, except as otherwise provided in  
10 Chapter 44, dealing with the merger or consolidation of two or more  
11 insurers; or

12 (2) Any offer, request, invitation, agreement, or  
13 acquisition which the director by order shall exempt therefrom as (a)  
14 not having been made or entered into for the purpose and not having  
15 the effect of changing or influencing the control of a domestic  
16 insurer or (b) otherwise not comprehended within the purposes of  
17 section 44-2126.

18 Sec. 288. Section 44-2916, Reissue Revised Statutes of  
19 Nebraska, is amended to read:

20 44-2916 To the extent applicable and when not in conflict  
21 with the Nebraska Hospital and Physicians Mutual Insurance  
22 Association Act, the ~~provisions of the Business Corporation Act~~  
23 Nebraska Model Business Corporation Act and Chapters 44 and 77  
24 relating to corporations and insurance shall apply to associations  
25 incorporated pursuant to the Nebraska Hospital and Physicians Mutual

1 Insurance Association Act.

2           Sec. 289. Section 44-3112, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           44-3112 To the extent applicable and when not in conflict  
5 with the Nebraska Professional Association Mutual Insurance Company  
6 Act, the ~~provisions of the Business Corporation Act~~ Nebraska Model  
7 Business Corporation Act and Chapters 44 and 77 relating to  
8 corporations and insurance shall apply to companies incorporated  
9 pursuant to the Nebraska Professional Association Mutual Insurance  
10 Company Act.

11           Sec. 290. Section 44-32,115, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13           44-32,115 Any person may apply to the director for a  
14 certificate of authority to establish and operate a health  
15 maintenance organization in compliance with the Health Maintenance  
16 Organization Act. No person shall establish or operate a health  
17 maintenance organization in this state without obtaining a  
18 certificate of authority under the act. Operating a health  
19 maintenance organization without a certificate of authority shall be  
20 a violation of the Unauthorized Insurers Act. A foreign corporation  
21 may qualify under the Health Maintenance Organization Act if it  
22 registers to do business in this state as a foreign corporation under  
23 the ~~Business Corporation Act~~ Nebraska Model Business Corporation Act  
24 and complies with the Health Maintenance Organization Act and other  
25 applicable state laws.

1           Sec. 291. Section 44-3312, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           44-3312 (1) Two or more persons may organize a legal  
4 service insurance corporation under this section.

5           (2) The articles of incorporation of a not-for-profit  
6 corporation shall conform to the requirements applicable to not-for-  
7 profit corporations under the Nebraska Nonprofit Corporation Act and  
8 the articles of incorporation of a corporation for profit shall  
9 conform to the requirements applicable to corporations for profit  
10 under the ~~Business Corporation Act, Nebraska Model Business~~  
11 Corporation Act, except that:

12           (a) The name of the corporation shall indicate that legal  
13 services or indemnity for legal services is to be provided;

14           (b) The purposes of the corporation shall be limited to  
15 providing legal services or indemnity for legal expenses and business  
16 reasonably related thereto;

17           (c) The articles shall state whether members or other  
18 providers of services may be required to share operating deficits,  
19 either through assessments or through reductions in the compensation  
20 for services rendered. They shall also state the general conditions  
21 and procedures for deficit sharing and any limits on the amount of  
22 the deficit to be assumed by each individual member or provider;

23           (d) For corporations having members, the articles shall  
24 state the conditions and procedures for acquiring membership and that  
25 only members have the right to vote; and

1                   (e) For corporations not having members, the articles  
2 shall state how the directors are to be selected.

3                   Sec. 292. Section 44-3812, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5                   44-3812 (1) Two or more persons may organize a prepaid  
6 dental service corporation under this section.

7                   (2) The articles of incorporation of the corporation  
8 shall conform to the requirements of the Nebraska Nonprofit  
9 Corporation Act or to the requirements of the ~~Business Corporation~~  
10 ~~Act, Nebraska Model Business Corporation Act,~~ except that:

11                   (a) The name of the corporation shall indicate that  
12 dental services are to be provided;

13                   (b) The purposes of the corporation shall be limited to  
14 providing dental services and business reasonably related thereto;

15                   (c) The articles shall state whether members,  
16 shareholders, or providers of services may be required to share  
17 operating deficits, either through assessments or through reductions  
18 in compensation for services rendered, the general conditions and  
19 procedures for deficit sharing, and any limits on the amount of the  
20 deficit to be assumed by each individual member, shareholder, or  
21 provider;

22                   (d) For corporations having members, the articles shall  
23 state the conditions and procedures for acquiring membership and that  
24 only members have the right to vote; and

25                   (e) For corporations not having members, the articles

1 shall state how the directors are to be selected.

2           Sec. 293. Section 67-248.02, Revised Statutes Supplement,  
3 2013, is amended to read:

4           67-248.02 (a)(1) A domestic limited partnership may merge  
5 or consolidate with one or more domestic or foreign limited  
6 partnerships or other business entities pursuant to an agreement or  
7 plan of merger or consolidation adopted in accordance with this  
8 section setting forth:

9           (A) The name of each limited partnership or business  
10 entity that is a party to the merger or consolidation;

11           (B) The name, type of business entity, and jurisdiction  
12 of formation of the surviving limited partnership or business entity  
13 into which the limited partnership and such other business entities  
14 will merge or the name, type of business entity, and jurisdiction of  
15 formation of the new business entity resulting from the consolidation  
16 of the limited partnership and the other business entities that are  
17 party to a plan of consolidation;

18           (C) The terms and conditions of the merger or  
19 consolidation, including the manner and basis of converting the  
20 interests of the partners, members, or shareholders, as the case may  
21 be, of each limited partnership or business entity that is a party to  
22 such merger or consolidation into interests or obligations of the  
23 surviving or new limited partnership or business entity resulting  
24 therefrom or into money or other property in whole or in part; and

25           (D) Such other provisions as the merging or consolidating

1 limited partnerships or business entities may desire.

2 (2) Notwithstanding the provisions of section 67-450, an  
3 agreement or plan of merger or consolidation shall be approved (A) by  
4 each domestic limited partnership that is a party thereto in  
5 accordance with the voting provisions of its partnership agreement  
6 or, if not so provided, by each general partner and by limited  
7 partners who own in the aggregate more than a fifty percent interest  
8 in the profits of such limited partnership owned by all of the  
9 limited partners or, if there is more than one class or group of  
10 limited partners, then by limited partners of each class or group of  
11 limited partners, in either case, who own in the aggregate more than  
12 fifty percent of the then current percentage of other interest in the  
13 profits of such limited partnership owned by all of the limited  
14 partners in each such class or group and (B) by each other business  
15 entity that is a party thereto in accordance with the laws under  
16 which such business entity was formed and in accordance with the  
17 applicable requirements of its organizational documents.  
18 Notwithstanding such approval, at any time before the articles of  
19 merger or consolidation are filed, an agreement or plan of merger or  
20 of consolidation may be terminated or amended pursuant to a provision  
21 for such termination or amendment contained in such agreement or plan  
22 of merger or of consolidation.

23 (b) As used in this section:

24 (1) Business entity means a domestic or foreign  
25 corporation; a domestic or foreign partnership; a domestic or foreign

1 limited partnership; or a domestic or foreign limited liability  
2 company; and

3 (2) Organizational documents includes:

4 (A) For a domestic or foreign corporation, its articles  
5 of incorporation, bylaws, and other agreements among its shareholders  
6 which are authorized by its governing statute or comparable records  
7 as provided in its governing statute;

8 (B) For a domestic or foreign partnership, its  
9 partnership agreement;

10 (C) For a domestic or foreign limited partnership, its  
11 certificate of limited partnership and partnership agreement; and

12 (D) For a domestic or foreign limited liability company,  
13 its certificate or articles of organization and operating agreement  
14 or comparable records as provided in its governing statute.

15 (c) After a plan of merger or consolidation with respect  
16 to a domestic limited partnership is approved in accordance with this  
17 section, the surviving or resulting business entity shall deliver to  
18 the Secretary of State for filing articles of merger or consolidation  
19 setting forth:

20 (1) The plan of merger or consolidation;

21 (2) A statement to the effect that the requisite approval  
22 was obtained by the partners, members, or shareholders, as the case  
23 may be, of each business entity that is a party to such plan of  
24 merger or consolidation; and

25 (3) If the surviving or resulting business entity of a



1 merger or consolidation is not a domestic business entity, an  
2 agreement by the surviving or resulting business entity that it may  
3 be served with process within or outside this state in any proceeding  
4 in the courts of this state for the enforcement of any obligation of  
5 such former domestic limited partnership.

6 (d) If the surviving or resulting business entity of a  
7 merger or consolidation under this section is a domestic corporation,  
8 then the merger or consolidation shall become effective and shall  
9 have the effects provided in sections ~~21-20,128 to 21-20,134.~~ 161 to  
10 168 of this act. If the surviving or resulting business entity of a  
11 merger or consolidation under this section is a domestic limited  
12 liability company, then the merger or consolidation shall become  
13 effective and shall have the effects provided in sections 21-170 to  
14 21-174. If the surviving or resulting business entity of a merger or  
15 consolidation under this section is a domestic partnership other than  
16 a limited partnership, then the merger or consolidation shall become  
17 effective and shall have the effects provided in sections 67-450 to  
18 67-452. If the surviving or resulting business entity of a merger or  
19 consolidation is a domestic limited partnership, then:

20 (1) The merger or consolidation shall take effect on the  
21 later of:

22 (A) The approval of the plan or agreement of merger or  
23 consolidation as provided in this section;

24 (B) The filing of all documents required by law to be  
25 filed as a condition to the effectiveness of the merger or

1 consolidation; or

2 (C) Any effective date specified in the plan or agreement  
3 of merger or consolidation;

4 (2) The several limited partnerships and other business  
5 entities which are parties to the plan or agreement of merger or  
6 consolidation shall be a single limited partnership which, in the  
7 case of a merger, shall be that limited partnership designated in the  
8 merger plan or agreement as the surviving limited partnership and, in  
9 the case of a consolidation, shall be the new limited partnership  
10 provided for in the consolidation plan or agreement;

11 (3) The separate existence of all limited partnerships  
12 and other business entities which are parties to the plan or  
13 agreement of merger or consolidation, except the surviving or new  
14 limited partnership, shall cease;

15 (4) The surviving or new limited partnership shall have  
16 all the rights, privileges, immunities, and powers and shall be  
17 subject to all the duties and liabilities of a limited partnership  
18 organized under the Nebraska Uniform Limited Partnership Act;

19 (5) The surviving or new limited partnership shall  
20 possess all the rights, privileges, immunities, and powers, of a  
21 public as well as of a private nature, of each of the merging or  
22 consolidating limited partnerships and other business entities,  
23 subject to the Nebraska Uniform Limited Partnership Act. All  
24 property, real, personal, and mixed, all debts due on whatever  
25 account, all other things and causes of actions, and all and every

1 other interest belonging to or due to any of the limited partnerships  
2 and other business entities, as merged or consolidated, shall be  
3 taken and deemed to be transferred to and vested in the surviving or  
4 new limited partnership without further act and deed and shall  
5 thereafter be the property of the surviving or new limited  
6 partnership as they were of any of such merging or consolidating  
7 business entities. The title to any real property or any interest in  
8 such property vested in any of such merging or consolidating business  
9 entities shall not revert or be in any way impaired by reason of such  
10 merger or consolidation;

11           (6) Such surviving or new limited partnership shall be  
12 responsible and liable for all the liabilities and obligations of  
13 each of the limited partnerships and other business entities so  
14 merged or consolidated. Any claim existing or action or proceeding  
15 pending by or against any of such limited partnerships or other  
16 business entities may be prosecuted as if such merger or  
17 consolidation had not taken place or such surviving or new limited  
18 partnership may be substituted in its place. Neither the rights of  
19 creditors nor any liens upon the property of any such limited  
20 partnerships or other business entities shall be impaired by such  
21 merger or consolidation; and

22           (7) The equity interests or securities of each limited  
23 partnership or other business entity which is a party to the plan or  
24 agreement of merger or consolidation that are, under the terms of the  
25 merger or consolidation, to be converted or exchanged, shall cease to

1 exist, and the holders of such equity interests or securities shall  
2 thereafter be entitled only to the cash, property interests, or  
3 securities into which they shall have been converted in accordance  
4 with the terms of the plan or agreement of merger or consolidation,  
5 subject to any rights under sections ~~21-20,137 to 21-20,150~~ 53 to 83  
6 of this act or the Nebraska Uniform Limited Liability Company Act or  
7 other applicable law.

8           Sec. 294. Section 84-511, Revised Statutes Supplement,  
9 2013, is amended to read:

10           84-511 The Secretary of State may provide for the  
11 electronic transmission and filing of documents delivered for filing  
12 under (1) the ~~Business Corporation Act, Nebraska Model Business~~  
13 Corporation Act, the Nebraska Limited Cooperative Association Act,  
14 the Nebraska Nonprofit Corporation Act, the Nebraska Professional  
15 Corporation Act, the Nebraska Uniform Limited Liability Company Act,  
16 the Nebraska Uniform Limited Partnership Act, the Nonstock  
17 Cooperative Marketing Act, the Trademark Registration Act, and the  
18 Uniform Partnership Act of 1998, ~~and the Trademark Registration Act~~  
19 and (2) any filing provisions of sections 21-1301 to 21-1306, 21-1333  
20 to 21-1339, and 87-208 to 87-219.01. The Secretary of State shall  
21 adopt and promulgate rules and regulations to implement this section.

22           Sec. 295. This act becomes operative on January 1, 2016.

23           Sec. 296. If any section in this act or any part of any  
24 section is declared invalid or unconstitutional, the declaration  
25 shall not affect the validity or constitutionality of the remaining

1 portions.

2                   Sec. 297. Original sections 8-1401, 8-2104, 8-2306,  
3 8-2311, 21-301, 21-302, 21-303, 21-304, 21-305, 21-306, 21-311,  
4 21-312, 21-313, 21-314, 21-315, 21-317, 21-318, 21-319, 21-321,  
5 21-322, 21-323, 21-323.01, 21-323.02, 21-325, 21-325.01, 21-325.02,  
6 21-328, 21-329, 21-330, 21-1301, 21-1931, 21-1933, 21-19,151,  
7 21-2103, 21-2105, 21-2110, 21-2115, 21-2203, 21-2204, 21-2209,  
8 21-2212, 21-2439, 21-2971, 21-2976, 30-3214, 33-101, 44-205.01,  
9 44-206, 44-208.02, 44-211, 44-224.01, 44-224.04, 44-301, 44-2128,  
10 44-2916, 44-3112, 44-32,115, 44-3312, and 44-3812, Reissue Revised  
11 Statutes of Nebraska, and sections 9-614, 28-1354, 67-248.02, and  
12 84-511, Revised Statutes Supplement, 2013, are repealed.

13                   Sec. 298. The following sections are outright repealed:  
14 Sections 21-317, 21-2001, 21-2002, 21-2003, 21-2004, 21-2005,  
15 21-2006, 21-2007, 21-2008, 21-2009, 21-2010, 21-2011, 21-2012,  
16 21-2013, 21-2014, 21-2015, 21-2016, 21-2017, 21-2018, 21-2019,  
17 21-2020, 21-2021, 21-2022, 21-2023, 21-2024, 21-2025, 21-2026,  
18 21-2027, 21-2028, 21-2029, 21-2030, 21-2031, 21-2032, 21-2033,  
19 21-2034, 21-2035, 21-2036, 21-2037, 21-2038, 21-2039, 21-2040,  
20 21-2041, 21-2042, 21-2043, 21-2044, 21-2045, 21-2046, 21-2047,  
21 21-2048, 21-2049, 21-2050, 21-2051, 21-2052, 21-2053, 21-2054,  
22 21-2055, 21-2056, 21-2057, 21-2058, 21-2059, 21-2060, 21-2061,  
23 21-2062, 21-2063, 21-2064, 21-2065, 21-2066, 21-2067, 21-2068,  
24 21-2069, 21-2070, 21-2071, 21-2072, 21-2073, 21-2074, 21-2075,  
25 21-2076, 21-2077, 21-2078, 21-2079, 21-2080, 21-2081, 21-2082,

1 21-2083, 21-2084, 21-2085, 21-2086, 21-2087, 21-2088, 21-2089,  
2 21-2090, 21-2091, 21-2092, 21-2093, 21-2094, 21-2095, 21-2096,  
3 21-2097, 21-2098, 21-2099, 21-20,100, 21-20,101, 21-20,102,  
4 21-20,103, 21-20,104, 21-20,105, 21-20,106, 21-20,107, 21-20,108,  
5 21-20,109, 21-20,110, 21-20,111, 21-20,112, 21-20,113, 21-20,114,  
6 21-20,115, 21-20,116, 21-20,117, 21-20,118, 21-20,119, 21-20,120,  
7 21-20,121, 21-20,122, 21-20,123, 21-20,124, 21-20,125, 21-20,126,  
8 21-20,127, 21-20,128, 21-20,129, 21-20,130, 21-20,131, 21-20,132,  
9 21-20,133, 21-20,134, 21-20,135, 21-20,135.01, 21-20,136, 21-20,137,  
10 21-20,138, 21-20,139, 21-20,140, 21-20,141, 21-20,142, 21-20,143,  
11 21-20,144, 21-20,145, 21-20,146, 21-20,147, 21-20,148, 21-20,149,  
12 21-20,150, 21-20,151, 21-20,152, 21-20,153, 21-20,154, 21-20,155,  
13 21-20,156, 21-20,157, 21-20,158, 21-20,159, 21-20,160, 21-20,161,  
14 21-20,162, 21-20,163, 21-20,164, 21-20,165, 21-20,166, 21-20,167,  
15 21-20,168, 21-20,169, 21-20,170, 21-20,171, 21-20,172, 21-20,173,  
16 21-20,174, 21-20,175, 21-20,176, 21-20,177, 21-20,178, 21-20,179,  
17 21-20,180, 21-20,180.01, 21-20,181, 21-20,181.01, 21-20,181.02,  
18 21-20,181.03, 21-20,182, 21-20,183, 21-20,184, 21-20,185, 21-20,186,  
19 21-20,187, 21-20,188, 21-20,189, 21-20,190, 21-20,191, 21-20,192,  
20 21-20,193, 21-20,194, 21-20,195, 21-20,196, and 21-20,197, Reissue  
21 Revised Statutes of Nebraska.