

ASSEMBLY BILL NO. 564—COMMITTEE ON WAYS AND MEANS

MARCH 28, 2011

Referred to Committee on Judiciary

SUMMARY—Makes various changes to allow for the use of the most recent technology by various business associations, corporations and other entities in carrying out their powers and duties. (BDR 7-891)

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

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

AN ACT relating to business associations; authorizing the Secretary of State to adopt regulations to define certain terms to allow certain corporations, associations, organizations, partnerships and other entities to carry out their powers and duties using the most recent technology available; providing that certain meetings of corporations may be conducted through the use of available technology; authorizing the Secretary of State to develop and make available a model operating agreement for use by limited-liability companies; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the formation of various business entities and establishes certain powers and duties of such entities. (Chapters 78-89 of NRS) **Sections 1, 4-7, 10, 11 and 14-18** of this bill authorize the Secretary of State to adopt regulations interpreting the terms "meeting," "writing," "written" and other terms to allow such business entities to carry out those powers and duties through the use of the most recent technology available, including, without limitation, the use of electronic communications, videoconferencing and telecommunications.

Sections 8 and 9 of this bill revise provisions relating to certain meetings held by members of a board of directors and others within a nonprofit corporation to provide that members may participate in meetings through electronic communications, videoconferencing, teleconferencing or other available technology which allows for simultaneous or sequential communication and that such participation constitutes meeting in person.



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Sections 12 and 13 of this bill provide that the operating agreement of a limited-liability company is not required to be in writing. In addition, section 13 provides that the written consent of the members needed to adopt such an agreement may be in a tangible or electronic format. Section 13 further authorizes the Secretary of State to develop and make available a model operating agreement which a limited-liability company is authorized to use under the terms and limitations established by the Secretary of State.

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 a new section to read as follows:

The Secretary of State may adopt regulations to define, for the purposes of certain provisions of this chapter, the terms "meeting," "writing," "written" and other terms to allow a corporation or other entity which is subject to the provisions of this chapter to carry out its powers and duties as prescribed by this chapter through the use of the most recent technology available including, without limitation, the use of electronic communications, videoconferencing and telecommunications.

Sec. 2. NRS 78.315 is hereby amended to read as follows:

78.315 1. Unless the articles of incorporation or the bylaws provide for a 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, except that such written consent is not required to be signed by:

(a) A common or interested director who abstains in writing from providing consent to the action. If a common or interested director abstains in writing from providing consent:

(1) The fact of the common directorship, office or financial interest must be known to the board of directors or committee before a written consent is signed by all the members of the board of the committee.

(2) Such fact must be described in the written consent.



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(3) The board of directors or committee must approve, authorize or ratify the action in good faith by unanimous consent without counting the abstention of the common or interested director.

(b) A director who is a party to an action, suit or proceeding who abstains in writing from providing consent to the action of the board of directors or committee. If a director who is a party to an action, suit or proceeding abstains in writing from providing consent on the basis that he or she is a party to an action, suit or proceeding, the board of directors or committee must:

(1) Make a determination pursuant to NRS 78.751 that indemnification of the director is proper under the circumstances.

(2) Approve, authorize or ratify the action of the board of directors or committee in good faith by unanimous consent without counting the abstention of the director who is a party to an action, suit or proceeding.

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 methods of communication by which all persons participating in the meeting can hear each other.]~~ *through electronic communications, videoconferencing, teleconferencing or other available technology which allows the members to communicate simultaneously or sequentially.* Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

Sec. 3. 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 methods of communication by which all persons participating in the meeting can hear each other.]~~ *through electronic communications, videoconferencing, teleconferencing or other available technology which allows the members to communicate simultaneously or sequentially.* Participation in a meeting pursuant to this subsection constitutes presence in person at the meeting.

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

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

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

Sec. 4. Chapter 78A of NRS is hereby amended by adding thereto a new section to read as follows:

The Secretary of State may adopt regulations to define, for the purposes of certain provisions of this chapter, the terms "meeting," "writing," "written" and other terms to allow a close corporation or other entity which is subject to the provisions of this chapter to carry out its powers and duties as prescribed by this chapter through the use of the most recent technology available including, without limitation, the use of electronic communications, videoconferencing and telecommunications.

Sec. 5. Chapter 80 of NRS is hereby amended by adding thereto a new section to read as follows:

The Secretary of State may adopt regulations to define, for the purposes of certain provisions of this chapter, the terms "meeting," "writing," "written" and other terms to allow a foreign corporation or other entity which is subject to the provisions of this chapter to carry out its powers and duties as prescribed by this chapter through the use of the most recent technology available including, without limitation, the use of electronic communications, videoconferencing and telecommunications.

Sec. 6. Chapter 81 of NRS is hereby amended by adding thereto a new section to read as follows:

The Secretary of State may adopt regulations to define, for the purposes of certain provisions of this chapter, the terms



1 *“meeting,” “writing,” “written” and other terms to allow a*
2 *corporation, association, organization or other entity which is*
3 *subject to the provisions of this chapter to carry out its powers and*
4 *duties as prescribed by this chapter through the use of the most*
5 *recent technology available including, without limitation, the use*
6 *of electronic communications, videoconferencing and*
7 *telecommunications.*

8 **Sec. 7.** Chapter 82 of NRS is hereby amended by adding
9 thereto a new section to read as follows:

10 *The Secretary of State may adopt regulations to define, for the*
11 *purposes of certain provisions of this chapter, the terms*
12 *“meeting,” “writing,” “written” and other terms to allow a*
13 *corporation or other entity which is subject to the provisions of*
14 *this chapter to carry out its powers and duties as prescribed by this*
15 *chapter through the use of the most recent technology available*
16 *including, without limitation, the use of electronic*
17 *communications, videoconferencing and telecommunications.*

18 **Sec. 8.** NRS 82.271 is hereby amended to read as follows:

19 82.271 1. Unless the articles or the bylaws provide for a
20 different proportion, a majority of the board of directors or delegates
21 of the corporation, at a meeting duly assembled, is necessary to
22 constitute a quorum for the transaction of business at their
23 respective meetings, and the act of a majority of the directors or
24 delegates present at a meeting at which a quorum is present is the
25 act of the board of directors or delegates.

26 2. Unless otherwise restricted by the articles or bylaws, any
27 action required or permitted to be taken at any meeting of the board
28 of directors or the delegates or of any committee thereof may be
29 taken without a meeting if, before or after the action, a written
30 consent thereto is signed by a majority of the board of directors or
31 the delegates or of such committee. If the vote of a different
32 proportion of the directors or delegates is required for an action,
33 then the different proportion of written consents is required.

34 3. Unless otherwise restricted by the articles or bylaws,
35 members of the board of directors, the delegates or any committee
36 designated by the board or the delegates may participate in a
37 meeting ~~[by means of a telephone conference or similar method of~~
38 ~~communication by which all persons participating in the meeting~~
39 ~~can hear each other.]~~ *through electronic communications,*
40 *videoconferencing, teleconferencing or other available technology*
41 *which allows the members to communicate simultaneously or*
42 *sequentially.* Participating in a meeting pursuant to this subsection
43 constitutes presence in person at the meeting.



Sec. 9. NRS 82.276 is hereby amended to read as follows:

82.276 1. Unless otherwise provided in the articles or bylaws, any action which may be taken by the vote of members at a meeting may be taken without a meeting if authorized by the written consent of members holding at least a majority of the voting power, except that:

(a) If any greater proportion of voting power is required for such an action at a meeting, then the greater proportion of written consents is required; and

(b) This general provision for action by written consent does not supersede any specific provision for action by written consent contained in this chapter.

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

3. Unless otherwise restricted by the articles or bylaws, members may participate in a meeting ~~[by means of a telephone conference or similar method of communication by which all persons participating in the meeting can hear each other.]~~ *through electronic communications, videoconferencing, teleconferencing or other available technology which allows the members to communicate simultaneously or sequentially.* Participating in a meeting pursuant to this subsection constitutes presence in person at the meeting.

Sec. 10. Chapter 84 of NRS is hereby amended by adding thereto a new section to read as follows:

The Secretary of State may adopt regulations to define, for the purposes of certain provisions of this chapter, the terms "meeting," "writing," "written" and other terms to allow a corporation sole or other entity which is subject to the provisions of this chapter to carry out its powers and duties as prescribed by this chapter through the use of the most recent technology available including, without limitation, the use of electronic communications, videoconferencing and telecommunications.

Sec. 11. Chapter 86 of NRS is hereby amended by adding thereto a new section to read as follows:

The Secretary of State may adopt regulations to define, for the purposes of certain provisions of this chapter, the terms "meeting," "writing," "written" and other terms to allow a limited-liability company or other entity which is subject to the provisions of this chapter to carry out its powers and duties as prescribed by this chapter through the use of the most recent technology available including, without limitation, the use of electronic communications, videoconferencing and telecommunications.



1 **Sec. 12.** NRS 86.101 is hereby amended to read as follows:

2 86.101 “Operating agreement” means any valid ~~[written]~~
3 agreement of the members as to the affairs of a limited-liability
4 company and the conduct of its business ~~[.]~~ , *whether in any*
5 *tangible or electronic format.*

6 **Sec. 13.** NRS 86.286 is hereby amended to read as follows:

7 86.286 1. A limited-liability company may, but is not
8 required to, adopt an operating agreement. An operating agreement
9 may be adopted only by the unanimous vote or unanimous written
10 consent of the members, *which may be in any tangible or*
11 *electronic format*, or by the sole member . ~~[, and the operating~~
12 ~~agreement must be in writing.]~~ If any operating agreement provides
13 for the manner in which it may be amended, including by requiring
14 the approval of a person who is not a party to the operating
15 agreement or the satisfaction of conditions, it may be amended only
16 in that manner or as otherwise permitted by law and any attempt to
17 otherwise amend the operating agreement shall be deemed void and
18 of no legal force or effect unless otherwise provided in the operating
19 agreement. Unless otherwise provided in the operating agreement,
20 amendments to the agreement may be adopted only by the
21 unanimous vote or unanimous written consent of the persons who
22 are members at the time of amendment.

23 2. An operating agreement may be adopted before, after or at
24 the time of the filing of the articles of organization and, whether
25 entered into before, after or at the time of the filing, may become
26 effective at the formation of the limited-liability company or at a
27 later date specified in the operating agreement. If an operating
28 agreement is adopted:

29 (a) Before the filing of the articles of organization or before the
30 effective date of formation specified in the articles of organization,
31 the operating agreement is not effective until the effective date of
32 formation of the limited-liability company.

33 (b) After the filing of the articles of organization or after the
34 effective date of formation specified in the articles of organization,
35 the operating agreement binds the limited-liability company and
36 may be enforced whether or not the limited-liability company
37 assents to the operating agreement.

38 3. An operating agreement may provide that a certificate of
39 limited-liability company interest issued by the limited-liability
40 company may evidence a member’s interest in a limited-liability
41 company.

42 4. An operating agreement:

43 (a) May provide rights to any person, including a person who is
44 not a party to the operating agreement, to the extent set forth therein.



(b) Must be interpreted and construed to give the maximum effect to the principle of freedom of contract and enforceability.

5. To the extent that a member or manager or other person has duties to a limited-liability company, to another member or manager, or to another person that is a party to or is otherwise bound by the operating agreement, the member, manager or other person's duties may be expanded, restricted or eliminated by provisions in the operating agreement, except that an operating agreement may not eliminate the implied contractual covenant of good faith and fair dealing.

6. Unless otherwise provided in an operating agreement, a member or manager or other person is not liable to a limited-liability company, another member or manager, or to another person that is a party to or otherwise bound by an operating agreement for breach of fiduciary duty for the member, manager or other person's good faith reliance on the provisions of the operating agreement.

7. An operating agreement may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties of a member, manager or other person to a limited-liability company, to another member or manager, or to another person that is a party to or is otherwise bound by the operating agreement. An operating agreement may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

8. The Secretary of State may make available a model operating agreement for use by and at the discretion of a limited-liability company according to such terms and limitations as established by the Secretary of State. The use of such an operating agreement does not create a presumption that the contents of the operating agreement are accurate or that the operating agreement is valid.

Sec. 14. Chapter 87 of NRS is hereby amended by adding thereto a new section to read as follows:

The Secretary of State may adopt regulations to define, for the purposes of certain provisions of this chapter, the terms "meeting," "writing," "written" and other terms to allow a partnership or other entity which is subject to the provisions of this chapter to carry out its powers and duties as prescribed by this chapter through the use of the most recent technology available including, without limitation, the use of electronic communications, videoconferencing and telecommunications.

Sec. 15. Chapter 87A of NRS is hereby amended by adding thereto a new section to read as follows:

The Secretary of State may adopt regulations to define, for the purposes of certain provisions of this chapter, the terms



1 *“meeting,” “writing,” “written” and other similar terms to allow a*
2 *limited partnership or other entity which is subject to the*
3 *provisions of this chapter to carry out its powers and duties as*
4 *prescribed by this chapter through the use of the most recent*
5 *technology available including, without limitation, the use of*
6 *electronic communications, videoconferencing and*
7 *telecommunications.*

8 **Sec. 16.** Chapter 88 of NRS is hereby amended by adding
9 thereto a new section to read as follows:

10 *The Secretary of State may adopt regulations to define, for the*
11 *purposes of certain provisions of this chapter, the terms*
12 *“meeting,” “writing,” “written” and other terms to allow a limited*
13 *partnership or other entity which is subject to the provisions of*
14 *this chapter to carry out its powers and duties as prescribed by this*
15 *chapter through the use of the most recent technology available*
16 *including, without limitation, the use of electronic*
17 *communications, videoconferencing and telecommunications.*

18 **Sec. 17.** Chapter 88A of NRS is hereby amended by adding
19 thereto a new section to read as follows:

20 *The Secretary of State may adopt regulations to define, for the*
21 *purposes of certain provisions of this chapter, the terms*
22 *“meeting,” “writing,” “written,” and other terms to allow a*
23 *business trust or other entity which is subject to the provisions of*
24 *this chapter to carry out its powers and duties as prescribed by this*
25 *chapter through the use of the most recent technology available,*
26 *including, without limitation, the use of electronic*
27 *communications, videoconferencing and telecommunications.*

28 **Sec. 18.** Chapter 89 of NRS is hereby amended by adding
29 thereto a new section to read as follows:

30 *The Secretary of State may adopt regulations to define, for the*
31 *purposes of certain provisions of this chapter, the terms*
32 *“meeting,” “writing,” “written” and other terms to allow a*
33 *professional entity, professional association or other entity which*
34 *is subject to the provisions of this chapter to carry out its powers*
35 *and duties as prescribed by this chapter through the use of the*
36 *most recent technology available including, without limitation, the*
37 *use of electronic communications, videoconferencing and*
38 *telecommunications.*

39 **Sec. 19.** The Secretary of State shall adopt the regulations
40 necessary to carry out the provisions of this act on or before
41 December 31, 2011.



- 1 **Sec. 20.** This act becomes effective upon passage and approval
2 for purposes of adopting regulations and on October 1, 2011 for all
3 other purposes.

