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# A Consideration of the Nebraska Corporation Law in the Light of the American Bar Association's Model Business Corporation Act

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## A CONSIDERATION OF THE NEBRASKA CORPORATION LAW IN THE LIGHT OF THE AMERICAN BAR ASSOCIATION'S MODEL BUSINESS CORPORATION ACT\*

*The following article is presented as a general, rather than a technical, survey of the relationship between the Model Corporation Act and the present Nebraska Corporation Laws. The purpose is to give a brief comprehensive glance so that Nebraska attorneys will be able to more easily decide what their position will be on the proposed revamping of the present Nebraska Corporation Statutes. For a comprehensive picture of the action other states have taken on the Model Act, the reader's attention is directed to Appendix A.*

*The Editors*

### I. INTRODUCTION

The present General Corporation Law of Nebraska was adopted in 1941.<sup>1</sup> Although it carried forward some provisions of previous Nebraska corporation law, the 1941 act contained many sections derived directly from the General Corporation Law of Delaware.<sup>2</sup> The Delaware law was itself modeled after the laws of New Jersey many years earlier.<sup>3</sup> This process, which does pattern the corporation laws of one jurisdiction after those of another to some extent, did not lead to uniformity among the various states which

\* Introductory material, Appendix, and footnote references to jurisdictions other than Nebraska supplied by Staff member Don H. Sherwood, presently a junior, College of Law, University of Nebraska.

<sup>1</sup> Neb. Laws c. 41, pp. 158-217 (1941). The 1941 act, as amended, is found in NEB. REV. STAT. §§ 21-101 - 1,165 (Reissue 1954), as amended, NEB. REV. STAT. §§ 21-171 - 1,159 (Supp. 1957), as amended, Neb. Laws cc. 70 - 72, pp. 300-09 (1959). Some of the materials studied in this paper are found elsewhere in chapter 21 of the the Nebraska statutes, especially in articles 3 (Occupation Tax) and 12 (Foreign Corporations).

<sup>2</sup> See Ritchie & Vold, "General Corporation Law of Nebraska," 21 NEB. L. REV. 197, 199-200 (1942).

<sup>3</sup> *Id.* at 199. Cf. *Chicago Corp. v. Munds*, 20 Del. Ch. 142, 172 Atl. 452 (1934). See also *Liggett Co. v. Lee*, 288 U.S. 517, 548-64 (1933) (dissenting opinion of Brandeis, J.)

modernized their corporation laws during the period from 1927 to 1950.<sup>4</sup> While uniformity in state corporation laws is no longer thought necessary,<sup>5</sup> the patterning process was encouraged by the promulgation of the Model Business Corporation Act in 1946,<sup>6</sup> and most of the jurisdictions which have revised their corporation laws since 1950 have been greatly influenced by this model act.<sup>7</sup> A model act so favorably received and found adaptable to the needs of a number of neighboring or comparable jurisdictions<sup>8</sup> ought to be considered in any contemplated revision of Nebraska corporation law.

The Model Business Corporation Act has been prepared by the Committee on Corporate Laws (Corporation, Banking and

<sup>4</sup> Compare, e.g., Illinois Business Corporation Act of 1933, ILL. REV. STAT. c. 32, §§ 157.1 - .167 (1957) with Ohio General Corporation Law of 1927, OHIO REV. CODE §§ 1701.01 - 1702.99 (Anderson 1953); Louisiana Business Corporation Act of 1928, LA. REV. STAT. §§ 1 - 71 (1950); Indiana General Corporation Act of 1929, IND. ANN. STAT. §§ 25-101 - 423 (1933); Idaho Business Corporation Act of 1929, IDAHO CODE ANN. §§ 30-101 - 165 (1948); Tennessee General Corporation Act of 1929, TENN. CODE ANN. §§ 48-101 - 922 (1956); Arkansas Corporation Act of 1931, ARK. STAT. §§ 64-101 - 1210 (1947); California General Corporation Law of 1931, CAL. CORP. CODE §§ 100 - 8999; Michigan General Corporation Act of 1931, MICH. COMP. LAWS §§ 450.1 - .192 (1948); Pennsylvania Business Corporation Law of 1933, PA. STAT. tit. 15, §§ 1 - 591; 3141 - 3201 (1936); Minnesota Business Corporation Act of 1933, MINN. STAT. §§ 301.01 - .61 (1953); Washington Private Business Corporations Act of 1933, WASH. REV. CODE §§ 23.01.010 - 23.74.020 (1951); Kansas General Corporation Code of 1939, KAN. GEN. STAT. ANN. §§ 17-101 - 4505 (1949); Nebraska General Corporation Law of 1941, NEB. REV. STAT. §§ 21-101 - 1,165 (Reissue 1954); Missouri General and Business Corporation Law of 1943, MO. REV. STAT. §§ 351.010 - .720 (1949); Kentucky Corporation Law of 1946, KY. REV. STAT. §§ 271.-005 - .615 (1953); Oklahoma Business Corporation Act of 1947, OKLA. STAT. tit. 18, §§ 1.1 - .250 (1951).

<sup>5</sup> See Cosson, "The Iowa Business Corporation Act", 45 IOWA L. REV. 12, 22 (1959). Cf. *Id.* at n. 23.

<sup>6</sup> The Model Business Corporation Act discussed in this paper should not be confused with the earlier Uniform Business Corporation Act of 1928. This latter act, promulgated by the Conference of Commissioners on Uniform State Laws, is no longer up to date but has been redesignated the Model Business Corporation Act and is still published. See Cosson, "The Iowa Business Corporation Act," 45 IOWA L. REV. 12, n. 23 (1959).

<sup>7</sup> See note 10, *infra*, and materials there cited.

<sup>8</sup> The neighboring states of Iowa and Colorado have revised their corporation laws quite recently, relying extensively upon the Model Business Corporation Act. See note 10, *infra*. Other states similar to Nebraska in population, economy, or commerce have adapted the Model Business Corporation Act to their needs. *Ibid.*

Business Law Section) of the American Bar Association, in collaboration with the American Law Institute, and has been published by the American Law Institute Committee on Continuing Legal Education.<sup>9</sup> Eight states and the District of Columbia have relied upon the Model Business Corporation Act to such an extent in recent revisions of their corporation laws that it may be said that they have adopted the Model Act as the pattern for their revisions.<sup>10</sup> Only two states have revised their corporation laws since 1950 without considerable reliance upon the Model Act, but, in each case, many provisions of the Model Act were adapted to the new laws.<sup>11</sup>

The purpose here is to reveal some of the changes that would result in Nebraska corporation law if the present Model Business Corporation Act were adopted here. This paper does not deal with the similarities of the two acts, but rather with the differences that would be brought about in Nebraska law by adoption of the Model Act in its present form.

<sup>9</sup> MODEL BUSINESS CORPORATION ACT (1953 Revision, 1957), hereinafter cited: M.A. Since the 1953 revision, a substantial number of sections of the model act have been revised, deleted, renumbered, or amended. Two new sections have been added, two alternate sections suggested, and five optional sections advanced. See Appendix.

<sup>10</sup> See Wisconsin Business Corporation Law of 1951, WISC. STAT. §§ 180.01 - .97 (1957); Oregon Business Corporation Act of 1953, ORE. REV. STAT. §§ 57.002 - .994 (1957); District of Columbia Business Corporation Act of 1954, D.C. CODE ANN. tit. 29, §§ 901 - 956 (1959); Texas Business Corporation Act of 1955, TEX. BUS. CORP. ACT art. 1.01 - 10.02 (1956); Virginia Stock Corporation Act of 1956, VA. CODE ANN. §§ 13.1-1 - 132 (1956); Alaska Business Corporation Act of 1957, ALASKA COMP. LAWS ANN. §§ 36-2A-1 - 213 (Supp. 1958); North Dakota Business Corporation Act of 1957, N.D. REV. CODE §§ 10-1901 - 2319 (Supp. 1957); Colorado Corporation Act of 1958, Colo. Laws c. 32, pp. 119-203 (1958), as amended, Colo. Laws c. 83, pp. 326-41 (1959); Iowa Business Corporation Act of 1959, Iowa Laws c. 321, pp. 344-412 (1959). As to sections which have been more recently amended, see Appendix.

<sup>11</sup> See Maryland General Corporation Law of 1951, MD. ANN. CODE art. 23, §§ 1 - 131 (1957); North Carolina Business Corporation Act of 1955, N.C. GEN. STAT. §§ 55-1 - 175 (1959). Puerto Rico revised its corporation law in 1956, but did not rely upon the Model Business Corporation Act. See Puerto Rico General Corporation Law of 1956, P.R. LAWS ANN. tit. 14, §§ 1101 - 2505 (1957).

## II. DEFINITIONS

The Model Act and the Nebraska act differ substantially in definition of terms.<sup>12</sup> The Model Act defines terms frequently found in corporate terminology, while Nebraska generally limits its definitions to terms used in its corporation law.

## III. SUBSTANTIVE PROVISIONS

The Model Act defines the purposes for which a corporation may be organized.<sup>13</sup> The Nebraska act, hereinafter cited R.R.S., does this, but only in a general way.<sup>14</sup> The Model Act, furthermore, congregates corporate powers in one section.<sup>15</sup> These powers are scattered throughout the Nebraska statutes,<sup>16</sup> and Constitution.<sup>17</sup> The Model Act covers corporate powers dealing with lending money for corporate purposes, donations for public welfare or for scientific purposes, and to finance a war effort. Some of these powers may be construed as included in the Nebraska act.<sup>18</sup>

Unlike the Model Act, the Nebraska statute has no provision giving a corporation a right to reserve or register a corporate name.<sup>19</sup> Logically enough, there is therefore no need for a provision in the present Nebraska act providing for a renewal of a registered name.<sup>20</sup>

The subject of authorized shares receives scattered notice in the Nebraska statutes.<sup>21</sup> This is also true with the classes of

<sup>12</sup> See NEB. REV. STAT. §§ 21-101, and -1202 (Reissue 1954), hereinafter cited: R.R.S. Cf. M.A. § 2. The Model Act, for example, defines "shares," "subscriber," "shareholders," "authorized shares," "treasury shares," "net assets," "stated capital," "surplus," "earned surplus," "capital surplus," and "insolvent." The Nebraska act defines the following terms, among others: "a certificate of stock," "principal place of business," and "principal office." Only Oregon, North Dakota, and Wisconsin have adopted M.A. § 2 without considerable change.

<sup>13</sup> M.A. § 3.

<sup>14</sup> R.R.S. § 21-102.

<sup>15</sup> M.A. § 4. In general, this section has not been adopted in any state without considerable revision.

<sup>16</sup> R.R.S. §§ 21-103; -104; -120; -180; 76-402; -406.

<sup>17</sup> NEB. CONST. art. 12, § 3.

<sup>18</sup> R.R.S. § 21-1,165.

<sup>19</sup> M.A. §§ 8 and 9 provide for this.

<sup>20</sup> *But see* M.A. § 10.

<sup>21</sup> R.R.S. §§ 21-121; -152; 25-105(8). Compare M.A. § 14.

shares which might be issued.<sup>22</sup> As to obtaining payment of subscriptions, the Nebraska act does not require that the demand be uniform as to all the shares of the same class or series.<sup>23</sup> The Model Act requires that any demand on shareholders in the same class be uniform.<sup>24</sup> The Nebraska statute expressly provides that shares shall be regarded as personal property of the holder.<sup>25</sup> The Nebraska act regards redeemed shares as authorized and unissued shares of their respective classes.<sup>26</sup> Such a reversion to the status of authorized but unissued shares is also effected under the Model Act, but redemption or purchase of issued shares there works an express cancellation.<sup>27</sup>

The Nebraska act contains no specific provision dealing with an allowance or payment of reasonable expenses of organization or reorganization by the corporation as does the Model Act.<sup>28</sup> The Nebraska act does not expressly exclude personal liability on the part of an executor, administrator, guardian, or other fiduciary, as does the Model Act.<sup>29</sup>

For failure to produce a shareholders list, the Model Act provides that, while all acts done thereafter are valid, yet the persons guilty of such failure shall answer in damages to the shareholder.<sup>30</sup> Under the Nebraska act, the guilty parties are ineligible to hold any office at such an election.<sup>31</sup> The latter act appears to provide a much stiffer penalty, in that ineligibility for office would destroy to a large extent the reasons for withholding such lists. Under the Model Act, proof of damages may be difficult to make, and hence leave a wronged, though uninjured, shareholder without a remedy.

<sup>22</sup> R.R.S. §§ 21-126 - 27. Compare M.A. § 15.

<sup>23</sup> R.R.S. § 21-144. This would not appear to work an undue hardship on the shareholder, however, since he would be paying only what he previously agreed to pay. It would insure that all shareholders received equal treatment.

<sup>24</sup> M.A. § 16. Under this provision, all shareholders would receive equal treatment.

<sup>25</sup> R.R.S. § 21-134.

<sup>26</sup> R.R.S. § 21-154.

<sup>27</sup> M.A. § 61.

<sup>28</sup> M.A. § 20.

<sup>29</sup> M.A. § 23 excludes personal liability, but includes the fund held by a fiduciary. See R.R.S. § 21-142. Cf. NEB. CONST. art. 12, § 4.

<sup>30</sup> M.A. § 29. This section, except in Alaska, Colorado, and Oregon, has not been accepted without substantial variation.

<sup>31</sup> R.R.S. § 21-165.

To constitute a quorum of shareholders under the Model Act at least one-third of the shares entitled to vote must be present.<sup>32</sup> The Nebraska statute leaves the number of shares required for a quorum to be determined by a provision in the articles of incorporation or in the by-laws.<sup>33</sup> Both acts concur that a majority of the total number of directors shall constitute a quorum.<sup>34</sup> The Model Act would permit the designation of certain directors to constitute an executive committee with powers delegated to it by the board of directors if the articles of incorporation or by-laws so provide.<sup>35</sup> There is no comparable section in the Nebraska statutes. The Nebraska act would seem to prohibit the use of an executive committee in that it provides that the business of the corporation shall be managed by a board of directors.<sup>36</sup>

Voting trusts are permitted by both acts, but Nebraska limits such trusts to five years,<sup>37</sup> whereas the Model Act permits such trusts to run for ten years.<sup>38</sup> The Nebraska act specifically provides that all elections of directors shall be by ballot.<sup>39</sup> The Model Act is less technical in that it does not limit the method of voting.<sup>40</sup> Nebraska statutes give the district courts power to fill vacancies or to supervise an election of the board of directors under certain specified conditions.<sup>41</sup> The Model Act does not provide for these powers. The Model Act defines the liability of directors in much greater detail than does the present Nebraska law.<sup>42</sup> The Model Act defines in detail the liability of directors in particular situations.<sup>43</sup> Nebraska does, however, provide for liability of directors for issuing false reports.<sup>44</sup>

<sup>32</sup> M.A. § 30.

<sup>33</sup> R.R.S. § 21-137.

<sup>34</sup> M.A. § 27; R.R.S. § 21-113.

<sup>35</sup> M.A. § 38.

<sup>36</sup> R.R.S. § 21-111.

<sup>37</sup> R.R.S. § 21-139.

<sup>38</sup> M.A. § 32.

<sup>39</sup> R.R.S. § 21-167.

<sup>40</sup> M.A. § 36.

<sup>41</sup> R.R.S. §§ 21-168; -170.

<sup>42</sup> The substance of M.A. § 43(b), (c), and (e) is not included in the present Nebraska statutes. See R.R.S. §§ 21-178 - 80.

<sup>43</sup> M.A. § 43.

<sup>44</sup> R.R.S. § 21-181.

The Model Act permits officers to hold any two or more offices except that of president and secretary.<sup>45</sup> Nebraska permits holding any two or more offices except that of president and vice president.<sup>46</sup> Nebraska statutes spell out the duties of the secretary,<sup>47</sup> while the Model Act leaves the duties of the officers to definition in the by-laws.<sup>48</sup>

#### IV. FORMATION OF CORPORATIONS

Under current Nebraska statutes, two or more persons may incorporate a business.<sup>49</sup> The Model Act requires that at least three persons combine to incorporate.<sup>50</sup> The Nebraska act permits the articles of incorporation to determine the amount of stock to be paid in before commencing business.<sup>51</sup> Presumably, a corporation could commence business before any capital had been paid in. The Model Act, on the other hand, would make it mandatory that at least one thousand dollars be paid in before business could be begun.<sup>52</sup>

The current Nebraska act permits a provision in the articles of incorporation to determine the extent of liability of private property of shareholders for debts of the corporation.<sup>53</sup> This is expressly negated by the Model Act.<sup>54</sup> Section 21-141 of the Nebraska statutes provides for liability to the extent of unpaid subscriptions.

#### V. AMENDMENT

The Model Act spells out in great detail the powers that a corporation shall have in amending its articles of incorporation.<sup>55</sup> This seems to be assumed under the Nebraska act.<sup>56</sup> The Nebras-

<sup>45</sup> M.A. § 44.

<sup>46</sup> R.R.S. § 21-116.

<sup>47</sup> *Ibid.*

<sup>48</sup> M.A. § 44.

<sup>49</sup> R.R.S. § 21-102.

<sup>50</sup> M.A. § 47.

<sup>51</sup> R.R.S. § 21-105(7).

<sup>52</sup> M.A. § 51.

<sup>53</sup> R.R.S. § 21-105(6). Cf. NEB. CONST. art. 12, § 4.

<sup>54</sup> M.A. § 23 excludes liability once full consideration has been paid in by the shareholders.

<sup>55</sup> M.A. § 53.

<sup>56</sup> R.R.S. §§ 21-148 - 49 provide for amendment of the charter or name but not in the same degree of detail as does M.A. § 53.



ka act requires that notice of amendment must be filed in the office of the county clerk as well as in the Secretary of State's office,<sup>57</sup> whereas the Model Act provides for filing in the Secretary of State's office only.<sup>58</sup> It would seem to be desirable that amendments be filed in the county where the corporation was created so as to keep notice of the corporation and its purposes current locally.

## VI. MERGER AND CONSOLIDATION

The Nebraska act requires that a special meeting be called to consider a merger or consolidation.<sup>59</sup> The Model Act permits such action at either an annual or special meeting.<sup>60</sup> This would appear to permit surprise motions with no warning to opposing factions. Actually, the shareholders are to receive notice twenty days ahead of the time of the meeting.<sup>61</sup> In Nebraska, notice of a special meeting must be given at least three weeks before the scheduled time of the special meeting, and written notice must be given to each shareholder twenty days prior to the date of the meeting.<sup>62</sup> Thus there appears to be no advantages in requiring a special meeting. In the event of a dispute over stock evaluation, the Nebraska act provides for submission to a panel of three disinterested persons to determine fair or actual value.<sup>63</sup> The Model Act provides for referral of the matter to a court of law.<sup>64</sup>

## VII. SALE OF ASSETS

The Model Act provides for disposition by sale of the assets of a corporation other than in the regular course of business by obtaining approval of two-thirds of the shareholders.<sup>65</sup> Nebraska permits such disposition by only a majority vote of the share-

<sup>57</sup> R.R.S. § 21-151.

<sup>58</sup> M.A. § 57.

<sup>59</sup> R.R.S. § 21-1,104.

<sup>60</sup> M.A. § 67.

<sup>61</sup> *Ibid.*

<sup>62</sup> R.R.S. § 21-1,104.

<sup>63</sup> R.R.S. § 21-1,109.

<sup>64</sup> M.A. § 71. This section has been deleted from the Model Act since the 1957 printing.

<sup>65</sup> M.A. § 73. Since the 1957 printing, this section has been renumbered M.A. § 72.

holders, providing the meeting where the sale is considered has been called expressly for this purpose.<sup>66</sup>

### VIII. DISSOLUTION

The Nebraska act has now been amended so as to provide for the filing of a statement of intent to dissolve, and for the duties of the Secretary of State after such filing.<sup>67</sup> The Model Act, in addition to these provisions,<sup>68</sup> also provides for the revocation of a voluntary dissolution proceeding by the consent of shareholders,<sup>69</sup> and by an act of the corporation.<sup>70</sup>

The Model Act provides for distributions and partial liquidations.<sup>71</sup> Such distribution must be out of surplus and at a time when the corporation is solvent.<sup>72</sup> The Nebraska statute permits a corporation to take up to five years to close out.<sup>73</sup> There is no express statutory authority under the Nebraska act for partial liquidations.

To effect a complete dissolution, the Model Act imposes certain conditions, one of which is that all debts and obligations of the corporation have been paid.<sup>74</sup> The Nebraska statute continues the life of a corporation for five years after dissolution has been filed so that suits may be filed against the corporation.<sup>75</sup> The Model Act does permit such a suit against the corporation, but for a period of two years after corporate existence has terminated.<sup>76</sup>

### IX. FOREIGN CORPORATIONS

The Model Act provides for the suspension of a foreign corporation's charter should that corporation change its name so as to fail to comply with the domestic corporation-name require-

<sup>66</sup> R.R.S. § 21-1,113.

<sup>67</sup> Neb. Laws c. 70, pp. 300-01 (1959), amending R.R.S. § 21-183.

<sup>68</sup> M.A. § 73. See note 65 *supra*.

<sup>69</sup> M.A. § 81.

<sup>70</sup> M.A. § 82.

<sup>71</sup> M.A. § 41. Adaptation of this section has varied widely.

<sup>72</sup> M.A. § 41(a). See note 71 *supra*.

<sup>73</sup> R.R.S. § 21-186.

<sup>74</sup> M.A. § 85.

<sup>75</sup> R.R.S. § 21-186.

<sup>76</sup> M.A. § 98.

ments.<sup>77</sup> Nebraska has no such provision, but the same result may be reached under Nebraska law.<sup>78</sup> Other provisions pertaining to foreign corporations in the two acts are quite similar. The Model Act provides in detail for procedural steps necessary for foreign corporations to withdraw from the state.<sup>79</sup> Nebraska provides for this, but does not delineate the steps necessary to accomplish it.<sup>80</sup>

## X. ANNUAL REPORTS

Nebraska separates into two different categories the requirements for filing of annual reports, depending upon whether the corporation is of foreign or domestic origin.<sup>81</sup> Although not substantially different, for purposes of annual reports the Model Act puts both domestic and foreign corporations into one category.<sup>82</sup>

## XI. FEES, FRANCHISE TAXES, AND CHARGES

The Model Act provides in considerable detail for the payment of fees.<sup>83</sup> Only part of such fees are provided for in the Nebraska Corporation Law.<sup>84</sup> The provisions for fees, to a considerable extent, are set forth in Section 33-101 of the Nebraska statutes, which deals with fees and salaries.

The franchise taxes are computed on a different basis under the two acts. The Model Act provides for an initial franchise tax

<sup>77</sup> M.A. § 102.

<sup>78</sup> R.R.S. § 21-105(1) provides that domestic corporations must include certain titles in their corporate names. R.R.S. § 21-1201 provides that foreign corporations must comply with the statutes of the state of their origin. Most states require that a corporation provide something in its name to indicate that it is a corporation and thus different than a firm or individual person. See 6 FLETCHER, CYCLOPEDIA CORPORATIONS § 2418 at 11 (perm. ed. rev. 1950).

<sup>79</sup> M.A. § 112. Only Alaska, Colorado, Iowa, North Dakota and Virginia have adopted this section without considerable variation, and Virginia has recently supplemented this provision. See Appendix.

<sup>80</sup> R.R.S. § 21-1,151.

<sup>81</sup> R.R.S. §§ 21-301-05.

<sup>82</sup> M.A. §§ 118 - 19. Almost without exception, these two sections have undergone substantial revision in each jurisdiction adopting the Model Act.

<sup>83</sup> M.A. §§ 121 - 24. Treatment of these sections in the various jurisdictions which have adopted the Model Act has not been uniform. See Appendix.

<sup>84</sup> R.R.S. §§ 21-109; -1,142 (Change of Office); 21-1,143 (Change of Resident Agent); and 21-326.

amounting to "one-twelfth of one-half" of the license fee.<sup>85</sup> This amount is to be paid at the time of the filing of the articles of incorporation for each month, or each fraction thereof, from the time of filing to the next first day of July. The license fee is computed under Section 124 of the Model Act as follows: One cent per share for the first ten thousand shares; one-half cent per share in excess thereof up to one-hundred thousand shares; and one-fifth cent per share in excess thereof whether the shares are with or without par value. After the payment of the initial franchise tax there is an annual franchise tax imposed at the rate of one-twentieth of one per cent of the stated capital.<sup>86</sup> This same rate applies to foreign corporations.<sup>87</sup> The Nebraska statute provides for payment of an occupation tax under the following formula: A five dollar fee when the paid-up capital stock does not exceed ten-thousand dollars graduated up for increases in paid-up capital stock to the extent of a fee of \$2,500 for a corporation with paid-up capital stock of over twenty-five million dollars.<sup>88</sup> This same scale applies to foreign corporations doing business in Nebraska.<sup>89</sup>

## XII. PEALTIES

For failing to pay the occupation or franchise tax, the Model Act imposes a penalty of ten per cent of the amount of the tax.<sup>90</sup> The Nebraska statute imposes a penalty of fifteen per cent of the amount to be paid,<sup>91</sup> but permits certain officials to remit the penalty for cause shown.<sup>92</sup>

## XIII. MISCELLANEOUS PROVISIONS

The Nebraska statute provides that the Secretary of State may direct questions to county clerks or obtain information con-

<sup>85</sup> M.A. § 125. This section has not been adopted in any jurisdiction without considerable variation. In some jurisdictions, it has not been adopted at all. See Appendix.

<sup>86</sup> See comment, note 85, *supra*.

<sup>87</sup> M.A. § 126. See comment, note 85, *supra*.

<sup>88</sup> R.R.S. § 21-303.

<sup>89</sup> R.R.S. § 21-306.

<sup>90</sup> M.A. § 128. This section has been adopted without substantial variation only in Alaska and Iowa.

<sup>91</sup> R.R.S. § 21-313.

<sup>92</sup> R.R.S. § 21-316 provides for remission of the penalty in the discretion of the Governor, Secretary of State, and Attorney General.

cerning corporations within the county.<sup>93</sup> The Model Act provides that the Secretary of State may direct interrogatories directly to persons connected with the corporation, or to the corporation itself.<sup>94</sup>

The Model Act provides for an appeal from the Secretary of State's ruling of disapproval of a corporation to the district court.<sup>95</sup> This same right of appeal exists from an attempt to revoke a certificate of authority.<sup>96</sup> There are no comparable provisions in the Nebraska statutes.

All persons assuming unauthorized corporate powers are made jointly and severally liable for any debts and liabilities incurred as a result thereof under the Model Act.<sup>97</sup> No similar provisions appear under the Nebraska act.

The Model Act omits much of the material contained in Sections 21-1,143 to 21-1,149 and 21-1,152 to 21-1,165 of the Nebraska statutes. Among other requirements of a formal nature, these sections deal with the resident agent, his appointment, and replacement.

#### XIV. CONCLUSION

Some of the differences between the two acts under consideration are more a matter of degree than of actual substance. Examples of such variations are found in the terms for which a voting trust may be created, or in the amount of the penalty imposed for delinquent occupation taxes. Further, in the voting-trust provisions, Nebraska permits five-year trusts, whereas the Model Act permits ten-year trusts. As to penalties, similarly, the Nebraska act provides for fifteen per cent of the tax due, whereas the Model Act imposes a penalty of ten per cent of the amount due.

Other differences are perhaps more significant in that they provide for substantially different regulations governing corporations. One such provision is the Model Act requirement that a

<sup>93</sup> R.R.S. § 21-319.

<sup>94</sup> M.A. § 130. This section has been omitted in Oregon, Virginia, and Wisconsin. Elsewhere, except in the District of Columbia, it has been adopted without substantial variation.

<sup>95</sup> M.A. § 133.

<sup>96</sup> *Ibid.*

<sup>97</sup> M.A. § 139. This section has been omitted in Texas, Virginia, and Wisconsin.

demand on the shareholders of any class for payment of the balance due on subscription be uniform. Nebraska does not impose this uniformity of demand requirement, and thus the board of directors could conceivably impose payment requirements upon the minority shareholders to the extent of their shares at par value.

Further, the Model Act permits creation of an executive committee to administer corporation affairs. This might prove helpful in a large corporation, or where the board of directors is composed of members living in other states, making attendance at meetings difficult.

Another difference perhaps merits comment. This is the penalties imposed on corporation officers who refuse to produce shareholders lists prior to shareholders meetings. The Model Act would make valid any acts passed at such shareholders meetings, but create liability against persons guilty of violating their statutory duty to produce such lists. Nebraska has a strict penalty making the guilty party ineligible for office in the corporation after such a meeting.

Perhaps the most significant development which would result from adoption of the Model Act and the subsequent repeal of the present corporation law would be that the Model Act would provide a much more concise organization of the law relating to corporations. Its provisions are arranged in a more orderly manner facilitating location of desired sections and interpretation. Furthermore, the Model Act would eliminate many of the lengthy provisions in the current Nebraska corporation law which result in no additional clarity and add nothing to the comprehensiveness of a state corporation law.

The desirability of a concise, well organized law might well warrant the adoption of the Model Act. Since the Model Business Corporation Act is intended only as a model, minor changes could be made in its present text to adapt it to our special needs without diminishing its clarity or orderly mode of presentation. Substantial changes in the basic corporation law of the State of Nebraska could likewise be avoided. This paper does not purport to exhaust the subject, and any recommendation of the Model Act to the Legislature would depend upon a further analysis in considerable detail. So that such an analysis might draw upon the experience of other jurisdictions which have adapted the Model Act to their needs, a comparative table of sections is set out following.

*Vincent D. Brown, '60*

## APPENDIX A \* 1

TABLE OF SECTIONS OF STATE BUSINESS CORPORATION STATUTES COMPARABLE TO  
THE VARIOUS SECTIONS OF THE MODEL BUSINESS CORPORATION ACT OF 1950<sup>2</sup>

MODEL CORP. ACTS Sec. <sup>4</sup> Provision <sup>5</sup>	COMPARABLE STATE BUSINESS CORPORATION STATUTES <sup>7</sup>										
	Nebraska <sup>6</sup>	Alaska	Colorado <sup>9</sup>	D. of C. <sup>10</sup>	Iowa <sup>11</sup>	No. Dak. <sup>12</sup>	Oregon <sup>13</sup>	Texas <sup>14</sup>	Virginia <sup>15</sup>	Wisconsin <sup>16</sup>	Illinois <sup>17</sup>
1 Short Title	1,155	1	1	901	1	1901	.002	1.01	1	.01	.1
2 Definitions	101	2* <sup>18</sup>	2*	902*	2*	1902	.004 <sup>19</sup>	1.02*	2*	.02	.2*
<b>A. Substantive Provisions</b>											
3 Purposes	102†	11* <sup>18</sup>	3*	903*	3	1903	.025	2.01*	2(c)	.03	.3*; cf. .7*
4 General Powers <sup>20</sup>	103; 104; 105; 120; 180; 1,165; 76-402†	12*	4* <sup>21</sup>	904*; cf. 921a; 921b	4*	1904	.030; cf. .311(1)(b)	2.02; cf. 3.02(a)(2)	3*	.04*	.5* <sup>22</sup> ; cf. 47(c)
5 Right of Corp. to Acquire and Dispose of Its Own Shares <sup>23</sup>	140	13	5* <sup>21</sup>	904a*	5*	1905	.035	2.03*	4*	.385*	.6*
6 Defense of Ultra Vires	1,117	14	6	905	6	1906	.040	2.04	5	.06	.8
7 Corporate Name	105; cf. 174	15	7	906	7*	1907	.045	2.05*	6	.07	.9*
8 Reserved Name	†	16	8	906a*	8	1908	.050	2.06	7*	.08*	.10
9 Registered Name	†	17	9	†	9	†	.055	2.07*	8	†	†
10 — Renewal of	1,129	18	10	†	10	†	.060	2.08*	8	†	†
11 Registered: Office; Agent	173	19	11* <sup>21</sup>	907	11*	1909	.065	2.09	9	.09	.11
12 —Change of	1,142; 1,143	20	12* <sup>21</sup>	907a* <sup>24</sup>	12*	1910	.070	2.10	10* <sup>25</sup>	.10;	.11(a)*; .12*

13	Service of Process on Corp.	192; 25-511	21	13	907b	13	1911	.075 <sup>19</sup>	2.11*	11*	.11	.13 <sup>22</sup>
14	Authorized Shares <sup>26</sup>	121; 125; 152; 157; 25-105(8)	22	14 <sup>21</sup>	908*	14	1912	.080	2.12	12 <sup>*25</sup> cf. 13*	.12	.14*
15	Issuance of Shares of Preferred or Special Classes in Series	121; 126; 127	23	15	908a <sup>24</sup>	15	1913	.085	2.13	14* .12(3)-(5)* cf. 13*	.15	.15*
16	Subscriptions for Shares	144; 145	24	16	908b	16*	1914	.090	2.14*	15	.13	.16*
17	Consideration for Shares <sup>27</sup>	128	25	17	908c	17	1915	.100	2.15†	17 <sup>*25</sup>	.14*	.17*
18	Payment for Shares <sup>28</sup>	128†	26	18	908d	18	1916	.106*	2.16*†	17 <sup>25</sup>	.15	.18
18A	Stock Rights and Options <sup>29</sup>	132	†	19*	†	19	1917	†	2.22(b)(3)*	17 <sup>*25</sup>	†	†
19	Determination of Amount of Stated Capital <sup>30</sup>	129; 130	27	20	908e*	20	1918	.111	2.17*	18	.16	.19*
20	Expenses of Organization, Reorganization and Financing	†	28	21	908f	21	1919	.116	2.18 <sup>31</sup>	†	.17; cf. 185 <sup>32</sup>	.20
21	Certificates Representing Shares <sup>33</sup>	125; 131; 133	29	22	908g <sup>24</sup>	22*	1920	.121	2.10* <sup>31</sup>	20 <sup>25</sup>	.18	.21*
22	Issuance of Fractional Shares or Scrip	†	30	23	908h	23	1921	.126	2.20	21 <sup>*25</sup>	.19	.22
23	Liability of Subscribers and Shareholders	142†	31	24	908i* <sup>24</sup>	24	1922	.131*†	2.21	22*	.20*	.23
24	Shareholders' Preemptive Rights <sup>34</sup>	†	32	25* <sup>21</sup>	908j	25	1924	.136*	2.22* <sup>31</sup>	23*	.21*	.24*

\* This section is comparable, but differs from the Model Act provision considerably.

† The comparable Model Act section is omitted.

‡ Cf. State Constitution.



MODEL CORP. ACT		COMPARABLE STATE BUSINESS CORPORATION STATUTES										
Sec.	Provision	Nebraska	Alaska	Colorado	D. of C.	Iowa	No. Dak.	Oregon	Texas	Virginia	Wisconsin	Illinois
24A	Shareholders' Preemptive Rights <sup>35</sup>	†	†	†	†	†	†	†	†	†	†	†
25	By-Laws	120	33	26	909; cf. 929e	26*	1925	.141	2.23	24	.22*	.25; cf. .51
26	Meetings of Shareholders	169; 173	34	27	910	27	1926	.145 <sup>10</sup>	2.24	25	.23	.26
27	— Notice of	119	35	28	910a <sup>24</sup>	28	1928	.150	2.25	26* <sup>25</sup>	.24	.27
28	Closing Transfer Books and Fixing Reford Date <sup>36</sup>	136	36	29 <sup>21</sup>	912	29	1930	.155	2.26	29	.26	.29* <sup>22</sup>
29	Voting List	165	37	30	913* <sup>24</sup>	30*	1931*	.160	2.27*	30*	.29*	.32
30	Quorum of Shareholders	137	38	31	915* <sup>24</sup>	31*	1932	.165*	2.28	31*	.28	.31
31	Voting of Shares <sup>37</sup>	135; 138	39	32; 50g*	911a-d 913a-d	32	1933*	.170	2.29* <sup>31</sup>	32* <sup>25</sup>	.25*	.28; .30*
32	Voting Trust	139	40	33* <sup>21</sup>	914*	33	1935	.175	2.30	34	.27*	.30(a)*
33	Board of Directors	106; 111; 112	41	34*	916*	34	1936	.180*	2.31*	35*	.30*	.33*
34	Number and Election of Directors	111; 113; 167	42	35	916a*	35*	1937*	.185	2.32	36*	.32*	.34*
35	Classification of Directors <sup>38</sup>	115	43	36	916b	36	1938	.190	2.33	37	.33	†
36	Vacancies <sup>39</sup>	118; 168	44	37	916c* <sup>24</sup>	37	1939	.195	2.34	38*	.34*	.36
36A	Removal of Directors <sup>40</sup>	†	†	38* <sup>21</sup>	†	35*	1940*	.185*	2.32*	42*	.32*	†
37	Quorum of Directors	113	45	39	916d	38; cf. 140	1941	.200*	2.35*	39*	.35*	.37
38	Executive Committee	†	46	40	916e*	39	1942	.206	2.36*	40*	.36*	.38*

39	Place and Notice of Directors' Meetings	173	47	41	916f-g*	40	1943	.211	2.37	41*	.37*	.39; .40*
40	Dividends <sup>41</sup>	175; 176	48	42*	917	41*	1944 1945a*	.216	2.38(a)(2-4) 2.39*	43	.38	.41*
41	Distributions in Partial Liquidation	186	49	43	917*	42*	1945	.221	2.40*	43*	.39*	.41*
42	Loans	180	50	4f*	918(4)* <sup>24</sup>	†	1946	.226	2.02(6) 2.41(a)(4)*	3f*	.40*	.41(b)
43	Liabilities of Directors in Certain Cases <sup>42</sup>	178; 179; 180	51	44	918* <sup>24</sup>	44*	1947*	.231	2.41*	44	.40	.42*
43A	Provisions Relating to Actions by Shareholders <sup>43</sup>	†	†	45	†	43*	1948	†	†	†	.405*	.45a*
44	Officers	116	52	46	919	45	1949	.236	2.42	45*	.41*	.43
45	Removal of Officers	†	53	47	919a*	46	1950	.241*	2.43*	46*	.42*	.44
46	Books and Records	166	54	48*	920* <sup>24</sup>	47	1951 <sup>44</sup>	.246*	2.44*	47*	.43*	.45*

**B. Formation of Corporations**

47	Incorporators	102	61	49	921	48*	1952	.306	3.01*	48*	.44*	46
48	Articles of Incorporation <sup>45</sup>	105; 106; 110	62	50 <sup>21</sup>	921a	49*	1953*	.311*	3.02 <sup>31</sup>	49* <sup>25</sup>	.45*	.47*
49	— Filing of	107	63	51*	921b	50*	1954	.316	3.03	51*	.46*	.48
50	Effect of Issuance of Certificate of Incorporation	108; 109	64	52	921c	51*	1955	.321	3.04*	52*	.46; .47*	.49

\* This section is comparable, but differs from the Model Act provision considerably.

† The comparable Model Act section is omitted.

‡ Cf. State Constitution.

MODEL CORP. ACT Sec. Provision	COMPARABLE STATE BUSINESS CORPORATION STATUTES										
	Nebraska	Alaska	Colorado	D. of C.	Iowa	No. Dak.	Oregon	Texas	Virginia	Wisconsin	Illinois
51 Requirement Before Com- encing Business	105(7)	65	†	921d	†	1956	.326*	3.05*81	53*	.48	.50
52 Organization Meeting of Directors	119	66	53	921; 921e*	54	1957	.331	3.06	54*	.49*	.51*
<b>C. Amendment of Articles of Incorporation</b>											
53 Right to Amend	148; 149; 150	71	54	921f*	55	1958	.355	4.01*	55*25	.50	.52*
54 Procedure to Amend	151	72	55	921g,h*	56	1959	.360*10	4.02	56	.51	.53
55 Class Voting on Amendments <sup>46</sup>	151	73	56 <sup>21</sup>	922*	57	1960	.365	4.03*	57*	.52	.54*
56 Articles of Amendment	150; 151	74	57	922; 923	58	1961	.370*	4.04*	58*25	.53*32	.5522
57 — Filing of	148; 150; 151	75	58	923a	59*	1962	.375	4.05	59*	.54*	.56
58 Effect of Certificate of Amendment	151	76	59	923b	60	1963	.380	4.06	60	.57*	.57*
59 Restated Articles of Incorporation <sup>47</sup>	†	77	60*	†	61*	1964*	.385*	4.07*81	60*	.55*	.57*
59A Amendment in Reorgani- zation Proceedings <sup>48</sup>	†	†	61*	†	62	1965; 1966*	†	†	61*	†	†
60 Restriction on Redemption or Purchase of Redeemable Shares	153	78	62	924*	63	1967	.390	4.09*	62	.385*	.58*
61 Cancellation of Redeem- able Shares by Redemption or Purchase	154; 155	79	63	924; 924b*	64*	1968	.395	4.10*	63*25	.58*	.58*
62 Cancellation of Other Reacquired Shares	158	80	64	924b	65*	1969	.400	4.11*	64*25	.59*	.58a

63	Reduction of Stated Capital in Certain Cases	158; 159	81	65	925a*	66*	1970	.406	4.10 4.12*	64* <sup>25</sup> 65* <sup>25</sup>	.60*	.59; .60
64	Special Provisions Relating to Surplus and Reserves	177	82	66	925b; 926*	67*	1971	.411	4.13	67* <sup>25</sup>	.61* <sup>32</sup>	.60*

**D. Merger and Consolidation**

65	Procedure for Merger	1,103	91	67	927	68	2001	.455	5.01	68	.62	.61
66	Procedure for Consolidation	1,103	92	68	927a	69	2002	.460	5.02	69	.63	.62
67	Approval by Shareholders of Merger or Consolidation	1,104	93	69	927b; 927c	70	2003	.465	5.03*	70	.64	.63; .64
68	Articles of Merger or Consolidation <sup>49</sup>	1,103; 1,104	94	70	927d	71	2004*	.470	5.04	72*	.65*	.63; .64; .65; .66; .68
68A	Merger of Subsidiary Corp. <sup>50</sup>	1,107	†	71 <sup>21</sup>	927h*	72	2005; 2008*	†	†	76*	.685*	†
69	Effect of Merger or Consolidation	1,108; 1,110; 1,111	95	72	927e; 927f	73*	2006	.475 .480	5.05 5.06*	74	.66 .67	.67; .69
70	Merger or Consolidation of Dom. and For. Corp. <sup>51</sup>	1,105	96	73 <sup>21</sup>	927g	74	2007	.485	5.07 5.14*	71 72*	.68 cf. .685*	.69a
71X	Rights of Dissenting Shareholders in Merger or Consolidations <sup>52</sup>	1,109	97	74*	927i*	†	2009*	.490	5.12*	75*	.69* <sup>32</sup>	.70

\* This section is comparable, but differs from the Model Act provision considerably.  
 † The comparable Model Act section is omitted.  
 ‡ Cf. State Constitution.

MODEL CORP. ACT Sec. Provision	COMPARABLE STATE BUSINESS CORPORATION STATUTES										
	Nebraska	Alaska	Colorado	D. of C.	Iowa	No. Dak.	Oregon	Texas	Virginia	Wisconsin	Illinois
<b>E. Sale of Assets</b>											
71N Sale or Mortgage of Assets in Regular Course of Business <sup>53</sup>	1,113	101	75*	928	75	2010	.506	5.09* <sup>31</sup>	77	.70*	.71
72N — Other Than in Regular Course of Business <sup>54</sup>	†	102	75*	929	76	2008	.511	5.10* <sup>31</sup>	77	.71* <sup>32</sup>	.72
73N Right of Shareholders to Dissent <sup>55</sup>	†	†	cf. 76*	†	77*	†	†	5.11*	†	†	†
74N Rights of Dissenting Shareholders <sup>56</sup>	†	†	†	†	78*	†	†	5.12 5.13*	75*	†	†
74X Rights of Dissenting Shareholders Upon Sale or Exchange of Assets <sup>57</sup>	1,161	103	76	927i*	†	2011	.516*	See 5.12; 5.13*	78*	.72* <sup>32</sup>	.73*
<b>F. Dissolution</b>											
75 Voluntary by Incorporators	182	111	77	930	79*	2101	.526	6.01	79*	.49*	.74
76 Voluntary by Consent of Shareholders	183	112	78	930a	80	2102	.531	6.02	80	†	.75
77 Voluntary by Act of Corporation	183	113	79	930b	81*	2103	.536*	6.03*	81	.753*	.76
78 Filing of Statement of Intent to Dissolve	†	114	80	930c	82*	2104	.541	6.04	82*	.755*	.77
79 — Effect of	186	115	81	930d*	83	2105	.546	6.05	83	.756*	.78
80 — Procedure After Filing of	197	116	82	930e*	84	2106	.551*	6.06	84	.757*	.79

81	Revocation of Voluntary Proceedings by Consent of Shareholders	1,127	117	83	930f	85	2107	.556	6.07	85*	.761*	.79(a)
82	— By Act of Corp.	†	118	84	930g	86	2108	.560	6.08	86	.763*	.79(b)
83	Filing of Statement of Revocation of Voluntary Proceedings	†	119	85	930h	87	2109	.565	6.09	87*	.763*	.79(c)*
84	— Effect of	†	120	86	930i	88	2110	.570	6.10	88; 92*	.763*	.79(d)
85	Articles of Dissolution	185; 186	121	87 <sup>21</sup>	930j	89	2111	.575	6.11	89*	.765*	.80*
86	— Filing of	184	122	88	930k	90	2112	.580	6.12	79; 90*	.767*	.81*
87	Involuntary Dissolution	1116; 25-21,121; 25-21,122	123	90 <sup>21</sup>	931*	91*	2113	.585*	7.01	93* <sup>25</sup>	.769*	.82*
88	Notification of Attorney General	317	124	91	931*	92*	2114	.585*	7.02*	91; 92; 93; 94* <sup>25</sup>	.769*	.83*
89	Venue and Process	187	125	92* <sup>21</sup>	931a	93*	2115	.590	7.03	94* <sup>25</sup>	.769*	.84
90	Jurisdiction of Court to Liquidate Assets and Business of Corp.	187	126	90* <sup>21</sup>	931b* <sup>24</sup>	94*	2116	.595	7.05 7.06*	94* <sup>25</sup>	.771* <sup>32</sup>	.86
91	Procedure on Liquidation of Corp. by Court	187; 188; 1,102	127	93	931c*	95	2117	.600	7.04 7.05*	95	.773	.87
92	Qualifications of Receivers	†	128	94	931d*	96	2118	†	7.07*	96	.775	.88
93	Filing of Claims in Liquidation Proceedings	197	129	95	931e	97	2119	.606	7.06*	97	.777	.89

\* This section is comparable, but differs from the Model Act provision considerably.

† The comparable Model Act section is omitted.

‡ Cf. State Constitution.

MODEL CORP. ACT		COMPARABLE STATE BUSINESS CORPORATION STATUTES										
Sec.	Provision	Nebraska	Alaska	Colorado	D. of C.	Iowa	No. Dak.	Oregon	Texas	Virginia	Wisconsin	Illinois
94	Discontinuance of Liquidation Proceedings	†	130	96	931f	98	2120	.611	7.06 7.08*	98	.779	.90*
95	Decree of Involuntary Dissolution	191	131	97	931g	99	2121	.616	7.09	99*	.781*	.91
96	— Filing of	191	132	98	931h	100	2122	.620	7.10	100*	.783	.92*
97	Deposit with State Treas. of Amount Due Certain Shareholders	†	133	99	†	101*	2123	.625*	7.11*	†	.785	.93*
98	Survival of Remedy	186; 190; 197; 199	134	100*21	931i	102*	2124	.630(1)*	7.12	101*	.787	.94*
<b>G. Foreign Corporations</b>												
99	Admission	1201; 1202	141	101*21	933*	103	2201	.655	8.01*31	102*	.801*	.102*
100	Powers	1,150	142	102*21	933a*	104	2202	.660	8.02*	103*†	.807*	.103*
101	Corporate Name	†	143	103*21	933b*	105*	2203	.665	8.03*	104*25	.809*	.104*
102	Change of Name	†	144	104*	933c	106	2204	.670	8.04*	105	.811*	.105
103	Application for Certificate of Authority	1201; 1208	145	105*21	933d*24	107*	2205	.675*	8.05*	106*25	.813*	.106*
104	— Filing of Application	1201	146*	106*21	933e	108*	2206	.680	8.06	107*	.815	.107*
105	Effect of Certificate of Authority	1201	147	107	933f	109	2207	.685	8.07*	108	.819*	.108
106	Registered; Office; Agent	1201	148	108*21	933g*	110	2208†	.690	8.08	109*	.821	.109*22
107	— Change of <sup>68</sup>	1209	149	109*†21	933h <sup>24</sup>	111	2209†	.695	8.09*	110*25	.823 .824*	.110*

108	Service of Process	1201; 1211 25-511	150	110*†21	933i*24	112	2210*44	.700	8.10*	111*	.825*	.111*
109	Amendment to Articles of Incorporation	1,150	151	111	933j	113	2211	.706	8.11	112*	.827	.112*
110	Merger of Foreign Corp. Authorized to Transact Business in This State	†	152	112	933k	114	2212	.711	8.12*	113*	.829	.113*
111	Amended Certificate of Authority	†	153*	113	933l	115	2213	.716	8.13	114*	.830*	.114*
112	Withdrawal	1,151	154	114	934*	116	2214	.721*	8.14*31	115 115.1*25	.837*	.120*
113	--- Filing of Application for	1,151	155	115	934a	117	2215	.726	8.15	116*	.839*	.121*
114	Revocation of Certificate of Authority	†	155*	116*21	934b*	118	2216	.731*	8.16*	117*	.841*	.122*
115	Issuance of Certificate of Revocation	†	157	117	934c	119	2217	.735*	8.17*	118*25	.843*	.123*
116	Application to Foreign Corp. Heretofore Authorized to Transact Business in this State	†	158	118	934e*	142	2218	.740	9.14*	128*	.845*	.124
117	Foreign Corp. Transacting Business Without Certificate of Authority	†	159	119*21	934f*	120*	2219	.745	8.18*	119*	.847*	.125*

\* This section is comparable, but differs from the Model Act provision considerably.

† The comparable Model Act section is omitted.

‡ Cf. State Constitution.



MODEL CORP. ACT Sec. Provision	COMPARABLE STATE BUSINESS CORPORATION STATUTES										
	Nebraska	Alaska	Colorado	D. of C.	Iowa	No. Dak.	Oregon	Texas	Virginia	Wisconsin	Illinois
	<b>H. Annual Reports</b>										
118	Annual Report of Domestic and Foreign Corp.	161*	120*	932; 933m*24	121*	2301*	.755*10	R.C.S. 122-7089*	120*25 121*	.791* .833* .835*	.115*22; .116*; .95*22; .96*
119	— Filing of	301; 304	162*	121	932; 933m*24	122	2302*44	.757*10	R.C.S. 122-7089*	120*25 121*	.115*22 .116*; .793* .795* .835* .96*

**I. Fees, Franchise Taxes and Charges**

120	To be Collected by Sec. of State	†	171-173 183-187*	122	936	123	†	.055 .060*	10.01*31	122	.87	.126
121	Fees for Filing Documents and Issuing Certificates	109; 1,142; 1,143; 1,144; 33-101	171-173 183-187*	123*	936	124	2304*	.761*10	10.01*31	123*25	.87	.127
122	Miscellaneous Charges	33-101	171-173 183-187*	124	936	125	2305	.766	10.01*31	124	.87	.141
123	License Fees Payable by Dom. Corp.	33-101(4); 33-101(9)	171-172* 183-187*	123-124*	936	126	2306	.767*10	10.01*31	†	.87*	.128- .132*22
124	License Fees Payable by For. Corp.	33-101(9)	171*	123*	936*	127*	2307*	.769*10	10.01*31	†	.813 .87*	.135- .137*22
125	Franchise Taxes Payable by Dom. Corp.	303	171-189*	125*	936*	†	†	†	10.01*31	†	.87*	.131- .134*22
126	Franchise Taxes Payable by For. Corp.	306	171-189*	126*	936*	†	†	†	10.01*31	†	.87*	.138- 140½*22

127 Assessment and Collection of Annual Franchise Taxes 311; 315; 320 171-189\* 128\* 936\* 128 † 10.01\*31 † .87\* .143

**J. Penalties**

128 Imposed Upon Corp. 313 191 129\* 939; 937-942\* 130 2303\* .779\* † 91\* .793; .835; .88\* .100\*

129 Imposed Upon Officers and Directors 181; 313 192 130 942; 937-941\* 131 2308 .991\* † 97\* .88\* .101

**K. Miscellaneous Provisions**

130 Interrogatories by Sec. of State 319 201 131 943; 944\* 132 2309 † 9.01 † .153

131 — Information Disclosed by 318 202 132 943; 944\* 133 2310 † 9.02 † .154

132 Powers of Sec. of State 318 203 133 935\* 134 2311 .776 9.03 † .152

133 Appeal From Sec. of State † 204 134 948 135 2312 .778 9.04 287\* .148

134 Certificates and Certified Copies to be Received in Evidence 108 205 135 949 136 2313 .781 9.05 52\* .47\* .149

135 Forms to be Furnished by Sec. of State 301; 304 206 136 951 137 2314 .783 9.06 126\* .94\* .151

136 Greater Voting Requirements 106 207 137 946 138 1934 .786 9.08 33 .146

137 Waiver of Notice 1,153 208 138 945 139 1929 .788 9.09 27 .89\* .145

138 Action by Shareholders Without a Meeting 1,153 209 139 947 140 1927 .791 9.10 28 .91 .147

\* This section is comparable, but differs from the Model Act provision considerably.

† The comparable Model Act section is omitted.

‡ Cf. State Constitution.

MODEL CORP. ACT Sec. Provision	COMPARABLE STATE BUSINESS CORPORATION STATUTES										
	Nebraska	Alaska	Colorado	D. of C.	Iowa	No. Dak.	Oregon	Texas	Virginia	Wisconsin	Illinois
139 Unauthorized Assumption of Corp. Powers	†	210	140	950	141	1923	.793	†	†	†	.150
140 Application to Existing Corp.	1,156; 1,157	211	141	952; 952a*	142*	2315*	.796*	9.14 9.15*	128*26	.95 .97	.156-.160; .166*
141 Application to Foreign and Interstate Commerce	†	212	142	†	143	2316	†	9.11	†	†	.161
142 Reservation of Power	1,154;†	213	143;†	955	144	2317;†	.798*†	9.12;†	129;†	‡	.162
143 Effect of Repeal of Prior Acts	1,156	Laws, c. 126 §154 (1957)	144	†	†	2318	.799	9.16C	130	.95*	.163
144 Effect of Invalidity of Part of this Act	1,154	Laws, c. 126 §155 (1957)	147	954	146	2319	†	9.13	†	†	.164
145 Repeal of Prior Acts	†	Laws, c. 126 §156 (1957)	148	†	†	2315	.799	9.16	†	†	.167

\* This section is comparable, but differs from the Model Act provision considerably.

† The comparable Model Act section is omitted.

‡ Cf. State Constitution.

## Footnotes to Appendix

- \* Compiled by Don H. Sherwood, '61.
- <sup>1</sup> The compilation of this Appendix was aided substantially by the CORPORATE LAWS ANNOTATED Project of the American Bar Foundation, James F. Spoerri, Director. Members of the staff of the NEBRASKA LAW REVIEW, Classes of 1961 and 1962, contributed an analysis of the various state statutes.
- <sup>2</sup> The Model Business Corporation Act compared in this table is the 1953 Revision of the American Law Institute Model Business Corporation Act (1950 Revision) as printed in 1957 by the American Law Institute Committee on Continuing Legal Education in collaboration with the American Bar Association. More recent revisions of various sections of the Model Business Corporation Act, hereinafter referred to as the "Model Act," will be noted in the column labeled "Provision."
- <sup>3</sup> *Ibid.*
- <sup>4</sup> With the exceptions noted *infra*, notes 52-57, the Model Act section numbers used herein are identical to those used in the Model Act. See note 2 *supra*.
- <sup>5</sup> Except where expanded for clarity, the various provisions of the Model Act are identified herein by the titles used in the Model Act. See note 2 *supra*.
- <sup>6</sup> Unless otherwise indicated by a more complete citation, the section numbers in this column refer to the Nebraska General Corporation Law of 1941, NEB. REV. STAT. art. 21 (Reissue 1954). Sections located elsewhere in the Nebraska statutes are indicated by reference to the appropriate article. As to comparisons between the Model Act and the Nebraska statutes, see the text accompanying this table.
- <sup>7</sup> The nine jurisdictions here listed are those which have revised their corporation laws along the lines of the Model Act. Ala. Laws (1959) was unavailable as of March 15, 1960. The numbers used in the columns below are short-form citations to the appropriate statutes. For complete citations, see notes 8-16 *infra*. Amendments to these sections as of December 1, 1959, are noted in the columns where appropriate. See notes 18, 19, 21, 24, 25, 31, 32, and 44 *infra*.
- <sup>8</sup> Alaska Business Corporation Act of 1957, ALASKA COMP. LAWS ANN. §§ 36-2A-1 — 213 (Supp. 1958). Cf. note 18 *infra*.
- <sup>9</sup> Colorado Corporation Act of 1958, Colo. Laws c. 32, pp. 119-203 (1958). Cf. note 21 *infra*.
- <sup>10</sup> District of Columbia Business Corporation Act of 1954, D.C. CODE ANN. tit. 29, §§ 901 — 956 (Supp. 1959). Cf. note 24 *infra*.
- <sup>11</sup> Iowa Business Corporation Act of 1959, Iowa Laws c. 321, pp. 344-412 (1959). Cf. IOWA CODE ANN. §§ 496A.1 — .146 (Supp. 1959).
- <sup>12</sup> North Dakota Business Corporation Act of 1957, N.D. REV. CODE §§ 10-1901 — 2319 (Supp. 1957). Cf. note 44 *infra*.

- <sup>13</sup> Oregon Business Corporation Act of 1953, ORE. REV. STAT. §§ 57.002 — .994 (1957). Cf. note 19 *infra*.
- <sup>14</sup> Texas Business Corporation Act of 1955, TEX. BUS. CORP. ACT art. 1.01 — 10.02 (1956). Cf. note 31 *infra*.
- <sup>15</sup> Virginia Stock Corporation Act of 1956, VA. CODE ANN. §§ 13.1-1 — 132 (1956). Cf. note 25 *infra*.
- <sup>16</sup> Wisconsin Business Corporation Law of 1951, WISC. STAT. §§ 180.01 — .97 (1957). Cf. note 32 *infra*.
- <sup>17</sup> Because the Model Act follows the Illinois act to a large extent, it is set out here separately for comparative purposes. The references are to the Illinois Business Corporation Act of 1933, ILL. REV. STAT. c. 32, §§ 157.1 — .167 (1957). Cf. note 22 *infra*.
- <sup>18</sup> Amended. See Alaska Laws c. 168, p. 360 (1957).
- <sup>19</sup> Amended. See Ore. Laws c. 171, p. 207; c. 172, p. 208; c. 244, pp. 332-40; c. 568, pp. 1031-32 (1959).
- <sup>20</sup> The Model Act § 4(h), (o), and (p) has been revised since the 1957 printing.
- <sup>21</sup> Amended. See Colo. Laws c. 83, pp. 326-41 (1959).
- <sup>22</sup> Amended. See Smith-Hurd Ill. Ann. Stat. 52-53 (No. 2, April 1959); 107-14 (No. 6, August 1959); 198-202 (No. 7, September 1959).
- <sup>23</sup> The Model Act § 5 has been revised since the 1957 printing.
- <sup>24</sup> Amended. See 73 Stat. 239 (1959). See also U.S.C. Cong. & Ad. News 1946-50 (No. 11, August 5, 1959).
- <sup>25</sup> Amended. See VA. CODE ANN. §§ 13.1-1 — 135 (Supp. 1958); Va. Acts c. 57, pp. 139-41 (Extra Sess. 1959).
- <sup>26</sup> The Model Act § 14 has been slightly revised since the 1957 printing.
- <sup>27</sup> The Model Act § 17 has been slightly revised since the 1957 printing.
- <sup>28</sup> On the subject of stock rights and options, see Model Act § 18A (optional).
- <sup>29</sup> This section is optional to the Model Act.
- <sup>30</sup> The Model Act § 19 has been revised since the 1957 printing.
- <sup>31</sup> Amended. See TEX. BUS. CORP. ACT art 1.01 — 10.02 (1958).
- <sup>32</sup> Amended. See WISC. STAT. c. 180 (Supp. 1959); West's Wisc. Leg. Serv. c. 252, p. 338 (No. 4, August 5, 1959); c. 319, pp. 506-07 (No. 5, August 22, 1959).
- <sup>33</sup> The Model Act § 21 has been slightly revised since the 1957 printing.
- <sup>34</sup> There is an alternative Model Act § 24. See Model Act § 24A.
- <sup>35</sup> This section of the Model Act is alternative to Model Act § 24. See Model Act § 24 and statutes cited, *supra*.
- <sup>36</sup> The Model Act § 28 has been slightly revised since the 1957 printing.

- <sup>37</sup> An alternative fourth paragraph has been suggested for the Model Act § 31, and, since the 1957 printing, the section has been revised by the addition of a new paragraph at the end of the section.
- <sup>38</sup> The Model Act § 35 has been slightly revised since the 1957 printing.
- <sup>39</sup> Cf. Model Act § 36A regarding removal of directors.
- <sup>40</sup> This section is optional to the Model Act.
- <sup>41</sup> The Model Act § 40(d) has been revised since the 1957 printing.
- <sup>42</sup> The Model Act § 43 has been slightly revised since the 1957 printing. As to provisions relating to actions by shareholders, see Model Act § 43A (optional).
- <sup>43</sup> This section is optional to the Model Act.
- <sup>44</sup> Amended. See No. Dak. Laws c. 108, pp. 143-44; c. 115, pp. 220-21; c. 116, pp. 221-22 (1959).
- <sup>45</sup> The Model Act § 48 has been revised since the 1957 printing.
- <sup>46</sup> The Model Act § 55 has been extensively revised since the 1957 printing.
- <sup>47</sup> As to Amendment of Articles of Incorporation in Reorganization Proceedings, see Model Act § 59A (optional).
- <sup>48</sup> This section is optional to the Model Act.
- <sup>49</sup> As to the merger of a subsidiary corporation, see Model Act § 68A (optional).
- <sup>50</sup> This section is optional to the Model Act.
- <sup>51</sup> The Model Act § 70 has been revised since the 1957 printing by the addition of a new paragraph.
- <sup>52</sup> This section of the Model Act, § 71, has been deleted since the 1957 printing and replaced by the former § 72. For convenience, the statutory references are to the old section, § 71X.
- <sup>53</sup> This section of the Model Act, § 72, has been renumbered § 71. See note 52 *supra*. The statutory references are to the old section, § 72X, rather than to the new section, § 71N.
- <sup>54</sup> This section of the Model Act, § 73, has been renumbered § 72. See note 53 *supra*. The statutory references are to the old section, § 73X, rather than to the new section, § 72N.
- <sup>55</sup> This section of the Model Act, § 73N, is an addition to the Model Act since the 1957 printing. See note 54 *supra*.
- <sup>56</sup> This section of the Model Act, § 74N, is an addition to the Model Act since the 1957 printing. See note 57 *infra*.
- <sup>57</sup> This section of the Model Act, § 74, has been deleted since the 1957 printing and replaced by a new section, § 74N. The statutory references here are to the old section, § 74X.
- <sup>58</sup> Section 107 of the Model Act has been revised since the 1957 printing by the addition of a new paragraph.