

LEGISLATIVE BILL 121

Approved by the Governor March 13, 1997

Introduced by Brashear, 4; Kristensen, 37

AN ACT relating to the Nebraska Nonprofit Corporation Act; to amend sections 21-19,119 and 21-19,121, Revised Statutes Supplement, 1996; to change provisions relating to mergers; and to repeal the original sections.

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

Section 1. Section 21-19,119, Revised Statutes Supplement, 1996, is amended to read:

21-19,119. (a)(1) Without the prior approval of the district court in a proceeding in which the Attorney General has been given written notice, a public benefit or religious corporation may merge only with:

~~(1)~~ (i) A public benefit or religious corporation;
~~(2)~~ (ii) A foreign corporation that would qualify under the Nebraska Nonprofit Corporation Act as a public benefit or religious corporation;
~~(3)~~ (iii) A wholly-owned foreign or domestic business or mutual benefit corporation, provided the public benefit or religious corporation is the surviving corporation and continues to be a public benefit or religious corporation after the merger; or

~~(4)~~ (iv) A business or mutual benefit corporation, if: ~~(i)~~ (A) On or prior to the effective date of the merger, assets with a value equal to the greater of the fair market value of the net tangible and intangible assets (including goodwill) of the public benefit corporation or the fair market value of the public benefit corporation if it were to be operated as a business concern, are transferred or conveyed to one or more persons who would have received its assets under subdivisions (a)(5) and (6) of section 21-19,134 had it dissolved; ~~(ii)~~ (B) it shall return, transfer, or convey any assets held by it upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the merger, in accordance with such condition; and ~~(iii)~~ (C) the merger is approved by a majority of directors of the public benefit or religious corporation who are not and will not become members or shareholders in or officers, employees, agents, or consultants of the surviving corporation.

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

(i) The plan of merger;

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

(iii) If approval by members was required:

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

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

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

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

(b) At least twenty days before consummation of any merger of a public benefit corporation or a religious corporation pursuant to subdivision ~~(a)(4)~~ ~~(a)(1)(iv)~~ of this section, notice, including a copy of the proposed plan of merger, must be delivered to the Attorney General.

(c) Without the prior written consent of the Attorney General or of

the district court in a proceeding in which the Attorney General has been given notice, no member of a public benefit or religious corporation may receive or keep anything as a result of a merger other than a membership or membership in the surviving public benefit or religious corporation. The district court shall approve the transaction if it is in the public interest. If it shall appear to the satisfaction of the district court that the interests of the corporations planning to merge and the public interest will not be adversely affected by the transaction, the district court shall issue an order approving the transaction upon such terms and conditions as it may prescribe.

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

Sec. 2. Section 21-19,121, Revised Statutes Supplement, 1996, is amended to read:

21-19,121. After a plan of merger is approved by the board of directors, and if required by section 21-19,119 or 21-19,120, by the district court or the members and any other persons, the surviving corporation shall deliver to the Secretary of State articles of merger setting forth:

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

(3) If approval by members was required:

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

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

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

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

Sec. 3. Original sections 21-19,119 and 21-19,121, Revised Statutes Supplement, 1996, are repealed.