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SENATE BILL NO. 95—SENATOR OHRENSCHALL

FEBRUARY 3, 2021

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.

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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 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; 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:**

- 1 Existing law establishes various provisions relating to business entities,
- 2 including private corporations and limited-liability companies. (Chapters 78 and 86



3 of NRS) This bill revises certain provisions relating to business entities and makes  
4 certain other changes generally relating to business entities.

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

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

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

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

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

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

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

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

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

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

49 **Section 14** additionally applies these changes to the form of notice required for  
50 adjourned meetings of stockholders.

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

54 **Section 15** of this bill expands the circumstances by which a corporation may  
55 discretionally indemnify a person who is or was a party to an action, or threatened  
56 to be made a party to an action, by authorizing the corporation to indemnify any



57 such person who is or was serving at the request of the corporation as a manager of  
58 another corporation or business entity.

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

62 **Section 19** of this bill defines the term “distribution” for the purposes of  
63 **section 21** of this bill concerning noneconomic members of limited-liability  
64 companies and **sections 23 and 24** of this bill relating to the circumstances by  
65 which a limited-liability company is authorized to or prohibited from making  
66 distributions and certain other provisions of law relating to limited-liability  
67 companies.

68 **Sections 22 and 25-27** of this bill require that a vote of approval for certain  
69 actions taken by a limited-liability company be determined by a specified  
70 proportion “in interest” of the members, as defined by **section 18** of this bill.  
71 **Section 38** makes a conforming change by repealing the term “majority in interest.”  
72 **Sections 17 and 20** of this bill make conforming changes relating to the placement  
73 of **section 18** in the NRS.

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

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

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

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

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

96 **Sections 29 and 30** of this bill define the terms “advance notice statement” and  
97 “statement of intent,” respectively. **Section 31** of this bill makes conforming  
98 changes related to the placement of the definitions in the NRS.

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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  
3 October 1, 2013, accepts election or appointment, including  
4 reelection or reappointment, as a management person of an entity, or  
5 who, on or after October 1, 2014, serves in such capacity, and every  
6 resident of this State who accepts election or appointment or serves



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

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

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

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

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



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

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

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

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

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

31 8. In a charter or other writing, a management person or owner  
32 of any entity may consent to be subject to the nonexclusive  
33 jurisdiction of the courts of, or arbitration in, a specified jurisdiction,  
34 or the exclusive jurisdiction of the courts of this State, or the  
35 exclusivity of arbitration in a specified jurisdiction or this State, and  
36 to be served with process in the manner prescribed in the charter or  
37 other writing. Notwithstanding any other provision of this  
38 subsection, except by agreeing to arbitrate any arbitrable matter in a  
39 specified jurisdiction or in this State, an owner of an entity who is  
40 not a management person may not waive its right to maintain a legal  
41 action or proceeding in the courts of this State with respect to  
42 matters relating to the organization or internal affairs of an entity.  
43 Without limiting or affecting the enforceability under the laws of  
44 this State governing corporations of any consent or agreement by a



1 management person or stockholder of a corporation, this subsection  
2 does not apply to an entity which is a corporation.

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

7 10. As used in this section:

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

12 (b) "Entity" means a domestic:

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

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

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

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

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

25 78.010 1. As used in this chapter:

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

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

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

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

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

43 (e) *"Market value" when used in reference to the shares or*  
44 *property of any resident domestic corporation, means:*



1           (1) *In the case of shares, the highest closing sale price of a*  
2 *share during the 30 calendar days immediately preceding the date*  
3 *in question on the principal United States securities exchange*  
4 *registered under the Securities Exchange Act on which the shares*  
5 *are listed, or, if the shares are not listed on any such exchange, the*  
6 *fair market value on the date in question of a share as determined*  
7 *by the board of directors of the resident domestic corporation in*  
8 *good faith.*

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

13       (f) *“Publicly traded corporation” means a domestic*  
14 *corporation that has a class or series of voting shares which is:*

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

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

23       (g) *“Principal office” means the office, in or out of this State,*  
24 *where the principal executive offices of a domestic or foreign*  
25 *corporation are located.*

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

28       ~~(e)~~ (i) *“Registered agent” has the meaning ascribed to it in*  
29 *NRS 77.230.*

30       ~~(h)~~ (j) *“Registered office” means the office maintained at the*  
31 *street address of the registered agent.*

32       ~~(i)~~ (k) *“Resident domestic corporation” means a domestic*  
33 *corporation that has 200 or more stockholders of record. A*  
34 *resident domestic corporation does not cease to be a resident*  
35 *domestic corporation by reason of events occurring or actions*  
36 *taken while the resident domestic corporation is subject to NRS*  
37 *78.411 to 78.444, inclusive.*

38       (l) *“Securities Exchange Act” means the Act of Congress*  
39 *known as the Securities Exchange Act of 1934, as amended, 15*  
40 *U.S.C. §§ 78a et seq.*

41       (m) *“Stockholder of record” means a person whose name*  
42 *appears on the stock ledger of the corporation as the owner of record*  
43 *of shares of any class or series of the stock of the corporation. The*  
44 *term does not include a beneficial owner of shares who is not*



1 simultaneously the owner of record of such shares as indicated in  
2 the stock ledger.

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

6 **3. As used in this section:**

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

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

9 (c) *“Voting shares” has the meaning ascribed to it in*  
10 *NRS 78.432.*

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

12 78.045 1. The Secretary of State shall not accept for filing  
13 any articles of incorporation or any certificate of amendment of  
14 articles of incorporation of any corporation formed pursuant to the  
15 laws of this State which provides that the name of the corporation  
16 contains the word “bank” or “trust,” unless:

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

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

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

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

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

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





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

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

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

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

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

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

30 6. The Secretary of State shall not accept for filing any articles  
31 of incorporation or any certificate of amendment of articles of  
32 incorporation of any corporation formed or existing pursuant to the  
33 laws of this State which provides that the name of the corporation  
34 contains the words “common-interest community,” “community  
35 association,” “master association,” “unit-owners’ association” or  
36 “homeowners’ association” or if it appears in the articles of  
37 incorporation or certificate of amendment that the purpose of the  
38 corporation is to operate as a unit-owners’ association pursuant to  
39 chapter 116 or 116B of NRS unless the Administrator of the Real  
40 Estate Division of the Department of Business and Industry certifies  
41 that the corporation has:

42 (a) Registered with the Ombudsman for Owners in Common-  
43 Interest Communities and Condominium Hotels pursuant to NRS  
44 116.31158 or 116B.625; and



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

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

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

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

13 78.046 1. The articles of incorporation or bylaws of a  
14 corporation may require, to the extent not inconsistent with any  
15 applicable jurisdictional requirements ~~[ ]~~ *and the laws of the United*  
16 *States*, that any, all or certain ~~[internal]~~ :

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

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

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

27 ~~[2.]~~ 3. The provisions of this section do not create or authorize  
28 any cause of action against a corporation or its directors or officers.

29 ~~[3.]~~ 4. As used in this section:

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

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

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

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

38 (I) *The corporation;*

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

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

42 (b) “Court” means any court of:

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



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

2 (3) The United States.

3 ~~(b)~~ (c) "Internal action" means any action, suit or proceeding:

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

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

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

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

16 78.138 1. The fiduciary duties of directors and officers are to  
17 exercise their respective powers in good faith and with a view to the  
18 interests of the corporation.

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

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

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

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

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

38 3. Except as otherwise provided in subsection 1 of NRS  
39 78.139, directors and officers, in deciding upon matters of business,  
40 are presumed to act in good faith, on an informed basis and with a  
41 view to the interests of the corporation. A director or officer is not  
42 individually liable for damages as a result of an act or failure to act  
43 in his or her capacity as a director or officer except as described in  
44 subsection 7.



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

3 (a) Consider all relevant facts, circumstances, contingencies or  
4 constituencies, including, without limitation ~~[;]~~, *one or more of the*  
5 *following*:

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

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

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

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

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

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

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

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

26 7. Except as otherwise provided in NRS 35.230, 90.660,  
27 91.250, 452.200, 452.270, 668.045 and 694A.030, or unless the  
28 articles of incorporation or an amendment thereto, in each case filed  
29 on or after October 1, 2003, provide for greater individual liability, a  
30 director or officer is not individually liable to the corporation or its  
31 stockholders or creditors for any damages as a result of any act or  
32 failure to act in his or her capacity as a director or officer unless:

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

35 (b) It is proven that:

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

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

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



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

2       78.191 As used in NRS 78.191 to 78.307, inclusive, unless the  
3 context otherwise requires, the word “distribution” means a direct or  
4 indirect transfer of money or other property , other than its own  
5 shares or the incurrence of indebtedness by a corporation , to or for  
6 the benefit of ~~[its stockholders]~~ *the holders of shares of one or*  
7 *more classes or series of the capital stock of the corporation*, with  
8 respect to any ~~[of its]~~ *such* shares. A distribution may be in the form  
9 of a declaration or payment of a dividend, a purchase, redemption or  
10 other acquisition of shares, a distribution of indebtedness, or  
11 otherwise.

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

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

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

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

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

43       5. If any officer or agent of any corporation keeping records in  
44 this State willfully neglects or refuses to permit an inspection of the  
45 books of account and financial records upon demand by a person



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

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

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

12 (b) Is liable for such costs and fees, if the stockholder does not  
13 prevail,  
14 ↪ in the action or proceeding.

15 7. Except as otherwise provided in this subsection, the  
16 provisions of this section do not apply to any corporation that  
17 furnishes to its stockholders a detailed, annual financial statement or  
18 any corporation that has filed during the preceding 12 months all  
19 reports required to be filed pursuant to section 13 or section 15(d) of  
20 the Securities Exchange Act ~~[of 1934.]~~ , 15 U.S.C. §§ 78m or  
21 78o(d). A person who owns, or is authorized in writing by the  
22 owners of, at least 15 percent of the issued and outstanding shares of  
23 the stock of a corporation that has elected to be governed by  
24 subchapter S of the Internal Revenue Code and whose shares are not  
25 listed or traded on any recognized stock exchange is entitled to  
26 inspect the books of the corporation pursuant to subsection 1 and  
27 has the rights, duties and liabilities provided in subsections 2 to 6,  
28 inclusive.

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

30 78.265 1. The provisions of this section apply to corporations  
31 originated in this State before October 1, 1991.

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

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

37 (a) A preemptive right does not exist:

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

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



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

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

7 (5) To acquire any shares, treasury shares or securities  
8 convertible into such shares, if the shares or the shares into which  
9 the convertible securities may be converted are upon issuance  
10 registered pursuant to section 12 of the Securities Exchange Act ,  
11 ~~[of 1934,]~~ 15 U.S.C. § 781.

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

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

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

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

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

26 78.288 1. Except as otherwise provided in subsection 2 and  
27 the articles of incorporation, a board of directors may authorize and  
28 the corporation may make distributions to the holders of any class or  
29 series of the ~~[corporation's shares,]~~ *capital stock of the corporation,*  
30 including distributions on shares that are partially paid.

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

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

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

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

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



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

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

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

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

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

11 (2) The date upon which the ~~[stockholder]~~ *holder of shares*  
12 *of one or more classes or series of the capital stock of the*  
13 *corporation* ceases to be a ~~[stockholder]~~ *holder* with respect to the  
14 acquired shares.

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

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

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

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

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

28 6. Indebtedness of a corporation, including indebtedness issued  
29 as a distribution, is not considered a liability for purposes of  
30 determinations pursuant to subsection 2 if its terms provide that  
31 payment of principal and interest are made only if and to the extent  
32 that payment of a distribution to ~~[stockholders]~~ *holders of shares of*  
33 *one or more classes or series of the capital stock of the corporation*  
34 could then be made pursuant to this section. If the indebtedness is  
35 issued as a distribution, each payment of principal or interest must  
36 be treated as a distribution, the effect of which must be measured on  
37 the date the payment is actually made.

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

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





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

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

4 78.300 1. The directors of a corporation shall not make  
5 distributions to ~~[stockholders]~~ *holders of shares of one or more*  
6 *classes or series of the capital stock of the corporation* except as  
7 provided by this chapter.

8 2. Except as otherwise provided in subsection 3 and NRS  
9 78.138, in case of any violation of the provisions of this section, the  
10 directors under whose administration the violation occurred are  
11 jointly and severally liable, at any time within 3 years after each  
12 violation, to the corporation, and, in the event of its dissolution or  
13 insolvency, to its creditors at the time of the violation, or any of  
14 them, to the lesser of the full amount of the distribution made or of  
15 any loss sustained by the corporation by reason of the distribution to  
16 ~~[stockholders.]~~ *holders of shares of one or more classes or series of*  
17 *the capital stock of the corporation.*

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

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

24 78.320 1. Unless this chapter, the articles of incorporation or  
25 the bylaws provide for different proportions:

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

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

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

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

43 4. Unless otherwise restricted by the articles of incorporation  
44 or bylaws, stockholders *and certain other persons authorized by*  
45 *the corporation to attend a meeting of stockholders* may participate



1 in ~~[a]~~ *the* meeting ~~[of stockholders]~~ through *remote*  
2 *communication, including, without limitation,* electronic  
3 communications, videoconferencing, teleconferencing or other  
4 available technology , if the corporation has implemented  
5 reasonable measures to:

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

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

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

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

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

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

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

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

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

38 78.350 1. Unless otherwise provided in the articles of  
39 incorporation, or in the certificate of designation establishing the  
40 class or series of stock, every stockholder of record of a corporation  
41 is entitled at each meeting of stockholders thereof to one vote for  
42 each share of stock standing in his or her name on the records of the  
43 corporation. If the articles of incorporation, or the certificate of  
44 designation establishing the class or series of stock provides for  
45 more or less than one vote per share for any class or series of shares



1 on any matter, every reference in this chapter to a majority or other  
2 proportion of stock shall be deemed to refer to a majority or other  
3 proportion of the voting power of all of the shares or those classes or  
4 series of shares, as may be required by the articles of incorporation,  
5 or in the certificate of designation establishing the class or series of  
6 stock or the provisions of this chapter.

7 2. Unless a period of more than 60 days or a period of less than  
8 10 days is prescribed or fixed in the articles of incorporation, the  
9 *board of* directors may prescribe a period not exceeding 60 days  
10 before any meeting of the stockholders during which no transfer of  
11 stock on the books of the corporation may be made, or may fix ~~[, in~~  
12 ~~advance,]~~ a record date not more than 60 or less than 10 days before  
13 the date of any such meeting as the date as of which stockholders  
14 entitled to notice of and to vote at such meetings must be  
15 determined.

16 3. *If a record date is fixed by the board of directors:*

17 (a) *The record date:*

18 (1) *Must be so fixed by a resolution adopted by the board of*  
19 *directors; and*

20 (2) *Must not precede the date that the resolution is adopted*  
21 *by the board of directors, regardless of the effective date of the*  
22 *resolution.*

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

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

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

36 ~~[3.]~~ 6. The board of directors may adopt a resolution  
37 prescribing a date upon which the stockholders of record entitled to  
38 give written consent pursuant to NRS 78.320 must be determined.  
39 The date prescribed by the board of directors may not precede or be  
40 more than 10 days after the date the resolution is adopted by the  
41 board of directors ~~[]~~ *, regardless of the effective date of the*  
42 *resolution.*

43 7. If the board of directors does not adopt a resolution  
44 prescribing a date upon which the stockholders of record entitled to



1 give written consent pursuant to NRS 78.320 must be determined  
2 and:

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

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

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

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

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

33 2. At any time within the 2 years next preceding the expiration  
34 of an agreement entered into pursuant to the provisions of  
35 subsection 1, or the expiration of an extension of that agreement,  
36 any beneficiary of the trust may, by written agreement with the  
37 trustee or trustees, extend the duration of the trust for a time not to  
38 exceed 15 years after the scheduled expiration date of the original  
39 agreement or the latest extension. An extension is not effective  
40 unless the trustee, before the expiration date of the original  
41 agreement or the latest extension, files a duplicate of the agreement  
42 providing for the extension in the registered office of the  
43 corporation. An agreement providing for an extension does not  
44 affect the rights or obligations of any person not a party to that  
45 agreement. *An agreement entered into pursuant to the provisions*



1 *of subsection 1 is not invalidated by the fact that by its terms its*  
2 *duration shall be deemed amended to conform with the provisions*  
3 *of this section.*

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

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

9 (b) As they may subsequently agree; or

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

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

14 (a) *To the extent that the transferee agrees in writing to be*  
15 *bound by the agreement; or*

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

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

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

24 5. An agreement ~~{entered into}~~ pursuant to the provisions of  
25 subsection 3 is not effective for a term of more than 15 years, but at  
26 any time within the 2 years next preceding the expiration of the  
27 agreement the parties thereto may extend its duration for ~~{as many~~  
28 ~~additional periods, each not to exceed 15 years, as they wish.~~  
29 ~~—5.—~~ *An] such period as is stated in the extension.*

30 6. An agreement entered into pursuant to the provisions of  
31 subsection 1 or 3 is not invalidated by the fact that by its terms its  
32 duration is more than 15 years, but its duration shall be deemed  
33 amended to conform with the provisions of this section.

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

35 78.370 1. If under the provisions of this chapter stockholders  
36 are required or authorized to take any action at a meeting, the notice  
37 of the meeting must be in writing.

38 2. Except in the case of the annual meeting, the notice must  
39 state the purpose or purposes for which the meeting is called. In all  
40 instances, the notice must state ~~{the}~~ :

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



1 (b) *The* means of ~~electronic communications,~~ *remote*  
2 *communication*, if any, by which stockholders and proxies shall be  
3 deemed to be present in person and vote ~~☐~~; *and*

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

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

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

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

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

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

41 (b) All, and at least two, payments sent by first-class mail of  
42 dividends or interest on securities during a 12-month period,  
43 ➤ have been mailed addressed to the stockholder at his or her  
44 address as shown on the records of the corporation and have been  
45 returned undeliverable, the delivery of further notices to the



1 stockholder is not required. Any action or meeting taken or held  
2 without notice to such a stockholder has the same effect as if the  
3 notice had been delivered. If any such stockholder delivers to the  
4 corporation a written notice setting forth his or her current address,  
5 the requirement that notice be delivered to the stockholder is  
6 reinstated. If the action taken by the corporation is such as to require  
7 the filing of a certificate under any of the other sections of this  
8 chapter, the certificate need not state that notice was not delivered to  
9 persons to whom notice was not required to be delivered pursuant to  
10 this subsection. The delivery of further notices to a stockholder is  
11 still required for any notice returned as undeliverable if the notice  
12 was delivered by electronic transmission.

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

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

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

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

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

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

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

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

43 10. *As used in this section, "remote communication" means a*  
44 *form of communication described in subsection 4 of NRS 78.320.*



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

2       78.7502 1. A corporation may indemnify pursuant to this  
3 subsection any person who was or is a party or is threatened to be  
4 made a party to any threatened, pending or completed action, suit or  
5 proceeding, whether civil, criminal, administrative or investigative,  
6 except an action by or in the right of the corporation, by reason of  
7 the fact that the person is or was a director, officer, employee or  
8 agent of the corporation, or is or was serving at the request of the  
9 corporation as a director, officer, *manager*, employee or agent of  
10 another corporation, partnership, joint venture, trust or other  
11 enterprise, against expenses, including attorneys' fees, judgments,  
12 fines and amounts paid in settlement actually and reasonably  
13 incurred by the person in connection with the action, suit or  
14 proceeding if the person:

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

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

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

29       2. A corporation may indemnify pursuant to this subsection  
30 any person who was or is a party or is threatened to be made a party  
31 to any threatened, pending or completed action or suit by or in the  
32 right of the corporation to procure a judgment in its favor by reason  
33 of the fact that the person is or was a director, officer, employee or  
34 agent of the corporation, or is or was serving at the request of the  
35 corporation as a director, officer, *manager*, employee or agent of  
36 another corporation, partnership, joint venture, trust or other  
37 enterprise against expenses, including amounts paid in settlement  
38 and attorneys' fees actually and reasonably incurred by the person in  
39 connection with the defense or settlement of the action or suit if the  
40 person:

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

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





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

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

16 (a) The stockholders;

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

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

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

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

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

26 81.430 1. Any person or any number of persons, including  
27 and in addition to the original incorporators, may become members  
28 of the corporation upon such terms and conditions as to  
29 membership, and subject to such rules and regulations as to their,  
30 and each of their, contract and other rights and liabilities between it  
31 and the member, as the corporation shall prescribe in its bylaws.

32 2. ~~The~~ *Unless the corporation is a unit-owners' association,*  
33 *as defined in NRS 116.3101, the* corporation shall issue a certificate  
34 of membership to each member, but the membership or the  
35 certificate thereof shall not, except as provided in NRS 81.410 to  
36 81.540, inclusive, be assigned by any member to any other person,  
37 nor shall the assigns thereof be entitled to membership in the  
38 corporation, or to any property rights or interest therein.

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

43 4. The corporation shall also have the right, by its bylaws, to  
44 provide for or against the transfer of membership and for or against  
45 the assignment of membership certificates, and also the terms and



1 conditions upon which any such transfer or assignment shall be  
2 allowed.

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

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

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

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

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

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

26 86.011 As used in this chapter, unless the context otherwise  
27 requires, the words and terms defined in NRS 86.022 to 86.1255,  
28 inclusive, *and section 18 of this act* have the meanings ascribed to  
29 them in those sections.

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

31 86.095 *1.* “Noneconomic member” means a member of a  
32 limited-liability company who:

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

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

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

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

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



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

2       86.291 1. Except as otherwise provided in this section or in  
3 the articles of organization or operating agreement, ~~[management~~  
4 ~~of]~~ a limited-liability company is ~~[vested]~~ *managed by a majority in*  
5 *interest of* its members . ~~[in proportion to their contribution to its~~  
6 ~~capital, as adjusted from time to time to reflect properly any~~  
7 ~~additional contributions or withdrawals by the members.]~~

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

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

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

23       86.341 A limited-liability company may, from time to time,  
24 ~~[divide the profits of its business and distribute them to its members,~~  
25 ~~and any transferee as his or her interest may appear, upon the basis]~~  
26 *make distributions as* stipulated in the *articles of organization or*  
27 operating agreement. If the *articles of organization or* operating  
28 agreement ~~[does]~~ *do* not otherwise provide, ~~[profits and losses]~~ *the*  
29 *distributions* must be allocated proportionately to the value, as  
30 shown in the records of the company, of the contributions made by  
31 each member and not returned.

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

33       86.343 1. Except as otherwise provided in subsection 2, a  
34 distribution ~~[of the profits and contributions]~~ of a limited-liability  
35 company must not be made if, after giving it effect:

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 7. A member who receives a distribution from a limited-  
45 liability company *or the series, as applicable*, in violation of this



1 section is not liable to the limited-liability company *or such series,*  
2 *as applicable,* and, in the event of its dissolution or insolvency, to  
3 its creditors, or any of them, for the amount of the distribution after  
4 the expiration of 3 years after the date of the distribution unless an  
5 action to recover the distribution from the member is commenced  
6 before the expiration of the 3-year period following the distribution.

7 **8. *Except as otherwise provided in the articles of organization***  
8 ***or operating agreement, the manager or managers or, if the***  
9 ***management of the company is not vested in a manager or***  
10 ***managers, the members, may fix a record date for determining the***  
11 ***members entitled to a distribution authorized pursuant to this***  
12 ***section. The record date must not precede the date of its fixation.***

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

14 86.5411 1. Whenever any limited-liability company becomes  
15 insolvent or suspends its ordinary business for want of money to  
16 carry on the business, or if its business has been and is being  
17 conducted at a great loss and greatly prejudicial to the interest of its  
18 creditors or members, any creditors holding *at least* 10 percent of  
19 the outstanding indebtedness [~~or members owning either 10~~  
20 ~~percent of the outstanding member's interests or 10 percent of the~~  
21 ~~voting power~~] of the company [~~or~~] *or at least 10 percent in interest*  
22 *of the members,* may, by petition setting forth the facts and  
23 circumstances of the case, apply to the district court of the county in  
24 which the principal office of the company is located or, if the  
25 principal office is not located in this State, to the district court in the  
26 county in which the company's registered office is located for a writ  
27 of injunction and the appointment of a receiver or receivers or  
28 trustee or trustees.

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

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



1 except to a receiver appointed by the court, until the court otherwise  
2 orders.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

14 86.5416 Whenever ~~[members holding member's interests~~  
15 ~~entitling them to exercise at least]~~ a majority *in interest* of the  
16 ~~[voting power]~~ *members* of the limited-liability company ~~[shall]~~  
17 have agreed upon a plan for the reorganization of the company and a  
18 resumption by it of the management and control of its property and  
19 business, the company may, with the consent of the district court:

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

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

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

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

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

41 2. *Identify the proposed corporate action;*

42 3. *Provide that a stockholder who wishes to assert dissenter's*  
43 *rights with respect to any class or series of shares must deliver a*  
44 *statement of intent to the subject corporation and set a date by*  
45 *which the subject corporation must receive the statement of intent,*



1 *which may not be less than 15 days after the date the notice is*  
2 *sent, and state that the stockholder shall be deemed to have waived*  
3 *the right to assert dissenter's rights with respect to the shares*  
4 *unless the statement of intent is received by the subject*  
5 *corporation by such specified date; and*

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

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

13 **Sec. 31.** NRS 92A.005 is hereby amended to read as follows:  
14 92A.005 As used in this chapter, unless the context otherwise  
15 requires, the words and terms defined in NRS 92A.007 to 92A.092,  
16 inclusive, *and sections 29 and 30 of this act* have the meanings  
17 ascribed to them in those sections.

18 **Sec. 32.** NRS 92A.133 is hereby amended to read as follows:  
19 92A.133 1. Unless otherwise expressly required by the  
20 articles of incorporation, no vote of the stockholders of a ~~publicly~~  
21 ~~traded~~ *domestic* corporation is necessary to authorize a merger in  
22 which the ~~publicly-traded~~ *domestic* corporation is a constituent  
23 entity if the plan of merger expressly permits or requires the merger  
24 to be effected under this section and:

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

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

29 *(I) The domestic corporation has been a publicly traded*  
30 *corporation at all times during the period between:*

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

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

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

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

39 ~~(2)~~ *(II) Each outstanding share of each class or series of*  
40 *stock of the ~~publicly-traded~~ domestic corporation that is the*  
41 *subject of, and not irrevocably accepted for purchase or exchange*  
42 *in, the offer must be converted in such merger into, or into the right*  
43 *to receive, the same amount and kind of cash, property, rights or*  
44 *securities to be paid for shares of such class or series of stock of the*  
45 *~~publicly-traded~~ domestic corporation irrevocably accepted for*





1 purchase or exchange in the offer. The plan of merger may  
2 expressly provide that the requirements of this ~~subparagraph~~ **sub-**  
3 **subparagraph** must not apply to specified categories of excluded  
4 shares.

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

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

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

17 (c) **The domestic corporation must have been a publicly traded**  
18 **corporation at all times during the period between:**

19 (1) **The date of the commencement of the offer or the date**  
20 **of the adoption of the plan of merger by the board of directors of**  
21 **the domestic corporation, whichever is earlier; and**

22 (2) **The effective date of the merger.**

23 3. This section does not apply to circumvent or contravene the  
24 provisions of NRS 78.378 to 78.3793, inclusive, or NRS 78.411 to  
25 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  
30 purchase or 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  
34 are owned beneficially or of record at the commencement of an  
35 offer by:

36 (I) The ~~publicly traded~~ **domestic** corporation;

37 (II) The constituent entity making the offer;

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

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

43 (e) "Offer" means an offer made by the other constituent entity  
44 in the merger for all of the outstanding shares of each class or series  
45 of stock of the ~~publicly traded~~ **domestic** corporation listed on a



1 national securities exchange, on the terms provided in the plan of  
2 merger that, absent this section, would be entitled to vote on the  
3 ~~adoption~~ *approval* of the plan of merger. The other constituent  
4 entity in the merger may, but is not required to, engage in the  
5 consummation of separate offers for separate classes or series of the  
6 stock of the ~~publicly-traded~~ *domestic* corporation. An offer may,  
7 but is not required to:

8 (1) Exclude any excluded shares; and

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

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

17 (g) “Ownership threshold requirement” means that the voting  
18 power of the stock of the ~~publicly-traded~~ *domestic* corporation  
19 otherwise owned beneficially or of record by the other constituent  
20 entity in the merger or any of the owned affiliates of the other  
21 constituent entity, together with the voting power of any rollover  
22 shares and any shares irrevocably accepted for purchase or exchange  
23 pursuant to any offer and received before the expiration of the offer  
24 by the agent or depository appointed to facilitate the consummation  
25 of the offer, equals at least that proportion of the voting power of the  
26 stock, and of each class or series thereof, of the ~~publicly-traded~~  
27 *domestic* corporation that, absent this section, would be required to  
28 approve the plan of merger under this chapter and the articles of  
29 incorporation and bylaws of the ~~publicly-traded~~ *domestic*  
30 corporation. For the purposes of this paragraph, shares are received:

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

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

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

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



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

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

12 92A.140 1. Unless otherwise provided in the partnership  
13 agreement or the certificate of limited partnership, a plan of merger,  
14 conversion or exchange involving a domestic limited partnership  
15 must be approved by all general partners and by limited partners  
16 who own a majority in interest of the partnership then owned by all  
17 the limited partners. If the partnership has more than one class of  
18 limited partners, the plan of merger, conversion or exchange must  
19 be approved by those limited partners who own a majority in  
20 interest of the partnership then owned by the limited partners in each  
21 class.

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

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

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

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

38 3. *As used in this section, “majority in interest of the*  
39 *partnership” means a majority of the total contributions of the*  
40 *limited partners to the capital of the partnership, as adjusted from*  
41 *time to time to reflect properly any additional contributions or*  
42 *withdrawals by the partners.*

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

44 92A.150 1. Unless otherwise provided in the articles of  
45 organization or an operating agreement:



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

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

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

16 3. *As used in this section, "majority in interest":*

17 (a) *In reference to a limited-liability company with one class of*  
18 *members, means a majority of the total contributions of the*  
19 *members to the capital of the limited-liability company, as adjusted*  
20 *from time to time to properly reflect any additional contributions*  
21 *or withdrawals by the members.*

22 (b) *In reference to a limited-liability company with more than*  
23 *one class of members, means a majority of the total contributions*  
24 *of the members of each class to the capital of the limited-liability*  
25 *company, as adjusted from time to time to properly reflect any*  
26 *additional contributions or withdrawals from the series by the*  
27 *members.*

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

29 92A.390 1. There is no right of dissent pursuant to paragraph  
30 (a), (b), (c) or (f) of subsection 1 of NRS 92A.380 in favor of  
31 stockholders of any class or series which is:

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

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

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



1 ↪ unless the articles of incorporation of the corporation issuing the  
2 class or series or the resolution of the board of directors approving  
3 the plan of merger, conversion or exchange expressly provide  
4 otherwise.

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

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

9 (b) The day before the effective date of such corporate action if  
10 ~~there~~ :

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

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

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

19 (a) Cash;

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

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

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

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

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

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

38 92A.410 ~~to read~~ If a proposed corporate action creating  
39 dissenter's rights is ~~submitted~~ :

40 1. *Submitted for approval* to a vote at a stockholders' meeting,  
41 the notice of the meeting must state that stockholders are, are not or  
42 may be entitled to assert dissenter's rights under NRS 92A.300 to  
43 92A.500, inclusive. If the domestic corporation concludes that  
44 dissenter's rights are or may be available, a copy of NRS 92A.300



1 to 92A.500, inclusive, must accompany the meeting notice sent to  
2 those stockholders of record entitled to exercise dissenter's rights.

3 2. ~~[[If the corporate action creating dissenter's rights is taken]~~  
4 *Submitted for approval* by written consent of the stockholders or  
5 *taken* without a vote of the stockholders, the domestic corporation  
6 *may send an advance notice statement with respect to the proposed*  
7 *corporate action. If the proposed corporate action is taken*  
8 *pursuant to this subsection, the domestic corporation* shall notify  
9 in writing all stockholders of record entitled to assert dissenter's  
10 rights that the action was taken and send them the dissenter's notice  
11 described in NRS 92A.430.

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

13 92A.420 1. If a proposed corporate action creating  
14 dissenter's rights is submitted to a vote at a stockholders' meeting, a  
15 stockholder who wishes to assert dissenter's rights with respect to  
16 any class or series of shares:

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

21 (b) Must not vote, or cause or permit to be voted, any of his or  
22 her shares of such class or series in favor of the proposed *corporate*  
23 action.

24 2. If a proposed corporate action creating dissenter's rights is  
25 ~~[[taken]]~~ *submitted for approval* by written consent of the  
26 stockholders, a stockholder who wishes to assert dissenter's rights  
27 with respect to any class or series of shares ~~[[must]]~~ :

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

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

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

38 **Sec. 38.** NRS 78.424, 78.4265, 78.427, 78.428 and 86.065 are  
39 hereby repealed.



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**LEADLINES OF REPEALED SECTIONS**

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- 78.424** “Market value” defined.
- 78.4265** “Publicly traded corporation” defined.
- 78.427** “Resident domestic corporation” defined.
- 78.428** “Securities Exchange Act” defined.
- 86.065** “Majority in interest” defined.

