

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 751

Introduced by Conrad, 46.

Read first time January 09, 2014

Committee: Banking, Commerce and Insurance

A BILL

- 1 FOR AN ACT relating to corporations; to amend section 84-511, Revised
- 2 Statutes Supplement, 2013; to adopt the Nebraska Benefit
- 3 Corporation Act; to harmonize provisions; and to repeal
- 4 the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 14 of this act shall be known
2 and may be cited as the Nebraska Benefit Corporation Act.

3 Sec. 2. (a) The Nebraska Benefit Corporation Act applies
4 to all benefit corporations.

5 (b) The existence of a provision of the Nebraska Benefit
6 Corporation Act does not of itself create an implication that a
7 contrary or different rule of law is applicable to a business
8 corporation that is not a benefit corporation. The act does not
9 affect a statute or rule of law that is applicable to a business
10 corporation that is not a benefit corporation.

11 (c) Except as otherwise provided in the Nebraska Benefit
12 Corporation Act, the Business Corporation Act is generally applicable
13 to all benefit corporations. The specific provisions of the Nebraska
14 Benefit Corporation Act control over the general provisions of the
15 Business Corporation Act. A benefit corporation may be subject
16 simultaneously to the Nebraska Benefit Corporation Act and one or
17 more other statutes that provide for the incorporation of a specific
18 type of business corporation.

19 (d) A provision of the articles of incorporation or
20 bylaws of a benefit corporation may not limit, be inconsistent with,
21 or supersede a provision of the Nebraska Benefit Corporation Act.

22 Sec. 3. The following words and phrases when used in the
23 Nebraska Benefit Corporation Act have the meanings given to them in
24 this section unless the context clearly indicates otherwise:

25 (1) Benefit corporation means a business corporation:

1 (a) Which has elected to become subject to the act; and
2 (b) The status of which as a benefit corporation has not
3 been terminated;

4 (2) Benefit director means the director designated as the
5 benefit director of a benefit corporation under section 9 of this
6 act;

7 (3) Benefit enforcement proceeding means any claim or
8 action or proceeding for:

9 (a) Failure of a benefit corporation to pursue or create
10 general public benefit or a specific public benefit purpose set forth
11 in its articles; or

12 (b) Violation of any obligation, duty, or standard of
13 conduct under the act;

14 (4) Benefit officer means the officer designated as the
15 benefit officer of a benefit corporation under section 11 of this
16 act;

17 (5) Business corporation means a domestic corporation as
18 defined in section 21-2014;

19 (6) General public benefit means a material positive
20 impact on society and the environment, taken as a whole, assessed
21 against a third-party standard, from the business and operations of a
22 benefit corporation;

23 (7) Independent means having no material relationship
24 with a benefit corporation or a subsidiary of the benefit
25 corporation. Serving as benefit director or benefit officer does not

1 make an individual not independent. A material relationship between
2 an individual and a benefit corporation or any of its subsidiaries
3 will be conclusively presumed to exist if:

4 (a) The individual is, or has been within the last three
5 years, an employee other than a benefit officer of the benefit
6 corporation or a subsidiary;

7 (b) An immediate family member of the individual is, or
8 has been within the last three years, an executive officer other than
9 a benefit officer of the benefit corporation or a subsidiary; or

10 (c) There is beneficial or record ownership of five
11 percent or more of the outstanding shares of the benefit corporation,
12 calculated as if all outstanding rights to acquire equity interests
13 in the benefit corporation had been exercised, by:

14 (i) The individual; or

15 (ii) An entity:

16 (A) Of which the individual is a director, an officer, or
17 a manager; or

18 (B) In which the individual owns beneficially or of
19 record five percent or more of the outstanding equity interests,
20 calculated as if all outstanding rights to acquire equity interests
21 in the entity had been exercised;

22 (8) Minimum status vote means:

23 (a) In the case of a business corporation, in addition to
24 any other required approval or vote, the satisfaction of the
25 following conditions:

1 (i) The shareholders of every class or series are
2 entitled to vote separately on a corporate action regardless of a
3 limitation stated in the articles of incorporation or bylaws on the
4 voting rights of any class or series; and

5 (ii) The corporate action must be approved by a vote of
6 the shareholders of each class or series entitled to cast at least
7 two-thirds of the votes that all shareholders of the class or series
8 are entitled to cast on the action; and

9 (b) In the case of a domestic entity other than a
10 business corporation, in addition to any other required approval,
11 vote, or consent, the satisfaction of the following conditions:

12 (i) The holders of every class or series of equity
13 interests in the entity that are entitled to receive a distribution
14 of any kind from the entity are entitled to vote separately on or
15 consent to the action regardless of any otherwise applicable
16 limitation on the voting or consent rights of any class or series;
17 and

18 (ii) The action must be approved by a vote or consent of
19 the holders described in subdivision (i) of this subdivision entitled
20 to cast at least two-thirds of the votes or consents that all of
21 those holders are entitled to cast on the action;

22 (9) Publicly traded corporation means a business
23 corporation that has shares listed on a national securities exchange
24 or traded in a market maintained by one or more members of a national
25 securities association;

- 1 (10) Specific public benefit includes:
- 2 (a) Providing low-income or underserved individuals or
3 communities with beneficial products or services;
- 4 (b) Promoting economic opportunity for individuals or
5 communities beyond the creation of jobs in the normal course of
6 business;
- 7 (c) Protecting or restoring the environment;
- 8 (d) Improving human health;
- 9 (e) Promoting the arts, sciences, or advancement of
10 knowledge;
- 11 (f) Increasing the flow of capital to entities with a
12 purpose to benefit society or the environment; and
- 13 (g) Conferring any other particular benefit on society or
14 the environment;
- 15 (11) Subsidiary means in relation to a person, an entity
16 in which the person owns beneficially or of record fifty percent or
17 more of the outstanding equity interests; and
- 18 (12) Third-party standard means a recognized standard for
19 defining, reporting, and assessing corporate social and environmental
20 performance that is:
- 21 (a) Comprehensive because it assesses the effect of the
22 business and its operations upon the interests listed in subdivisions
23 (1)(a)(ii), (iii), (iv), and (v) of section 8 of this act;
- 24 (b) Developed by an entity that is not controlled by the
25 benefit corporation;

1 (c) Credible because it is developed by an entity that
2 both:

3 (i) Has access to necessary expertise to assess overall
4 corporate social and environmental performance; and

5 (ii) Uses a balanced multistakeholder approach to develop
6 the standard, including a reasonable public comment period; and

7 (d) Transparent because the following information is
8 publicly available:

9 (i) About the standard:

10 (A) The criteria considered when measuring the overall
11 social and environmental performance of a business; and

12 (B) The relative weightings, if any, of those criteria;
13 and

14 (ii) About the development and revision of the standard:

15 (A) The identity of the directors, officers, material
16 owners, and the governing body of the entity that developed and
17 controls revisions to the standard;

18 (B) The process by which revisions to the standard and
19 changes to the membership of the governing body are made; and

20 (C) An accounting of the revenue and sources of financial
21 support for the entity, with sufficient detail to disclose any
22 relationships that could reasonably be considered to present a
23 potential conflict of interest.

24 Sec. 4. A benefit corporation shall be incorporated in
25 accordance with the Business Corporation Act, but its articles of

1 incorporation must also state that it is a benefit corporation.

2 Sec. 5. (1) An existing business corporation may become a
3 benefit corporation under the Nebraska Benefit Corporation Act by
4 amending its articles of incorporation so that they contain, in
5 addition to the requirements of section 21-2018, a statement that the
6 corporation is a benefit corporation. In order to be effective, the
7 amendment must be adopted by at least the minimum status vote.

8 (2) An entity that is not a benefit corporation may
9 become a benefit corporation pursuant to subsection (1) of this
10 section if the entity is (a) a party to a merger or conversion or (b)
11 an exchanging entity in a share exchange, and the surviving, new, or
12 resulting entity in the merger, conversion, or share exchange is to
13 be a benefit corporation. In order to be effective, a plan of merger,
14 conversion, or share exchange subject to this subsection must be
15 adopted by at least the minimum status vote.

16 Sec. 6. (1) A benefit corporation may terminate its
17 status as such and cease to be subject to the Nebraska Benefit
18 Corporation Act by amending its articles of incorporation to delete
19 the provision required by section 4 or 5 of this act to be stated in
20 the articles of a benefit corporation. In order to be effective, the
21 amendment must be adopted by at least the minimum status vote.

22 (2) If a plan of merger, conversion, or share exchange
23 would have the effect of terminating the status of a business
24 corporation as a benefit corporation, the plan must be adopted by at
25 least the minimum status vote in order to be effective. Any sale,

1 lease, exchange, or other disposition of all or substantially all of
2 the assets of a benefit corporation, unless the transaction is in the
3 usual and regular course of business, is not effective unless the
4 transaction is approved by at least the minimum status vote.

5 Sec. 7. (1) A benefit corporation shall have a purpose of
6 creating general public benefit. This purpose is in addition to its
7 purpose under section 21-2024.

8 (2) The articles of incorporation of a benefit
9 corporation may identify one or more specific public benefits that it
10 is the purpose of the benefit corporation to create in addition to
11 its purposes under section 21-2024 and subsection (1) of this
12 section. The identification of a specific public benefit under this
13 subsection does not limit the purpose of a benefit corporation to
14 create general public benefit under subsection (1) of this section.

15 (3) The creation of general public benefit and specific
16 public benefit under subsections (1) and (2) of this section is in
17 the best interests of the benefit corporation.

18 (4) A benefit corporation may amend its articles of
19 incorporation to add, amend, or delete the identification of a
20 specific public benefit that it is the purpose of the benefit
21 corporation to create. In order to be effective, the amendment must
22 be adopted by at least the minimum status vote.

23 Sec. 8. (1) In discharging the duties of their respective
24 positions and in considering the best interests of the benefit
25 corporation, the board of directors, committees of the board, and

1 individual directors of a benefit corporation:

2 (a) Shall consider the effects of any action or inaction
3 upon:

4 (i) The shareholders of the benefit corporation;

5 (ii) The employees and work force of the benefit
6 corporation, its subsidiaries, and its suppliers;

7 (iii) The interests of customers as beneficiaries of the
8 general public benefit or specific public benefit purposes of the
9 benefit corporation;

10 (iv) Community and societal factors, including those of
11 each community in which offices or facilities of the benefit
12 corporation, its subsidiaries, or its suppliers are located;

13 (v) The local and global environment;

14 (vi) The short-term and long-term interests of the
15 benefit corporation, including benefits that may accrue to the
16 benefit corporation from its long-term plans and the possibility that
17 these interests may be best served by the continued independence of
18 the benefit corporation; and

19 (vii) The ability of the benefit corporation to
20 accomplish its general public benefit purpose and any specific public
21 benefit purpose;

22 (b) May consider other pertinent factors or the interests
23 of any other group that they deem appropriate;

24 (c) Need not give priority to the interests of a
25 particular person or group referred to in subdivision (a) or (b) of

1 this subsection over the interests of any other person or group
2 unless the benefit corporation has stated in its articles of
3 incorporation its intention to give priority to certain interests
4 related to its accomplishment of its general public benefit purpose
5 or of a specific public benefit purpose identified in its articles.

6 (2) The consideration of interests and factors in the
7 manner required by subsection (1) of this section does not constitute
8 a violation of section 21-2095.

9 (3) Except as provided in the articles of incorporation
10 or bylaws, a director is not personally liable for monetary damages
11 for:

12 (a) Any action or inaction in the course of performing
13 the duties of a director under subsection (1) of this section if the
14 director performed the duties of office in compliance with section
15 21-2095 and this section; or

16 (b) Failure of the benefit corporation to pursue or
17 create general public benefit or specific public benefit.

18 (4) A director does not have a duty to a person that is a
19 beneficiary of the general public benefit purpose or a specific
20 public benefit purpose of a benefit corporation arising from the
21 status of the person as a beneficiary.

22 (5) A director who makes a business judgment in good
23 faith fulfills the duty under this section if the director:

24 (a) Is not interested in the subject of the business
25 judgment;

1 (b) Is informed with respect to the subject of the
2 business judgment to the extent the director reasonably believes to
3 be appropriate under the circumstances; and

4 (c) Rationally believes that the business judgment is in
5 the best interests of the benefit corporation.

6 Sec. 9. (1) The board of directors of a benefit
7 corporation that is a publicly traded corporation shall, and the
8 board of any other benefit corporation may, include a director, who:

9 (a) Shall be designated the benefit director; and

10 (b) Shall have, in addition to the powers, duties,
11 rights, and immunities of the other directors of the benefit
12 corporation, the powers, duties, rights, and immunities provided in
13 this section.

14 (2) The benefit director shall be elected and may be
15 removed in the manner provided by the Business Corporation Act. The
16 benefit director shall be an individual who is independent. The
17 benefit director may serve as the benefit officer at the same time as
18 serving as the benefit director. The articles of incorporation or
19 bylaws of a benefit corporation may prescribe additional
20 qualifications of the benefit director not inconsistent with this
21 subsection.

22 (3) The benefit director shall prepare, and the benefit
23 corporation shall include in the annual benefit report to
24 shareholders required by section 13 of this act, the opinion of the
25 benefit director on all of the following:

1 (a) Whether the benefit corporation acted in accordance
2 with its general public benefit purpose and any specific public
3 benefit purpose in all material respects during the period covered by
4 the report;

5 (b) Whether the directors and officers complied with
6 subsection (1) of section 8 of this act and subsection (1) of section
7 10 of this act, respectively; and

8 (c) If, in the opinion of the benefit director, the
9 benefit corporation or its directors or officers failed to act or
10 comply in the manner described in subdivisions (3)(a) and (b) of this
11 subsection, a description of the ways in which the benefit
12 corporation or its directors or officers failed to act or comply.

13 (4) The action or inaction of an individual in the
14 capacity of a benefit director constitutes for all purposes an action
15 or inaction of that individual in the capacity of a director of the
16 benefit corporation.

17 (5) Regardless of whether the articles of incorporation
18 or bylaws of a benefit corporation include a provision eliminating or
19 limiting the personal liability of directors authorized by section
20 21-2018, a benefit director is not personally liable for an act or
21 omission in the capacity of a benefit director unless the act or
22 omission constitutes self-dealing, willful misconduct, or a knowing
23 violation of law.

24 Sec. 10. (1) Each officer of a benefit corporation shall
25 consider the interests and factors described in subsection (1) of

1 section 8 of this act in the manner provided in that subsection if:

2 (a) The officer has discretion to act with respect to a
3 matter; and

4 (b) It reasonably appears to the officer that the matter
5 may have a material effect on the creation by the benefit corporation
6 of general public benefit or a specific public benefit identified in
7 the articles of incorporation of the benefit corporation.

8 (2) The consideration of interests and factors in the
9 manner described in subsection (1) of this section does not
10 constitute a violation of section 21-2099.

11 (3) Except as provided in the articles of incorporation
12 or bylaws, an officer is not personally liable for monetary damages
13 for:

14 (a) An action or inaction as an officer in the course of
15 performing the duties of an officer under subsection (1) of this
16 section if the officer performed the duties of the position in
17 compliance with section 21-2099 and this section; or

18 (b) Failure of the benefit corporation to pursue or
19 create general public benefit or specific public benefit.

20 (4) An officer does not have a duty to a person that is a
21 beneficiary of the general public benefit purpose or a specific
22 public benefit purpose of a benefit corporation arising from the
23 status of the person as a beneficiary.

24 (5) An officer who makes a business judgment in good
25 faith fulfills the duty under this section if the officer:

1 (a) Is not interested in the subject of the business
2 judgment;

3 (b) Is informed with respect to the subject of the
4 business judgment to the extent the officer reasonably believes to be
5 appropriate under the circumstances; and

6 (c) Rationally believes that the business judgment is in
7 the best interests of the benefit corporation.

8 Sec. 11. (1) A benefit corporation may have an officer
9 designated the benefit officer.

10 (2) A benefit officer shall have:

11 (a) The powers and duties relating to the purpose of the
12 corporation to create general public benefit or specific public
13 benefit provided:

14 (i) By the bylaws; or

15 (ii) Absent controlling provisions in the bylaws, by
16 resolutions or orders of the board of directors; and

17 (b) The duty to prepare the benefit report required by
18 section 13 of this act.

19 Sec. 12. (1)(a) Except in a benefit enforcement
20 proceeding, no person may bring an action or assert a claim against a
21 benefit corporation or its directors or officers with respect to:

22 (i) Failure to pursue or create general public benefit or
23 a specific public benefit set forth in its articles of incorporation;
24 or

25 (ii) Violation of an obligation, duty, or standard of

1 conduct under the Nebraska Benefit Corporation Act.

2 (b) A benefit corporation is not liable for monetary
3 damages under the act for any failure of the benefit corporation to
4 pursue or create general public benefit or a specific public benefit.

5 (2) A benefit enforcement proceeding may be commenced or
6 maintained only:

7 (a) Directly by the benefit corporation; or

8 (b) Derivatively in accordance with the Business
9 Corporation Act by:

10 (i) A person or group of persons that owned beneficially
11 or of record at least two percent of the total number of shares of a
12 class or series outstanding at the time of the act or omission
13 complained of;

14 (ii) A director;

15 (iii) A person or group of persons that owned
16 beneficially or of record five percent or more of the outstanding
17 equity interests in an entity of which the benefit corporation is a
18 subsidiary at the time of the act or omission complained of; or

19 (iv) Other persons as specified in the articles of
20 incorporation or bylaws of the benefit corporation.

21 (3) For purposes of this section, a person is the
22 beneficial owner of shares or equity interests if the shares or
23 equity interests are held in a voting trust or by a nominee on behalf
24 of the beneficial owner.

25 Sec. 13. (1) A benefit corporation shall prepare an

1 annual benefit report including all of the following:

2 (a) A narrative description of:

3 (i) The ways in which the benefit corporation pursued
4 general public benefit during the year and the extent to which
5 general public benefit was created;

6 (ii) Both:

7 (A) The ways in which the benefit corporation pursued a
8 specific public benefit that the articles of incorporation state it
9 is the purpose of the benefit corporation to create; and

10 (B) The extent to which that specific public benefit was
11 created;

12 (iii) Any circumstances that have hindered the creation
13 by the benefit corporation of general public benefit or specific
14 public benefit; and

15 (iv) The process and rationale for selecting or changing
16 the third-party standard used to prepare the benefit report;

17 (b) An assessment of the overall social and environmental
18 performance of the benefit corporation against a third-party
19 standard:

20 (i) Applied consistently with any application of that
21 standard in prior benefit reports; or

22 (ii) Accompanied by an explanation of the reasons for:

23 (A) Any inconsistent application; or

24 (B) The change to that standard from the one used in the
25 immediately prior report;

1 (c) The name of the benefit director and the benefit
2 officer, if any, and the address to which correspondence to each of
3 them may be directed;

4 (d) The compensation paid by the benefit corporation
5 during the year to each director in the capacity of a director;

6 (e) The statement of the benefit director described in
7 subsection (3) of section 9 of this act; and

8 (f) A statement of any connection between the
9 organization that established the third-party standard, or its
10 directors, officers, or any holder of five percent or more of the
11 governance interests in the organization, and the benefit corporation
12 or its directors, officers, or any holder of five percent or more of
13 the outstanding shares of the benefit corporation, including any
14 financial or governance relationship which might materially affect
15 the credibility of the use of the third-party standard.

16 (2) If, during the year covered by a benefit report, a
17 benefit director resigned from or refused to stand for reelection to
18 the position of benefit director, or was removed from the position of
19 benefit director, and the benefit director furnished the benefit
20 corporation with any written correspondence concerning the
21 circumstances surrounding the resignation, refusal, or removal, the
22 benefit report shall include that correspondence as an exhibit.

23 (3) Neither the benefit report nor the assessment of the
24 performance of the benefit corporation in the benefit report required
25 by subdivision (1)(b) of this section needs to be audited or

1 certified by a third-party standards provider.

2 Sec. 14. (1) A benefit corporation shall send its annual
3 benefit report to each shareholder:

4 (a) Within one hundred twenty days following the end of
5 the fiscal year of the benefit corporation; or

6 (b) At the same time that the benefit corporation
7 delivers any other annual report to its shareholders.

8 (2) A benefit corporation shall post all of its benefit
9 reports on the public portion of its Internet web site, if any,
10 except that the compensation paid to directors and financial or
11 proprietary information included in the benefit reports may be
12 omitted from the benefit reports as posted.

13 (3) If a benefit corporation does not have an Internet
14 web site, the benefit corporation shall provide a copy of its most
15 recent benefit report, without charge, to any person that requests a
16 copy, except that the compensation paid to directors and financial or
17 proprietary information included in the benefit report may be omitted
18 from the copy of the benefit report provided.

19 (4)(a) Concurrently with the delivery of the benefit
20 report to shareholders under subsection (4) of this section, the
21 benefit corporation shall deliver a copy of the benefit report to the
22 Secretary of State for filing, except that the compensation paid to
23 directors and financial or proprietary information included in the
24 benefit report may be omitted from the benefit report as delivered to
25 the Secretary of State.

1 (b) The Secretary of State shall charge a fee in the
2 amount prescribed in subdivision (1)(y) of section 21-2005 for filing
3 a benefit report. The fee shall be remitted to the State Treasurer
4 for credit to the Corporation Cash Fund.

5 Sec. 15. Section 84-511, Revised Statutes Supplement,
6 2013, is amended to read:

7 84-511 The Secretary of State may provide for the
8 electronic transmission and filing of documents delivered for filing
9 under (1) the Business Corporation Act, the Nebraska Benefit
10 Corporation Act, the Nebraska Limited Cooperative Association Act,
11 the Nebraska Nonprofit Corporation Act, the Nebraska Professional
12 Corporation Act, the Nebraska Uniform Limited Liability Company Act,
13 the Nebraska Uniform Limited Partnership Act, the Nonstock
14 Cooperative Marketing Act, the Uniform Partnership Act of 1998, and
15 the Trademark Registration Act and (2) any filing provisions of
16 sections 21-1301 to 21-1306, 21-1333 to 21-1339, and 87-208 to
17 87-219.01. The Secretary of State shall adopt and promulgate rules
18 and regulations to implement this section.

19 Sec. 16. Original section 84-511, Revised Statutes
20 Supplement, 2013, is repealed.