

ASSEMBLY BILL NO. 207—ASSEMBLYMEN FRIERSON, BENITEZ-
THOMPSON; ASSEFA, MONROE-MORENO AND SPRINKLE

FEBRUARY 18, 2019

Referred to Committee on Judiciary

SUMMARY—Revises various provisions relating to business entities. (BDR 7-146)

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

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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 entities; revising provisions concerning certain records required to be kept by certain business entities; revising provisions relating to the breach of a fiduciary duty by a director or officer of a corporation; revising provisions relating to the ability of a stockholder to dissent in certain circumstances; revising provisions concerning distributions; revising the definition of the term “issuing corporation” as it relates to the acquisition of a controlling interest therein; authorizing stockholders of a corporation to approve an amendment to the articles of incorporation in writing; requiring written notice to certain stockholders after the dissolution of a corporation approved by written consent of the stockholders thereof; revising provisions relating to the individual liability of a person acting as the alter ego of a corporation and applying such provisions to limited-liability companies; revising provisions concerning the indemnification of certain persons by a corporation; establishing provisions relating to the duties owed to a limited-liability company and its members by a member, manager or officer of the limited-liability company; establishing provisions relating to a series of members of a limited-liability company; establishing the circumstances under which the merger of a publicly traded corporation without the vote of the stockholders is authorized; revising provisions relating to limitations on the right of a stockholder to dissent; making various other changes relating to business entities; and providing other matters properly relating thereto.



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Legislative Counsel's Digest:

Existing law establishes various provisions relating to business entities, including private corporations, nonprofit corporations and limited-liability companies. (Chapters 78, 82 and 86 of NRS) This bill revises certain provisions relating to such specific business entities and makes certain other changes generally relating to business entities.

Section 1 of this bill authorizes a private corporation to include a forum selection clause within its articles of incorporation or bylaws.

Sections 2, 17 and 22 of this bill revise provisions relating to certain records required to be kept by a private corporation, nonprofit corporation and limited-liability company, respectively, and provide that if such records are not made available for inspection within this State after a demand by certain persons, such a person may serve a demand upon the registered agent of the private corporation, nonprofit corporation or limited-liability company, as applicable, that the records be sent to the person or the agent or attorney thereof.

Section 3 of this bill revises the acts that constitute a breach of the fiduciary duty of a director or officer of a corporation for the purpose of determining whether the director or officer is individually liable to the corporation or its stockholders or creditors for damages. **Section 3** also provides that if a director or officer is not individually liable for damages, liability must not be imposed on any person for aiding or abetting the director or officer in any such act or failure to act.

Sections 4-6 of this bill revise provisions relating to the ability of a stockholder who is obligated, as a result of certain corporate action, to accept money or scrip rather than receive a fraction of a share in exchange for the cancellation of all their outstanding shares to dissent.

Section 7 of this bill provides that if the board of directors of a corporation determines that a distribution is not prohibited based on certain factors, such a determination is presumed to be proper in the absence of actual fraud. **Section 8** of this bill provides that if the board of directors makes such a determination, liability does not apply to a director if it is not proven that the director had actual knowledge, before the distribution was made, that the determination was or had become erroneous.

Section 11 of this bill revises the definition of the term "issuing corporation" for the purposes of provisions relating to the acquisition of a controlling interest therein.

Section 12 of this bill authorizes stockholders of a corporation to approve an amendment to the articles of incorporation in writing instead of being required to approve such an amendment at a meeting under certain circumstances. **Section 13** of this bill provides that if the dissolution of a corporation is approved by written consent of the stockholders of a corporation, the corporation is required to notify each stockholder whose written consent was not solicited of the dissolution in writing not later than 10 days after the effective date of the dissolution.

Section 14 of this bill revises provisions relating to the individual liability of a person acting as the alter ego of a corporation, and **section 19** of this bill makes such provisions applicable to limited-liability companies.

Sections 15 and 16 of this bill revise provisions concerning the indemnification of certain persons by a corporation. **Section 15** establishes the requirements pursuant to which a determination that indemnification is proper must be made and authorizes a corporation to indemnify a person if such a determination is made. **Section 16** establishes the circumstances under which a corporation is required to indemnify a person.

Section 20 of this bill establishes provisions relating to the duties owed to a limited-liability company and its members by a member, manager or officer.

Sections 21 and 23-25 of this bill establish provisions relating to a series of members of a limited-liability company. **Section 23** of this bill authorizes a series



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to exercise the powers and privileges granted by the provisions of law governing limited-liability companies.

Section 27 of this bill establishes the circumstances under which the merger of a publicly traded corporation without the vote of the stockholders is authorized and also establishes other provisions relating to such a merger.

Section 28 of this bill revises provisions relating to the right of a stockholder to dissent from certain corporate actions and to obtain payment of the fair value of the stockholder's shares and provides that a stockholder who is entitled to dissent and obtain payment is prohibited from challenging the corporate action creating the entitlement unless the action is unlawful or constitutes or is the result of actual fraud against the stockholder or the domestic corporation. **Section 29** of this bill revises provisions relating to limitations on the right of a stockholder to dissent.

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. The articles of incorporation or bylaws of a corporation may require, to the extent not inconsistent with any applicable jurisdictional requirements, that any, all or certain internal actions must be brought solely or exclusively in the court or courts specified in the requirement, which must include at least one court in this State. Unless otherwise expressly set forth in the articles of incorporation or bylaws, such a requirement must not be interpreted as prohibiting any corporation from consenting, or requiring any corporation to consent, to any alternative forum in any instance.

2. The provisions of this section do not create or authorize any cause of action against a corporation or its directors or officers.

3. As used in this section:

(a) "Court" means any court of:

(1) This State, including, without limitation, those courts in any county having a business court, as that term is defined in NRS 13.050;

(2) A state other than this State; or

(3) The United States.

(b) "Internal action" means any action, suit or proceeding that asserts any claim or counterclaim:

(1) Brought in the name or right of the corporation or on its behalf, including, without limitation, any action subject to NRS 41.520;

(2) For or based upon any breach of any fiduciary duty owed by any director, officer, employee or agent of the corporation in such capacity; or



(3) *Arising pursuant to, or to interpret, apply, enforce or determine the validity of, any provision of this title, the articles of incorporation, the bylaws or any agreement entered into pursuant to NRS 78.365 to which the corporation is a party or a stated beneficiary thereof.*

Sec. 2. NRS 78.105 is hereby amended to read as follows:

78.105 1. A corporation shall keep a copy of the following records at its principal office or with its custodian of records whose name and street address are available at the corporation's registered office:

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

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

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

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

3. If the records required by subsection 1 are ~~kept outside of~~ *not made available for inspection at a location within* this State ~~;~~ *;* ~~pursuant to a proper demand made pursuant to subsection 2,~~ *the* stockholder or other person ~~entitled to inspect those records~~ *demanding the inspection* may serve a demand ~~to inspect the records~~ upon the corporation's registered agent ~~that the records to be inspected be sent to the demanding stockholder or other person or the agent or attorney thereof.~~ Upon such a ~~request,~~ *demand,* the corporation shall send copies of the requested records ~~;~~ *required by subsection 1,* either in paper or electronic form, to the stockholder ~~,~~ *,* ~~or~~ *agent or attorney* entitled to inspect the requested records within 10 business days after service



1 of the ~~{request}~~ **demand** upon the registered agent. ~~{Every~~
2 ~~corporation that neglects or refuses to keep the records required by~~
3 ~~subsection 1 open for inspection, as required in this subsection, shall~~
4 ~~forfeit to the State the sum of \$25 for every day of such neglect or~~
5 ~~refusal.~~

6 ~~—3.}~~ **4.** If any corporation willfully neglects or refuses to make
7 any proper entry in the stock ledger or duplicate copy thereof, or
8 neglects or refuses to permit an inspection of the records required by
9 subsection 1 upon demand by a person entitled to inspect them, or
10 refuses to permit copies to be made therefrom, as provided in
11 subsection 2, the corporation is liable to the person injured for all
12 damages resulting to the person therefrom.

13 ~~{4.}~~ **5.** In every instance where an attorney or other agent of
14 the stockholder seeks the right of inspection, the demand must be
15 accompanied by a power of attorney signed by the stockholder
16 authorizing the attorney or other agent to inspect on behalf of the
17 stockholder.

18 ~~{5.}~~ **6.** The right to copy records under subsection 2 includes,
19 if reasonable, the right to make copies by photographic, xerographic
20 or other means.

21 ~~{6.}~~ **7.** The corporation may impose a reasonable charge to
22 recover the costs of labor and materials and the cost of copies of any
23 records provided to the stockholder.

24 **Sec. 3.** NRS 78.138 is hereby amended to read as follows:

25 78.138 1. The fiduciary duties of directors and officers are to
26 exercise their respective powers in good faith and with a view to the
27 interests of the corporation.

28 2. In exercising their respective powers, directors and officers
29 may, and are entitled to, rely on information, opinions, reports,
30 books of account or statements, including financial statements and
31 other financial data, that are prepared or presented by:

32 (a) One or more directors, officers or employees of the
33 corporation reasonably believed to be reliable and competent in the
34 matters prepared or presented;

35 (b) Counsel, public accountants, financial advisers, valuation
36 advisers, investment bankers or other persons as to matters
37 reasonably believed to be within the preparer's or presenter's
38 professional or expert competence; or

39 (c) A committee on which the director or officer relying thereon
40 does not serve, established in accordance with NRS 78.125, as to
41 matters within the committee's designated authority and matters on
42 which the committee is reasonably believed to merit confidence,

43 ➡ but a director or officer is not entitled to rely on such
44 information, opinions, reports, books of account or statements if the



1 director or officer has knowledge concerning the matter in question
2 that would cause reliance thereon to be unwarranted.

3 3. Except as otherwise provided in subsection 1 of NRS
4 78.139, directors and officers, in deciding upon matters of business,
5 are presumed to act in good faith, on an informed basis and with a
6 view to the interests of the corporation. A director or officer is not
7 individually liable for damages as a result of an act or failure to act
8 in his or her capacity as a director or officer except ~~under~~
9 ~~circumstances~~ as described in subsection 7.

10 4. Directors and officers, in exercising their respective powers
11 with a view to the interests of the corporation, may:

12 (a) Consider all relevant facts, circumstances, contingencies or
13 constituencies, including, without limitation:

14 (1) The interests of the corporation's employees, suppliers,
15 creditors or customers;

16 (2) The economy of the State or Nation;

17 (3) The interests of the community or of society;

18 (4) The long-term or short-term interests of the corporation,
19 including the possibility that these interests may be best served by
20 the continued independence of the corporation; or

21 (5) The long-term or short-term interests of the corporation's
22 stockholders, including the possibility that these interests may be
23 best served by the continued independence of the corporation.

24 (b) Consider or assign weight to the interests of any particular
25 person or group, or to any other relevant facts, circumstances,
26 contingencies or constituencies.

27 5. Directors and officers are not required to consider, as a
28 dominant factor, the effect of a proposed corporate action upon any
29 particular group or constituency having an interest in the
30 corporation.

31 6. The provisions of subsections 4 and 5 do not create or
32 authorize any causes of action against the corporation or its directors
33 or officers.

34 7. Except as otherwise provided in NRS 35.230, 90.660,
35 91.250, 452.200, 452.270, 668.045 and 694A.030, or unless the
36 articles of incorporation or an amendment thereto, in each case filed
37 on or after October 1, 2003, provide for greater individual liability, a
38 director or officer is not individually liable to the corporation or its
39 stockholders or creditors for any damages as a result of any act or
40 failure to act in his or her capacity as a director or officer unless:

41 (a) The ~~trier of fact determines that the~~ presumption
42 established by subsection 3 has been rebutted; and

43 (b) It is proven that:

44 (1) The director's or officer's act or failure to act constituted
45 a breach of his or her fiduciary duties as a director or officer; and



(2) Such breach involved intentional misconduct, fraud or a knowing violation of law.

↪ If a director or officer is not individually liable pursuant to this subsection to the corporation or its stockholders or creditors for any damages as a result of any breach of fiduciary duty or any other act or failure to act in his or her capacity as a director or officer, liability must not be imposed on any person for aiding and abetting the director or officer in any such breach, act or failure to act.

8. This section applies to all cases, circumstances and matters , ~~[unless otherwise provided in the articles of incorporation, or an amendment thereto,]~~ including, without limitation, any change or potential change in control of the corporation ~~[.]~~ *unless otherwise provided in the articles of incorporation or an amendment thereto.*

Sec. 4. NRS 78.205 is hereby amended to read as follows:

78.205 1. A corporation is not obligated to but may sign and deliver a certificate for or including a fraction of a share.

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

(a) Pay to any person otherwise entitled to become a holder of a fraction of a share an amount in cash based on a per share value, and that value or the method of determining that value must be specified in the articles, plan of reorganization, plan of merger or exchange, resolution of the board of directors, or other instrument pursuant to which the fractional share would otherwise be issued;

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

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

3. ~~[Any]~~ *If any* proposed corporate action ~~[that]~~ *pursuant to this section* would result in only money being paid or scrip being issued to stockholders who:

(a) Before the proposed corporate action becomes effective, *in the aggregate* hold 1 percent or more of the outstanding shares of the affected class or series; and



(b) Would otherwise be entitled to receive a fraction of a share in exchange for the cancellation of all their outstanding shares, ~~↳ [is subject to] any stockholder who is obligated, as a result of the corporate action taken pursuant to this section, to accept money or scrip rather than receive a fraction of a share in exchange for the cancellation of all the stockholder's outstanding shares, may dissent in accordance with~~ the provisions of NRS 92A.300 to 92A.500, inclusive, ~~[. If the proposed corporate action is subject to those provisions, any stockholder who is obligated to accept money or scrip rather than receive a fraction of a share resulting from the action taken pursuant to this section may dissent in accordance with those provisions]~~ and obtain payment of the fair value of the fraction of a share to which the stockholder would otherwise be entitled.

Sec. 5. NRS 78.2055 is hereby amended to read as follows:

78.2055 1. Unless otherwise provided in the articles of incorporation, a corporation that desires to decrease the number of issued and outstanding shares of a class or series held by each stockholder of record at the effective date and time of the change without correspondingly decreasing the number of authorized shares of the same class or series may do so if:

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

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

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

3. Except as otherwise provided in this subsection, if a proposed decrease in the number of issued and outstanding shares of any class or series would adversely alter or change any preference, or any relative or other right given to any other class or series of outstanding shares, then the decrease must be approved by the vote, in addition to any vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series whose preference or rights are adversely affected by the decrease, or such greater proportion as may be provided in the articles of incorporation, regardless of limitations or restrictions on the voting power of the adversely affected class or series. The decrease does not have to be approved by the vote of the holders of shares



1 representing a majority of the voting power of each class or series
2 whose preference or rights are adversely affected by the decrease if
3 the articles of incorporation specifically deny the right to vote on
4 such a decrease.

5 4. ~~[Any proposal to decrease the number of issued and~~
6 ~~outstanding shares of any class or series, if any, that includes~~
7 ~~provisions pursuant to which]~~ *If any proposed corporate action*
8 *pursuant to this section would result in* only money ~~[will be]~~ *being*
9 paid or scrip ~~[will be]~~ *being* issued to stockholders who:

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

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

15 ~~↳ [is subject to]~~ *any stockholder who is obligated, as a result of*
16 *the corporate action taken pursuant to this section, to accept*
17 *money or scrip rather than receive a fraction of a share in*
18 *exchange for the cancellation of all the stockholder's outstanding*
19 *shares, may dissent in accordance with* the provisions of NRS
20 92A.300 to 92A.500, inclusive, ~~[. If the proposal is subject to those~~
21 ~~provisions, any stockholder who is obligated to accept money or~~
22 ~~scrip rather than receive a fraction of a share resulting from the~~
23 ~~action taken pursuant to this section may dissent in accordance with~~
24 ~~those provisions]~~ and obtain payment of the fair value of the fraction
25 of a share to which the stockholder would otherwise be entitled.

26 **Sec. 6.** NRS 78.207 is hereby amended to read as follows:

27 78.207 1. Unless otherwise provided in the articles of
28 incorporation, a corporation that desires to change the number of
29 shares of a class or series, if any, of its authorized stock by
30 increasing or decreasing the number of authorized shares of the
31 class or series and correspondingly increasing or decreasing the
32 number of issued and outstanding shares of the same class or series
33 held by each stockholder of record at the effective date and time of
34 the change, may, except as otherwise provided in subsections 2 and
35 3, do so by a resolution adopted by the board of directors, without
36 obtaining the approval of the stockholders. The resolution may also
37 provide for a change of the par value, if any, of the same class or
38 series of the shares increased or decreased. After the effective date
39 and time of the change, the corporation may issue its stock in
40 accordance therewith.

41 2. A proposal to increase or decrease the number of authorized
42 shares of any class or series, if any, that includes provisions
43 pursuant to which only money will be paid or scrip will be issued to
44 stockholders who:



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

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

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

3. Except as otherwise provided in this subsection, if a proposed increase or decrease in the number of authorized shares of any class or series would adversely alter or change any preference or any relative or other right given to any other class or series of outstanding shares, then the increase or decrease must be approved by the vote, in addition to any vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series whose preference or rights are adversely affected by the increase or decrease, regardless of limitations or restrictions on the voting power thereof. The increase or decrease does not have to be approved by the vote of the holders of shares representing a majority of the voting power in each class or series whose preference or rights are adversely affected by the increase or decrease if the articles of incorporation specifically deny the right to vote on such an increase or decrease.

4. ~~[Any proposal to increase or decrease the number of authorized shares of any class or series, if any, that includes provisions pursuant to which]~~ *If any proposed corporate action pursuant to this section would result in only money [will be] being paid or scrip [will be] being issued to stockholders who:*

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

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

➔ ~~[is subject to]~~ *any stockholder who is obligated, as a result of the corporate action taken pursuant to this section, to accept money or scrip rather than receive a fraction of a share in exchange for the cancellation of all the stockholder's outstanding shares, may dissent in accordance with* the provisions of NRS 92A.300 to 92A.500, inclusive, ~~[. If the proposal is subject to those provisions, any stockholder who is obligated to accept money or scrip rather than receive a fraction of a share resulting from the action taken pursuant to this section may dissent in accordance with those provisions]~~ and obtain payment of the fair value of the fraction of a share to which the stockholder would otherwise be entitled.



Sec. 7. NRS 78.288 is hereby amended to read as follows:

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

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

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

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

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

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

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

(c) Any other method that is reasonable in the circumstances ~~it~~, *and if the determination is made upon any of the factors enumerated in this subsection, the determination is presumed to be proper in the absence of actual fraud.*

4. The effect of a distribution pursuant to subsection 2 must be measured:

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

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

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

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

(c) In all other cases, as of:

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

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

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



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

7. This section does not apply to any distribution in liquidation pursuant to NRS 78.590.

8. The provisions of chapter 112 of NRS do not apply to any distribution made by a corporation in accordance with this chapter.

Sec. 8. NRS 78.300 is hereby amended to read as follows:

78.300 1. The directors of a corporation shall not make distributions to stockholders except as provided by this chapter.

2. Except as otherwise provided in subsection 3 and NRS 78.138, in case of any violation of the provisions of this section, the directors under whose administration the violation occurred are jointly and severally liable, at any time within 3 years after each violation, to the corporation, and, in the event of its dissolution or insolvency, to its creditors at the time of the violation, or any of them, to the lesser of the full amount of the distribution made or of any loss sustained by the corporation by reason of the distribution to stockholders.

3. The liability imposed pursuant to subsection 2 does not apply to a director ~~who~~:

(a) *Who* caused his or her dissent to be entered upon the minutes of the meeting of the directors at the time the action was taken or who was not present at the meeting and caused his or her dissent to be entered on learning of the action ~~to~~; or

(b) *If a determination that a distribution is not prohibited pursuant to subsection 2 of NRS 78.288 is made upon any of the factors enumerated in subsection 3 of NRS 78.288 and it is not proven that the director had actual knowledge before the distribution was made that the determination was or had become erroneous.*

Sec. 9. NRS 78.315 is hereby amended to read as follows:

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



1 power of the directors, present at a meeting at which a quorum is
2 present, is the act of the board of directors.

3 2. Unless otherwise restricted by the articles of incorporation
4 or bylaws, any action required or permitted to be taken at a meeting
5 of the board of directors or of a committee thereof may be taken
6 without a meeting if, before or after the action, a written consent
7 thereto is signed by all the members of the board or of the
8 committee, except that such written consent is not required to be
9 signed by:

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

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

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

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

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

28 (1) Make a determination pursuant to NRS ~~78.751~~ 78.7502
29 that indemnification of the director is proper under the
30 circumstances.

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

35 3. Unless otherwise restricted by the articles of incorporation
36 or bylaws, members of the board of directors or the governing body
37 of any corporation, or of any committee designated by such board or
38 body, may participate in a meeting of the board, body or committee
39 through electronic communications, videoconferencing,
40 teleconferencing or other available technology if the corporation has
41 implemented reasonable measures to:

42 (a) Verify the identity of each person participating through such
43 means as a director or member of the governing body or committee,
44 as the case may be; and



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

4. Participation in a meeting pursuant to subsection 3 constitutes presence in person at the meeting.

Sec. 10. 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 ~~fall-matters,~~ *any matter*, 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~~ *Unless otherwise restricted by* 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.



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

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

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

Sec. 11. NRS 78.3788 is hereby amended to read as follows:

78.3788 "Issuing corporation" means a corporation , *as of any date*, which is organized in this State and which:

1. Has 200 or more stockholders of record, at least 100 of whom have *had* addresses in this State appearing on the stock ledger of the corporation ~~[] at all times during the 90 days immediately preceding such a date;~~ and

2. Does business in this State directly or through an affiliated corporation.

Sec. 12. NRS 78.390 is hereby amended to read as follows:

78.390 1. Except as otherwise provided in NRS 77.340 ~~[] or 78.209 or chapter 92A of NRS~~, every amendment to the articles of incorporation must be made in the following manner:

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

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

(c) The certificate so signed must be filed with the Secretary of State.



2. Except as otherwise provided in this subsection, if any proposed amendment would adversely alter or change any preference or any relative or other right given to any class or series of outstanding shares, then, *in addition to any approval otherwise required*, the amendment must be approved by the ~~[vote, in addition to the affirmative vote otherwise required, of the]~~ holders of shares representing a majority of the voting power of each class or series adversely affected by the amendment regardless of limitations or restrictions on the voting power thereof. The amendment does not have to be approved by ~~[the vote of]~~ the holders of shares representing a majority of the voting power of each class or series whose preference or rights are adversely affected by the amendment if the articles of incorporation specifically deny the right to vote on such an amendment.

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

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

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

6. A certificate filed pursuant to subsection 1 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.

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

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



- (b) Identifies the certificate being terminated;
- (c) States that, pursuant to the resolution of the stockholders, the board of directors is authorized to terminate the effectiveness of the certificate;
- (d) States that the effectiveness of the certificate has been terminated;
- (e) Is signed by an officer of the corporation; and
- (f) Is accompanied by a filing fee of \$175.

Sec. 13. NRS 78.580 is hereby amended to read as follows:

78.580 1. If the board of directors of any corporation organized under this chapter decides that the corporation should be dissolved, the board may adopt a resolution to that effect.

2. If the corporation has issued no stock, only the directors need to approve the dissolution.

3. If the corporation has issued stock, the directors must recommend the dissolution to the stockholders. The board of directors may condition its submission of the proposal for dissolution on any lawful basis. ~~[The]~~ *Unless the dissolution is to be approved by written consent pursuant to NRS 78.320, the corporation shall notify each stockholder, whether or not entitled to vote on dissolution, of the proposed dissolution and the stockholders entitled to vote must approve the dissolution. If the dissolution is approved by written consent pursuant to subsection 2 of NRS 78.320, the corporation shall notify each stockholder whose written consent was not solicited of the dissolution, in writing, not later than 10 days after the effective date of the dissolution.*

4. If the dissolution is approved by the directors or both the directors and stockholders, as respectively provided in subsections 2 and 3, the corporation shall file with the Secretary of State a certificate signed by an officer of the corporation setting forth that the dissolution has been approved by the directors, or by the directors and the stockholders, and a list of the names and addresses, either residence or business, of the corporation's president, secretary and treasurer, or the equivalent thereof, and all of its directors.

5. The dissolution takes effect at the time of the filing of the certificate of dissolution with the Secretary of State or upon a later date and time as specified in the certificate, which date must be not more than 90 days after the date on which the certificate is filed. If a certificate of dissolution 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.

Sec. 14. NRS 78.747 is hereby amended to read as follows:

78.747 1. Except as otherwise *specifically* provided by ~~[specifie]~~ statute ~~[,]~~ *or agreement*, no ~~[stockholder, director or officer of]~~ *person other than* a corporation is individually liable for



1 a debt or liability of the corporation ~~[.]~~ unless the ~~[stockholder,~~
2 ~~director or officer]~~ *person* acts as the alter ego of the corporation.

3 2. A ~~[stockholder, director or officer]~~ *person* acts as the alter
4 ego of a corporation *only* if:

5 (a) The corporation is influenced and governed by the
6 ~~[stockholder, director or officer;]~~ *person;*

7 (b) There is such unity of interest and ownership that the
8 corporation and the ~~[stockholder, director or officer]~~ *person* are
9 inseparable from each other; and

10 (c) Adherence to the ~~[corporate fiction of a separate]~~ *notion of*
11 *the corporation being an* entity *separate from the person* would
12 sanction fraud or promote a manifest injustice.

13 3. The question of whether a ~~[stockholder, director or officer]~~
14 *person* acts as the alter ego of a corporation must be determined by
15 the court as a matter of law.

16 **Sec. 15.** NRS 78.7502 is hereby amended to read as follows:

17 78.7502 1. A corporation may indemnify *pursuant to this*
18 *subsection* any person who was or is a party or is threatened to be
19 made a party to any threatened, pending or completed action, suit or
20 proceeding, whether civil, criminal, administrative or investigative,
21 except an action by or in the right of the corporation, by reason of
22 the fact that the person is or was a director, officer, employee or
23 agent of the corporation, or is or was serving at the request of the
24 corporation as a director, officer, employee or agent of another
25 corporation, partnership, joint venture, trust or other enterprise,
26 against expenses, including attorneys' fees, judgments, fines and
27 amounts paid in settlement actually and reasonably incurred by the
28 person in connection with the action, suit or proceeding if the
29 person:

30 (a) Is not liable pursuant to NRS 78.138; or

31 (b) Acted in good faith and in a manner which he or she
32 reasonably believed to be in or not opposed to the best interests of
33 the corporation, and, with respect to any criminal action or
34 proceeding, had no reasonable cause to believe the conduct was
35 unlawful.

36 ➤ The termination of any action, suit or proceeding by judgment,
37 order, settlement, conviction or upon a plea of nolo contendere or its
38 equivalent, does not, of itself, create a presumption that the person is
39 liable pursuant to NRS 78.138 or did not act in good faith and in a
40 manner which he or she reasonably believed to be in or not opposed
41 to the best interests of the corporation, or that, with respect to any
42 criminal action or proceeding, he or she had reasonable cause to
43 believe that the conduct was unlawful.

44 2. A corporation may indemnify *pursuant to this subsection*
45 any person who was or is a party or is threatened to be made a party



1 to any threatened, pending or completed action or suit by or in the
2 right of the corporation to procure a judgment in its favor by reason
3 of the fact that the person is or was a director, officer, employee or
4 agent of the corporation, or is or was serving at the request of the
5 corporation as a director, officer, employee or agent of another
6 corporation, partnership, joint venture, trust or other enterprise
7 against expenses, including amounts paid in settlement and
8 attorneys' fees actually and reasonably incurred by the person in
9 connection with the defense or settlement of the action or suit if the
10 person:

11 (a) Is not liable pursuant to NRS 78.138; or

12 (b) Acted in good faith and in a manner which he or she
13 reasonably believed to be in or not opposed to the best interests of
14 the corporation.

15 ➤ Indemnification *pursuant to this section* may not be made for
16 any claim, issue or matter as to which such a person has been
17 adjudged by a court of competent jurisdiction, after exhaustion of
18 ~~all~~ *any* appeals *taken* therefrom, to be liable to the corporation or
19 for amounts paid in settlement to the corporation, unless and only to
20 the extent that the court in which the action or suit was brought or
21 other court of competent jurisdiction determines upon application
22 that in view of all the circumstances of the case, the person is fairly
23 and reasonably entitled to indemnity for such expenses as the court
24 deems proper.

25 3. ~~[To the extent that]~~ *Any discretionary indemnification*
26 *pursuant to this section, unless ordered by a court or advanced*
27 *pursuant to subsection 2 of NRS 78.751, may be made by the*
28 *corporation only as authorized in each specific case upon a*
29 *determination that the indemnification of* a director, officer,
30 employee or agent of a corporation ~~[has been successful on the~~
31 ~~merits or otherwise in defense of any action, suit or proceeding~~
32 ~~referred to in subsections 1 and 2, or in defense of any claim, issue~~
33 ~~or matter therein, the corporation shall indemnify him or her against~~
34 ~~expenses, including attorneys' fees, actually and reasonably incurred~~
35 ~~by him or her in connection with the defense.]~~ *is proper under the*
36 *circumstances. The determination must be made by:*

37 (a) *The stockholders;*

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

41 (c) *Independent legal counsel, in a written opinion, if:*

42 (1) *A majority vote of a quorum consisting of directors who*
43 *were not parties to the action, suit or proceeding so orders; or*

44 (2) *A quorum consisting of directors who were not parties*
45 *to the action, suit or proceeding cannot be obtained.*



Sec. 16. NRS 78.751 is hereby amended to read as follows:

78.751 1. ~~{Any discretionary indemnification pursuant to NRS 78.7502, unless ordered by a court or advanced pursuant to subsection 2, may be made by the}~~ A corporation ~~{only as authorized in the specific case upon a determination that indemnification of the}~~ *shall indemnify any person who is a director, officer, employee or agent to the extent that the person is proper in the circumstances. The determination must be made:*

— (a) By the stockholders;

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

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

— (d) If a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion. *successful on the merits or otherwise in defense of:*

(a) *Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, including, without limitation, an action by or in the right of the corporation, by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; or*

(b) *Any claim, issue or matter therein, against expenses actually and reasonably incurred by the person in connection with defending the action, including, without limitation, attorney's fees.*

2. ~~{The}~~ *Unless otherwise restricted by the* articles of incorporation, the bylaws or an agreement made by *a corporation,* the corporation may ~~{provide that}~~ *pay* the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding ~~{must be paid by the corporation}~~ as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that the director or officer is not entitled to be indemnified by the corporation. *The articles of incorporation, the bylaws or an agreement made by the corporation may require the corporation to pay such expenses upon receipt of such an undertaking.* The provisions of this subsection do not affect any rights to advancement of expenses to



1 which corporate personnel other than directors or officers may be
2 entitled under any contract or otherwise by law.

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

6 (a) Does not exclude any other rights to which a person seeking
7 indemnification or advancement of expenses may be entitled under
8 the articles of incorporation or any bylaw, agreement, vote of
9 stockholders or disinterested directors or otherwise, for either an
10 action in the person's official capacity or an action in another
11 capacity while holding office, except that indemnification, unless
12 ordered by a court pursuant to NRS 78.7502 or for the advancement
13 of expenses made pursuant to subsection 2, may not be made to or
14 on behalf of any director or officer ~~if a final adjudication~~
15 ~~establishes that the director's or officer's acts or omissions~~
16 ~~involved~~ *finally adjudged by a court of competent jurisdiction,*
17 *after exhaustion of any appeals taken therefrom, to be liable for*
18 intentional misconduct, fraud or a knowing violation of ~~the~~ law ,
19 and *such misconduct, fraud or violation* was material to the cause
20 of action.

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

24 4. *Unless the articles of incorporation, the bylaws or an*
25 *agreement made by a corporation provide otherwise, if a person is*
26 *entitled to indemnification or the advancement of expenses from*
27 *the corporation and any other person, the corporation is the*
28 *primary obligor with respect to such indemnification or*
29 *advancement.*

30 5. A right to indemnification or to advancement of expenses
31 arising under a provision of the articles of incorporation or any
32 bylaw is not eliminated or impaired by an amendment to such
33 provision after the occurrence of the act or omission that is the
34 subject of the civil, criminal, administrative or investigative action,
35 suit or proceeding for which indemnification or advancement of
36 expenses is sought, unless the provision in effect at the time of such
37 act or omission explicitly authorizes such elimination or impairment
38 after such ~~action~~ *act* or omission has occurred.

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

42 **Sec. 17.** NRS 82.181 is hereby amended to read as follows:

43 82.181 1. A corporation shall keep a copy of the following
44 records at its principal office or with its custodian of records whose



1 name and street address are available at the corporation's registered
2 office:

3 (a) A copy, certified by the Secretary of State, of its articles and
4 all amendments thereto;

5 (b) A copy, certified by an officer of the corporation, of its
6 bylaws and all amendments thereto; and

7 (c) If the corporation has members, a members' ledger or a
8 duplicate members' ledger, revised annually, containing *only* the
9 names, alphabetically arranged, of all persons who are members of
10 the corporation, showing their places of residence, if known, and the
11 class of membership held by each.

12 2. A corporation must maintain the records required by
13 subsection 1 in written form or in another form capable of
14 conversion into written form within a reasonable time.

15 3. A director or any person who has been a member of record
16 of a corporation for at least 6 months, or at least 5 percent of the
17 members of the corporation, upon at least 5 days' written demand, is
18 entitled to inspect in person or by agent or attorney, during usual
19 business hours, the members' ledger or duplicate ledger and to make
20 copies therefrom. *Every corporation that neglects or refuses to*
21 *keep the members' ledger or duplicate copy thereof open for*
22 *inspection, as required by this subsection, shall forfeit to the State*
23 *the sum of \$25 for every day of such neglect or refusal.*

24 4. If the records required by subsection 1 are ~~kept outside of~~
25 *not made available for inspection at a location within* this State ~~;~~
26 ~~and pursuant to a proper demand pursuant to subsection 3, the~~
27 director or other person ~~entitled to inspect those records~~
28 *demanding the inspection* may serve a demand ~~to inspect the~~
29 ~~records~~ upon the corporation's registered agent ~~that the records~~
30 *to be inspected be sent to the demanding director or other person*
31 *or the agent or attorney thereof.* Upon such a ~~request,~~ demand,
32 the corporation shall send copies of the requested records ~~;~~
33 *required by subsection 1*, either in paper or electronic form, to the
34 director, ~~or~~ other person, *agent or attorney* entitled to inspect
35 the requested records within 10 business days after service of the
36 ~~request~~ demand upon the registered agent. ~~Every corporation that~~
37 ~~neglects or refuses to keep the members' ledger or duplicate copy~~
38 ~~thereof open for inspection, as required in this subsection, shall~~
39 ~~forfeit to the State the sum of \$25 for every day of such neglect or~~
40 ~~refusal.~~

41 ~~—4.]~~ 5. An inspection authorized by subsection 3 *or 4* may be
42 denied to a member or other person upon the refusal of the member
43 or other person to furnish to the corporation an affidavit that the
44 inspection is not desired for any purpose not relating to his or her



1 interest as a member, including, but not limited to, those purposes
2 set forth in subsection ~~5~~.

3 ~~5~~ 6.

4 6. It is a defense to any action to enforce the provisions of this
5 section or for charges, penalties or damages under this section that
6 the person suing has used or intends to use the list for any of the
7 following purposes:

8 (a) To solicit money or property from the members unless the
9 money or property will be used solely to solicit the votes of
10 members;

11 (b) For any commercial purpose or purpose in competition with
12 the corporation;

13 (c) To sell to any person; or

14 (d) For any other purpose not related to his or her interest as a
15 member.

16 ~~6~~ 7. This section does not impair the power or jurisdiction of
17 any court to compel the production for examination of the books of
18 a corporation in any proper case.

19 ~~7~~ 8. In every instance where an attorney or other agent of
20 the director or member seeks the right of inspection, the demand
21 must be accompanied by a power of attorney signed by the director
22 or member authorizing the attorney or other agent to inspect on
23 behalf of the director or member.

24 ~~8~~ 9. The right to copy records under subsection 3 includes,
25 if reasonable, the right to make copies by photographic, xerographic
26 or other means.

27 ~~9~~ 10. The corporation may impose a reasonable charge,
28 covering costs of labor, materials and copies of any records
29 provided to the member or director.

30 **Sec. 18.** Chapter 86 of NRS is hereby amended by adding
31 thereto the provisions set forth as sections 19 and 20 of this act.

32 **Sec. 19. 1. *Except as otherwise specifically provided by***
33 ***statute or agreement, no person other than the limited-liability***
34 ***company is individually liable for a debt or liability of the limited-***
35 ***liability company unless the person acts as the alter ego of the***
36 ***limited-liability company.***

37 **2. *A person acts as the alter ego of a limited-liability company***
38 ***only if:***

39 ***(a) The limited-liability company is influenced and governed***
40 ***by the person;***

41 ***(b) There is such unity of interest and ownership that the***
42 ***limited-liability company and the person are inseparable from***
43 ***each other; and***



(c) *Adherence to the notion of the limited-liability company being an entity separate from the person would sanction fraud or promote manifest injustice.*

3. *The question of whether a person acts as the alter ego of a limited-liability company must be determined by the court as a matter of law.*

Sec. 20. *The duties of a member, manager or officer of a limited-liability company to the limited-liability company, to any series of the limited-liability company, to any other member or to another person that is a party to or otherwise bound by the operating agreement are:*

1. *The implied contractual covenant of good faith and fair dealing; and*

2. *Such other duties, including, without limitation, fiduciary duties, if any, as are expressly prescribed by the articles of organization or operating agreement.*

Sec. 21. NRS 86.131 is hereby amended to read as follows:

86.131 The provisions of this chapter apply to commerce with foreign nations and among the several states. It is the intention of the Legislature by enactment of this chapter that the legal existence of limited-liability companies formed under this chapter, *and any series thereof*, be recognized beyond the limits of this State and that, subject to any reasonable requirement of registration, any such company transacting business outside this State be granted protection of full faith and credit under Section 1 of Article IV of the Constitution of the United States.

Sec. 22. NRS 86.241 is hereby amended to read as follows:

86.241 1. Each limited-liability company shall continuously keep at its ~~principal~~ *registered* office in this State or with its custodian of records whose name and street address are available at its registered office, unless otherwise provided by an operating agreement, the following:

(a) A current list of the full name and last known business address of each member and manager, separately identifying the members in alphabetical order and the managers, if any, in alphabetical order;

(b) A copy of the filed articles of organization and all amendments thereto, together with signed copies of any powers of attorney pursuant to which any record has been signed; and

(c) Copies of any then effective operating agreement of the company.

2. Each member of a limited-liability company is entitled to obtain from the company, from time to time upon reasonable demand, for any purpose reasonably related to the interest of the member as a member of the company:



(a) The records required to be maintained pursuant to subsection 1;

(b) True and, in light of the member's stated purpose, complete records regarding the activities and the status of the business and financial condition of the company;

(c) Promptly after becoming available, a copy of the company's federal, state and local income tax returns for each year;

(d) True and complete records regarding the amount of cash and a description and statement of the agreed value of any other property or services contributed by each member and which each member has agreed to contribute in the future, and the date on which each became a member; and

(e) Other records regarding the affairs of the company as is just and reasonable under the circumstances and in light of the member's stated purpose for demanding such records.

➤ The right to obtain records under this subsection includes, if reasonable, the right to make copies or abstracts by photographic, xerographic, electronic or other means.

3. Each manager of a limited-liability company managed by a manager or managers is entitled to examine from time to time upon reasonable demand, for a purpose reasonably related to the manager's rights, powers and duties as such, the records described in subsection 2.

4. Any demand by a member or manager under subsection 2 or 3 is subject to such reasonable standards regarding at what time and location and at whose expense records are to be furnished as may be set forth in the articles of organization or in an operating agreement adopted or amended as provided in subsection ~~[7]~~ 8, or, if no such standards are set forth in the articles of organization or operating agreement, the records must be provided or made available for examination, as the case may be, during ordinary business hours, at the *office of the* company's ~~[principal]~~ *custodian of records or its registered* office in this State and at the expense of the demanding member or manager.

5. If ~~[such]~~ *the* records ~~[are maintained outside of]~~ *subject to a demand pursuant to subsection 2 or 3 are not available to obtain or made available for examination, as applicable, at a location within* this State ~~[]~~ *upon a reasonable demand made pursuant to subsection 2 or 3*, the manager or member may serve a demand ~~[for the records]~~ upon the limited-liability company's registered agent ~~[]~~ *that the records to be obtained or examined be sent to the demanding manager or member*. Upon ~~[receipt of]~~ such a demand, the limited-liability company shall send copies of the requested records ~~[]~~ *described in subsection 2* either in paper or electronic



form to the manager or member within 10 business days after the demand is served upon the registered agent.

~~[5-]~~ 6. Any demand by a member or manager under this section must be in writing and must state the purpose of such demand. When a demanding member seeks to obtain or a manager seeks to examine the records described in subsection 2, the demanding member or manager must first establish that:

(a) The demanding member or manager has complied with the provisions of this section respecting the form and manner of making a demand for obtaining or examining such records; and

(b) The records sought by the demanding member or manager are reasonably related to the member's interest as a member or the manager's rights, powers and duties as a manager, as the case may be.

~~[6-]~~ 7. In every instance where an attorney or other agent of a member or manager seeks to exercise any right arising under this section on behalf of such member or manager, the demand must be accompanied by a power of attorney signed by the member or manager authorizing the attorney or other agent to exercise such rights on behalf of the member or manager.

~~[7-]~~ 8. The rights of a member to obtain or a manager to examine records as provided in this section may be restricted or denied entirely in the articles of organization or in an operating agreement adopted by all of the members or by the sole member or in any subsequent amendment adopted by all of the members at the time of amendment.

Sec. 23. NRS 86.281 is hereby amended to read as follows:

86.281 A limited-liability company organized and existing pursuant to this chapter, *or any series thereof*, may exercise the powers and privileges granted by this chapter and may:

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

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

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

4. Lend money to and otherwise assist its members;

5. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use and deal in and with shares, member's interests or other interests in or obligations of domestic or foreign limited-liability companies, domestic or foreign corporations, joint ventures or similar associations, general or limited partnerships or natural persons, or direct or indirect obligations of the United States or of any government, state,



territory, governmental district or municipality or of any instrumentality of it;

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

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

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

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

10. Cease its activities and ~~{surrender its articles of organization;}~~ *terminate its existence in accordance with this chapter;*

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

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

Sec. 24. NRS 86.301 is hereby amended to read as follows:

86.301 Except as otherwise provided in this chapter, ~~{its}~~ *the* articles of organization or ~~{its}~~ *the* operating agreement, no debt may be contracted or liability incurred by or on behalf of a limited-liability company ~~{}~~ *or any series thereof* except by:

1. One or more managers of a company *or series* which is managed by a manager or managers;

2. Any member of a company *or series* which is managed by its members;

3. Any agent, officer, employee or other representative of the company *or series, as* authorized in the operating agreement or in another writing by a manager or managers, if the company *or series* is managed by a manager or managers; or

4. Any agent, officer, employee or other representative of the company *or series* authorized in the operating agreement or in another writing by a member ~~{}~~ *thereof*, if the company *or series* is managed by its members.

Sec. 25. NRS 86.321 is hereby amended to read as follows:

86.321 The contributions to capital of a member to a limited-liability company *or series* may be in cash, property or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.



Sec. 26. NRS 86.531 is hereby amended to read as follows:

86.531 1. Except in the case of a dissolution pursuant to NRS 86.490, as soon as practicable after the dissolution of a limited-liability company, articles of dissolution must be prepared and signed setting forth:

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

(b) That the company has been ~~for will be~~ dissolved; and

(c) The effective date and time of the dissolution, which may not be later than the effective date and time of the articles of dissolution.

2. The articles of dissolution must be signed by:

(a) A manager of the company, if management of the company is vested in a manager;

(b) A member of the company, if management of the company is not vested in a manager; or

(c) The personal representative of the last remaining member, if there is no remaining manager or member, unless otherwise provided in the articles of organization or operating agreement.

Sec. 27. Chapter 92A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Unless otherwise expressly required by the articles of incorporation, no vote of the stockholders of a publicly traded corporation is necessary to authorize a merger in which the publicly traded corporation is a constituent entity if:

(a) The plan of merger expressly permits or requires the merger to be effected under this section;

(b) The ownership threshold requirement is satisfied, subject to the provisions of subsection 2; and

(c) The ownership threshold requirement is satisfied in whole or in part by way of an offer and the plan of merger requires that:

(1) The merger must be effected as soon as practicable following the consummation of the offer if the merger is effected under this section; and

(2) Each outstanding share of each class or series of stock of the publicly traded corporation that is the subject of, and not irrevocably accepted for purchase or exchange in, the offer must be converted in such merger into, or into the right to receive, the same amount and kind of cash, property, rights or securities to be paid for shares of such class or series of stock of the publicly traded corporation irrevocably accepted for purchase or exchange in the offer. The plan of merger may expressly provide that the requirements of this subparagraph must not apply to specified categories of excluded shares.

2. If a merger pursuant to this section is to be effectuated without any offer:



(a) The ownership threshold requirement must be satisfied without counting the voting power of any shares of the stock of the publicly traded corporation acquired from the publicly traded corporation, or any of the directors, officers, affiliates or associates thereof, within the 6 months immediately preceding the adoption of the plan of merger; and

(b) The publicly traded corporation must provide notice of the merger to all of its stockholders not less than 30 days before the effective date of the merger.

3. 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.

4. As used in this section:

(a) "Affiliate" has the meaning ascribed to it in NRS 78.412.

(b) "Associate" has the meaning ascribed to it in NRS 78.413.

(c) "Consummation" means the irrevocable acceptance for purchase or exchange of shares tendered pursuant to an offer.

(d) "Excluded shares" means:

(1) Rollover shares; and

(2) Shares of the publicly traded corporation that are owned beneficially or of record at the commencement of an offer by:

(I) The publicly traded corporation;

(II) The constituent entity making the offer;

(III) Any person who owns, directly or indirectly, all of the outstanding equity interests of the constituent entity making the offer; or

(IV) Any direct or indirect wholly owned subsidiary of any of the foregoing.

(e) "Offer" means an offer made by the other constituent entity in the merger for all of the outstanding shares of each class or series of stock of the publicly traded corporation listed on a national securities exchange, on the terms provided in the plan of merger that, absent this section, would be entitled to vote on the adoption of the plan of merger. The other constituent entity in the merger may, but is not required to, engage in the consummation of separate offers for separate classes or series of the stock of the publicly traded corporation. An offer may, but is not required to:

(1) Exclude any excluded shares; and

(2) Be conditioned on the tender of a minimum number or proportion of shares of any class or series of the stock of the publicly traded corporation.

(f) "Owned affiliate" means, with respect to a constituent entity, any other person who owns, directly or indirectly, all of the outstanding equity interests of the constituent entity, or any direct



1 *or indirect wholly owned subsidiary of the constituent entity or*
2 *other person.*

3 (g) *“Ownership threshold requirement” means that the voting*
4 *power of the stock of the publicly traded corporation otherwise*
5 *owned beneficially or of record by the other constituent entity in*
6 *the merger or any of the owned affiliates of the other constituent*
7 *entity, together with the voting power of any rollover shares and*
8 *any shares irrevocably accepted for purchase or exchange*
9 *pursuant to any offer and received before the expiration of the*
10 *offer by the agent or depositary appointed to facilitate*
11 *the consummation of the offer, equals at least that proportion of*
12 *the voting power of the stock, and of each class or series thereof,*
13 *of the publicly traded corporation that, absent this section, would*
14 *be required to approve the plan of merger under this chapter and*
15 *the articles of incorporation and bylaws of the publicly traded*
16 *corporation. For the purposes of this paragraph, shares are*
17 *received:*

18 (1) *If the shares are certificated shares, upon physical*
19 *receipt by the agent or depositary of a stock certificate with an*
20 *executed letter of transmittal or other instrument of transfer;*

21 (2) *If the shares are uncertificated shares held of record by*
22 *a clearing corporation as nominee, upon transfer into the account*
23 *of the agent or depositary by way of an agent’s message; and*

24 (3) *If the shares are uncertificated shares held of record by*
25 *a person other than a clearing corporation as nominee, upon*
26 *physical receipt by the agent or depositary of an executed letter of*
27 *transmittal or other instrument of transfer.*

28 (h) *“Publicly traded corporation” means a domestic*
29 *corporation that has a class or series of voting shares which is a*
30 *covered security under section 18(b)(1)(A) or (B) of the Securities*
31 *Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended.*

32 (i) *“Rollover shares” means any shares of any class or series*
33 *of the capital stock of the publicly traded corporation that are the*
34 *subject of a written agreement requiring such shares to be*
35 *contributed or otherwise transferred to the other constituent entity*
36 *in the merger or any of the owned affiliates of the other*
37 *constituent entity in exchange for shares or other equity interest in*
38 *the other constituent entity or any of its owned affiliates. Shares*
39 *must cease to be rollover shares if, as of the effective time of the*
40 *merger, the shares have not been contributed or otherwise*
41 *transferred pursuant to the written agreement.*

42 **Sec. 28.** NRS 92A.380 is hereby amended to read as follows:

43 92A.380 1. Except as otherwise provided in NRS 92A.370
44 and 92A.390 and subject to the limitation in paragraph (f), any
45 stockholder is entitled to dissent from, and obtain payment of the



1 fair value of the stockholder's shares in the event of any of the
2 following corporate actions:

3 (a) Consummation of a plan of merger to which the domestic
4 corporation is a constituent entity:

5 (1) If approval by the stockholders is required for the merger
6 by NRS 92A.120 to 92A.160, inclusive, or the articles of
7 incorporation, regardless of whether the stockholder is entitled to
8 vote on the plan of merger; ~~for~~

9 (2) If the domestic corporation is a subsidiary and is merged
10 with its parent pursuant to NRS 92A.180 ~~for~~; or

11 *(3) The domestic corporation is a constituent entity in a*
12 *merger pursuant to section 27 of this act.*

13 (b) Consummation of a plan of conversion to which the
14 domestic corporation is a constituent entity as the corporation whose
15 subject owner's interests will be converted.

16 (c) Consummation of a plan of exchange to which the domestic
17 corporation is a constituent entity as the corporation whose subject
18 owner's interests will be acquired, if the stockholder's shares are to
19 be acquired in the plan of exchange.

20 (d) Any corporate action taken pursuant to a vote of the
21 stockholders to the extent that the articles of incorporation, bylaws
22 or a resolution of the board of directors provides that voting or
23 nonvoting stockholders are entitled to dissent and obtain payment
24 for their shares.

25 (e) Accordance of full voting rights to control shares, as defined
26 in NRS 78.3784, only to the extent provided for pursuant to
27 NRS 78.3793.

28 (f) Any corporate action not described in this subsection ~~that~~
29 ~~will result in~~ *pursuant to which* the stockholder ~~receiving~~ *would*
30 *be obligated, as a result of the corporate action, to accept* money or
31 scrip ~~instead of~~ *rather than receive* a fraction of a share *in*
32 *exchange for the cancellation of all the stockholder's outstanding*
33 *shares*, except where the stockholder would not be entitled to
34 receive such payment pursuant to NRS 78.205, 78.2055 or 78.207.
35 A dissent pursuant to this paragraph applies only to the fraction of a
36 share, and the stockholder is entitled only to obtain payment of the
37 fair value of the fraction of a share.

38 2. A stockholder who is entitled to dissent and obtain payment
39 pursuant to NRS 92A.300 to 92A.500, inclusive, ~~may~~ *must* not
40 challenge the corporate action creating the entitlement unless the
41 action is unlawful or ~~fraudulent with respect to~~ *constitutes or is*
42 *the result of actual fraud against* the stockholder or the domestic
43 corporation.

44 3. Subject to the limitations in this subsection, from and after
45 the effective date of any corporate action described in subsection 1,



no stockholder who has exercised the right to dissent pursuant to NRS 92A.300 to 92A.500, inclusive, is entitled to vote his or her shares for any purpose or to receive payment of dividends or any other distributions on shares. This subsection does not apply to dividends or other distributions payable to stockholders on a date before the effective date of any corporate action from which the stockholder has dissented. If a stockholder exercises the right to dissent with respect to a corporate action described in paragraph (f) of subsection 1, the restrictions of this subsection apply only to the shares to be converted into a fraction of a share and the dividends and distributions to those shares.

Sec. 29. NRS 92A.390 is hereby amended to read as follows:

92A.390 1. There is no right of dissent ~~[with respect to a plan of merger, conversion or exchange]~~ *pursuant to paragraph (a), (b), (c) or (f) of subsection 1 of NRS 92A.380* in favor of stockholders of any class or series which is:

(a) A covered security under section 18(b)(1)(A) or (B) of the Securities Act of 1933, 15 U.S.C. § 77r(b)(1)(A) or (B), as amended;

(b) Traded in an organized market and has at least 2,000 stockholders and a market value of at least \$20,000,000, exclusive of the value of such shares held by the corporation's subsidiaries, senior executives, directors and beneficial stockholders owning more than 10 percent of such shares; or

(c) Issued by an open end management investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 et seq., as amended, and which may be redeemed at the option of the holder at net asset value,

↪ unless the articles of incorporation of the corporation issuing the class or series or the resolution of the board of directors approving the plan of merger, conversion or exchange expressly provide otherwise.

2. The applicability of subsection 1 must be determined as of:

(a) The record date fixed to determine the stockholders entitled to receive notice of and to vote at the meeting of stockholders to act upon the corporate action requiring dissenter's rights; or

(b) The day before the effective date of such corporate action if there is no meeting of stockholders.

3. Subsection 1 is not applicable and dissenter's rights are available pursuant to NRS 92A.380 for the holders of any class or series of shares who are required by the terms of the corporate action ~~[requiring dissenter's rights]~~ to accept for such shares anything other than ~~[cash or shares of any class or any series of shares of any corporation, or any]~~ :



1 (a) *Cash*;

2 (b) *Any security or* other proprietary interest of any other entity,
3 *including, without limitation, shares, equity interests or contingent*
4 *value rights*, that satisfies the standards set forth in subsection 1 at
5 the time the corporate action becomes effective ~~H~~; *or*

6 (c) *Any combination of paragraphs (a) and (b).*

7 4. There is no right of dissent for any holders of stock of the
8 surviving domestic corporation if the plan of merger does not
9 require action of the stockholders of the surviving domestic
10 corporation under NRS 92A.130.

11 5. There is no right of dissent for any holders of stock of the
12 parent domestic corporation if the plan of merger does not require
13 action of the stockholders of the parent domestic corporation under
14 NRS 92A.180.

15 **Sec. 30.** NRS 92A.410 is hereby amended to read as follows:

16 92A.410 1. If a proposed corporate action creating
17 dissenter's rights is submitted to a vote at a stockholders' meeting,
18 the notice of the meeting must state that stockholders are, are not or
19 may be entitled to assert dissenter's rights under NRS 92A.300 to
20 92A.500, inclusive. If the domestic corporation concludes that
21 dissenter's rights are or may be available, a copy of NRS 92A.300
22 to 92A.500, inclusive, must accompany the meeting notice sent to
23 those ~~freed~~ stockholders *of record* entitled to exercise dissenter's
24 rights.

25 2. If the corporate action creating dissenter's rights is taken by
26 written consent of the stockholders or without a vote of the
27 stockholders, the domestic corporation shall notify in writing all
28 stockholders *of record* entitled to assert dissenter's rights that the
29 action was taken and send them the dissenter's notice described in
30 NRS 92A.430.

31 **Sec. 31.** The amendatory provisions of section 20 of this act
32 apply to a limited-liability company organized in this State:

33 1. On or after October 1, 2019, pursuant to the provisions of
34 chapter 86 of NRS; and

35 2. Before October 1, 2019, if the limited-liability company
36 expressly elects to accept the provisions of section 20 of this act
37 pursuant to an amendment to its articles of organization enacted in
38 accordance with NRS 86.216 or 86.221.

