

SENATE BILL NO. 427—COMMITTEE ON JUDICIARY

MARCH 22, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to business entities. (BDR 7-306)

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

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

AN ACT relating to business entities; revising provisions governing the resignation of registered agents; revising provisions governing the records kept by a corporation and made available for inspection to certain persons; revising provisions concerning certain distributions to stockholders; revising provisions governing meetings of stockholders of corporations; authorizing the removal of a director of a corporation under certain circumstances; revising provisions relating to the appointment of a receiver for a private corporation; establishing the appointment of a receiver for a limited-liability company; revising the definition of “sales representative” for purposes relating to securities; revising provisions relating to limitations on the right of a stockholder to dissent; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

- 1 Existing law requires a registered agent who wishes to resign to file an affidavit
- 2 with the Secretary of State stating that written notice was provided to each
- 3 represented entity. (NRS 77.370) **Section 1** of this bill eliminates the requirement
- 4 to file such an affidavit.
- 5 Existing law regulates business entities, including private corporations.
- 6 (Chapter 78 of NRS) **Sections 2-9** of this bill revise certain provisions relating to
- 7 private corporations. Existing law requires a private corporation to keep, among
- 8 other documents, a stock ledger or duplicate thereof, and make such records
- 9 available for inspection after a demand by certain persons. (NRS 78.105) **Sections**
- 10 **2-5** of this bill revise such requirements by: (1) clarifying which records must be
- 11 kept by the corporation and made available for inspection; (2) clarifying which
- 12 persons are entitled to inspect such records; and (3) revising the requirements to



13 submit a demand to inspect records made available for inspection. **Section 6** of this  
14 bill establishes the record date fixed by the board of directors for the purpose of  
15 making distributions to stockholders. **Section 8** of this bill authorizes the removal  
16 of a director of a corporation under certain circumstances. **Section 9** of this bill  
17 revises provisions related to the appointment of a receiver.

18 Existing law governs the meeting of stockholders, including the requirements  
19 for participation and whether a quorum is present at such a meeting. (NRS 78.320)  
20 **Section 7** of this bill revises requirements for determining whether a quorum is  
21 present at a meeting of stockholders.

22 Existing law defines "sales representative" as a natural person who is  
23 authorized to act for a broker-dealer or issuer under certain circumstances related to  
24 the sale of securities. A partner, officer or director or other similar situated person  
25 is authorized to act for a broker-dealer or issuer if such a person comes within the  
26 definition. (NRS 90.285) **Section 29** of this bill revises that definition by  
27 authorizing a partner, officer or director or other similar situated person to act under  
28 such circumstances if he or she does not fail to meet certain requirements of the  
29 Securities and Exchange Commission.

30 Existing law provides for the appointment of a receiver for the creditors and  
31 stockholders of a private corporation. (NRS 78.630-78.720) **Sections 10-28** of this  
32 bill enact similar provisions for a limited-liability company.

33 **Section 30** of this bill expands provisions relating to limitations on the right of  
34 a stockholder to dissent.

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

1 **Section 1.** NRS 77.370 is hereby amended to read as follows:

2 77.370 1. A registered agent may resign at any time with  
3 respect to a represented entity by filing with the Secretary of State a  
4 statement of resignation signed by or on behalf of the agent which  
5 states:

- 6 (a) The name of the entity;  
7 (b) The name of the agent; and  
8 (c) That the agent resigns from serving as agent for service of  
9 process for the entity.

10 2. A statement of resignation takes effect on the earlier of the  
11 31st day after the day on which it is filed or the appointment of a  
12 new registered agent for the represented entity.

13 3. The registered agent shall promptly furnish the represented  
14 entity with notice in a record of the date on which a statement of  
15 resignation was filed . ~~[and shall file with the Secretary of State an~~  
16 ~~affidavit stating that written notice of the resignation has been~~  
17 ~~provided to each represented entity. The affidavit must include the~~  
18 ~~name of each represented entity that was provided notice, but is not~~  
19 ~~required to include the contact information of the represented entity~~  
20 ~~or the names of the interest holders of the represented entity.]~~ The

21 registered agent shall keep a copy of each notice provided to a  
22 represented entity on file for 1 year after the date of filing the



1 statement of resignation and shall make any such copy available to  
2 the Secretary of State upon request.

3 4. When a statement of resignation takes effect, the registered  
4 agent ceases to have responsibility for any matter tendered to it as  
5 agent for the represented entity. A resignation under this section  
6 does not affect any contractual rights the entity may have against the  
7 agent or that the agent may have against the entity.

8 5. A registered agent may resign with respect to a represented  
9 entity whether or not the entity is in good standing.

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

11 78.010 1. As used in this chapter:

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

15 (b) "Articles," "articles of incorporation" and "certificate of  
16 incorporation" are synonymous terms and, unless the context  
17 otherwise requires, include all certificates filed pursuant to NRS  
18 78.030, 78.180, 78.185, 78.1955, 78.209, 78.380, 78.385, 78.390,  
19 78.725 and 78.730 and any articles of merger, conversion, exchange  
20 or domestication filed pursuant to NRS 92A.200 to 92A.240,  
21 inclusive, or 92A.270. Unless the context otherwise requires, these  
22 terms include restated articles and certificates of incorporation.

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

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

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

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

32 (f) "Receiver" includes receivers and trustees appointed by a  
33 court as provided in this chapter or in chapter 32 of NRS.

34 (g) "Registered agent" has the meaning ascribed to it in  
35 NRS 77.230.

36 (h) "Registered office" means the office maintained at the street  
37 address of the registered agent.

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



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

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

5 78.105 1. A corporation shall keep a copy of the following  
6 records at its principal office or with its custodian of records whose  
7 name and street address are available at the corporation's registered  
8 office:

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

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

13 (c) A stock ledger or a duplicate stock ledger, revised annually  
14 not later than 60 days after the date by which an annual list is  
15 required to be filed pursuant to NRS 78.150, containing the names,  
16 alphabetically arranged, of all persons who are stockholders of  
17 record of the corporation, showing their places of residence, if  
18 known, and the number of shares held by them respectively. *A*  
19 *corporation is not required to keep a list of any person who is a*  
20 *beneficial owner of any shares who is not simultaneously the*  
21 *stockholder of record of such shares, or any other information*  
22 *concerning any person having an interest in the corporation,*  
23 *except for the stock ledger or duplicate stock ledger required by*  
24 *this paragraph. Absent manifest error or actual fraud, the stock*  
25 *ledger of the corporation, as maintained by the corporation or its*  
26 *designated transfer agent, shall conclusively determine the*  
27 *stockholders of record of the corporation.*

28 2. Any person who has been a stockholder of record of a  
29 corporation for at least 6 months immediately preceding the  
30 demand, or any person holding, or thereunto authorized in writing  
31 by the holders of, at least 5 percent of all of its outstanding shares,  
32 upon at least 5 days' written demand, *including the affidavit*  
33 *required pursuant to subsection 3,* is entitled to inspect in person or  
34 by agent or attorney, during usual business hours, the records  
35 required by subsection 1 and make copies therefrom. Holders of  
36 voting trust certificates representing shares of the corporation must  
37 be regarded as stockholders for the purpose of this subsection. If the  
38 records required by subsection 1 are kept outside of this State, a  
39 stockholder or other person entitled to inspect those records may  
40 serve a demand to inspect the records upon the corporation's  
41 registered agent. Upon such a request, the corporation shall send  
42 copies of the requested records, either in paper or electronic form, to  
43 the stockholder or other person entitled to inspect the requested  
44 records within 10 business days after service of the request upon the  
45 registered agent. Every corporation that neglects or refuses to keep



1 the records required by subsection 1 open for inspection, as required  
2 in this subsection, shall forfeit to the State the sum of \$25 for every  
3 day of such neglect or refusal.

4 3. *Together with the written demand required pursuant to*  
5 *subsection 2, a stockholder or other person who wishes to inspect*  
6 *the records required by subsection 1 or make copies therefrom*  
7 *shall furnish an affidavit to the corporation stating that the*  
8 *inspection is not desired for a purpose which is in the interest of a*  
9 *business or object other than the business of the corporation and*  
10 *that the stockholder or other person has not at any time sold or*  
11 *offered for sale any list of stockholders or any domestic or foreign*  
12 *corporation or aided or abetted any person in procuring any such*  
13 *record of stockholders for any such purpose.*

14 4. If any corporation willfully neglects or refuses to make any  
15 proper entry in the stock ledger or duplicate copy thereof, or  
16 neglects or refuses to permit an inspection of the records required by  
17 subsection 1 upon demand by a person entitled to inspect them, or  
18 refuses to permit copies to be made therefrom, as provided in  
19 subsection 2, the corporation is liable to the person injured for all  
20 damages resulting to the person therefrom.

21 ~~[4.]~~ 5. In every instance where an attorney or other agent of  
22 the stockholder seeks the right of inspection, the demand must be  
23 accompanied by a power of attorney signed by the stockholder  
24 authorizing the attorney or other agent to inspect on behalf of the  
25 stockholder.

26 ~~[5.]~~ 6. The right to copy records under subsection 2 includes,  
27 if reasonable, the right to make copies by photographic, xerographic  
28 or other means.

29 ~~[6.]~~ 7. The corporation may impose a reasonable charge to  
30 recover the costs of labor and materials and the cost of copies of any  
31 records provided to the stockholder.

32 **Sec. 4.** NRS 78.107 is hereby amended to read as follows:

33 78.107 1. An inspection authorized by NRS 78.105 may be  
34 denied to a stockholder or other person upon the refusal of the  
35 stockholder or other person to furnish to the corporation ~~[an] the~~  
36 ~~affidavit [that the inspection is not desired for a purpose which is in~~  
37 ~~the interest of a business or object other than the business of the~~  
38 ~~corporation and that the stockholder or other person has not at any~~  
39 ~~time sold or offered for sale any list of stockholders of any domestic~~  
40 ~~or foreign corporation or aided or abetted any person in procuring~~  
41 ~~any such record of stockholders for any such purpose.]~~ *required*  
42 *pursuant to subsection 3 of NRS 78.105.*

43 2. It is a defense to any action for penalties or damages under  
44 NRS 78.105 that the person suing has at any time sold, or offered  
45 for sale, any list of stockholders of the corporation, or any other



1 corporation, or has aided or abetted any person in procuring any  
2 such stock list for any such purpose, or that the person suing desired  
3 inspection for a purpose which is in the interest of a business or  
4 object other than the business of the corporation.

5 3. This section does not impair the power or jurisdiction of any  
6 court to compel the production for examination of the ~~books~~  
7 *records required by subsection 1* of ~~the corporation~~ *NRS 78.105* in  
8 any proper case. *This subsection does not authorize or establish*  
9 *any right of inspection or examination independent from the right*  
10 *of inspection or examination authorized by NRS 78.105.*

11 **Sec. 5.** NRS 78.257 is hereby amended to read as follows:

12 78.257 1. Any person who has been a stockholder of record  
13 of any corporation and owns not less than 15 percent of all of the  
14 issued and outstanding shares of the stock of such corporation or has  
15 been authorized in writing by the holders of at least 15 percent of all  
16 its issued and outstanding shares, upon at least 5 days' written  
17 demand, *including the affidavit required pursuant to subsection 2,*  
18 is entitled to inspect in person or by agent or attorney, during normal  
19 business hours, the books of account and all financial records of the  
20 corporation, to make copies of records, and to conduct an audit of  
21 such records. Holders of voting trust certificates representing 15  
22 percent of the issued and outstanding shares of the corporation are  
23 regarded as stockholders for the purpose of this subsection. The  
24 right of stockholders to inspect the corporate records may not be  
25 limited in the articles or bylaws of any corporation.

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

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

34 ~~3.~~ 4. The rights authorized by subsection 1 may be denied to  
35 any stockholder upon the stockholder's refusal to furnish the  
36 corporation an affidavit ~~that such inspection, copies or audit is not~~  
37 ~~desired for any purpose not related to his or her interest in the~~  
38 ~~corporation as a stockholder.~~ *required pursuant to subsection 2.*  
39 Any stockholder or other person, exercising rights set forth in  
40 subsection 1, who uses or attempts to use information, records or  
41 other data obtained from the corporation, for any purpose not related  
42 to the stockholder's interest in the corporation as a stockholder, is  
43 guilty of a gross misdemeanor.

44 ~~4.~~ 5. If any officer or agent of any corporation keeping  
45 records in this State willfully neglects or refuses to permit an



1 inspection of the books of account and financial records upon  
2 demand by a person entitled to inspect them, or refuses to permit an  
3 audit to be conducted ~~§~~ *by such a person*, as provided in  
4 subsection 1, the corporation shall forfeit to the State the sum of  
5 \$100 for every day of such neglect or refusal, and the corporation,  
6 officer or agent thereof is jointly and severally liable to the person  
7 injured for all damages resulting to the person.

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

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

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

15 → in the action or proceeding.

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

29 **Sec. 6.** NRS 78.288 is hereby amended to read as follows:

30 78.288 1. Except as otherwise provided in subsection 2 and  
31 the articles of incorporation, a board of directors may authorize and  
32 the corporation may make distributions to its stockholders,  
33 including distributions on shares that are partially paid.

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

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

37 (b) Except as otherwise specifically allowed by the articles of  
38 incorporation, the corporation's total assets would be less than the  
39 sum of its total liabilities plus the amount that would be needed, if  
40 the corporation were to be dissolved at the time of distribution, to  
41 satisfy the preferential rights upon dissolution of stockholders  
42 whose preferential rights are superior to those receiving the  
43 distribution.

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





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

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

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

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

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

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

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

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

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

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

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

21 5. A corporation's indebtedness to a stockholder incurred by  
22 reason of a distribution made in accordance with this section is at  
23 parity with the corporation's indebtedness to its general unsecured  
24 creditors except to the extent subordinated by agreement.

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

34 *7. The board of directors may fix a record date for*  
35 *determining stockholders entitled to a distribution authorized by*  
36 *the board of directors pursuant to this section, which record date*  
37 *must not precede the date upon which the resolution fixing the*  
38 *record date is adopted.*

39 **Sec. 7.** NRS 78.320 is hereby amended to read as follows:

40 78.320 1. Unless this chapter, the articles of incorporation or  
41 the bylaws provide for different proportions:

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





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

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

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

14 4. Unless otherwise restricted by the articles of incorporation  
15 or bylaws, stockholders may participate in a meeting of stockholders  
16 through electronic communications, videoconferencing,  
17 teleconferencing or other available technology if the corporation has  
18 implemented reasonable measures to:

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

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

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

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

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

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

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

41 *8. Unless otherwise provided in the articles of incorporation*  
42 *or the bylaws, once a share is represented in person or by proxy*  
43 *for any purpose at a meeting, the share shall be deemed present*  
44 *for purposes of determining a quorum for the remainder of the*



1 *meeting and for any adjournment of the meeting unless a new*  
2 *record date is or must be fixed for the adjourned meeting.*

3 **Sec. 8.** NRS 78.335 is hereby amended to read as follows:

4 78.335 1. Except as otherwise provided in this section, any  
5 director or one or more of the incumbent directors may be removed  
6 ~~{from office}~~ *as a director only* by the vote of stockholders  
7 representing not less than two-thirds of the voting power of the  
8 issued and outstanding stock entitled to vote.

9 2. In the case of corporations which have provided in their  
10 articles of incorporation for the election of directors by cumulative  
11 voting, any director or directors who constitute fewer than all of the  
12 incumbent directors may not be removed ~~{from office}~~ *as a director*  
13 at any one time or as the result of any one transaction under the  
14 provisions of this section except upon the vote of stockholders  
15 owning sufficient shares to prevent each director's election ~~{to~~  
16 ~~office}~~ at the time of removal.

17 3. The articles of incorporation may require the concurrence of  
18 more than two-thirds of the voting power of the issued and  
19 outstanding stock entitled to vote in order to remove one or more  
20 directors. ~~{from office.}~~

21 4. Whenever the holders of any class or series of shares are  
22 entitled to elect one or more directors, unless otherwise provided in  
23 the articles of incorporation, removal of any such director requires  
24 only the proportion of votes, specified in subsection 1, of the holders  
25 of that class or series, and not the votes of the outstanding shares as  
26 a whole.

27 5. All vacancies, including those caused by an increase in the  
28 number of directors, may be filled by a majority of the remaining  
29 directors, though less than a quorum, unless it is otherwise provided  
30 in the articles of incorporation.

31 6. Unless otherwise provided in the articles of incorporation,  
32 when ~~{one or more directors give}~~ *any director gives* notice of  
33 resignation to the board, effective at a future date, the board may fill  
34 the vacancy ~~{or vacancies}~~ to take effect when the resignation ~~{or~~  
35 ~~resignations become}~~ *becomes* effective ~~{, each}~~. *The* director so  
36 appointed *is* to hold ~~{office}~~ *such position* during the remainder of  
37 the term of office of the resigning director. ~~{or directors.}~~

38 7. If the articles or bylaws provide that the holders of any class  
39 or series of shares are entitled to elect one or more directors under  
40 specified circumstances and that, upon termination of those  
41 specified circumstances, the right terminates and the directors  
42 elected by the holders of the class or series of shares are no longer  
43 directors, the termination of a director pursuant to such provisions in  
44 the articles or bylaws shall not be deemed a removal of the director  
45 pursuant to this section.



1       8. *If a court of competent jurisdiction, or other governmental*  
2 *entity or regulatory agency with authority over the corporation*  
3 *requires, without providing any other reasonable and practicable*  
4 *alternative, that any specified director of a corporation cease to be*  
5 *a director in order for the corporation to obtain, or avoid the*  
6 *suspension, conditioning or revocation of, any permit, license,*  
7 *registration, franchise, finding of suitability or similar*  
8 *authorization or approval required for the conduct of all or any*  
9 *material portion of the business of the corporation or any of its*  
10 *affiliates taken as a whole and such requirement is not appealable*  
11 *or has otherwise become final after declination or exhaustion of*  
12 *all appeals therefrom, then that specified director may be removed*  
13 *as a director by not less than a majority of the voting power of the*  
14 *other directors, even if less than a quorum, acting at a meeting*  
15 *and not by written consent and without a vote of the stockholders.*

16       **Sec. 9.** NRS 78.650 is hereby amended to read as follows:

17       78.650 1. Any holder or holders of one-tenth of the issued  
18 and outstanding stock may apply to the district court in the county in  
19 which the corporation has its principal place of business or, if the  
20 principal place of business is not located in this State, to the district  
21 court in the county in which the corporation's registered office is  
22 located, for an order ~~[dissolving the corporation and]~~ appointing a  
23 receiver, ~~[to wind up its affairs,]~~ and by injunction restrain the  
24 corporation from exercising any of its powers or doing business  
25 whatsoever, except by and through a receiver appointed by the  
26 court, whenever ~~[ ]~~ *irreparable injury to the corporation is*  
27 *threatened or being suffered and:*

28       (a) The corporation has willfully violated its charter;

29       (b) Its trustees or directors have been guilty of fraud or collusion  
30 or gross mismanagement in the conduct or control of its affairs ~~[ ]~~  
31 *and any presumption established by subsection 3 has been*  
32 *rebutted with respect to such conduct or control;*

33       (c) ~~[Its trustees or directors have been guilty of misfeasance,  
34 ~~malfeasance or nonfeasance;~~~~

35       ~~—(d) The corporation is unable to conduct the business or~~  
36 ~~conserve its assets by reason of the act, neglect or refusal to function~~  
37 ~~of any of the directors or trustees;~~

38       ~~—(e) ]~~ The assets of the corporation are in danger of waste,  
39 sacrifice or loss through attachment, foreclosure, litigation or  
40 otherwise;

41       ~~[(f) The corporation has abandoned its business;~~

42       ~~—(g) ] or~~

43       (d) The corporation *has dissolved, but* has not proceeded  
44 diligently to wind up its affairs, or to distribute its assets in a  
45 reasonable time. ~~[ ]~~



1 ~~—(h) The corporation has become insolvent;~~  
2 ~~—(i) The corporation, although not insolvent, is for any cause not~~  
3 ~~able to pay its debts or other obligations as they mature; or~~  
4 ~~—(j) The corporation is not about to resume its business with~~  
5 ~~safety to the public.]~~

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

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

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

23 5. Receivers so appointed have, among the usual powers, all  
24 the functions, powers, tenure and duties to be exercised under the  
25 direction of the court as are conferred on receivers and as provided  
26 in NRS 78.635, 78.640 and 78.645, whether the corporation is  
27 insolvent or not.

28 *6. The ownership requirement set forth in subsection 1 must*  
29 *be maintained from the date and throughout the pendency of the*  
30 *application for the appointment of a receiver of the corporation.*

31 **Sec. 10.** Chapter 86 of NRS is hereby amended by adding  
32 thereto the provisions set forth as sections 11 to 28, inclusive, of this  
33 act.

34 **Sec. 11. 1. Whenever any limited-liability company**  
35 ***becomes insolvent or suspends its ordinary business for want of***  
36 ***money to carry on the business, or if its business has been and is***  
37 ***being conducted at a great loss and greatly prejudicial to the***  
38 ***interest of its creditors or members, any creditors holding 10***  
39 ***percent of the outstanding indebtedness, or members owning***  
40 ***either 10 percent of the outstanding member's interests or 10***  
41 ***percent of the voting power of the company, may, by petition***  
42 ***setting forth the facts and circumstances of the case, apply to the***  
43 ***district court of the county in which the principal office of the***  
44 ***company is located or, if the principal office is not located in this***  
45 ***State, to the district court in the county in which the company's***



1 registered office is located for a writ of injunction and the  
2 appointment of a receiver or receivers or trustee or trustees.

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

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

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

24 **Sec. 12.** 1. The district court, at the time of ordering the  
25 injunction, or at any time afterwards, may appoint a receiver or  
26 receivers or a trustee or trustees for the creditors and members of  
27 the limited-liability company.

28 2. Receivers or trustees shall have full power and authority:

29 (a) To demand, sue for, collect, receive and take into  
30 possession all the goods and chattels, rights and credits, moneys  
31 and effects, lands and tenements, books, papers, choses in action,  
32 bills, notes and property, of every description of the company;

33 (b) To institute suits at law or in equity for the recovery of any  
34 estate, property, damages or demands existing in favor of the  
35 company;

36 (c) In their discretion to compound and settle with any debtor  
37 or creditor of the company, or with persons having possession of  
38 its property or in any way responsible at law or in equity to the  
39 company at the time of its insolvency or suspension of business, or  
40 afterwards, upon such terms and in such manner as they shall  
41 deem just and beneficial to the company; and

42 (d) In case of mutual dealings between the company and any  
43 person to allow just setoffs in favor of such person in all cases in  
44 which the same ought to be allowed according to law and equity.



1       3. A debtor who shall have in good faith paid a debt to the  
2 company without notice of its insolvency or suspension of  
3 business, shall not be liable therefor, and the receiver or receivers  
4 or trustee or trustees shall have power to sell, convey and assign  
5 all the estate, rights and interests, and shall hold and dispose of  
6 the proceeds thereof under the directions of the district court.

7       **Sec. 13.** All real and personal property of an insolvent  
8 limited-liability company, wheresoever situated, and all its  
9 franchises, rights, privileges and effects shall, upon the  
10 appointment of a receiver, forthwith vest in the receiver, and the  
11 company shall be divested of the title thereto.

12       **Sec. 14.** 1. Whenever a receiver shall have been appointed  
13 pursuant to section 12 of this act and it shall afterwards appear  
14 that the debts of the limited-liability company have been paid or  
15 provided for, and that there remains or can be obtained by further  
16 contributions sufficient capital to enable it to resume its business,  
17 the district court may, in its discretion, a proper case being shown,  
18 direct the receiver to reconvey to the company all its property,  
19 franchises, rights and effects, and thereafter the company may  
20 resume control of and enjoy the same as fully as if the receiver  
21 had never been appointed.

22       2. In every case in which the district court shall not direct  
23 such reconveyance, the court may, in its discretion, make a decree  
24 dissolving the company and declaring its charter forfeited and  
25 void.

26       **Sec. 15.** 1. Any member owning either 10 percent of the  
27 outstanding member's interests or 10 percent of the voting power  
28 of the limited-liability company may apply to the district court in  
29 the county in which the company has its principal place of  
30 business or, if the principal place of business is not located in this  
31 State, to the district court in the county in which the company's  
32 registered office is located, for an order appointing a receiver, and  
33 by injunction restrain the company from exercising any of its  
34 powers or doing business whatsoever, except by and through a  
35 receiver appointed by the court, whenever irreparable injury to the  
36 company is threatened or being suffered and:

37       (a) The company has willfully violated its charter;

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

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



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

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

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

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

21 5. *Receivers so appointed have, among the usual powers, all*  
22 *the functions, powers, tenure and duties to be exercised under the*  
23 *direction of the court as are conferred on receivers and as*  
24 *provided pursuant to sections 12, 13 and 14 of this act, whether*  
25 *the company is insolvent or not.*

26 6. *The requirement as to ownership or voting set forth in*  
27 *subsection 1 shall be maintained from the date of and throughout*  
28 *the pendency of the application for the appointment of a receiver*  
29 *of the company.*

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

33 **Sec. 16.** *Whenever members holding member's interests*  
34 *entitling them to exercise at least a majority of the voting power of*  
35 *the limited-liability company shall have agreed upon a plan for the*  
36 *reorganization of the company and a resumption by it of the*  
37 *management and control of its property and business,*  
38 *the company may, with the consent of the district court:*

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

42 2. *Issue bonds or other evidences of indebtedness, or*  
43 *additional member's interests of one or more classes, or both*  
44 *bonds and member's interests, or certificates of investment or*  
45 *participation certificates, and use the same for the full or partial*





1 *payment of the creditors who will accept the same, or otherwise*  
2 *dispose of the same for the purposes of the reorganization.*

3 **Sec. 17.** 1. *The court shall have power to send for persons*  
4 *and papers and to examine any persons, including the creditors*  
5 *and claimants, and the managers, managing members,*  
6 *officers and agents of the limited-liability company, on oath or*  
7 *affirmation, respecting its affairs and transactions and its estate,*  
8 *money, goods, chattels, credits, notes, bills and choses in action,*  
9 *real and personal estate and effects of every kind, and also*  
10 *respecting its debts, obligations, contracts and liabilities, and the*  
11 *claims against it.*

12 2. *If any person shall refuse to be sworn or affirmed, or to*  
13 *make answers to such questions as shall be put to the person, or*  
14 *refuse to declare the whole truth touching the subject matter of the*  
15 *examination, the district court may commit such person to a place*  
16 *of confinement, there to remain until the person shall submit to be*  
17 *examined and pay all the costs of the proceedings against the*  
18 *person.*

19 **Sec. 18.** *The receiver, upon order of the court, with the*  
20 *assistance of a peace officer, may break open, in the daytime, the*  
21 *houses, shops, warehouses, doors, trunks, chests or other places of*  
22 *the limited-liability company where any of its goods, chattels,*  
23 *choses in action, notes, bills, moneys, books, papers or other*  
24 *writings or effects have been usually kept, or shall be, and take*  
25 *possession of the same and of the lands and tenements belonging*  
26 *to the company.*

27 **Sec. 19.** *The receiver, as soon as convenient, shall lay before*  
28 *the district court a full and complete inventory of all the estate,*  
29 *property and effects of the limited-liability company, its nature and*  
30 *probable value, and an account of all debts due from and to it, as*  
31 *nearly as the same can be ascertained, and make a report to the*  
32 *court of his or her proceedings at least every 3 months thereafter*  
33 *during the continuance of the trust, and whenever the receiver*  
34 *shall be so ordered.*

35 **Sec. 20.** *All creditors shall present and make proof to the*  
36 *receiver of their respective claims against the limited-liability*  
37 *company within 6 months from the date of appointment of the*  
38 *receiver or trustee for the company, or sooner if the court shall*  
39 *order and direct, and all creditors and claimants failing to do so*  
40 *within the time limited by this section, or the time prescribed by*  
41 *the order of the court, shall by the direction of the court be barred*  
42 *from participating in the distribution of the assets of the company.*  
43 *The court shall also prescribe what notice, by publication or*  
44 *otherwise, shall be given to creditors of such limitation of time.*



1     **Sec. 21.** *Every claim against any limited-liability company*  
2 *for which a receiver has been appointed shall be presented to the*  
3 *receiver in writing and upon oath. The claimant, if required, shall*  
4 *submit to such examination in relation to the claim as the court*  
5 *shall direct, and shall produce such books and papers relating to*  
6 *the claim as shall be required. The court shall have power to*  
7 *authorize the receiver to examine, under oath or affirmation, all*  
8 *witnesses produced before the receiver touching the claim or any*  
9 *part thereof.*

10     **Sec. 22.** *1. The clerk of the district court, immediately upon*  
11 *the expiration of the time fixed for the filing of claims, shall notify*  
12 *the trustee or receiver of the filing of the claims. The trustee or*  
13 *receiver shall inspect the claims and within 30 days notify each*  
14 *claimant of his or her decision. The trustee or receiver may*  
15 *require all creditors whose claims are disputed to submit*  
16 *themselves to an examination in relation to their claims, and to*  
17 *produce such books and papers relating to their claims as the*  
18 *trustee or receiver requests. The trustee or receiver may examine,*  
19 *under oath or affirmation, all witnesses produced before him or*  
20 *her regarding the claims, and shall pass upon and allow or*  
21 *disallow the claims, or any part thereof, and notify the claimants*  
22 *of the determination.*

23     *2. Every creditor or claimant who has received notice from*  
24 *the receiver or trustee that his or her claim has been disallowed in*  
25 *whole or in part may appeal to the district court within 30 days*  
26 *thereafter. The court, after a hearing, shall determine the rights of*  
27 *the parties.*

28     **Sec. 23.** *1. A receiver, upon application by him or her, shall*  
29 *be substituted as party plaintiff or complainant in the place and*  
30 *stead of the limited-liability company in any suit or proceeding at*  
31 *law or in equity which was pending at the time of the receiver's*  
32 *appointment.*

33     *2. No action against a receiver of a company shall abate by*  
34 *reason of the receiver's death, but, upon suggestion of the facts on*  
35 *the record, shall be continued against the receiver's successor, or*  
36 *against the company in case no new receiver be appointed.*

37     **Sec. 24.** *Where property of an insolvent limited-liability*  
38 *company is at the time of the appointment of a receiver*  
39 *encumbered with mortgages or other liens, the legality of which is*  
40 *brought in question, or the property is of a character which will*  
41 *materially deteriorate in value pending the litigation, the district*  
42 *court may order the receiver to sell the same, clear of*  
43 *encumbrances, at public or private sale, for the best price that can*  
44 *be obtained, and pay the money into court, there to remain subject*



1 *to the same liens and equities of all parties in interest as was the*  
2 *property before sale, to be disposed of as the court shall direct.*

3 **Sec. 25.** *Before distribution of the assets of an insolvent*  
4 *limited-liability company among the creditors or members, the*  
5 *district court shall allow a reasonable compensation to the*  
6 *receiver for his or her services and the costs and expenses of*  
7 *the administration of the trust, and the cost of the proceedings in*  
8 *the court, to be first paid out of the assets.*

9 **Sec. 26.** *After payment of all allowances, expenses and costs,*  
10 *and the satisfaction of all special and general liens upon the funds*  
11 *of the limited-liability company to the extent of their lawful*  
12 *priority, the creditors shall be paid proportionately to the amount*  
13 *of their respective debts, excepting mortgage and judgment*  
14 *creditors when the judgment has not been by confession for the*  
15 *purpose of preferring creditors. The creditors shall be entitled to*  
16 *distribution on debts not due, making in such case a rebate of*  
17 *interest, when interest is not accruing on the same. Unless*  
18 *otherwise provided in the articles of organization or operating*  
19 *agreement, the surplus funds, if any, after payment of the*  
20 *creditors and the costs, expenses and allowances, shall be*  
21 *distributed among the members or their legal representatives in*  
22 *respect of their contributions to capital.*

23 **Sec. 27. 1.** *Every matter and thing by this chapter required*  
24 *to be done by receivers or trustees shall be good and effectual, to*  
25 *all intents and purposes, if performed by a majority of them.*

26 **2.** *The district court may remove any receiver or trustee and*  
27 *appoint another or others in his or her place to fill any vacancy*  
28 *which may occur.*

29 **Sec. 28. 1.** *Whenever any limited-liability company*  
30 *becomes insolvent or is dissolved in any way or for any cause, the*  
31 *employees doing labor or service, of whatever character, in the*  
32 *regular employ of the company, have a lien upon the assets*  
33 *thereof for the amount of wages due to them, not exceeding*  
34 *\$1,000, which have been earned within 3 months before the date*  
35 *of the insolvency or dissolution, which must be paid before any*  
36 *other debt of the company.*

37 **2.** *The word "employees" does not include any of the*  
38 *managers or managing members of the company.*

39 **Sec. 29.** NRS 90.285 is hereby amended to read as follows:

40 90.285 "Sales representative" means a natural person other  
41 than a broker-dealer, authorized to act and acting for a broker-dealer  
42 or issuer effecting or attempting to effect purchases or sales of  
43 securities. A partner, officer or director of a broker-dealer or issuer,  
44 or a person occupying a similar status or performing similar  
45 functions, is a sales representative only if he or she otherwise



1 ~~[comes within the definition.]~~ fails to satisfy the requirements set  
2 forth in Rule 3a4-1 under the Securities Exchange Act of 1934, 17  
3 C.F.R. § 240.3a4-1.

4 **Sec. 30.** NRS 92A.390 is hereby amended to read as follows:

5 92A.390 1. There is no right of dissent with respect to a plan  
6 of merger, conversion or exchange in favor of stockholders of any  
7 class or series which is:

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

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

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

21 ↪ unless the articles of incorporation of the corporation issuing the  
22 class or series or the resolution of the board of directors approving  
23 the plan of merger, conversion or exchange expressly provide  
24 otherwise.

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

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

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

31 3. Subsection 1 is not applicable and dissenter's rights are  
32 available pursuant to NRS 92A.380 for the holders of any class or  
33 series of shares who are required by the terms of the corporate  
34 action requiring dissenter's rights to accept for such shares anything  
35 other than cash or shares of any class or any series of shares of any  
36 corporation, or any other proprietary interest of any other entity, that  
37 satisfies the standards set forth in subsection 1 at the time the  
38 corporate action becomes effective.

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

43 5. There is no right of dissent for any holders of stock of the  
44 parent domestic corporation if the plan of merger does not require



1 action of the stockholders of the parent domestic corporation under  
2 NRS 92A.180.

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

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