

SENATE BILL NO. 304—SENATOR CANCELA

MARCH 18, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to corporations. (BDR 7-573)

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 corporations; providing that certain legal claims of a foreign corporation or other business entity become the property of a domestic corporation that acquires the foreign corporation or other business entity; enacting various provisions relating to internal corporate claims; requiring the Secretary of State to conduct a study relating to fee-shifting provisions in the context of internal corporate claims; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law contains a legislative finding and declaration that Nevada law governs the incorporation and internal affairs of a domestic corporation and the rights, privileges, powers, duties and liabilities, if any, of its directors, officers and stockholders. (NRS 78.012) **Section 2** of this bill provides that all legal claims belonging to any corporation or other business entity organized under the laws of any other state or other foreign jurisdiction become the property of, and transfer to, any domestic corporation that acquires the corporation or other business entity.

The remaining sections of this bill enact provisions relating to internal corporate claims. As defined in **section 4** of this bill, an internal corporate claim means a claim, including, without limitation, a claim in the right of the corporation, that is based upon an alleged violation of a duty owed to the corporation by a current or former director, officer or stockholder acting in such a capacity.

Section 2 of this bill provides that: (1) if any merger, acquisition, reincorporation or other combination is approved by a majority of stockholders who are not interested stockholders, any provision in the articles of incorporation or the bylaws of a domestic corporation that imposes liability on a stockholder for the attorney’s fees, costs and expenses of the corporation or any other party in connection with an unsuccessful internal corporate claim applies to stockholders of the domestic corporation who assert legal claims arising out of the prior entity’s



20 conduct of its internal affairs; (2) regardless of whether or not a corporation has
21 included in its articles of incorporation or bylaws any provision imposing liability
22 on a stockholder for the attorney's fees, costs and expenses of the corporation or
23 any other party in connection with an unsuccessful internal corporate claim, the
24 corporation retains the right to file a motion to require the furnishing of security;
25 and (3) no provision of the articles of incorporation or the bylaws of a corporation
26 may prohibit bringing an internal corporate claim in the courts of Nevada.

27 **Section 3** of this bill allows the Secretary of State to authorize, by regulation,
28 any lawyer or law firm representing a stockholder in connection with an internal
29 corporate claim to indemnify the stockholder for any liability for attorney's fees,
30 costs and expenses of the corporation or any other party incurred as a result of
31 bringing an unsuccessful internal corporate claim.

32 Existing law provides that the articles of incorporation of a corporation may
33 contain any provision, not contrary to Nevada law, creating, defining, limiting or
34 regulating the powers of the corporation or the rights, powers or duties of the
35 directors, the officers or the stockholders, or any class of the stockholders. (NRS
36 78.037) **Section 5** of this bill authorizes a corporation to include in its articles of
37 incorporation a provision: (1) that any internal corporate claim must be brought
38 solely and exclusively in the courts of Nevada; (2) that a stockholder who is
39 pursuing any internal corporate claim in a jurisdiction other than the courts of
40 Nevada consents to personal jurisdiction in the courts of Nevada; or (3) imposing
41 liability on a stockholder for the attorney's fees, costs and expenses of the
42 corporation or any other party in connection with an unsuccessful internal corporate
43 claim.

44 **Section 6** of this bill requires the Secretary of State to conduct a 3-year study of
45 fee-shifting provisions in the context of internal corporate claims and their impact
46 on stockholders, corporate governance and the business environment in this State.

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

1 **Section 1.** Chapter 78 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 and 3 of this act.

3 **Sec. 2. 1.** *All legal claims belonging to any corporation or*
4 *other business entity organized under the laws of any other state*
5 *or other foreign jurisdiction become the property of, and transfer*
6 *to, any domestic corporation that acquires the corporation or other*
7 *business entity.*

8 *2. If any merger, acquisition, reincorporation or other*
9 *combination is approved by a majority of stockholders who are not*
10 *interested stockholders as defined in NRS 78.3787 or 78.423, any*
11 *provision in the articles of incorporation or the bylaws of a*
12 *domestic corporation that imposes liability on a stockholder for*
13 *the attorney's fees, costs and expenses of the corporation or any*
14 *other party in connection with an unsuccessful internal corporate*
15 *claim applies to stockholders of the domestic corporation who*
16 *assert legal claims arising out of the prior entity's conduct of its*
17 *internal corporate affairs.*



1 **3. Regardless of whether or not a corporation has included in**
2 **its articles of incorporation or bylaws any provision imposing**
3 **liability on a stockholder for the attorney's fees, costs and**
4 **expenses of the corporation or any other party in connection with**
5 **an unsuccessful internal corporate claim, the corporation retains**
6 **the right to file a motion to require the furnishing of security**
7 **pursuant to NRS 41.520.**

8 **4. No provision of the articles of incorporation or the bylaws**
9 **of a corporation may prohibit bringing an internal corporate**
10 **claim in the courts of this State.**

11 **Sec. 3. The Secretary of State may, by regulation, authorize**
12 **any lawyer or law firm representing a stockholder in connection**
13 **with an internal corporate claim to indemnify the stockholder for**
14 **any liability for attorney's fees, costs and expenses of the**
15 **corporation or any other party incurred as a result of bringing an**
16 **unsuccessful internal corporate claim.**

17 **Sec. 4.** NRS 78.010 is hereby amended to read as follows:

18 78.010 1. As used in this chapter:

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

22 (b) "Articles," "articles of incorporation" and "certificate of
23 incorporation" are synonymous terms and, unless the context
24 otherwise requires, include all certificates filed pursuant to NRS
25 78.030, 78.180, 78.185, 78.1955, 78.209, 78.380, 78.385, 78.390,
26 78.725 and 78.730 and any articles of merger, conversion, exchange
27 or domestication filed pursuant to NRS 92A.200 to 92A.240,
28 inclusive, or 92A.270. Unless the context otherwise requires, these
29 terms include restated articles and certificates of incorporation.

30 (c) "Directors" and "trustees" are synonymous terms.

31 (d) "Entity" means a foreign or domestic:

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

36 (e) **"Internal corporate claim" means a claim, including,**
37 **without limitation, a claim in the right of the corporation, that is**
38 **based upon an alleged violation of a duty owed to the corporation**
39 **by a current or former director, officer or stockholder acting in**
40 **such a capacity.**

41 (f) "Principal office" means the office, in or out of this State,
42 where the principal executive offices of a domestic or foreign
43 corporation are located.

44 ~~(f)~~ (g) "Receiver" includes receivers and trustees appointed by
45 a court as provided in this chapter or in chapter 32 of NRS.



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

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

5 ~~(i)~~ (j) “Stockholder of record” means a person whose name
6 appears on the stock ledger of the corporation.

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

10 **Sec. 5.** NRS 78.037 is hereby amended to read as follows:

11 78.037 The articles of incorporation may also contain any
12 provision, not contrary to the laws of this State:

13 1. For the management of the business and for the conduct of
14 the affairs of the corporation. ~~(j)~~

15 2. Creating, defining, limiting or regulating the powers of the
16 corporation or the rights, powers or duties of the directors, the
17 officers or the stockholders, or any class of the stockholders, or
18 the holders of bonds or other obligations of the corporation ~~(j),~~
19 *including, without limitation, a provision:*

20 *(a) That any internal corporate claim must be brought solely*
21 *and exclusively in the courts of this State;*

22 *(b) That a stockholder who is pursuing any internal corporate*
23 *claim in a jurisdiction other than the courts of this State consents*
24 *to personal jurisdiction in the courts of this State; or*

25 *(c) Imposing liability on a stockholder for the attorney’s fees,*
26 *costs and expenses of the corporation or any other party in*
27 *connection with an unsuccessful internal corporate claim.*

28 3. Governing the distribution or division of the profits of the
29 corporation.

30 **Sec. 6.** 1. Beginning on October 1, 2019, the Secretary of
31 State shall conduct a 3-year study of fee-shifting provisions in the
32 context of internal corporate claims and their impact on
33 stockholders, corporate governance and the business environment in
34 this State.

35 2. On or before January 1, 2023, the Secretary of State shall
36 submit a report of the results of the study to the Director of the
37 Legislative Counsel Bureau for transmittal to the 82nd Session of
38 the Nevada Legislature.

39 3. As used in this section, “internal corporate claim” means a
40 claim, including, without limitation, a claim in the right of the
41 corporation, that is based upon an alleged violation of a duty owed
42 to the corporation by a current or former director, officer or
43 stockholder acting in such a capacity.

