

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



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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 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:

- 1 **Section 1.** NRS 76.020 is hereby amended to read as follows:
2 76.020 1. Except as otherwise provided in subsection 2,
3 “business” means:
4 (a) Any person, except a natural person, that performs a service
5 or engages in a trade for profit;
6 (b) Any natural person who performs a service or engages in a
7 trade for profit if the person is required to file with the Internal
8 Revenue Service a Schedule C (Form 1040), Profit or Loss From
9 Business Form, or its equivalent or successor form, a Schedule E
10 (Form 1040), Supplemental Income and Loss Form, or its
11 equivalent or successor form, or a Schedule F (Form 1040), Profit or
12 Loss From Farming Form, or its equivalent or successor form, for
13 that activity; or
14 (c) Any entity organized pursuant to this title, including, without
15 limitation, those entities required to file with the Secretary of State,
16 whether or not the entity performs a service or engages in a business
17 for profit.
18 2. The term does not include:
19 (a) A governmental entity.
20 (b) A nonprofit religious, charitable, fraternal or other
21 organization that qualifies as a tax-exempt organization pursuant to
22 26 U.S.C. § 501(c).
23 (c) A person who operates a business from his or her home and
24 whose net earnings from that business are not more than 66 2/3
25 percent of the average annual wage, as computed for the preceding
26 calendar year pursuant to chapter 612 of NRS and rounded to the
27 nearest hundred dollars.
28 (d) A natural person whose sole business is the rental of four or
29 fewer dwelling units to others.
30 (e) ~~IA business whose primary purpose is to create or produce~~
31 ~~motion pictures. As used in this paragraph, “motion pictures” has~~
32 ~~the meaning ascribed to it in NRS 231.020.~~
33 ~~(f)~~ A business organized pursuant to chapter 82 or 84 of NRS.
34 ~~(e)~~ (f) A business organized pursuant to chapter 81 of NRS if
35 the business is a nonprofit unit-owners’ association.
36 **Sec. 2.** NRS 77.443 is hereby amended to read as follows:
37 77.443 The Secretary of State may conduct *periodic, special or*
38 *any other* examinations of any records required to be maintained
39 pursuant to this chapter or any other provision of NRS pertaining to
40 the duties of a registered agent ~~if~~ *as* the Secretary of State ~~has~~
41 ~~reason to believe that~~ *deems necessary or appropriate to determine*
42 *whether* a violation of this chapter or any other provision of NRS



1 pertaining to the duties of a registered agent has been ~~violated~~
2 *committed*.

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

4 82A.110 1. A charitable organization is not required to be
5 registered with the Secretary of State pursuant to NRS 82A.100
6 during any year in which its only solicitations for contributions,
7 donations, gifts or the like are:

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

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

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

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

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

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

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

35 84.150 1. Except as otherwise provided in subsections 3 and
36 4, the Secretary of State shall reinstate any corporation sole which
37 has forfeited its right to transact business under the provisions of
38 this chapter and restore the right to carry on business in this State
39 and exercise its corporate privileges and immunities, if it:

40 (a) Files with the Secretary of State:

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

42 (2) A declaration under penalty of perjury, on a form
43 provided by the Secretary of State, that the reinstatement is
44 authorized by a court of competent jurisdiction in this State or by
45 the archbishop, bishop, president, trustee in trust, president of stake,



1 president of congregation, overseer, presiding elder, district
2 superintendent, other presiding officer or member of the clergy of a
3 church or religious society or denomination, who has been chosen,
4 elected or appointed in conformity with the constitution, canons,
5 rites, regulations or discipline of the church or religious society or
6 denomination, and in whom is vested the legal title to property held
7 for the purposes, use or benefit of the church or religious society or
8 denomination; and

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

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

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

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

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

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

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

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

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

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

35 86.246 1. ~~A limited liability company shall maintain at its~~
36 ~~registered office or principal place of business in this State a~~
37 ~~statement indicating where the list required pursuant to paragraph~~
38 ~~(a) of subsection 1 of NRS 86.241 is maintained.~~

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

41 (a) Provide the Secretary of State with the name and contact
42 information of the custodian of the list described in **paragraph (a)**
43 **of subsection 1 of NRS 86.241**, if different than the registered
44 agent for such company. The information required pursuant to this
45 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* ~~†~~ *3.† 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.

~~†4.†~~ 3. If a limited-liability company fails to comply with any requirement pursuant to subsection ~~†3.†~~ 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.

~~†5.†~~ 4. The Secretary of State shall not reinstate or revive a charter that was revoked or suspended pursuant to subsection ~~†4.†~~ 3 unless:

(a) The limited-liability company complies with the requirements of subsection ~~†3.†~~ 2; or

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

~~†6.†~~ 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 ~~†~~ *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 88.3355 is hereby amended to read as follows:

88.3355 1. A limited partnership shall maintain at its ~~†registered office or†~~ principal place of business in this State ~~†a statement indicating where†~~ *or with the custodian of records as*



1 *referred to in paragraph (a) of subsection 1 of NRS 88.330*, the list
2 required pursuant to paragraph (a) of subsection 1 of NRS 88.335 .
3 ~~is maintained.~~

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

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

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

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

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

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

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

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

30 (a) The limited partnership complies with the requirements of
31 subsection 3; or

32 (b) The law enforcement agency conducting the investigation
33 advises the Secretary of State to reinstate or revive the right of the
34 limited partnership to transact business in this State.

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

