

SENATE BILL NO. 446—COMMITTEE ON JUDICIARY

MARCH 23, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to businesses.
(BDR 7-1088)

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 entities; establishing procedures for the ratification or validation of certain noncompliant corporate acts; providing that a trust company may be formed as a corporation; revising provisions governing the stock ledger maintained by the registered agent of a corporation; revising provisions setting forth the required officers of a corporation; revising provisions governing transactions involving interested directors or officers; revising provisions governing the stock of corporations; revising provisions governing meetings of stockholders of corporations; revising provisions governing certain transactions between corporations and interested stockholders; revising provisions relating to articles and certificates of incorporation; revising provisions establishing the time of organization of certain business entities; revising provisions governing the allocation of certain liabilities after a merger of business entities; revising provisions governing notarial acts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1 of this bill establishes procedures by which a corporate act that is not in compliance with applicable law or the articles of incorporation or bylaws of the corporation may be ratified or validated by the directors and shareholders of the corporation.

Under existing law, a trust company organized for the purpose of conducting a banking business may not be organized as a corporation. (NRS 78.020) **Section 2** of this bill provides that a trust company may be formed as a corporation under



* S B 4 4 6 *

chapter 78 of NRS but that the trust company may not transact business in this State as a trust company until it complies with existing law governing trust companies.

Existing law requires a corporation to keep, among other documents, a stock ledger or duplicate thereof, revised annually, at its registered office. (NRS 78.105) **Section 3** of this bill specifies a timeline for revising the stock ledger by requiring the stock ledger to be revised not later than 60 days after the date by which the corporation is required to file its annual list.

Section 4 of this bill revises provisions relating to the officers of a corporation to clarify that vice presidents, assistant secretaries and assistant treasurers are not officers of a corporation unless those persons are designated as officers.

Existing law authorizes a corporation to have more than one class or series of stock if the articles of incorporation prescribe the classes and series, the number of shares of each class or series and the voting powers, designations, preferences, limitations, restrictions and relative rights of each class or series, or if the articles of incorporation authorize the board of directors to prescribe those matters. (NRS 78.195) **Section 6** of this bill specifically states that all shares of the same class or series must have the same voting powers, designations, preferences, limitations, restrictions and relative rights. **Section 6** also specifically states that the voting powers, designations, preferences, limitations, restrictions and relative rights for the shares of a class or series of stock may be made dependent upon certain facts or events.

Existing law provides that if more than one class or series of stock is authorized, the articles of incorporation or the resolution of the board of directors authorizing the class or series must describe the voting powers, designations, preferences, limitations, restrictions, relative rights and distinguishing designation of the class or series. **Section 6** provides that the certificate of designation filed with the Secretary of State rather than the resolution of the board of directors must describe these matters, and **sections 7, 8 and 12** of this bill make conforming changes to refer to the certificate of designation rather than the resolution of the board of directors. **Section 7** further specifies that when a filed certificate of designation, or amendment thereto, becomes effective, the certificate or amendment has the effect of amending articles of incorporation.

Existing law provides that in certain circumstances, a corporation may change the numbers of shares of a class or series of stock by a resolution adopted by the board of directors, without obtaining the approval of the stockholders. Such a change is not effective until a certificate is filed in the Office of the Secretary of State setting forth certain information concerning the shares of stock of the corporation. (NRS 78.207, 78.209) **Section 9** of this bill specifies that when a filed certificate changing the number of shares of a class or series of stock becomes effective, the certificate has the effect of amending articles of incorporation. (NRS 78.209)

Existing law authorizes a board of directors of a corporation to authorize shares of stock to be issued for consideration of various forms. (NRS 78.211) **Section 10** of this bill provides that the nature and amount of that consideration may be made dependent upon a formula approved by the board or upon certain other facts or events. **Section 10** also provides that issued shares of stock are outstanding shares unless the shares are treasury shares.

Existing law provides that stockholders may participate in a meeting of stockholders through electronic communications, videoconferencing, teleconferencing or other technology under certain circumstances. (NRS 78.320) **Section 11** of this bill revises this provision to provide that if authorized by the articles of incorporation or bylaws, a meeting of stockholders may be held solely through the use of such technology.

Existing law sets forth certain restrictions on combinations and other transactions between certain corporations and interested stockholders.



(NRS 78.411-78.444) **Section 14** of this bill provides that those provisions do not apply to a combination of a resident domestic corporation with an interested stockholder of that corporation after the expiration of 4 years after the person first became an interested stockholder. **Section 15** of this bill authorizes a resident domestic corporation to engage in a combination with any interested stockholder less than 2 years after the person first became an interested stockholder if the combination meets the requirements of the articles of incorporation of the resident domestic corporation as well as certain requirements set forth in existing law. **Sections 16-19** of this bill clarify the language of certain provisions governing combinations and other transactions between certain corporations and interested stockholders.

Sections 20-31 of this bill change references to a certificate of incorporation to refer to articles of incorporation.

Existing law provides that a limited liability company or a limited partnership is considered legally organized at the time of the filing of organizational documents with the Secretary of State or upon some later date and time as specified in those documents. (NRS 86.201, 87A.235, 88.350) **Sections 32, 34 and 35** of this bill revise these provisions to provide that those business entities are considered legally organized at the time of the filing with the Secretary of State.

Under existing law, the surviving entity in certain mergers between a parent entity and a subsidiary entity may be either the parent or the subsidiary. (NRS 92A.180) **Section 36** of this bill requires the surviving entity in the merger, rather than the parent entity, to 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.

Existing law establishes the effect of a merger between business entities, including, without limitation, the effect of the merger on the liabilities of the surviving entity and the constituent entities. (NRS 92A.250) **Section 37** of this bill revises this provision to provide that an owner of a constituent entity remains liable for the obligations of the constituent entity that existed at the time of the merger to the extent the owner was liable before the merger.

Section 38 of this bill provides that the certificate evidencing a notarial act must be signed in the same manner as the signature that is on file with the Secretary of State only if the notarial officer is a notary public with such a signature on file with 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:

1. Except to the extent expressly prohibited in the articles of incorporation or an amendment thereto, in each case filed and effective on or after October 1, 2015, any corporate act not in compliance, or purportedly not in compliance, with this title or the articles of incorporation or bylaws in effect at the time of such corporate act may be ratified or validated in accordance with this section. This section does not apply to circumvent or contravene the provisions of NRS 78.378 to 78.3793, inclusive, or NRS 78.411 to 78.444, inclusive. Except as otherwise determined by the district court pursuant to its authority under subsection 5, a ratification or



1 validation of a corporate act in accordance with this section is
2 conclusive in the absence of actual fraud in the transaction.
3 Ratification or validation under this section must not be the
4 exclusive means by which a corporate act may be ratified or
5 validated. This section shall not be construed to limit the authority
6 of the board of directors, the stockholders or the corporation to
7 effect any lawful means of ratification or validation of a corporate
8 act or correction of a record, including, without limitation, the
9 authority of:

10 (a) The board of directors to act, or to consent to an action
11 before or after the action, pursuant to NRS 78.315;

12 (b) The stockholders to act, or to consent to an action before or
13 after the action, pursuant to NRS 78.320; or

14 (c) The corporation to correct a record filed in the Office of
15 the Secretary of State pursuant to NRS 78.0295.

16 2. Any ratification or validation of a corporate act pursuant
17 to this section must be approved by the board of directors and, as
18 applicable, the stockholders in accordance with this title and the
19 articles of incorporation and bylaws in effect at the time of such
20 ratification or validation, unless a higher approval standard was
21 or would have been applicable to the original taking or purported
22 taking of the corporate act, in which case such ratification or
23 validation must be approved in accordance with such higher
24 approval standard. The voting power of any shares issued or
25 purportedly issued pursuant to the corporate act being ratified or
26 validated must be disregarded for all purposes of the stockholder
27 approval of such corporate act as required by this subsection,
28 including for purposes of determining a quorum at a meeting of
29 stockholders.

30 3. Notice of any ratification or validation of a corporate act
31 pursuant to this section must be given not later than 10 days after
32 the approval of such ratification or validation pursuant to
33 subsection 2, to each stockholder of record at the time of such
34 ratification or validation, whether or not action by the
35 stockholders is required for such ratification or validation.

36 4. If a corporate act ratified or validated pursuant to this
37 section would have required any filing with the Secretary of State
38 pursuant to the provisions of this title, or if such ratification or
39 validation would cause any such filing to be inaccurate or
40 incomplete in any material respect, the corporation shall make,
41 amend or correct each such filing in accordance with this title,
42 including this subsection. Any such filing, amendment or
43 correction:

44 (a) Must be accompanied by a certificate of validation
45 indicating that the filing, amendment or correction is being made



1 *in connection with a ratification or validation of a corporate act in*
2 *accordance with this section and specifying the effective date and*
3 *time of the filing, amendment or correction, which may be before*
4 *the date and time of filing; and*

5 *(b) Must otherwise be filed with the Secretary of State in*
6 *accordance with the requirements of this title.*

7 *5. The district court has plenary and exclusive jurisdiction in*
8 *equity, upon application of any person adversely affected, to*
9 *administer and provide equitable relief under this section,*
10 *including, without limitation, the authority to confirm, nullify,*
11 *modify or compel any ratification or validation taken or proposed*
12 *to be taken pursuant to this section, including any filing,*
13 *amendment or correction pursuant to subsection 4. The provisions*
14 *of this section shall not be construed to prescribe or circumscribe*
15 *which facts and circumstances the court may consider or which*
16 *remedies the court may grant in exercising its jurisdiction under*
17 *this section. Any action, application or petition relating to a*
18 *ratification or validation taken or proposed to be taken pursuant to*
19 *this section must be filed in the district court:*

20 *(a) Not later than 180 days after the notice required by*
21 *subsection 3 is given; and*

22 *(b) In the county where the principal office of the corporation*
23 *is located or, if the principal office is not located in this State, in*
24 *the county in which the corporation's registered office is located.*

25 *6. Unless otherwise determined by the district court pursuant*
26 *to its authority under subsection 5, a ratification or validation of a*
27 *corporate act in accordance with this section relates back to the*
28 *date of the corporate act.*

29 *7. As used in this section:*

30 *(a) "Corporate act" means:*

31 *(1) Any act or purported act of the board of directors;*

32 *(2) Any act or purported act of the stockholders; or*

33 *(3) Any other act or transaction taken or purportedly taken*
34 *by or on behalf of the corporation, including, without limitation,*
35 *any issuance or purported issuance of stock or other securities of*
36 *the corporation.*

37 *(b) "Higher approval standard" means any provision set forth*
38 *in the articles of incorporation or bylaws in effect at the time of*
39 *the original taking or purported taking of a corporate act:*

40 *(1) Requiring action of the directors or stockholders, at a*
41 *meeting or by written consent, to be taken by a proportion greater*
42 *than otherwise would have been required pursuant to this chapter*
43 *if the articles of incorporation and bylaws were silent as to the*
44 *required proportion;*



1 (2) *Requiring a greater proportion of the directors or*
2 *stockholders to constitute a quorum for the transaction of business*
3 *at a meeting than otherwise would have been required pursuant to*
4 *this chapter if the articles of incorporation and bylaws were silent*
5 *as to the required proportion;*

6 (3) *Requiring, prohibiting or prescribing conditions on*
7 *action of the directors or stockholders at a meeting or by written*
8 *consent;*

9 (4) *Requiring separate action of the holders of shares of*
10 *any class or series of the corporation's stock, unless no shares of*
11 *such class or series are outstanding at the time of the ratification*
12 *or validation of the corporate act pursuant to this section;*

13 (5) *Requiring separate action of the holders of securities of*
14 *the corporation other than stock, unless such securities are not*
15 *outstanding at the time of the ratification or validation of the*
16 *corporate act pursuant to this section; or*

17 (6) *Requiring separate action of any specified person or*
18 *persons.*

19 **Sec. 2.** NRS 78.020 is hereby amended to read as follows:

20 78.020 1. ~~Insurance~~ *Trust companies, insurance*
21 *companies, mutual fire insurance companies, surety companies,*
22 *express companies and railroad companies may be formed under*
23 *this chapter, but such a corporation may not:*

24 (a) Transact any such business within this State until it has first
25 complied with all laws concerning or affecting the right to engage in
26 such business.

27 (b) Infringe the laws of any other state or country in which it
28 may intend to engage in business, by so incorporating under this
29 chapter.

30 2. No ~~trust company,~~ savings and loan association, thrift
31 company or corporation organized for the purpose of conducting a
32 banking business may be organized under this chapter.

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

34 78.105 1. A corporation shall keep a copy of the following
35 records at its registered office:

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

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

40 (c) A stock ledger or a duplicate stock ledger, revised annually
41 ~~H~~ *not later than 60 days after the date by which an annual list is*
42 *required to be filed pursuant to NRS 78.150,* containing the names,
43 alphabetically arranged, of all persons who are stockholders *of*
44 *record* of the corporation, showing their places of residence, if
45 known, and the number of shares held by them respectively. In lieu



1 of the stock ledger or duplicate stock ledger, the corporation may
2 keep a statement setting out the name of the custodian of the stock
3 ledger or duplicate stock ledger, and the present and complete
4 mailing or street address where the stock ledger or duplicate stock
5 ledger specified in this section is kept.

6 2. A stock ledger, duplicate stock ledger or statement setting
7 out the name of the custodian of the stock ledger or duplicate stock
8 ledger described in paragraph (c) of subsection 1 must be
9 maintained by the registered agent of the corporation for 3 years
10 following the resignation or termination of the registered agent or
11 the dissolution of the corporation by the Secretary of State.

12 3. Any person who has been a stockholder of record of a
13 corporation for at least 6 months immediately preceding the
14 demand, or any person holding, or thereunto authorized in writing
15 by the holders of, at least 5 percent of all of its outstanding shares,
16 upon at least 5 days' written demand is entitled to inspect in person
17 or by agent or attorney, during usual business hours, the records
18 required by subsection 1 and make copies therefrom. Holders of
19 voting trust certificates representing shares of the corporation must
20 be regarded as stockholders for the purpose of this subsection. Every
21 corporation that neglects or refuses to keep the records required by
22 subsection 1 open for inspection, as required in this subsection, shall
23 forfeit to the State the sum of \$25 for every day of such neglect or
24 refusal.

25 4. If any corporation willfully neglects or refuses to make any
26 proper entry in the stock ledger or duplicate copy thereof, or
27 neglects or refuses to permit an inspection of the records required by
28 subsection 1 upon demand by a person entitled to inspect them, or
29 refuses to permit copies to be made therefrom, as provided in
30 subsection 3, the corporation is liable to the person injured for all
31 damages resulting to the person therefrom.

32 5. When the corporation keeps a statement in the manner
33 provided for in paragraph (c) of subsection 1, the information
34 contained thereon must be given to any stockholder of the
35 corporation demanding the information, when the demand is made
36 during business hours. Every corporation that neglects or refuses to
37 keep a statement available, as in this subsection required, shall
38 forfeit to the State the sum of \$25 for every day of such neglect or
39 refusal.

40 6. In every instance where an attorney or other agent of the
41 stockholder seeks the right of inspection, the demand must be
42 accompanied by a power of attorney signed by the stockholder
43 authorizing the attorney or other agent to inspect on behalf of the
44 stockholder.



7. The right to copy records under subsection 3 includes, if reasonable, the right to make copies by photographic, xerographic or other means.

8. The corporation may impose a reasonable charge to recover the costs of labor and materials and the cost of copies of any records provided to the stockholder.

Sec. 4. NRS 78.130 is hereby amended to read as follows:

78.130 1. Every corporation must have a president, a secretary and a treasurer, or the equivalent thereof.

2. Every corporation may also have ~~one or more vice presidents, assistant secretaries and assistant treasurers, and~~ such other officers and agents as may be deemed necessary.

3. All officers must be natural persons and must be chosen in such manner, hold their offices for such terms and have such powers and duties as may be prescribed by the bylaws or determined by the board of directors. Any natural person may hold two or more offices.

4. An officer holds office after the expiration of his or her term until a successor is chosen or until the officer's resignation or removal before the expiration of his or her term. A failure to elect officers does not require the corporation to be dissolved. Any vacancy occurring in an office of the corporation by death, resignation, removal or otherwise, must be filled as the bylaws provide, or in the absence of such a provision, by the board of directors.

Sec. 5. NRS 78.140 is hereby amended to read as follows:

78.140 1. A contract or other transaction is not void or voidable solely because:

(a) The contract or transaction is between a corporation and:

(1) One or more of its directors or officers; or

(2) Another corporation, firm or association in which one or more of its directors or officers are directors or officers or are financially interested;

(b) A common or interested director or officer:

(1) Is present at the meeting of the board of directors or a committee thereof which authorizes or approves the contract or transaction; or

(2) Joins in the signing of a written consent which authorizes or approves the contract or transaction pursuant to subsection 2 of NRS 78.315; or

(c) The vote or votes of a common or interested director are counted for the purpose of authorizing or approving the contract or transaction,

↪ if one of the circumstances specified in subsection 2 exists.



2. The circumstances in which a contract or other transaction is not void or voidable pursuant to subsection 1 are:

(a) The fact of the common directorship, office or financial interest is known to the board of directors or committee, and the ~~{board}~~ *directors* or *members of the* committee ~~{authorizes, approves or ratifies}~~ , *other than any common or interested directors or members of the committee, approve or ratify* the contract or transaction in good faith . ~~{by a vote sufficient for the purpose without counting the vote or votes of the common or interested director or directors.}~~

(b) The fact of the common directorship, office or financial interest is known to the stockholders, and ~~{they}~~ *stockholders holding a majority of the voting power* approve or ratify the contract or transaction in good faith . ~~{by a majority vote of stockholders holding a majority of the voting power.}~~ The votes of the common or interested directors or officers must be counted in any such vote of stockholders.

(c) The fact of the common directorship, office or financial interest is not known to the director or officer at the time the transaction is brought before the board of directors of the corporation for action.

(d) The contract or transaction is fair as to the corporation at the time it is authorized or approved.

3. Common or interested directors *or common or interested members of the committee* may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves or ratifies a contract or transaction, and if the votes of the common or interested directors *or common or interested members of the committee* are not counted at the meeting, then a majority of the disinterested directors *or disinterested members of the committee* may authorize, approve or ratify a contract or transaction.

4. The fact that the vote or votes of the common or interested director or directors , *or common or interested member or members of the committee*, are not counted for purposes of subsection 2 does not prohibit any authorization, approval or ratification of a contract or transaction to be given by written consent pursuant to subsection 2 of NRS 78.315, regardless of whether the common or interested director signs such written consent or abstains in writing from providing consent.

5. Unless otherwise provided in the articles of incorporation or the bylaws, the board of directors, without regard to personal interest, may establish the compensation of directors for services in any capacity. If the board of directors establishes the compensation of directors pursuant to this subsection, such compensation is



1 presumed to be fair to the corporation unless proven unfair by a
2 preponderance of the evidence.

3 **Sec. 6.** NRS 78.195 is hereby amended to read as follows:

4 78.195 1. If a corporation desires to have more than one class
5 or series of stock, the articles of incorporation must prescribe, or
6 vest authority in the board of directors to prescribe, the classes,
7 series and the number of each class or series of stock and the voting
8 powers, designations, preferences, limitations, restrictions and
9 relative rights of each class or series of stock. If more than one class
10 or series of stock is authorized, the articles of incorporation or the
11 resolution of the board of directors ~~passed~~ *adopted* pursuant to a
12 provision of the articles must prescribe a distinguishing designation
13 for each class and series. The voting powers, designations,
14 preferences, limitations, restrictions, relative rights and
15 distinguishing designation of each class or series of stock must be
16 described in the articles of incorporation or the resolution of the
17 board of directors *and the certificate of designation filed pursuant*
18 *to subsection 1 of NRS 78.1955* before the issuance of shares of that
19 class or series.

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

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

28 4. ~~Any rate, condition or time for payment of distributions on~~
29 ~~any~~ *The voting powers, designations, preferences, limitations,*
30 *restrictions and relative rights for the shares of a* class or series of
31 stock may be made dependent upon any fact or event which may be
32 ascertained outside the articles of incorporation ~~for the resolution~~
33 ~~providing for the distributions adopted by the board of directors~~ if
34 the manner in which a fact or event may operate upon the ~~rate,~~
35 ~~condition or time of payment for the distributions~~ *voting powers,*
36 *designations, preferences, limitations, restrictions and relative*
37 *rights* is stated in the articles of incorporation. ~~for the resolution.~~
38 As used in this subsection, "fact or event" includes, without
39 limitation, the existence of a fact or occurrence of an event,
40 including, without limitation, a determination or action by a person,
41 the corporation itself or any government, governmental agency or
42 political subdivision of a government.

43 5. The provisions of this section do not restrict the directors of
44 a corporation from taking action to protect the interests of the
45 corporation and its stockholders, including, but not limited to,



1 adopting or signing plans, arrangements or instruments that grant or
2 deny rights, privileges, power or authority to a holder or holders of a
3 specified number of shares or percentage of share ownership or
4 voting power.

5 **Sec. 7.** NRS 78.1955 is hereby amended to read as follows:

6 78.1955 1. If the voting powers, designations, preferences,
7 limitations, restrictions and relative rights of any class or series of
8 stock have been established by a resolution of the board of directors
9 pursuant to a provision in the articles of incorporation, a certificate
10 of designation setting forth the resolution and stating the number of
11 shares for each designation must be signed by an officer of the
12 corporation and filed with the Secretary of State. A certificate of
13 designation signed and filed pursuant to this section must become
14 effective before the issuance of any shares of the class or series.

15 2. Unless otherwise provided in the articles of incorporation or
16 the certificate of designation being amended, if no shares of a class
17 or series of stock established by ~~18 a resolution of the board of~~
~~19 directors~~ *20 a certificate of designation filed pursuant to subsection 1*
21 have been issued, the designation of the class or series, the number
22 of the class or series and the voting powers, designations,
23 preferences, limitations, restrictions and relative rights of the class
24 or series may be amended by a resolution of the board of directors
25 pursuant to a certificate of amendment filed in the manner provided
26 in subsection 4.

27 3. Unless otherwise provided in the articles of incorporation or
28 the certificate of designation, if shares of a class or series of stock
29 established by ~~30 a resolution of the board of directors~~ *31 a certificate of*
32 designation filed pursuant to subsection 1 have been issued, the
33 designation of the class or series, the number of the class or series
34 and the voting powers, designations, preferences, limitations,
35 restrictions and relative rights of the class or series may be amended
36 by a resolution of the board of directors only if the amendment is
37 approved as provided in this subsection. Unless otherwise provided
38 in the articles of incorporation or the certificate of designation, the
39 proposed amendment adopted by the board of directors must be
40 approved by the vote of stockholders holding shares in the
41 corporation entitling them to exercise a majority of the voting
42 power, or such greater proportion of the voting power as may be
43 required by the articles of incorporation or the certificate of
44 designation, of:

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

46 (b) Each class and each series of stock which, before
47 amendment, is senior to the class or series being amended as to the
48 payment of distributions upon dissolution of the corporation,



* S B 4 4 6 *

1 regardless of any limitations or restrictions on the voting power of
2 that class or series.

3 4. A certificate of amendment to a certificate of designation
4 must be signed by an officer of the corporation and filed with the
5 Secretary of State and must:

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

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

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

15 5. A certificate filed pursuant to subsection 1 or 4 is effective at
16 the time of the filing of the certificate with the Secretary of State or
17 upon a later date and time as specified in the certificate, which date
18 must not be more than 90 days after the date on which the certificate
19 is filed. If a certificate filed pursuant to subsection 1 or 4 specifies a
20 later effective date but does not specify an effective time, the
21 certificate is effective at 12:01 a.m. in the Pacific time zone on the
22 specified later date.

23 6. If shares of a class or series of stock established by a
24 certificate of designation are not outstanding, the corporation may
25 file a certificate which states that no shares of the class or series are
26 outstanding and which contains the resolution of the board of
27 directors authorizing the withdrawal of the certificate of designation
28 establishing the class or series of stock. The certificate must identify
29 the date and certificate of designation being withdrawn and must be
30 signed by an officer of the corporation and filed with the Secretary
31 of State. Upon filing the certificate and payment of the fee required
32 pursuant to NRS 78.765, all matters contained in the certificate of
33 designation regarding the class or series of stock are eliminated
34 from the articles of incorporation.

35 7. *When any certificate of designation, or any amendment*
36 *thereto, filed pursuant to this section becomes effective, it shall*
37 *have the effect of amending the articles of incorporation, but* NRS
38 78.380, 78.385 and 78.390 do not apply to ~~certificates~~ *a certificate*
39 *of designation, or any amendment thereto, filed pursuant to this*
40 *section.*

41 **Sec. 8.** NRS 78.196 is hereby amended to read as follows:

42 78.196 1. Each corporation must have:

43 (a) One or more classes or series of shares that together have
44 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 *certificate of designation approved pursuant to a* resolution of the board of directors ~~pursuant thereto,~~ *and filed in accordance with this chapter,* 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~~ *certificate of designation* 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~~ *certificate of designation*. As used in this paragraph, "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, the corporation itself or any government, governmental agency or political subdivision of a government.

3. Unless otherwise provided in the articles of incorporation, or in a ~~resolution of the board of directors~~ *certificate of designation filed pursuant to subsection 1 of NRS 78.1955*, 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:



* S B 4 4 6 *

(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. 9. 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 an officer of the corporation, setting forth:

(a) The number of authorized shares and the par value, if any, of each affected class or, if applicable, each affected series of shares before the change;

(b) The number of authorized shares and the par value, if any, of each affected class or, if applicable, each affected series of shares after the change;

(c) The number of shares of each affected class or, if applicable, each affected series 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.

➔ The provisions in the articles of incorporation of the corporation regarding the authorized number and par value, if any, of the changed class or, if applicable, the changed series 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 articles of incorporation of the corporation, such an amendment is not required by that section.

3. A certificate filed pursuant to subsection 1 is effective at the time of the filing of the certificate with the Secretary of State or upon a later date and time as specified in the certificate, which date must not be more than 90 days after the date on which the certificate is filed. If a certificate filed pursuant to subsection 1 specifies a later effective date but does not specify an effective time, the certificate is effective at 12:01 a.m. in the Pacific time zone on the specified later date.



* S B 4 4 6 *

4. If a certificate filed pursuant to subsection 1 specifies a later effective date, the board of directors may terminate the effectiveness of the certificate by resolution ~~[-A-]~~ *and 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.

5. When any certificate filed pursuant to subsection 1 becomes effective, it shall have the effect of amending the articles of incorporation, but NRS 78.380, 78.385 and 78.390 do not apply to a certificate of change filed pursuant to this section.

Sec. 10. 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. *The nature and amount of such consideration may be made dependent upon a formula approved by the board of directors or upon any fact or event which may be ascertained outside the articles of incorporation or the resolution providing for the issuance of the shares adopted by the board of directors if the manner in which a fact or event may operate upon the nature and amount of the consideration is stated in the articles of incorporation or the resolution.* The judgment of the board of directors as to the consideration received for the shares issued is conclusive in the absence of actual fraud in the transaction.

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. *Shares that are issued are outstanding shares unless such shares are treasury shares.*

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 cancelled in whole or in part.



4. For the purposes of this section, "benefit to the corporation" includes, without limitation, the authorization of the issuance of shares to up to 100 persons without consideration for the sole purpose of qualifying the corporation as a real estate investment trust pursuant to 26 U.S.C. §§ 856 et seq., as amended, or any successor provision, and any regulations adopted pursuant thereto.

Sec. 11. 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 through electronic communications, videoconferencing, teleconferencing or other available technology if the corporation has implemented reasonable measures to:

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

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

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

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



* S B 4 4 6 *

1 ~~16.1~~ 7. Unless this chapter, the articles of incorporation or the
2 bylaws provide for different proportions, if voting by a class or
3 series of stockholders is permitted or required:

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

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

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

12 78.350 1. Unless otherwise provided in the articles of
13 incorporation, or in the ~~resolution providing for the issuance of~~
14 *certificate of designation establishing the class or series of* stock ,
15 ~~adopted by the board of directors pursuant to authority expressly~~
16 ~~vested in it by the provisions of the articles of incorporation,]~~ every
17 stockholder of record of a corporation is entitled at each meeting of
18 stockholders thereof to one vote for each share of stock standing in
19 his or her name on the records of the corporation. If the articles of
20 incorporation, or the ~~resolution providing for the issuance of~~
21 *certificate of designation establishing the class or series of* stock
22 ~~adopted by the board of directors pursuant to authority expressly~~
23 ~~vested in it by the articles of incorporation,]~~ provides for more or
24 less than one vote per share for any class or series of shares on any
25 matter, every reference in this chapter to a majority or other
26 proportion of stock shall be deemed to refer to a majority or other
27 proportion of the voting power of all of the shares or those classes or
28 series of shares, as may be required by the articles of incorporation,
29 or in the ~~resolution providing for the issuance of~~ *certificate of*
30 *designation establishing the class or series of* stock ~~adopted by the~~
31 ~~board of directors pursuant to authority expressly vested in it by the~~
32 ~~provisions of the articles of incorporation,]~~ or the provisions of this
33 chapter.

34 2. Unless a period of more than 60 days or a period of less than
35 10 days is prescribed or fixed in the articles of incorporation, the
36 directors may prescribe a period not exceeding 60 days before any
37 meeting of the stockholders during which no transfer of stock on the
38 books of the corporation may be made, or may fix, in advance, a
39 record date not more than 60 or less than 10 days before the date of
40 any such meeting as the date as of which stockholders entitled to
41 notice of and to vote at such meetings must be determined. Only
42 stockholders of record on that date are entitled to notice or to vote at
43 such a meeting. If a record date is not fixed, the record date is at the
44 close of business on the day before the day on which the first notice
45 is given or, if notice is waived, at the close of business on the day



1 before the meeting is held. A determination of stockholders of
2 record entitled to notice of or to vote at a meeting of stockholders
3 applies to an adjournment *or postponement* of the meeting unless
4 the board of directors fixes a new record date for the adjourned *or*
5 *postponed* meeting. The board of directors must fix a new record
6 date if the meeting is adjourned *or postponed* to a date more than 60
7 days later than the *meeting* date set for the original meeting.

8 3. The board of directors may adopt a resolution prescribing a
9 date upon which the stockholders of record entitled to give written
10 consent pursuant to NRS 78.320 must be determined. The date
11 prescribed by the board of directors may not precede or be more
12 than 10 days after the date the resolution is adopted by the board of
13 directors. If the board of directors does not adopt a resolution
14 prescribing a date upon which the stockholders of record entitled to
15 give written consent pursuant to NRS 78.320 must be determined
16 and:

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

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

26 4. The provisions of this section do not restrict the directors
27 from taking action to protect the interests of the corporation and its
28 stockholders, including, but not limited to, adopting or signing
29 plans, arrangements or instruments that grant or deny rights,
30 privileges, power or authority to a holder or holders of a specified
31 number of shares or percentage of share ownership or voting power.

32 **Sec. 13.** NRS 78.370 is hereby amended to read as follows:

33 78.370 1. If under the provisions of this chapter stockholders
34 are required or authorized to take any action at a meeting, the notice
35 of the meeting must be in writing.

36 2. Except in the case of the annual meeting, the notice must
37 state the purpose or purposes for which the meeting is called. In all
38 instances, the notice must state the time when, and the place, which
39 may be within or without this State, where the meeting is to be held,
40 and the means of electronic communications, if any, by which
41 stockholders and proxies shall be deemed to be present in person
42 and vote.

43 3. A copy of the notice must be delivered personally, mailed
44 postage prepaid or delivered as provided in NRS 75.150 to each
45 stockholder of record entitled to vote at the meeting not less than 10



1 nor more than 60 days before the meeting. If mailed, it must be
2 directed to the stockholder at his or her address as it appears upon
3 the records of the corporation. Personal delivery of any such notice
4 to any officer of a corporation or association, to any member of a
5 limited-liability company managed by its members, to any manager
6 of a limited-liability company managed by managers, to any general
7 partner of a partnership or to any trustee of a trust constitutes
8 delivery of the notice to the corporation, association, limited-
9 liability company, partnership or trust.

10 4. The articles of incorporation or the bylaws may require that
11 the notice be also published in one or more newspapers.

12 5. Notice delivered or mailed to a stockholder in accordance
13 with the provisions of this section and NRS 75.150 and the
14 provisions, if any, of the articles of incorporation or the bylaws is
15 sufficient, and in the event of the transfer of the stockholder's stock
16 after such delivery or mailing and before the holding of the meeting
17 it is not necessary to deliver or mail notice of the meeting to the
18 transferee.

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

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

27 (b) All, and at least two, payments sent by first-class mail of
28 dividends or interest on securities during a 12-month period,
29 ➤ have been mailed addressed to the stockholder at his or her
30 address as shown on the records of the corporation and have been
31 returned undeliverable, the delivery of further notices to the
32 stockholder is not required. Any action or meeting taken or held
33 without notice to such a stockholder has the same effect as if the
34 notice had been delivered. If any such stockholder delivers to the
35 corporation a written notice setting forth his or her current address,
36 the requirement that notice be delivered to the stockholder is
37 reinstated. If the action taken by the corporation is such as to require
38 the filing of a certificate under any of the other sections of this
39 chapter, the certificate need not state that notice was not delivered to
40 persons to whom notice was not required to be delivered pursuant to
41 this subsection. The delivery of further notices to a stockholder is
42 still required for any notice returned as undeliverable if the notice
43 was delivered by electronic transmission.

44 7. Unless the articles of incorporation or bylaws otherwise
45 require, and except as otherwise provided in this subsection, if a



1 stockholders' meeting is adjourned to another date, time or place,
2 notice need not be delivered of the date, time or place of the
3 adjourned meeting if they are announced at the meeting at which
4 the adjournment is taken. If a new record date is fixed for ~~the~~ *an*
5 adjourned *or postponed* meeting, notice of the adjourned *or*
6 *postponed* meeting must be delivered to each stockholder of record
7 as of the new record date.

8 **Sec. 14.** NRS 78.433 is hereby amended to read as follows:

9 78.433 1. NRS 78.411 to 78.444, inclusive, do not apply to
10 any combination of a resident domestic corporation:

11 (a) Which was not, as of the date that the person first becomes
12 an interested stockholder, a publicly traded corporation, unless the
13 corporation's articles of incorporation provide otherwise.

14 (b) Whose articles of incorporation have been amended to
15 provide that the resident domestic corporation is subject to NRS
16 78.411 to 78.444, inclusive, and which was not a publicly traded
17 corporation on the effective date of the amendment, if the
18 combination is with a person who first became an interested
19 stockholder before the effective date of the amendment.

20 *(c) With an interested stockholder of the resident domestic*
21 *corporation after the expiration of 4 years after the person first*
22 *became an interested stockholder.*

23 2. The articles of incorporation of a resident domestic
24 corporation may impose on combinations of the resident domestic
25 corporation stricter requirements than the requirements of NRS
26 78.411 to 78.444, inclusive.

27 3. The provisions of NRS 78.411 to 78.444, inclusive, do not
28 restrict the directors of a resident domestic corporation from taking
29 action to protect the interests of the corporation and its stockholders,
30 including, without limitation, adopting or signing plans,
31 arrangements or instruments that grant or deny rights, privileges,
32 power or authority to a holder or holders of a specified number of
33 shares or percentage of share ownership or voting power.

34 **Sec. 15.** NRS 78.438 is hereby amended to read as follows:

35 78.438 1. Except as otherwise provided in NRS 78.433 to
36 78.437, inclusive, a resident domestic corporation may not engage
37 in any combination with any interested stockholder of the resident
38 domestic corporation for 2 years after the date that the person first
39 became an interested stockholder unless ~~H~~ *the combination meets*
40 *all of the requirements of the articles of incorporation of the*
41 *resident domestic corporation and:*

42 (a) The combination or the transaction by which the person first
43 became an interested stockholder is approved by the board of
44 directors of the resident domestic corporation before the person first
45 became an interested stockholder; or



(b) The combination is approved by the board of directors of the resident domestic corporation and, at or after that time, the combination is approved at an annual or special meeting of the stockholders of the resident domestic corporation, and not by written consent, by the affirmative vote of the holders of stock representing at least 60 percent of the outstanding voting power of the resident domestic corporation not beneficially owned by the interested stockholder or the affiliates or associates of the interested stockholder.

2. If a proposal in good faith regarding a combination is made in writing to the board of directors of the resident domestic corporation, the board of directors shall respond, in writing, within 30 days or such shorter period, if any, as may be required by the Securities Exchange Act, setting forth its reasons for its decision regarding the proposal.

3. If a proposal in good faith to enter into a transaction by which the person will become an interested stockholder is made in writing to the board of directors of the resident domestic corporation, the board of directors, unless it responds affirmatively in writing within 30 days or such shorter period, if any, as may be required by the Securities Exchange Act, is considered to have disapproved the transaction.

Sec. 16. NRS 78.439 is hereby amended to read as follows:

78.439 A resident domestic corporation may not engage in any combination with an interested stockholder of the resident domestic corporation after the expiration of 2 years after the person first became an interested stockholder ~~{other than a}~~ *unless the combination {meeting} meets* all of the requirements of the articles of incorporation of the resident domestic corporation and : ~~{either the requirements specified in subsection 1, 2 or 3 or all of the requirements specified in NRS 78.441 to 78.444, inclusive;}~~

1. The combination ~~{was approved by the board of directors of the resident domestic corporation before such person first became an interested stockholder.~~

~~—2.— The} or~~ transaction by which the person first became an interested stockholder ~~{was}~~ *is* approved by the board of directors of the resident domestic corporation before the person first became an interested stockholder ~~{~~

~~—3.—} ;~~

2. The combination is approved ~~{at an annual or special meeting of the stockholders of the resident domestic corporation held no earlier than 2 years after the date that the person first became an interested stockholder, and not by written consent.}~~ by ~~{the affirmative vote of the holders of stock representing}~~ a majority of the outstanding voting power of the resident domestic corporation



1 not beneficially owned by the interested stockholder or any affiliate
2 or associate of the interested stockholder ~~H~~ ; or

3 **3. The combination meets the requirements specified in NRS**
4 **78.411 to 78.444, inclusive.**

5 **Sec. 17.** NRS 78.441 is hereby amended to read as follows:

6 78.441 As an alternative to a combination satisfying the
7 requirements of subsection 1 ~~H~~ or 2 ~~for 3~~ of NRS 78.439, a
8 combination with an interested stockholder of the resident domestic
9 corporation engaged in more than 2 years after the date that the
10 person first became an interested stockholder is permissible if the
11 requirements of NRS 78.442, 78.443 and 78.444 are satisfied and
12 the aggregate amount of the cash and the market value, as of the
13 date of consummation, of consideration other than cash to be
14 received per share by all of the holders of outstanding common
15 shares of the resident domestic corporation not beneficially owned
16 by such interested stockholder immediately before that date is at
17 least equal to the higher of the following:

18 1. The highest price per share paid by the interested
19 stockholder, at a time when the interested stockholder was the
20 beneficial owner, directly or indirectly, of 5 percent or more of the
21 outstanding voting shares of the corporation, for any common shares
22 of the same class or series acquired by the interested stockholder
23 within 2 years immediately before the date of announcement with
24 respect to the combination or within 2 years immediately before, or
25 in, the transaction in which the person became an interested
26 stockholder, whichever is higher, plus, in either case, interest
27 compounded annually from the earliest date on which the highest
28 price per share was paid through the date of consummation at the
29 rate for one-year obligations of the United States Treasury in effect
30 on that earliest date, less the aggregate amount of any dividends
31 paid in cash and the market value of any dividends paid other than
32 in cash, per common share since that earliest date.

33 2. The market value per common share on the date of
34 announcement with respect to the combination or on the date that
35 the person first became an interested stockholder, whichever is
36 higher, plus interest compounded annually from that date through
37 the date of consummation at the rate for one-year obligations of the
38 United States Treasury in effect on that date, less the aggregate
39 amount of any dividends paid in cash and the market value of any
40 dividends paid other than in cash, per common share since that date.

41 **Sec. 18.** NRS 78.442 is hereby amended to read as follows:

42 78.442 As an alternative to a combination satisfying the
43 requirements of subsection 1 ~~H~~ or 2 ~~for 3~~ of NRS 78.439, a
44 combination with an interested stockholder of the resident domestic
45 corporation engaged in more than 2 years after the date that the



1 person first became an interested stockholder is permissible if the
2 requirements of NRS 78.441, 78.443 and 78.444 are satisfied and
3 the aggregate amount of the cash and the market value, as of the
4 date of consummation, of consideration other than cash to be
5 received per share by all of the holders of outstanding shares of any
6 class or series of shares, other than common shares, of the resident
7 domestic corporation not beneficially owned by the interested
8 stockholder immediately before that date is at least equal to the
9 highest of the following, whether or not the interested stockholder
10 has previously acquired any shares of the class or series of shares:

11 1. The highest price per share paid by the interested
12 stockholder, at a time when the interested stockholder was the
13 beneficial owner, directly or indirectly, of 5 percent or more of the
14 outstanding voting shares of the corporation, for any shares of that
15 class or series of shares acquired by the interested stockholder
16 within 2 years immediately before the date of announcement with
17 respect to the combination or within 2 years immediately before, or
18 in, the transaction in which the person became an interested
19 stockholder, whichever is higher, plus, in either case, interest
20 compounded annually from the earliest date on which the highest
21 price per share was paid through the date of consummation at the
22 rate for one-year obligations of the United States Treasury in effect
23 on that earliest date, less the aggregate amount of any dividends
24 paid in cash and the market value of any dividends paid other than
25 in cash, per share of the class or series of shares since that earliest
26 date.

27 2. The amount specified in the articles of incorporation of the
28 resident domestic corporation, including in any certificate of
29 designation for the class or series, to which the holders of shares of
30 the class or series of shares are entitled upon the consummation of a
31 transaction of a type encompassing the combination, determined as
32 if the transaction had been consummated on the date of
33 consummation with respect to the combination or on the date that
34 the interested stockholder first became an interested stockholder,
35 whichever is higher or, if the articles of incorporation, including any
36 certificate of designation, do not so provide, the highest preferential
37 amount per share to which the holders of shares of the class or series
38 of shares are entitled in the event of any voluntary liquidation,
39 dissolution or winding up of the resident domestic corporation, plus
40 the aggregate amount of any dividends declared or due to which the
41 holders are entitled before payment of the dividends on some other
42 class or series of shares, unless the aggregate amount of the
43 dividends is included in the preferential amount.

44 3. The market value per share of the class or series of shares on
45 the date of announcement with respect to the combination or on the



* S B 4 4 6 *

1 date that the person first became an interested stockholder,
2 whichever is higher, plus interest compounded annually from that
3 date through the date of consummation at the rate for one-year
4 obligations of the United States Treasury in effect on that date, less
5 the aggregate amount of any dividends paid in cash and the market
6 value of any dividends paid other than in cash, per share of the class
7 or series of shares since that date.

8 **Sec. 19.** NRS 78.444 is hereby amended to read as follows:

9 78.444 As an alternative to a combination satisfying the
10 requirements of subsection 1 ~~1~~ *or* 2 ~~for 3~~ of NRS 78.439, a
11 combination with an interested stockholder of the resident domestic
12 corporation engaged in more than 2 years after the date that the
13 person first became an interested stockholder is permissible if the
14 requirements of NRS 78.441, 78.442 and 78.443 are satisfied and,
15 after the date that such person first became an interested stockholder
16 and before the date of consummation with respect to the
17 combination, the interested stockholder has not become the
18 beneficial owner of any additional voting shares of the resident
19 domestic corporation except:

20 1. As part of the transaction that resulted in the person
21 becoming an interested stockholder;

22 2. By virtue of any transaction or series of transactions not
23 constituting a combination;

24 3. Through a combination meeting the requirements of NRS
25 78.439; or

26 4. Through a purchase at any price that, if the price had been
27 paid in an otherwise permissible combination whose date of
28 announcement and date of consummation were the date of the
29 purchase, would have satisfied the requirements of NRS 78.441,
30 78.442 and 78.443.

31 **Sec. 20.** NRS 78.725 is hereby amended to read as follows:

32 78.725 1. Any corporation organized and existing under the
33 laws of this State on April 1, 1925, may reincorporate under this
34 chapter, either under the same or a different name, by:

35 (a) Filing with the Secretary of State a certificate signed by its
36 president and attested by its secretary and duly authorized by a
37 meeting of the stockholders called for that purpose, setting forth the
38 statements required in ~~1a~~ *the* original ~~certificate~~ *articles* of
39 incorporation by NRS 78.035; and

40 (b) Surrendering the existing charter or certificate *or articles* of
41 incorporation of the corporation, and accepting the provisions of this
42 chapter.

43 2. Upon the filing of the certificate, the corporation shall be
44 deemed to be incorporated under this chapter and is entitled to and
45 possesses all the privileges, franchises and powers as if originally



1 incorporated under this chapter. All the properties, rights and
2 privileges theretofore belonging to the corporation, which were
3 acquired by gift, grant, conveyance, assignment or otherwise, are
4 hereby ratified, approved and confirmed and assured to the
5 corporation with like effect and to all intents and purposes as if the
6 same had been originally acquired through incorporation under this
7 chapter.

8 3. Any corporation reincorporating under this chapter is subject
9 to all the contracts, duties and obligations theretofore resting upon
10 the corporation whose charter or certificate *or articles* of
11 incorporation ~~is~~ *are* thus surrendered or to which the corporation is
12 then in any way liable.

13 **Sec. 21.** NRS 78A.030 is hereby amended to read as follows:

14 78A.030 1. Any corporation organized under chapter 78 of
15 NRS may become a close corporation pursuant to this chapter by
16 signing, filing and recording, in accordance with NRS 78.390, a
17 certificate of amendment of the ~~certificate~~ *articles* of incorporation
18 which must:

19 (a) Contain a statement that the corporation elects to become a
20 close corporation; and

21 (b) Meet the requirements of paragraph (a) of subsection 2 of
22 NRS 78A.020.

23 2. Except as otherwise provided in subsection 3, the
24 amendment must be adopted in accordance with the requirements of
25 NRS 78.380 or 78.390.

26 3. If an amendment is adopted in accordance with the
27 requirements of NRS 78.390, it must be approved by a vote of the
28 holders of record of at least two-thirds of the shares of each class of
29 stock of the corporation that are outstanding and entitled to vote,
30 unless the articles of incorporation or bylaws require approval by a
31 greater proportion.

32 **Sec. 22.** NRS 78A.040 is hereby amended to read as follows:

33 78A.040 1. The following statement must appear
34 conspicuously on each share certificate issued by a close
35 corporation:
36

37 The rights of stockholders in a close corporation may differ
38 materially from the rights of shareholders in other
39 corporations. Copies of the ~~certificate~~ *articles* of
40 incorporation, bylaws, shareholders' agreements and other
41 records, any of which may restrict transfers of stock and
42 affect voting and other rights, may be obtained by a
43 shareholder on written request to the corporation.



2. A person claiming an interest in the shares of a close corporation that has complied with the requirement of subsection 1 is bound by the records referred to in the notice. A person claiming an interest in the shares of a close corporation that has not complied with the requirement of subsection 1 is bound by any record that he or she or a person through whom he or she claims has knowledge or notice.

3. A close corporation shall provide to any shareholder upon his or her written request and without charge, copies of the provisions that restrict transfer or affect voting or other rights of shareholders appearing in the articles of incorporation, bylaws, shareholders' agreements or voting trust agreements filed with the corporations.

4. Except as otherwise provided in subsection 5, the close corporation may refuse to register the transfer of stock into the name of a person to whom the stock of a close corporation has been transferred if the person has, or is presumed to have, notice that the transfer of the stock is in violation of a restriction on the transfer of stock. If the close corporation refuses to register the transfer of stock into the name of the transferee, the close corporation must notify the transferee of its refusal and state the reasons therefor.

5. Subsection 4 does not apply if:

(a) The transfer of stock, even if contrary to the restrictions on transfer of stock, has been consented to by all the stockholders of the close corporation; or

(b) The close corporation has amended its ~~certificate~~ articles of incorporation in accordance with NRS 78A.180.

6. The provisions of this section do not impair any rights of a transferee to:

(a) Rescind the transaction by which the transferee acquired the stock; or

(b) Recover under any applicable warranty.

7. As used in this section, "transfer" is not limited to a transfer for value.

Sec. 23. NRS 78A.050 is hereby amended to read as follows:

78A.050 1. An interest in the shares of a close corporation may not be transferred, except to the extent permitted by the ~~certificate~~ articles of incorporation, the bylaws, a shareholders' agreement or a voting trust agreement.

2. Except as otherwise provided by the ~~certificate~~ articles of incorporation, the provisions of this section do not apply to a transfer:

(a) To the corporation or to any other shareholder of the same class or series of shares.

(b) To heirs at law.



(c) That has been approved in writing by all of the holders of the shares of the corporation having voting rights.

(d) To an executor or administrator upon the death of a shareholder or to a trustee or receiver as a result of a bankruptcy, insolvency, dissolution or similar proceeding brought by or against a shareholder.

(e) By merger or share exchange or an exchange of existing shares for other shares of a different class or series in the corporation.

(f) By a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor.

(g) Made after the termination of the status of the corporation as a close corporation.

Sec. 24. NRS 78A.080 is hereby amended to read as follows:

78A.080 A written agreement among stockholders of a close corporation or any provision of the ~~certificate~~ *articles* of incorporation or of the bylaws of the corporation that relates to any phase of the affairs of the corporation, including, but not limited to, the management of its business, the declaration and payment of dividends or other division of profits, the election of directors or officers, the employment of stockholders by the corporation or the arbitration of disputes is not invalid on the ground that it is an attempt by the parties to the agreement or by the stockholders of the corporation to treat the corporation as if it were a partnership or to arrange relations among the stockholders or between the stockholders and the corporation in a manner that would be appropriate only among partners.

Sec. 25. NRS 78A.090 is hereby amended to read as follows:

78A.090 1. A close corporation may operate without a board of directors if the ~~certificate~~ *articles* of incorporation ~~contains~~ *contain* a statement to that effect.

2. An amendment to the ~~certificate~~ *articles* of incorporation eliminating a board of directors must be approved:

(a) By all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments; or

(b) If no shares have been issued, by all subscribers for shares, if any, or if none, by the incorporators.

3. While a corporation is operating without a board of directors as authorized by subsection 1:

(a) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, the shareholders.

(b) Unless the articles of incorporation provide otherwise:



(1) Action requiring the approval of the board of directors or of both the board of directors and the shareholders is authorized if approved by the shareholders; and

(2) Action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of votes of the shareholders entitled to vote on the action.

(c) A requirement by a state or the United States that a record delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a close corporation without a board of directors and that the action was approved by the shareholders.

(d) The shareholders by resolution may appoint one or more shareholders to sign records as designated directors.

4. An amendment to the articles of incorporation that deletes the provision which eliminates a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must specify the number, names and mailing addresses of the directors of the corporation or describe who will perform the duties of the board of directors.

Sec. 26. NRS 78A.140 is hereby amended to read as follows:

78A.140 1. Upon application of a stockholder, the court may appoint one or more persons to be custodians and, if the corporation is insolvent, to be receivers of any close corporation when:

(a) The business and affairs of the close corporation are managed by the stockholders who are so divided that the business of the corporation is suffering or is threatened with irreparable injury and any remedy with respect to such a deadlock provided in the ~~certificate~~ articles of incorporation or bylaws or in any written agreement of the stockholders has failed; or

(b) The petitioning stockholder has the right to the dissolution of the corporation under a provision of the ~~certificate~~ articles of incorporation permitted by NRS 78A.160.

2. If the court determines that it would be in the best interest of the corporation, the court may appoint a provisional director in lieu of appointing a custodian or receiver for a close corporation. Such an appointment does not preclude any subsequent order of the court appointing a custodian or receiver for the corporation.

Sec. 27. NRS 78A.150 is hereby amended to read as follows:

78A.150 1. Notwithstanding any contrary provision of the ~~certificate~~ articles of incorporation, the bylaws or an agreement of the stockholders, the court may appoint a provisional director for a close corporation if the shareholders or directors, if any, are so



1 divided concerning the management of the business and affairs of
2 the corporation that the votes required for action by the board of
3 directors cannot be obtained, with the consequence that the business
4 and affairs of the corporation cannot be conducted to the advantage
5 of the stockholders generally.

6 2. An application for relief pursuant to this section must be
7 filed:

8 (a) By at least one-half of the number of directors then in office;

9 (b) By the holders of at least one-third of all stock then entitled
10 to elect directors; or

11 (c) If there is more than one class of stock then entitled to elect
12 one or more directors, by the holders of two-thirds of the stock of
13 each class.

14 ➔ The ~~certificate~~ **articles** of incorporation of a close corporation
15 may provide that a lesser proportion of the directors, the
16 stockholders or a class of stockholders may apply for relief under
17 this section.

18 3. A provisional director:

19 (a) Must be an impartial person who is not a stockholder or a
20 creditor of the corporation or of any subsidiary or affiliate of the
21 corporation and whose further qualifications, if any, may be
22 determined by the court.

23 (b) Is not a custodian or receiver of the corporation and does not
24 have the title and powers of a custodian or receiver appointed under
25 NRS 78A.140.

26 (c) Has the rights and powers of an elected director of the
27 corporation, including the right to notice of and to vote at meetings
28 of directors, until such time as the provisional director may be
29 removed by order of the court.

30 4. The compensation of a provisional director must be
31 determined by agreement between the provisional director and the
32 corporation subject to the approval of the court, which may fix the
33 compensation in the absence of agreement or in the event of
34 disagreement between the provisional director and the corporation.

35 **Sec. 28.** NRS 78A.160 is hereby amended to read as follows:

36 78A.160 1. The ~~certificate~~ **articles** of incorporation of any
37 close corporation may include a provision granting to any
38 stockholder or to the holder of any specified number or percentage
39 of shares of any class of stock an option to have the corporation
40 dissolved at will or upon the occurrence of any specified event or
41 contingency. Whenever any option to dissolve is exercised, the
42 stockholders who exercise the option shall give written notice
43 thereof to all other stockholders. Thirty days after the notice is sent,
44 the dissolution of the corporation must proceed as if the required



1 number of stockholders having voting power consented in writing to
2 dissolution of the corporation as provided by NRS 78.320.

3 2. If the ~~{certificate}~~ *articles* of incorporation as originally filed
4 ~~{does}~~ *do* not contain a provision authorized by subsection 1, the
5 ~~{certificate}~~ *articles* may be amended to include such a provision if
6 adopted by the affirmative vote of the holders of all the outstanding
7 stock, whether or not otherwise entitled to vote, unless the
8 ~~{certificate}~~ *articles* of incorporation specifically ~~{authorizes}~~
9 *authorize* such an amendment by a vote which is not less than two-
10 thirds of all the outstanding stock, whether or not otherwise entitled
11 to vote.

12 3. Each stock certificate in any corporation whose ~~{certificate}~~
13 *articles* of incorporation ~~{authorizes}~~ *authorize* dissolution as
14 permitted by this section must conspicuously note on the face of the
15 certificate the existence of the provision or the provision is
16 ineffective.

17 **Sec. 29.** NRS 78A.170 is hereby amended to read as follows:

18 78A.170 A close corporation is subject to the provisions of this
19 chapter until:

20 1. The corporation files with the Secretary of State a certificate
21 of amendment deleting from the ~~{certificate}~~ *articles* of
22 incorporation the provisions required or permitted by NRS 78A.020,
23 to be stated in the ~~{certificate}~~ *articles* of incorporation; or

24 2. A provision or condition required or permitted by NRS
25 78A.020 to be stated in ~~{a certificate}~~ *the articles* of incorporation
26 has been breached and the corporation or any stockholder has not
27 acted pursuant to NRS 78A.190 to prevent the loss of status or
28 remedy the breach.

29 **Sec. 30.** NRS 78A.180 is hereby amended to read as follows:

30 78A.180 1. A corporation may voluntarily terminate its status
31 as a close corporation, and cease to be subject to the provisions of
32 this chapter, by amending the ~~{certificate}~~ *articles* of incorporation
33 to delete therefrom the additional provisions required or permitted
34 by NRS 78A.020 to be stated in the ~~{certificate}~~ *articles* of
35 incorporation of a close corporation. An amendment must be
36 adopted and become effective in accordance with NRS 78.390,
37 except that it must be approved by a vote of the holders of record of
38 at least two-thirds of the voting shares of each class of stock of the
39 corporation that are outstanding.

40 2. The ~~{certificate}~~ *articles* of incorporation of a close
41 corporation may provide that on any amendment to terminate the
42 status as a close corporation, a vote greater than two-thirds or a vote
43 of all shares of any class may be required. If the ~~{certificate}~~ *articles*
44 of incorporation ~~{contains}~~ *contain* such a provision, that provision
45 may not be amended, repealed or modified by any vote less than that



1 required to terminate the status of the corporation as a close
2 corporation.

3 3. ~~{A-certificate}~~ *An amendment* filed pursuant to this section
4 is effective at the time of the filing of the ~~{certificate}~~ *amendment*
5 with the Secretary of State or upon a later date and time as specified
6 in the ~~{certificate,}~~ *amendment*, which date must not be more than
7 90 days after the date on which the ~~{certificate}~~ *amendment* is filed.
8 If the ~~{certificate}~~ *amendment* specifies a later effective date but
9 does not specify an effective time, the ~~{certificate}~~ *amendment*
10 becomes effective at 12:01 a.m. in the Pacific time zone on the
11 specified later date.

12 **Sec. 31.** NRS 78A.190 is hereby amended to read as follows:

13 78A.190 1. The status of a corporation as a close corporation
14 terminates if one or more of the provisions or conditions of this
15 chapter cease to exist or be fulfilled unless:

16 (a) Within 30 days after the occurrence of the event, or within
17 30 days after the event has been discovered by the corporation,
18 whichever is later, the corporation files with the Secretary of State a
19 signed certificate stating that a specified provision or condition
20 included in the ~~{certificate}~~ *articles* of incorporation to qualify the
21 corporation as a close corporation has ceased to be applicable and
22 furnishes a copy of the certificate to each stockholder; and

23 (b) The corporation, concurrently with the filing of a certificate,
24 takes such steps as are necessary to correct the situation that
25 threatens the status as a close corporation, including the refusal to
26 register the transfer of stock which has been wrongfully transferred
27 as provided by NRS 78A.050 or commencing a proceeding under
28 subsection 2.

29 2. Upon the suit of the close corporation or any stockholder,
30 the court has jurisdiction to:

31 (a) Issue all orders necessary to prevent the corporation from
32 losing its status as a close corporation.

33 (b) Restore the status of the corporation as a close corporation
34 by enjoining or setting aside any act or threatened act on the part of
35 the corporation or a stockholder that would be inconsistent with any
36 of the provisions or conditions required or permitted by this chapter
37 to be stated in the ~~{certificate}~~ *articles* of incorporation of a close
38 corporation, unless it is an act approved in accordance with
39 NRS 78A.050.

40 (c) Enjoin or set aside any transfer or threatened transfer of
41 stock of a close corporation that is contrary to the terms of the
42 ~~{certificate}~~ *articles* of incorporation or of any permitted restriction
43 on transfer.

44 (d) Enjoin any public offering or threatened public offering of
45 stock of the close corporation.



Sec. 32. NRS 86.201 is hereby amended to read as follows:

86.201 1. A limited-liability company is considered legally organized pursuant to this chapter:

(a) At the time of the filing of the articles of organization with the Secretary of State ; ~~1, upon a later date and time as specified in the articles, which date must not be more than 90 days after the date on which the articles are filed or, if the articles specify a later effective date but do not specify an effective time, at 12:01 a.m. in the Pacific time zone on the specified later date, whichever is applicable;~~ and

(b) Upon 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 company is considered legally organized pursuant to subsection 1.

3. A limited-liability company is an entity distinct from its managers and members.

Sec. 33. 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, which may be in any tangible or electronic format, or by the sole member. If any operating agreement provides for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the operating agreement or the satisfaction of conditions, it may be amended only in that manner or as otherwise permitted by law and any attempt to otherwise amend the operating agreement shall be deemed void and of no legal force or effect unless otherwise provided in the operating agreement. 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:

(a) 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.



* S B 4 4 6 *

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

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.

4. An operating agreement:

(a) May provide, but is not required to provide : ~~to any person, including a person who is not a party to the operating agreement, to the extent set forth therein;~~

(1) Rights to any person, including a person who is not a party to the operating agreement, to the extent set forth therein;

(2) For the admission of any person as a member of the company dependent upon any fact or event that may be ascertained outside the articles of organization or the operating agreement, if the manner in which the fact or event may operate on the determination of the person or the admission of the person as a member of the company is set forth in the articles of organization or the operating agreement;

(3) That the personal representative of the last remaining member is obligated to agree in writing to the admission of the personal representative, or its nominee or designee, as a member of the company effective upon the occurrence of the event that terminated the last remaining member's status as a member of the company;

(4) For the admission of any person as a member of the company upon or after the death, retirement, resignation, expulsion, bankruptcy, dissolution or dissociation of, or any other event affecting, a member or the last remaining member, or after there is no longer a member of the company; or

(5) Any other provision, not inconsistent with law or the articles of organization, which the members elect to set out in the operating agreement for the regulation of the internal affairs of the company.

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

5. If, and 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, such duties may be expanded, restricted or eliminated by provisions in the operating agreement,



1 except that an operating agreement may not eliminate the implied
2 contractual covenant of good faith and fair dealing.

3 6. Unless otherwise provided in an operating agreement, a
4 member, manager or other person is not liable for breach of duties,
5 if any, to a limited-liability company, to any of the members or
6 managers or to another person that is a party to or otherwise bound
7 by the operating agreement for conduct undertaken in the member's,
8 manager's or other person's good faith reliance on the provisions of
9 the operating agreement.

10 7. An operating agreement may provide for the limitation or
11 elimination of any and all liabilities for breach of contract and
12 breach of duties, if any, of a member, manager or other person to a
13 limited-liability company, to any of the members or managers, or to
14 another person that is a party to or is otherwise bound by the
15 operating agreement. An operating agreement may not limit or
16 eliminate liability for any conduct that constitutes a bad faith
17 violation of the implied contractual covenant of good faith and fair
18 dealing.

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

26 **Sec. 34.** NRS 87A.235 is hereby amended to read as follows:

27 87A.235 1. In order for a limited partnership to be formed, a
28 certificate of limited partnership must be delivered to the Secretary
29 of State for filing. The certificate must state:

30 (a) The name of the limited partnership;

31 (b) The information required pursuant to NRS 77.310;

32 (c) The name and the street and mailing address of each general
33 partner;

34 (d) Any additional information required by chapter 92A of NRS;
35 and

36 (e) If the limited partnership is to be a restricted limited
37 partnership, a statement to that effect.

38 2. A certificate of limited partnership may also contain any
39 other matters but may not vary or otherwise affect the provisions
40 specified in subsection 2 of NRS 87A.190 in a manner inconsistent
41 with that section.

42 3. If there has been substantial compliance with subsection 1, a
43 limited partnership is formed on ~~the later of~~ the filing of the
44 certificate of limited partnership . ~~for a date specified in the~~
45 ~~certificate of limited partnership.~~



4. Subject to subsection 2, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed certificate of withdrawal, certificate of cancellation or statement of change or filed articles of conversion or merger:

(a) The partnership agreement prevails as to partners and transferees; and

(b) The filed certificate of limited partnership, certificate of withdrawal, certificate of cancellation or statement of change or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

Sec. 35. NRS 88.350 is hereby amended to read as follows:

88.350 1. In order to form a limited partnership, a certificate of limited partnership must be signed and filed in the Office of the Secretary of State. The certificate must set forth:

(a) The name of the limited partnership;

(b) The information required pursuant to NRS 77.310;

(c) The name and business address of each organizer executing the certificate;

(d) The name and business address of each initial general partner;

(e) The latest date upon which the limited partnership is to dissolve;

(f) If the limited partnership is to be a restricted limited partnership, a statement to that effect; and

(g) Any other matters the organizers determine to include therein.

2. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the Office of the Secretary of State ~~for at any later time specified in the certificate of limited partnership~~ if there has been substantial compliance with the requirements of this section.

Sec. 36. 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 entitled to vote on a merger, 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 entitled to vote on a merger 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 entitled to vote on a



1 merger may merge the subsidiary into itself without approval of the
2 owners of the owner's interests of the parent domestic corporation,
3 parent domestic limited-liability company or parent domestic
4 limited partnership or the owners of the owner's interests of the
5 subsidiary domestic corporation, subsidiary domestic limited-
6 liability company or subsidiary domestic limited partnership.

7 2. A parent domestic corporation, whether or not for profit,
8 parent domestic limited-liability company, unless otherwise
9 provided in the articles of organization or operating agreement, or
10 parent domestic limited partnership owning at least 90 percent of the
11 outstanding shares of each class of a subsidiary corporation entitled
12 to vote on a merger, 90 percent of the percentage or other interest in
13 the capital and profits of a subsidiary limited-liability company then
14 owned by each class of members entitled to vote on a merger, or 90
15 percent of the percentage or other interest in the capital and profits
16 of a subsidiary limited partnership then owned by both the general
17 partners and each class of limited partners entitled to vote on a
18 merger may merge with and into the subsidiary without approval of
19 the owners of the owner's interests of the subsidiary domestic
20 corporation, subsidiary domestic limited-liability company or
21 subsidiary domestic limited partnership.

22 3. The board of directors of a parent corporation, the managers
23 of a parent limited-liability company with managers unless
24 otherwise provided in the operating agreement, all members of a
25 parent limited-liability company without managers unless otherwise
26 provided in the operating agreement, or all general partners of a
27 parent limited partnership shall adopt a plan of merger that sets
28 forth:

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

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

34 4. The ~~parent~~ *surviving entity* shall mail a copy or summary
35 of the plan of merger to each owner of the subsidiary who does not
36 waive the mailing requirement in writing.

37 5. Articles of merger under this section may not contain
38 amendments to the constituent documents of the surviving entity
39 except that the name of the surviving entity may be changed.

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



1 **Sec. 37.** NRS 92A.250 is hereby amended to read as follows:
2 92A.250 1. When a merger takes effect:

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

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

9 (c) *An owner of a constituent entity remains liable for all the*
10 *obligations of such constituent entity existing at the time of the*
11 *merger to the extent the owner was liable before the merger;*

12 (d) The surviving entity has all of the liabilities of each other
13 constituent entity ~~†~~

14 ~~—(d)†~~ *incurred after the time of the merger;*

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

19 ~~†(e)†~~ (f) The articles of incorporation, articles of organization,
20 certificate of limited partnership or certificate of trust of the
21 surviving entity are amended to the extent provided in the plan of
22 merger; and

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

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

34 3. When a conversion takes effect:

35 (a) The constituent entity is converted into the resulting entity
36 and is governed by and subject to the law of the jurisdiction of the
37 resulting entity;

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

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

43 (d) The resulting entity has all the liabilities of the constituent
44 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 *existing at the time of the conversion* 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. 38. NRS 240.1655 is hereby amended to read as follows:

240.1655 1. A notarial act must be evidenced by a certificate that:

(a) Identifies the county, including, without limitation, Carson City, in this State in which the notarial act was performed in substantially the following form:

State of Nevada

County of

(b) Except as otherwise provided in this paragraph, includes the name of the person whose signature is being notarized. If the certificate is for certifying a copy of a document, the certificate must include the name of the person presenting the document. If the certificate is for the jurat of a subscribing witness, the certificate must include the name of the subscribing witness.

(c) Is signed and dated in ink by the notarial officer performing the notarial act. ~~The~~ *If the notarial officer is a notary public, the* certificate must be signed in the same manner as the signature of the notarial officer that is on file with the Secretary of State.

(d) If the notarial officer performing the notarial act is a notary public, includes the statement imprinted with the stamp of the notary public, as described in NRS 240.040.

(e) If the notarial officer performing the notarial act is not a notary public, includes the title of the office of the notarial officer and may include the official stamp or seal of that office. If the officer is a commissioned officer on active duty in the military service of the United States, the certificate must also include the officer's rank.



2. Except as otherwise provided in subsection 8, a notarial officer shall:

(a) In taking an acknowledgment, determine, from personal knowledge or satisfactory evidence, that the person making the acknowledgment is the person whose signature is on the document. The person who signed the document shall present the document to the notarial officer in person.

(b) In administering an oath or affirmation, determine, from personal knowledge or satisfactory evidence, the identity of the person taking the oath or affirmation.

(c) In certifying a copy of a document, photocopy the entire document and certify that the photocopy is a true and correct copy of the document that was presented to the notarial officer.

(d) In making or noting a protest of a negotiable instrument, verify compliance with the provisions of subsection 2 of NRS 104.3505.

(e) In executing a jurat, administer an oath or affirmation to the affiant and determine, from personal knowledge or satisfactory evidence, that the affiant is the person named in the document. The affiant shall sign the document in the presence of the notarial officer. The notarial officer shall administer the oath or affirmation required pursuant to this paragraph in substantially the following form:

Do you (solemnly swear, or affirm) that the statements in this document are true, (so help you God)?

3. A certificate of a notarial act is sufficient if it meets the requirements of subsections 1 and 2 and it:

(a) Is in the short form set forth in NRS 240.166 to 240.169, inclusive;

(b) Is in a form otherwise prescribed by the law of this State;

(c) Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

4. For the purposes of paragraphs (a), (b) and (e) of subsection 2, a notarial officer has satisfactory evidence that a person is the person whose signature is on a document if the person:

(a) Is personally known to the notarial officer;

(b) Is identified upon the oath or affirmation of a credible witness who personally appears before the notarial officer;

(c) Is identified on the basis of an identifying document which contains a signature and a photograph;

(d) Is identified on the basis of a consular identification card;



(e) Is identified upon an oath or affirmation of a subscribing witness who is personally known to the notarial officer; or

(f) In the case of a person who is 65 years of age or older and cannot satisfy the requirements of paragraphs (a) to (e), inclusive, is identified upon the basis of an identification card issued by a governmental agency or a senior citizen center.

5. An oath or affirmation administered pursuant to paragraph (b) of subsection 4 must be in substantially the following form:

Do you (solemnly swear, or affirm) that you personally know(name of person who signed the document)....., (so help you God)?

6. A notarial officer shall not affix his or her signature over printed material.

7. By executing a certificate of a notarial act, the notarial officer certifies that the notarial officer has complied with all the requirements of this section.

8. If a person is physically unable to sign a document that is presented to a notarial officer pursuant to this section, the person may direct a person other than the notarial officer to sign the person's name on the document. The notarial officer shall insert "Signature affixed by (insert name of other person) at the direction of (insert name of person)" or words of similar import.

9. As used in this section, unless the context otherwise requires, "consular identification card" means an identification card issued by a consulate of a foreign government, which consulate is located within the State of Nevada.

