REQUIRES TWO-THIRDS MAJORITY VOTE (§§ 6, 10, 14, 27, 28, 34, 40, 51, 57, 58, 70, 80, 81, 82, 96)

S.B. 51

SENATE BILL NO. 51–COMMITTEE ON JUDICIARY

PREFILED JANUARY 24, 2001

(ON BEHALF OF ENCOURAGING BUSINESSES TO ORGANIZE AND CONDUCT BUSINESS IN NEVADA (S.C.R. 19))

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning requirements for formation, maintenance and management of business associations. (BDR 7-255)

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

~

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

AN ACT relating to business associations; providing for the decrease of issued and outstanding shares of stock in certain circumstances; providing for the voting rights of fiduciaries and joint owners of stock; revising provisions governing the forfeiture of stock by delinquent subscribers; providing for the registration and management of foreign limited-liability companies; revising provisions governing the merger, conversion and exchange of business entities; providing for the domestication of certain foreign business entities; making various other changes pertaining to business associations; and providing other matters properly relating thereto.

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

Section 1. Chapter 78 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. ***1. A person holding stock in a fiduciary capacity is entitled to vote the shares so held.***

2. A person whose stock is pledged is entitled to vote, unless in the pledge the pledgor has expressly empowered the pledgee to vote the stock, in which case only the pledgee or the proxy of the pledgee may vote the stock.

3. If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, joint tenants, tenants in common or otherwise, or if two or more persons have the same fiduciary relationship respecting the shares or securities, unless the

secretary of the corporation is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship, their acts with respect to voting have the following effect:

(a) If only one votes, that person's act binds all;

(b) If more than one votes, the act chosen by a majority of votes binds all; or

(c) If more than one votes, but the vote is evenly split on any particular matter, each faction may vote the shares or securities in question proportionally.

Sec. 3. *1. Unless otherwise provided in the articles of incorporation, a corporation that desires to decrease the number of issued and outstanding shares of a class or series held by each stockholder of record at the effective date and time of the change without correspondingly decreasing the number of authorized shares of the same class or series may do so if:*

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

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

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

3. If a proposed decrease in the number of issued and outstanding shares of any class or series would adversely alter or change any preference, or any relative or other right given to any other class or series of outstanding shares, then the decrease must be approved by the vote, in addition to any vote otherwise required, of the shares representing a majority of the voting power of each class or series whose preference or rights are adversely affected by the decrease, or such greater proportion as may be provided in the articles of incorporation, regardless of limitations or restrictions on the voting power of the adversely affected class or series.

4. Any proposal to decrease the number of issued and outstanding shares of any class or series, if any, that includes provisions pursuant to which only money will be paid or scrip will be issued to stockholders who:

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

(b) Would otherwise be entitled to receive fractions of shares in exchange for the cancellation of all their outstanding shares,

is subject to the provisions of NRS 92A.300 to 92A.500, inclusive. If the proposal is subject to those provisions, any stockholder who is obligated

to accept money or scrip rather than receive a fraction of a share resulting from the action taken pursuant to this section may dissent in accordance with the provisions of NRS 92A.300 to 92A.500, inclusive, and obtain payment of the fair value of the fraction of a share to which the stockholder would otherwise be entitled.

Sec. 4. NRS 78.010 is hereby amended to read as follows:

78.010 1. As used in this chapter:

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

(b) "Articles," "articles of incorporation" and "certificate of incorporation" are synonymous terms and unless the context otherwise requires, include all certificates filed pursuant to NRS 78.030, 78.1955, 78.209, 78.380, 78.385 and 78.390 and any articles of merger ~~[or]~~ ***, conversion,*** exchange ***or domestication*** filed pursuant to NRS 92A.200 to 92A.240, inclusive ~~[.]~~ ***, and sections 76 to 82, inclusive, of this act.*** Unless the context otherwise requires, these terms include restated articles and certificates of incorporation.

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

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

(e) "Registered office" means the office maintained at the street address of the resident agent.

(f) "Resident agent" means the agent appointed by the corporation upon whom process or a notice or demand authorized by law to be served upon the corporation may be served.

(g) "Sign" means to affix a signature to a document.

(h) "Signature" means a name, word or mark executed or adopted by a person with the present intention to authenticate a document. The term includes, without limitation, a digital signature as defined in NRS 720.060.

(i) "Stockholder of record" means a person whose name appears on the stock ledger of the corporation.

(j) "Street address" of a resident agent means the actual physical location in this state at which a resident agent is available for service of process.

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

Sec. 5. NRS 78.125 is hereby amended to read as follows:

78.125 1. Unless it is otherwise provided in the articles of incorporation, the board of directors may designate one or more committees which, to the extent provided in the resolution or resolutions or in the bylaws of the corporation, have and may exercise the powers of the board of directors in the management of the business and affairs of the corporation ***.*** ~~[, and may have power to authorize the seal of the corporation to be affixed to all papers on which the corporation desires to place a seal.]~~

2. The committee or committees must have such name or names as may be stated in the bylaws of the corporation or as may be determined from time to time by resolution adopted by the board of directors.

3. Each committee must include at least one director. Unless the articles of incorporation or the bylaws provide otherwise, the board of directors may appoint natural persons who are not directors to serve on committees.

4. The board of directors may designate one or more directors as alternate members of a committee to replace any member who is disqualified or absent from a meeting of the committee. The bylaws of the corporation may provide that, unless the board of directors appoints alternate members pursuant to this subsection, the member or members of a committee present at a meeting and not disqualified from voting, whether or not the member or members constitute a quorum, may unanimously appoint another member of the board of directors to act at the meeting in the place of an absent or disqualified member of the committee.

Sec. 6. NRS 78.150 is hereby amended to read as follows:

78.150 1. A corporation organized ~~[under]~~ ***pursuant to*** the laws of this state shall, on or before the first day of the second month after the filing of its articles of incorporation with the secretary of state, file with the secretary of state a list, on a form furnished by him, containing:

(a) The name of the corporation;

(b) The file number of the corporation, if known;

(c) The names and titles of the president, secretary, treasurer and of all the directors of the corporation;

(d) The mailing or street address, either residence or business, of each officer and director listed, following the name of the officer or director; and

(e) The signature of an officer of the corporation certifying that the list is true, complete and accurate.

2. The corporation shall annually thereafter, on or before the last day of the month in which the anniversary date of incorporation occurs in each year, file with the secretary of state, on a form furnished by him, an ~~[amended]~~ ***annual*** list containing all of the information required in subsection 1.

3. Upon filing ~~[a list of officers and directors,]~~ ***the annual list required by subsection 2,*** the corporation shall pay to the secretary of state a fee of $85.

4. The secretary of state shall, 60 days before the last day for filing the annual list required by subsection 2, cause to be mailed to each corporation which is required to comply with the provisions of NRS 78.150 to 78.185, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection 3 and a reminder to file ~~[a list of officers and directors.]~~ ***the annual list required by subsection 2.*** Failure of any corporation to receive a notice or form does not excuse it from the penalty imposed by law.

5. If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective in any respect or the fee required by subsection 3 ***, 6*** or 7 is not paid, the secretary of state may return the list for correction or payment.

6. An annual list for a corporation not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and ~~[does not satisfy the requirements of subsection 2 for the year to which the due date is applicable.]~~ ***must be accompanied by a fee of $85 for filing. A payment submitted pursuant to this subsection does not satisfy the requirements of subsection 2 for the year to which the due date is applicable.***

7. If the corporation is an association as defined in NRS 116.110315, the secretary of state shall not accept the filing required by this section unless it is accompanied by evidence of the payment of the fee required to be paid pursuant to NRS 116.31155 that is provided to the association pursuant to subsection 4 of that section.

Sec. 7. NRS 78.175 is hereby amended to read as follows:

78.175 1. The secretary of state shall notify, by letter addressed to its resident agent, each corporation deemed in default pursuant to NRS 78.170. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

2. On the first day of the ~~[ninth month following]~~ ***second anniversary of*** the month in which the filing was required, the charter of the corporation is revoked and its right to transact business is forfeited.

3. The secretary of state shall compile a complete list containing the names of all corporations whose right to do business has been forfeited. The secretary of state shall forthwith notify, by letter addressed to its resident agent, each such corporation of the forfeiture of its charter. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

4. If the charter of a corporation is revoked and the right to transact business is forfeited as provided in subsection 2, all of the property and assets of the defaulting domestic corporation must be held in trust by the directors of the corporation as for insolvent corporations, and the same proceedings may be had with respect thereto as are applicable to insolvent corporations. Any person interested may institute proceedings at any time after a forfeiture has been declared, but if the secretary of state reinstates the charter the proceedings must at once be dismissed and all property restored to the officers of the corporation.

5. Where the assets are distributed they must be applied in the following manner:

(a) To the payment of the filing fee, penalties and costs due to the state;

(b) To the payment of the creditors of the corporation; and

(c) Any balance remaining to distribution among the stockholders.

Sec. 8. NRS 78.180 is hereby amended to read as follows:

78.180 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate a corporation which has forfeited its right to transact business ~~[under]~~ ***pursuant to*** the provisions of this chapter and restore to the corporation its right to carry on business in this state, and to exercise its corporate privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 78.150; and

(b) Pays to the secretary of state:

(1) The annual filing fee and penalty set forth in NRS 78.150 and 78.170 for each year or portion thereof during which ~~[its charter was revoked;]~~ ***it failed to file each required annual list in a timely manner;*** and

(2) A fee of $50 for reinstatement.

2. When the secretary of state reinstates the corporation, he shall:

(a) Immediately issue and deliver to the corporation a certificate of reinstatement authorizing it to transact business as if the filing fee ***or fees*** had been paid when due; and

(b) Upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

4. If a corporate charter has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 consecutive years, the charter must not be reinstated.

Sec. 9. NRS 78.195 is hereby amended to read as follows:

78.195 1. If a corporation desires to have more than one class or series of stock, the articles of incorporation must prescribe, or vest authority in the board of directors to prescribe, the classes, series and the number of each class or series of stock and the voting powers, designations, preferences, limitations, restrictions and relative rights of each class or series of stock. If more than one class or series of stock is authorized, the articles of incorporation or the resolution of the board of directors passed pursuant to a provision of the articles must prescribe a distinguishing designation for each class and series. The voting powers, designations, preferences, limitations, restrictions, relative rights and distinguishing designation of each class or series of stock must be described in the articles of incorporation or the resolution of the board of directors before the issuance of shares of that class or series.

2. All shares of a series must have voting powers, designations, preferences, limitations, restrictions and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

3. Unless otherwise provided in the articles of incorporation, no stock issued as fully paid up may ever be assessed and the articles of incorporation must not be amended in this particular.

4. Any rate, condition or time for payment of distributions on any class or series of stock may be made dependent upon any fact or event which may be ascertained outside the articles of incorporation or the resolution providing for the distributions adopted by the board of directors if the manner in which a fact or event may operate upon the rate, condition or time of payment for the distributions is stated in the articles of incorporation or the resolution. ***As used in this subsection, "fact or event" includes, without limitation, the existence of a fact or occurrence of an event, including, without limitation, a determination or action by a***

person, government, governmental agency or political subdivision of a government.

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

Sec. 10. NRS 78.1955 is hereby amended to read as follows:

78.1955 1. If the voting powers, designations, preferences, limitations, restrictions and relative rights of any class or series of stock have been established by a resolution of the board of directors pursuant to a provision in the articles of incorporation, a certificate of designation ***setting forth the resolution*** must be ***signed by an officer of the corporation and*** filed with the secretary of state ***.*** ~~[setting forth the resolution. The certificate of designation must be executed by the president or vice president and secretary or assistant secretary and acknowledged by the president or vice president before a person authorized by the laws of Nevada to take acknowledgments of deeds. The]~~ ***A*** certificate of designation ~~[so executed and acknowledged must be filed]~~ ***signed and filed pursuant to this section must become effective*** before the issuance of any shares of the class or series.

2. Unless otherwise provided in the articles of incorporation or the certificate of designation being amended, if no shares of a class or series of stock established by a resolution of the board of directors have been issued, the designation of the class or series, the number of the class or series and the voting powers, designations, preferences, limitations, restrictions and relative rights of the class or series may be amended by a resolution of the board of directors pursuant to a certificate of amendment filed in the manner provided in subsection 4.

3. Unless otherwise provided in the articles of incorporation or the certificate of designation, if shares of a class or series of stock established by a resolution of the board of directors have been issued, the designation of the class or series, the number of the class or series and the voting powers, designations, preferences, limitations, restrictions and relative rights of the class or series may be amended by a resolution of the board of directors only if the amendment is approved as provided in this subsection. Unless otherwise provided in the articles of incorporation or the certificate of designation, the proposed amendment adopted by the board of directors must be approved by the vote of stockholders holding shares in the corporation entitling them to exercise a majority of the voting power, or such greater proportion of the voting power as may be required by the articles of incorporation or the certificate of designation, of:

(a) The class or series of stock being amended; and

(b) Each class and each series of stock which, before amendment, is senior to the class or series being amended as to the payment of distributions upon dissolution of the corporation, regardless of any limitations or restrictions on the voting power of that class or series.

4. A certificate of amendment to a certificate of designation must be ***signed by an officer of the corporation and*** filed with the secretary of state and must:

(a) Set forth the original designation and the new designation, if the designation of the class or series is being amended;

(b) State that no shares of the class or series have been issued or state that the approval of the stockholders required pursuant to subsection 3 has been obtained; and

(c) Set forth the amendment to the class or series or set forth the designation of the class or series, the number of the class or series and the voting powers, designations, preferences, limitations, restrictions and relative rights of the class or series, as amended.

~~[The certificate of amendment must be executed by the president or vice president and secretary or assistant secretary and acknowledged by the president or vice president before a person authorized by the laws of Nevada to take acknowledgments of deeds.]~~

5. A certificate filed pursuant to subsection 1 or 4 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

6. If shares of a class or series of stock established by a certificate of designation are not outstanding, the corporation may file a certificate:

(a) Stating that no shares of the class or series are outstanding; and

(b) Containing the resolution of the board of directors authorizing the withdrawal of the certificate of designation establishing the class or series of stock. The certificate must be signed by an officer of the corporation and filed with the secretary of state. Upon filing the certificate and payment of the fee required pursuant to NRS 78.765, all matters contained in the certificate of designation regarding the class or series of stock are eliminated from the articles of incorporation.

7. NRS 78.380, 78.385 and 78.390 do not apply to certificates of amendment filed pursuant to this section.

Sec. 11. NRS 78.196 is hereby amended to read as follows:

78.196 1. Each corporation must have:

(a) One or more classes or series of shares that together have unlimited voting rights; and

(b) One or more classes or series of shares that together are entitled to receive the net assets of the corporation upon dissolution.

If the articles of incorporation provide for only one class of stock, that class of stock has unlimited voting rights and is entitled to receive the net assets of the corporation upon dissolution.

2. The articles of incorporation, or a resolution of the board of directors pursuant thereto, may authorize one or more classes or series of stock that:

(a) Have special, conditional or limited voting powers, or no right to vote, except to the extent otherwise provided by this Title;

(b) Are redeemable or convertible:

(1) At the option of the corporation, the stockholders or another person, or upon the occurrence of a designated event;

(2) For cash, indebtedness, securities or other property; or

(3) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the stockholders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative or partially cumulative;

(d) Have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation;

(e) Have par value; or

(f) Have powers, designations, preferences, limitations, restrictions and relative rights dependent upon any fact or event which may be ascertained outside of the articles of incorporation or the resolution if the manner in which the fact or event may operate on such class or series of stock is stated in the articles of incorporation or the resolution.

3. ***Unless otherwise provided in the articles of incorporation or in a resolution of the board of directors establishing a class or series of stock, shares which are subject to redemption and which have been called for redemption are not deemed to be outstanding shares for purposes of voting or determining the total number of shares entitled to vote on a matter on and after the date on which:***

(a) Written notice of redemption has been sent to the holders of such shares; and

(b) A sum sufficient to redeem the shares has been irrevocably deposited or set aside to pay the redemption price to the holders of the shares upon surrender of any certificates.

4. The description of voting powers, designations, preferences, limitations, restrictions and relative rights of the classes or series of shares contained in this section is not exclusive.

Sec. 12. NRS 78.205 is hereby amended to read as follows:

78.205 1. A corporation is not ~~[obliged]~~ ***obligated*** to but may execute and deliver a certificate for or including a fraction of a share.

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

(a) Pay to any person otherwise entitled to become a holder of a fraction of a share:

(1) The appraised value of that share if the appraisal was properly demanded ~~[.]~~ ***pursuant to this chapter or chapter 92A of NRS;*** or

(2) If no appraisal was demanded or an appraisal was not properly demanded, an amount in cash specified for that purpose as the value of the fraction in the articles, plan of reorganization, plan of merger or exchange, resolution of the board of directors, or other instrument pursuant to which the fractional share would otherwise be issued, or, if not specified, then as may be determined for that purpose by the board of directors of the issuing corporation;

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

(c) Execute and deliver registered or bearer scrip over the manual or facsimile signature of an officer of the corporation or of its agent for that

purpose, exchangeable as provided on the scrip for full share certificates, but the scrip does not entitle the holder to any rights as a stockholder except as provided on the scrip. The scrip may provide that it becomes void unless the rights of the holders are exercised within a specified period and may contain any other provisions or conditions that the corporation deems advisable. Whenever any scrip ceases to be exchangeable for full share certificates, the shares that would otherwise have been issuable as provided on the scrip are deemed to be treasury shares unless the scrip contains other provisions for their disposition.

3. The provisions of this section do not prevent a person who holds a fractional share from disputing the appraised value of a share pursuant to NRS 92A.300 to 92A.500, inclusive, if the person is otherwise entitled to exercise such rights.

Sec. 13. NRS 78.207 is hereby amended to read as follows:

78.207 1. Unless otherwise provided in the articles of incorporation, a corporation ~~[organized and existing under the laws of this state]~~ that desires to change the number of shares of a class ~~[and]~~ ***or*** series, if any, of its authorized stock by increasing or decreasing the number of authorized shares of the class ~~[and]~~ ***or*** series and correspondingly increasing or decreasing the number of issued and outstanding shares of the same class ~~[and]~~ ***or*** series held by each stockholder of record at the effective date and time of the change, may, except as otherwise provided in subsections 2 and 3, do so by a resolution adopted by the board of directors, without obtaining the approval of the stockholders. The resolution may also provide for a change of the par value, if any, of the same class ~~[and]~~ ***or*** series of the shares increased or decreased. After the effective date and time of the change, the corporation may issue its stock in accordance therewith.

2. A proposal to increase or decrease the number of authorized shares of any class ~~[and]~~ ***or*** series, if any, that includes provisions pursuant to which only money will be paid or scrip will be issued to stockholders who:

(a) Before the increase or decrease in the number of shares becomes effective, in the aggregate hold 10 percent or more of the outstanding shares of the affected class ~~[and]~~ ***or*** series; and

(b) Would otherwise be entitled to receive fractions of shares in exchange for the cancellation of all of their outstanding shares,

must be approved by the vote of stockholders holding a majority of the voting power of the affected class ~~[and]~~ ***or*** series, or such greater proportion as may be provided in the articles of incorporation, regardless of limitations or restrictions on the voting power thereof.

3. If a proposed increase or decrease in the number of authorized shares of any class or series would ***adversely*** alter or change any preference or any relative or other right given to any other class or series of outstanding shares, then the increase or decrease must be approved by the vote, in addition to any vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series whose preference or rights are ***adversely*** affected by the increase or decrease, regardless of limitations or restrictions on the voting power thereof.

4. Any proposal to increase or decrease the number of authorized shares of any class ~~[and]~~ ***or*** series, if any, that includes provisions pursuant to which only money will be paid or scrip will be issued to stockholders who:

(a) Before the increase or decrease in the number of shares becomes effective, hold 1 percent or more of the outstanding shares of the affected class ~~[and]~~ ***or*** series; and

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

is subject to the provisions of NRS 92A.300 to 92A.500, inclusive. If the proposal is subject to those provisions, any stockholder who is obligated to accept money or scrip rather than receive a fraction of a share resulting from the action taken pursuant to this section may dissent in accordance with those provisions and obtain payment of the fair value of the fraction of a share to which the stockholder would otherwise be entitled.

Sec. 14. NRS 78.209 is hereby amended to read as follows:

78.209 1. A change pursuant to NRS 78.207 is not effective until after the filing in the office of the secretary of state of a certificate, signed by ~~[the corporation's president, or a vice president, and its secretary, or an assistant secretary, and acknowledged by the president or vice president before a person authorized by the laws of this state to take acknowledgments of deeds,]~~ ***an officer of the corporation,*** setting forth:

(a) The current number of authorized shares and the par value, if any, of each class ~~[and]~~ ***or*** series, if any, of shares before the change;

(b) The number of authorized shares and the par value, if any, of each class ~~[and]~~ ***or*** series, if any, of shares after the change;

(c) The number of shares of each affected class ~~[and]~~ ***or*** series, if any, to be issued after the change in exchange for each issued share of the same class or series;

(d) The provisions, if any, for the issuance of fractional shares, or for the payment of money or the issuance of scrip to stockholders otherwise entitled to a fraction of a share and the percentage of outstanding shares affected thereby; ***and***

(e) That any required approval of the stockholders has been obtained ***.*** ~~[; and~~

~~(f) Whether the change is effective on filing the certificate or, if not, the date and time at which the change will be effective, which must not be more than 90 days after the certificate is filed.]~~

The provisions in the articles of incorporation of the corporation regarding the authorized number and par value, if any, of the changed class ~~[and]~~ ***or*** series, if any, of shares shall be deemed amended as provided in the certificate at the effective date and time of the change.

2. Unless an increase or decrease of the number of authorized shares pursuant to NRS 78.207 is accomplished by an action that otherwise requires an amendment to the ~~[corporation's]~~ articles of incorporation ~~[,]~~ ***of the corporation,*** such an amendment is not required by that section.

3. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the

certificate, which must not be later than 90 days after the certificate is filed.

4. If a certificate filed pursuant to subsection 1 specifies an effective date, the board of directors may terminate the effectiveness of the certificate by resolution. A certificate of termination must:

(a) Be filed with the secretary of state before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identify the certificate being terminated;

(c) State that the effectiveness of the certificate has been terminated;

(d) Be signed by an officer of the corporation; and

(e) Be accompanied by the fee required pursuant to NRS 78.765.

Sec. 15. NRS 78.211 is hereby amended to read as follows:

78.211 1. The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including, but not limited to, cash, promissory notes, services performed, contracts for services to be performed or other securities of the corporation.

~~[2. Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for the shares to be issued is adequate.]~~ The judgment of the board of directors as to ~~[the adequacy of]~~ the consideration received for the shares issued is conclusive in the absence of actual fraud in the transaction.

~~[3.]~~ ***2.*** When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid.

~~[4.]~~ ***3.*** The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make any other arrangements to restrict the transfer of the shares. The corporation may credit distributions made for the shares against their purchase price, until the services are performed, the benefits are received or the promissory note is paid. If the services are not performed, the benefits are not received or the promissory note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or in part.

Sec. 16. NRS 78.220 is hereby amended to read as follows:

78.220 1. Subscriptions to the shares of a corporation, whether made before or after its organization, ~~[shall]~~ ***must*** be paid in full at such time or in such installments at such times as determined by the board of directors. Any call made by the board of directors for payment on subscriptions ~~[shall]~~ ***must*** be uniform as to all shares of the same class or series.

2. If default is made in the payment of any installment or call, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. In addition, the corporation may sell a sufficient number of the subscriber's shares at public auction to pay for the installment or call and any incidental charges incurred as a result of the sale. No penalty causing a forfeiture of a subscription, of stock for which a subscription has been executed, or of amounts paid thereon, may be declared against any subscriber unless the amount due remains unpaid for 30 days after written demand. Such written demand shall be deemed made when it is mailed by registered or certified mail, return receipt requested, to

the subscriber's last known address. If any of the subscriber's shares are sold at public auction, any excess of the proceeds over the total of the amount due plus any incidental charges of the sale ~~[shall]~~ ***must*** be paid to the subscriber or his legal representative. If an action is brought to recover the amount due on a subscription or call, any judgment in favor of the corporation ~~[shall]~~ ***must*** be reduced by the amount of the net proceeds of any sale by the corporation of the subscriber's stock.

3. All stock subject to a delinquent installment or call and all amounts previously paid by a delinquent subscriber for the stock must be forfeited to the corporation if an amount due from a subscriber remains unpaid, the corporation has complied with the requirements of subsection 2 and:

(a) A bidder does not purchase the subscriber's shares at public auction; or

(b) The corporation does not collect the defaulted amount by an action at law.

4. If a receiver of a corporation has been appointed, all unpaid subscriptions ~~[shall]~~ ***must*** be paid at such times and in such installments as the receiver or the court may direct, subject, however, to the provisions of the subscription contract.

~~[4.]~~ ***5.*** A subscription for shares of a corporation to be organized is irrevocable for 6 months unless otherwise provided by the subscription agreement or unless all of the subscribers consent to the revocation of the subscription.

Sec. 17. NRS 78.235 is hereby amended to read as follows:

78.235 1. Except as otherwise provided in subsection 4, every stockholder is entitled to have a certificate, signed by officers or agents designated by the corporation for the purpose, certifying the number of shares owned by him in the corporation.

2. Whenever any certificate is countersigned or otherwise authenticated by a transfer agent or transfer clerk, and by a registrar, then a facsimile of the signatures of the officers or agents, the transfer agent or transfer clerk or the registrar of the corporation may be printed or lithographed upon the certificate in lieu of the actual signatures. If a corporation uses facsimile signatures of its officers and agents on its stock certificates, it cannot act as registrar of its own stock, but its transfer agent and registrar may be identical if the institution acting in those dual capacities countersigns or otherwise authenticates any stock certificates in both capacities.

3. If any officer or officers who have signed, or whose facsimile signature or signatures have been used on, any certificate or certificates for stock cease to be an officer or officers of the corporation, whether because of death, resignation or other reason, before the certificate or certificates have been delivered by the corporation, the certificate or certificates may nevertheless be adopted by the corporation and be issued and delivered as though the person or persons who signed the certificate or certificates, or whose facsimile signature or signatures have been used thereon, had not ceased to be an officer or officers of the corporation.

4. ~~[A corporation may provide in its]~~ ***Unless otherwise provided in the*** articles of incorporation or ~~[in its bylaws for]~~ ***bylaws,*** the ***board of directors may authorize the*** issuance of uncertificated shares of some or all of the shares of any or all of its classes or series. The issuance of uncertificated shares has no effect on existing certificates for shares until surrendered to the corporation, or on the respective rights and obligations of the stockholders. Unless otherwise provided by a specific statute, the rights and obligations of stockholders are identical whether or not their shares of stock are represented by certificates.

5. Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the stockholder a written statement containing the information required on the certificates pursuant to subsection 1. At least annually thereafter, the corporation shall provide to its stockholders of record, a written statement confirming the information contained in the informational statement previously sent pursuant to this subsection.

6. Unless otherwise provided in the articles of incorporation or bylaws, a corporation may issue a new certificate of stock or, if authorized by the board of directors pursuant to subsection 4, uncertificated shares in place of a certificate previously issued by it and alleged to have been lost, stolen or destroyed. A corporation may require an owner or legal representative of an owner of a lost, stolen or destroyed certificate to give the corporation a bond or other security sufficient to indemnify it against any claim that may be made against it for the alleged loss, theft or destruction of a certificate, or the issuance of a new certificate or uncertificated shares.

Sec. 18. NRS 78.257 is hereby amended to read as follows:

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

2. All costs for making ~~[extracts]~~ ***copies*** of records or conducting an audit must be borne by the person exercising his rights ~~[under]~~ ***set forth in*** subsection 1.

3. The rights authorized by subsection 1 may be denied to any stockholder upon his refusal to furnish the corporation an affidavit that such inspection, ~~[extracts]~~ ***copies*** or audit is not desired for any purpose not related to his interest in the corporation as a stockholder. Any stockholder or other person, exercising rights ~~[under]~~ ***set forth in*** subsection 1, who uses or attempts to use information, documents, records or other data

obtained from the corporation, for any purpose not related to the stockholder's interest in the corporation as a stockholder, is guilty of a gross misdemeanor.

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

5. A stockholder who brings an action or proceeding to enforce any right ~~[under]~~ ***set forth in*** this section or to recover damages resulting from its denial:

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

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

in the action or proceeding.

6. Except as otherwise provided in this subsection, the provisions of this section do not apply to any corporation listed and traded on any recognized stock exchange nor do they apply to any corporation that furnishes to its stockholders a detailed, annual financial statement. A person who owns, or is authorized in writing by the owners of, at least 15 percent of the issued and outstanding shares of the stock of a corporation that has elected to be governed by subchapter S of the Internal Revenue Code and whose shares are not listed or traded on any recognized stock exchange is entitled to inspect the books of the corporation pursuant to subsection 1 and has the rights, duties and liabilities provided in subsections 2 to 5, inclusive.

Sec. 19. NRS 78.288 is hereby amended to read as follows:

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

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

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

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

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

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

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

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

4. The effect of a distribution ~~[under]~~ ***pursuant to*** subsection 2 must be measured:

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

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

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

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

(c) In all other cases, as of:

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

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

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

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

Sec. 20. NRS 78.310 is hereby amended to read as follows:

78.310 ***1.*** Meetings of stockholders and directors of any corporation organized ~~[under]~~ ***pursuant to*** the provisions of this chapter may be held within or without this state, in the manner provided by the bylaws of the corporation. The articles of incorporation may designate any place or places where such stockholders' or directors' meetings may be held, but in the absence of any provision therefor in the articles of incorporation, then the meetings must be held within or without this state, as directed from time to time by the bylaws of the corporation.

2. Unless otherwise provided in the articles of incorporation or bylaws, the entire board of directors, any two directors or the president may call annual and special meetings of the stockholders and directors.

Sec. 21. NRS 78.315 is hereby amended to read as follows:

78.315 1. Unless the articles of incorporation or the bylaws provide for a ~~[different]~~ ***greater or lesser*** proportion, a majority of the board of directors of the corporation then in office, at a meeting duly assembled, is necessary to constitute a quorum for the transaction of business, and the act of directors holding a majority of the voting power of the directors, present at a meeting at which a quorum is present, is the act of the board of directors.

2. Unless otherwise restricted by the articles of incorporation or bylaws, any action required or permitted to be taken at a meeting of the board of directors or of a committee thereof may be taken without a meeting if, before or after the action, a written consent thereto is signed by all the members of the board or of the committee.

3. Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or the governing body of any corporation, or of any committee designated by such board or body, may participate in a meeting of the board, body or committee by means of a telephone conference or similar ~~[method]~~ ***methods*** of communication by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

Sec. 22. NRS 78.320 is hereby amended to read as follows:

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

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

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

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

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

4. Unless otherwise restricted by the articles of incorporation or bylaws, stockholders may participate in a meeting of stockholders by means of a telephone conference or similar ~~[method]~~ ***methods*** of communication by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

5. Unless otherwise provided in this chapter, the articles of incorporation or the bylaws, if voting by a class or series of stockholders is permitted or required, a majority of the voting power of the class or series that is present in person or by proxy, regardless of whether the proxy has authority to vote on all matters, constitutes a quorum for the transaction of business. An act by the stockholders of each class or series is approved if a majority of the voting power of a quorum of the class or series votes for the action.

Sec. 23. NRS 78.330 is hereby amended to read as follows:

78.330 1. Unless elected pursuant to NRS 78.320, directors of every corporation must be elected at the annual meeting of the stockholders by a

plurality of the votes cast at the election. Unless otherwise provided ***in this chapter or*** in the bylaws, the board of directors ~~[have]~~ ***has*** the authority to set the date, time and place for the annual meeting of the stockholders. If for any reason directors are not elected pursuant to NRS 78.320 or at the annual meeting of the stockholders, they may be elected at any special meeting of the stockholders which is called and held for that purpose. ***Unless otherwise provided in the articles of incorporation or bylaws, each director holds office after the expiration of his term until his successor is elected and qualified, or until he resigns or is removed.***

2. The articles of incorporation or the bylaws may provide for the classification of directors as to the duration of their respective terms of office or as to their election by one or more authorized classes or series of shares, but at least one-fourth in number of the directors of every corporation must be elected annually. If an amendment reclassifying the directors would otherwise increase the term of a director, unless the amendment is to the articles of incorporation and otherwise provides, the term of each incumbent director on the effective date of the amendment terminates on the date it would have terminated had there been no reclassification.

3. The articles of incorporation may provide that the voting power of individual directors or classes of directors may be greater than or less than that of any other individual directors or classes of directors, and the different voting powers may be stated in the articles of incorporation or may be dependent upon any fact or event that may be ascertained outside the articles of incorporation if the manner in which the fact or event may operate on those voting powers is stated in the articles of incorporation. If the articles of incorporation provide that any directors may have voting power greater than or less than other directors, every reference in this chapter to a majority or other proportion of directors shall be deemed to refer to a majority or other proportion of the voting power of all of the directors or classes of directors, as may be required by the articles of incorporation.

Sec. 24. NRS 78.3783 is hereby amended to read as follows:

78.3783 1. Except as otherwise provided in subsection 2, "acquisition" means the direct or indirect acquisition of a controlling interest.

2. "Acquisition" does not include any acquisition of shares in good faith, and without an intent to avoid the requirements of NRS 78.378 to 78.3793, inclusive:

(a) By an acquiring person authorized pursuant to NRS 78.378 to 78.3793, inclusive, to exercise voting rights, to the extent that the new acquisition does not result in the acquiring person obtaining a controlling interest greater than that previously authorized; or

(b) Pursuant to:

(1) The laws of descent and distribution;

(2) The enforcement of a judgment;

(3) The satisfaction of a pledge or other security interest; or

(4) A merger ***, exchange, conversion, domestication*** or reorganization effected in compliance with the provisions of NRS 78.622 ***,*** ~~[or]~~ 92A.200 to 92A.240, inclusive, ***or sections 78 to 82, inclusive, of this act*** to which the issuing corporation is a party.

Sec. 25. NRS 78.3791 is hereby amended to read as follows:

78.3791 Except as otherwise provided by the articles of incorporation of the issuing corporation, a resolution of the stockholders granting voting rights to the control shares acquired by an acquiring person must be approved by:

1. The holders of a majority of the voting power of the corporation; and

2. If the acquisition will result in any change of the kind described in subsection ~~[3]~~ ***2*** of NRS 78.390, the holders of a majority of each class or series affected,

excluding those shares as to which any interested stockholder exercises voting rights.

Sec. 26. NRS 78.3793 is hereby amended to read as follows:

78.3793 ~~[1.]~~ Unless otherwise provided in the articles of incorporation or the bylaws of the issuing corporation in effect on the 10th day following the acquisition of a controlling interest by an acquiring person, if the control shares are accorded full voting rights pursuant to NRS 78.378 to 78.3793, inclusive, and the acquiring person has acquired control shares with a majority or more of all the voting power, any stockholder ~~[of record,]~~ ***, as that term is defined in NRS 92A.325,*** other than the acquiring person, ~~[who has]~~ ***whose shares are*** not voted in favor of authorizing voting rights for the control shares ~~[is entitled to demand payment for]~~ ***may dissent in accordance with the provisions of NRS 92A.300 to 92A.500, inclusive, and obtain payment of*** the fair value of his shares.

~~[2. The board of directors of the issuing corporation shall, within 20 days after the vote of the stockholders authorizing voting rights for the control shares, cause a notice to be sent to any stockholder, other than the acquiring person, who has not voted in favor of authorizing voting rights for the control shares, advising him of the fact and of his right to receive fair value for his shares as provided in subsection 3.~~

~~3. Within 20 days after the mailing of the notice described in subsection 2, any stockholder of the corporation, other than the acquiring person, who has not voted in favor of authorizing voting rights for the control shares, may deliver to the registered office of the corporation a written demand that the corporation purchase, for fair value, all or any portion of his shares. The corporation shall comply with the demand within 30 days after its delivery.]~~

Sec. 27. NRS 78.380 is hereby amended to read as follows:

78.380 1. At least two-thirds of the incorporators or of the board of directors of any corporation, before issuing any stock, may amend the ~~[original]~~ articles of incorporation ~~[thereof as may be desired by executing or proving in the manner required for original articles of incorporation,]~~ ***of the corporation by signing*** and filing with the secretary of state a

certificate amending, modifying, changing or altering the ~~[original]~~ articles, in whole or in part. The certificate must ***state that:***

(a) ~~[Declare that the]~~ ***The*** signers thereof are at least two-thirds of the incorporators or of the board of directors of the corporation, and state the ~~[corporation's name.]~~ ***name of the corporation; and***

(b) ~~[State the date upon which the original articles thereof were filed with the secretary of state.~~

~~(c) Affirmatively declare that to]~~ ***As of*** the date of the certificate, no stock of the corporation has been issued.

2. ~~[The amendment]~~ ***A certificate filed pursuant to this section*** is effective upon ~~[the filing of]~~ ***filing*** the certificate with the secretary of state ***or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.***

3. ***If a certificate specifies an effective date and if no stock of the corporation has been issued, the board of directors may terminate the effectiveness of a certificate by filing a certificate of termination with the secretary of state that:***

(a) Identifies the certificate being terminated;

(b) States that no stock of the corporation has been issued;

(c) States that the effectiveness of the certificate has been terminated;

(d) Is signed by at least two-thirds of the board of directors of the corporation; and

(e) Is accompanied by the fee required pursuant to NRS 78.765.

4. This section does not permit the insertion of any matter not in conformity with this chapter.

Sec. 28. NRS 78.390 is hereby amended to read as follows:

78.390 1. Every amendment adopted pursuant to the provisions of NRS 78.385 must be made in the following manner:

(a) The board of directors must adopt a resolution setting forth the amendment proposed and declaring its advisability, and ***either*** call a ***special*** meeting ~~[, either annual or special,]~~ ***of the stockholders entitled to vote on the amendment or direct that the proposed amendment be considered at the next annual meeting*** of the stockholders entitled to vote ~~[for the consideration thereof.]~~ ***on the amendment.***

(b) At the meeting, of which notice must be given to each stockholder entitled to vote pursuant to the provisions of this section, a vote of the stockholders entitled to vote in person or by proxy must be taken for and against the proposed amendment. If it appears upon the canvassing of the votes that stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, as provided in subsections ~~[3 and 5,]~~ ***2 and 4,*** or as may be required by the provisions of the articles of incorporation, have voted in favor of the amendment, ~~[the president, or vice president, and secretary, or assistant secretary, shall execute]~~ ***an officer of the corporation shall sign*** a certificate setting forth the amendment, or setting forth the articles of incorporation as amended, and the vote by which the amendment was adopted.

(c) The certificate so ~~[executed]~~ ***signed*** must be filed ~~[in the office of]~~ ***with*** the secretary of state.

~~[2. Upon filing the certificate the articles of incorporation are amended accordingly.~~

~~3.~~ ***2.*** If any proposed amendment would ***adversely*** alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series ***adversely*** affected by the amendment regardless of limitations or restrictions on the voting power thereof.

~~[4.]~~ ***3.*** Provision may be made in the articles of incorporation requiring, in the case of any specified amendments, a larger proportion of the voting power of stockholders than that required by this section.

~~[5.]~~ ***4.*** Different series of the same class of shares do not constitute different classes of shares for the purpose of voting by classes except when the series is adversely affected by an amendment in a different manner than other series of the same class.

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

6. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

7. If a certificate filed pursuant to subsection 1 specifies an effective date and if the resolution of the stockholders approving the proposed amendment provides that the board of directors may abandon the proposed amendment pursuant to subsection 5, the board of directors may terminate the effectiveness of the certificate by resolution and by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

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

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

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

(f) Is accompanied by the fee required pursuant to NRS 78.765.

Sec. 29. NRS 78.403 is hereby amended to read as follows:

78.403 1. A corporation may restate, or amend and restate, in a single certificate the entire text of its articles of incorporation as amended by filing with the secretary of state a certificate ***signed by an officer of the corporation and*** entitled "Restated Articles of Incorporation of ....," which must set forth the articles as amended to the date of the certificate. If the certificate alters or amends the articles in any manner, it must comply

with the provisions of this chapter governing such amendments and must be accompanied by:

(a) A resolution; or

(b) A form prescribed by the secretary of state,

setting forth which provisions of the articles of incorporation on file with the secretary of state are being altered or amended.

2. If the certificate does not alter or amend the articles, it must be signed by ~~[the president or vice president and the secretary or assistant secretary]~~ ***an officer*** of the corporation and state that ~~[they have]~~ ***he has*** been authorized to execute the certificate by resolution of the board of directors adopted on the date stated, and that the certificate correctly sets forth the text of the articles of incorporation as amended to the date of the certificate.

3. The following may be omitted from the restated articles:

(a) The names, addresses, signatures and acknowledgments of the incorporators;

(b) The names and addresses of the members of the past and present boards of directors; and

(c) The name and address of the resident agent.

4. Whenever a corporation is required to file a certified copy of its articles, in lieu thereof it may file a certified copy of the most recent certificate restating its articles as amended, subject to the provisions of subsection 2, together with certified copies of all certificates of amendment filed subsequent to the restated articles and certified copies of all certificates supplementary to the original articles.

Sec. 30. NRS 78.565 is hereby amended to read as follows:

78.565 ~~[Every]~~

1. Unless otherwise provided in the articles of incorporation, every corporation may, by action taken at any meeting of its board of directors, sell, lease or exchange all of its property and assets, including its good will and its corporate franchises, upon such terms and conditions as its board of directors may ~~[deem expedient and for the best interests of the corporation,]~~ ***approve,*** when and as authorized by the affirmative vote of stockholders holding stock in the corporation entitling them to exercise at least a majority of the voting power given at a stockholders' meeting called for that purpose**.** ~~[but:~~

~~1. The articles of incorporation may require the vote of a larger proportion of the stockholders and the separate vote or consent of any class of stockholders; and]~~

2. Unless ***otherwise provided in*** the articles of incorporation ~~[provide otherwise, no]~~ **,** ***a*** vote of stockholders is ***not*** necessary ~~[for]~~ ***:***

(a) For a transfer of assets by way of mortgage, or in trust or in pledge to secure indebtedness of the corporation ~~[.]~~ ***; or***

(b) To abandon the sale, lease or exchange of assets.

Sec. 31. NRS 78.750 is hereby amended to read as follows:

78.750 1. In any action commenced against any corporation in any court of this state, service of process may be made in the manner provided by law and rule of court for the service of civil process.

2. Service of process on a corporation ***whose charter has been revoked or*** which has been continued as a body corporate ~~[under]~~ ***pursuant to*** NRS 78.585 may be made by mailing copies of the process and any associated documents by certified mail, with return receipt requested, to:

(a) The resident agent of the corporation, if there is one; and

(b) Each officer and director of the corporation as named in the list last filed with the secretary of state before the dissolution or expiration of the corporation or the forfeiture of its charter.

The manner of serving process described in this subsection does not affect the validity of any other service authorized by law.

Sec. 32. NRS 78.751 is hereby amended to read as follows:

78.751 1. Any discretionary indemnification ~~[under]~~ ***pursuant to*** NRS 78.7502 **,** unless ordered by a court or advanced pursuant to subsection 2, may be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances. The determination must be made:

(a) By the stockholders;

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

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

(d) If a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

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

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

(a) Does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, for either an action in his official capacity or an action in another capacity while holding his office, except that indemnification, unless ordered by a court pursuant to NRS 78.7502 or for the advancement of expenses made pursuant to subsection 2, may not be made to or on behalf of any director or officer if a final adjudication establishes that his acts or omissions involved intentional misconduct,

fraud or a knowing violation of the law and was material to the cause of action.

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

Sec. 33. NRS 78.760 is hereby amended to read as follows:

78.760 1. The fee for filing articles of incorporation is prescribed in the following schedule:

If the amount represented by the total number of shares provided for in the articles ~~[or agreement]~~ is:

$25,000 or less	$125
Over $25,000 and not over $75,000	175
Over $75,000 and not over $200,000	225
Over $200,000 and not over $500,000	325
Over $500,000 and not over $1,000,000	425
Over $1,000,000:	
For the first $1,000,000	425
For each additional $500,000 or fraction thereof	225

2. The maximum fee which may be charged ~~[under]~~ ***pursuant to*** this section is $25,000 for:

(a) The original filing of articles of incorporation.

(b) A subsequent filing of any instrument which authorizes an increase in stock.

3. For the purposes of computing the filing fees according to the schedule in subsection 1, the amount represented by the total number of shares provided for in the articles of incorporation is:

(a) The aggregate par value of the shares, if only shares with a par value are therein provided for;

(b) The product of the number of shares multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which shares may be issued and disposed of, if only shares without par value are therein provided for; or

(c) The aggregate par value of the shares with a par value plus the product of the number of shares without par value multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which the shares without par value may be issued and disposed of, if shares with and without par value are therein provided for.

For the purposes of this subsection, shares with no prescribed par value shall be deemed shares without par value.

4. The secretary of state shall calculate filing fees pursuant to this section with respect to shares with a par value of less than one-tenth of a cent as if the par value were one-tenth of a cent.

Sec. 34. NRS 78.765 is hereby amended to read as follows:

78.765 1. The fee for filing a certificate changing the number of authorized shares pursuant to NRS 78.209 or a certificate of amendment to articles of incorporation that increases the corporation's authorized stock or a certificate of correction that increases the corporation's authorized stock is the difference between the fee computed at the rates specified in NRS 78.760 upon the total authorized stock of the corporation, including the

proposed increase, and the fee computed at the rates specified in NRS 78.760 upon the total authorized capital, excluding the proposed increase. In no case may the amount be less than $75.

2. The fee for filing a certificate of amendment to articles of incorporation that does not increase the corporation's authorized stock or a certificate of correction that does not increase the corporation's authorized stock is $75.

3. The fee for filing a certificate or an amended certificate pursuant to NRS 78.1955 is $75.

4. The fee for filing a certificate of termination pursuant to NRS 78.1955, 78.209, 78.380 or 78.390 is $75.

Sec. 35. NRS 80.015 is hereby amended to read as follows:

80.015 1. For the purposes of this chapter, the following activities do not constitute doing business in this state:

(a) Maintaining, defending or settling any proceeding;

(b) Holding meetings of the board of directors or stockholders or carrying on other activities concerning internal corporate affairs;

(c) Maintaining accounts in banks or credit unions;

(d) Maintaining offices or agencies for the transfer, exchange and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;

(e) Making sales through independent contractors;

(f) Soliciting or receiving orders outside of this state through or in response to letters, circulars, catalogs or other forms of advertising, accepting those orders outside of this state and filling them by shipping goods into this state;

(g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Isolated transactions completed within 30 days and not a part of a series of similar transactions;

(k) The production of motion pictures as defined in NRS 231.020;

(l) Transacting business as an out-of-state depository institution pursuant to the provisions of Title 55 of NRS; and

(m) Transacting business in interstate commerce.

2. The list of activities in subsection 1 is not exhaustive.

3. A person who is not doing business in this state within the meaning of this section need not qualify or comply with any provision of NRS 80.010 to 80.280, inclusive, chapter 645A, 645B or 645E of NRS or Title 55 or 56 of NRS unless he:

(a) Maintains an office in this state for the transaction of business; or

(b) Solicits or accepts deposits in the state, except pursuant to the provisions of chapter 666 or 666A of NRS.

4. As used in this section and for the purposes of NRS 80.016, "deposits" means demand deposits, savings deposits and time deposits, as those terms are defined in chapter 657 of NRS.

Sec. 36. Chapter 86 of NRS is hereby amended by adding thereto the provisions set forth as sections 37 to 54, inclusive, of this act.

Sec. 37. ***"Articles" and "articles of organization" are synonymous terms and, unless the context otherwise requires, include certificates and restated articles of organization filed pursuant to NRS 86.221 and articles of merger, conversion, exchange or domestication filed pursuant to NRS 92A.200 to 92A.240, inclusive, and sections 78 to 82, inclusive, of this act.***

Sec. 38. ***"Noneconomic member" means a member of a limited-liability company who:***

1. Does not own a member's interest in the company;

2. Does not have an obligation to contribute capital to the company;

3. Does not have a right to participate in or receive distributions of profits of the company or an obligation to contribute to the losses of the company; and

4. May have voting rights and other rights and privileges given to noneconomic members of the company by the articles of organization or operating agreement.

Sec. 39. ***The provisions of this chapter may be amended or repealed at the pleasure of the legislature. A limited-liability company created pursuant to the provisions of this chapter or availing itself of any of the provisions of this chapter and all members and managers of the limited-liability company are bound by the amendment. An amendment or repeal does not take away or impair any remedy against a limited-liability company or its managers or members for a liability that has been previously incurred. The provisions of this chapter and all amendments thereof are a part of the articles of every limited-liability company.***

Sec. 40. ***1. A limited-liability company may correct a document filed by the secretary of state if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged.***

2. To correct a document, the limited-liability company must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited-liability company;

(2) Describes the document, including, without limitation, its filing date;

(3) Identifies the incorrect statement and specifies the reason it is incorrect, or the manner in which the execution or other formal authentication was defective;

(4) Corrects the incorrect statement or defective execution; and

(5) Is signed by a manager of the company, or if management is not vested in a manager, by a member of the company.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay the fee required pursuant to NRS 86.561 to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 41. ***The articles of organization or operating agreement of a limited-liability company may create classes of members or managers, define their relative rights, powers and duties, and may authorize the creation, in the manner provided in the operating agreement, of additional classes of members or managers with the relative rights, powers and duties as may from time to time be established, including, without limitation, rights, powers and duties senior to existing classes of members or managers. The articles of organization or operating agreement may provide that any member, or class or group of members, has voting rights that differ from other classes or groups.***

Sec. 42. ***Upon application by or for a member, the district court may decree dissolution of a limited-liability company whenever it is not reasonably practicable to carry on the business of the company in conformity with the articles of organization or operating agreement.***

Sec. 43. ***A member who owns a member's interest in a limited-liability company or a noneconomic member, when permitted by the terms of the articles of organization or operating agreement, may bring an action in the right of a limited-liability company to recover a judgment in its favor if managers or members with authority to do so have refused to bring the action or if an effort to cause those managers or members to bring the action is not likely to succeed.***

Sec. 44. ***In a derivative action, the plaintiff must be a member who owns a member's interest or a noneconomic member at the time of bringing the action and at the time of the transaction of which he complains.***

Sec. 45. ***In a derivative action, the complaint must set forth with particularity:***

1. The effort of the plaintiff to secure initiation of the action by a manager or member; or

2. The reasons for the plaintiff not making the effort to secure initiation of the action by a manager or member.

Sec. 46. ***If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to remit to the limited-liability company the remainder of those proceeds received by him.***

Sec. 47. ***Subject to the constitution of this state:***

1. The laws of the state, pursuant to which a foreign limited-liability company is organized, govern its organization, internal affairs and the liability of its managers and members; and

2. A foreign limited-liability company may not be denied registration by reason of any difference between the laws of the state of organization and the laws of this state.

Sec. 48. ***Before transacting business in this state, a foreign limited-liability company must register with the secretary of state. In order to register, a foreign limited-liability company must submit to the secretary of state an application for registration as a foreign limited-liability company, signed by a manager of the company or, if management is not***

vested in a manager, a member of the company and a signed certificate of acceptance of a resident agent. The application for registration must set forth:

1. The name of the foreign limited-liability company and, if different, the name under which it proposes to register and transact business in this state;

2. The state and date of its formation;

3. The name and address of the resident agent whom the foreign limited-liability company elects to appoint;

4. A statement that the secretary of state is appointed the agent of the foreign limited-liability company for service of process if the authority of the resident agent has been revoked, or if the resident agent has resigned or cannot be found or served with the exercise of reasonable diligence;

5. The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited-liability company;

6. The name and business address of each manager or, if management is not vested in a manager, each member; and

7. The address of the office at which is kept a list of the names and addresses of the members and their capital contributions, together with an undertaking by the foreign limited-liability company to keep those records until the registration in this state of the foreign limited-liability company is canceled or withdrawn.

Sec. 49. *If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall issue a certificate of registration to transact business in this state and mail it to the person who filed the application or his representative.*

Sec. 50. *A foreign limited-liability company may register with the secretary of state under any name, whether or not it is the name under which it is registered in its state of organization, which contains the words required by NRS 86.171 and which could be registered by a domestic limited-liability company.*

Sec. 51. *1. A foreign limited-liability company may cancel its registration by filing with the secretary of state a certificate of cancellation signed by a manager of the company or, if management is not vested in a manager, a member of the company. The certificate, which must be accompanied by the required fees, must set forth:*

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

(b) The date upon which its certificate of registration was filed;

(c) The effective date of the cancellation if other than the date of the filing of the certificate of cancellation; and

(d) Any other information deemed necessary by the manager of the company or, if management is not vested in a manager, a member of the company.

2. A cancellation pursuant to this section does not terminate the authority of the secretary of state to accept service of process on the foreign limited-liability company with respect to causes of action arising from the transaction of business in this state by the foreign limited-liability company.

Sec. 52. ***1. A foreign limited-liability company transacting business in this state may not maintain any action, suit or proceeding in any court of this state until it has registered in this state.***

2. The failure of a foreign limited-liability company to register in this state does not impair the validity of any contract or act of the foreign limited-liability company, or prevent the foreign limited-liability company from defending any action, suit or proceeding in any court of this state.

3. A foreign limited-liability company, by transacting business in this state without registration, appoints the secretary of state as its agent for service of process with respect to causes of action arising out of the transaction of business in this state by the foreign limited-liability company.

Sec. 53. ***The attorney general may bring an action to restrain a foreign limited-liability company from transacting business in this state in violation of this section and sections 47 to 52, inclusive, of this act.***

Sec. 54. ***The articles of organization or operating agreement of a limited-liability company may provide for one or more noneconomic members or classes of noneconomic members.***

Sec. 55. NRS 86.011 is hereby amended to read as follows:

86.011 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS ~~[86.021]~~ ***86.031*** to 86.128, inclusive, ***and sections 37 and 38 of this act*** have the meanings ascribed to them in those sections.

Sec. 56. NRS 86.081 is hereby amended to read as follows:

86.081 "Member" means the owner of ~~[an]~~ ***a member's*** interest in a limited-liability company ~~[.]~~ ***or a noneconomic member.***

Sec. 57. NRS 86.201 is hereby amended to read as follows:

86.201 1. ~~[Upon filing the articles of organization and the certificate of acceptance of the resident agent, and the payment of filing fees, the]~~ ***A*** limited-liability company is considered legally organized pursuant to this chapter ~~[.]~~ ***upon:***

(a) Filing the articles of organization with the secretary of state or upon a later date specified in the articles of organization;

(b) Filing the certificate of acceptance of the resident agent with the secretary of state; and

(c) Paying the required filing fees to the secretary of state.

2. A limited-liability company must not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the ~~[secretary of state has filed the articles of organization and the certificate of acceptance.]~~ ***company is considered legally organized pursuant to subsection 1.***

Sec. 58. NRS 86.226 is hereby amended to read as follows:

86.226 1. A signed certificate of amendment, or a certified copy of a judicial decree of amendment, must be filed with the secretary of state. A person who executes a certificate as an agent, officer or fiduciary of the limited-liability company need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that a certificate

does not conform to law, upon his receipt of all required filing fees he shall file the certificate.

2. ~~[Upon the filing of a]~~ ***A*** certificate of amendment or judicial decree of amendment ~~[in the office of]~~ ***is effective upon filing with*** the secretary of state ~~[, the articles of organization are amended as set forth therein.]~~ ***or upon a later date specified in the certificate or judicial decree, which must not be more than 90 days after the certificate or judicial decree is filed.***

3. If a certificate specifies an effective date and if the resolution of the members approving the proposed amendment provides that one or more managers, or, if management is not vested in a manager, one or more members may abandon the proposed amendment, then those managers or members may terminate the effectiveness of the certificate by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate or judicial decree filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the members, the manager of the company or, if management is not vested in a manager, a designated member is authorized to terminate the effectiveness of the certificate;

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

(e) Is signed by a manager of the company or, if management is not vested in a manager, a designated member; and

(f) Is accompanied by the fee required pursuant to NRS 86.561.

Sec. 59. NRS 86.274 is hereby amended to read as follows:

86.274 1. The secretary of state shall notify, by letter addressed to its resident agent, each limited-liability company deemed in default pursuant to the provisions of this chapter. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

2. On the ~~[first day of the ninth month]~~ ***second anniversary*** following the month in which the filing was required, the charter of the company is revoked and its right to transact business is forfeited.

3. The secretary of state shall compile a complete list containing the names of all limited-liability companies whose right to do business has been forfeited. The secretary of state shall forthwith notify each limited-liability company by letter addressed to its resident agent of the forfeiture of its charter. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

4. If the charter of a limited-liability company is revoked and the right to transact business is forfeited, all of the property and assets of the defaulting company must be held in trust by the managers or, if none, by the members of the company, and the same proceedings may be had with respect to its property and assets as apply to the dissolution of a limited-liability company ~~[.]~~ ***pursuant to NRS 86.505 and 86.521.*** Any person interested may institute proceedings at any time after a forfeiture has been declared, but if the secretary of state reinstates the charter the proceedings must be dismissed and all property restored to the company.

5. If the assets are distributed they must be applied in the following manner:

(a) To the payment of the filing fee, penalties and costs due to the state; and

(b) To the payment of the creditors of the company.

Any balance remaining must be distributed among the members as provided in subsection 1 of NRS 86.521.

Sec. 60. NRS 86.276 is hereby amended to read as follows:

86.276 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate any limited-liability company which has forfeited its right to transact business ~~[under]~~ ***pursuant to*** the provisions of this chapter and restore to the company its right to carry on business in this state, and to exercise its privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 86.263; and

(b) Pays to the secretary of state:

(1) The annual filing fee and penalty set forth in NRS 86.263 and 86.272 for each year or portion thereof during which ~~[its charter has been revoked;]~~ ***it failed to file in a timely manner each required annual list;*** and

(2) A fee of $50 for reinstatement.

2. When the secretary of state reinstates the limited-liability company, he shall:

(a) Immediately issue and deliver to the company a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the company one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

4. If a company's charter has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 consecutive years, the charter must not be reinstated.

Sec. 61. NRS 86.281 is hereby amended to read as follows:

86.281 A limited-liability company organized and existing ~~[under]~~ ***pursuant to*** this chapter may ~~[:]~~ ***exercise the powers and privileges granted by this chapter and may:***

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

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

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

4. Lend money to and otherwise assist its members;

5. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares, member's interests or other interests in or obligations of domestic or foreign limited-liability companies, domestic or foreign corporations, joint ventures or similar

associations, general or limited partnerships or natural persons, or direct or indirect obligations of the United States or of any government, state, territory, governmental district or municipality or of any instrumentality of it;

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

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

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

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

10. Cease its activities and surrender its articles of organization;

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

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

Sec. 62. NRS 86.286 is hereby amended to read as follows:

86.286 ***1.*** A limited-liability company may, but is not required to, adopt an operating agreement. An operating agreement may be adopted only by the unanimous vote or unanimous written consent of the members, ***or by the sole member,*** and the operating agreement must be in writing. Unless otherwise provided in the operating agreement, amendments to the agreement may be adopted only by the unanimous vote or unanimous written consent of the persons who are members at the time of amendment.

2. An operating agreement may be adopted before, after or at the time of the filing of the articles of organization and, whether entered into before, after or at the time of the filing, may become effective at the formation of the limited-liability company or at a later date specified in the operating agreement. If an operating agreement is adopted before the filing of the articles of organization or before the effective date of formation specified in the articles of organization, the operating agreement is not effective until the effective date of formation of the limited-liability company.

3. An operating agreement may provide that a certificate of limited-liability company interest issued by the limited-liability company may evidence a member's interest in a limited-liability company.

Sec. 63. NRS 86.291 is hereby amended to read as follows:

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

2. If provision is made in the articles of organization, management of the company may be vested in a manager or managers, who may but need not be members, in the manner prescribed by the operating agreement of

the company. The manager or managers also hold the offices and have the responsibilities accorded to them by the members and set out in the operating agreement.

Sec. 64. NRS 86.301 is hereby amended to read as follows:

86.301 Except as otherwise provided in this chapter**, [**~~or~~**]** in its articles of organization **[**~~,~~**]** ***or its operating agreement,*** no debt may be contracted or liability incurred by or on behalf of a limited-liability company, except by one or more of its managers if management of the limited-liability company has been vested by the members in a manager or managers or, if management of the limited-liability company is retained by the members, then **[**~~as provided in the articles of organization or the operating agreement.~~**]** ***by any member.***

Sec. 65. NRS 86.343 is hereby amended to read as follows:

86.343 1. A distribution of the profits ***and contributions*** of a limited-liability company must not be made if, after giving it effect:

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

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

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

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

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

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

3. The effect of a distribution **[**~~under~~**]** ***pursuant to*** this section must be measured:

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

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

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

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

(c) In all other cases, as of:

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

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

4. Indebtedness of the company, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations **[**~~under~~**]** ***pursuant to*** this section if its terms provide that payment of principal and interest are to be made only if and to the extent that payment of a distribution to the members could then be made pursuant to this section. If the indebtedness is issued as a distribution, each payment of

principal or interest must be treated as a distribution, the effect of which must be measured as of the date of payment.

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

6. Unless otherwise agreed, a member who receives a distribution from a limited-liability company is not liable for the amount of the distribution after the expiration of 3 years after the date of the distribution unless an action to recover the distribution from the member is commenced before the expiration of the 3-year period following the distribution.

Sec. 66. NRS 86.351 is hereby amended to read as follows:

86.351 1. The interest of each member of a limited-liability company is personal property. The articles of organization or operating agreement may prohibit or regulate the transfer of a member's interest. Unless otherwise provided in the articles or ***operating*** agreement, a transferee of a member's interest has no right to participate in the management of the business and affairs of the company or to become a member unless a majority in interest of the other members approve the transfer. If so approved, the transferee becomes a substituted member. The transferee is only entitled to receive the share of profits or other compensation by way of income, and the return of contributions, to which his transferor would otherwise be entitled.

2. A substituted member has all the rights and powers and is subject to all the restrictions and liabilities of his transferor, except that the substitution of the transferee does not release the transferor from any liability to the company.

Sec. 67. NRS 86.391 is hereby amended to read as follows:

86.391 1. A member is liable to a limited-liability company:

(a) For a difference between his contributions to capital as actually made and as stated in the articles of organization or operating agreement as having been made; and

(b) For any unpaid contribution to capital which he agreed in the articles of organization or operating agreement to make in the future at the time and on the conditions stated in the articles of organization or operating agreement.

2. A member holds as trustee for the company ~~[:~~

~~(a) Specific]~~ ***specific*** property stated in the articles of organization or operating agreement as contributed by him, but which was not ***so*** contributed **.** ~~[or which has been wrongfully or erroneously returned; and~~

~~(b) Money or other property wrongfully paid or conveyed to him on account of his contribution or the contribution of a predecessor with respect to his member's interest.]~~

3. The liabilities of a member as set out in this section can be waived or compromised only by the consent of all of the members, but a waiver or compromise does not affect the right of a creditor of the company to enforce the liabilities if he extended credit or his claim arose before the

effective date of an amendment of the articles of organization or operating agreement effecting the waiver or compromise.

~~[4. When a contributor has rightfully received the return in whole or in part of his contribution to capital, the contributor is liable to the company for any sum, not in excess of the return with interest, necessary to discharge its liability to all of its creditors who extended credit or whose claims arose before the return.]~~

Sec. 68. NRS 86.491 is hereby amended to read as follows:

86.491 ***1.*** A limited-liability company organized ~~[under]~~ ***pursuant to*** this chapter must be dissolved and its affairs wound up:

~~[1.]~~ ***(a)*** At the time, if any, specified in the articles of organization;

~~[2.]~~ ***(b)*** Upon the occurrence of an event specified in an operating agreement; ~~[or~~

~~3. By the unanimous written agreement of all members.]~~

(c) Unless otherwise provided in the articles of organization or operating agreement, upon the affirmative vote or written agreement of members owning at least two-thirds of the interests in the current profits of the limited-liability company or, if there is more than one class or group of members, by members owning at least two-thirds of the interests in the current profits of each class or group of members voting separately; or

(d) Upon entry of a decree of judicial dissolution pursuant to section 42 of this act.

2. Except as otherwise provided in the articles of organization or operating agreement, the death, retirement, resignation, expulsion, bankruptcy, dissolution or dissociation of a member or any other event affecting the member does not:

(a) Terminate the status of the person as a member; or

(b) Cause the limited-liability company to be dissolved or its affairs to be wound up.

3. Except as otherwise provided in the articles of organization or operating agreement, upon the death of a natural person who is the sole member of a limited-liability company, the status of the member, including the member's interest, may pass to the heirs, successors and assigns of the member by will or applicable law. The heir, successor or assign of the member's interest becomes a substituted member pursuant to NRS 86.351, subject to administration as provided by applicable law, without the permission or consent of the heirs, successors or assigns or those administering the estate of the deceased member.

Sec. 69. NRS 86.541 is hereby amended to read as follows:

86.541 1. ~~[The signed articles of dissolution must be filed with the secretary of state. Unless the secretary of state finds that the articles of dissolution do not conform to law, he shall when all fees and license taxes prescribed by law have been paid issue a certificate that the limited-liability company is dissolved.]~~ ***Articles of dissolution become effective upon filing with the secretary of state.***

2. Upon the filing of the articles of dissolution the existence of the company ceases, except for the purpose of suits, other proceedings and appropriate action as provided in this chapter. The manager or managers in

office at the time of dissolution, or the survivors of them, are thereafter trustees for the members and creditors of the dissolved company and as such have authority to distribute any property of the company discovered after dissolution, convey real estate and take such other action as may be necessary on behalf of and in the name of the dissolved company.

Sec. 70. NRS 86.561 is hereby amended to read as follows:

86.561 1. The secretary of state shall charge and collect for:

(a) Filing the original articles of organization, or for registration of a foreign company, $125;

(b) Amending or restating the articles of organization, ~~[or]~~ amending the registration of a foreign company ~~[,]~~ ***or filing a certificate of correction,*** $75;

(c) Filing the articles of dissolution of a domestic or foreign company, $30;

(d) Filing a statement of change of address of a records or registered office, or change of the resident agent, $15;

(e) Certifying articles of organization or an amendment to the articles, in both cases where a copy is provided, $10;

(f) Certifying an authorized printed copy of this chapter, $10;

(g) Reserving a name for a limited-liability company, $20;

(h) ***Filing a certificate of termination or cancellation, $30;***

(i) Executing, filing or certifying any other document, $20; and

~~[(i)]~~ ***(j)*** Copies made at the office of the secretary of state, $1 per page.

2. The secretary of state shall charge and collect at the time of any service of process on him as agent for service of process of a limited-liability company, $10 which may be recovered as taxable costs by the party to the action causing the service to be made if the party prevails in the action.

3. Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to this chapter.

Sec. 71. NRS 86.580 is hereby amended to read as follows:

86.580 1. A limited-liability company which did exist or is existing ~~[under]~~ ***pursuant to*** the laws of this state may, upon complying with the provisions of NRS 86.276, procure a renewal or revival of its charter for any period, together with all the rights, franchises, privileges and immunities, and subject to all its existing and preexisting debts, duties and liabilities secured or imposed by its original charter and amendments thereto, or existing charter, by filing:

(a) A certificate with the secretary of state, which must set forth:

(1) The name of the limited-liability company, which must be the name of the limited-liability company at the time of the renewal or revival, or its name at the time its original charter expired.

(2) The name of the person designated as the resident agent of the limited-liability company, his street address for the service of process, and his mailing address if different from his street address.

(3) The date when the renewal or revival of the charter is to commence or be effective, which may be, in cases of a revival, before the date of the certificate.

(4) Whether or not the renewal or revival is to be perpetual, and, if not perpetual, the time for which the renewal or revival is to continue.

(5) That the limited-liability company desiring to renew or revive its charter is, or has been, organized and carrying on the business authorized by its existing or original charter and amendments thereto, and desires to renew or continue through revival its existence pursuant to and subject to the provisions of this chapter.

(b) A list of its managers, or if there are no managers, all its managing members and their post office box or street addresses, either residence or business.

2. A limited-liability company whose charter has not expired and is being renewed shall cause the certificate to be signed by its manager, or if there is no manager, by a person designated by its members. The certificate must be approved by a majority ~~[of the members.]~~ ***in interest.***

3. A limited-liability company seeking to revive its original or amended charter shall cause the certificate to be signed by a person or persons designated or appointed by the members. The execution and filing of the certificate must be approved by the written consent of a majority ~~[of the members]~~ ***in interest*** and must contain a recital that this consent was secured. The limited-liability company shall pay to the secretary of state the fee required to establish a new limited-liability company pursuant to the provisions of this chapter.

4. The filed certificate, or a copy thereof which has been certified under the hand and seal of the secretary of state, must be received in all courts and places as prima facie evidence of the facts therein stated and of the existence of the limited-liability company therein named.

Sec. 72. NRS 88.405 is hereby amended to read as follows:

88.405 1. The secretary of state shall notify, by letter addressed to its resident agent, each defaulting limited partnership. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

2. Immediately after the ~~[first day of the ninth month following]~~ ***second anniversary of*** the month in which filing was required, the certificate of the limited partnership is revoked. The secretary of state shall compile a complete list containing the names of all limited partnerships whose right to do business has been forfeited. The secretary of state shall notify, by letter addressed to its resident agent, each limited partnership of the revocation of its certificate. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

3. In case of revocation of the certificate and of the forfeiture of the right to transact business thereunder, all the property and assets of the defaulting domestic limited partnership are held in trust by the general partners, and the same proceedings may be had with respect thereto as for the judicial dissolution of a limited partnership. Any person interested may institute proceedings at any time after a forfeiture has been declared, but if the secretary of state reinstates the limited partnership the proceedings must at once be dismissed and all property restored to the general partners.

Sec. 73. NRS 88A.030 is hereby amended to read as follows:

88A.030 "Business trust" means an unincorporated association which:

1. Is created by a trust instrument under which property is held, managed, controlled, invested, reinvested or operated, or any combination of these, or business or professional activities for profit are carried on, by a trustee for the benefit of the persons entitled to a beneficial interest in the trust property; and

2. Files a certificate of trust pursuant to NRS 88A.210.

The term includes, without limitation, a trust of the type known at common law as a business trust or Massachusetts trust, a trust qualifying as a real estate investment trust pursuant to 26 U.S.C. §§ 856 et seq., as amended, or any successor provision, or a trust qualifying as a real estate mortgage investment conduit pursuant to 26 U.S.C. § 860D, as amended, or any successor provision. ~~[The term does not include a corporation as that term is defined in 11 U.S.C. § 101(9).]~~

Sec. 74. NRS 88A.640 is hereby amended to read as follows:

88A.640 1. The secretary of state shall notify, by letter addressed to its resident agent, each business trust deemed in default pursuant to the provisions of this chapter. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

2. ~~[On the first day of the ninth month following]~~ ***Immediately after the second anniversary of*** the month in which the filing was required, the certificate of trust of the business trust is revoked and its right to transact business is forfeited.

3. The secretary of state shall compile a complete list containing the names of all business trusts whose right to do business has been forfeited. He shall forthwith notify each such business trust, by letter addressed to its resident agent, of the revocation of its certificate of trust. The notice must be accompanied by a statement indicating the amount of the filing fee, penalties and costs remaining unpaid.

4. If the certificate of trust is revoked and the right to transact business is forfeited, all the property and assets of the defaulting business trust must be held in trust by its trustees as for insolvent business trusts, and the same proceedings may be had with respect thereto as are applicable to insolvent business trusts. Any person interested may institute proceedings at any time after a forfeiture has been declared, but if the secretary of state reinstates the certificate of trust, the proceedings must at once be dismissed.

Sec. 75. Chapter 92A of NRS is hereby amended by adding thereto the provisions set forth as sections 76 to 82, inclusive, of this act.

Sec. 76. "Domestic general partnership" means a general partnership governed by the provisions of Chapter 87 of NRS.

Sec. 77. "Resulting entity" means, with respect to a conversion, the entity that results from conversion of the constituent entity.

Sec. 78. 1. Except as limited by NRS 78.411 to 78.444, inclusive, one domestic general partnership or one domestic entity, except a domestic nonprofit corporation, may convert into a different type of

entity if the plan of conversion is approved pursuant to the provisions of this chapter.

2. The plan of conversion must be in writing and set forth the:

(a) Name of the constituent entity and the proposed name for the resulting entity;

(b) Address of the constituent entity and the resulting entity;

(c) Jurisdiction of the law that governs the constituent entity;

(d) Jurisdiction of the law that will govern the resulting entity;

(e) Terms and conditions of the conversion;

(f) Manner and basis of converting the owner's interest or the interest of a partner in a general partnership of the constituent entity into owner's interests, rights of purchase and other securities in the resulting entity; and

(g) Full text of the constituent documents of the resulting entity.

3. The plan of conversion may set forth other provisions relating to the conversion.

Sec. 79. *Unless otherwise provided in the partnership agreement, all partners must approve a plan of conversion involving a domestic general partnership.*

Sec. 80. *1. One foreign entity or foreign general partnership may convert into one domestic entity if:*

(a) The conversion is permitted by the law of the jurisdiction governing the foreign entity or foreign general partnership and the foreign entity or foreign general partnership complies with that law in effecting the conversion;

(b) The foreign entity or foreign general partnership complies with the applicable provisions of section 81 of this act and, if it is the resulting entity in the conversion, with NRS 92A.210 to 92A.240, inclusive; and

(c) The domestic entity complies with the applicable provisions of NRS 92A.120, 92A.140 and 92A.165 and sections 78 and 79 of this act and, if it is the resulting entity in the conversion, with NRS 92A.210 to 92A.240, inclusive, and section 81 of this act.

2. When the conversion takes effect, the resulting foreign entity in a conversion shall be deemed to have appointed the secretary of state as its agent for service of process in a proceeding to enforce any obligation. Service of process must be made personally by delivering to and leaving with the secretary of state duplicate copies of the process and the payment of a fee of $25 for accepting and transmitting the process. The secretary of state shall send one of the copies of the process by registered or certified mail to the resulting entity at its specified address, unless the resulting entity has designated in writing to the secretary of state a different address for that purpose, in which case it must be mailed to the last address so designated.

Sec. 81. *1. After a plan of conversion is approved as required by this chapter, if the resulting entity is a domestic entity, the constituent entity shall deliver to the secretary of state for filing:*

(a) Articles of conversion setting forth:

(1) The name and jurisdiction of organization of the constituent entity and the resulting entity; and

(2) That a plan of conversion has been adopted by the constituent entity in compliance with the law of the jurisdiction governing the constituent entity.

(b) The following constituent document of the domestic resulting entity:

(1) If the resulting entity is a domestic corporation, the articles of incorporation;

(2) If the resulting entity is a domestic limited partnership, the certificate of limited partnership;

(3) If the resulting entity is a domestic limited-liability company, the articles of organization; or

(4) If the resulting entity is a domestic business trust, the certificate of trust.

2. After a plan of conversion is approved as required by this chapter, if the resulting entity is a foreign entity, the constituent entity shall deliver to the secretary of state for filing articles of conversion setting forth:

(a) The name and jurisdiction of organization of the constituent entity and the resulting entity;

(b) That a plan of conversion has been adopted by the constituent entity in compliance with the laws of this state; and

(c) The address of the resulting entity where copies of process may be sent by the secretary of state.

3. If the entire plan of conversion is not set forth in the articles of conversion, the filing party must include in the articles of conversion a statement that the complete executed plan of conversion is on file at the registered office or principal place of business of the resulting entity or, if the resulting entity is a domestic limited partnership, the office described in paragraph (a) of subsection 1 of NRS 88.330.

4. If the conversion takes effect on a later date specified in the articles of conversion pursuant to NRS 92A.240, the constituent document filed with the secretary of state pursuant to paragraph (b) of subsection 1 must state the name and the jurisdiction of the constituent entity and that the existence of the resulting entity does not begin until the later date.

5. Any documents filed with the secretary of state pursuant to this section must be accompanied by the required fees.

Sec. 82. *1. Any undomesticated organization may become domesticated in this state as a domestic entity by:*

(a) Paying the required fees to the secretary of state; and

(b) Filing with the secretary of state:

(1) Articles of domestication which must be executed in compliance with subsection 6; and

(2) The appropriate constituent document in compliance with the provisions of all applicable statutes governing the appropriate domestic entity.

2. The articles of domestication must set forth the:

(a) Date when and the jurisdiction where the undomesticated organization was first formed, incorporated, organized or otherwise created;

(b) Name of the undomesticated organization immediately before filing the articles of domestication;

(c) Name and type of domestic entity as set forth in its constituent document pursuant to subsection 1; and

(d) Jurisdiction that constituted the principal place of business or central administration of the undomesticated organization, or any other equivalent thereto pursuant to applicable law, immediately before filing the articles of domestication.

3. Upon filing the articles of domestication and constituent document with the secretary of state, the undomesticated organization is domesticated in this state as the domestic entity described in the constituent document filed pursuant to subsection 1. The existence of the domestic entity begins on the date the undomesticated organization began its existence in the jurisdiction in which the undomesticated organization was first formed, incorporated, organized or otherwise created.

4. The domestication of any undomesticated organization does not affect any obligations or liabilities of the undomesticated organization incurred before its domestication.

5. The filing of the constituent document of the domestic entity filed pursuant to subsection 1 does not affect the choice of law applicable to the undomesticated organization. From the date the constituent document of the domestic entity is filed, the law of this state applies to the domestic entity to the same extent as if the undomesticated organization was organized and created as a domestic entity on that date.

6. Before filing articles of domestication, the domestication must be approved in the manner required by:

(a) The document, instrument, agreement or other writing governing the internal affairs of the undomesticated organization and the conduct of its business; and

(b) Applicable foreign law.

7. When a domestication becomes effective, all rights, privileges and powers of the undomesticated organization, all property owned by the undomesticated organization, all debts due to the undomesticated organization, and all causes of action belonging to the undomesticated organization are vested in the domestic entity and become the property of the domestic entity to the same extent as vested in the undomesticated organization immediately before domestication. The title to any real property vested by deed or otherwise in the undomesticated organization is not reverted or impaired by the domestication. All rights of creditors and all liens upon any property of the undomesticated organization are preserved unimpaired and all debts, liabilities and duties of an undomesticated organization that has been domesticated attach to the domestic entity resulting from the domestication and may be enforced against it to the same extent as if the debts, liability and duties had been incurred or contracted by the domestic entity.

8. When an undomesticated organization is domesticated, the domestic entity resulting from the domestication is for all purposes deemed to be the same entity as the undomesticated organization. Unless otherwise agreed by the owners of the undomesticated organization or as required pursuant to applicable foreign law, the domestic entity resulting from the domestication is not required to wind up its affairs, pay its liabilities or distribute its assets. The domestication of an undomesticated organization does not constitute the dissolution of the undomesticated organization. The domestication constitutes a continuation of the existence of the undomesticated organization in the form of a domestic entity. If, following domestication, an undomesticated organization that has become domesticated pursuant to this section continues its existence in the foreign country or foreign jurisdiction in which it was existing immediately before the domestication, the domestic entity and the undomesticated organization are for all purposes a single entity formed, incorporated, organized or otherwise created and existing pursuant to the laws of this state and the laws of the foreign country or other foreign jurisdiction.

9. As used in this section, "undomesticated organization" means any incorporated organization, private law corporation, whether or not organized for business purposes, public law corporation, general partnership, registered limited-liability partnership, limited partnership or registered limited-liability limited partnership, proprietorship, joint venture, foundation, business trust, real estate investment trust, common law trust or any other unincorporated business formed, organized, created or the internal affairs of which are governed by the laws of any foreign country or jurisdiction other than the United States, the District of Columbia or another state, territory, possession, commonwealth or dependency of the United States.

Sec. 83. NRS 92A.005 is hereby amended to read as follows:

92A.005 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 92A.007 to 92A.080, inclusive, ***and sections 76 and 77 of this act*** have the meanings ascribed to them in those sections.

Sec. 84. NRS 92A.010 is hereby amended to read as follows:

92A.010 "Constituent document" means the articles of incorporation or bylaws of a corporation, whether or not for profit, the articles of organization or operating agreement of a limited-liability company ***,*** ~~[or]~~ the certificate of limited partnership or partnership agreement of a limited partnership ~~[.]~~ ***, or the certificate of trust or governing instrument of a business trust.***

Sec. 85. NRS 92A.015 is hereby amended to read as follows:

92A.015 "Constituent entity" means ~~[, with]~~ ***:***

1. With respect to a merger, each merging or surviving entity ~~[and, with]~~ ***;***

2. With respect to an exchange, each entity whose owner's interests will be acquired or each entity acquiring those interests ~~[.]~~ ***; and***

3. With respect to the conversion of an entity or a general partnership, the entity or general partnership that will be converted into another entity.

Sec. 86. NRS 92A.070 is hereby amended to read as follows:

92A.070 "Member" means:

1. A ~~[person who owns an interest in, and has the right to participate in the management of the business and affairs of a domestic limited-liability company; or]~~ ***member of a limited-liability company, as defined in NRS 86.081; or***

2. A member of a nonprofit corporation which has members.

Sec. 87. NRS 92A.075 is hereby amended to read as follows:

92A.075 "Owner" means the holder of an interest described in NRS 92A.080 ~~[.]~~ ***or a noneconomic member of a limited-liability company described in section 38 of this act.***

Sec. 88. NRS 92A.120 is hereby amended to read as follows:

92A.120 1. After adopting a plan of merger ~~[or exchange,]~~ ***, exchange or conversion,*** the board of directors of each domestic corporation that is a constituent entity in the merger ~~[.]~~ ***or conversion,*** or the board of directors of the domestic corporation whose shares will be acquired in the exchange, must submit the plan of merger, except as otherwise provided in NRS 92A.130, ***the plan of conversion*** or the plan of exchange for approval by its stockholders ~~[.]~~ ***who are entitled to vote on the plan.***

2. For a plan of merger***, conversion*** or exchange to be approved:

(a) The board of directors must recommend the plan of merger ***, conversion*** or exchange to the stockholders, unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and it communicates the basis for its determination to the stockholders with the plan; and

(b) The stockholders entitled to vote must approve the plan.

3. The board of directors may condition its submission of the proposed merger***, conversion*** or exchange on any basis.

4. ~~[The]~~ ***Unless the plan of merger, conversion or exchange is approved by the written consent of stockholders pursuant to subsection 8, the*** domestic corporation must notify each stockholder, whether or not he is entitled to vote, of the proposed stockholders' meeting in accordance with NRS 78.370. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger***, conversion*** or exchange and must contain or be accompanied by a copy or summary of the plan.

5. Unless this chapter, the articles of incorporation ***, the resolutions of the board of directors establishing the class or series of stock, subsection 6*** or the board of directors acting pursuant to subsection 3 require a greater vote or a vote by classes of stockholders, the plan of merger or ~~[exchange to be authorized]~~ ***conversion*** must be approved by a majority of the voting power ~~[unless stockholders of a class of shares are entitled to vote thereon as a class. If stockholders of a class of shares are so entitled, the plan must be approved by a majority of all votes entitled to be cast on the plan by each class and representing a majority of all votes entitled to be voted.~~

~~6. Separate voting by a class of stockholders is required:~~

~~(a) On a plan of merger if the plan contains a provision that, if contained in the proposed amendment to the articles of incorporation, would entitle particular stockholders to vote as a class on the proposed amendment; and~~

~~(b) On a plan of exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting class.~~

~~7.~~] ***of the stockholders.***

6. Unless the articles of incorporation or the resolution of the board of directors establishing a class or series of stock provide otherwise, or unless the board of directors acting pursuant to subsection 3 requires a greater vote, the plan of exchange must be approved by a majority of the voting power of each class and each series to be exchanged pursuant to the plan of exchange.

7. In addition to any other vote required, if a plan of merger contains an amendment to the articles of incorporation of the surviving domestic corporation or if a plan of conversion provides for a resulting entity with constituent documents, that adversely alter or change any preference or other right given to any class or series of outstanding stock of the surviving domestic corporation, then the plan of merger or conversion must be approved by the vote of stockholders representing a majority of the voting power of each class or series adversely affected by the amendment or the constituent documents, regardless of limitations or restrictions on the voting power of that class or series of stock.

8. Unless otherwise provided in the articles of incorporation or the bylaws of the domestic corporation, the plan of merger ***, conversion or exchange*** may be approved by written consent as provided in NRS 78.320.

9. If an officer, director or stockholder of a domestic corporation, which will be the constituent entity in a conversion, will have any liability for the obligations of the resulting entity after the conversion because he will be the owner of an owner's interest in the resulting entity, then that officer, director or stockholder must also approve the plan of conversion.

10. Unless otherwise provided in the articles of incorporation or bylaws of a domestic corporation, a plan of merger, conversion or exchange may contain a provision that permits amendment of the plan of merger, conversion or exchange at any time after the stockholders of the domestic corporation approve the plan of merger, conversion or exchange, but before the articles of merger, conversion or exchange become effective, without obtaining the approval of the stockholders of the domestic corporation for the amendment if the amendment does not:

(a) Alter or change the manner or basis of exchanging an owner's interest to be acquired for owner's interests, rights to purchase owner's interests, or other securities of the acquiring entity or any other entity, or for cash or other property in whole or in part; or

(b) Alter or change any of the terms and conditions of the plan of merger, conversion or exchange in a manner that adversely affects the stockholders of the domestic corporation.

11. This section does not prevent or restrict a board of directors from canceling the proposed meeting or removing the plan of merger, conversion or exchange from consideration at the meeting if the board of directors determines that it is not advisable to submit the plan of merger, conversion or exchange to the stockholders for approval.

Sec. 89. NRS 92A.140 is hereby amended to read as follows:

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

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

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

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

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

Sec. 90. NRS 92A.150 is hereby amended to read as follows:

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

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

~~[2.]~~ ***(b)*** If the company has more than one class of members, the plan of merger ***, conversion or exchange*** must be approved by those members who own a majority of the interests in the current profits of the company then owned by the members in each class.

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

Sec. 91. NRS 92A.165 is hereby amended to read as follows:

92A.165 Unless otherwise provided in the certificate of trust or governing instrument of a business trust, a ***plan of*** merger ***, conversion or exchange*** must be approved by all the trustees and beneficial owners of each business trust that is a constituent entity in the merger.

Sec. 92. NRS 92A.170 is hereby amended to read as follows:

92A.170 After a merger ***, conversion*** or exchange is approved, and at any time before the articles of merger ***, conversion*** or exchange are filed, the planned merger ***, conversion*** or exchange may be abandoned, subject to any contractual rights, without further action, in accordance with the procedure set forth in the plan of merger ***, conversion*** or exchange or, if none is set forth, in the case of:

1. A domestic corporation, whether or not for profit, by the board of directors;

2. A domestic limited partnership, unless otherwise provided in the partnership agreement or certificate of limited partnership, by all general partners;

3. A domestic limited-liability company, unless otherwise provided in the articles of organization or an operating agreement, by members who own a majority in interest ***in the current profits*** of the company then owned by all of the members or, if the company has more than one class of members, by members who own a majority in interest ***in the current profits*** of the company then owned by the members in each class; ~~[and]~~

4. A domestic business trust, unless otherwise provided in the certificate of trust or governing instrument, by all the trustees ~~[.]~~ ***; and***

5. A domestic general partnership, unless otherwise provided in the partnership agreement, by all the partners.

Sec. 93. NRS 92A.175 is hereby amended to read as follows:

92A.175 After a merger ***, conversion*** or exchange is approved, at any time after the articles of merger ***, conversion*** or exchange are filed but before an effective date specified in the articles which is later than the date of filing the articles, the planned merger ***, conversion*** or exchange may be terminated in accordance with a procedure set forth in the plan of merger ***, conversion*** or exchange by filing articles of termination pursuant to the provisions of NRS 92A.240.

Sec. 94. NRS 92A.180 is hereby amended to read as follows:

92A.180 1. A parent domestic corporation, whether or not for profit, parent domestic limited-liability company ***, unless otherwise provided in the articles of organization or operating agreement,*** or parent domestic limited partnership owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation, 90 percent of the percentage or other interest in the capital and profits of a subsidiary ~~[limited partnership]~~ ***limited-liability company*** then owned by ~~[both the general and]~~ each class of ~~[limited partners]~~ ***members*** or 90 percent of the percentage or other interest in the capital and profits of a subsidiary ~~[limited-liability company then owned by each class of members]~~ ***limited partnership then owned by both the general partners and each class of limited partners*** may merge the subsidiary into itself without approval of the owners of the owner's interests of the parent domestic corporation, domestic limited-liability

company or domestic limited partnership or the owners of the owner's interests of a subsidiary domestic corporation, subsidiary domestic limited-liability company or subsidiary domestic limited partnership.

2. ***A parent domestic corporation, whether or not for profit, parent domestic limited-liability company, unless otherwise provided in the articles of organization, or parent domestic limited partnership owning at least 90 percent of the outstanding shares of each class of a subsidiary corporation, 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited-liability company then owned by each class of members, or 90 percent of the percentage or other interest in the capital and profits of a subsidiary limited partnership then owned by both the general partners and each class of limited partners may merge with and into the subsidiary without approval of the owners of the owner's interests of the subsidiary domestic corporation, subsidiary domestic limited-liability company or subsidiary domestic limited partnership.***

3. The board of directors of ~~[the]~~ ***a*** parent corporation, the managers of a parent limited-liability company with managers unless otherwise provided in the operating agreement, all ~~[the]~~ members of a parent limited-liability company without managers unless otherwise provided in the operating agreement, or all ~~[the]~~ general partners of ~~[the]~~ ***a*** parent limited partnership shall adopt a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the owner's interests of the disappearing entity into the owner's interests, obligations or other securities of the surviving or any other entity or into cash or other property in whole or in part.

~~[3.]~~ ***4.*** The parent shall mail a copy or summary of the plan of merger to each owner of the subsidiary who does not waive the mailing requirement in writing.

~~[4. The parent may not deliver articles of merger to the secretary of state for filing until at least 30 days after the date the parent mailed a copy of the plan of merger to each owner of the subsidiary who did not waive the requirement of mailing.]~~

5. Articles of merger under this section may not contain amendments to the constituent documents of the surviving entity ~~[.]~~ ***except that the name of the surviving entity may be changed.***

6. The articles of incorporation of a domestic corporation, the articles of organization of a domestic limited-liability company, the certificate of limited partnership of a domestic limited partnership or the certificate of trust of a domestic business trust may forbid that entity from entering into a merger pursuant to this section.

Sec. 95. NRS 92A.200 is hereby amended to read as follows:

92A.200 After a plan of merger or exchange is approved as required by this chapter, the surviving or acquiring entity shall deliver to the secretary of state for filing articles of merger or exchange setting forth:

1. The name and jurisdiction of organization of each constituent entity;

2. That a plan of merger or exchange has been adopted by each constituent entity;

3. If approval of the owners of one or more constituent entities was not required, a statement to that effect and the name of each entity;

4. If approval of owners of one or more constituent entities was required, the name of each entity and a statement for each entity that:

(a) The plan was approved by the ~~[unanimous]~~ ***required*** consent of the owners; or

(b) A plan was submitted to the owners pursuant to this chapter including:

(1) The designation, percentage of total vote or number of votes entitled to be cast by each class of owner's interests entitled to vote separately on the plan; and

(2) Either the total number of votes or percentage of owner's interests cast for and against the plan by the owners of each class of interests entitled to vote separately on the plan or the total number of undisputed votes or undisputed total percentage of owner's interests cast for the plan separately by the owners of each class,

and the number of votes or percentage of owner's interests cast for the plan by the owners of each class of interests was sufficient for approval by the owners of that class;

5. In the case of a merger, the amendment ***, if any,*** to the articles of incorporation, articles of organization, certificate of limited partnership or certificate of trust of the surviving entity ~~[; and]~~ ***, which amendment may be set forth in the articles of merger as a specific amendment or in the form of:***

(a) Amended and restated articles of incorporation;

(b) Amended and restated articles of organization;

(c) An amended and restated certificate of limited partnership; or

(d) An amended and restated certificate of trust,

or attached in that form as an exhibit; and

6. If the entire plan of merger or exchange is not set forth, a statement that the complete executed plan of merger or plan of exchange is on file at the registered office if a corporation, limited-liability company or business trust, or office described in paragraph (a) of subsection 1 of NRS 88.330 if a limited partnership, or other place of business of the surviving entity or the acquiring entity, respectively.

7. Any of the terms of the plan of merger, conversion or exchange may be made dependent upon facts ascertainable outside of the plan of merger, conversion or exchange, provided that the plan of merger, conversion or exchange clearly and expressly sets forth the manner in which such facts shall operate upon the terms of the plan. As used in this subsection, the term "facts" includes, without limitation, the occurrence of an event, including a determination or action by a person or body, including a constituent entity.

Sec. 96. NRS 92A.210 is hereby amended to read as follows:

92A.210 ~~[The]~~

1. Except as otherwise provided in this section, the fee for filing articles of merger, ***articles of conversion,*** articles of exchange ***, articles of domestication*** or articles of termination is $125. ***The fee for filing the constituent documents of a domestic resulting entity is the fee for filing***

the constituent documents determined by the chapter of NRS governing the particular domestic resulting entity.

2. The fee for filing articles of merger of two or more domestic corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporation.

3. The fee for filing articles of merger of one or more domestic corporations with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid the fees required by NRS 78.760 and 80.050.

4. The fee for filing articles of merger of two or more domestic or foreign corporations must not be less than $125. The amount paid pursuant to subsection 3 must not exceed $25,000.

Sec. 97. NRS 92A.220 is hereby amended to read as follows:

92A.220 If the entire plan of merger ***, conversion*** or exchange is not set forth ~~[,]~~ ***in the articles of merger, conversion or exchange,*** a copy of the plan of merger ***, conversion*** or exchange must be furnished by the surviving ***,*** ~~[or]~~ acquiring ***or resulting*** entity, on request and without cost, to any owner of any entity which is a party to the merger ***, conversion*** or exchange.

Sec. 98. NRS 92A.230 is hereby amended to read as follows:

92A.230 1. Articles of merger ***, conversion*** or exchange must be signed by each domestic constituent entity as follows:

(a) By ~~[the president or a vice president]~~ ***an officer*** of a domestic corporation, whether or not for profit;

(b) By all the general partners of a domestic limited partnership;

(c) By a manager of a domestic limited-liability company with managers or by all the members of a domestic limited-liability company without managers; and

(d) By a trustee of a domestic business trust.

2. ~~[If the domestic entity is a corporation, the articles must also be signed by the secretary or an assistant secretary.~~

~~3.]~~ Articles of merger ***, conversion*** or exchange must be signed by each foreign constituent entity in the manner provided by the law governing it.

~~[4.]~~ ***3.*** As used in this section, "signed" means to have executed or adopted a name, word or mark, including, without limitation, a digital signature as defined in NRS 720.060, with the present intention to authenticate a document.

Sec. 99. NRS 92A.240 is hereby amended to read as follows:

92A.240 1. A merger ***, conversion*** or exchange takes effect upon filing the articles of merger ***, conversion*** or exchange or upon a later date as specified in the articles, which must not be more than 90 days after the articles are filed.

2. If the filed articles of merger ***, conversion*** or exchange specify such a later effective date, the constituent ***entity or entities*** may file articles of termination before the effective date, setting forth:

(a) The name of each constituent entity ~~[,]~~ and ***, for a conversion, the resulting entity; and***

(b) That the merger ***, conversion*** or exchange has been terminated pursuant to the plan of merger ***, conversion*** or exchange.

3. The articles of termination must be executed in the manner provided in NRS 92A.230.

Sec. 100. NRS 92A.250 is hereby amended to read as follows:

92A.250 1. When a merger takes effect:

(a) Every other entity that is a constituent entity merges into the surviving entity and the separate existence of every entity except the surviving entity ceases;

(b) The title to all real estate and other property owned by each merging constituent entity is vested in the surviving entity without reversion or impairment;

(c) The surviving entity has all of the liabilities of each other constituent entity;

(d) A proceeding pending against any constituent entity may be continued as if the merger had not occurred or the surviving entity may be substituted in the proceeding for the entity whose existence has ceased;

(e) The articles of incorporation, articles of organization, certificate of limited partnership or certificate of trust of the surviving entity are amended to the extent provided in the plan of merger; and

(f) The owner's interests of each constituent entity that are to be converted into owner's interests, obligations or other securities of the surviving or any other entity or into cash or other property are converted, and the former holders of the owner's interests are entitled only to the rights provided in the articles of merger or any created pursuant to NRS 92A.300 to 92A.500, inclusive.

2. When an exchange takes effect, the owner's interests of each acquired entity are exchanged as provided in the plan, and the former holders of the owner's interests are entitled only to the rights provided in the articles of exchange or any rights created pursuant to NRS 92A.300 to 92A.500, inclusive.

3. When a conversion takes effect:

(a) The constituent entity is converted into the resulting entity and is subject to the law of the jurisdiction of the resulting entity;

(b) The conversion is a continuation of the existence of the constituent entity;

(c) The title to all real estate and other property owned by the constituent entity is vested in the resulting entity without reversion or impairment;

(d) The resulting entity has all the liabilities of the constituent entity;

(e) A proceeding pending against the constituent entity may be continued as if the conversion had not occurred or the resulting entity may be substituted in the proceeding for the constituent entity;

(f) The owner's interests of the constituent entity that are to be converted into the owner's interests of the resulting entity are converted;

(g) An owner of the resulting entity remains liable for all the obligations of the constituent entity to the extent the owner was personally liable before the conversion; and

(h) The domestic constituent entity is not required to wind up its affairs, pay its liabilities, distribute its assets or dissolve, and the conversion is not deemed a dissolution of the domestic constituent entity.

Sec. 101. NRS 92A.260 is hereby amended to read as follows:

92A.260 An owner that is not personally liable for the debts, liabilities or obligations of the entity pursuant to the laws and constituent documents under which the entity was organized does not become personally liable for the debts, liabilities or obligations of the surviving entity or entities of the merger or exchange ***or the resulting entity of the conversion*** unless the owner consents to becoming personally liable by action taken in connection with the plan of merger***, conversion*** or exchange.

Sec. 102. NRS 92A.380 is hereby amended to read as follows:

92A.380 1. Except as otherwise provided in NRS 92A.370 and 92A.390, a stockholder is entitled to dissent from, and obtain payment of the fair value of his shares in the event of any of the following corporate actions:

(a) Consummation of a plan of merger to which the domestic corporation is a ~~[party:]~~ ***constituent entity:***

(1) If approval by the stockholders is required for the merger by NRS 92A.120 to 92A.160, inclusive, or the articles of incorporation ~~[and he]~~ ***, regardless of whether the stockholder*** is entitled to vote on the ***plan of*** merger; or

(2) If the domestic corporation is a subsidiary and is merged with its parent ~~[under]~~ ***pursuant to*** NRS 92A.180.

(b) Consummation of a plan of exchange to which the domestic corporation is a ~~[party]~~ ***constituent entity*** as the corporation whose subject owner's interests will be acquired, if ~~[he is entitled to vote on the plan.]~~ ***his shares are to be acquired in the plan of exchange.***

(c) Any corporate action taken pursuant to a vote of the stockholders to the event that the articles of incorporation, bylaws or a resolution of the board of directors provides that voting or nonvoting stockholders are entitled to dissent and obtain payment for their shares.

2. A stockholder who is entitled to dissent and obtain payment ~~[under]~~ ***pursuant to*** NRS 92A.300 to 92A.500, inclusive, may not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to him or the domestic corporation.

Sec. 103. NRS 78.295, 86.021 and 86.551 are hereby repealed.

TEXT OF REPEALED SECTIONS

78.295 Liability of directors for declaration of distributions. A director is fully protected in relying in good faith upon the books of account of the corporation or statements prepared by any of its officials as to the value and amount of the assets, liabilities or net profits of the corporation, or any other facts pertinent to the existence and amount of money from which distributions may properly be declared.

86.021 "Articles of organization" defined. "Articles of organization" means the articles of organization filed with the secretary of state for the purpose of forming a limited-liability company pursuant to this chapter.

86.551 Registration of foreign limited-liability company. A foreign limited-liability company may register with the secretary of state by complying with the provisions of NRS 88.570 to 88.605, inclusive, which provide for registration of foreign limited partnerships, except that:

1. The provisions of subsection 7 of NRS 88.575 do not apply; and
2. Cancellation is accomplished by filing articles of dissolution signed by all managers, if any, or by all members, if there are no managers.

~