

Amendment No. 31

Senate Amendment to Senate Bill No. 41	(BDR 7-425)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

Adoption of this amendment will MAINTAIN the 2/3s majority vote requirement for final passage of S.B. 41 (§ 1).

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

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



SENATE BILL NO. 41—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE SECRETARY OF STATE)

PREFILED NOVEMBER 16, 2016

Referred to Committee on Judiciary

SUMMARY—Revises various provisions relating to business entities.
(BDR 7-425)

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

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

AN ACT relating to business; removing the exemption from the requirement to obtain a state business registration for businesses whose primary purpose is to create or produce motion pictures; revising provisions governing the examination of the records required to be maintained by registered agents; revising the requirement for certain charitable organizations to register with the Secretary of State before soliciting charitable contributions in this State; revising provisions governing the reinstatement of the charter of a corporation sole; revising provisions governing the examination of the records required to be maintained by certain business entities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain businesses to obtain a state business registration from the Secretary of State and to pay an annual fee for such registration. (NRS 76.100, 76.130) **Section 1** of this bill removes the exemption from this requirement for businesses whose primary purpose is to create or produce motion pictures and, thus, requires such businesses to obtain a state business registration and pay the annual fee.

Existing law requires foreign and domestic entities to appoint a registered agent. (NRS 77.310) Under existing law, the Secretary of State may conduct an examination of the records required to be maintained by a registered agent if the Secretary of State has reason to believe that a violation of the laws governing registered agents has been committed. (NRS 77.443) **Section 2** of this bill revises this provision to authorize the Secretary of State to conduct a periodic, special or other examination of the records of a registered agent as the Secretary of State deems necessary or appropriate to determine whether a violation of the law governing registered agents has been committed.

Existing law requires certain charitable organizations that intend to solicit tax-deductible charitable contributions in this State to register with the Secretary of State by filing certain information and a financial report with the Secretary of State before the charitable organization first solicits charitable contributions in this State or has charitable contributions solicited in this State on its behalf. (NRS 82A.100) For the purposes of this registration requirement, the definition of "charitable organization" excludes an organization that is

established for and serving bona fide religious purposes and, thus, such religious organizations are exempt from the requirement to register with the Secretary of State before soliciting tax-deductible charitable contributions. (NRS 82A.025) **Section 3** of this bill removes a duplicative exemption from the registration requirement for certain church organizations.

Under existing law, if a corporation sole has not filed an annual list within 1 year after the annual list is due, the corporation sole's right to transact business in this State is forfeited. (NRS 78.175, 84.110, 84.140) The corporation sole may reinstate its right to transact business in this State if, within 5 years after forfeiting its right to transact business, it files the required annual lists and pays certain fees, including, without limitation, a reinstatement fee. (NRS 78.180, 84.110, 84.150) Existing law contains two conflicting provisions that set forth the reinstatement fee, one provision states that the fee for reinstatement is \$25 and the other provision states that the fee is \$100. (NRS 84.110, 84.150) Under a well-established rule of statutory construction, "when statutes are in conflict, the one more recent in time controls over the provisions of an earlier enactment." *Laird v. State of Nev. Pub. Employees Ret. Bd.*, 98 Nev. 42, 45 (1982). Because the \$25 reinstatement fee was enacted in 1995 and the \$100 reinstatement fee was enacted in 2003, the fee for reinstatement under existing law is \$100. (Section 39 of Chapter 435, Statutes of Nevada 1995, p. 1124; Section 69 of Chapter 4, Statutes of Nevada 2003, 20th Special Session, p. 57) **Section 4** of this bill clarifies that the reinstatement fee is \$100 by removing a reference to the \$25 reinstatement fee.

Existing law requires a limited-liability company to maintain at its registered office or principal place of business in this State a statement indicating where a list of the names and business addresses of each member and manager is maintained. (NRS 86.246) Section 5 of this bill removes this requirement.

Existing law requires a limited partnership to maintain a principal office in this State or a custodian of records. (NRS 88.330) If a limited partnership maintains a custodian of records, section 6 of this bill requires the limited partnership to make its name and street address available at its registered office.

Existing law requires a limited partnership to maintain a list of the name and business address of each partner at its principal office or with its custodian of records. (NRS 88.335) Existing law also requires a limited partnership to maintain at its registered office or principal place of business in this State a statement indicating where such a list is maintained. (NRS 88.3355) Section 7 of this bill removes the requirement to maintain such a statement and instead requires a limited partnership to maintain the list at its principal place of business in this State or with its custodian of records, in addition to the requirement under existing law to maintain such a list at its principal office or with its custodian of records.

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

Section 1. NRS 76.020 is hereby amended to read as follows:

76.020 1. Except as otherwise provided in subsection 2, "business" means:

(a) Any person, except a natural person, that performs a service or engages in a trade for profit;

(b) Any natural person who performs a service or engages in a trade for profit if the person is required to file with the Internal Revenue Service a Schedule C (Form 1040), Profit or Loss From Business Form, or its equivalent or successor form, a Schedule E (Form 1040), Supplemental Income and Loss Form, or its equivalent or successor form, or a Schedule F (Form 1040), Profit or Loss From Farming Form, or its equivalent or successor form, for that activity; or

(c) Any entity organized pursuant to this title, including, without limitation, those entities required to file with the Secretary of State, whether or not the entity performs a service or engages in a business for profit.

2. The term does not include:

(a) A governmental entity.

(b) A nonprofit religious, charitable, fraternal or other organization that qualifies as a tax-exempt organization pursuant to 26 U.S.C. § 501(c).

(c) A person who operates a business from his or her home and whose net earnings from that business are not more than 66 2/3 percent of the average annual wage, as computed for the preceding calendar year pursuant to chapter 612 of NRS and rounded to the nearest hundred dollars.

(d) A natural person whose sole business is the rental of four or fewer dwelling units to others.

~~(e) A business whose primary purpose is to create or produce motion pictures. As used in this paragraph, "motion pictures" has the meaning ascribed to it in NRS 231.020.~~

~~(f) A business organized pursuant to chapter 82 or 84 of NRS.~~

~~(g) (f)~~ A business organized pursuant to chapter 81 of NRS if the business is a nonprofit unit-owners' association.

Sec. 2. NRS 77.443 is hereby amended to read as follows:

77.443 The Secretary of State may conduct *periodic, special or any other* examinations of any records required to be maintained pursuant to this chapter or any other provision of NRS pertaining to the duties of a registered agent ~~if~~ as the Secretary of State ~~has reason to believe that~~ *deems necessary or appropriate to determine whether* a violation of this chapter or any other provision of NRS pertaining to the duties of a registered agent has been ~~violated~~ *committed*.

Sec. 3. NRS 82A.110 is hereby amended to read as follows:

82A.110 1. A charitable organization is not required to be registered with the Secretary of State pursuant to NRS 82A.100 during any year in which its only solicitations for contributions, donations, gifts or the like are:

(a) Directed only to a total of fewer than 15 persons annually;

(b) Directed only to persons who are related within the third degree of consanguinity or affinity to the officers, directors, trustees or executive personnel of the charitable organization;

~~(c) Conducted by a church or one or more of its integrated auxiliaries or by a convention or association of churches that is exempt from taxation pursuant to section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. § 501(c)(3), and exempt from filing an annual return pursuant to section 6033 of the Internal Revenue Code, 26 U.S.C. § 6033;~~

~~(d)~~ Appeals for funds to benefit a particular person or his or her immediate family named in the solicitation, but only if all the proceeds of the solicitation are given to or expended for the direct benefit of the person or his or her immediate family; or

~~(e)~~ (d) Conducted by an alumni association of an accredited institution which solicits only persons who have an established affiliation with the institution, including, without limitation, current and former students, members of the faculty or staff, or persons who are within the third degree of consanguinity or affinity of such persons.

2. A charitable organization that believes it is exempt from registration pursuant to this section must, before it solicits a charitable contribution in this State or has a charitable contribution solicited in this State on its behalf by another person, and annually thereafter, file a declaration of exemption on a form prescribed by the Secretary of State.

Sec. 4. NRS 84.150 is hereby amended to read as follows:

84.150 1. Except as otherwise provided in subsections 3 and 4, the Secretary of State shall reinstate any corporation sole which has forfeited its right to transact business under the provisions of this chapter and restore the right to carry on business in this State and exercise its corporate privileges and immunities, if it:

(a) Files with the Secretary of State:

(1) The information required pursuant to NRS 77.310; and

(2) A declaration under penalty of perjury, on a form provided by the Secretary of State, that the reinstatement is authorized by a court of competent jurisdiction in this State or by the archbishop, bishop, president, trustee in trust, president of stake, president of congregation, overseer, presiding elder, district superintendent, other presiding officer or member of the clergy of a church or religious society or denomination, who has been chosen, elected or appointed in conformity with the constitution, canons, rites, regulations or discipline of the church or religious society or denomination, and in whom is vested the legal title to property held for the purposes, use or benefit of the church or religious society or denomination; and

(b) Pays to the Secretary of State ~~the~~ *the*:

(1) ~~The filing~~ *Filing* fees and penalties set forth in this chapter for each year or portion thereof during which its charter has been revoked; and

(2) ~~A fee of \$25~~ *Fee* for reinstatement ~~set forth in paragraph (c) of subsection 2 of NRS 84.110.~~

2. When the Secretary of State reinstates the corporation to its former rights, the Secretary of State shall:

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

(b) Upon demand, issue to the corporation a certified copy of the certificate of reinstatement.

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

4. If a corporate charter has been revoked pursuant to the provisions of this chapter and has remained revoked for 10 consecutive years, the charter must not be reinstated.

5. A reinstatement pursuant to this section relates back to the date on which the corporation forfeited its right to transact business under the provisions of this chapter and reinstates the corporation's right to transact business as if such right had at all times remained in full force and effect.

Sec. 5. NRS 86.246 is hereby amended to read as follows:

86.246 1. ~~A limited liability company shall maintain at its registered office or principal place of business in this State a statement indicating where the list required pursuant to paragraph (a) of subsection 1 of NRS 86.241 is maintained.~~

~~2.~~ Upon the request of the Secretary of State, ~~the~~ a limited-liability company shall:

(a) Provide the Secretary of State with the name and contact information of the custodian of the list described in paragraph (a) of subsection 1 of NRS 86.241, if different than the registered agent for such company. The information required pursuant to this paragraph shall be kept confidential by the Secretary of State.

(b) Provide written notice to the Secretary of State within 10 days after any change in the custodian of the list described in paragraph (a) of subsection 1 of NRS 86.241.

2. Upon the request of any law enforcement agency in the course of a criminal investigation, the Secretary of State may require a limited-liability company to:

(a) Submit to the Secretary of State, within 3 business days, a copy of the list required to be maintained pursuant to paragraph (a) of subsection 1 of NRS 86.241; or

(b) Answer any interrogatory submitted by the Secretary of State that will assist in the criminal investigation.

~~44~~ 3. If a limited-liability company fails to comply with any requirement pursuant to subsection ~~44~~ 2, the Secretary of State may take any action necessary, including, without limitation, the suspension or revocation of the charter of the limited-liability company.

~~45~~ 4. The Secretary of State shall not reinstate or revive a charter that was revoked or suspended pursuant to subsection ~~44~~ 3 unless:

(a) The limited-liability company complies with the requirements of subsection ~~44~~ 2; or

(b) The law enforcement agency conducting the investigation advises the Secretary of State to reinstate or revive the charter.

~~46~~ 5. The Secretary of State may adopt regulations to administer the provisions of this section.

Sec. 6. NRS 88.330 is hereby amended to read as follows:

88.330 1. Each limited partnership shall continuously maintain:

(a) A principal office in this State, which may but need not be a place of its business in this State, or a custodian of records ~~47~~ whose name and street address is available at the limited partnership's registered office, at which must be kept the records required by NRS 88.335 to be maintained; and

(b) A registered agent.

2. Within 30 days after changing the location of the office which contains records for a limited partnership, a general partner of the limited partnership shall file a certificate of a change in address with the Secretary of State which sets forth the name of the limited partnership, the previous address of the office which contains records and the new address of the office which contains records.

Sec. 7. NRS 88.335 is hereby amended to read as follows:

88.335 1. A limited partnership shall maintain at its ~~48~~ principal place of business in this State ~~49~~ in a statement indicating where ~~50~~ or with the custodian of records as referred to in paragraph (a) of subsection 1 of NRS 88.330, the list required pursuant to paragraph (a) of subsection 1 of NRS 88.335; ~~51~~ no maintained.

2. Upon the request of the Secretary of State, the limited partnership shall:

(a) Provide the Secretary of State with the name and contact information of the custodian of the list described in subsection 1, if different than the registered agent for such limited partnership. The information required pursuant to this paragraph shall be kept confidential by the Secretary of State.

(b) Provide written notice to the Secretary of State within 10 days after any change in the custodian of the list described in subsection 1.

3. Upon the request of any law enforcement agency in the course of a criminal investigation, the Secretary of State may require a limited partnership to:

(a) Submit to the Secretary of State, within 3 business days, a copy of the list required to be maintained pursuant to paragraph (a) of subsection 1 of NRS 88.335; or

(b) Answer any interrogatory submitted by the Secretary of State that will assist in the criminal investigation.

4. If a limited partnership fails to comply with any requirement pursuant to subsection 3, the Secretary of State may take any action necessary, including, without limitation, the suspension or revocation of the right of the limited partnership to transact any business in this State.

5. The Secretary of State shall not reinstate or revive the right of a limited partnership to transact any business in this State that was revoked or suspended pursuant to subsection 4 unless:

1 (a) The limited partnership complies with the requirements of subsection 3; or
2 (b) The law enforcement agency conducting the investigation advises the
3 Secretary of State to reinstate or revive the right of the limited partnership to
4 transact business in this State.

5 6. The Secretary of State may adopt regulations to administer the provisions
6 of this section.