

Amendment No. 43

Assembly Amendment to Assembly Bill No. 207	(BDR 7-146)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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

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



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 ~~the~~ certain limited-liability ~~company~~ companies and ~~its members~~ certain other persons by a ~~member~~ manager or ~~officer~~ managing member 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.

Legislative Counsel’s Digest:

- 1 Existing law establishes various provisions relating to business entities, including private
- 2 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] by a manager or managing member of~~ a limited-liability company ~~[and its members by a member, manager or officer.]~~ to the limited-liability company, to any series of the limited-liability company, to any member or to another person that is a party to or otherwise bound by the operating agreement. **Section 31 of this bill provides that the provisions of section 20 apply only to certain limited-liability companies.**

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 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 ~~to a~~ *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~~ other person, *agent or attorney* entitled to inspect the requested records within 10 business days after service of the ~~request~~ *demand* upon the registered agent. ~~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.~~

~~3.4.~~ 4. If any corporation willfully neglects or refuses to make any proper entry in the stock ledger or duplicate copy thereof, or neglects or refuses to permit an inspection of the records required by subsection 1 upon demand by a person entitled to inspect them, or refuses to permit copies to be made therefrom, as provided in subsection 2, the corporation is liable to the person injured for all damages resulting to the person therefrom.

~~4.5.~~ 5. In every instance where an attorney or other agent of the stockholder seeks the right of inspection, the demand must be accompanied by a power of attorney signed by the stockholder authorizing the attorney or other agent to inspect on behalf of the stockholder.

~~5.6.~~ 6. The right to copy records under subsection 2 includes, if reasonable, the right to make copies by photographic, xerographic or other means.

~~6.7.~~ 7. The corporation may impose a reasonable charge to recover the costs of labor and materials and the cost of copies of any records provided to the stockholder.

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

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

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

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

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

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

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

1 concerning the matter in question that would cause reliance thereon to be
2 unwarranted.

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

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

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

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

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

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

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

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

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

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

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

30 7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200,
31 452.270, 668.045 and 694A.030, or unless the articles of incorporation or an
32 amendment thereto, in each case filed on or after October 1, 2003, provide for
33 greater individual liability, a director or officer is not individually liable to the
34 corporation or its stockholders or creditors for any damages as a result of any act or
35 failure to act in his or her capacity as a director or officer unless:

36 (a) The ~~[trier of fact determines that the]~~ presumption established by
37 subsection 3 has been rebutted; and

38 (b) It is proven that:

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

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

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

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

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

2 78.205 1. A corporation is not obligated to but may sign and deliver a
3 certificate for or including a fraction of a share.

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

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

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

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

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

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

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

29 ~~is subject to~~ *any stockholder who is obligated, as a result of the corporate*
30 *action taken pursuant to this section, to accept money or scrip rather than receive*
31 *a fraction of a share in exchange for the cancellation of all the stockholder's*
32 *outstanding shares, may dissent in accordance with* the provisions of NRS
33 92A.300 to 92A.500, inclusive, ~~is subject to those provisions, any stockholder who is obligated to accept money or scrip rather~~
34 ~~than receive a fraction of a share resulting from the action taken pursuant to this~~
35 ~~section may dissent in accordance with those provisions~~ and obtain payment of the
36 fair value of the fraction of a share to which the stockholder would otherwise be
37 entitled.
38

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

40 78.2055 1. Unless otherwise provided in the articles of incorporation, a
41 corporation that desires to decrease the number of issued and outstanding shares of
42 a class or series held by each stockholder of record at the effective date and time of
43 the change without correspondingly decreasing the number of authorized shares of
44 the same class or series may do so if:

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

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

51 2. If the proposal required by subsection 1 is approved by the stockholders
52 entitled to vote, the corporation may reissue its stock in accordance with the
53 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 representing a majority of the voting power of each class or series whose preference or rights are adversely affected by the decrease if the articles of incorporation specifically deny the right to vote on such a decrease.

4. ~~[Any proposal to decrease the number of issued and outstanding 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 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 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. 6. NRS 78.207 is hereby amended to read as follows:

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

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

1 in the articles of incorporation, regardless of limitations or restrictions on the voting
2 power thereof.

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

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

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

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

24 ~~↳ [is subject to] any stockholder who is obligated, as a result of the corporate~~
25 ~~action taken pursuant to this section, to accept money or scrip rather than receive~~
26 ~~a fraction of a share in exchange for the cancellation of all the stockholder's~~
27 ~~outstanding shares, may dissent in accordance with~~ the provisions of NRS
28 92A.300 to 92A.500, inclusive, ~~[. If the proposal is subject to those provisions, any~~
29 ~~stockholder who is obligated to accept money or scrip rather than receive a fraction~~
30 ~~of a share resulting from the action taken pursuant to this section may dissent in~~
31 ~~accordance with those provisions]~~ and obtain payment of the fair value of the
32 fraction of a share to which the stockholder would otherwise be entitled.

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

34 78.288 1. Except as otherwise provided in subsection 2 and the articles of
35 incorporation, a board of directors may authorize and the corporation may make
36 distributions to ~~[its stockholders,]~~ *the holders of any class or series of the*
37 *corporation's shares*, including distributions on shares that are partially paid.

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

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

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

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

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

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

53 (c) Any other method that is reasonable in the circumstances. ~~✚~~

~~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 [.]~~

~~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.] (Deleted by amendment.)~~

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

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

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

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

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

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

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

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

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

3. Unless otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or the governing body of any corporation, or of any committee designated by such board or body, may participate in a meeting of the board, body or committee 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 director or member of the governing body or committee, 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 ~~[all 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 ~~[(specific)]~~ statute ~~[(,)]~~ or agreement, no ~~[(stockholder, director or officer of)]~~ person other than a corporation is individually liable for a debt or liability of the corporation ~~[(,)]~~ unless the ~~[(stockholder, director or officer)]~~ person acts as the alter ego of the corporation.

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

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

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

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

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

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

78.7502 1. A corporation may indemnify ~~pursuant to this subsection~~ any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except 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, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with the action, suit or proceeding if the person:

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

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

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

2. A corporation may indemnify *pursuant to this subsection* any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor 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 against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by the person in connection with the defense or settlement of the action or suit if the person:

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

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

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

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

(a) The stockholders;

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

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

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

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

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

6 78.751 1. ~~[Any discretionary indemnification pursuant to NRS 78.7502,~~
7 ~~unless ordered by a court or advanced pursuant to subsection 2, may be made by~~
8 ~~the] A corporation [only as authorized in the specific case upon a determination that~~
9 ~~indemnification of the] shall indemnify any person who is a~~ director, officer,
10 employee or agent *to the extent that the person* is ~~[proper in the circumstances.~~
11 ~~The determination must be made:~~

12 ~~— (a) By the stockholders;~~

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

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

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

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

27 *(b) Any claim, issue or matter therein,*

28 *↪ against expenses actually and reasonably incurred by the person in connection*
29 *with defending the action, including, without limitation, attorney's fees.*

30 2. ~~[The] Unless otherwise restricted by the~~ articles of incorporation, the
31 bylaws or an agreement made by ~~[a] the corporation,~~ the corporation may ~~[provide~~
32 ~~that] pay~~ the expenses of officers and directors incurred in defending a civil or
33 criminal action, suit or proceeding ~~[must be paid by the corporation]~~ as they are
34 incurred and in advance of the final disposition of the action, suit or proceeding,
35 upon receipt of an undertaking by or on behalf of the director or officer to repay the
36 amount if it is ultimately determined by a court of competent jurisdiction that the
37 director or officer is not entitled to be indemnified by the corporation. *The articles*
38 *of incorporation, the bylaws or an agreement made by the corporation may*
39 *require the corporation to pay such expenses upon receipt of such an*
40 *undertaking.* The provisions of this subsection do not affect any rights to
41 advancement of expenses to which corporate personnel other than directors or
42 officers may be entitled under any contract or otherwise by law.

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

45 (a) Does not exclude any other rights to which a person seeking
46 indemnification or advancement of expenses may be entitled under the articles of
47 incorporation or any bylaw, agreement, vote of stockholders or disinterested
48 directors or otherwise, for either an action in the person's official capacity or an
49 action in another capacity while holding office, except that indemnification, unless
50 ordered by a court pursuant to NRS 78.7502 or for the advancement of expenses
51 made pursuant to subsection 2, may not be made to or on behalf of any director or
52 officer ~~[if a final adjudication establishes that the director's or officer's acts or~~
53 ~~omissions involved]~~ *finally adjudged by a court of competent jurisdiction, after*

1 *exhaustion of any appeals taken therefrom, to be liable for* intentional
2 misconduct, fraud or a knowing violation of ~~the~~ law, and *such misconduct, fraud*
3 *or violation* was material to the cause of action.

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

7 4. *Unless the articles of incorporation, the bylaws or an agreement made by*
8 *a corporation provide otherwise, if a person is entitled to indemnification or the*
9 *advancement of expenses from the corporation and any other person, the*
10 *corporation is the primary obligor with respect to such indemnification or*
11 *advancement.*

12 5. A right to indemnification or to advancement of expenses arising under a
13 provision of the articles of incorporation or any bylaw is not eliminated or impaired
14 by an amendment to such provision after the occurrence of the act or omission that
15 is the subject of the civil, criminal, administrative or investigative action, suit or
16 proceeding for which indemnification or advancement of expenses is sought, unless
17 the provision in effect at the time of such act or omission explicitly authorizes such
18 elimination or impairment after such ~~action~~ act or omission has occurred.

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

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

23 82.181 1. A corporation shall keep a copy of the following records at its
24 principal office or with its custodian of records whose name and street address are
25 available at the corporation's registered office:

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

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

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

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

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

45 4. If the records required by subsection 1 are ~~kept outside of~~ *not made*
46 *available for inspection at a location within* this State ~~[-a]~~ *pursuant to a proper*
47 *demand pursuant to subsection 3, the* director or other person ~~entitled to inspect~~
48 ~~those records~~ *demanding the inspection* may serve a demand ~~to inspect the~~
49 ~~records~~ *upon the corporation's registered agent [-] that the records to be inspected*
50 *be sent to the demanding director or other person or the agent or attorney*
51 *thereof.* Upon such a ~~request,~~ *demand,* the corporation shall send copies of the
52 requested records ~~[-] required by subsection 1,~~ either in paper or electronic form, to
53 the director, ~~or~~ other person, *agent or attorney* entitled to inspect the requested

records within 10 business days after service of the ~~{request}~~ *demand* upon the registered agent. ~~{Every corporation that neglects or refuses to keep the members' ledger or duplicate copy thereof 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.}~~

~~—4.}~~ *5.* An inspection authorized by subsection 3 *or 4* may be denied to a member or other person upon the refusal of the member or other person to furnish to the corporation an affidavit that the inspection is not desired for any purpose not relating to his or her interest as a member, including, but not limited to, those purposes set forth in subsection ~~{5.}~~

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

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

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

(c) To sell to any person; or

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

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

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

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

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

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

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

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

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

(b) There is such unity of interest and ownership that the limited-liability company and the person are inseparable from 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}~~ managing member 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 ~~{ }~~ only:*

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 the operating agreement.

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

2 86.131 The provisions of this chapter apply to commerce with foreign nations
3 and among the several states. It is the intention of the Legislature by enactment of
4 this chapter that the legal existence of limited-liability companies formed under this
5 chapter, *and any series thereof*, be recognized beyond the limits of this State and
6 that, subject to any reasonable requirement of registration, any such company
7 transacting business outside this State be granted protection of full faith and credit
8 under Section 1 of Article IV of the Constitution of the United States.

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

10 86.241 1. Each limited-liability company shall continuously keep at its
11 ~~principal (registered)~~ office in this State or with its custodian of records whose
12 name and street address are available at its registered office, unless otherwise
13 provided by an operating agreement, the following:

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

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

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

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

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

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

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

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

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

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

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

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

1 5. If ~~[such]~~ the records ~~[are maintained outside of]~~ *subject to a demand*
2 *pursuant to subsection 2 or 3 are not available to obtain or made available for*
3 *examination, as applicable, at a location within this State* ~~[]~~ *upon a reasonable*
4 *demand made pursuant to subsection 2 or 3*, the manager or member may serve a
5 demand ~~[for the records]~~ upon the limited-liability company's registered agent ~~[]~~
6 *that the records to be obtained or examined be sent to the demanding manager or*
7 *member*. Upon ~~[receipt of]~~ such a demand, the limited-liability company shall send
8 copies of the requested records ~~[]~~ *described in subsection 2* either in paper or
9 electronic form to the manager or member within 10 business days after the
10 demand is served upon the registered agent.

11 ~~[5.]~~ 6. Any demand by a member or manager under this section must be in
12 writing and must state the purpose of such demand. When a demanding member
13 seeks to obtain or a manager seeks to examine the records described in subsection
14 2, the demanding member or manager must first establish that:

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

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

21 ~~[6.]~~ 7. In every instance where an attorney or other agent of a member or
22 manager seeks to exercise any right arising under this section on behalf of such
23 member or manager, the demand must be accompanied by a power of attorney
24 signed by the member or manager authorizing the attorney or other agent to
25 exercise such rights on behalf of the member or manager.

26 ~~[7.]~~ 8. The rights of a member to obtain or a manager to examine records as
27 provided in this section may be restricted or denied entirely in the articles of
28 organization or in an operating agreement adopted by all of the members or by the
29 sole member or in any subsequent amendment adopted by all of the members at the
30 time of amendment.

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

32 86.281 A limited-liability company organized and existing pursuant to this
33 chapter, *or any series thereof*, may exercise the powers and privileges granted by
34 this chapter and may:

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

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

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

41 4. Lend money to and otherwise assist its members;

42 5. Purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote,
43 use, employ, sell, mortgage, lend, pledge or otherwise dispose of, and otherwise use
44 and deal in and with shares, member's interests or other interests in or obligations
45 of domestic or foreign limited-liability companies, domestic or foreign
46 corporations, joint ventures or similar associations, general or limited partnerships
47 or natural persons, or direct or indirect obligations of the United States or of any
48 government, state, territory, governmental district or municipality or of any
49 instrumentality of it;

50 6. Make contracts and guarantees and incur liabilities, borrow money at such
51 rates of interest as the company may determine, issue its notes, bonds and other
52 obligations and secure any of its obligations by mortgage or pledge of all or any
53 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 ~~its 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 ~~it~~ *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 ~~it~~ *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

~~1 (a) The~~ *the plan of merger expressly permits or requires the merger to be effected under this section.*

~~2 (b) and;~~

(a) The ownership threshold requirement is satisfied ~~for~~ without any offer, subject to the provisions of subsection 2; ~~and~~

~~3 (c) or~~

(b) 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

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

3 (f) *“Owned affiliate” means, with respect to a constituent entity, any other*
4 *person who owns, directly or indirectly, all of the outstanding equity interests of*
5 *the constituent entity, or any direct or indirect wholly owned subsidiary of the*
6 *constituent entity or other person.*

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

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

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

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

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

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

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

41 92A.380 1. Except as otherwise provided in NRS 92A.370 and 92A.390
42 and subject to the limitation in paragraph (f), any stockholder is entitled to dissent
43 from, and obtain payment of the fair value of the stockholder’s shares in the event
44 of any of the following corporate actions:

45 (a) Consumption of a plan of merger to which the domestic corporation is a
46 constituent entity:

47 (1) If approval by the stockholders is required for the merger by NRS
48 92A.120 to 92A.160, inclusive, or the articles of incorporation, regardless of
49 whether the stockholder is entitled to vote on the plan of merger; ~~{or}~~

50 (2) If the domestic corporation is a subsidiary and is merged with its parent
51 pursuant to NRS 92A.180 ~~{;}~~ **; or**

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

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

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

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

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

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

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

3. Subject to the limitations in this subsection, from and after 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~~:

(a) *Cash*;

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

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

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

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

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

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

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

Sec. 31. The amendatory provisions of section 20 of this act apply to a limited-liability company ~~organized in this State~~ that filed its original articles of organization:

1. On or after October 1, 2019, ~~it, pursuant to the provisions of chapter 86 of NRS; and~~; *or*

2. Before October 1, 2019, if the limited-liability company ~~expressly~~:

(a) Voluntarily elects to ~~accept~~ be governed by the provisions of section 20 of this act ~~pursuant to an amendment to its articles of organization enacted in accordance with NRS 86.216 or 86.221~~; *or*

(b) Was managed by a sole member before October 1, 2019, and:

(1) Becomes managed by one or more managers on or after October 1, 2019; or

(2) Admits one or more additional members on or after October 1, 2019.