Senate Bill No. 95–Senator Ohrenschall

Joint Sponsor: Assemblyman Orentlicher

CHAPTER.....

AN ACT relating to business entities; revising provisions relating to service of process on management persons; making various changes to definitions relating to corporations; authorizing a corporation to include a federal forum selection clause in its articles of incorporation or bylaws; revising provisions relating to the breach of a fiduciary duty by a director or officer of a corporation; making various changes relating to meetings of stockholders held by means of remote communication; revising provisions relating to voting agreements of stockholders; revising provisions relating to notice of meetings of stockholders; revising provisions relating to insolvent corporations; revising provisions relating to discretionary indemnification of directors, officers, employees and agents of corporations; providing an exception to the requirement that a corporation issue a certificate of membership; establishing and revising provisions relating to distributions made by limited-liability companies; revising provisions relating to the form of contributions to capital of members of a limited-liability company or series; making various changes relating to the standard of voting for actions taken by corporations, limited partnerships and limited-liability companies; revising provisions relating to dissenter's rights; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes various provisions relating to business entities, including private corporations and limited-liability companies. (Chapters 78 and 86 of NRS) This bill revises certain provisions relating to business entities and makes certain other changes generally relating to business entities.

Section 1 of this bill removes the requirement that a clerk of the court mail to certain management persons of a business entity true and attested copies of the process served on the registered agent of the entity, and instead requires that the party serving the registered agent mail to such management persons a copy of any document served upon the registered agent.

Section 38 of this bill repeals the selectively applicable definitions of "publicly traded corporation," "Securities Exchange Act " and "voting shares," respectively, and replaces the definitions in **section 2** of this bill in order to expand the applicability of such definitions to the entirety of chapter 78 of NRS. **Sections 3, 7 and 8** of this bill make conforming changes related to the definition of the "Securities Exchange Act." **Section 14.2** of this bill makes a conforming change related to the definition of "voting shares."

Section 4 of this bill authorizes a corporation to include a federal forum selection clause in its articles of incorporation or bylaws under certain circumstances.

Section 5 of this bill expressly provides that the directors and officers of a corporation may consider one or more facts, circumstances, contingencies or constituencies when exercising their respective powers.

Section 6 of this bill revises the definition of "distribution," as it relates to distributions made by corporations, by delineating that the term applies to all holders of shares of any one or more classes or series of the capital stock of the corporation. **Sections 9 and 10** of this bill make conforming changes related to distributions made by corporations.

Section 11 of this bill authorizes a meeting of stockholders to be held solely by means of remote communication unless otherwise prescribed by the board of directors. **Section 11** also provides that, in addition to the stockholders, the corporation may permit certain other persons to attend the remote meeting. Moreover, **section 11** provides that the corporation must implement measures to verify the identity of the permitted persons.

Section 12 of this bill provides that the record date for a meeting of stockholders of the corporation: (1) must be fixed through a resolution adopted by the board of directors; and (2) must not precede the day on which the resolution is adopted by the board of directors, regardless of the effective date of the resolution.

Section 12 also provides that the date upon which the stockholders of record are entitled to give written consent for certain actions taken by the corporation must not precede the day on which the resolution fixing such a date is adopted by the board of directors, regardless of the effective date of the resolution.

Section 13 of this bill: (1) establishes provisions concerning the validity and enforceability of certain voting agreements; and (2) revises provisions relating to the limitation on the duration of certain voting agreements.

Section 14 of this bill revises the form of notice for meetings of stockholders by requiring the notice to include the following information: (1) the date of the meeting; (2) if the meeting is to be held by means of remote communication, the form of the remote communication; and (3) if the meeting is not going to be held solely by means of remote communication, the physical location of the meeting. **Section 14** additionally applies these changes to the form of notice required for adjourned meetings of stockholders.

Section 14 also: (1) revises provisions related to notice by publication; and (2) establishes provisions authorizing certain publicly traded corporations to provide notice by proxy statement under certain circumstances.

Section 14.5 of this bill expressly provides that whenever a corporation is insolvent and in certain other circumstances, any creditors holding at least 10 percent of the outstanding indebtedness, or stockholders owning at least 10 percent of the outstanding stock entitled to vote, may petition a district court for a writ of injunction and the appointment of receivers or trustees.

Section 15 of this bill expands the circumstances by which a corporation may discretionally indemnify a person who is or was a party to an action, or threatened to be made a party to an action, by authorizing the corporation to indemnify any such person who is or was serving at the request of the corporation as a manager of a limited-liability company.

Section 16 of this bill provides exception for corporations that are associations or unit-owners' associations from the requirement that corporations issue a certificate of membership to any person who becomes a member of the corporation.

Section 19 of this bill defines the term "distribution" for the purposes of **section 21** of this bill concerning noneconomic members of limited-liability

companies and **sections 23 and 24** of this bill relating to the circumstances by which a limited-liability company is authorized to or prohibited from making distributions and certain other provisions of law relating to limited-liability companies.

Sections 22 and 25-27 of this bill require that a vote of approval for certain actions taken by a limited-liability company be determined by a specified proportion "in interest" of the members, as defined by **section 18** of this bill. **Section 38** makes a conforming change by repealing the definition of the term "majority in interest." **Section 20** of this bill makes a conforming change relating to the placement of **section 18** in the Nevada Revised Statutes.

Section 22.5 of this bill: (1) provides that the provisions concerning the form of contributions to capital of a member of a limited-liability company or a series apply to the entirety of chapter 86 of NRS; and (2) clarifies the form of such contributions.

Section 32 of this bill provides the circumstances under which a vote of the stockholders of a domestic corporation is not required to authorize a merger in which the corporation is a constituent entity.

Section 33 of this bill provides that a plan of merger, conversion or exchange involving a domestic limited partnership must be approved, in relevant part, by a majority of the total contributions of the limited partners.

Section 34 of this bill provides that a plan of merger, conversion or exchange involving a domestic limited-liability company must be approved by: (1) a majority of the total contributions of the members, if there is one class of members; or (2) a majority of the total contributions of each class of members, if there are two or more classes of members.

Section 35 of this bill revises the applicability of the limitations on dissenter's rights. **Section 36** of this bill makes various changes related to the notification of stockholders concerning corporate actions creating dissenter's rights, including, without limitation, authorizing a domestic corporation to send an advance notice statement to the stockholders if a proposed corporate action creating dissenter's rights is submitted for approval pursuant to a written consent of the stockholders or taken without a vote of the stockholders.

Section 37 of this bill makes various changes to provisions related to the prerequisites for a demand by a stockholder for payment of the shares of the stockholder, including requiring such a stockholder to file a statement of intent under certain circumstances.

Sections 29 and 30 of this bill define the terms "advance notice statement" and "statement of intent," respectively. **Section 31** of this bill makes conforming changes related to the placement of the definitions in the Nevada Revised Statutes.

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

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

Section 1. NRS 75.160 is hereby amended to read as follows:

75.160 1. Every nonresident of this State who, on or after October 1, 2013, accepts election or appointment, including reelection or reappointment, as a management person of an entity, or who, on or after October 1, 2014, serves in such capacity, and every

resident of this State who accepts election or appointment or serves in such capacity and thereafter removes residence from this State shall be deemed, by the acceptance or by the service, to have consented to the appointment of the registered agent of the entity as an agent upon whom service of process may be made in all civil actions or proceedings brought in this State by, on behalf of or against the entity in which the management person is a necessary or proper party, or in any action or proceeding against the management person for a violation of a duty in such capacity, whether or not the person continues to serve as the management person at the time the action or proceeding is commenced. The acceptance or the service by the management person shall be deemed to be signification of the consent of the management person that any process so served has the same legal force and validity as if served upon the management person within this State.

2. Service of process must be effected by serving the registered agent with a true copy in the manner provided by law for service of process. In addition, the ~~[clerk of the court in which the civil action or proceeding is pending]~~ ***party serving the registered agent*** shall, within 7 days after ***such*** service, send by registered or certified mail, postage prepaid, ~~[true and attested]~~ copies of the ~~[process,]~~ ***documents served upon the registered agent,*** together with a statement that service is being made pursuant to this section, addressed to the management person at the address as it appears on the records of the Secretary of State, or if no such address appears, at the address last known to the ***serving*** party ***.*** ~~[desiring to make the service.]~~

3. The appointment of the registered agent is irrevocable. If any entity or management person fails to appoint a registered agent, or fails to file a statement of change of registered agent pursuant to NRS 77.340 before the effective date of a vacancy in the agency pursuant to NRS 77.330 or 77.370, on the production of a certificate of the Secretary of State showing either fact, which is conclusive evidence of the fact so certified to be made a part of the return of service, or if the street address of the registered agent of the entity is not staffed as required pursuant to NRS 14.020, which fact is to be made part of the return of service, the management person may be served with any and all legal process, or a demand or notice described in NRS 14.020, by delivering a copy to the Secretary of State or, in the absence of the Secretary of State, to any deputy secretary of state, and such service is valid to all intents and purposes. The copy must:

(a) Include a specific citation to the provisions of this section. The Secretary of State may refuse to accept such service if the proper citation is not included.

(b) Be accompanied by a fee of $10.

➥ The Secretary of State shall keep a copy of the legal process received pursuant to this section in the Office of the Secretary of State for at least 1 year after receipt thereof and shall make those records available for public inspection during normal business hours.

4. In all cases of service pursuant to subsection 3, the defendant has 40 days, exclusive of the day of service, within which to answer or plead. Before such service is authorized, the plaintiff shall make or cause to be made and filed an affidavit setting forth the facts, showing that due diligence has been used to ascertain the whereabouts of the management person to be served, and the facts showing that direct or personal service on, or notice to, the management person cannot be made.

5. If it appears from the affidavit that there is a last known address of the management person, the plaintiff shall, in addition to and after such service on the Secretary of State, mail or cause to be mailed to the management person at such address, by registered or certified mail, a copy of the summons and a copy of the complaint, and in all such cases the defendant has 40 days after the date of the mailing within which to appear in the action.

6. Service pursuant to subsection 3 provides an additional manner of serving process, and does not affect the validity of any other valid service.

7. In any action in which any management person has been served with process pursuant to subsection 2, the time in which a defendant is required to appear and file a responsive pleading must be computed from the date of mailing by the ~~[clerk of the court.]~~ ***serving party.*** The court may grant an extension of time as may be necessary to afford the management person reasonable opportunity to defend the action.

8. In a charter or other writing, a management person or owner of any entity may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of this State, or the exclusivity of arbitration in a specified jurisdiction or this State, and to be served with process in the manner prescribed in the charter or other writing. Notwithstanding any other provision of this subsection, except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in this State, an owner of an entity who is

not a management person may not waive its right to maintain a legal action or proceeding in the courts of this State with respect to matters relating to the organization or internal affairs of an entity. Without limiting or affecting the enforceability under the laws of this State governing corporations of any consent or agreement by a management person or stockholder of a corporation, this subsection does not apply to an entity which is a corporation.

9. This section does not limit or affect the right to serve process in any other manner now existing or hereafter enacted. This section is an extension of, and not a limitation upon, the right otherwise existing of service of legal process upon nonresidents.

10. As used in this section:

(a) "Charter" means the articles of organization or an operating agreement of a limited-liability company, the certificate of limited partnership or partnership agreement of a limited partnership or the certificate of trust or governing instrument of a business trust.

(b) "Entity" means a domestic:

(1) Corporation, whether or not for profit;

(2) Limited-liability company;

(3) Limited partnership; or

(4) Business trust.

(c) "Management person" means a director, officer, manager, managing member, general partner or trustee of an entity.

(d) "Owner" means a member of a limited-liability company, limited partner of a limited partnership or beneficial owner of a business trust.

(e) "Registered agent" has the meaning ascribed to it in NRS 77.230.

Sec. 2. NRS 78.010 is hereby amended to read as follows:

78.010 1. As used in this chapter:

(a) "Approval" and "vote" as describing action by the directors or stockholders mean the vote of directors in person or by written consent or of stockholders in person, by proxy or by written consent.

(b) "Articles," "articles of incorporation" and "certificate of incorporation" are synonymous terms and, unless the context otherwise requires, include all certificates filed pursuant to NRS 78.030, 78.180, 78.185, 78.1955, 78.209, 78.380, 78.385, 78.390, 78.725 and 78.730 and any articles of merger, conversion, exchange or domestication filed pursuant to NRS 92A.200 to 92A.240, inclusive, or 92A.270. Unless the context otherwise requires, these terms include restated articles and certificates of incorporation.

(c) "Directors" and "trustees" are synonymous terms.

(d) "Entity" means a foreign or domestic:

(1) Corporation, whether or not for profit;
(2) Limited-liability company;
(3) Limited partnership; or
(4) Business trust.

(e) ***"Publicly traded corporation" means a domestic corporation that has a class or series of voting shares which is:***

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

(2) Traded in an organized market and that has at least 2,000 stockholders and a market value of at least $20,000,000, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial stockholders owning more than 10 percent of such shares.

(f) "Principal office" means the office, in or out of this State, where the principal executive offices of a domestic or foreign corporation are located.

~~[(f)]~~ ***(g)*** "Receiver" includes receivers and trustees appointed by a court as provided in this chapter or in chapter 32 of NRS.

~~[(g)]~~ ***(h)*** "Registered agent" has the meaning ascribed to it in NRS 77.230.

~~[(h)]~~ ***(i)*** "Registered office" means the office maintained at the street address of the registered agent.

~~[(i)]~~ ***(j) "Securities Exchange Act" means the Act of Congress known as the Securities Exchange Act of 1934, as amended, 15 U.S.C. §§ 78a et seq.***

(k) "Stockholder of record" means a person whose name appears on the stock ledger of the corporation as the owner of record of shares of any class or series of the stock of the corporation. The term does not include a beneficial owner of shares who is not simultaneously the owner of record of such shares as indicated in the stock ledger.

(l) "Voting shares" means shares of stock of a corporation entitled to vote generally in the election of directors.

2. General terms and powers given in this chapter are not restricted by the use of special terms, or by any grant of special powers contained in this chapter.

Sec. 3. NRS 78.045 is hereby amended to read as follows:

78.045 1. The Secretary of State shall not accept for filing any articles of incorporation or any certificate of amendment of articles of incorporation of any corporation formed pursuant to the laws of this State which provides that the name of the corporation contains the word "bank" or "trust," unless:

(a) It appears from the articles or the certificate of amendment that the corporation proposes to carry on business as a banking or trust company, exclusively or in connection with its business as a bank, savings and loan association, savings bank or thrift company; and

(b) The articles or certificate of amendment is first approved by the Commissioner of Financial Institutions.

2. The Secretary of State shall not accept for filing any articles of incorporation or any certificate of amendment of articles of incorporation of any corporation formed pursuant to the provisions of this chapter if it appears from the articles or the certificate of amendment that the business to be carried on by the corporation is subject to supervision by the Commissioner of Insurance or by the Commissioner of Financial Institutions, unless the articles or certificate of amendment is approved by the Commissioner who will supervise the business of the corporation.

3. Except as otherwise provided in subsection 7, the Secretary of State shall not accept for filing any articles of incorporation or any certificate of amendment of articles of incorporation of any corporation formed pursuant to the laws of this State if the name of the corporation contains the words "engineer," "engineered," "engineering," "professional engineer," "registered engineer" or "licensed engineer" unless:

(a) The State Board of Professional Engineers and Land Surveyors certifies that the principals of the corporation are licensed to practice engineering pursuant to the laws of this State; or

(b) The State Board of Professional Engineers and Land Surveyors certifies that the corporation is exempt from the prohibitions of NRS 625.520.

4. Except as otherwise provided in subsection 7, the Secretary of State shall not accept for filing any articles of incorporation or any certificate of amendment of articles of incorporation of any corporation formed pursuant to the laws of this State if the name of the corporation contains the words "architect," "architecture," "registered architect," "licensed architect," "registered interior designer," "registered interior design," "residential designer," "registered residential designer," "licensed residential designer" or "residential design" unless the State Board of Architecture, Interior Design and Residential Design certifies that:

(a) The principals of the corporation are holders of a certificate of registration to practice architecture or residential design or to practice as a registered interior designer, as applicable, pursuant to the laws of this State; or

(b) The corporation is qualified to do business in this State pursuant to NRS 623.349.

5. The Secretary of State shall not accept for filing any articles of incorporation or any certificate of amendment of articles of incorporation of any corporation formed pursuant to the laws of this State which provides that the name of the corporation contains the word "accountant," "accounting," "accountancy," "auditor" or "auditing" unless the Nevada State Board of Accountancy certifies that the corporation:

(a) Is registered pursuant to the provisions of chapter 628 of NRS; or

(b) Has filed with the Nevada State Board of Accountancy under penalty of perjury a written statement that the corporation is not engaged in the practice of accounting and is not offering to practice accounting in this State.

6. The Secretary of State shall not accept for filing any articles of incorporation or any certificate of amendment of articles of incorporation of any corporation formed or existing pursuant to the laws of this State which provides that the name of the corporation contains the words "common-interest community," "community association," "master association," "unit-owners' association" or "homeowners' association" or if it appears in the articles of incorporation or certificate of amendment that the purpose of the corporation is to operate as a unit-owners' association pursuant to chapter 116 or 116B of NRS unless the Administrator of the Real Estate Division of the Department of Business and Industry certifies that the corporation has:

(a) Registered with the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels pursuant to NRS 116.31158 or 116B.625; and

(b) Paid to the Administrator of the Real Estate Division the fees required pursuant to NRS 116.31155 or 116B.620.

7. The provisions of subsections 3 and 4 do not apply to any corporation, whose securities are publicly traded and regulated by the Securities Exchange Act , ~~[of 1934,]~~ which does not engage in the practice of professional engineering, architecture or residential design or interior design, as applicable.

8. The Commissioner of Financial Institutions and the Commissioner of Insurance may approve or disapprove the articles or amendments referred to them pursuant to the provisions of this section.

Sec. 4. NRS 78.046 is hereby amended to read as follows:

78.046 1. The articles of incorporation or bylaws of a corporation may require, to the extent not inconsistent with any applicable jurisdictional requirements ~~[,]~~ ***and the laws of the United States,*** that any, all or certain ~~[internal]~~ ***:***

(a) Concurrent jurisdiction actions must be brought solely or exclusively in the court or courts specified in the requirement; and

(b) Internal actions must be brought solely or exclusively in the court or courts specified in the requirement, which must include at least one court in this State.

2. Unless otherwise expressly set forth in the articles of incorporation or bylaws, ~~[such a]~~ ***any*** requirement ***described in subsection 1*** must not be interpreted as prohibiting any corporation from consenting, or requiring any corporation to consent, to any alternative forum in any instance.

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

~~[3.]~~ ***4.*** As used in this section:

(a) ***"Concurrent jurisdiction action" means any action, suit or proceeding against the corporation or any of its directors or officers, that:***

(1) Asserts a cause of action under the laws of the United States;

(2) Could be properly commenced in either a federal forum or a forum of this State or any other state; and

(3) Is brought by or in the name or on behalf of:

(I) The corporation;

(II) Any stockholder of the corporation; or

(III) Any subscriber for, or purchaser or offeree of, any shares or other securities of the corporation.

(b) "Court" means any court of:

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

(2) A state other than this State; or

(3) The United States.

~~[(b)]~~ ***(c)*** "Internal action" means any action, suit or proceeding:

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

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

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

Sec. 5. NRS 78.138 is hereby amended to read as follows:

78.138 1. The fiduciary duties of directors and officers are to exercise their respective powers in good faith and with a view to the interests of the corporation.

2. In exercising their respective powers, directors and officers may, and are entitled to, rely on information, opinions, reports, books of account or statements, including financial statements and other financial data, that are prepared or presented by:

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

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

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

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

3. Except as otherwise provided in subsection 1 of NRS 78.139, directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation. A director or officer is not individually liable for damages as a result of an act or failure to act in his or her capacity as a director or officer except as described in subsection 7.

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

(a) Consider all relevant facts, circumstances, contingencies or constituencies, ~~[including,]~~ ***which may include,*** without limitation ~~[:]~~ ***, one or more of the following:***

(1) The interests of the corporation's employees, suppliers, creditors or customers;

(2) The economy of the State or Nation;

(3) The interests of the community or of society;

(4) The long-term or short-term interests of the corporation, including the possibility that these interests may be best served by the continued independence of the corporation; or

(5) The long-term or short-term interests of the corporation's stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.

(b) Consider or assign weight to the interests of any particular person or group, or to any other relevant facts, circumstances, contingencies or constituencies.

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

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

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

(a) The presumption established by subsection 3 has been rebutted; and

(b) It is proven that:

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

(2) Such breach involved intentional misconduct, fraud or a knowing violation of law.

8. This section applies to all cases, circumstances and matters, including, without limitation, any change or potential change in control of the corporation unless otherwise provided in the articles of incorporation or an amendment thereto.

Sec. 6. NRS 78.191 is hereby amended to read as follows:

78.191 As used in NRS 78.191 to 78.307, inclusive, unless the context otherwise requires, the word "distribution" means a direct or indirect transfer of money or other property ***,*** other than its own shares or the incurrence of indebtedness by a corporation ***,*** to or for the benefit of ~~[its stockholders]~~ ***all holders of shares of any one or more classes or series of the capital stock of the corporation,*** with respect to ~~[any of its]~~ ***such*** shares. A distribution may be in the form

of a declaration or payment of a dividend, a purchase, redemption or other acquisition of shares, a distribution of indebtedness, or otherwise.

Sec. 7. NRS 78.257 is hereby amended to read as follows:

78.257 1. Any person who has been a stockholder of record of any corporation and owns not less than 15 percent of all of the issued and outstanding shares of the stock of such corporation or has been authorized in writing by the holders of at least 15 percent of all its issued and outstanding shares, upon at least 5 days' written demand, including the affidavit required pursuant to subsection 2, is entitled to inspect in person or by agent or attorney, during normal business hours, the books of account and all financial records of the corporation, to make copies of records, and to conduct an audit of such records. Holders of voting trust certificates representing 15 percent of the issued and outstanding shares of the corporation are regarded as stockholders for the purpose of this subsection. The right of stockholders to inspect the corporate records may not be limited in the articles or bylaws of any corporation.

2. Together with the written demand required pursuant to subsection 1, a person who wishes to exercise the rights set forth in subsection 1 shall furnish an affidavit to the corporation stating that the inspection, copies or audit is not desired for any purpose not related to his or her interest as a stockholder.

3. All costs for making copies of records or conducting an audit must be borne by the person exercising the rights set forth in subsection 1.

4. The rights authorized by subsection 1 may be denied to any stockholder upon the stockholder's refusal to furnish the corporation an affidavit required pursuant to subsection 2. Any stockholder or other person, exercising rights set forth in subsection 1, who uses or attempts to use information, records or other data obtained from the corporation, for any purpose not related to the stockholder's interest in the corporation as a stockholder, is guilty of a gross misdemeanor.

5. If any officer or agent of any corporation keeping records in this State willfully neglects or refuses to permit an inspection of the books of account and financial records upon demand by a person entitled to inspect them, or refuses to permit an audit to be conducted by such a person, as provided in subsection 1, the corporation shall forfeit to the State the sum of $100 for every day of such neglect or refusal, and the corporation, officer or agent thereof is jointly and severally liable to the person injured for all damages resulting to the person.

6. A stockholder who brings an action or proceeding to enforce any right set forth in this section or to recover damages resulting from its denial:

(a) Is entitled to costs and reasonable attorney's fees, if the stockholder prevails; or

(b) Is liable for such costs and fees, if the stockholder does not prevail,

➥ in the action or proceeding.

7. Except as otherwise provided in this subsection, the provisions of this section do not apply to any corporation that furnishes to its stockholders a detailed, annual financial statement or any corporation that has filed during the preceding 12 months all reports required to be filed pursuant to section 13 or section 15(d) of the Securities Exchange Act ~~[of 1934.]~~ ***, 15 U.S.C. §§ 78m or 78o(d).*** A person who owns, or is authorized in writing by the owners of, at least 15 percent of the issued and outstanding shares of the stock of a corporation that has elected to be governed by subchapter S of the Internal Revenue Code and whose shares are not listed or traded on any recognized stock exchange is entitled to inspect the books of the corporation pursuant to subsection 1 and has the rights, duties and liabilities provided in subsections 2 to 6, inclusive.

Sec. 8. NRS 78.265 is hereby amended to read as follows:

78.265 1. The provisions of this section apply to corporations organized in this State before October 1, 1991.

2. Except to the extent limited or denied by this section or the articles of incorporation, shareholders have a preemptive right to acquire unissued shares, treasury shares or securities convertible into such shares.

3. Unless otherwise provided in the articles of incorporation:

(a) A preemptive right does not exist:

(1) To acquire any shares issued to directors, officers or employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote or when authorized by a plan approved by such a vote of shareholders;

(2) To acquire any shares sold for a consideration other than cash;

(3) To acquire any shares issued at the same time that the shareholder who claims a preemptive right acquired his or her shares;

(4) To acquire any shares issued as part of the same offering in which the shareholder who claims a preemptive right acquired his or her shares; or

(5) To acquire any shares, treasury shares or securities convertible into such shares, if the shares or the shares into which the convertible securities may be converted are upon issuance registered pursuant to section 12 of the Securities Exchange Act ~~[of 1934,]~~ 15 U.S.C. § 78l.

(b) Holders of shares of any class that is preferred or limited as to dividends or assets are not entitled to any preemptive right.

(c) Holders of common stock are not entitled to any preemptive right to shares of any class that is preferred or limited as to dividends or assets or to any obligations, unless convertible into shares of common stock or carrying a right to subscribe to or acquire shares of common stock.

(d) Holders of common stock without voting power have no preemptive right to shares of common stock with voting power.

(e) The preemptive right is only an opportunity to acquire shares or other securities upon such terms as the board of directors fixes for the purpose of providing a fair and reasonable opportunity for the exercise of such right.

Sec. 9. NRS 78.288 is hereby amended to read as follows:

78.288 1. Except as otherwise provided in subsection 2 and the articles of incorporation, a board of directors may authorize and the corporation may make distributions to the holders of any class or series of the ~~[corporation's shares,]~~ ***capital stock of the corporation,*** including distributions on shares that are partially paid.

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

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

(b) Except as otherwise specifically allowed by the articles of incorporation, the corporation's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the corporation were to be dissolved immediately after the time of the distribution, to satisfy the preferential rights upon such dissolution of ~~[stockholders]~~ ***holders of shares of any class or series of the capital stock of the corporation*** ~~[whose]~~ ***having*** preferential rights ~~[are]~~ superior to those receiving the distribution.

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

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

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

(c) Any other method that is reasonable in the circumstances.

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

(a) In the case of a distribution by purchase, redemption or other acquisition of ***shares of*** the ~~[corporation's shares,]~~ ***capital stock of the corporation,*** as of the earlier of:

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

(2) The date upon which the ~~[stockholder]~~ ***holder of such shares*** ceases to ~~[be a stockholder with respect to]~~ ***hold*** the acquired shares.

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

(c) In all other cases, as of:

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

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

5. A corporation's indebtedness to a ~~[stockholder]~~ ***holder of shares of one or more classes or series of the capital stock of the corporation*** incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general unsecured creditors except to the extent subordinated by agreement.

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

7. The board of directors may fix a record date for determining ~~[stockholders]~~ ***holders of shares of one or more classes or series of the capital stock of the corporation*** entitled to a distribution authorized by the board of directors pursuant to this section, which record date must not precede the date upon which the resolution fixing the record date is adopted.

8. This section does not apply to any distribution in liquidation pursuant to NRS 78.590.

9. The provisions of chapter 112 of NRS do not apply to any distribution made by a corporation in accordance with this chapter.

Sec. 10. NRS 78.300 is hereby amended to read as follows:

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

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

3. The liability imposed pursuant to subsection 2 does not apply to a director who caused his or her dissent to be entered upon the minutes of the meeting of the directors at the time the action was taken or who was not present at the meeting and caused his or her dissent to be entered on learning of the action.

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

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

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

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

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

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

4. Unless otherwise restricted by the articles of incorporation or bylaws, stockholders ***and certain other persons permitted by the corporation to attend a meeting of stockholders*** may participate in ~~[a]~~ ***the*** meeting ~~[of stockholders]~~ through ***remote communication, including, without limitation,*** electronic communications,

videoconferencing, teleconferencing or other available technology ***,*** if the corporation has implemented reasonable measures to:

(a) Verify the identity of each person participating through such means as a stockholder ~~[,]~~ ***or permitted person;*** and

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

5. Unless otherwise restricted by the articles of incorporation or bylaws, a meeting of stockholders may be held solely by remote communication pursuant to subsection 4 ~~[.]~~ ***and, if a meeting is so held, no other means of communication is required in the conduct of the meeting unless otherwise prescribed by the board of directors.***

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

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

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

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

8. Unless otherwise provided in the articles of incorporation or the bylaws, once a share is represented in person or by proxy for any purpose at a meeting, the share shall be deemed present for purposes of determining a quorum for the remainder of the meeting and for any adjournment of the meeting unless a new record date is or must be fixed for the adjourned meeting.

Sec. 12. NRS 78.350 is hereby amended to read as follows:

78.350 1. Unless otherwise provided in the articles of incorporation, or in the certificate of designation establishing the class or series of stock, every stockholder of record of a corporation is entitled at each meeting of stockholders thereof to one vote for each share of stock standing in his or her name on the records of the corporation. If the articles of incorporation, or the certificate of designation establishing the class or series of stock provides for more or less than one vote per share for any class or series of shares on any matter, every reference in this chapter to a majority or other

proportion of stock shall be deemed to refer to a majority or other proportion of the voting power of all of the shares or those classes or series of shares, as may be required by the articles of incorporation, or in the certificate of designation establishing the class or series of stock or the provisions of this chapter.

2. Unless a period of more than 60 days or a period of less than 10 days is prescribed or fixed in the articles of incorporation, the ***board of*** directors may prescribe a period not exceeding 60 days before any meeting of the stockholders during which no transfer of stock on the books of the corporation may be made, or may fix ~~[, in advance,]~~ a record date not more than 60 or less than 10 days before the date of any such meeting as the date as of which stockholders entitled to notice of and to vote at such meetings must be determined.

3. If a record date for a meeting of stockholders is fixed by the board of directors:

(a) The record date:

(1) Must be so fixed pursuant to a resolution adopted by the board of directors; and

(2) Must not precede the day on which the resolution is adopted by the board of directors, regardless of the effective date of the resolution.

(b) Only stockholders of record on ~~[that]~~ ***the record*** date are entitled to notice ***of*** or to vote at ~~[such a]~~ ***the*** meeting.

4. If a record date ***for a meeting of stockholders*** is not fixed ~~[,]~~ ***by the board of directors,*** the record date is at the close of business on the day before the day on which the first notice is given or, if notice is waived, at the close of business on the day before the meeting is held.

5. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders applies to ~~[an]~~ ***any*** adjournment or postponement of the meeting unless the board of directors fixes a new record date for the adjourned or postponed meeting. The board of directors must fix a new record date if the meeting is adjourned or postponed to a date more than 60 days later than the meeting date set for the original meeting.

~~[3.]~~ ***6.*** The board of directors may adopt a resolution prescribing a date upon which the stockholders of record entitled to give written consent pursuant to NRS 78.320 must be determined. The date prescribed by the board of directors may not precede or be more than 10 days after the ~~[date]~~ ***day on which*** the resolution is adopted by the board of directors ~~[.]~~ ***, regardless of the effective date of the resolution.***

7. If the board of directors does not adopt a resolution prescribing a date upon which the stockholders of record entitled to give written consent pursuant to NRS 78.320 must be determined and:

(a) No prior action by the board of directors is required by this chapter or chapter 92A of NRS before the matter is submitted for consideration by the stockholders, the date is the first date on which any stockholder delivers to the corporation such consent signed by the stockholder.

(b) Prior action by the board of directors is required by this chapter or chapter 92A of NRS before the matter is submitted for consideration by the stockholders, the date is at the close of business on the day the board of directors adopts the resolution.

~~[4.]~~ ***8.*** The provisions of this section do not restrict the directors from taking action to protect the interests of the corporation and its stockholders, including, but not limited to, adopting or signing plans, arrangements or instruments that grant or deny rights, privileges, power or authority to a holder or holders of a specified number of shares or percentage of share ownership or voting power.

Sec. 13. NRS 78.365 is hereby amended to read as follows:

78.365 1. A stockholder, by agreement in writing, may transfer his or her stock to a voting trustee or trustees for the purpose of conferring the right to vote the stock for a period not exceeding 15 years upon the terms and conditions therein stated. Any certificates of stock so transferred must be surrendered and cancelled and new certificates for the stock issued to the trustee or trustees in which it must appear that they are issued pursuant to the agreement, and in the entry of ownership in the proper books of the corporation that fact must also be noted, and thereupon the trustee or trustees may vote the stock so transferred during the terms of the agreement. A duplicate of every such agreement must be filed in the registered office of the corporation and at all times during its terms be open to inspection by any stockholder or his or her attorney.

2. At any time within the 2 years next preceding the expiration of an agreement entered into pursuant to the provisions of subsection 1, or the expiration of an extension of that agreement, any beneficiary of the trust may, by written agreement with the trustee or trustees, extend the duration of the trust for a time not to exceed 15 years after the scheduled expiration date of the original agreement or the latest extension. An extension is not effective unless the trustee, before the expiration date of the original agreement or the latest extension, files a duplicate of the agreement

providing for the extension in the registered office of the corporation. An agreement providing for an extension does not affect the rights or obligations of any person not a party to that agreement. ***An agreement entered into pursuant to the provisions of subsection 1 is not invalidated by the fact that, by its terms, its duration is more than 15 years, but its duration shall be deemed amended to conform with the provisions of this section.***

3. An agreement between two or more stockholders, if in writing and signed by ~~[them,]~~ ***each stockholder to be bound thereby,*** may provide that in exercising any voting rights **,** the stock held by ~~[them]~~ ***each such stockholder*** must be voted:

(a) Pursuant to the provisions of the agreement;

(b) As they may subsequently agree; or

(c) In accordance with a procedure agreed upon.

4. ***An agreement pursuant to the provisions of subsection 3 is valid and enforceable against the transferee of a stockholder party to the agreement only:***

(a) If and to the extent that the transferee agrees in writing to be bound by the agreement; or

(b) If the agreement expressly provides that it is enforceable against the transferee of a stockholder party to the agreement and:

(1) The transferee had actual knowledge of the existence of the agreement before the transfer; or

(2) The existence of the agreement is noted conspicuously on the front or back of the stock certificate or is contained in the written statement of information required by subsection 5 of NRS 78.235.

5. An agreement ~~[entered into]~~ pursuant to the provisions of subsection 3 ***, or an amendment thereto or an extension thereof, in each case entered into before October 1, 2021,*** is not ~~[effective]~~ ***:***

(a) Effective for a term of more than 15 years, but at any time within the 2 years next preceding the expiration of the agreement the parties thereto may extend its duration for ~~[as many additional periods, each not to exceed 15 years, as they wish.~~

~~5. An]~~ ***such period as is stated in the extension*** ~~[agreement entered into pursuant to the provisions of subsection 1 or 3 is not invalidated]~~ ***; and***

(b) Invalidated by the fact that by its terms its duration is more than 15 years, but its duration shall be deemed amended to conform with the provisions of this section.

Sec. 14. NRS 78.370 is hereby amended to read as follows:

78.370 1. If under the provisions of this chapter stockholders are required or authorized to take any action at a meeting, the notice of the meeting must be in writing.

2. Except in the case of the annual meeting, the notice must state the purpose or purposes for which the meeting is called. In all instances, the notice must state ~~[the]~~ ***:***

(a) The date and time ~~[when, and the place, which may be within or without this State, where]~~ ***of*** the meeting ~~[is to be held, and the]~~ ***;***

(b) The means of ~~[electronic communications,]~~ ***remote communication,*** if any, by which stockholders and proxies shall be deemed to be present in person and vote ~~[.]~~ ***at the meeting; and***

(c) Unless the meeting is to be held solely by remote communication pursuant to subsection 5 of NRS 78.320, the physical location of the meeting, which may be within or without this State.

3. A copy of the notice must be delivered personally, mailed postage prepaid or delivered as provided in NRS 75.150 to each stockholder of record entitled to vote at the meeting not less than 10 nor more than 60 days before the meeting. If mailed, it must be directed to the stockholder at his or her address as it appears upon the records of the corporation. Personal delivery of any such notice to any officer of a corporation or association, to any member of a limited-liability company managed by its members, to any manager of a limited-liability company managed by managers, to any general partner of a partnership or to any trustee of a trust constitutes delivery of the notice to the corporation, association, limited-liability company, partnership or trust.

4. The articles of incorporation or the bylaws may require that the notice be also published in one or more newspapers ~~[.]~~ ***but, notwithstanding such a requirement in the articles of incorporation or bylaws, notice by publication in one or more newspapers is not required if the corporation is a publicly traded corporation on the record date for the meeting.***

5. Notice delivered or mailed to a stockholder in accordance with the provisions of this section and NRS 75.150 and the provisions, if any, of the articles of incorporation or the bylaws is sufficient, and in the event of the transfer of the stockholder's stock after such delivery or mailing and before the holding of the meeting it is not necessary to deliver or mail notice of the meeting to the transferee.

6. Unless otherwise provided in the articles of incorporation or the bylaws, if notice is required to be delivered, under any provision of this chapter or the articles of incorporation or bylaws of any corporation, to any stockholder to whom:

(a) Notice of two consecutive annual meetings, and all notices of meetings or of the taking of action by written consent without a meeting to the stockholder during the period between those two consecutive annual meetings; or

(b) All, and at least two, payments sent by first-class mail of dividends or interest on securities during a 12-month period,

➥ have been mailed addressed to the stockholder at his or her address as shown on the records of the corporation and have been returned undeliverable, the delivery of further notices to the stockholder is not required. Any action or meeting taken or held without notice to such a stockholder has the same effect as if the notice had been delivered. If any such stockholder delivers to the corporation a written notice setting forth his or her current address, the requirement that notice be delivered to the stockholder is reinstated. If the action taken by the corporation is such as to require the filing of a certificate under any of the other sections of this chapter, the certificate need not state that notice was not delivered to persons to whom notice was not required to be delivered pursuant to this subsection. The delivery of further notices to a stockholder is still required for any notice returned as undeliverable if the notice was delivered by electronic transmission.

7. Unless the articles of incorporation or bylaws otherwise require, and except as otherwise provided in this subsection, if a ~~[~~stockholders'~~]~~ meeting ***of stockholders*** is adjourned ***,*** ~~[~~to another date, time or place,~~]~~ notice ***of the following information*** need not be delivered ~~[~~of the~~]~~ ***if the information is announced at the meeting at which the adjournment is taken:***

(a) The date ~~[,]~~ ***and*** time ~~[~~or place~~]~~ of the adjourned meeting ~~[~~if they are announced at the meeting at which the adjournment is taken.~~]~~ ***;***

(b) The means of remote communication, if any, by which stockholders and proxies shall be deemed to be present in person and vote at the adjourned meeting; and

(c) Unless the adjourned meeting is to be held solely by remote communication pursuant to subsection 5 of NRS 78.320, the physical location of the adjourned meeting, which may be within or without this State.

8. If a new record date is fixed for an adjourned or postponed meeting, notice of the adjourned or postponed meeting must be delivered to each stockholder of record as of the new record date.

9. The requirements for notice pursuant to this section are satisfied by a corporation if the corporation is a publicly traded corporation on the record date for the meeting and the corporation timely files, pursuant to section 14(a) of the Securities Exchange Act, 15 U.S.C. § 78n(a), a proxy statement or an amendment thereto, containing the information described in subsection 2, unless such notice by proxy statement is expressly prohibited in:

(a) The articles of incorporation or an amendment thereto, which are filed and effective on or after October 1, 2021; or

(b) The bylaws or an amendment thereto, which are effective on or after October 1, 2021.

10. As used in this section, "remote communication" includes any form of communication described in subsection 4 of NRS 78.320.

Sec. 14.2. NRS 78.411 is hereby amended to read as follows:

78.411 As used in NRS 78.411 to 78.444, inclusive, unless the context otherwise requires, the words and terms defined in NRS 78.412 to ~~[78.432,]~~ ***78.431,*** inclusive, have the meanings ascribed to them in those sections.

Sec. 14.5. NRS 78.630 is hereby amended to read as follows:

78.630 1. Whenever any corporation becomes insolvent or suspends its ordinary business for want of money to carry on the business, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, any creditors holding ***at least*** 10 percent of the outstanding indebtedness, or stockholders owning ***at least*** 10 percent of the outstanding stock entitled to vote, may, by petition setting forth the facts and circumstances of the case, apply to the district court of the county in which the principal office of the corporation is located or, if the principal office is not located in this State, to the district court in the county in which the corporation's registered office is located for a writ of injunction and the appointment of a receiver or receivers or trustee or trustees.

2. The court, being satisfied by affidavit or otherwise of the sufficiency of the application and of the truth of the allegations contained in the petition and upon hearing after such notice as the court by order may direct, shall proceed in a summary way to hear the affidavits, proofs and allegations which may be offered in behalf of the parties.

3. If upon such inquiry it appears to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors or stockholders, so that its business cannot be conducted with safety to the public, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, money, lands, tenements or effects, except to a receiver appointed by the court, until the court otherwise orders.

Sec. 15. NRS 78.7502 is hereby amended to read as follows:

78.7502 1. A corporation may indemnify pursuant to this subsection any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise ~~[,]~~ ***or as a manager of a limited-liability company,*** against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding if the person:

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

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

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

2. A corporation may indemnify pursuant to this subsection any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason

of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise ***or as a manager of a limited-liability company,*** against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by the person in connection with the defense or settlement of the action or suit if the person:

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

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

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

3. Any discretionary indemnification pursuant to this section, unless ordered by a court or advanced pursuant to subsection 2 of NRS 78.751, may be made by the corporation only as authorized in each specific case upon a determination that the indemnification of a director, officer, employee or agent of a corporation is proper under the circumstances. The determination must be made by:

(a) The stockholders;

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

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

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

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

Sec. 16. NRS 81.430 is hereby amended to read as follows:

81.430 1. Any person or any number of persons, including and in addition to the original incorporators, may become members of the corporation upon such terms and conditions as to membership, and subject to such rules and regulations as to their, and each of their, contract and other rights and liabilities between it and the member, as the corporation shall prescribe in its bylaws.

2. ~~[The]~~ ***Unless the corporation is an association or a unit-owners' association, each term as defined in NRS 116.011, the*** corporation shall issue a certificate of membership to each member, but the membership or the certificate thereof shall not, except as provided in NRS 81.410 to 81.540, inclusive, be assigned by any member to any other person, nor shall the assigns thereof be entitled to membership in the corporation, or to any property rights or interest therein.

3. The board of directors may, however, by motion duly adopted by it, consent to such assignment or transfer, and to the acceptance of the assignee or transferee as a member of the corporation.

4. The corporation shall also have the right, by its bylaws, to provide for or against the transfer of membership and for or against the assignment of membership certificates, and also the terms and conditions upon which any such transfer or assignment shall be allowed.

Sec. 17. Chapter 86 of NRS is hereby amended by adding thereto the provisions set forth as sections 18 and 19 of this act.

Sec. 18. ***"In interest," when used in reference to a stated proportion and:***

1. In reference to a limited-liability company, means such proportion of the total contributions of the members to the capital of the limited-liability company, as adjusted from time to time to properly reflect any additional contributions or withdrawals by the members.

2. In reference to a series, means such proportion of the total contributions of the members to the capital of the series, as adjusted from time to time to properly reflect any additional contributions or withdrawals from the series by the members associated with the series.

Sec. 19. ***As used in NRS 86.281 to 86.351, inclusive, unless the context otherwise requires, "distribution" means a direct or indirect transfer of money or property, other than its own member's interests, or the incurrence of indebtedness, by a limited-liability company to or for the benefit of all holders of any one or more classes or series of its members' interests with respect to such interests or as otherwise provided in the articles of organization or operating agreement.***

Sec. 20. NRS 86.011 is hereby amended to read as follows:

86.011 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 86.022 to 86.1255,

inclusive, ***and section 18 of this act*** have the meanings ascribed to them in those sections.

Sec. 21. NRS 86.095 is hereby amended to read as follows:

86.095 ***1.*** "Noneconomic member" means a member of a limited-liability company who:

~~[1.]~~ ***(a)*** Does not own a member's interest in the company;

~~[2.]~~ ***(b)*** Does not have an obligation to contribute capital to the company;

~~[3.]~~ ***(c)*** Does not have a right to participate in or receive distributions ~~[of profits of]~~ ***from*** the company or an obligation to contribute to the losses of the company; and

~~[4.]~~ ***(d)*** May have voting rights and other rights and privileges given to noneconomic members of the company by the articles of organization or operating agreement.

2. As used in this section, "distribution" has the meaning ascribed to it in section 19 of this act.

Sec. 22. NRS 86.291 is hereby amended to read as follows:

86.291 1. Except as otherwise provided in this section or in the articles of organization or operating agreement, management of a limited-liability company is vested in its members ~~[. in proportion to their contribution to its capital, as adjusted from time to time to reflect properly any additional contributions or withdrawals by the members.]~~ ***proportionally in interest thereof.***

2. Unless otherwise provided in the articles of organization or operating agreement, the management of a series is vested in the members associated with the series ~~[in proportion to their contribution to the capital of the series, as adjusted from time to time to reflect properly any additional contributions or withdrawals from the assets or income of the series by the members associated with the series.]~~ ***proportionally in interest thereof.***

3. If provision is made in the articles of organization, management of the company may be vested in a manager or managers, who may but need not be members. The manager or managers shall hold the offices, have the responsibilities and otherwise manage the company as set forth in the operating agreement of the company or, if the company has not adopted an operating agreement, then as prescribed by the members.

Sec. 22.5. NRS 86.321 is hereby amended to read as follows:

86.321 ~~[The]~~ ***For purposes of this chapter,*** ~~[contributions]~~ ***a contribution*** to capital of a member to a limited-liability company or series may ~~[be in cash,]~~ ***consist of tangible or intangible*** property or ***any other benefit to the limited-liability company or series, including, without limitation, money, real or personal property,***

services ~~[rendered,]~~ ***performed,*** or a promissory note or other binding obligation to contribute cash or property or to perform services.

Sec. 23. NRS 86.341 is hereby amended to read as follows:

86.341 A limited-liability company may, from time to time, ~~[divide the profits of its business and distribute them to its members, and any transferee as his or her interest may appear, upon the basis]~~ ***make distributions as*** ~~[stipulated]~~ ***provided*** in the ***articles of organization or*** operating agreement. If the ***articles of organization or*** operating agreement ~~[does]~~ ***do*** not otherwise provide, ~~[profits and losses]~~ ***the distributions*** must be allocated proportionately to the value, as shown in the records of the company, of the contributions made by each member and not returned.

Sec. 24. NRS 86.343 is hereby amended to read as follows:

86.343 1. Except as otherwise provided in subsection 2, a distribution ~~[of the profits and contributions of]~~ ***from*** a limited-liability company must not be made if, after giving it effect:

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

(b) Except as otherwise specifically permitted by the articles of organization, the total assets of the company would be less than the sum of its total liabilities.

2. A distribution ~~[of the profits and contributions of]~~ ***from*** a series of the company must not be made if, after giving it effect:

(a) The company would not be able to pay the debts of the series from assets of the series as debts of the series become due in the usual course of business; or

(b) Except as otherwise specifically permitted by the articles of organization, the total assets of the series would be less than the sum of the total liabilities of the series.

3. The manager ***or managers*** or, if management of the company is not vested in a manager or managers, the members ***,*** may base a determination that a distribution is not prohibited pursuant to this section on:

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

(b) A fair valuation, including unrealized appreciation and depreciation; or

(c) Any other method that is reasonable in the circumstances.

4. The effect of a distribution pursuant to this section must be measured:

(a) In the case of a distribution by purchase, redemption or other acquisition by the company of member's interests, as of the earlier of:

(1) The date on which money or other property is transferred or debt incurred by the company; or

(2) The date on which the member ceases to be a member with respect to his or her acquired interest.

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

(c) In all other cases, as of:

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

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

5. Indebtedness of the company, or a series of the company, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations pursuant to this section if its terms provide that payment of principal and interest are to be made only if and to the extent that payment of a distribution to the members could then be made pursuant to this section. If the indebtedness is issued as a distribution, each payment of principal or interest must be treated as a distribution, the effect of which must be measured as of the date of payment.

6. Except as otherwise provided in subsection 7, a member who receives a distribution in violation of this section is liable to the limited-liability company ***or the series, as applicable,*** for the amount of the distribution. This subsection does not affect the validity of an obligation or liability of a member created by an agreement or other applicable law for the amount of a distribution.

7. A member who receives a distribution from a limited-liability company ***or the series, as applicable,*** in violation of this section is not liable to the limited-liability company ***or such series, as applicable,*** and, in the event of its dissolution or insolvency, to its creditors, or any of them, for the amount of the distribution after the expiration of 3 years after the date of the distribution unless an action to recover the distribution from the member is commenced before the expiration of the 3-year period following the distribution.

8. Except as otherwise provided in the articles of organization or operating agreement, the manager or managers or, if the management of the company is not vested in a manager or managers, the members, may fix a record date for determining the members entitled to a distribution authorized pursuant to this

section. The record date must not precede the day on which it is fixed.

Sec. 25. NRS 86.5411 is hereby amended to read as follows:

86.5411 1. Whenever any limited-liability company becomes insolvent or suspends its ordinary business for want of money to carry on the business, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or members, any creditors holding ***at least*** 10 percent of the outstanding indebtedness ~~[, or members owning either 10 percent of the outstanding member's interests or 10 percent of the voting power]~~ of the company ~~[,]~~ ***or at least 10 percent in interest of the members,*** may, by petition setting forth the facts and circumstances of the case, apply to the district court of the county in which the principal office of the company is located or, if the principal office is not located in this State, to the district court in the county in which the company's registered office is located for a writ of injunction and the appointment of a receiver or receivers or trustee or trustees.

2. The court, being satisfied by affidavit or otherwise of the sufficiency of the application and of the truth of the allegations contained in the petition and upon hearing after such notice as the court by order may direct, shall proceed in a summary way to hear the affidavits, proofs and allegations which may be offered in behalf of the parties.

3. If, upon such inquiry it appears to the court that the company has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors or members so that its business cannot be conducted with safety to the public, it may issue an injunction to restrain the company and its managers, managing members, officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, money, lands, tenements or effects, except to a receiver appointed by the court, until the court otherwise orders.

4. The rights of a member set forth in this section may be exercised by a noneconomic member if specifically set forth in the articles of organization or the operating agreement.

Sec. 26. NRS 86.5415 is hereby amended to read as follows:

86.5415 1. ~~[Any member owning either 10 percent of the outstanding member's interests or]~~ ***Members holding not less than*** 10 percent ~~[of the voting power]~~ ***in interest*** of the limited-liability

company may apply to the district court in the county in which the company has its principal place of business or, if the principal place of business is not located in this State, to the district court in the county in which the company's registered office is located, for an order appointing a receiver, and by injunction restrain the company from exercising any of its powers or doing business whatsoever, except by and through a receiver appointed by the court, whenever irreparable injury to the company is threatened or being suffered and:

(a) The company has willfully violated its charter;

(b) Its managers or managing members have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs and the presumption established by subsection 3 has been rebutted with respect to such conduct or control;

(c) The assets of the company are in danger of waste, sacrifice or loss through attachment, foreclosure, litigation or otherwise; or

(d) The company has dissolved, but has not proceeded diligently to wind up its affairs, or to distribute its assets in a reasonable time.

2. The application may be for the appointment of a receiver, without at the same time applying for the dissolution of the company, and notwithstanding the absence, if any there be, of any action or other proceeding in the premises pending in such court.

3. In any such application for a receivership, it is sufficient for a temporary appointment if notice of the same is given to the company alone, by process as in the case of an application for a temporary restraining order or injunction, and the hearing thereon may be had after 5 days' notice unless the court directs a longer or different notice and different parties.

4. The court may, if good cause exists therefor, appoint one or more receivers for such purpose, but in all cases managers or managing members who have been guilty of no negligence nor active breach of duty must be preferred in making the appointment. The court may at any time for sufficient cause make a decree terminating the receivership, or dissolving the company and terminating its existence, or both, as may be proper.

5. Receivers so appointed have, among the usual powers, all the functions, powers, tenure and duties to be exercised under the direction of the court as are conferred on receivers and as provided pursuant to NRS 86.5412, 86.5413 and 86.5414, whether the company is insolvent or not.

6. The requirement ~~[as to ownership or voting]~~ ***to hold not less than 10 percent in interest*** set forth in subsection 1 shall be

maintained from the date of and throughout the pendency of the application for the appointment of a receiver of the company.

7. The rights of a member set forth in this section may be exercised by a noneconomic member if specifically set forth in the articles of organization or the operating agreement.

Sec. 27. NRS 86.5416 is hereby amended to read as follows:

86.5416 Whenever ~~[members holding member's interests entitling them to exercise at least]~~ a majority ***in interest*** of the ~~[voting power]~~ ***members*** of the limited-liability company ~~[shall]~~ have agreed upon a plan for the reorganization of the company and a resumption by it of the management and control of its property and business, the company may, with the consent of the district court:

1. Upon the reconveyance to it of its property and franchises, mortgage the same for such amount as may be necessary for the purposes of reorganization; and

2. Issue bonds or other evidences of indebtedness, or additional member's interests of one or more classes, or both bonds and member's interests, or certificates of investment or participation certificates, and use the same for the full or partial payment of the creditors who will accept the same, or otherwise dispose of the same for the purposes of the reorganization.

Sec. 28. Chapter 92A of NRS is hereby amended by adding thereto the provisions set forth as sections 29 and 30 of this act.

Sec. 29. ***"Advance notice statement" when used in reference to a proposed corporate action creating dissenter's rights that is taken or submitted for approval pursuant to a written consent of the stockholders or taken without a vote of the stockholders, means written notice of the proposed corporate action sent by the subject corporation to all stockholders of record entitled to assert dissenter's rights if the corporate action is effectuated. Such notice must:***

1. Be sent not later than 20 days before the effective date of the proposed corporate action;

2. Identify the proposed corporate action;

3. Provide that a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares must deliver a statement of intent to the subject corporation and set a date by which the subject corporation must receive the statement of intent, which may not be less than 15 days after the date the notice is sent, and state that the stockholder shall be deemed to have waived the right to assert dissenter's rights with respect to the shares unless the statement of intent is received by the subject corporation by such specified date; and

4. Be accompanied by a copy of NRS 92A.300 to 92A.500, inclusive.

Sec. 30. ***"Statement of intent" when used in reference to a proposed corporate action creating dissenter's rights, means written notice of a stockholder's intent to assert dissenter's rights and demand payment for the stockholder's shares if the corporate action is effectuated.***

Sec. 31. NRS 92A.005 is hereby amended to read as follows:

92A.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 92A.007 to 92A.092, inclusive, ***and sections 29 and 30 of this act*** have the meanings ascribed to them in those sections.

Sec. 32. NRS 92A.133 is hereby amended to read as follows:

92A.133 1. Unless otherwise expressly required by the articles of incorporation, no vote of the stockholders of a ~~[publicly traded]~~ ***domestic*** corporation is necessary to authorize a merger in which the ~~[publicly traded]~~ ***domestic*** corporation is a constituent entity if the plan of merger expressly permits or requires the merger to be effected under this section and:

(a) The ownership threshold requirement is satisfied without any offer, subject to the provisions of subsection 2; or

(b) The ownership threshold requirement is satisfied in whole or in part by way of an offer and ~~[the]~~ ***:***

(1) The domestic corporation has been a publicly traded corporation at all times during the period between:

(I) The date of the commencement of the offer or the date of the adoption of the plan of merger by the board of directors of the domestic corporation, whichever is earlier; and

(II) The effective date of the merger; and

(2) The plan of merger requires that:

~~[(1)]~~ ***(I)*** The merger must be effected as soon as practicable following the consummation of the offer if the merger is effected under this section; and

~~[(2)]~~ ***(II)*** Each outstanding share of each class or series of stock of the ~~[publicly traded]~~ ***domestic*** corporation that is the subject of, and not irrevocably accepted for purchase or exchange in, the offer must be converted in such merger into, or into the right to receive, the same amount and kind of cash, property, rights or securities to be paid for shares of such class or series of stock of the ~~[publicly traded]~~ ***domestic*** corporation irrevocably accepted for purchase or exchange in the offer. The plan of merger may expressly provide that the requirements of this ~~[subparagraph]~~

sub-subparagraph must not apply to specified categories of excluded shares.

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

(a) The ownership threshold requirement must be satisfied without counting the voting power of any shares of the stock of the ~~[publicly traded]~~ ***domestic*** corporation acquired from the ~~[publicly traded]~~ ***domestic*** corporation, or any of the directors, officers, affiliates or associates thereof, within the 6 months immediately preceding the adoption of the plan of merger ~~[; and]~~ ***by the board of directors of the domestic corporation;***

(b) The ~~[publicly traded]~~ ***domestic*** corporation must provide notice of the merger to all of its stockholders not less than 30 days before the effective date of the merger ~~[.]~~ ***; and***

(c) The domestic corporation must have been a publicly traded corporation at all times during the period between the date of the adoption of the plan of merger by the board of directors of the domestic corporation and the effective date of the merger.

3. This section does not apply to circumvent or contravene the provisions of NRS 78.378 to 78.3793, inclusive, or NRS 78.411 to 78.444, inclusive.

4. As used in this section:

(a) "Affiliate" has the meaning ascribed to it in NRS 78.412.

(b) "Associate" has the meaning ascribed to it in NRS 78.413.

(c) "Consummation" means the irrevocable acceptance for purchase or exchange of shares tendered pursuant to an offer.

(d) "Excluded shares" means:

(1) Rollover shares; and

(2) Shares of the ~~[publicly traded]~~ ***domestic*** corporation that are owned beneficially or of record at the commencement of an offer by:

(I) The ~~[publicly traded]~~ ***domestic*** corporation;

(II) The constituent entity making the offer;

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

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

(e) "Offer" means an offer made by the other constituent entity in the merger for all of the outstanding shares of each class or series of stock of the ~~[publicly traded]~~ ***domestic*** corporation listed on a national securities exchange, on the terms provided in the plan of merger that, absent this section, would be entitled to vote on the

~~[adoption]~~ ***approval*** of the plan of merger. The other constituent entity in the merger may, but is not required to, engage in the consummation of separate offers for separate classes or series of the stock of the ~~[publicly traded]~~ ***domestic*** corporation. An offer may, but is not required to:

(1) Exclude any excluded shares; and

(2) Be conditioned on the tender of a minimum number or proportion of shares of any class or series of the stock of the ~~[publicly traded]~~ ***domestic*** corporation.

(f) "Owned affiliate" means, with respect to a constituent entity, any other person who owns, directly or indirectly, all of the outstanding equity interests of the constituent entity, or any direct or indirect wholly owned subsidiary of the constituent entity or other person.

(g) "Ownership threshold requirement" means that the voting power of the stock of the ~~[publicly traded]~~ ***domestic*** corporation otherwise owned beneficially or of record by the other constituent entity in the merger or any of the owned affiliates of the other constituent entity, together with the voting power of any rollover shares and any shares irrevocably accepted for purchase or exchange pursuant to any offer and received before the expiration of the offer by the agent or depositary appointed to facilitate the consummation of the offer, equals at least that proportion of the voting power of the stock, and of each class or series thereof, of the ~~[publicly traded]~~ ***domestic*** corporation that, absent this section, would be required to approve the plan of merger under this chapter and the articles of incorporation and bylaws of the ~~[publicly traded]~~ ***domestic*** corporation. For the purposes of this paragraph, shares are received:

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

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

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

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

(i) "Rollover shares" means any shares of any class or series of the capital stock of the ~~[publicly traded]~~ ***domestic*** corporation that are the subject of a written agreement requiring such shares to be contributed or otherwise transferred to the other constituent entity in the merger or any of the owned affiliates of the other constituent entity in exchange for shares or other equity interest in the other constituent entity or any of its owned affiliates. Shares must cease to be rollover shares if, as of the effective time of the merger, the shares have not been contributed or otherwise transferred pursuant to the written agreement.

Sec. 33. NRS 92A.140 is hereby amended to read as follows:

92A.140 1. Unless otherwise provided in the partnership agreement or the certificate of limited partnership, a plan of merger, conversion or exchange involving a domestic limited partnership must be approved by all general partners and by limited partners who own a majority in interest of the partnership then owned by all the limited partners. If the partnership has more than one class of limited partners, the plan of merger, conversion or exchange must be approved by those limited partners who own a majority in interest of the partnership then owned by the limited partners in each class.

2. ~~[For the purposes of this section, "majority in interest of the partnership" means a majority of the interests in capital and profits of the limited partners of a domestic limited partnership which:~~

~~(a) In the case of capital, is determined as of the date of the approval of the plan of merger, conversion or exchange.~~

~~(b) In the case of profits, is based on any reasonable estimate of profits for the period beginning on the date of the approval of the plan of merger, conversion or exchange and ending on the anticipated date of the termination of the domestic limited partnership, including any present or future division of profits distributed pursuant to the partnership agreement.~~

~~3.]~~ If any partner of a domestic limited partnership, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because the partner will be the owner of an owner's interest in the resulting entity, then that partner must also approve the plan of conversion.

3. As used in this section, "majority in interest of the partnership" means a majority of the total contributions of the limited partners to the capital of the partnership, as adjusted from time to time to reflect properly any additional contributions or withdrawals by the partners.

Sec. 34. NRS 92A.150 is hereby amended to read as follows:

92A.150 1. Unless otherwise provided in the articles of organization or an operating agreement:

(a) A plan of merger, conversion or exchange involving a domestic limited-liability company must be approved by ~~[members who own]~~ a majority ~~[of the interests in the current profits of the company then owned by all]~~ ***in interest*** of the members; and

(b) If the company has more than one class of members, the plan of merger, conversion or exchange must be approved by ~~[those members who own]~~ a majority ~~[of the interests in the current profits]~~ ***in interest*** of the ~~[company then owned by the]~~ members in each class.

2. If any manager or member of a domestic limited-liability company, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because the manager or member will be the owner of an owner's interest in the resulting entity, then that manager or member must also approve the plan of conversion.

3. As used in this section, "in interest" has the meaning ascribed to it in section 18 of this act.

Sec. 35. NRS 92A.390 is hereby amended to read as follows:

92A.390 1. There is no right of dissent pursuant to paragraph (a), (b), (c) or (f) of subsection 1 of NRS 92A.380 in favor of stockholders of any class or series which is:

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

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

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

➥ unless the articles of incorporation of the corporation issuing the class or series or the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise.

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

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

(b) The day before the effective date of such corporate action if ~~[there]~~ ***:***

(1) There is no meeting of stockholders ~~[.]~~ ***to act upon the corporate action otherwise requiring dissenter's rights; or***

(2) The corporate action is a merger described in NRS 92A.133.

3. Subsection 1 is not applicable and dissenter's rights are available pursuant to NRS 92A.380 for the holders of any class or series of shares who are required by the terms of the corporate action to accept for such shares anything other than:

(a) Cash;

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

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

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

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

6. There is no right of dissent with respect to any share of stock that was not issued and outstanding on the date of the first announcement to the news media or to the stockholders of the terms of the proposed action requiring dissenter's rights.

Sec. 36. NRS 92A.410 is hereby amended to read as follows:

92A.410 1. If a proposed corporate action creating dissenter's rights is submitted ***for approval pursuant*** to a vote at a stockholders' meeting, the notice of the meeting must state that stockholders are, are not or may be entitled to assert dissenter's rights under NRS 92A.300 to 92A.500, inclusive. If the domestic corporation concludes that dissenter's rights are or may be available, a copy of NRS 92A.300 to 92A.500, inclusive, must accompany the meeting notice sent to those stockholders of record entitled to exercise dissenter's rights.

2. If ~~[the]~~ ***a*** corporate action creating dissenter's rights is ~~[taken]~~ ***submitted for approval*** ~~[by]~~ ***pursuant to a*** written consent

of the stockholders or ***taken*** without a vote of the stockholders, the domestic corporation ***:***

(a) May send an advance notice statement with respect to the proposed corporate action; and

(b) If the proposed corporate action is taken, the domestic corporation shall notify in writing all stockholders of record entitled to assert dissenter's rights that the action was taken and send them the dissenter's notice described in NRS 92A.430.

Sec. 37. NRS 92A.420 is hereby amended to read as follows:

92A.420 1. If a proposed corporate action creating dissenter's rights is submitted to a vote at a stockholders' meeting, a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares:

(a) Must deliver to the subject corporation, before the vote is taken, ~~[written notice of the stockholder's]~~ ***a statement of*** intent ~~[to demand payment for his or her shares if]~~ ***with respect to*** the proposed ***corporate*** action ***;*** ~~[is effectuated;]~~ and

(b) Must not vote, or cause or permit to be voted, any of ~~[his or her]~~ ***the stockholder's*** shares of such class or series in favor of the proposed ***corporate*** action.

2. If a proposed corporate action creating dissenter's rights is taken ***without a vote of the stockholders or submitted for approval*** ~~[by]~~ ***pursuant to a*** written consent of the stockholders, a stockholder who wishes to assert dissenter's rights with respect to any class or series of shares ~~[must]~~ ***:***

(a) If an advance notice statement is sent by the subject corporation pursuant to NRS 92A.410, must deliver a statement of intent with respect to any class or series of shares to the subject corporation by the date specified in the advance notice statement; and

(b) Must not consent to or approve the proposed corporate action with respect to such class or series.

3. A stockholder who does not satisfy the requirements of subsection 1 or 2 and NRS 92A.400 is not entitled to payment for his or her shares under this chapter.

Sec. 38. NRS 78.4265, 78.428, 78.432 and 86.065 are hereby repealed.