

Amendment No. 537

Assembly Amendment to Senate Bill No. 95 First Reprint	(BDR 7-493)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: Yes Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



SENATE BILL NO. 95--SENATOR OHRENSCHALL

FEBRUARY 3, 2021

JOINT SPONSORS: ASSEMBLYMAN ORENTLICHER

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to business entities. (BDR 7-493)

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

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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 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

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7 registered agent of the entity, and instead requires that the party serving the registered agent
8 mail to such management persons a copy of any document served upon the registered agent.

9 **Section 38** of this bill repeals the selectively applicable definitions of ~~“market value,”~~
10 “publicly traded corporation,” ~~“resident domestic corporation”~~ and “Securities Exchange
11 Act ~~“”~~” and **“voting shares,”** respectively, and replaces the definitions in **section 2** of this
12 bill in order to expand the applicability of such definitions to the entirety of chapter 78 of
13 NRS. **Sections 3, 7 and 8** of this bill make conforming changes related to the definition of the
14 “Securities Exchange Act.” **Section 14.2 of this bill makes a conforming change related to**
15 **the definition of “voting shares.”**

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

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

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

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

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

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

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

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

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

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

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

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

62 **Section 19** of this bill defines the term “distribution” for the purposes of **section 21** of
63 this bill concerning noneconomic members of limited-liability companies and **sections 23 and**
64 **24** of this bill relating to the circumstances by which a limited-liability company is authorized

65 to or prohibited from making distributions and certain other provisions of law relating to
66 limited-liability companies.

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

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

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

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

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

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

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

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

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

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

2 75.160 1. Every nonresident of this State who, on or after October 1, 2013,
3 accepts election or appointment, including reelection or reappointment, as a
4 management person of an entity, or who, on or after October 1, 2014, serves in such
5 capacity, and every resident of this State who accepts election or appointment or
6 serves in such capacity and thereafter removes residence from this State shall be
7 deemed, by the acceptance or by the service, to have consented to the appointment
8 of the registered agent of the entity as an agent upon whom service of process may
9 be made in all civil actions or proceedings brought in this State by, on behalf of or
10 against the entity in which the management person is a necessary or proper party, or
11 in any action or proceeding against the management person for a violation of a duty
12 in such capacity, whether or not the person continues to serve as the management
13 person at the time the action or proceeding is commenced. The acceptance or the
14 service by the management person shall be deemed to be signification of the
15 consent of the management person that any process so served has the same legal
16 force and validity as if served upon the management person within this State.

17 2. Service of process must be effected by serving the registered agent with a
18 true copy in the manner provided by law for service of process. In addition, the
19 ~~[clerk of the court in which the civil action or proceeding is pending]~~ **party serving**

1 *the registered agent* shall, within 7 days after *such* service, send by registered or
2 certified mail, postage prepaid, ~~{true and attested}~~ copies of the ~~{process,}~~
3 *documents served upon the registered agent*, together with a statement that service
4 is being made pursuant to this section, addressed to the management person at the
5 address as it appears on the records of the Secretary of State, or if no such address
6 appears, at the address last known to the *-serving party* . ~~{desiring to make the}~~
7 ~~service.}~~

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

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

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

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

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

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

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

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

48 8. In a charter or other writing, a management person or owner of any entity
49 may consent to be subject to the nonexclusive jurisdiction of the courts of, or
50 arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of
51 this State, or the exclusivity of arbitration in a specified jurisdiction or this State,
52 and to be served with process in the manner prescribed in the charter or other
53 writing. Notwithstanding any other provision of this subsection, except by agreeing

1 to arbitrate any arbitrable matter in a specified jurisdiction or in this State, an owner
2 of an entity who is not a management person may not waive its right to maintain a
3 legal action or proceeding in the courts of this State with respect to matters relating
4 to the organization or internal affairs of an entity. Without limiting or affecting the
5 enforceability under the laws of this State governing corporations of any consent or
6 agreement by a management person or stockholder of a corporation, this subsection
7 does not apply to an entity which is a corporation.

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

12 10. As used in this section:

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

17 (b) "Entity" means a domestic:

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

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

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

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

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

28 78.010 1. As used in this chapter:

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

32 (b) "Articles," "articles of incorporation" and "certificate of incorporation" are
33 synonymous terms and, unless the context otherwise requires, include all
34 certificates filed pursuant to NRS 78.030, 78.180, 78.185, 78.1955, 78.209, 78.380,
35 78.385, 78.390, 78.725 and 78.730 and any articles of merger, conversion,
36 exchange or domestication filed pursuant to NRS 92A.200 to 92A.240, inclusive, or
37 92A.270. Unless the context otherwise requires, these terms include restated
38 articles and certificates of incorporation.

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

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

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

45 (e) ~~"Market value" when used in reference to the shares or property of any
46 resident domestic corporation, means:~~

47 ~~———— (1) In the case of shares, the highest closing sale price of a share during
48 the 30 calendar days immediately preceding the date in question on the principal
49 United States securities exchange registered under the Securities Exchange Act
50 on which the shares are listed, or, if the shares are not listed on any such
51 exchange, the fair market value on the date in question of a share as determined
52 by the board of directors of the resident domestic corporation in good faith.~~

~~(2) In the case of property other than cash or shares, the fair market value of the property on the date in question as determined by the board of directors of the resident domestic corporation in good faith.~~

~~(f)~~ **“(f) “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.

~~(g)~~ **(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.

~~(h)~~ **(g)** “Receiver” includes receivers and trustees appointed by a court as provided in this chapter or in chapter 32 of NRS.

~~(e)~~ **(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)~~ **(k)** **“Resident domestic corporation” means a domestic corporation that has 200 or more stockholders of record. A resident domestic corporation does not cease to be a resident domestic corporation by reason of events occurring or actions taken while the resident domestic corporation is subject to NRS 78.411 to 78.444, inclusive.**

~~(l)~~ **(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.**

~~(m)~~ **(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.

~~3. As used in this section:~~

~~(a) “Share” has the meaning ascribed to it in NRS 78.429.~~

~~(b) “Subsidiary” has the meaning ascribed to it in NRS 78.431.~~

~~(c) “Voting shares” has the meaning ascribed to it in NRS 78.432.]~~

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

1 corporation is subject to supervision by the Commissioner of Insurance or by the
2 Commissioner of Financial Institutions, unless the articles or certificate of
3 amendment is approved by the Commissioner who will supervise the business of
4 the corporation.

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

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

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

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

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

27 (b) The corporation is qualified to do business in this State pursuant to NRS
28 623.349.

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

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

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

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

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

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

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

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

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

9 78.046 1. The articles of incorporation or bylaws of a corporation may
10 require, to the extent not inconsistent with any applicable jurisdictional
11 requirements ~~[+] and the laws of the United States,~~ that any, all or certain ~~[internal]~~
12 :

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

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

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

21 ~~[2.]~~ 3. The provisions of this section do not create or authorize any cause of
22 action against a corporation or its directors or officers.

23 ~~[3.]~~ 4. As used in this section:

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

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

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

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

30 (I) *The corporation;*

31 (II) *Any stockholder of the corporation; or*

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

34 (b) “Court” means any court of:

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

37 (2) A state other than this State; or

38 (3) The United States.

39 ~~[(b)]~~ (c) “Internal action” means any action, suit or proceeding:

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

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

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

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

49 78.138 1. The fiduciary duties of directors and officers are to exercise their
50 respective powers in good faith and with a view to the interests of the corporation.

51 2. In exercising their respective powers, directors and officers may, and are
52 entitled to, rely on information, opinions, reports, books of account or statements,

1 including financial statements and other financial data, that are prepared or
2 presented by:

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

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

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

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

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

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

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

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

28 (2) The economy of the State or Nation;

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

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

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

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

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

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

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

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

50 (b) It is proven that:

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

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

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

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

7 78.191 As used in NRS 78.191 to 78.307, inclusive, unless the context
8 otherwise requires, the word “distribution” means a direct or indirect transfer of
9 money or other property , other than its own shares or the incurrence of
10 indebtedness by a corporation , to or for the benefit of ~~its stockholders~~ *all holders*
11 *of shares of any one or more classes or series of the capital stock of the*
12 *corporation*, with respect to ~~any of its~~ *such* shares. A distribution may be in the
13 form of a declaration or payment of a dividend, a purchase, redemption or other
14 acquisition of shares, a distribution of indebtedness, or otherwise.

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

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

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

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

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

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

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

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

51 (b) Is liable for such costs and fees, if the stockholder does not prevail,
52 in the action or proceeding.

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

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

13 78.265 1. The provisions of this section apply to corporations organized in
14 this State before October 1, 1991.

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

18 3. Unless otherwise provided in the articles of incorporation:

19 (a) A preemptive right does not exist:

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

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

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

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

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

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

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

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

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

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

45 78.288 1. Except as otherwise provided in subsection 2 and the articles of
46 incorporation, a board of directors may authorize and the corporation may make
47 distributions to the holders of any class or series of the ~~[corporation's shares,]~~
48 *capital stock of the corporation*, including distributions on shares that are partially
49 paid.

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

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

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

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

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

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

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

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

16 (a) In the case of a distribution by purchase, redemption or other acquisition of
17 *shares of the* ~~{corporation's shares,}~~ *capital stock of the corporation,* as of the
18 earlier of:

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

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

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

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

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

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

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

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

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

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

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

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

52 78.300 1. The directors of a corporation shall not make distributions ~~{to~~
53 ~~{stockholders}~~ except as provided by this chapter.

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

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

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

13 78.320 1. Unless this chapter, the articles of incorporation or the bylaws
14 provide for different proportions:

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

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

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

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

29 4. Unless otherwise restricted by the articles of incorporation or bylaws,
30 stockholders *and certain other persons permitted by the corporation to attend a*
31 *meeting of stockholders* may participate in ~~[a]~~ the meeting ~~[of stockholders]~~
32 through *remote communication, including, without limitation,* electronic
33 communications, videoconferencing, teleconferencing or other available technology
34 , if the corporation has implemented reasonable measures to:

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

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

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

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

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

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

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

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

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

9 78.350 1. Unless otherwise provided in the articles of incorporation, or in
10 the certificate of designation establishing the class or series of stock, every
11 stockholder of record of a corporation is entitled at each meeting of stockholders
12 thereof to one vote for each share of stock standing in his or her name on the
13 records of the corporation. If the articles of incorporation, or the certificate of
14 designation establishing the class or series of stock provides for more or less than
15 one vote per share for any class or series of shares on any matter, every reference in
16 this chapter to a majority or other proportion of stock shall be deemed to refer to a
17 majority or other proportion of the voting power of all of the shares or those classes
18 or series of shares, as may be required by the articles of incorporation, or in the
19 certificate of designation establishing the class or series of stock or the provisions
20 of this chapter.

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

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

30 (a) *The record date:*

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

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

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

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

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

47 ~~[3.]~~ 6. The board of directors may adopt a resolution prescribing a date upon
48 which the stockholders of record entitled to give written consent pursuant to NRS
49 78.320 must be determined. The date prescribed by the board of directors may not
50 precede or be more than 10 days after the ~~[date]~~ *day on which* the resolution is
51 adopted by the board of directors ~~[,]~~ *regardless of the effective date of the*
52 *resolution.*

1 7. If the board of directors does not adopt a resolution prescribing a date upon
2 which the stockholders of record entitled to give written consent pursuant to NRS
3 78.320 must be determined and:

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

8 (b) Prior action by the board of directors is required by this chapter or chapter
9 92A of NRS before the matter is submitted for consideration by the stockholders,
10 the date is at the close of business on the day the board of directors adopts the
11 resolution.

12 ~~4.~~ 8. The provisions of this section do not restrict the directors from taking
13 action to protect the interests of the corporation and its stockholders, including, but
14 not limited to, adopting or signing plans, arrangements or instruments that grant or
15 deny rights, privileges, power or authority to a holder or holders of a specified
16 number of shares or percentage of share ownership or voting power.

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

18 78.365 1. A stockholder, by agreement in writing, may transfer his or her
19 stock to a voting trustee or trustees for the purpose of conferring the right to vote
20 the stock for a period not exceeding 15 years upon the terms and conditions therein
21 stated. Any certificates of stock so transferred must be surrendered and cancelled
22 and new certificates for the stock issued to the trustee or trustees in which it must
23 appear that they are issued pursuant to the agreement, and in the entry of ownership
24 in the proper books of the corporation that fact must also be noted, and thereupon
25 the trustee or trustees may vote the stock so transferred during the terms of the
26 agreement. A duplicate of every such agreement must be filed in the registered
27 office of the corporation and at all times during its terms be open to inspection by
28 any stockholder or his or her attorney.

29 2. At any time within the 2 years next preceding the expiration of an
30 agreement entered into pursuant to the provisions of subsection 1, or the expiration
31 of an extension of that agreement, any beneficiary of the trust may, by written
32 agreement with the trustee or trustees, extend the duration of the trust for a time not
33 to exceed 15 years after the scheduled expiration date of the original agreement or
34 the latest extension. An extension is not effective unless the trustee, before the
35 expiration date of the original agreement or the latest extension, files a duplicate of
36 the agreement providing for the extension in the registered office of the
37 corporation. An agreement providing for an extension does not affect the rights or
38 obligations of any person not a party to that agreement. *An agreement entered into
39 pursuant to the provisions of subsection 1 is not invalidated by the fact that, by its
40 terms, its duration is more than 15 years, but its duration shall be deemed
41 amended to conform with the provisions of this section.*

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

45 (a) Pursuant to the provisions of the agreement;

46 (b) As they may subsequently agree; or

47 (c) In accordance with a procedure agreed upon.

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

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

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

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

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

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

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

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

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

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

19 78.370 1. If under the provisions of this chapter stockholders are required or
20 authorized to take any action at a meeting, the notice of the meeting must be in
21 writing.

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

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

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

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

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

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

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

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

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

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

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

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

26 (a) *The date ~~{}~~ and time ~~{or place}~~ of the adjourned meeting ~~{if they are~~*
27 *announced at the meeting at which the adjournment is taken.};*

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

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

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

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

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

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

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

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

50 78.411 As used in NRS 78.411 to 78.444, inclusive, unless the context
51 otherwise requires, the words and terms defined in NRS 78.412 to ~~78.432,~~ 78.431,
52 inclusive, have the meanings ascribed to them in those sections.

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

2 78.630 1. Whenever any corporation becomes insolvent or suspends its
3 ordinary business for want of money to carry on the business, or if its business has
4 been and is being conducted at a great loss and greatly prejudicial to the interest of
5 its creditors or stockholders, any creditors holding *at least* 10 percent of the
6 outstanding indebtedness, or stockholders owning *at least* 10 percent of the
7 outstanding stock entitled to vote, may, by petition setting forth the facts and
8 circumstances of the case, apply to the district court of the county in which the
9 principal office of the corporation is located or, if the principal office is not located
10 in this State, to the district court in the county in which the corporation's registered
11 office is located for a writ of injunction and the appointment of a receiver or
12 receivers or trustee or trustees.

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

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

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

28 78.7502 1. A corporation may indemnify pursuant to this subsection any
29 person who was or is a party or is threatened to be made a party to any threatened,
30 pending or completed action, suit or proceeding, whether civil, criminal,
31 administrative or investigative, except an action by or in the right of the
32 corporation, by reason of the fact that the person is or was a director, officer,
33 employee or agent of the corporation, or is or was serving at the request of the
34 corporation as a director, officer, employee or agent of another corporation,
35 partnership, joint venture, trust or other enterprise ~~or~~ *or as a manager of a limited-*
36 *liability company*, against expenses, including attorneys' fees, judgments, fines and
37 amounts paid in settlement actually and reasonably incurred by the person in
38 connection with the action, suit or proceeding if the person:

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

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

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

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

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

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

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

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

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

24 (a) The stockholders;

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

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

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

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

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

33 81.430 1. Any person or any number of persons, including and in addition
34 to the original incorporators, may become members of the corporation upon such
35 terms and conditions as to membership, and subject to such rules and regulations as
36 to their, and each of their, contract and other rights and liabilities between it and the
37 member, as the corporation shall prescribe in its bylaws.

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

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

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

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

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

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

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

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

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

20 86.011 As used in this chapter, unless the context otherwise requires, the
21 words and terms defined in NRS 86.022 to 86.1255, inclusive, *and section 18 of*
22 *this act* have the meanings ascribed to them in those sections.

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

24 86.095 1. “Noneconomic member” means a member of a limited-liability
25 company who:

26 ~~1.~~ (a) Does not own a member’s interest in the company;

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

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

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

34 2. *As used in this section, “distribution” has the meaning ascribed to it in*
35 *section 19 of this act.*

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

37 86.291 1. Except as otherwise provided in this section or in the articles of
38 organization or operating agreement, management of a limited-liability company is
39 vested in its members ~~[in proportion to their contribution to its capital, as adjusted~~
40 ~~from time to time to reflect properly any additional contributions or withdrawals by~~
41 ~~the members.] proportionally in interest thereof.~~

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

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

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

2 86.321 ~~[(The)]~~ *For purposes of this chapter, ~~[(the contributions)]~~ a contribution*
3 to capital of a member to a limited-liability company or series may ~~[(be in cash,]~~
4 *consist of tangible or intangible property or any other benefit to the limited-*
5 *liability company or series, including, without limitation, money, real or personal*
6 *property, services ~~[(rendered,)]~~ performed, or a promissory note or other binding*
7 obligation to contribute cash or property or to perform services.

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

9 86.341 A limited-liability company may, from time to time, ~~[(divide the profits~~
10 ~~of its business and distribute them to its members, and any transferee as his or her~~
11 ~~interest may appear, upon the basis)]~~ *make distributions as ~~[(stipulated)]~~ provided* in
12 the *articles of organization or* operating agreement. If the *articles of organization*
13 *or* operating agreement ~~[(does)]~~ *do* not otherwise provide, ~~[(profits and losses)]~~ *the*
14 *distributions* must be allocated proportionately to the value, as shown in the records
15 of the company, of the contributions made by each member and not returned.

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

17 86.343 1. Except as otherwise provided in subsection 2, a distribution ~~[(of~~
18 ~~the profits and contributions of)]~~ *from* a limited-liability company must not be made
19 if, after giving it effect:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 5. Indebtedness of the company, or a series of the company, including
53 indebtedness issued as a distribution, is not considered a liability for purposes of

1 determinations pursuant to this section if its terms provide that payment of principal
2 and interest are to be made only if and to the extent that payment of a distribution to
3 the members could then be made pursuant to this section. If the indebtedness is
4 issued as a distribution, each payment of principal or interest must be treated as a
5 distribution, the effect of which must be measured as of the date of payment.

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

11 7. A member who receives a distribution from a limited-liability company *or*
12 *the series, as applicable*, in violation of this section is not liable to the limited-
13 liability company *or such series, as applicable*, and, in the event of its dissolution
14 or insolvency, to its creditors, or any of them, for the amount of the distribution
15 after the expiration of 3 years after the date of the distribution unless an action to
16 recover the distribution from the member is commenced before the expiration of the
17 3-year period following the distribution.

18 *8. Except as otherwise provided in the articles of organization or operating*
19 *agreement, the manager or managers or, if the management of the company is*
20 *not vested in a manager or managers, the members, may fix a record date for*
21 *determining the members entitled to a distribution authorized pursuant to this*
22 *section. The record date must not precede the day on which it is fixed.*

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

24 86.5411 1. Whenever any limited-liability company becomes insolvent or
25 suspends its ordinary business for want of money to carry on the business, or if its
26 business has been and is being conducted at a great loss and greatly prejudicial to
27 the interest of its creditors or members, any creditors holding *at least* 10 percent of
28 the outstanding indebtedness [~~or members owning either 10 percent of the~~
29 ~~outstanding member's interests or 10 percent of the voting power]~~ of the company
30 [~~or at least 10 percent in interest of the members~~], may, by petition setting forth
31 the facts and circumstances of the case, apply to the district court of the county in
32 which the principal office of the company is located or, if the principal office is not
33 located in this State, to the district court in the county in which the company's
34 registered office is located for a writ of injunction and the appointment of a receiver
35 or receivers or trustee or trustees.

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

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

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

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

2 86.5415 1. ~~[Any member owning either 10 percent of the outstanding~~
3 ~~member's interests or]~~ **Members holding not less than** 10 percent ~~[of the voting~~
4 ~~power]~~ **in interest** of the limited-liability company may apply to the district court in
5 the county in which the company has its principal place of business or, if the
6 principal place of business is not located in this State, to the district court in the
7 county in which the company's registered office is located, for an order appointing
8 a receiver, and by injunction restrain the company from exercising any of its
9 powers or doing business whatsoever, except by and through a receiver appointed
10 by the court, whenever irreparable injury to the company is threatened or being
11 suffered and:

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

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

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

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

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

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

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

36 5. Receivers so appointed have, among the usual powers, all the functions,
37 powers, tenure and duties to be exercised under the direction of the court as are
38 conferred on receivers and as provided pursuant to NRS 86.5412, 86.5413 and
39 86.5414, whether the company is insolvent or not.

40 6. The requirement ~~[as to ownership or voting]~~ **to hold not less than 10**
41 **percent in interest** set forth in subsection 1 shall be maintained from the date of and
42 throughout the pendency of the application for the appointment of a receiver of the
43 company.

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

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

48 86.5416 Whenever ~~[members holding member's interests entitling them to~~
49 ~~exercise at least]~~ a majority **in interest** of the ~~[voting power]~~ **members** of the
50 limited-liability company ~~[shall]~~ have agreed upon a plan for the reorganization of
51 the company and a resumption by it of the management and control of its property
52 and business, the company may, with the consent of the district court:

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

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

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

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

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

18 2. *Identify the proposed corporate action;*

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

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

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

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

32 92A.005 As used in this chapter, unless the context otherwise requires, the
33 words and terms defined in NRS 92A.007 to 92A.092, inclusive, *and sections 29*
34 *and 30 of this act* have the meanings ascribed to them in those sections.

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

36 92A.133 1. Unless otherwise expressly required by the articles of
37 incorporation, no vote of the stockholders of a ~~publicly traded~~ *domestic*
38 corporation is necessary to authorize a merger in which the ~~publicly traded~~
39 *domestic* corporation is a constituent entity if the plan of merger expressly permits
40 or requires the merger to be effected under this section and:

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

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

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

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

50 (II) *The effective date of the merger; and*

51 (2) *The plan of merger requires that:*

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

1 ~~{(2)}~~ (II) Each outstanding share of each class or series of stock of the
2 ~~{publicly traded}~~ domestic corporation that is the subject of, and not irrevocably
3 accepted for purchase or exchange in, the offer must be converted in such merger
4 into, or into the right to receive, the same amount and kind of cash, property, rights
5 or securities to be paid for shares of such class or series of stock of the ~~{publicly~~
6 ~~traded}~~ domestic corporation irrevocably accepted for purchase or exchange in the
7 offer. The plan of merger may expressly provide that the requirements of this
8 ~~{subparagraph}~~ *sub-subparagraph* must not apply to specified categories of
9 excluded shares.

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

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

17 (b) The ~~{publicly traded}~~ domestic corporation must provide notice of the
18 merger to all of its stockholders not less than 30 days before the effective date of
19 the merger ~~{, and}~~ *and*

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

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

26 4. As used in this section:

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

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

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

31 (d) "Excluded shares" means:

32 (1) Rollover shares; and

33 (2) Shares of the ~~{publicly traded}~~ domestic corporation that are owned
34 beneficially or of record at the commencement of an offer by:

35 (I) The ~~{publicly traded}~~ domestic corporation;

36 (II) The constituent entity making the offer;

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

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

41 (e) "Offer" means an offer made by the other constituent entity in the merger
42 for all of the outstanding shares of each class or series of stock of the ~~{publicly~~
43 ~~traded}~~ domestic corporation listed on a national securities exchange, on the terms
44 provided in the plan of merger that, absent this section, would be entitled to vote on
45 the ~~{adoption}~~ *approval* of the plan of merger. The other constituent entity in the
46 merger may, but is not required to, engage in the consummation of separate offers
47 for separate classes or series of the stock of the ~~{publicly traded}~~ domestic
48 corporation. An offer may, but is not required to:

49 (1) Exclude any excluded shares; and

50 (2) Be conditioned on the tender of a minimum number or proportion of
51 shares of any class or series of the stock of the ~~{publicly traded}~~ domestic
52 corporation.

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

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

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

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

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

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

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

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

38 92A.140 1. Unless otherwise provided in the partnership agreement or the
39 certificate of limited partnership, a plan of merger, conversion or exchange
40 involving a domestic limited partnership must be approved by all general partners
41 and by limited partners who own a majority in interest of the partnership then
42 owned by all the limited partners. If the partnership has more than one class of
43 limited partners, the plan of merger, conversion or exchange must be approved by
44 those limited partners who own a majority in interest of the partnership then owned
45 by the limited partners in each class.

46 2. ~~For the purposes of this section, “majority in interest of the partnership”~~
47 ~~means a majority of the interests in capital and profits of the limited partners of a~~
48 ~~domestic limited partnership which:~~

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

51 ~~—(b) In the case of profits, is based on any reasonable estimate of profits for the~~
52 ~~period beginning on the date of the approval of the plan of merger, conversion or~~
53 ~~exchange and ending on the anticipated date of the termination of the domestic~~

1 ~~limited partnership, including any present or future division of profits distributed~~
2 ~~pursuant to the partnership agreement.~~

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

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

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

13 92A.150 1. Unless otherwise provided in the articles of organization or an
14 operating agreement:

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

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

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

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

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

31 92A.390 1. There is no right of dissent pursuant to paragraph (a), (b), (c) or
32 (f) of subsection 1 of NRS 92A.380 in favor of stockholders of any class or series
33 which is:

34 (a) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of
35 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended;

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

40 (c) Issued by an open end management investment company registered with
41 the Securities and Exchange Commission under the Investment Company Act of
42 1940, 15 U.S.C. §§ 80a-1 et seq., as amended, and which may be redeemed at the
43 option of the holder at net asset value,

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

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

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

51 (b) The day before the effective date of such corporate action if ~~{there}~~ :

52 *(1) There* is no meeting of stockholders ~~{}~~ *to act upon the corporate*
53 *action otherwise requiring dissenter's rights; or*

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

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

5 (a) Cash;

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

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

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

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

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

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

21 92A.410 1. If a proposed corporate action creating dissenter's rights is
22 submitted ***for approval pursuant*** to a vote at a stockholders' meeting, the notice of
23 the meeting must state that stockholders are, are not or may be entitled to assert
24 dissenter's rights under NRS 92A.300 to 92A.500, inclusive. If the domestic
25 corporation concludes that dissenter's rights are or may be available, a copy of NRS
26 92A.300 to 92A.500, inclusive, must accompany the meeting notice sent to those
27 stockholders of record entitled to exercise dissenter's rights.

28 2. If ~~the~~ a corporate action creating dissenter's rights is ~~taken~~ ***submitted***
29 ***for approval [by] pursuant to a*** written consent of the stockholders or ***taken***
30 without a vote of the stockholders, the domestic corporation :

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

33 ***(b) If the proposed corporate action is taken, the domestic corporation*** shall
34 notify in writing all stockholders of record entitled to assert dissenter's rights that
35 the action was taken and send them the dissenter's notice described in NRS
36 92A.430.

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

38 92A.420 1. If a proposed corporate action creating dissenter's rights is
39 submitted to a vote at a stockholders' meeting, a stockholder who wishes to assert
40 dissenter's rights with respect to any class or series of shares:

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

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

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

51 ***(a) If an advance notice statement is sent by the subject corporation pursuant***
52 ***to NRS 92A.410, must deliver a statement of intent with respect to any class or***

1 *series of shares to the subject corporation by the date specified in the advance*
2 *notice statement; and*

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

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

7 **Sec. 38.** NRS ~~[78.424,]~~ 78.4265, ~~[78.427,]~~ 78.428, 78.432 and 86.065 are
8 hereby repealed.

LEADLINES OF REPEALED SECTIONS

~~[78.424 “Market value” defined.]~~

78.4265 “Publicly traded corporation” defined.

~~[78.427 “Resident domestic corporation” defined.]~~

78.428 “Securities Exchange Act” defined.

78.432 “Voting shares” defined.

86.065 “Majority in interest” defined.