

SENATE BILL NO. 264—COMMITTEE ON JUDICIARY

MARCH 14, 2017

Referred to Committee on Judiciary

SUMMARY—Revises various provisions relating to business entities. (BDR 7-479)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to business entities; revising provisions concerning certain records required to be kept by certain business entities; revising provisions relating to the breach of a fiduciary duty by a director or officer of a corporation; revising provisions relating to the ability of a stockholder to dissent in certain circumstances; revising provisions concerning distributions; revising the definition of the term “issuing corporation” as it relates to the acquisition of a controlling interest therein; authorizing stockholders of a corporation to approve an amendment to the articles of incorporation in writing; requiring written notice to certain stockholders after the dissolution of a corporation approved by written consent of the stockholders thereof; revising provisions relating to the individual liability of a person acting as the alter ego of a corporation and applying such provisions to limited-liability companies; revising provisions concerning the indemnification of certain persons by a corporation; establishing provisions relating to the fiduciary duties owed to a limited-liability company and its members by a manager or managing member; establishing provisions relating to a series of members of a limited-liability company; establishing the circumstances under which the merger of a publicly traded corporation without the vote of the stockholders is authorized; revising provisions relating to limitations on the right of a stockholder to dissent; making various other changes relating to business entities; and providing other matters properly relating thereto.



\* S B 2 6 4 \*

**Legislative Counsel's Digest:**

1 Existing law establishes various provisions relating to business entities,  
2 including private corporations, nonprofit corporations and limited-liability  
3 companies. (Chapters 78, 82 and 86 of NRS) This bill revises certain provisions  
4 relating to such specific business entities and makes certain other changes generally  
5 relating to business entities.

6 **Sections 3, 18 and 23** of this bill revise provisions relating to certain records  
7 required to be kept by a private corporation, nonprofit corporation and limited-  
8 liability company, respectively, and provide that if such records are not made  
9 available for inspection within this State after a demand by certain persons, such a  
10 person may serve a demand upon the registered agent of the private corporation,  
11 nonprofit corporation or limited-liability company, as applicable, that the records  
12 be sent to the person or the agent or attorney thereof.

13 **Section 4** of this bill revises the acts that constitute a breach of the fiduciary  
14 duty of a director or officer of a corporation for the purpose of determining whether  
15 the director or officer is individually liable to the corporation or its stockholders or  
16 creditors for damages. **Section 4** also provides that if a director or officer is not  
17 individually liable for damages, liability must not be imposed on any person for  
18 aiding or abetting the director or officer in any such act or failure to act.

19 **Sections 5-7** of this bill revise provisions relating to the ability of a stockholder  
20 who is obligated, as a result of certain corporate action, to accept money or scrip  
21 rather than receive a fraction of a share in exchange for the cancellation of all their  
22 outstanding shares to dissent.

23 **Section 8** of this bill provides that if the board of directors of a corporation  
24 determines that a distribution is not prohibited based on certain factors, such a  
25 determination is presumed to be proper in the absence of actual fraud. **Section 9** of  
26 this bill provides that if the board of directors makes such a determination, liability  
27 does not apply to a director if it is not proven that the director had actual  
28 knowledge, before the distribution was made, that the determination was or had  
29 become erroneous.

30 **Section 12** of this bill revises the definition of the term "issuing corporation"  
31 for the purposes of provisions relating to the acquisition of a controlling interest  
32 therein.

33 **Section 13** of this bill authorizes stockholders of a corporation to approve an  
34 amendment to the articles of incorporation in writing instead of being required to  
35 approve such an amendment at a meeting. **Section 14** of this bill provides that if the  
36 dissolution of a corporation is approved by written consent of the stockholders of a  
37 corporation, the corporation is required to notify each stockholder whose written  
38 consent was not solicited of the dissolution in writing not later than 10 days after  
39 the effective date of the dissolution.

40 **Section 15** of this bill revises provisions relating to the individual liability of a  
41 person acting as the alter ego of a corporation, and **section 20** of this bill makes  
42 such provisions applicable to limited-liability companies.

43 **Sections 16 and 17** of this bill revise provisions concerning the indemnification  
44 of certain persons by a corporation. **Section 16** establishes the requirements  
45 pursuant to which a determination that indemnification is proper must be made and  
46 authorizes a corporation to indemnify a person if such a determination is made.  
47 **Section 17** establishes the circumstances under which a corporation is required to  
48 indemnify a person.

49 **Section 21** of this bill establishes provisions relating to the fiduciary duties  
50 owed to a limited-liability company and its members by a manager or managing  
51 member.

52 **Sections 22 and 24-27** of this bill establish provisions relating to a series of  
53 members of a limited-liability company. **Section 24** of this bill authorizes a series  
54 to exercise the powers and privileges granted by the provisions of law governing



55 limited-liability companies. **Section 26** of this bill authorizes a series to own real  
56 and personal property in its own name.

57 **Section 29** of this bill establishes the circumstances under which the merger of  
58 a publicly traded corporation without the vote of the stockholders is authorized and  
59 also establishes other provisions relating to such a merger.

60 **Section 30** of this bill revises provisions relating to the right of a stockholder to  
61 dissent from certain corporate actions and to obtain payment of the fair value of the  
62 stockholder's shares and provides that a stockholder who is entitled to dissent and  
63 obtain payment is prohibited from challenging the corporate action creating the  
64 entitlement unless the action is unlawful or constitutes or is the result of actual  
65 fraud against the stockholder or the domestic corporation. **Section 31** of this bill  
66 revises provisions relating to limitations on the right of a stockholder to dissent.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 75 of NRS is hereby amended by adding  
2 thereto a new section to read as follows:

3 *The laws of this State govern the formation and internal affairs*  
4 *of any domestic business entity and any rights, privileges, powers,*  
5 *duties and liabilities of its directors, officers, managers, trustees,*  
6 *stockholders, members, partners and beneficial owners. Any*  
7 *statutes or decisions of a court from another jurisdiction must not*  
8 *supplant, modify or supersede the plain meaning of the statutes*  
9 *enacted by the Legislature, including, without limitation, with*  
10 *respect to any fiduciary duties of directors, officers, managers,*  
11 *trustees, stockholders, members, partners and beneficial owners as*  
12 *set forth in this title. The formation and internal affairs of a*  
13 *domestic business entity must be adjudicated exclusively in*  
14 *accordance with the laws of this State, and the Legislature hereby*  
15 *declares that any inappropriate reliance upon or application of*  
16 *any statutes or decisions of a court from any other jurisdiction is*  
17 *contrary to the specific intent of the Legislature.*

18 **Sec. 2.** Chapter 78 of NRS is hereby amended by adding  
19 thereto a new section to read as follows:

20 *1. The articles of incorporation or bylaws of a corporation*  
21 *may require, to the extent not inconsistent with any applicable*  
22 *jurisdictional requirements, that any, all or certain internal*  
23 *actions must be brought solely or exclusively in specified courts,*  
24 *which must include at least one court in this State. Unless*  
25 *otherwise expressly set forth in the articles of incorporation or*  
26 *bylaws, such a requirement must not be interpreted as prohibiting*  
27 *any corporation from consenting, or requiring any corporation to*  
28 *consent, to any alternative forum in any instance.*



1       2. *The provisions of this section do not create or authorize*  
2 *any cause of action against a corporation or its directors or*  
3 *officers.*

4       3. *As used in this section:*

5       (a) *“Internal action” means any action, suit or proceeding that*  
6 *asserts any claim or counterclaim:*

7       (1) *Brought in the name or right of the corporation or on*  
8 *its behalf, including, without limitation, any action pursuant to*  
9 *NRS 41.520;*

10       (2) *For or based upon any breach of any fiduciary duty*  
11 *owed by any director, officer, employee or agent of the corporation*  
12 *in such capacity; or*

13       (3) *Arising pursuant to, or to interpret, apply, enforce or*  
14 *determine the validity of, any provision of this title, the articles of*  
15 *incorporation or bylaws or any agreement entered into pursuant to*  
16 *NRS 78.365 to which the corporation is a party or a stated*  
17 *beneficiary thereof.*

18       (b) *“Specified court” means any court of:*

19       (1) *This State, including, without limitation, those courts in*  
20 *any county having a business court, as that term is defined in*  
21 *NRS 13.050;*

22       (2) *The United States; or*

23       (3) *Another state.*

24       **Sec. 3.** NRS 78.105 is hereby amended to read as follows:

25       78.105 1. A corporation shall keep a copy of the following  
26 records at its principal office or with its custodian of records whose  
27 name and street address are available at the corporation’s registered  
28 office:

29       (a) A copy certified by the Secretary of State of its articles of  
30 incorporation, and all amendments thereto;

31       (b) A copy certified by an officer of the corporation of its  
32 bylaws and all amendments thereto; and

33       (c) A stock ledger or a duplicate stock ledger, revised annually  
34 not later than 60 days after the date by which an annual list is  
35 required to be filed pursuant to NRS 78.150, containing the names,  
36 alphabetically arranged, of all persons who are stockholders of  
37 record of the corporation, showing their places of residence, if  
38 known, and the number of shares held by them respectively.

39       2. Any person who has been a stockholder of record of a  
40 corporation for at least 6 months immediately preceding the  
41 demand, or any person holding, or thereunto authorized in writing  
42 by the holders of, at least 5 percent of all of its outstanding shares,  
43 upon at least 5 days’ written demand is entitled to inspect in person  
44 or by agent or attorney, during usual business hours, the records  
45 required by subsection 1 and make copies therefrom. Holders of



1 voting trust certificates representing shares of the corporation must  
2 be regarded as stockholders for the purpose of this subsection. *Every*  
3 *corporation that neglects or refuses to keep the records required*  
4 *by subsection 1 open for inspection, as required in this subsection,*  
5 *shall forfeit to the State the sum of \$25 for every day of such*  
6 *neglect or refusal.*

7 3. If the records required by subsection 1 are ~~kept outside of~~  
8 *not made available for inspection at a location within* this State ~~;~~  
9 ~~and~~ *pursuant to a proper demand pursuant to subsection 2,*  
10 *the* stockholder or other person ~~entitled to inspect those records~~  
11 *demanding the inspection* may serve a demand ~~to inspect the~~  
12 ~~records~~ upon the corporation's registered agent ~~that the records~~  
13 *to be inspected be sent to the demanding stockholder or other*  
14 *person or the agent or attorney thereof.* Upon such a ~~request,~~  
15 *demand,* the corporation shall send copies of the requested records  
16 ~~that~~ *required by subsection 1,* either in paper or electronic form, to  
17 the stockholder , ~~or~~ other person , *agent or attorney* entitled to  
18 inspect the requested records within 10 business days after service  
19 of the ~~request~~ *demand* upon the registered agent. ~~Every~~  
20 ~~corporation that neglects or refuses to keep the records required by~~  
21 ~~subsection 1 open for inspection, as required in this subsection, shall~~  
22 ~~forfeit to the State the sum of \$25 for every day of such neglect or~~  
23 ~~refusal.~~

24 ~~3.~~ 4. If any corporation willfully neglects or refuses to make  
25 any proper entry in the stock ledger or duplicate copy thereof, or  
26 neglects or refuses to permit an inspection of the records required by  
27 subsection 1 upon demand by a person entitled to inspect them, or  
28 refuses to permit copies to be made therefrom, as provided in  
29 subsection 2, the corporation is liable to the person injured for all  
30 damages resulting to the person therefrom.

31 ~~4.~~ 5. In every instance where an attorney or other agent of  
32 the stockholder seeks the right of inspection, the demand must be  
33 accompanied by a power of attorney signed by the stockholder  
34 authorizing the attorney or other agent to inspect on behalf of the  
35 stockholder.

36 ~~5.~~ 6. The right to copy records under subsection 2 includes,  
37 if reasonable, the right to make copies by photographic, xerographic  
38 or other means.

39 ~~6.~~ 7. The corporation may impose a reasonable charge to  
40 recover the costs of labor and materials and the cost of copies of any  
41 records provided to the stockholder.

42 **Sec. 4.** NRS 78.138 is hereby amended to read as follows:

43 78.138 1. Directors and officers shall exercise their powers in  
44 good faith and with a view to the interests of the corporation.



1 2. In performing their respective duties, directors and officers  
2 are entitled to rely on information, opinions, reports, books of  
3 account or statements, including financial statements and other  
4 financial data, that are prepared or presented by:

5 (a) One or more directors, officers or employees of the  
6 corporation reasonably believed to be reliable and competent in the  
7 matters prepared or presented;

8 (b) Counsel, public accountants, financial advisers, valuation  
9 advisers, investment bankers or other persons as to matters  
10 reasonably believed to be within the preparer's or presenter's  
11 professional or expert competence; or

12 (c) A committee on which the director or officer relying thereon  
13 does not serve, established in accordance with NRS 78.125, as to  
14 matters within the committee's designated authority and matters on  
15 which the committee is reasonably believed to merit confidence,

16 but a director or officer is not entitled to rely on such  
17 information, opinions, reports, books of account or statements if the  
18 director or officer has knowledge concerning the matter in question  
19 that would cause reliance thereon to be unwarranted.

20 3. Directors and officers, in deciding upon matters of business,  
21 are presumed to act in good faith, on an informed basis and with a  
22 view to the interests of the corporation.

23 4. Directors and officers, in exercising their respective powers  
24 with a view to the interests of the corporation, may consider:

25 (a) The interests of the corporation's employees, suppliers,  
26 creditors and customers;

27 (b) The economy of the State and Nation;

28 (c) The interests of the community and of society; and

29 (d) The long-term as well as short-term interests of the  
30 corporation and its stockholders, including the possibility that these  
31 interests may be best served by the continued independence of the  
32 corporation.

33 5. Directors and officers are not required to consider the effect  
34 of a proposed corporate action upon any particular group having an  
35 interest in the corporation as a dominant factor.

36 6. The provisions of subsections 4 and 5 do not create or  
37 authorize any causes of action against the corporation or its directors  
38 or officers.

39 7. Except as otherwise provided in NRS 35.230, 90.660,  
40 91.250, 452.200, 452.270, 668.045 and 694A.030, or unless the  
41 articles of incorporation or an amendment thereto, in each case filed  
42 on or after October 1, 2003, provide for greater individual liability, a  
43 director or officer is not individually liable to the corporation or its  
44 stockholders or creditors for any damages as a result of any act or



1 failure to act in his or her capacity as a director or officer unless it is  
2 proven that:

3 (a) The director's or officer's act or failure to act constituted a  
4 breach of his or her fiduciary duties as a director or officer; and

5 (b) The breach of those duties involved :

6 (1) *Actual fraud or intentional misconduct* ~~}; fraud or a~~  
7 ~~knowing}~~ *by the director or officer; or*

8 (2) *An act or failure to act that the director or officer knew,*  
9 *at the time of the act or failure to act, constituted a* violation of  
10 law.

11 *8. If a director or officer is not individually liable to the*  
12 *corporation or its stockholders or creditors for any damages as a*  
13 *result of any act or failure to act in his or her capacity as a*  
14 *director or officer, liability must not be imposed on any person for*  
15 *aiding or abetting the director or officer in any such act or failure*  
16 *to act.*

17 **Sec. 5.** NRS 78.205 is hereby amended to read as follows:

18 78.205 1. A corporation is not obligated to but may sign and  
19 deliver a certificate for or including a fraction of a share.

20 2. In lieu of signing and delivering a certificate for a fraction of  
21 a share, a corporation may:

22 (a) Pay to any person otherwise entitled to become a holder of a  
23 fraction of a share an amount in cash based on a per share value, and  
24 that value or the method of determining that value must be specified  
25 in the articles, plan of reorganization, plan of merger or exchange,  
26 resolution of the board of directors, or other instrument pursuant to  
27 which the fractional share would otherwise be issued;

28 (b) Issue such additional fraction of a share as is necessary to  
29 increase the fractional share to a full share; or

30 (c) Sign and deliver registered or bearer scrip over the manual or  
31 facsimile signature of an officer of the corporation or of its agent for  
32 that purpose, exchangeable as provided on the scrip for full share  
33 certificates, but the scrip does not entitle the holder to any rights as a  
34 stockholder except as provided on the scrip. The scrip may provide  
35 that it becomes void unless the rights of the holders are exercised  
36 within a specified period and may contain any other provisions or  
37 conditions that the corporation deems advisable. Whenever any  
38 scrip ceases to be exchangeable for full share certificates, the shares  
39 that would otherwise have been issuable as provided on the scrip are  
40 deemed to be treasury shares unless the scrip contains other  
41 provisions for their disposition.

42 3. ~~{Any}~~ *If any* proposed corporate action ~~{that}~~ *pursuant to*  
43 *this section* would result in only money being paid or scrip being  
44 issued to stockholders who:



1 (a) Before the proposed corporate action becomes effective, *in*  
2 *the aggregate* hold 1 percent or more of the outstanding shares of  
3 the affected class or series; and

4 (b) Would otherwise be entitled to receive a fraction of a share  
5 in exchange for the cancellation of all their outstanding shares,

6 ~~↳ [is subject to] any stockholder who is obligated, as a result of~~  
7 ~~the corporate action taken pursuant to this section, to accept~~  
8 ~~money or scrip rather than receive a fraction of a share in~~  
9 ~~exchange for the cancellation of all the stockholder's outstanding~~  
10 ~~shares, may dissent in accordance with the provisions of NRS~~  
11 ~~92A.300 to 92A.500, inclusive, [ If the proposed corporate action~~  
12 ~~is subject to those provisions, any stockholder who is obligated to~~  
13 ~~accept money or scrip rather than receive a fraction of a share~~  
14 ~~resulting from the action taken pursuant to this section may dissent~~  
15 ~~in accordance with those provisions]~~ and obtain payment of the fair  
16 value of the fraction of a share to which the stockholder would  
17 otherwise be entitled.

18 **Sec. 6.** NRS 78.2055 is hereby amended to read as follows:

19 78.2055 1. Unless otherwise provided in the articles of  
20 incorporation, a corporation that desires to decrease the number of  
21 issued and outstanding shares of a class or series held by each  
22 stockholder of record at the effective date and time of the change  
23 without correspondingly decreasing the number of authorized shares  
24 of the same class or series may do so if:

25 (a) The board of directors adopts a resolution setting forth the  
26 proposal to decrease the number of issued and outstanding shares of  
27 a class or series; and

28 (b) The proposal is approved by the vote of stockholders holding  
29 a majority of the voting power of the affected class or series, or such  
30 greater proportion as may be provided in the articles of  
31 incorporation, regardless of limitations or restrictions on the voting  
32 power of the affected class or series.

33 2. If the proposal required by subsection 1 is approved by the  
34 stockholders entitled to vote, the corporation may reissue its stock in  
35 accordance with the proposal after the effective date and time of the  
36 change.

37 3. Except as otherwise provided in this subsection, if a  
38 proposed decrease in the number of issued and outstanding shares of  
39 any class or series would adversely alter or change any preference,  
40 or any relative or other right given to any other class or series of  
41 outstanding shares, then the decrease must be approved by the vote,  
42 in addition to any vote otherwise required, of the holders of shares  
43 representing a majority of the voting power of each class or series  
44 whose preference or rights are adversely affected by the decrease, or  
45 such greater proportion as may be provided in the articles of





1 incorporation, regardless of limitations or restrictions on the voting  
2 power of the adversely affected class or series. The decrease does  
3 not have to be approved by the vote of the holders of shares  
4 representing a majority of the voting power of each class or series  
5 whose preference or rights are adversely affected by the decrease if  
6 the articles of incorporation specifically deny the right to vote on  
7 such a decrease.

8 4. ~~Any proposal to decrease the number of issued and~~  
9 ~~outstanding shares of any class or series, if any, that includes~~  
10 ~~provisions pursuant to which~~ *If any proposed corporate action*  
11 *pursuant to this section would result in* only money ~~will be~~ *being*  
12 paid or scrip ~~will be~~ *being* issued to stockholders who:

13 (a) Before the decrease in the number of shares becomes  
14 effective, *in the aggregate* hold 1 percent or more of the outstanding  
15 shares of the affected class or series; and

16 (b) Would otherwise be entitled to receive a fraction of a share  
17 in exchange for the cancellation of all their outstanding shares,

18 ~~is subject to~~ *any stockholder who is obligated, as a result of*  
19 *the corporate action taken pursuant to this section, to accept*  
20 *money or scrip rather than receive a fraction of a share in*  
21 *exchange for the cancellation of all the stockholder's outstanding*  
22 *shares, may dissent in accordance with* the provisions of NRS  
23 92A.300 to 92A.500, inclusive, ~~is subject to those~~  
24 ~~provisions, any stockholder who is obligated to accept money or~~  
25 ~~scrip rather than receive a fraction of a share resulting from the~~  
26 ~~action taken pursuant to this section may dissent in accordance with~~  
27 ~~those provisions~~ and obtain payment of the fair value of the fraction  
28 of a share to which the stockholder would otherwise be entitled.

29 **Sec. 7.** NRS 78.207 is hereby amended to read as follows:

30 78.207 1. Unless otherwise provided in the articles of  
31 incorporation, a corporation that desires to change the number of  
32 shares of a class or series, if any, of its authorized stock by  
33 increasing or decreasing the number of authorized shares of the  
34 class or series and correspondingly increasing or decreasing the  
35 number of issued and outstanding shares of the same class or series  
36 held by each stockholder of record at the effective date and time of  
37 the change, may, except as otherwise provided in subsections 2 and  
38 3, do so by a resolution adopted by the board of directors, without  
39 obtaining the approval of the stockholders. The resolution may also  
40 provide for a change of the par value, if any, of the same class or  
41 series of the shares increased or decreased. After the effective date  
42 and time of the change, the corporation may issue its stock in  
43 accordance therewith.

44 2. A proposal to increase or decrease the number of authorized  
45 shares of any class or series, if any, that includes provisions



1 pursuant to which only money will be paid or scrip will be issued to  
2 stockholders who:

3 (a) Before the increase or decrease in the number of shares  
4 becomes effective, in the aggregate hold 10 percent or more of the  
5 outstanding shares of the affected class or series; and

6 (b) Would otherwise be entitled to receive a fraction of a share  
7 in exchange for the cancellation of all their outstanding shares,  
8 ➔ must be approved by the vote of stockholders holding a majority  
9 of the voting power of the affected class or series, or such greater  
10 proportion as may be provided in the articles of incorporation,  
11 regardless of limitations or restrictions on the voting power thereof.

12 3. Except as otherwise provided in this subsection, if a  
13 proposed increase or decrease in the number of authorized shares of  
14 any class or series would adversely alter or change any preference or  
15 any relative or other right given to any other class or series of  
16 outstanding shares, then the increase or decrease must be approved  
17 by the vote, in addition to any vote otherwise required, of the  
18 holders of shares representing a majority of the voting power of  
19 each class or series whose preference or rights are adversely  
20 affected by the increase or decrease, regardless of limitations or  
21 restrictions on the voting power thereof. The increase or decrease  
22 does not have to be approved by the vote of the holders of shares  
23 representing a majority of the voting power in each class or series  
24 whose preference or rights are adversely affected by the increase or  
25 decrease if the articles of incorporation specifically deny the right to  
26 vote on such an increase or decrease.

27 4. ~~Any proposal to increase or decrease the number of~~  
28 ~~authorized shares of any class or series, if any, that includes~~  
29 ~~provisions pursuant to which~~ *If any proposed corporate action*  
30 *pursuant to this section would result in* only money ~~will be~~ *being*  
31 paid or scrip ~~will be~~ *being* issued to stockholders who:

32 (a) Before the increase or decrease in the number of shares  
33 becomes effective, *in the aggregate* hold 1 percent or more of the  
34 outstanding shares of the affected class or series; and

35 (b) Would otherwise be entitled to receive a fraction of a share  
36 in exchange for the cancellation of all of their outstanding shares,  
37 ➔ ~~is subject to~~ *any stockholder who is obligated, as a result of*  
38 *the corporate action taken pursuant to this section, to accept*  
39 *money or scrip rather than receive a fraction of a share in*  
40 *exchange for the cancellation of all the stockholder's outstanding*  
41 *shares, may dissent in accordance with* the provisions of NRS  
42 92A.300 to 92A.500, inclusive, ~~If the proposal is subject to those~~  
43 ~~provisions, any stockholder who is obligated to accept money or~~  
44 ~~scrip rather than receive a fraction of a share resulting from the~~  
45 ~~action taken pursuant to this section may dissent in accordance with~~



1 ~~these provisions~~ and obtain payment of the fair value of the fraction  
2 of a share to which the stockholder would otherwise be entitled.

3 **Sec. 8.** NRS 78.288 is hereby amended to read as follows:

4 78.288 1. Except as otherwise provided in subsection 2 and  
5 the articles of incorporation, a board of directors may authorize and  
6 the corporation may make distributions to ~~fits stockholders,~~ *the*  
7 *holders of any class or series of the corporation's shares,* including  
8 distributions on shares that are partially paid.

9 2. No distribution may be made if, after giving it effect:

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

12 (b) Except as otherwise specifically allowed by the articles of  
13 incorporation, the corporation's total assets would be less than the  
14 sum of its total liabilities plus the amount that would be needed, if  
15 the corporation were to be dissolved ~~fat~~ *immediately after* the time  
16 of *the* distribution, to satisfy the preferential rights upon *such*  
17 dissolution of stockholders whose preferential rights are superior to  
18 those receiving the distribution.

19 3. The board of directors may base a determination that a  
20 distribution is not prohibited pursuant to subsection 2 on:

21 (a) Financial statements prepared on the basis of accounting  
22 practices that are reasonable in the circumstances;

23 (b) A fair valuation, including, but not limited to, unrealized  
24 appreciation and depreciation; or

25 (c) Any other method that is reasonable in the circumstances ~~H~~,  
26 *↪ and if the determination is made upon any of the factors*  
27 *enumerated in this subsection, the determination is presumed to be*  
28 *proper in the absence of actual fraud.*

29 4. The effect of a distribution pursuant to subsection 2 must be  
30 measured:

31 (a) In the case of a distribution by purchase, redemption or other  
32 acquisition of the corporation's shares, as of the earlier of:

33 (1) The date money or other property is transferred or debt  
34 incurred by the corporation; or

35 (2) The date upon which the stockholder ceases to be a  
36 stockholder with respect to the acquired shares.

37 (b) In the case of any other distribution of indebtedness, as of  
38 the date the indebtedness is distributed.

39 (c) In all other cases, as of:

40 (1) The date the distribution is authorized if the payment  
41 occurs within 120 days after the date of authorization; or

42 (2) The date the payment is made if it occurs more than 120  
43 days after the date of authorization.

44 5. A corporation's indebtedness to a stockholder incurred by  
45 reason of a distribution made in accordance with this section is at



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

3 6. Indebtedness of a corporation, including indebtedness issued  
4 as a distribution, is not considered a liability for purposes of  
5 determinations pursuant to subsection 2 if its terms provide that  
6 payment of principal and interest are made only if and to the extent  
7 that payment of a distribution to stockholders could then be made  
8 pursuant to this section. If the indebtedness is issued as a  
9 distribution, each payment of principal or interest must be treated as  
10 a distribution, the effect of which must be measured on the date the  
11 payment is actually made.

12 *7. This section does not apply to any distribution in*  
13 *liquidation pursuant to NRS 78.590.*

14 *8. The provisions of chapter 112 of NRS do not apply to any*  
15 *distribution made by a corporation in accordance with this*  
16 *chapter.*

17 **Sec. 9.** NRS 78.300 is hereby amended to read as follows:

18 78.300 1. The directors of a corporation shall not make  
19 distributions to stockholders except as provided by this chapter.

20 2. Except as otherwise provided in subsection 3 and NRS  
21 78.138, in case of any violation of the provisions of this section, the  
22 directors under whose administration the violation occurred are  
23 jointly and severally liable, at any time within 3 years after each  
24 violation, to the corporation, and, in the event of its dissolution or  
25 insolvency, to its creditors at the time of the violation, or any of  
26 them, to the lesser of the full amount of the distribution made or of  
27 any loss sustained by the corporation by reason of the distribution to  
28 stockholders.

29 3. The liability imposed pursuant to subsection 2 does not  
30 apply to a director ~~whose~~:

31 (a) *Who* caused his or her dissent to be entered upon the minutes  
32 of the meeting of the directors at the time the action was taken or  
33 who was not present at the meeting and caused his or her dissent to  
34 be entered on learning of the action ~~H~~; or

35 (b) *If a determination that a distribution is not prohibited*  
36 *pursuant to subsection 2 of NRS 78.288 is made upon any of the*  
37 *factors enumerated in subsection 3 of NRS 78.288 and it is not*  
38 *proven that the director had actual knowledge before the*  
39 *distribution was made that the determination was or had become*  
40 *erroneous.*

41 **Sec. 10.** NRS 78.315 is hereby amended to read as follows:

42 78.315 1. Unless the articles of incorporation or the bylaws  
43 provide for a greater or lesser proportion, a majority of the board of  
44 directors of the corporation then in office, at a meeting duly  
45 assembled, is necessary to constitute a quorum for the transaction of



1 business, and the act of directors holding a majority of the voting  
2 power of the directors, present at a meeting at which a quorum is  
3 present, is the act of the board of directors.

4 2. Unless otherwise restricted by the articles of incorporation  
5 or bylaws, any action required or permitted to be taken at a meeting  
6 of the board of directors or of a committee thereof may be taken  
7 without a meeting if, before or after the action, a written consent  
8 thereto is signed by all the members of the board or of the  
9 committee, except that such written consent is not required to be  
10 signed by:

11 (a) A common or interested director who abstains in writing  
12 from providing consent to the action. If a common or interested  
13 director abstains in writing from providing consent:

14 (1) The fact of the common directorship, office or financial  
15 interest must be known to the board of directors or committee before  
16 a written consent is signed by all the members of the board of the  
17 committee.

18 (2) Such fact must be described in the written consent.

19 (3) The board of directors or committee must approve,  
20 authorize or ratify the action in good faith by unanimous consent  
21 without counting the abstention of the common or interested  
22 director.

23 (b) A director who is a party to an action, suit or proceeding  
24 who abstains in writing from providing consent to the action of the  
25 board of directors or committee. If a director who is a party to an  
26 action, suit or proceeding abstains in writing from providing consent  
27 on the basis that he or she is a party to an action, suit or proceeding,  
28 the board of directors or committee must:

29 (1) Make a determination pursuant to NRS ~~78.751~~ 78.7502  
30 that indemnification of the director is proper under the  
31 circumstances.

32 (2) Approve, authorize or ratify the action of the board of  
33 directors or committee in good faith by unanimous consent without  
34 counting the abstention of the director who is a party to an action,  
35 suit or proceeding.

36 3. Unless otherwise restricted by the articles of incorporation  
37 or bylaws, members of the board of directors or the governing body  
38 of any corporation, or of any committee designated by such board or  
39 body, may participate in a meeting of the board, body or committee  
40 through electronic communications, videoconferencing,  
41 teleconferencing or other available technology if the corporation has  
42 implemented reasonable measures to:

43 (a) Verify the identity of each person participating through such  
44 means as a director or member of the governing body or committee,  
45 as the case may be; and



1 (b) Provide the directors or members a reasonable opportunity to  
2 participate in the meeting and to vote on matters submitted to the  
3 directors or members, as the case may be, including an opportunity  
4 to communicate and to read or hear the proceedings of the meeting  
5 in a substantially concurrent manner with such proceedings.

6 4. Participation in a meeting pursuant to subsection 3  
7 constitutes presence in person at the meeting.

8 **Sec. 11.** NRS 78.320 is hereby amended to read as follows:

9 78.320 1. Unless this chapter, the articles of incorporation or  
10 the bylaws provide for different proportions:

11 (a) A majority of the voting power, which includes the voting  
12 power that is present in person or by proxy, regardless of whether  
13 the proxy has authority to vote on ~~all matters,~~ *any matter*,  
14 constitutes a quorum for the transaction of business; and

15 (b) Action by the stockholders on a matter other than the  
16 election of directors is approved if the number of votes cast in favor  
17 of the action exceeds the number of votes cast in opposition to the  
18 action.

19 2. Unless otherwise provided in the articles of incorporation or  
20 the bylaws, any action required or permitted to be taken at a meeting  
21 of the stockholders may be taken without a meeting if, before or  
22 after the action, a written consent thereto is signed by stockholders  
23 holding at least a majority of the voting power, except that if a  
24 different proportion of voting power is required for such an action at  
25 a meeting, then that proportion of written consents is required.

26 3. In no instance where action is authorized by written consent  
27 need a meeting of stockholders be called or notice given.

28 4. Unless otherwise restricted by the articles of incorporation  
29 or bylaws, stockholders may participate in a meeting of stockholders  
30 through electronic communications, videoconferencing,  
31 teleconferencing or other available technology if the corporation has  
32 implemented reasonable measures to:

33 (a) Verify the identity of each person participating through such  
34 means as a stockholder; and

35 (b) Provide the stockholders a reasonable opportunity to  
36 participate in the meeting and to vote on matters submitted to the  
37 stockholders, including an opportunity to communicate, and to read  
38 or hear the proceedings of the meetings in a substantially concurrent  
39 manner with such proceedings.

40 5. If authorized in the articles of incorporation or bylaws, a  
41 meeting of stockholders may be held solely by remote  
42 communication pursuant to subsection 4.

43 6. Participation in a meeting pursuant to subsection 4  
44 constitutes presence in person at the meeting.



1 7. Unless this chapter, the articles of incorporation or the  
2 bylaws provide for different proportions, if voting by a class or  
3 series of stockholders is permitted or required:

4 (a) A majority of the voting power of the class or series that is  
5 present in person or by proxy, regardless of whether the proxy has  
6 authority to vote on all matters, constitutes a quorum for the  
7 transaction of business; and

8 (b) An act by the stockholders of each class or series is approved  
9 if a majority of the voting power of a quorum of the class or series  
10 votes for the action.

11 **Sec. 12.** NRS 78.3788 is hereby amended to read as follows:

12 78.3788 "Issuing corporation" means a corporation which is  
13 organized in this State and which:

14 1. Has 200 or more stockholders of record, at least 100 of  
15 whom have *had* addresses in this State appearing on the stock ledger  
16 of the corporation ~~{}~~ *at all times during the 90 days immediately*  
17 *preceding an acquisition;* and

18 2. Does business in this State directly or through an affiliated  
19 corporation.

20 **Sec. 13.** NRS 78.390 is hereby amended to read as follows:

21 78.390 1. Except as otherwise provided in NRS 77.340,  
22 every amendment to the articles of incorporation must be made in  
23 the following manner:

24 (a) The board of directors must adopt a resolution setting forth  
25 the amendment proposed and ~~{either call a special meeting of the~~  
26 ~~stockholders entitled to vote on the amendment or direct that}~~  
27 *submit* the proposed amendment ~~{be considered at the next annual~~  
28 ~~meeting of}~~ *to* the stockholders ~~{entitled to vote on the amendment.}~~  
29 *for approval.*

30 (b) ~~{At the meeting, of which notice must be given to each~~  
31 ~~stockholder entitled to vote pursuant to the provisions of this~~  
32 ~~section, a vote of the stockholders entitled to vote in person or by~~  
33 ~~proxy must be taken for and against the proposed amendment. If it~~  
34 ~~appears upon the canvassing of the votes that}~~ *If* stockholders  
35 holding shares in the corporation ~~{entitling them to exercise}~~ *who*  
36 *represent* at least a majority of the voting power, or such greater  
37 proportion of the voting power as may be required in the case of a  
38 vote by classes or series, as provided in subsections 2 and 4, or as  
39 may be required by the provisions of the articles of incorporation,  
40 have ~~{voted in favor of}~~ *approved* the amendment, an officer of the  
41 corporation shall sign a certificate setting forth the amendment, or  
42 setting forth the articles of incorporation as amended, and the vote  
43 by which the amendment was adopted.

44 (c) The certificate so signed must be filed with the Secretary of  
45 State.



1 2. Except as otherwise provided in this subsection, if any  
2 proposed amendment would adversely alter or change any  
3 preference or any relative or other right given to any class or series  
4 of outstanding shares, then , *in addition to any approval otherwise*  
5 *required*, the amendment must be approved by the ~~vote, in addition~~  
6 ~~to the affirmative vote otherwise required, of the~~ holders of shares  
7 representing a majority of the voting power of each class or series  
8 adversely affected by the amendment regardless of limitations or  
9 restrictions on the voting power thereof. The amendment does not  
10 have to be approved by ~~the vote of~~ the holders of shares  
11 representing a majority of the voting power of each class or series  
12 whose preference or rights are adversely affected by the amendment  
13 if the articles of incorporation specifically deny the right to vote on  
14 such an amendment.

15 3. Provision may be made in the articles of incorporation  
16 requiring, in the case of any specified amendments, *approval by* a  
17 larger proportion of the voting power of stockholders than that  
18 required by this section.

19 4. Different series of the same class of shares do not constitute  
20 different classes of shares for the purpose of voting by classes  
21 except when the series is adversely affected by an amendment in a  
22 different manner than other series of the same class.

23 5. The resolution of the stockholders approving the proposed  
24 amendment may provide that at any time before the effective date of  
25 the amendment, notwithstanding approval of the proposed  
26 amendment by the stockholders, the board of directors may, by  
27 resolution, abandon the proposed amendment without further action  
28 by the stockholders.

29 6. A certificate filed pursuant to subsection 1 is effective at the  
30 time of the filing of the certificate with the Secretary of State or  
31 upon a later date and time as specified in the certificate, which date  
32 must not be more than 90 days after the date on which the certificate  
33 is filed. If a certificate filed pursuant to subsection 1 specifies a later  
34 effective date but does not specify an effective time, the certificate  
35 is effective at 12:01 a.m. in the Pacific time zone on the specified  
36 later date.

37 7. If a certificate filed pursuant to subsection 1 specifies a later  
38 effective date and if the resolution of the stockholders approving the  
39 proposed amendment provides that the board of directors may  
40 abandon the proposed amendment pursuant to subsection 5, the  
41 board of directors may terminate the effectiveness of the certificate  
42 by resolution and by filing a certificate of termination with the  
43 Secretary of State that:

44 (a) Is filed before the effective date specified in the certificate  
45 filed with the Secretary of State pursuant to subsection 1;





1 (b) Identifies the certificate being terminated;

2 (c) States that, pursuant to the resolution of the stockholders, the  
3 board of directors is authorized to terminate the effectiveness of the  
4 certificate;

5 (d) States that the effectiveness of the certificate has been  
6 terminated;

7 (e) Is signed by an officer of the corporation; and

8 (f) Is accompanied by a filing fee of \$175.

9 **Sec. 14.** NRS 78.580 is hereby amended to read as follows:

10 78.580 1. If the board of directors of any corporation  
11 organized under this chapter decides that the corporation should be  
12 dissolved, the board may adopt a resolution to that effect.

13 2. If the corporation has issued no stock, only the directors  
14 need to approve the dissolution.

15 3. If the corporation has issued stock, the directors must  
16 recommend the dissolution to the stockholders. The board of  
17 directors may condition its submission of the proposal for  
18 dissolution on any lawful basis. The corporation shall notify each  
19 stockholder, whether or not entitled to vote on dissolution, of the  
20 proposed dissolution and the stockholders entitled to vote must  
21 approve the dissolution. *If the dissolution is approved by written  
22 consent pursuant to subsection 2 of NRS 78.320, the corporation  
23 shall notify each stockholder whose written consent was not  
24 solicited of the dissolution, in writing, not later than 10 days after  
25 the effective date of the dissolution.*

26 4. If the dissolution is approved by the directors or both the  
27 directors and stockholders, as respectively provided in subsections 2  
28 and 3, the corporation shall file with the Secretary of State a  
29 certificate signed by an officer of the corporation setting forth that  
30 the dissolution has been approved by the directors, or by the  
31 directors and the stockholders, and a list of the names and addresses,  
32 either residence or business, of the corporation's president, secretary  
33 and treasurer, or the equivalent thereof, and all of its directors.

34 5. The dissolution takes effect at the time of the filing of the  
35 certificate of dissolution with the Secretary of State or upon a later  
36 date and time as specified in the certificate, which date must be not  
37 more than 90 days after the date on which the certificate is filed. If a  
38 certificate of dissolution specifies a later effective date but does not  
39 specify an effective time, the certificate is effective at 12:01 a.m. in  
40 the Pacific time zone on the specified later date.

41 **Sec. 15.** NRS 78.747 is hereby amended to read as follows:

42 78.747 1. Except as otherwise *specifically* provided by  
43 ~~[specific]~~ statute ~~{}~~ *or agreement*, no ~~{stockholder, director or~~  
44 ~~officer of}~~ *person other than* a corporation is individually liable for



1 a debt or liability of the corporation ~~{}~~ unless the ~~{stockholder,~~  
2 ~~director or officer}~~ *person* acts as the alter ego of the corporation.

3 2. A ~~{stockholder, director or officer}~~ *person* acts as the alter  
4 ego of a corporation *only* if:

5 (a) The corporation is influenced and governed by the  
6 ~~{stockholder, director or officer}~~ *person*;

7 (b) There is such unity of interest and ownership that the  
8 corporation and the ~~{stockholder, director or officer}~~ *person* are  
9 inseparable from each other; and

10 (c) Adherence to the ~~{corporate fiction of a separate}~~ *notion of*  
11 *the corporation being an entity separate from the person* would  
12 sanction fraud or promote a manifest injustice.

13 3. The question of whether a ~~{stockholder, director or officer}~~  
14 *person* acts as the alter ego of a corporation must be determined by  
15 the court as a matter of law.

16 **Sec. 16.** NRS 78.7502 is hereby amended to read as follows:

17 78.7502 1. A corporation may indemnify any person who  
18 was or is a party or is threatened to be made a party to any  
19 threatened, pending or completed action, suit or proceeding, whether  
20 civil, criminal, administrative or investigative, except an action by  
21 or in the right of the corporation, by reason of the fact that the  
22 person is or was a director, officer, employee or agent of the  
23 corporation, or is or was serving at the request of the corporation as  
24 a director, officer, employee or agent of another corporation,  
25 partnership, joint venture, trust or other enterprise, against expenses,  
26 including attorneys' fees, judgments, fines and amounts paid in  
27 settlement actually and reasonably incurred by the person in  
28 connection with the action, suit or proceeding if the person:

29 (a) Is not liable pursuant to NRS 78.138; or

30 (b) Acted in good faith and in a manner which he or she  
31 reasonably believed to be in or not opposed to the best interests of  
32 the corporation, and, with respect to any criminal action or  
33 proceeding, had no reasonable cause to believe the conduct was  
34 unlawful.

35 ➤ The termination of any action, suit or proceeding by judgment,  
36 order, settlement, conviction or upon a plea of nolo contendere or its  
37 equivalent, does not, of itself, create a presumption that the person is  
38 liable pursuant to NRS 78.138 or did not act in good faith and in a  
39 manner which he or she reasonably believed to be in or not opposed  
40 to the best interests of the corporation, or that, with respect to any  
41 criminal action or proceeding, he or she had reasonable cause to  
42 believe that the conduct was unlawful.

43 2. A corporation may indemnify any person who was or is a  
44 party or is threatened to be made a party to any threatened, pending  
45 or completed action or suit by or in the right of the corporation to



1 procure a judgment in its favor by reason of the fact that the person  
2 is or was a director, officer, employee or agent of the corporation, or  
3 is or was serving at the request of the corporation as a director,  
4 officer, employee or agent of another corporation, partnership, joint  
5 venture, trust or other enterprise against expenses, including  
6 amounts paid in settlement and attorneys' fees actually and  
7 reasonably incurred by the person in connection with the defense or  
8 settlement of the action or suit if the person:

9 (a) Is not liable pursuant to NRS 78.138; or

10 (b) Acted in good faith and in a manner which he or she  
11 reasonably believed to be in or not opposed to the best interests of  
12 the corporation.

13 ➔ Indemnification may not be made for any claim, issue or matter  
14 as to which such a person has been adjudged by a court of  
15 competent jurisdiction, after exhaustion of all appeals therefrom, to  
16 be liable to the corporation or for amounts paid in settlement to the  
17 corporation, unless and only to the extent that the court in which the  
18 action or suit was brought or other court of competent jurisdiction  
19 determines upon application that in view of all the circumstances of  
20 the case, the person is fairly and reasonably entitled to indemnity for  
21 such expenses as the court deems proper.

22 3. ~~{To the extent}~~ *Any discretionary indemnification pursuant*  
23 *to this section, unless ordered by a court or advanced pursuant to*  
24 *subsection 2 of NRS 78.751, may be made by the corporation only*  
25 *as authorized in each specific case upon a determination that the*  
26 *indemnification of a director, officer, employee or agent of a*  
27 *corporation ~~has been successful on the merits or otherwise in~~*  
28 *defense of any action, suit or proceeding referred to in subsections 1*  
29 *and 2, or in defense of any claim, issue or matter therein, the*  
30 *corporation shall indemnify him or her against expenses, including*  
31 *attorneys' fees, actually and reasonably incurred by him or her in*  
32 *connection with the defense.} *is proper under the circumstances.**

33 *The determination must be made by:*

34 (a) *The stockholders;*

35 (b) *The board of directors, by majority vote of a quorum*  
36 *consisting of directors who were not parties to the action, suit or*  
37 *proceeding; or*

38 (c) *Independent legal counsel, in a written opinion, if:*

39 (1) *A majority vote of a quorum consisting of directors who*  
40 *were not parties to the action, suit or proceeding so orders; or*

41 (2) *A quorum consisting of directors who were not parties*  
42 *to the action, suit or proceeding cannot be obtained.*

43 **Sec. 17.** NRS 78.751 is hereby amended to read as follows:

44 78.751 1. ~~{Any discretionary indemnification pursuant to~~  
45 ~~NRS 78.7502, unless ordered by a court or advanced pursuant to~~



1 ~~subsection 2, may be made by the~~ A corporation ~~only as~~  
2 ~~authorized in the specific case upon a determination that~~  
3 ~~indemnification of the~~ shall indemnify any person who is a  
4 director, officer, employee or agent *if the person* is ~~proper in the~~  
5 ~~circumstances. The determination must be made:~~

6 — (a) By the stockholders;

7 — (b) By the board of directors by majority vote of a quorum  
8 consisting of directors who were not parties to the action, suit or  
9 proceeding;

10 — (c) If a majority vote of a quorum consisting of directors who  
11 were not parties to the action, suit or proceeding so orders, by  
12 independent legal counsel in a written opinion; or

13 — (d) If a quorum consisting of directors who were not parties to  
14 the action, suit or proceeding cannot be obtained, by independent  
15 legal counsel in a written opinion.] *successful on the merits or*  
16 *otherwise in defense of:*

17 (a) Any threatened, pending or completed action, suit or  
18 proceeding, whether civil, criminal, administrative or investigative,  
19 including, without limitation, an action by or in the right of the  
20 corporation, by reason of the fact that the person is or was a  
21 director, officer, employee or agent of the corporation, or is or was  
22 serving at the request of the corporation as a director, officer,  
23 employee or agent of another corporation, partnership, joint  
24 venture, trust or other enterprise; or

25 (b) Any claim, issue or matter therein,  
26 ↪ against expenses actually and reasonably incurred by the  
27 person in connection with defending the action, including, without  
28 limitation, attorney's fees.

29 2. ~~The~~ Unless the articles of incorporation, the bylaws or an  
30 agreement made by a corporation require otherwise, the  
31 corporation may ~~provide that~~ pay the expenses of officers and  
32 directors incurred in defending a civil or criminal action, suit or  
33 proceeding ~~must be paid by the corporation~~ as they are incurred  
34 and in advance of the final disposition of the action, suit or  
35 proceeding, upon receipt of an undertaking by or on behalf of the  
36 director or officer to repay the amount if it is ultimately determined  
37 by a court of competent jurisdiction that the director or officer is not  
38 entitled to be indemnified by the corporation. The provisions of this  
39 subsection do not affect any rights to advancement of expenses to  
40 which corporate personnel other than directors or officers may be  
41 entitled under any contract or otherwise by law.

42 3. The indemnification pursuant to NRS 78.7502 and  
43 advancement of expenses authorized in or ordered by a court  
44 pursuant to this section:



1 (a) Does not exclude any other rights to which a person seeking  
2 indemnification or advancement of expenses may be entitled under  
3 the articles of incorporation or any bylaw, agreement, vote of  
4 stockholders or disinterested directors or otherwise, for either an  
5 action in the person's official capacity or an action in another  
6 capacity while holding office, except that indemnification, unless  
7 ordered by a court pursuant to NRS 78.7502 or for the advancement  
8 of expenses made pursuant to subsection 2, may not be made to or  
9 on behalf of any director or officer ~~{if a final adjudication~~  
10 ~~establishes that the director's or officer's acts or omissions~~  
11 ~~involved}~~ *adjudged by a court of competent jurisdiction, after*  
12 *exhaustion of all appeals therefrom, to be liable for* intentional  
13 misconduct, fraud or a knowing violation of ~~{the}~~ law , and *such*  
14 *misconduct, fraud or violation* was material to the cause of action.

15 (b) *Continues for a person who has ceased to be a director,*  
16 *officer, employee or agent and inures to the benefit of the heirs,*  
17 *executors and administrators of such a person.*

18 4. *Unless the articles of incorporation, the bylaws or an*  
19 *agreement made by a corporation provide otherwise, if a person is*  
20 *entitled to indemnification or the advancement of expenses from*  
21 *the corporation and any other person, the corporation is the*  
22 *primary obligor with respect to such indemnification or*  
23 *advancement.*

24 5. A right to indemnification or to advancement of expenses  
25 arising under a provision of the articles of incorporation or any  
26 bylaw is not eliminated or impaired by an amendment to such  
27 provision after the occurrence of the act or omission that is the  
28 subject of the civil, criminal, administrative or investigative action,  
29 suit or proceeding for which indemnification or advancement of  
30 expenses is sought, unless the provision in effect at the time of such  
31 act or omission explicitly authorizes such elimination or impairment  
32 after such action or omission has occurred.

33 ~~{(b) Continues for a person who has ceased to be a director,~~  
34 ~~officer, employee or agent and inures to the benefit of the heirs,~~  
35 ~~executors and administrators of such a person.}~~

36 **Sec. 18.** NRS 82.181 is hereby amended to read as follows:

37 82.181 1. A corporation shall keep a copy of the following  
38 records at its principal office or with its custodian of records whose  
39 name and street address are available at the corporation's registered  
40 office:

41 (a) A copy, certified by the Secretary of State, of its articles and  
42 all amendments thereto;

43 (b) A copy, certified by an officer of the corporation, of its  
44 bylaws and all amendments thereto; and



1 (c) If the corporation has members, a members' ledger or a  
2 duplicate members' ledger, revised annually, containing the names,  
3 alphabetically arranged, of all persons who are members of the  
4 corporation, showing their places of residence, if known, and the  
5 class of membership held by each.

6 2. A corporation must maintain the records required by  
7 subsection 1 in written form or in another form capable of  
8 conversion into written form within a reasonable time.

9 3. A director or any person who has been a member of record  
10 of a corporation for at least 6 months, or at least 5 percent of the  
11 members of the corporation, upon at least 5 days' written demand, is  
12 entitled to inspect in person or by agent or attorney, during usual  
13 business hours, the members' ledger or duplicate ledger and to make  
14 copies therefrom. *Every corporation that neglects or refuses to*  
15 *keep the members' ledger or duplicate copy thereof open for*  
16 *inspection, as required by this subsection, shall forfeit to the State*  
17 *the sum of \$25 for every day of such neglect or refusal.*

18 4. If the records required by subsection 1 are ~~kept outside of~~  
19 ~~not made available for inspection at a location within~~ this State ~~;~~  
20 ~~and~~ *pursuant to a proper demand pursuant to subsection 3, the*  
21 ~~director or other person~~ ~~entitled to inspect those records~~  
22 ~~demanding the inspection~~ may serve a demand ~~to inspect the~~  
23 ~~records~~ upon the corporation's registered agent ~~;~~ *that the records*  
24 *to be inspected be sent to the demanding director or other person*  
25 *or the agent or attorney thereof.* Upon such a ~~request,~~ *demand,*  
26 the corporation shall send copies of the requested records ~~;~~  
27 *required by subsection 1,* either in paper or electronic form, to the  
28 director, ~~;~~ ~~or~~ other person, *agent or attorney* entitled to inspect  
29 the requested records within 10 business days after service of the  
30 ~~request~~ *demand* upon the registered agent. ~~Every corporation that~~  
31 ~~neglects or refuses to keep the members' ledger or duplicate copy~~  
32 ~~thereof open for inspection, as required in this subsection, shall~~  
33 ~~forfeit to the State the sum of \$25 for every day of such neglect or~~  
34 ~~refusal.~~

35 ~~4.~~ 5. An inspection authorized by subsection 3 *or 4* may be  
36 denied to a member or other person upon the refusal of the member  
37 or other person to furnish to the corporation an affidavit that the  
38 inspection is not desired for any purpose not relating to his or her  
39 interest as a member, including, but not limited to, those purposes  
40 set forth in subsection ~~5.~~

41 ~~5.~~ 6.

42 6. It is a defense to any action to enforce the provisions of this  
43 section or for charges, penalties or damages under this section that  
44 the person suing has used or intends to use the list for any of the  
45 following purposes:



1 (a) To solicit money or property from the members unless the  
2 money or property will be used solely to solicit the votes of  
3 members;

4 (b) For any commercial purpose or purpose in competition with  
5 the corporation;

6 (c) To sell to any person; or

7 (d) For any other purpose not related to his or her interest as a  
8 member.

9 ~~16.1~~ 7. This section does not impair the power or jurisdiction of  
10 any court to compel the production for examination of the books of  
11 a corporation in any proper case.

12 ~~17.1~~ 8. In every instance where an attorney or other agent of  
13 the director or member seeks the right of inspection, the demand  
14 must be accompanied by a power of attorney signed by the director  
15 or member authorizing the attorney or other agent to inspect on  
16 behalf of the director or member.

17 ~~18.1~~ 9. The right to copy records under subsection 3 includes,  
18 if reasonable, the right to make copies by photographic, xerographic  
19 or other means.

20 ~~19.1~~ 10. The corporation may impose a reasonable charge,  
21 covering costs of labor, materials and copies of any records  
22 provided to the member or director.

23 **Sec. 19.** Chapter 86 of NRS is hereby amended by adding  
24 thereto the provisions set forth as sections 20 and 21 of this act.

25 **Sec. 20. 1.** *Except as otherwise specifically provided by*  
26 *statute or agreement, no person other than a limited-liability*  
27 *company is individually liable for a debt or liability of the limited-*  
28 *liability company unless the person acts as the alter ego of the*  
29 *limited-liability company.*

30 **2.** *A person acts as the alter ego of a limited-liability company*  
31 *only if:*

32 **(a)** *The limited-liability company is influenced and governed*  
33 *by the person;*

34 **(b)** *There is such unity of interest and ownership that the*  
35 *limited-liability company and the person are inseparable from*  
36 *each other; and*

37 **(c)** *Adherence to the notion of the limited-liability company*  
38 *being an entity separate from the person would sanction fraud or*  
39 *promote manifest injustice.*

40 **3.** *The question of whether a person acts as the alter ego of a*  
41 *limited-liability company must be determined by the court as a*  
42 *matter of law.*

43 **Sec. 21. 1.** *Except as otherwise provided in the articles of*  
44 *organization or operating agreement, the only fiduciary duties a*



1 *manager or managing member owes to a limited-liability company*  
2 *and its members are:*

3 (a) *The duty of loyalty, as set forth in subsection 4; and*

4 (b) *The duty of care, as set forth in subsection 5.*

5 2. *Managers and managing members are presumed to act in*  
6 *good faith, on an informed basis and with a view to the interests of*  
7 *a limited-liability company and its members and, unless otherwise*  
8 *provided in the articles of organization or operating agreement, no*  
9 *manager or managing member is personally liable for any breach*  
10 *of a fiduciary duty to the limited-liability company or its members*  
11 *unless the court determines that such a presumption has been*  
12 *rebutted and a breach of a fiduciary duty has been proven.*

13 3. *Except as otherwise provided in this subsection, managers*  
14 *and managing members are entitled to rely on information,*  
15 *opinions, reports, books of account or statements, including*  
16 *financial statements and other financial data, that are prepared or*  
17 *presented by one or more persons, including, without limitation,*  
18 *managers, members, officers or employees of the limited-liability*  
19 *company, counsel, public accountants, financial advisers,*  
20 *valuation advisers and investment bankers, reasonably believed to*  
21 *be reliable and competent in the matters prepared or presented or*  
22 *as to matters reasonably believed to be within the professional*  
23 *or expert competence of the preparer or presenter. A manager or*  
24 *managing member is not entitled to rely on such information,*  
25 *opinions, reports, books of account or statements if the manager*  
26 *or managing member has actual knowledge concerning the matter*  
27 *in question that would cause reliance thereon to be unwarranted.*

28 4. *Except as otherwise provided in the articles of organization*  
29 *or operating agreement, the duty of loyalty of a manager or*  
30 *managing member to a limited-liability company and its members*  
31 *is limited to the following:*

32 (a) *To account to the limited-liability company and hold as*  
33 *trustee for it any property, profit or pecuniary benefit derived by*  
34 *the manager or managing member in the conduct and winding up*  
35 *of the business of the limited-liability company or derived from a*  
36 *use by the manager or managing member of the property within*  
37 *the limited-liability company.*

38 (b) *To refrain from dealing with the limited-liability company*  
39 *in the conduct or winding up of the business of the limited-liability*  
40 *company as or on behalf of a party in a manner that is adverse to*  
41 *the interests of the limited-liability company. It is a defense to a*  
42 *claim under this paragraph that the transaction was fair to the*  
43 *limited-liability company.*





1 (c) *To refrain from competing with the limited-liability*  
2 *company in the conduct of the business of the limited-liability*  
3 *company before the dissolution of the limited-liability company.*

4 *↳ Except as otherwise provided in the articles of organization or*  
5 *operating agreement, all of the members of the limited-liability*  
6 *company may authorize or ratify, after full disclosure of all*  
7 *material facts, a specific act or transaction that otherwise would*  
8 *violate the duty of loyalty.*

9 5. *Except as otherwise provided in the articles of organization*  
10 *or operating agreement, the duty of care of a manager or*  
11 *managing member to the limited-liability company and its*  
12 *members, in the conduct and winding up of the business of the*  
13 *limited-liability company, consists only of refraining from*  
14 *engaging in grossly negligent or reckless conduct, intentional*  
15 *misconduct, actual fraud or a knowing violation of law.*

16 6. *A manager or managing member shall discharge the duties*  
17 *to the limited-liability company and its members under this*  
18 *chapter or under the articles of organization or operating*  
19 *agreement and shall exercise any rights consistently with the*  
20 *implied contractual covenant of good faith and fair dealing.*

21 7. *A manager or managing member does not violate any duty*  
22 *or obligation under this chapter or under the articles of*  
23 *organization or operating agreement merely because the conduct*  
24 *of the manager or managing member furthers his or her interests.*

25 8. *A manager or managing member may lend money to and*  
26 *transact other business with the limited-liability company, and as*  
27 *to each loan or transaction the rights and obligations of the*  
28 *manager or managing member are the same as those of a person*  
29 *who is not a manager or managing member, subject to other*  
30 *applicable law.*

31 9. *A member other than a managing member does not have*  
32 *any fiduciary duty to the limited-liability company or its members*  
33 *solely by reason of being a member.*

34 10. *This section must not be construed to limit the*  
35 *applicability of subsections 5, 6 or 7 of NRS 86.286. This section*  
36 *applies to a person winding up the business of a limited-liability*  
37 *company as the personal or legal representative of the last*  
38 *surviving manager or managing member as if the person were a*  
39 *manager or managing member.*

40 **Sec. 22.** NRS 86.131 is hereby amended to read as follows:

41 86.131 The provisions of this chapter apply to commerce with  
42 foreign nations and among the several states. It is the intention of  
43 the Legislature by enactment of this chapter that the legal existence  
44 of limited-liability companies formed under this chapter , *and any*  
45 *series thereof*, be recognized beyond the limits of this State and that,



1 subject to any reasonable requirement of registration, any such  
2 company transacting business outside this State be granted  
3 protection of full faith and credit under Section 1 of Article IV of  
4 the Constitution of the United States.

5 **Sec. 23.** NRS 86.241 is hereby amended to read as follows:

6 86.241 1. Each limited-liability company shall continuously  
7 keep at its ~~principal~~ *registered* office in this State or with its  
8 custodian of records whose name and street address are available at  
9 its registered office, unless otherwise provided by an operating  
10 agreement, the following:

11 (a) A current list of the full name and last known business  
12 address of each member and manager, separately identifying the  
13 members in alphabetical order and the managers, if any, in  
14 alphabetical order;

15 (b) A copy of the filed articles of organization and all  
16 amendments thereto, together with signed copies of any powers of  
17 attorney pursuant to which any record has been signed; and

18 (c) Copies of any then effective operating agreement of the  
19 company.

20 2. Each member of a limited-liability company is entitled to  
21 obtain from the company, from time to time upon reasonable  
22 demand, for any purpose reasonably related to the interest of the  
23 member as a member of the company:

24 (a) The records required to be maintained pursuant to  
25 subsection 1;

26 (b) True and, in light of the member's stated purpose, complete  
27 records regarding the activities and the status of the business and  
28 financial condition of the company;

29 (c) Promptly after becoming available, a copy of the company's  
30 federal, state and local income tax returns for each year;

31 (d) True and complete records regarding the amount of cash and  
32 a description and statement of the agreed value of any other property  
33 or services contributed by each member and which each member  
34 has agreed to contribute in the future, and the date on which each  
35 became a member; and

36 (e) Other records regarding the affairs of the company as is just  
37 and reasonable under the circumstances and in light of the member's  
38 stated purpose for demanding such records.

39 ↪ The right to obtain records under this subsection includes, if  
40 reasonable, the right to make copies or abstracts by photographic,  
41 xerographic, electronic or other means.

42 3. Each manager of a limited-liability company managed by a  
43 manager or managers is entitled to examine from time to time upon  
44 reasonable demand, for a purpose reasonably related to the



1 manager's rights, powers and duties as such, the records described  
2 in subsection 2.

3 4. Any demand by a member or manager under subsection 2 or  
4 3 is subject to such reasonable standards regarding at what time and  
5 location and at whose expense records are to be furnished as may be  
6 set forth in the articles of organization or in an operating agreement  
7 adopted or amended as provided in subsection ~~f7~~ 8, or, if no such  
8 standards are set forth in the articles of organization or operating  
9 agreement, the records must be provided or made available for  
10 examination, as the case may be, during ordinary business hours, at  
11 the *office of the company's ~~principal~~ custodian of records or its*  
12 *registered* office in this State and at the expense of the demanding  
13 member or manager.

14 5. If ~~such~~ the records ~~are maintained outside of~~ *subject to a*  
15 *demand pursuant to subsection 2 or 3 are not available to obtain*  
16 *or made available for examination, as applicable, at a location*  
17 *within* this State ~~+~~ *upon a reasonable demand made pursuant to*  
18 *subsection 2 or 3*, the manager or member may serve a demand ~~for~~  
19 ~~the records~~ upon the limited-liability company's registered agent ~~+~~  
20 *that the records to be obtained or examined be sent to the*  
21 *demanding manager or member*. Upon ~~receipt of~~ such a demand ,  
22 the limited-liability company shall send copies of the requested  
23 records ~~+~~ *described in subsection 2* either in paper or electronic  
24 form to the manager or member within 10 business days after the  
25 demand is served upon the registered agent.

26 ~~f5~~ 6. Any demand by a member or manager under this  
27 section must be in writing and must state the purpose of such  
28 demand. When a demanding member seeks to obtain or a manager  
29 seeks to examine the records described in subsection 2, the  
30 demanding member or manager must first establish that:

31 (a) The demanding member or manager has complied with the  
32 provisions of this section respecting the form and manner of making  
33 a demand for obtaining or examining such records; and

34 (b) The records sought by the demanding member or manager  
35 are reasonably related to the member's interest as a member or the  
36 manager's rights, powers and duties as a manager, as the case may  
37 be.

38 ~~f6~~ 7. In every instance where an attorney or other agent of a  
39 member or manager seeks to exercise any right arising under this  
40 section on behalf of such member or manager, the demand must be  
41 accompanied by a power of attorney signed by the member or  
42 manager authorizing the attorney or other agent to exercise such  
43 rights on behalf of the member or manager.

44 ~~f7~~ 8. The rights of a member to obtain or a manager to  
45 examine records as provided in this section may be restricted or



1 denied entirely in the articles of organization or in an operating  
2 agreement adopted by all of the members or by the sole member or  
3 in any subsequent amendment adopted by all of the members at the  
4 time of amendment.

5 **Sec. 24.** NRS 86.281 is hereby amended to read as follows:

6 86.281 A limited-liability company organized and existing  
7 pursuant to this chapter , *or any series thereof*, may exercise the  
8 powers and privileges granted by this chapter and may:

9 1. Sue and be sued, complain and defend, in its name;

10 2. Purchase, take, receive, lease or otherwise acquire, own,  
11 hold, improve, use and otherwise deal in and with real or personal  
12 property, or an interest in it, wherever situated;

13 3. Sell, convey, mortgage, pledge, lease, exchange, transfer and  
14 otherwise dispose of all or any part of its property and assets;

15 4. Lend money to and otherwise assist its members;

16 5. Purchase, take, receive, subscribe for or otherwise acquire,  
17 own, hold, vote, use, employ, sell, mortgage, lend, pledge or  
18 otherwise dispose of, and otherwise use and deal in and with shares,  
19 member's interests or other interests in or obligations of domestic or  
20 foreign limited-liability companies, domestic or foreign  
21 corporations, joint ventures or similar associations, general or  
22 limited partnerships or natural persons, or direct or indirect  
23 obligations of the United States or of any government, state,  
24 territory, governmental district or municipality or of any  
25 instrumentality of it;

26 6. Make contracts and guarantees and incur liabilities, borrow  
27 money at such rates of interest as the company may determine, issue  
28 its notes, bonds and other obligations and secure any of its  
29 obligations by mortgage or pledge of all or any part of its property,  
30 franchises and income;

31 7. Lend, invest and reinvest its money and take and hold real  
32 property and personal property for the payment of money so loaned  
33 or invested;

34 8. Conduct its business, carry on its operations and have and  
35 exercise the powers granted by this chapter in any state, territory,  
36 district or possession of the United States, or in any foreign country;

37 9. Appoint managers and agents, define their duties and fix  
38 their compensation;

39 10. Cease its activities and  ~~surrender its articles of~~  
40  ~~organization;~~  *terminate its existence in accordance with this*  
41  *chapter;*

42 11. Exercise all powers necessary or convenient to effect any  
43 of the purposes for which the company  *or series*  is organized; and

44 12. Hold a license issued pursuant to the provisions of chapter  
45 463 of NRS.



1       **Sec. 25.** NRS 86.301 is hereby amended to read as follows:

2       86.301 Except as otherwise provided in this chapter, ~~fits~~ *the*  
3 articles of organization or ~~fits~~ *the* operating agreement, no debt  
4 may be contracted or liability incurred by or on behalf of a limited-  
5 liability company ~~fit~~ *or any series thereof* except by:

6       1. One or more managers of a company *or series* which is  
7 managed by a manager or managers;

8       2. Any member of a company *or series* which is managed by  
9 its members;

10      3. Any agent, officer, employee or other representative of the  
11 company *or series, as* authorized in the operating agreement or in  
12 another writing by a manager or managers, if the company *or series*  
13 is managed by a manager or managers; or

14      4. Any agent, officer, employee or other representative of the  
15 company *or series* authorized in the operating agreement or in  
16 another writing by a member ~~fit~~ *thereof*, if the company *or series* is  
17 managed by its members.

18       **Sec. 26.** NRS 86.311 is hereby amended to read as follows:

19       86.311 Real and personal property owned or purchased by a  
20 *limited-liability* company *or series thereof* must be held and owned,  
21 and conveyance made, in the name of ~~the~~ *such* company ~~fit~~ *or*  
22 *series*. Except as otherwise provided in the ~~company's~~ articles of  
23 organization or operating agreement, instruments and records  
24 providing for the acquisition, mortgage or disposition of property of  
25 the company *or series* are valid and binding upon the company if  
26 signed by:

27      1. One or more managers of a company *or series* which is  
28 managed by a manager or managers;

29      2. Any member of a company *or series* which is managed by  
30 its members;

31      3. Any agent, officer, employee or other representative of the  
32 company *or series* authorized in the operating agreement or in  
33 another writing by a manager or managers, if the company *or series*  
34 is managed by a manager or managers; or

35      4. Any agent, officer, employee or other representative of the  
36 company *or series* authorized in the operating agreement or in  
37 another writing by a member, if the company *or series* is managed  
38 by its members.

39       **Sec. 27.** NRS 86.321 is hereby amended to read as follows:

40       86.321 The contributions to capital of a member to a limited-  
41 liability company *or series* may be in cash, property or services  
42 rendered, or a promissory note or other binding obligation to  
43 contribute cash or property or to perform services.



1       **Sec. 28.** NRS 86.531 is hereby amended to read as follows:

2       86.531 1. Except in the case of a dissolution pursuant to NRS  
3 86.490, as soon as practicable after the dissolution of a limited-  
4 liability company, articles of dissolution must be prepared and  
5 signed setting forth:

6       (a) The name of the limited-liability company;

7       (b) That the company has been ~~for will be~~ dissolved; and

8       (c) The effective date and time of the dissolution, which may not  
9 be later than the effective date and time of the articles of dissolution.

10      2. The articles of dissolution must be signed by:

11      (a) A manager of the company, if management of the company  
12 is vested in a manager;

13      (b) A member of the company, if management of the company  
14 is not vested in a manager; or

15      (c) The personal representative of the last remaining member, if  
16 there is no remaining manager or member, unless otherwise  
17 provided in the articles of organization or operating agreement.

18      **Sec. 29.** Chapter 92A of NRS is hereby amended by adding  
19 thereto a new section to read as follows:

20      ***1. Unless otherwise expressly required by the articles of***  
21 ***incorporation, no vote of the stockholders of a publicly traded***  
22 ***corporation is necessary to authorize a merger in which the***  
23 ***publicly traded corporation is a constituent entity if:***

24      ***(a) The plan of merger expressly permits or requires the***  
25 ***merger to be effected under this section;***

26      ***(b) The ownership threshold requirement is satisfied, subject***  
27 ***to the provisions of subsection 2; and***

28      ***(c) The ownership threshold requirement is satisfied in whole***  
29 ***or in part by way of an offer and the plan of merger requires that:***

30      ***(1) The merger must be effected as soon as practicable***  
31 ***following the consummation of the offer if the merger is effected***  
32 ***under this section; and***

33      ***(2) Each outstanding share of each class or series of stock***  
34 ***of the publicly traded corporation that is the subject of, and not***  
35 ***irrevocably accepted for purchase or exchange in, the offer must***  
36 ***be converted in such a merger into, or into the right to receive, the***  
37 ***same amount and kind of cash, property, rights or securities to be***  
38 ***paid for shares of such class or series of stock of the publicly***  
39 ***traded corporation irrevocably accepted for purchase or exchange***  
40 ***in the offer. The plan of merger may expressly provide that the***  
41 ***requirements of this subparagraph must not apply to specified***  
42 ***categories of excluded shares.***

43      ***↳ This subsection does not apply to circumvent or contravene the***  
44 ***provisions of NRS 78.378 to 78.3793, inclusive, or NRS 78.411 to***  
45 ***78.444, inclusive.***



1       2. *If a merger pursuant to this section is to be effectuated*  
2 *without any offer:*

3       (a) *The ownership threshold requirement must be satisfied*  
4 *without counting the voting power of any shares of the stock of the*  
5 *publicly traded corporation acquired from the publicly traded*  
6 *corporation, or any of the directors, officers, affiliates or*  
7 *associates thereof, within the 6 months immediately preceding the*  
8 *adoption of the plan of merger; and*

9       (b) *The publicly traded corporation must provide notice of the*  
10 *merger to all of its stockholders not less than 30 days before the*  
11 *effective date of the merger.*

12       3. *As used in this section:*

13       (a) *“Affiliate” has the meaning ascribed to it in NRS 78.412.*

14       (b) *“Associate” has the meaning ascribed to it in NRS 78.413.*

15       (c) *“Consummation” means the irrevocable acceptance for*  
16 *purchase or exchange of shares tendered pursuant to an offer.*

17       (d) *“Excluded shares” means:*

18           (1) *Rollover shares; and*

19           (2) *Shares of the publicly traded corporation that are*  
20 *owned beneficially or of record at the commencement of an offer*  
21 *by:*

22                   (I) *The publicly traded corporation;*

23                   (II) *The constituent entity making the offer;*

24                   (III) *Any person who owns, directly or indirectly, all of*  
25 *the outstanding equity interests of the constituent entity making*  
26 *the offer; or*

27                   (IV) *Any direct or indirect wholly owned subsidiary of*  
28 *any of the foregoing.*

29       (e) *“Offer” means an offer made by the other constituent*  
30 *entity in the merger for all of the outstanding shares of each class*  
31 *or series of stock of the publicly traded corporation listed on a*  
32 *national securities exchange, on the terms provided in the plan of*  
33 *merger that, absent this section, would be entitled to vote on the*  
34 *adoption of the plan of merger. The other constituent entity in the*  
35 *merger may, but is not required to, engage in the consummation*  
36 *of separate offers for separate classes or series of the stock of the*  
37 *publicly traded corporation. An offer may, but is not required to:*

38           (1) *Exclude any excluded shares; and*

39           (2) *Be conditioned on the tender of a minimum number or*  
40 *proportion of shares of any class or series of the stock of the*  
41 *publicly traded corporation.*

42       (f) *“Owned affiliate” means, with respect to a constituent*  
43 *entity, any other person who owns, directly or indirectly, all of the*  
44 *outstanding equity interests of the constituent entity, or any direct*



1 or indirect wholly owned subsidiary of the constituent entity or  
2 other person.

3 (g) "Ownership threshold requirement" means that the voting  
4 power of the stock of the publicly traded corporation otherwise  
5 owned beneficially or of record by the other constituent entity in  
6 the merger or any of the owned affiliates of the other constituent  
7 entity, together with the voting power of any rollover shares and  
8 any shares irrevocably accepted for purchase or exchange  
9 pursuant to any offer and received before the expiration of  
10 the offer by the agent or depositary appointed to facilitate the  
11 consummation of the offer, equals at least that proportion of the  
12 voting power of the stock, and of each class or series thereof, of  
13 the publicly traded corporation that, absent this section, would be  
14 required to approve the plan of merger under this chapter and the  
15 articles of incorporation and bylaws of the publicly traded  
16 corporation. For the purposes of this paragraph, shares are  
17 received:

18 (1) If the shares are certificated shares, upon physical  
19 receipt by the agent or depositary of a stock certificate with an  
20 executed letter of transmittal or other instrument transfer;

21 (2) If the shares are uncertificated shares held of record by  
22 a clearing corporation as nominee, upon transfer into the account  
23 of the agent or depositary by way of an agent's message; and

24 (3) If the shares are uncertificated shares held of record by  
25 a person other than a clearing corporation as nominee, upon  
26 physical receipt by the agent or depositary of an executed letter of  
27 transmittal or other instrument of transfer.

28 (h) "Publicly traded corporation" means a domestic  
29 corporation that has a class or series of voting shares which is a  
30 covered security under section 18(b)(1)(A) or (B) of the Securities  
31 Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended.

32 (i) "Rollover shares" means any shares of any class or series  
33 of the capital stock of the publicly traded corporation that are the  
34 subject of a written agreement requiring such shares to be  
35 contributed or otherwise transferred to the other constituent entity  
36 in the merger or any of the owned affiliates of the other  
37 constituent entity in exchange for shares or other equity interest in  
38 the other constituent entity or any of its owned affiliates. Shares  
39 must cease to be rollover shares if, as of the effective time of the  
40 merger, the shares have not been contributed or otherwise  
41 transferred pursuant to the written agreement.

42 **Sec. 30.** NRS 92A.380 is hereby amended to read as follows:

43 92A.380 1. Except as otherwise provided in NRS 92A.370  
44 and 92A.390 and subject to the limitation in paragraph (f), any  
45 stockholder is entitled to dissent from, and obtain payment of the





1 fair value of the stockholder's shares in the event of any of the  
2 following corporate actions:

3 (a) Consummation of a plan of merger to which the domestic  
4 corporation is a constituent entity:

5 (1) If approval by the stockholders is required for the merger  
6 by NRS 92A.120 to 92A.160, inclusive, or the articles of  
7 incorporation, regardless of whether the stockholder is entitled to  
8 vote on the plan of merger; or

9 (2) If the domestic corporation is a subsidiary and is merged  
10 with its parent pursuant to NRS 92A.180.

11 (b) Consummation of a plan of conversion to which the  
12 domestic corporation is a constituent entity as the corporation whose  
13 subject owner's interests will be converted.

14 (c) Consummation of a plan of exchange to which the domestic  
15 corporation is a constituent entity as the corporation whose subject  
16 owner's interests will be acquired, if the stockholder's shares are to  
17 be acquired in the plan of exchange.

18 (d) Any corporate action taken pursuant to a vote of the  
19 stockholders to the extent that the articles of incorporation, bylaws  
20 or a resolution of the board of directors provides that voting or  
21 nonvoting stockholders are entitled to dissent and obtain payment  
22 for their shares.

23 (e) Accordance of full voting rights to control shares, as defined  
24 in NRS 78.3784, only to the extent provided for pursuant to  
25 NRS 78.3793.

26 (f) Any corporate action not described in this subsection ~~that~~  
27 ~~will result in~~ *pursuant to which* the stockholder ~~receiving~~ *would*  
28 *be obligated, as a result of the corporate action, to accept* money or  
29 scrip ~~instead of~~ *rather than receive* a fraction of a share *in*  
30 *exchange for the cancellation of all the stockholder's outstanding*  
31 *shares*, except where the stockholder would not be entitled to  
32 receive such payment pursuant to NRS 78.205, 78.2055 or 78.207.  
33 A dissent pursuant to this paragraph applies only to the fraction of a  
34 share, and the stockholder is entitled only to obtain payment of the  
35 fair value of the fraction of a share.

36 2. A stockholder who is entitled to dissent and obtain payment  
37 pursuant to NRS 92A.300 to 92A.500, inclusive, ~~may~~ *must* not  
38 challenge the corporate action creating the entitlement unless the  
39 action is unlawful or ~~fraudulent with respect to~~ *constitutes or is*  
40 *the result of actual fraud against* the stockholder or the domestic  
41 corporation.

42 3. Subject to the limitations in this subsection, from and after  
43 the effective date of any corporate action described in subsection 1,  
44 no stockholder who has exercised the right to dissent pursuant to  
45 NRS 92A.300 to 92A.500, inclusive, is entitled to vote his or her



1 shares for any purpose or to receive payment of dividends or any  
2 other distributions on shares. This subsection does not apply to  
3 dividends or other distributions payable to stockholders on a date  
4 before the effective date of any corporate action from which the  
5 stockholder has dissented. If a stockholder exercises the right to  
6 dissent with respect to a corporate action described in paragraph (f)  
7 of subsection 1, the restrictions of this subsection apply only to the  
8 shares to be converted into a fraction of a share and the dividends  
9 and distributions to those shares.

10 **Sec. 31.** NRS 92A.390 is hereby amended to read as follows:

11 92A.390 1. There is no right of dissent ~~[with respect to a plan~~  
12 ~~of merger, conversion or exchange] pursuant to paragraph (a), (b),~~  
13 ~~(c) or (f) of subsection 1 of NRS 92A.380~~ in favor of stockholders  
14 of any class or series which is:

15 (a) A covered security under section 18(b)(1)(A) or (B) of the  
16 Securities Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as  
17 amended;

18 (b) Traded in an organized market and has at least 2,000  
19 stockholders and a market value of at least \$20,000,000, exclusive  
20 of the value of such shares held by the corporation's subsidiaries,  
21 senior executives, directors and beneficial stockholders owning  
22 more than 10 percent of such shares; or

23 (c) Issued by an open end management investment company  
24 registered with the Securities and Exchange Commission under the  
25 Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as  
26 amended, and which may be redeemed at the option of the holder at  
27 net asset value,

28 ↪ unless the articles of incorporation of the corporation issuing the  
29 class or series or the resolution of the board of directors approving  
30 the plan of merger, conversion or exchange expressly provide  
31 otherwise.

32 2. The applicability of subsection 1 must be determined as of:

33 (a) The record date fixed to determine the stockholders entitled  
34 to receive notice of and to vote at the meeting of stockholders to act  
35 upon the corporate action requiring dissenter's rights; or

36 (b) The day before the effective date of such corporate action if  
37 there is no meeting of stockholders.

38 3. Subsection 1 is not applicable and dissenter's rights are  
39 available pursuant to NRS 92A.380 for the holders of any class or  
40 series of shares who are required by the terms of the corporate  
41 action ~~[requiring dissenter's rights]~~ to accept for such shares  
42 anything other than ~~[cash or shares of any class or any series of~~  
43 ~~shares of any corporation, or any] :~~

44 (a) *Cash;*



1 (b) *Any security or* other proprietary interest of any other entity,  
2 *including, without limitation, shares, equity interests or contingent*  
3 *value rights*, that satisfies the standards set forth in subsection 1 at  
4 the time the corporate action becomes effective ~~H~~; *or*

5 (c) *Any combination of paragraphs (a) and (b).*

6 4. There is no right of dissent for any holders of stock of the  
7 surviving domestic corporation if the plan of merger does not  
8 require action of the stockholders of the surviving domestic  
9 corporation under NRS 92A.130.

10 5. There is no right of dissent for any holders of stock of the  
11 parent domestic corporation if the plan of merger does not require  
12 action of the stockholders of the parent domestic corporation under  
13 NRS 92A.180.

14 **Sec. 32.** NRS 92A.410 is hereby amended to read as follows:

15 92A.410 1. If a proposed corporate action creating  
16 dissenter's rights is submitted to a vote at a stockholders' meeting,  
17 the notice of the meeting must state that stockholders are, are not or  
18 may be entitled to assert dissenter's rights under NRS 92A.300 to  
19 92A.500, inclusive. If the domestic corporation concludes that  
20 dissenter's rights are or may be available, a copy of NRS 92A.300  
21 to 92A.500, inclusive, must accompany the meeting notice sent to  
22 those ~~freereord~~ stockholders *of record* entitled to exercise dissenter's  
23 rights.

24 2. If the corporate action creating dissenter's rights is taken by  
25 written consent of the stockholders or without a vote of the  
26 stockholders, the domestic corporation shall notify in writing all  
27 stockholders *of record* entitled to assert dissenter's rights that the  
28 action was taken and send them the dissenter's notice described in  
29 NRS 92A.430.

30 **Sec. 33.** The amendatory provisions of section 21 of this act  
31 apply to a limited-liability company organized in this State:

32 1. On or after October 1, 2017, pursuant to the provisions of  
33 chapter 86 of NRS; and

34 2. Before October 1, 2017, if the limited-liability company  
35 expressly elects to accept the provisions of section 21 of this act  
36 pursuant to an amendment to its articles of organization enacted in  
37 accordance with NRS 86.216 or 86.221.



