

Amendment No. 252

Senate Amendment to Senate Bill No. 427	(BDR 7-306)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: No 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.



SENATE BILL NO. 427—COMMITTEE ON JUDICIARY

MARCH 22, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to business entities. (BDR 7-306)

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 governing the resignation of registered agents; revising provisions governing the records kept by a corporation and made available for inspection to certain persons; revising provisions concerning certain distributions to stockholders; revising provisions governing meetings of stockholders of corporations; authorizing the removal of a director of a corporation under certain circumstances; revising provisions relating to the appointment of a receiver for a private corporation; establishing the appointment of a receiver for a limited-liability company; revising the definition of “sales representative” for purposes relating to securities; revising provisions relating to limitations on the right of a stockholder to dissent; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires a registered agent who wishes to resign to file a statement of resignation and an affidavit with the Secretary of State stating that written notice was provided to each represented entity. (NRS 77.370) **Section 1** of this bill eliminates the requirement to file such an affidavit ~~and~~ and provides that the statement of resignation must state that written notice of the resignation has been or will be provided to each represented entity from which the agent is resigning.

Existing law regulates business entities, including private corporations. (Chapter 78 of NRS) **Sections 2-9** of this bill revise certain provisions relating to private corporations. Existing law requires a private corporation to keep, among other documents, a stock ledger or duplicate thereof, and make such records available for inspection after a demand by certain persons. (NRS 78.105) **Sections 2-5** of this bill revise such requirements by: (1) clarifying which records must be kept by the corporation and made available for inspection; (2) clarifying which persons are entitled to inspect such records; and (3) revising the requirements to submit a demand to inspect records made available for inspection. **Section 6** of this bill establishes the record date fixed by the board of directors for the purpose of making distributions to stockholders. **Section 8** of this bill authorizes the removal of a director of a corporation under certain circumstances. **Section 9** of this bill revises provisions related to the appointment of a receiver.

Existing law governs the meeting of stockholders, including the requirements for participation and whether a quorum is present at such a meeting. (NRS 78.320) **Section 7** of

this bill revises requirements for determining whether a quorum is present at a meeting of stockholders.

~~[Existing law defines "sales representative" as a natural person who is authorized to act for a broker-dealer or issuer under certain circumstances related to the sale of securities. A partner, officer or director or other similar situated person is authorized to act for a broker-dealer or issuer if such a person comes within the definition. (NRS 90.285) Section 29 of this bill revises that definition by authorizing a partner, officer or director or other similar situated person to act under such circumstances if he or she does not fail to meet certain requirements of the Securities and Exchange Commission.]~~

Existing law provides for the appointment of a receiver for the creditors and stockholders of a private corporation. (NRS 78.630-78.720) **Sections 10-28** of this bill enact similar provisions for a limited-liability company.

Section 30 of this bill expands 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. NRS 77.370 is hereby amended to read as follows:

77.370 1. A registered agent may resign at any time with respect to a represented entity by filing with the Secretary of State a statement of resignation signed by or on behalf of the agent which states:

(a) The name of the entity;

(b) The name of the agent; ~~[and]~~

(c) That the agent resigns from serving as agent for service of process for the entity ~~[and]~~; and

(d) That written notice of the resignation has been or will be provided to each represented entity from which the registered agent is resigning.

2. A statement of resignation takes effect on the earlier of the 31st day after the day on which it is filed or the appointment of a new registered agent for the represented entity.

3. The registered agent shall promptly furnish the represented entity with notice in a record of the date on which a statement of resignation was filed. ~~[and shall file with the Secretary of State an affidavit stating that written notice of the resignation has been provided to each represented entity. The affidavit must include the name of each represented entity that was provided notice, but is not required to include the contact information of the represented entity or the names of the interest holders of the represented entity.]~~ The registered agent shall keep a copy of each notice provided to a represented entity on file for 1 year after the date of filing the statement of resignation and shall make any such copy available to the Secretary of State upon request.

4. When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity may have against the agent or that the agent may have against the entity.

5. A registered agent may resign with respect to a represented entity whether or not the entity is in good standing.

Sec. 2. NRS 78.010 is hereby amended to read as follows:

78.010 1. As used in this chapter:

(a) "Approval" and "vote" as describing action by the directors or stockholders mean the vote of directors in person or by written consent or of stockholders in person, by proxy or by written consent.

(b) “Articles,” “articles of incorporation” and “certificate of incorporation” are synonymous terms and, unless the context otherwise requires, include all certificates filed pursuant to NRS 78.030, 78.180, 78.185, 78.1955, 78.209, 78.380, 78.385, 78.390, 78.725 and 78.730 and any articles of merger, conversion, exchange or domestication filed pursuant to NRS 92A.200 to 92A.240, inclusive, or 92A.270. Unless the context otherwise requires, these terms include restated articles and certificates of incorporation.

(c) “Directors” and “trustees” are synonymous terms.

(d) “Entity” means a foreign or domestic:

- (1) Corporation, whether or not for profit;
- (2) Limited-liability company;
- (3) Limited partnership; or
- (4) Business trust.

(e) “Principal office” means the office, in or out of this State, where the principal executive offices of a domestic or foreign corporation are located.

(f) “Receiver” includes receivers and trustees appointed by a court as provided in this chapter or in chapter 32 of NRS.

(g) “Registered agent” has the meaning ascribed to it in NRS 77.230.

(h) “Registered office” means the office maintained at the street address of the registered agent.

(i) “Stockholder of record” means a person whose name appears on the stock ledger of the corporation ***as the owner of record of shares of any class or series of the stock of the corporation. The term does not include a beneficial owner of shares who is not simultaneously the owner of record of such shares as indicated in the stock ledger.***

2. General terms and powers given in this chapter are not restricted by the use of special terms, or by any grant of special powers contained in this chapter.

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

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 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. ***A corporation is not required to keep a list of any person who is a beneficial owner of any shares who is not simultaneously the stockholder of record of such shares, or any other information concerning any person having an interest in the corporation, except for the stock ledger or duplicate stock ledger required by this paragraph. Absent manifest error or actual fraud, the stock ledger of the corporation, as maintained by the corporation or its designated transfer agent, shall conclusively determine the stockholders of record of the corporation.***

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, ***including the affidavit required pursuant to subsection 3,*** is entitled to inspect in person or by agent or attorney, during usual business hours, the records required by subsection 1 and

1 make copies therefrom. Holders of voting trust certificates representing shares of
2 the corporation must be regarded as stockholders for the purpose of this subsection.
3 If the records required by subsection 1 are kept outside of this State, a stockholder
4 or other person entitled to inspect those records may serve a demand to inspect the
5 records upon the corporation's registered agent. Upon such a request, the
6 corporation shall send copies of the requested records, either in paper or electronic
7 form, to the stockholder or other person entitled to inspect the requested records
8 within 10 business days after service of the request upon the registered agent. Every
9 corporation that neglects or refuses to keep the records required by subsection 1
10 open for inspection, as required in this subsection, shall forfeit to the State the sum
11 of \$25 for every day of such neglect or refusal.

12 3. *Together with the written demand required pursuant to subsection 2, a*
13 *stockholder or other person who wishes to inspect the records required by*
14 *subsection 1 or make copies therefrom shall furnish an affidavit to the*
15 *corporation stating that the inspection is not desired for a purpose which is in the*
16 *interest of a business or object other than the business of the corporation and that*
17 *the stockholder or other person has not at any time sold or offered for sale any*
18 *list of stockholders or any domestic or foreign corporation or aided or abetted any*
19 *person in procuring any such record of stockholders for any such purpose.*

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

26 ~~[4.]~~ 5. In every instance where an attorney or other agent of the stockholder
27 seeks the right of inspection, the demand must be accompanied by a power of
28 attorney signed by the stockholder authorizing the attorney or other agent to inspect
29 on behalf of the stockholder.

30 ~~[5.]~~ 6. The right to copy records under subsection 2 includes, if reasonable,
31 the right to make copies by photographic, xerographic or other means.

32 ~~[6.]~~ 7. The corporation may impose a reasonable charge to recover the costs
33 of labor and materials and the cost of copies of any records provided to the
34 stockholder.

35 **Sec. 4.** NRS 78.107 is hereby amended to read as follows:

36 78.107 1. An inspection authorized by NRS 78.105 may be denied to a
37 stockholder or other person upon the refusal of the stockholder or other person to
38 furnish to the corporation ~~[an] the~~ affidavit ~~[that the inspection is not desired for a~~
39 ~~purpose which is in the interest of a business or object other than the business of the~~
40 ~~corporation and that the stockholder or other person has not at any time sold or~~
41 ~~offered for sale any list of stockholders or any domestic or foreign corporation or~~
42 ~~aided or abetted any person in procuring any such record of stockholders for any~~
43 ~~such purpose.] required pursuant to subsection 3 of NRS 78.105.~~

44 2. It is a defense to any action for penalties or damages under NRS 78.105
45 that the person suing has at any time sold, or offered for sale, any list of
46 stockholders of the corporation, or any other corporation, or has aided or abetted
47 any person in procuring any such stock list for any such purpose, or that the person
48 suing desired inspection for a purpose which is in the interest of a business or
49 object other than the business of the corporation.

50 3. This section does not impair the power or jurisdiction of any court to
51 compel the production for examination of the ~~[books]~~ *records required by*
52 *subsection 1 of [a corporation] NRS 78.105 in any proper case. This subsection*
53 *does not authorize or establish any right of inspection or examination*

1 *independent from the right of inspection or examination authorized by NRS*
2 *78.105.*

3 **Sec. 5.** NRS 78.257 is hereby amended to read as follows:

4 78.257 1. Any person who has been a stockholder of record of any
5 corporation and owns not less than 15 percent of all of the issued and outstanding
6 shares of the stock of such corporation or has been authorized in writing by the
7 holders of at least 15 percent of all its issued and outstanding shares, upon at least 5
8 days' written demand, *including the affidavit required pursuant to subsection 2*, is
9 entitled to inspect in person or by agent or attorney, during normal business hours,
10 the books of account and all financial records of the corporation, to make copies of
11 records, and to conduct an audit of such records. Holders of voting trust certificates
12 representing 15 percent of the issued and outstanding shares of the corporation are
13 regarded as stockholders for the purpose of this subsection. The right of
14 stockholders to inspect the corporate records may not be limited in the articles or
15 bylaws of any corporation.

16 2. *Together with the written demand required pursuant to subsection 1, a*
17 *person who wishes to exercise the rights set forth in subsection 1 shall furnish an*
18 *affidavit to the corporation stating that the inspection, copies or audit is not*
19 *desired for any purpose not related to his or her interest as a stockholder.*


20 3. All costs for making copies of records or conducting an audit must be
21 borne by the person exercising the rights set forth in subsection 1.

22 ~~[3.]~~ 4. The rights authorized by subsection 1 may be denied to any
23 stockholder upon the stockholder's refusal to furnish the corporation an affidavit
24 ~~[that such inspection, copies or audit is not desired for any purpose not related to~~
25 ~~his or her interest in the corporation as a stockholder.]~~ *required pursuant to*
26 *subsection 2.* Any stockholder or other person, exercising rights set forth in
27 subsection 1, who uses or attempts to use information, records or other data
28 obtained from the corporation, for any purpose not related to the stockholder's
29 interest in the corporation as a stockholder, is guilty of a gross misdemeanor.

30 ~~[4.]~~ 5. If any officer or agent of any corporation keeping records in this State
31 willfully neglects or refuses to permit an inspection of the books of account and
32 financial records upon demand by a person entitled to inspect them, or refuses to
33 permit an audit to be conducted ~~[.]~~ *by such a person*, as provided in subsection 1,
34 the corporation shall forfeit to the State the sum of \$100 for every day of such
35 neglect or refusal, and the corporation, officer or agent thereof is jointly and
36 severally liable to the person injured for all damages resulting to the person.

37 ~~[5.]~~ 6. A stockholder who brings an action or proceeding to enforce any right
38 set forth in this section or to recover damages resulting from its denial:

39 (a) Is entitled to costs and reasonable attorney's fees, if the stockholder
40 prevails; or

41 (b) Is liable for such costs and fees, if the stockholder does not prevail,
42  in the action or proceeding.

43 ~~[6.]~~ 7. Except as otherwise provided in this subsection, the provisions of this
44 section do not apply to any corporation that furnishes to its stockholders a detailed,
45 annual financial statement or any corporation that has filed during the preceding 12
46 months all reports required to be filed pursuant to section 13 or section 15(d) of the
47 Securities Exchange Act of 1934. A person who owns, or is authorized in writing
48 by the owners of, at least 15 percent of the issued and outstanding shares of the
49 stock of a corporation that has elected to be governed by subchapter S of the
50 Internal Revenue Code and whose shares are not listed or traded on any recognized
51 stock exchange is entitled to inspect the books of the corporation pursuant to
52 subsection 1 and has the rights, duties and liabilities provided in subsections 2 to
53 ~~[5.]~~ 6, inclusive.

Sec. 6. 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, 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 the time of distribution, to satisfy the preferential rights upon 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.

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. The board of directors may fix a record date for determining stockholders entitled to a distribution authorized by the board of directors pursuant to this section, which record date must not precede the date upon which the resolution fixing the record date is adopted.

Sec. 7. 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:

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

4 (b) Action by the stockholders on a matter other than the election of directors is
5 approved if the number of votes cast in favor of the action exceeds the number of
6 votes cast in opposition to the action.

7 2. Unless otherwise provided in the articles of incorporation or the bylaws,
8 any action required or permitted to be taken at a meeting of the stockholders may
9 be taken without a meeting if, before or after the action, a written consent thereto is
10 signed by stockholders holding at least a majority of the voting power, except that
11 if a different proportion of voting power is required for such an action at a meeting,
12 then that proportion of written consents is required.

13 3. In no instance where action is authorized by written consent need a meeting
14 of stockholders be called or notice given.

15 4. Unless otherwise restricted by the articles of incorporation or bylaws,
16 stockholders may participate in a meeting of stockholders through electronic
17 communications, videoconferencing, teleconferencing or other available technology
18 if the corporation has implemented reasonable measures to:

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

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

25 5. If authorized in the articles of incorporation or bylaws, a meeting of
26 stockholders may be held solely by remote communication pursuant to subsection
27 4.

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

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

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

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

38 *8. Unless otherwise provided in the articles of incorporation or the bylaws,*
39 *once a share is represented in person or by proxy for any purpose at a meeting,*
40 *the share shall be deemed present for purposes of determining a quorum for the*
41 *remainder of the meeting and for any adjournment of the meeting unless a new*
42 *record date is or must be fixed for the adjourned meeting.*

43 **Sec. 8.** NRS 78.335 is hereby amended to read as follows:

44 78.335 1. Except as otherwise provided in this section, any director or one
45 or more of the incumbent directors may be removed ~~from office~~ *as a director only*
46 by the vote of stockholders representing not less than two-thirds of the voting
47 power of the issued and outstanding stock entitled to vote.

48 2. In the case of corporations which have provided in their articles of
49 incorporation for the election of directors by cumulative voting, any director or
50 directors who constitute fewer than all of the incumbent directors may not be
51 removed ~~from office~~ *as a director* at any one time or as the result of any one
52 transaction under the provisions of this section except upon the vote of stockholders

owning sufficient shares to prevent each director's election ~~[to office]~~ at the time of removal.

3. The articles of incorporation may require the concurrence of more than two-thirds of the voting power of the issued and outstanding stock entitled to vote in order to remove one or more directors. ~~[from office.]~~

4. Whenever the holders of any class or series of shares are entitled to elect one or more directors, unless otherwise provided in the articles of incorporation, removal of any such director requires only the proportion of votes, specified in subsection 1, of the holders of that class or series, and not the votes of the outstanding shares as a whole.

5. All vacancies, including those caused by an increase in the number of directors, may be filled by a majority of the remaining directors, though less than a quorum, unless it is otherwise provided in the articles of incorporation.

6. Unless otherwise provided in the articles of incorporation, when ~~[one or more directors give]~~ *any director gives* notice of resignation to the board, effective at a future date, the board may fill the vacancy ~~[or vacancies]~~ to take effect when the resignation ~~[or resignations become]~~ *becomes* effective ~~[each]~~. *The* director so appointed *is* to hold ~~[office]~~ *such position* during the remainder of the term of office of the resigning director. ~~[or directors.]~~

7. If the articles or bylaws provide that the holders of any class or series of shares are entitled to elect one or more directors under specified circumstances and that, upon termination of those specified circumstances, the right terminates and the directors elected by the holders of the class or series of shares are no longer directors, the termination of a director pursuant to such provisions in the articles or bylaws shall not be deemed a removal of the director pursuant to this section.

8. If a court of competent jurisdiction, or other governmental entity or regulatory agency with authority over the corporation requires, without providing any other reasonable and practicable alternative, that any specified director of a corporation cease to be a director in order for the corporation to obtain, or avoid the suspension, conditioning or revocation of, any permit, license, registration, franchise, finding of suitability or similar authorization or approval required for the conduct of all or any material portion of the business of the corporation or any of its affiliates taken as a whole and such requirement is not appealable or has otherwise become final after declination or exhaustion of all appeals therefrom, then that specified director may be removed as a director by not less than a majority of the voting power of the other directors, even if less than a quorum, acting at a meeting and not by written consent and without a vote of the stockholders.

Sec. 9. NRS 78.650 is hereby amended to read as follows:

78.650 1. Any holder or holders of one-tenth of the issued and outstanding stock may apply to the district court in the county in which the corporation has its principal place of business or, if the principal place of business is not located in this State, to the district court in the county in which the corporation's registered office is located, for an order ~~[dissolving the corporation and]~~ appointing a receiver, ~~[to wind up its affairs.]~~ and by injunction restrain the corporation from exercising any of its powers or doing business whatsoever, except by and through a receiver appointed by the court, whenever ~~[]~~ *irreparable injury to the corporation is threatened or being suffered and:*

(a) The corporation has willfully violated its charter;

(b) Its trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs ~~[]~~ *and any presumption established by subsection 3 has been rebutted with respect to such conduct or control;*

1 (c) ~~[(c) Its trustees or directors have been guilty of misfeasance, malfeasance or~~
2 ~~nonfeasance;~~

3 ~~—(d) The corporation is unable to conduct the business or conserve its assets by~~
4 ~~reason of the act, neglect or refusal to function of any of the directors or trustees;~~

5 ~~—(e)] The assets of the corporation are in danger of waste, sacrifice or loss~~
6 ~~through attachment, foreclosure, litigation or otherwise;~~

7 ~~[(f) The corporation has abandoned its business;~~

8 ~~—(g)] or~~

9 (d) The corporation *has dissolved, but* has not proceeded diligently to wind up
10 its affairs, or to distribute its assets in a reasonable time . ~~[(f)~~

11 ~~—(h) The corporation has become insolvent;~~

12 ~~—(i) The corporation, although not insolvent, is for any cause not able to pay its~~
13 ~~debts or other obligations as they mature; or~~

14 ~~—(j) The corporation is not about to resume its business with safety to the~~
15 ~~public.]~~

16 2. The application may be for the appointment of a receiver, without at the
17 same time applying for the dissolution of the corporation, and notwithstanding the
18 absence, if any there be, of any action or other proceeding in the premises pending
19 in such court.

20 3. In any such application for a receivership, it is sufficient for a temporary
21 appointment if notice of the same is given to the corporation alone, by process as in
22 the case of an application for a temporary restraining order or injunction, and the
23 hearing thereon may be had after 5 days' notice unless the court directs a longer or
24 different notice and different parties.

25 4. The court may, if good cause exists therefor, appoint one or more receivers
26 for such purpose, but in all cases directors or trustees who have been guilty of no
27 negligence nor active breach of duty must be preferred in making the appointment.
28 The court may at any time for sufficient cause make a decree terminating the
29 receivership, or dissolving the corporation and terminating its existence, or both, as
30 may be proper.

31 5. Receivers so appointed have, among the usual powers, all the functions,
32 powers, tenure and duties to be exercised under the direction of the court as are
33 conferred on receivers and as provided in NRS 78.635, 78.640 and 78.645, whether
34 the corporation is insolvent or not.

35 6. *The ownership requirement set forth in subsection 1 must be maintained*
36 *from the date and throughout the pendency of the application for the*
37 *appointment of a receiver of the corporation.*

38 **Sec. 10.** Chapter 86 of NRS is hereby amended by adding thereto the
39 provisions set forth as sections 11 to 28, inclusive, of this act.

40 **Sec. 11. 1.** *Whenever any limited-liability company becomes insolvent or*
41 *suspends its ordinary business for want of money to carry on the business, or if*
42 *its business has been and is being conducted at a great loss and greatly*
43 *prejudicial to the interest of its creditors or members, any creditors holding 10*
44 *percent of the outstanding indebtedness, or members owning either 10 percent of*
45 *the outstanding member's interests or 10 percent of the voting power of the*
46 *company, may, by petition setting forth the facts and circumstances of the case,*
47 *apply to the district court of the county in which the principal office of the*
48 *company is located or, if the principal office is not located in this State, to the*
49 *district court in the county in which the company's registered office is located for*
50 *a writ of injunction and the appointment of a receiver or receivers or trustee or*
51 *trustees.*

52 2. *The court, being satisfied by affidavit or otherwise of the sufficiency of*
53 *the application and of the truth of the allegations contained in the petition and*

1 upon hearing after such notice as the court by order may direct, shall proceed in
2 a summary way to hear the affidavits, proofs and allegations which may be
3 offered in behalf of the parties.

4 3. If, upon such inquiry it appears to the court that the company has
5 become insolvent and is not about to resume its business in a short time
6 thereafter, or that its business has been and is being conducted at a great loss and
7 greatly prejudicial to the interests of its creditors or members so that its business
8 cannot be conducted with safety to the public, it may issue an injunction to
9 restrain the company and its managers, managing members, officers and agents
10 from exercising any of its privileges or franchises and from collecting or
11 receiving any debts or paying out, selling, assigning or transferring any of its
12 estate, money, lands, tenements or effects, except to a receiver appointed by the
13 court, until the court otherwise orders.

14 4. The rights of a member set forth in this section may be exercised by a
15 noneconomic member if specifically set forth in the articles of organization or the
16 operating agreement.

17 **Sec. 12.** 1. The district court, at the time of ordering the injunction, or at
18 any time afterwards, may appoint a receiver or receivers or a trustee or trustees
19 for the creditors and members of the limited-liability company.

20 2. Receivers or trustees shall have full power and authority:

21 (a) To demand, sue for, collect, receive and take into possession all the goods
22 and chattels, rights and credits, moneys and effects, lands and tenements, books,
23 papers, choses in action, bills, notes and property, of every description of the
24 company;

25 (b) To institute suits at law or in equity for the recovery of any estate,
26 property, damages or demands existing in favor of the company;

27 (c) In their discretion to compound and settle with any debtor or creditor of
28 the company, or with persons having possession of its property or in any way
29 responsible at law or in equity to the company at the time of its insolvency or
30 suspension of business, or afterwards, upon such terms and in such manner as
31 they shall deem just and beneficial to the company; and

32 (d) In case of mutual dealings between the company and any person to allow
33 just setoffs in favor of such person in all cases in which the same ought to be
34 allowed according to law and equity.

35 3. A debtor who shall have in good faith paid a debt to the company without
36 notice of its insolvency or suspension of business, shall not be liable therefor, and
37 the receiver or receivers or trustee or trustees shall have power to sell, convey and
38 assign all the estate, rights and interests, and shall hold and dispose of the
39 proceeds thereof under the directions of the district court.

40 **Sec. 13.** All real and personal property of an insolvent limited-liability
41 company, wheresoever situated, and all its franchises, rights, privileges and
42 effects shall, upon the appointment of a receiver, forthwith vest in the receiver,
43 and the company shall be divested of the title thereto.

44 **Sec. 14.** 1. Whenever a receiver shall have been appointed pursuant to
45 section 12 of this act and it shall afterwards appear that the debts of the limited-
46 liability company have been paid or provided for, and that there remains or can
47 be obtained by further contributions sufficient capital to enable it to resume its
48 business, the district court may, in its discretion, a proper case being shown,
49 direct the receiver to reconvey to the company all its property, franchises, rights
50 and effects, and thereafter the company may resume control of and enjoy the
51 same as fully as if the receiver had never been appointed.

1 2. In every case in which the district court shall not direct such
2 reconveyance, the court may, in its discretion, make a decree dissolving the
3 company and declaring its charter forfeited and void.

4 **Sec. 15.** 1. Any member owning either 10 percent of the outstanding
5 member's interests or 10 percent of the voting power of the limited-liability
6 company may apply to the district court in the county in which the company has
7 its principal place of business or, if the principal place of business is not located
8 in this State, to the district court in the county in which the company's registered
9 office is located, for an order appointing a receiver, and by injunction restrain
10 the company from exercising any of its powers or doing business whatsoever,
11 except by and through a receiver appointed by the court, whenever irreparable
12 injury to the company is threatened or being suffered and:

13 (a) The company has willfully violated its charter;

14 (b) Its managers or managing members have been guilty of fraud or
15 collusion or gross mismanagement in the conduct or control of its affairs and the
16 presumption established by subsection 3 has been rebutted with respect to such
17 conduct or control;

18 (c) The assets of the company are in danger of waste, sacrifice or loss
19 through attachment, foreclosure, litigation or otherwise; or

20 (d) The company has dissolved, but has not proceeded diligently to wind up
21 its affairs, or to distribute its assets in a reasonable time.

22 2. The application may be for the appointment of a receiver, without at the
23 same time applying for the dissolution of the company, and notwithstanding the
24 absence, if any there be, of any action or other proceeding in the premises
25 pending in such court.

26 3. In any such application for a receivership, it is sufficient for a temporary
27 appointment if notice of the same is given to the company alone, by process as in
28 the case of an application for a temporary restraining order or injunction, and
29 the hearing thereon may be had after 5 days' notice unless the court directs a
30 longer or different notice and different parties.

31 4. The court may, if good cause exists therefor, appoint one or more
32 receivers for such purpose, but in all cases managers or managing members who
33 have been guilty of no negligence nor active breach of duty must be preferred in
34 making the appointment. The court may at any time for sufficient cause make a
35 decree terminating the receivership, or dissolving the company and terminating
36 its existence, or both, as may be proper.

37 5. Receivers so appointed have, among the usual powers, all the functions,
38 powers, tenure and duties to be exercised under the direction of the court as are
39 conferred on receivers and as provided pursuant to sections 12, 13 and 14 of this
40 act, whether the company is insolvent or not.

41 6. The requirement as to ownership or voting set forth in subsection 1 shall
42 be maintained from the date of and throughout the pendency of the application
43 for the appointment of a receiver of the company.

44 7. The rights of a member set forth in this section may be exercised by a
45 noneconomic member if specifically set forth in the articles of organization or the
46 operating agreement.

47 **Sec. 16.** Whenever members holding member's interests entitling them to
48 exercise at least a majority of the voting power of the limited-liability company
49 shall have agreed upon a plan for the reorganization of the company and a
50 resumption by it of the management and control of its property and business, the
51 company may, with the consent of the district court:

1 1. *Upon the reconveyance to it of its property and franchises, mortgage the*
2 *same for such amount as may be necessary for the purposes of reorganization;*
3 *and*

4 2. *Issue bonds or other evidences of indebtedness, or additional member's*
5 *interests of one or more classes, or both bonds and member's interests, or*
6 *certificates of investment or participation certificates, and use the same for the*
7 *full or partial payment of the creditors who will accept the same, or otherwise*
8 *dispose of the same for the purposes of the reorganization.*

9 **Sec. 17.** *1. The court shall have power to send for persons and papers and*
10 *to examine any persons, including the creditors and claimants, and the*
11 *managers, managing members, officers and agents of the limited-liability*
12 *company, on oath or affirmation, respecting its affairs and transactions and its*
13 *estate, money, goods, chattels, credits, notes, bills and choses in action, real and*
14 *personal estate and effects of every kind, and also respecting its debts,*
15 *obligations, contracts and liabilities, and the claims against it.*

16 2. *If any person shall refuse to be sworn or affirmed, or to make answers to*
17 *such questions as shall be put to the person, or refuse to declare the whole truth*
18 *touching the subject matter of the examination, the district court may commit*
19 *such person to a place of confinement, there to remain until the person shall*
20 *submit to be examined and pay all the costs of the proceedings against the*
21 *person.*

22 **Sec. 18.** *The receiver, upon order of the court, with the assistance of a*
23 *peace officer, may break open, in the daytime, the houses, shops, warehouses,*
24 *doors, trunks, chests or other places of the limited-liability company where any of*
25 *its goods, chattels, choses in action, notes, bills, moneys, books, papers or other*
26 *writings or effects have been usually kept, or shall be, and take possession of the*
27 *same and of the lands and tenements belonging to the company.*

28 **Sec. 19.** *The receiver, as soon as convenient, shall lay before the district*
29 *court a full and complete inventory of all the estate, property and effects of the*
30 *limited-liability company, its nature and probable value, and an account of all*
31 *debts due from and to it, as nearly as the same can be ascertained, and make a*
32 *report to the court of his or her proceedings at least every 3 months thereafter*
33 *during the continuance of the trust, and whenever the receiver shall be so*
34 *ordered.*

35 **Sec. 20.** *All creditors shall present and make proof to the receiver of their*
36 *respective claims against the limited-liability company within 6 months from the*
37 *date of appointment of the receiver or trustee for the company, or sooner if the*
38 *court shall order and direct, and all creditors and claimants failing to do so*
39 *within the time limited by this section, or the time prescribed by the order of the*
40 *court, shall by the direction of the court be barred from participating in the*
41 *distribution of the assets of the company. The court shall also prescribe what*
42 *notice, by publication or otherwise, shall be given to creditors of such limitation*
43 *of time.*

44 **Sec. 21.** *Every claim against any limited-liability company for which a*
45 *receiver has been appointed shall be presented to the receiver in writing and upon*
46 *oath. The claimant, if required, shall submit to such examination in relation to*
47 *the claim as the court shall direct, and shall produce such books and papers*
48 *relating to the claim as shall be required. The court shall have power to authorize*
49 *the receiver to examine, under oath or affirmation, all witnesses produced before*
50 *the receiver touching the claim or any part thereof.*

51 **Sec. 22.** *1. The clerk of the district court, immediately upon the*
52 *expiration of the time fixed for the filing of claims, shall notify the trustee or*
53 *receiver of the filing of the claims. The trustee or receiver shall inspect the claims*

1 *and within 30 days notify each claimant of his or her decision. The trustee or*
2 *receiver may require all creditors whose claims are disputed to submit themselves*
3 *to an examination in relation to their claims, and to produce such books and*
4 *papers relating to their claims as the trustee or receiver requests. The trustee or*
5 *receiver may examine, under oath or affirmation, all witnesses produced before*
6 *him or her regarding the claims, and shall pass upon and allow or disallow the*
7 *claims, or any part thereof, and notify the claimants of the determination.*

8 *2. Every creditor or claimant who has received notice from the receiver or*
9 *trustee that his or her claim has been disallowed in whole or in part may appeal*
10 *to the district court within 30 days thereafter. The court, after a hearing, shall*
11 *determine the rights of the parties.*

12 **Sec. 23.** *1. A receiver, upon application by him or her, shall be*
13 *substituted as party plaintiff or complainant in the place and stead of the limited-*
14 *liability company in any suit or proceeding at law or in equity which was pending*
15 *at the time of the receiver's appointment.*

16 *2. No action against a receiver of a company shall abate by reason of the*
17 *receiver's death, but, upon suggestion of the facts on the record, shall be*
18 *continued against the receiver's successor, or against the company in case no*
19 *new receiver be appointed.*

20 **Sec. 24.** *Where property of an insolvent limited-liability company is at the*
21 *time of the appointment of a receiver encumbered with mortgages or other liens,*
22 *the legality of which is brought in question, or the property is of a character*
23 *which will materially deteriorate in value pending the litigation, the district court*
24 *may order the receiver to sell the same, clear of encumbrances, at public or*
25 *private sale, for the best price that can be obtained, and pay the money into court,*
26 *there to remain subject to the same liens and equities of all parties in interest as*
27 *was the property before sale, to be disposed of as the court shall direct.*

28 **Sec. 25.** *Before distribution of the assets of an insolvent limited-liability*
29 *company among the creditors or members, the district court shall allow a*
30 *reasonable compensation to the receiver for his or her services and the costs and*
31 *expenses of the administration of the trust, and the cost of the proceedings in the*
32 *court, to be first paid out of the assets.*

33 **Sec. 26.** *After payment of all allowances, expenses and costs, and the*
34 *satisfaction of all special and general liens upon the funds of the limited-liability*
35 *company to the extent of their lawful priority, the creditors shall be paid*
36 *proportionately to the amount of their respective debts, excepting mortgage and*
37 *judgment creditors when the judgment has not been by confession for the*
38 *purpose of preferring creditors. The creditors shall be entitled to distribution on*
39 *debts not due, making in such case a rebate of interest, when interest is not*
40 *accruing on the same. Unless otherwise provided in the articles of organization*
41 *or operating agreement, the surplus funds, if any, after payment of the creditors*
42 *and the costs, expenses and allowances, shall be distributed among the members*
43 *or their legal representatives in respect of their contributions to capital.*

44 **Sec. 27.** *1. Every matter and thing by this chapter required to be done by*
45 *receivers or trustees shall be good and effectual, to all intents and purposes, if*
46 *performed by a majority of them.*

47 *2. The district court may remove any receiver or trustee and appoint*
48 *another or others in his or her place to fill any vacancy which may occur.*

49 **Sec. 28.** *1. Whenever any limited-liability company becomes insolvent or*
50 *is dissolved in any way or for any cause, the employees doing labor or service, of*
51 *whatever character, in the regular employ of the company, have a lien upon the*
52 *assets thereof for the amount of wages due to them, not exceeding \$1,000, which*

1 *have been earned within 3 months before the date of the insolvency or*
2 *dissolution, which must be paid before any other debt of the company.*

3 *2. The word "employees" does not include any of the managers or*
4 *managing members of the company.*

5 **Sec. 29.** ~~NRS 90.285 is hereby amended to read as follows:~~
6 ~~90.285 "Sales representative" means a natural person other than a broker~~
7 ~~dealer, authorized to act and acting for a broker dealer or issuer effecting or~~
8 ~~attempting to effect purchases or sales of securities. A partner, officer or director of~~
9 ~~a broker dealer or issuer, or a person occupying a similar status or performing~~
10 ~~similar functions, is a sales representative only if he or she otherwise comes within~~
11 ~~the definition.] fails to satisfy the requirements set forth in Rule 3a4-1 under the~~
12 ~~Securities Exchange Act of 1934, 17 C.F.R. § 240.3a4-1.] (Deleted by~~
13 ~~amendment.)~~

14 **Sec. 30.** NRS 92A.390 is hereby amended to read as follows:

15 92A.390 1. There is no right of dissent with respect to a plan of merger,
16 conversion or exchange in favor of stockholders of any class or series which is:

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

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

23 (c) Issued by an open end management investment company registered with
24 the Securities and Exchange Commission under the Investment Company Act of
25 1940, 15 U.S.C. §§ 80a-1 et seq., as amended, and which may be redeemed at the
26 option of the holder at net asset value,

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

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

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

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

36 3. Subsection 1 is not applicable and dissenter's rights are available pursuant
37 to NRS 92A.380 for the holders of any class or series of shares who are required by
38 the terms of the corporate action requiring dissenter's rights to accept for such
39 shares anything other than cash or shares of any class or any series of shares of any
40 corporation, or any other proprietary interest of any other entity, that satisfies the
41 standards set forth in subsection 1 at the time the corporate action becomes
42 effective.

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

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

49 *6. There is no right of dissent with respect to any share of stock that was not*
50 *issued and outstanding on the date of the first announcement to the news media*
51 *or to the stockholders of the terms of the proposed action requiring dissenter's*
52 *rights.*