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OCT 20 2014

IN THE SUPREME COURT OF
THE STATE OF NEVADA

TRACIE K. LINDEMAN
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Ernest A. Becker, IV, INDIVIDUALLY,
ERNEST A. BECKER, IV and KATHLEEN
BECKER AS TRUSTEES OF THE ERNEST A.
BECKER IV and KATHLEEN C. BECKER
FAMILY TRUST; EB FAMILY HOLDINGS,
LLC; KIMBERLY RIGGS; SALLIE BECKER;
BRIAN BECKER; and WILLIAM A.
LEONARD, TRUSTEE,

SUPREME COURT NO. 65335

On Certification from United
States Bankruptcy Court for the
District of Nevada

Case No. BK-S-13-14932-BTB

Appellants,

vs.

ERNEST A. BECKER, V,

Respondent.

ADDENDUM TO APPELLANTS' OPENING BRIEF

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CERTIFICATE OF SERVICE

I certify that on the 15th day of October, 2014, I served a copy of this ADDENDUM TO APPELLANTS' OPENING BRIEF by mailing it by first class mail with sufficient postage prepaid to the following address(es):

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/s/ Maureen E. Marella
Maureen E. Marella
An Employee of Nitz, Walton & Heaton, Ltd.



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*** Current through PL 113-163, approved 2/8/14 ***

TITLE 11. BANKRUPTCY
CHAPTER 5. CREDITORS, THE DEBTOR, AND THE ESTATE
SUBCHAPTER II. DEBTOR'S DUTIES AND BENEFITS

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11 USCS § 522

THE CASE NOTES SEGMENT OF THIS DOCUMENT HAS BEEN SPLIT INTO 2 DOCUMENTS.
THIS IS PART-1.

USE THE BROWSE FEATURE TO REVIEW THE OTHER PART(S).

§ 522. Exemptions

(a) In this section—

- (1) "dependent" includes spouse, whether or not actually dependent; and
- (2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) (1) Notwithstanding section 541 of this title [11 USCS § 541], an individual debtor may exempt from property of the estate the property listed in either paragraph (2) or, in the alternative, paragraph (3) of this subsection. In joint cases filed under section 302 of this title [11 USCS § 302] and individual cases filed under section 301 or 303 of this title [11 USCS § 301 or 303] by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

(3) Property listed in this paragraph is—

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law; and

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(a)].

If the effect of the dispositive requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986 [26 USCS § 7805], and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805 [26 USCS § 7805], those funds are exempt from the estate if the debtor demonstrates that—

(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

(ii) (I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 [26 USCS §§ 1 et seq.]; or

(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 [26 USCS §§ 1 et seq.] and the debtor is not materially responsible for that failure.

(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(a)], under section 401(a)(31) of the Internal Revenue Code of 1986 [26 USCS § 401(a)(31)], or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(D) (i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 [26 USCS § 402(c)] or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

(ii) A distribution described in this clause is an amount that—

(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 [26 USCS § 401, 403, 408, 408A, 414, 457, or 501(a)]; and

(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title [11 USCS § 502] as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) [11 USCS § 523(a)] (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

(2) a debt secured by a lien that is—

(A) (i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title [11 USCS § 544, 545, 547, 548, 549, or 724(a)]; and

(ii) not void under section 506(d) of this title [11 USCS § 506(d)]; or

(B) a tax lien, notice of which is properly filed;

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title [11 USCS § 523(a)(4) or 523(a)(6)] owed by an institution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) The following property may be exempted under subsection (b)(2) of this section:

(1) The debtor's aggregate interest, not to exceed \$ 22,975 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed \$ 3,675 in value, in one motor vehicle.



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TITLE 11. BANKRUPTCY
CHAPTER 5. CREDITORS, THE DEBTOR, AND THE ESTATE
SUBCHAPTER III. THE ESTATE

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11 USCS § 544

§ 544. Trustee as lien creditor and as successor to certain creditors and purchasers

(a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by—

(1) a creditor that extends credit to the debtor at the time of the commencement of the case, and that obtains, at such time and with respect to such credit, a judicial lien on all property on which a creditor on a simple contract could have obtained such a judicial lien, whether or not such a creditor exists;

(2) a creditor that extends credit to the debtor at the time of the commencement of the case, and obtains, at such time and with respect to such credit, an execution against the debtor that is returned unsatisfied at such time, whether or not such a creditor exists; or

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

(b) (1) Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title [11 USCS § 502] or that is not allowable only under section 502(e) of this title [11 USCS § 502(e)].

(2) Paragraph (1) shall not apply to a transfer of a charitable contribution (as that term is defined in section 548(d)(3) [11 USCS § 548(d)(3)]) that is not covered under section 548(a)(1)(B) [11 USCS § 548(a)(1)(B)], by reason of section 548(a)(2) [11 USCS § 548(a)(2)]. Any claim by any person to recover a transferred contribution described in the preceding sentence under Federal or State law in a Federal or State court shall be preempted by the commencement of the case.

HISTORY:

(Nov. 6, 1978, P.L. 95-598, Title I, § 101, 92 Stat. 2596; July 10, 1984, P.L. 98-353, Title III, Subtitle H, § 459, 98 Stat. 377; June 19, 1998, P.L. 105-183, § 3(b), 112 Stat. 518.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

**NEVADA
COMPILED LAWS
SUPPLEMENT
1931—1941**

**CONTAINING ALL STATUTES OF A GENERAL NATURE ENACTED BY THE
LEGISLATURE OF THE STATE OF NEVADA AT THE SESSIONS OF
1931 TO 1941, INCLUSIVE, CLASSIFIED IN ACCORDANCE WITH
NEVADA COMPILED LAWS, 1929, TOGETHER WITH ANNOTATIONS
FROM THE DECISIONS OF THE SUPREME COURT OF NEVADA,
AND OF THE COURTS OF THE UNITED STATES, AND
A SUPPLEMENTAL DIGEST. ANNOTATIONS AND
DIGEST CLOSE WITH CASES REPORTED
IN 60 NEV., 117 P. 2d, 85 L. ED.,
122 P. 2d, 38 P. SUPP.**

**VOLUME I
SECTIONS 4 TO 5639.01**

**SAN FRANCISCO
BENDER-MOSS COMPANY
LAW PUBLISHERS AND BOOKSELLERS
1942**

Addendum000004

of them, or the representatives of a deceased partner, cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner his right in specific partnership property vests in the surviving partner or partners, except where the deceased was the last surviving partner, when his right in such property vests in his legal representative. Such surviving partner or partners, or the legal representative of the last surviving partner, has no right to possess the partnership property for any but a partnership purpose.

(e) A partner's right in specific partnership property is not subject to dower, curtesy, or allowances to widows, heirs or next of kin.

§ 5023.25. PARTNER'S INTEREST. § 26. Nature of Partner's Interest in the Partnership. A partner's interest in the partnership is his share of the profits and surplus, and the same is personal property.

§ 5023.26. ASSIGNMENT OF PARTNER'S INTEREST. § 27. Assignment of Partner's Interest. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership, nor, as against the other partners in the absence of agreement, entitle the assignee, during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any information or account of partnership transactions, or to inspect the partnership books; but it merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

§ 5023.27. PARTNER'S INTEREST SUBJECT TO CHARGING ORDER. § 28. Partner's Interest Subject to Charging Order. (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution

(a) With separate property, by any one or more of the partners, or,

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

NRS: CHAPTER 21 - ENFORCEMENT OF JUDGMENTS

NRS 21.090 Property exempt from execution.

1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

(a) Private libraries, works of art, musical instruments and jewelry not to exceed \$5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.

(b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed \$12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.

(c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by the judgment debtor.

(d) Professional libraries, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of the judgment debtor and his or her family not to exceed \$10,000 in value.

(e) The cabin or dwelling of a miner or prospector, the miner's or prospector's cars, implements and appliances necessary for carrying on any mining operations and the mining claim actually worked by the miner or prospector, not exceeding \$4,500 in total value.

(f) Except as otherwise provided in paragraph (p), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any workweek, 75 percent of the disposable earnings of a judgment debtor during that week, or 50 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), and in effect at the time the earnings are payable, whichever is greater. Except as otherwise provided in paragraphs (o), (s) and (t), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor.

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance.

(l) The homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

(m) The dwelling of the judgment debtor occupied as a home for himself or herself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$550,000 in value and the dwelling is situated upon lands not owned by the judgment debtor.

(n) All money reasonably deposited with a landlord by the judgment debtor to secure an agreement to rent or lease a dwelling that is used by the judgment debtor as his or her primary residence, except that such money is not exempt with respect to a landlord or the landlord's successor in interest who seeks to enforce the terms of the agreement to rent or lease the dwelling.

NRS: CHAPTER 21 - ENFORCEMENT OF JUDGMENTS

(o) All property in this State of the judgment debtor whose the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(p) Any vehicle owned by the judgment debtor for use by the judgment debtor or the judgment debtor's dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(q) Any prosthetics or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(r) Money, not to exceed \$500,000 in present value, held in:

(1) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(2) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(3) A cash or deferred arrangement which is a qualified plan pursuant to the Internal Revenue Code;

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

(t) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(u) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(v) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(x) Payments received as restitution for a criminal act.

(y) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(z) Any personal property not otherwise exempt from execution pursuant to this subsection belonging to the judgment debtor, including, without limitation, the judgment debtor's equity in any property, money, stocks, bonds or other funds on deposit with a financial institution, not to exceed \$1,000 in total value, to be selected by the judgment debtor.

(aa) Any tax refund received by the judgment debtor that is derived from the earned income credit described in section 32 of the Internal Revenue Code, 26 U.S.C. § 32, or a similar credit provided pursuant to a state law.

(bb) Stock of a corporation described in subsection 2 of NRS 78.746 except as set forth in that section.

(cc) Regardless of whether a trust contains a spendthrift provision:

(1) A distribution interest in the trust as defined in NRS 163.4155 that is a contingent interest, if the contingency has not been satisfied or removed;

(2) A distribution interest in the trust as defined in NRS 163.4155 that is a discretionary interest as described in NRS 163.4185, if the interest has not been distributed;

(3) A power of appointment in the trust as defined in NRS 163.4157 regardless of whether the power has been exercised;

(4) A power listed in NRS 163.5553 that is held by a trust protector as defined in NRS 163.5547 or any other person regardless of whether the power has been exercised; and

(5) A reserved power in the trust as defined in NRS 163.4165 regardless of whether the power has been exercised.

NRS: CHAPTER 21 - ENFORCEMENT OF JUDGMENTS

(dd) If a trust contains a spendthrift provision:

(1) A distribution interest in the trust as defined in NRS 163.4155 that is a mandatory interest as described in NRS 163.4185, if the interest has not been distributed; and

(2) Notwithstanding a beneficiary's right to enforce a support interest, a distribution interest in the trust as defined in NRS 163.4155 that is a support interest as described in NRS 163.4185, if the interest has not been distributed.

(cc) Proceeds received from a private disability insurance plan.

(ff) Money in a trust fund for funeral or burial services pursuant to NRS 689.700.

(gg) Compensation that was payable or paid pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS as provided in NRS 616C.205.

(hh) Unemployment compensation benefits received pursuant to NRS 612.710.

(ii) Benefits or refunds payable or paid from the Public Employees' Retirement System pursuant to NRS 286.670.

(jj) Money paid or rights existing for vocational rehabilitation pursuant to NRS 615.270.

(kk) Public assistance provided through the Department of Health and Human Services pursuant to NRS 422.291 and 422A.325.

(ll) Child welfare assistance provided pursuant to NRS 432.036.

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Act of 1978, 11 U.S.C. § 522(d), do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

[1911 CPA § 346; A 1921, 22; 1941, 32; 1931 NCL § 8844]—(NRS A 1969, 841; 1971, 1498; 1973, 23; 1975, 215; 1977, 650; 1979, 985, 1637; 1981, 626; 1983, 99, 665; 1987, 1206; 1989, 4, 176, 645; 1991, 812, 1414; 1993, 2629; 1995, 229; 1997, 267, 3414; 2003, 1012, 1814; 2005, 385, 974, 1015, 2230; 2007, 2710, 3018; 2009, 807; 2011, 1409, 1895, 3567; 2013, 1312)

NRS CHAPTER 78 - PRIVATE CORPORATIONS

NRS 78.746 Action against stockholder by judgment creditor; limitations.

1. On application to a court of competent jurisdiction by any judgment creditor of a stockholder, the court may charge the stockholder's stock with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the stockholder's stock.

2. Subject to the provisions of NRS 78.747, this section:

(a) Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stock of the judgment debtor. No other remedy, including, without limitation, foreclosure on the stockholder's stock or a court order for directions, accounts and inquiries that the debtor or stockholder might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the corporation, and no other remedy may be ordered by a court.

(b) Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.

(c) Applies only to a corporation that:

(1) Has fewer than 100 stockholders of record at any time.

(2) Is not a publicly traded corporation or a subsidiary of a publicly traded corporation, either in whole or in part.

(3) Is not a professional corporation as defined in NRS 89.020.

(d) Does not apply to any liability of a stockholder that exists as the result of an action filed before July 1, 2007.

(e) Does not supersede any written agreement between a stockholder and a creditor if the written agreement does not conflict with the corporation's articles of incorporation, bylaws or any shareholder agreement to which the stockholder is a party.

3. As used in this section, "rights of an assignee" means the rights to receive the share of the distributions or dividends paid by the corporation to which the judgment debtor would otherwise be entitled. The term does not include the rights to participate in the management of the business or affairs of the corporation or to become a director of the corporation.

(Added to NRS by 2007, 2639; A 2009, 2829; 2011, 2792)

NRS: CHAPTER 78 - PRIVATE CORPORATIONS

NRS 78.747 Liability of stockholder, director or officer for debt or liability of corporation.

1. Except as otherwise provided by specific statute, no stockholder, director or officer of a corporation is individually liable for a debt or liability of the corporation, unless the stockholder, director or officer acts as the alter ego of the corporation.

2. A stockholder, director or officer acts as the alter ego of a corporation if:

- (a) The corporation is influenced and governed by the stockholder, director or officer;
- (b) There is such unity of interest and ownership that the corporation and the stockholder, director or officer are inseparable from each other; and
- (c) Adherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice.

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

(Added to NRS by 2001, 3170)

NRS 78.750 Service of process on corporations.

1. In any action commenced against any corporation in any court of this State, service of process may be made in the manner provided by law and rule of court for the service of civil process.

2. Service of process on a corporation whose charter has been revoked or which has been continued as a body corporate pursuant to NRS 78.585 may be made by mailing copies of the process and any associated records by certified mail, with return receipt requested, to:

- (a) The registered agent of the corporation, if there is one; and
- (b) Each officer and director of the corporation as named in the list last filed with the Secretary of State before the dissolution or expiration of the corporation or the forfeiture of its charter.

3. The manner of serving process described in this subsection does not affect the validity of any other service authorized by law.

[81:177:1925; NCL § 1680]—(NRS A 1979, 568; 1997, 474; 2001, 1377, 3199; 2003, 3107; 2007, 2650)

NRS: CHAPTER 86 - LIMITED-LIABILITY COMPANIES

NRS 86.481 Rights and remedies of creditor of member.

1. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the member's interest with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the member's interest.

2. This section:

(a) Provides the exclusive remedy by which a judgment creditor of a member or an assignee of a member may satisfy a judgment out of the member's interest of the judgment debtor, whether the limited-liability company has one member or more than one member. No other remedy, including, without limitation, foreclosure on the member's interest or a court order for directions, accounts and inquiries that the debtor or member might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the limited-liability company, and no other remedy may be ordered by a court.

(b) Does not deprive any member of the benefit of any exemption applicable to his or her interest.

(c) Does not supersede any written agreement between a member and a creditor if the written agreement does not conflict with the limited-liability company's articles of organization or operating agreement.

(Added to NRS by 1991, 1302; A 2001, 1393, 3199; 2003, 20th Special Session, 71; 2011, 2800)

NRS: CHAPTER 87 - PARTNERSHIPS

NRS 87.280 Partner's interest subject to charging order.

1. On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of the debtor partner's share of the profits, and of any other money due or to fall due to the debtor partner in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

2. The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners; or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

3. Nothing in the provisions of **NRS 87.010 to 87.430**, inclusive, shall be held to deprive a partner of his or her right, if any, under the exemption laws, as regards the partner's interest in the partnership.

[28-74:1931; 1931 NCL § 5028.27]—(NRS A 2005, 442)

NRS: CHAPTER 87 - PARTNERSHIPS

NRS 87.4342 Transferable interest of partner subject to charging order.

1. On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts and inquiries the judgment debtor might have made or which the circumstances of the case may require.

2. A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

3. At any time before foreclosure, an interest charged may be redeemed:

- (a) By the judgment debtor;
- (b) With property other than partnership property, by one or more of the other partners; or
- (c) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

4. NRS 87.4301 to 87.4357, inclusive, does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

5. This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

(Added to NRS by 2005, 433)

NRS: CHAPTER 87A - UNIFORM LIMITED PARTNERSHIP ACT (2001)

NRS 87A.480 Rights and remedies of creditor of partner.

1. On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest.

2. This section:

(a) Provides the exclusive remedy by which a judgment creditor of a partner or an assignee of a partner may satisfy a judgment out of the partnership interest of the judgment debtor. No other remedy, including, without limitation, foreclosure on the partner's partnership interest or a court order for elections, accounts and inquiries that the debtor or partner might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the limited partnership, and no other remedy may be ordered by a court.

(b) Does not deprive any partner of the benefit of any exemption laws applicable to the partnership interest of the partner.

(c) Does not supersede any written agreement between a partner and creditor if the written agreement does not conflict with the partnership's certificate of limited partnership or partnership agreement.

(Added to NRS by 2007, 467; A 2011, 2803)

NRS: CHAPTER 82 - UNIFORM LIMITED PARTNERSHIP ACT

NRS 82.535 Rights and remedies of creditor of partner.

1. On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest.

2. This section:

(a) Provides the exclusive remedy by which a judgment creditor of a partner or an assignee of a partner may satisfy a judgment out of the partnership interest of the judgment debtor. No other remedy, including, without limitation, foreclosure on the partner's partnership interest or a court order for directions, accounts and inquiries that the debtor or partner might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the limited partnership, and no other remedy may be ordered by a court.

(b) Does not deprive any partner of the benefit of any exemption laws applicable to the partnership interest of the partner.

(c) Does not supersede any written agreement between a partner and creditor if the written agreement does not conflict with the partnership's certificate of limited partnership or partnership agreement.

(Added to NRS by 1985, 1290; A 2001, 1400, 3199; 2003, 3155; 2003, 20th Special Session, 101; 2011, 2007)

Sec. 43.5. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

1. On application to a court of competent jurisdiction by a judgment creditor of a stockholder, the court may charge the stockholder's stock with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the stockholder's stock.

2. This section:

(a) Applies only to a corporation that:

(1) Has more than 1 but fewer than 75 stockholders of record at any time.

(2) Is not a subsidiary of a publicly traded corporation, either in whole or in part.

(3) Is not a professional corporation, as defined in NRS 89.020.

(b) Does not apply to any liability of a stockholder that exists as the result of an action filed before July 1, 2007.

(c) Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stockholder's stock of the corporation.

(d) Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.

(e) Does not supersede any private agreement between a stockholder and a creditor.

Sec. 44. 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) "Principal office" means the office, in or out of this State, where the principal executive offices of a domestic or foreign corporation are located.

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

(f) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(g) "Registered agent" has the meaning ascribed to it in section 24 of this act.

(h) "Registered office" means the office maintained at the street address of the resident agent.

(i) "Resident agent" means the agent appointed by the corporation upon whom process or a notice or demand authorized by law to be served upon the corporation may be served.

Sec. 171.2. NRS 21.075 is hereby amended to read as follows:

21.075 1. Execution on the writ of execution by levying on the property of the judgment debtor may occur only if the sheriff serves the judgment debtor with a notice of the writ of execution pursuant to NRS 21.076 and a copy of the writ. The notice must describe the types of property exempt from execution and explain the procedure for claiming those exemptions in the manner required in subsection 2. The clerk of the court shall attach the notice to the writ of execution at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

**YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED**

A court has determined that you owe money to _____ (name of person), the judgment creditor. He has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.
4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.
6. Payments received as disability, illness or unemployment benefits.
7. Payments received as unemployment compensation.
8. Veteran's benefits.
9. A homestead in a dwelling or a mobile home, not to exceed \$350,000, unless:
 - (a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.
 - (b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.
10. A vehicle, if your equity in the vehicle is less than \$15,000.
11. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

federal minimum hourly wage, in which case the entire amount may be exempt.

12. Money, not to exceed \$500,000 in present value, held in:
 - (a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;
 - (b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;
 - (c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;
 - (d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and
 - (e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

13. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

15. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

16. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

17. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

18. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

19. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

20. Payments received as restitution for a criminal act.

21. Stock of a corporation described in subsection 2 of section 43.5 of this act except as set forth in that section.

↓2007 Statutes of Nevada, Page 2710 (Chapter 480, SB 242)↓

↪ These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through _____ (name of organization in county providing legal services to indigent or elderly persons).

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court a notarized affidavit claiming the exemption. A copy of the affidavit must be served upon the sheriff and the judgment creditor within 8 days after the notice of execution is mailed. The property must be returned to you within 5 days after you file the affidavit unless you or the judgment creditor files a motion for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The motion for the hearing to determine the issue of exemption must be filed within 10 days after the affidavit claiming exemption is filed. The hearing to determine whether the property or money is exempt must be held within 10 days after the motion for the hearing is filed.

IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

Sec. 171.4. NRS 21.090 is hereby amended to read as follows:

21.090 1. The following property is exempt from execution, except as otherwise specifically provided in this section or required by federal law:

(a) Private libraries, works of art, musical instruments and jewelry not to exceed \$5,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor, and all family pictures and keepsakes.

(b) Necessary household goods, furnishings, electronics, wearing apparel, other personal effects and yard equipment, not to exceed \$12,000 in value, belonging to the judgment debtor or a dependent of the judgment debtor, to be selected by the judgment debtor.

(c) Farm trucks, farm stock, farm tools, farm equipment, supplies and seed not to exceed \$4,500 in value, belonging to the judgment debtor to be selected by him.

(d) Professional libraries, equipment, supplies, and the tools, inventory, instruments and materials used to carry on the trade or business of the judgment debtor for the support of himself and his family not to exceed \$10,000 in value.

(e) The cabin or dwelling of a miner or prospector, his cars, implements and appliances necessary for carrying on any mining operations and his mining claims actually worked by him, not exceeding \$4,500 in total value.

↓2007 Statutes of Nevada, Page 2711 (Chapter 480, SB 242)↓

(f) Except as otherwise provided in paragraph (a), one vehicle if the judgment debtor's equity does not exceed \$15,000 or the creditor is paid an amount equal to any excess above that equity.

(g) For any workweek, 75 percent of the disposable earnings of a judgment debtor during that week, or 50 times the minimum hourly wage prescribed by section 6(a)(1) of the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1), and in effect at the time the earnings are payable, whichever is greater. Except as otherwise provided in paragraphs (n), (r) and (s), the exemption provided in this paragraph does not apply in the case of any order of a court of competent jurisdiction for the support of any person, any order of a court of bankruptcy or of any debt due for any state or federal tax. As used in this paragraph:

(1) "Disposable earnings" means that part of the earnings of a judgment debtor remaining after the deduction from those earnings of any amounts required by law to be withheld.

(2) "Earnings" means compensation paid or payable for personal services performed by a judgment debtor in the regular course of business, including, without limitation, compensation designated as income, wages, tips, a salary, a commission or a bonus. The term includes compensation received by a judgment debtor that is in the possession of the judgment debtor, compensation held in accounts maintained in a bank or any other financial institution or, in the case of a receivable, compensation that is due the judgment debtor.

(h) All fire engines, hooks and ladders, with the carts, trucks and carriages, hose, buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under the laws of this State.

(i) All arms, uniforms and accouterments required by law to be kept by any person, and also one gun, to be selected by the debtor.

(j) All courthouses, jails, public offices and buildings, lots, grounds and personal property, the fixtures, furniture, books, papers and appurtenances belonging and pertaining to the courthouse, jail and public offices belonging to any county of this State, all cemeteries, public squares, parks and places, public buildings, town halls, markets, buildings for the use of fire departments and military organizations, and the lots and grounds thereto belonging and appertaining, owned or held by any town or incorporated city, or dedicated by the town or city to health, ornament or public use, or for the use of any fire or military company organized under the laws of this State and all lots, buildings and other school property owned by a school district and devoted to public school purposes.

(k) All money, benefits, privileges or immunities accruing or in any manner growing out of any life insurance, if the annual premium paid does not exceed \$15,000. If the premium exceeds that amount, a similar exemption exists which bears the same proportion to the money, benefits, privileges and immunities so accruing or growing out of the insurance that the \$15,000 bears to the whole annual premium paid.

(l) The homestead as provided for by law, including a homestead for which allodial title has been established and not relinquished and for which a waiver executed pursuant to NRS 115.010 is not applicable.

↓2007 Statutes of Nevada, Page 2712 (Chapter 480, SB 242)↓

(m) The dwelling of the judgment debtor occupied as a home for himself and family, where the amount of equity held by the judgment debtor in the home does not exceed \$350,000 in value and the dwelling is situated upon lands not owned by him.

(n) All property in this State of the judgment debtor where the judgment is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

(o) Any vehicle owned by the judgment debtor for use by him or his dependent that is equipped or modified to provide mobility for a person with a permanent disability.

(p) Any prosthesis or equipment prescribed by a physician or dentist for the judgment debtor or a dependent of the debtor.

(q) Money, not to exceed \$500,000 in present value, held in:

(1) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(2) A written simplified employer pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(3) A cash or deferred arrangement which is a qualified plan pursuant to the Internal Revenue Code;

(4) A trust forming part of a stock bonus, pension or profit-sharing plan which is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(5) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

(r) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

(s) All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

(t) Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

(u) Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(v) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as restitution for a criminal act.

↓2007 Statutes of Nevada, Page 2713 (Chapter 480, SB 242)↓

(x) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(y) Stock of a corporation described in subsection 2 of section 43.5 of this act except as set forth in that section.

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Act of 1978, 11 U.S.C. § 522(d), do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

Sec. 171.6. NRS 31.045 is hereby amended to read as follows:

31.045 1. Execution on the writ of attachment by attaching property of the defendant may occur only if:

(a) The judgment creditor serves the defendant with notice of the execution when the notice of the hearing is served pursuant to NRS 31.013; or

(b) Pursuant to an ex parte hearing, the sheriff serves upon the judgment debtor notice of the execution and a copy of the writ at the same time and in the same manner as set forth in NRS 21.076.

↪ If the attachment occurs pursuant to an ex parte hearing, the clerk of the court shall attach the notice to the writ of attachment at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED

Plaintiff, (name of person), alleges that you owe him money. He has begun the procedure to collect that money. To secure satisfaction of judgment the court has ordered the garnishment of your wages, bank account or other personal property held by third persons or the taking of money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.
4. Proceeds from a policy of life insurance.
5. Payments of benefits under a program of industrial insurance.

Sec. 6.5. NRS 78.746 is hereby amended to read as follows:

78.746 1. On application to a court of competent jurisdiction by a judgment creditor of a stockholder, the court may charge the stockholder's stock with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the stockholder's stock.

2. This section:

(a) Applies only to a corporation that:

- (1) Has more than 1 but fewer than [75] 100 stockholders of record at any time.
- (2) Is not a subsidiary of a publicly traded corporation, either in whole or in part.
- (3) Is not a professional corporation as defined in NRS 89.020.

(b) Does not apply to any liability of a stockholder that exists as the result of an action filed before July 1, 2007.

(c) Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stockholder's stock of the corporation.

(d) Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.

(e) Does not supersede any private agreement between a stockholder and a creditor ~~if the private agreement does not conflict with the corporation's articles of incorporation, bylaws or any shareholder agreement to which the stockholder is a party.~~

3. As used in this section, "rights of an assignee" means the rights to receive the share of the distributions or dividends paid by the corporation to which the judgment debtor would otherwise be entitled. The term does not include the rights to participate in the management of the business or affairs of the corporation or to become a director of the corporation.

Sec. 7. Chapter 78A of NRS is hereby amended by adding thereto a new section to read as follows:

If a close corporation has made a filing with the Secretary of State and the Secretary of State has not processed the filing and placed the filing into the public record, the close corporation may cancel the filing by:

1. *Filing a statement of cancellation with the Secretary of State; and*
2. *Paying the required fee pursuant to subsection 7 of NRS 78.785.*

Sec. 8. NRS 80.007 is hereby amended to read as follows:

80.007 1. A foreign corporation may correct a record filed in the Office of the Secretary of State if the record contains an incorrect statement or was defectively signed, attested, sealed or verified.

2. To correct a record, the corporation must:

(a) Prepare a certificate of correction which:

- (1) States the name of the corporation;
- (2) Describes the record, including, without limitation, its filing date;
- (3) Specifies the inaccuracy or defect;
- (4) Sets forth the inaccurate or defective portion of the record in an accurate or corrected form; and
- (5) Is signed by an officer of the corporation or, if no stock has been issued by the corporation, by the incorporator or a director of the corporation.

(b) Deliver the certificate to the Secretary of State for filing.

(c) Pay a filing fee of \$175 to the Secretary of State.

against any stockholder who, within 30 days after the mailing of notice to the stockholder of the sale, applies to the district court for an appraisal of the value of his or her interest in the assets so sold, and unless within 30 days after the appraisal is confirmed by the court the stockholders consenting to the sale, or some of them, pay to the objecting stockholder or deposit for the objecting stockholder's account, in the manner directed by the court, the amount of the appraisal. Upon the payment or deposit the interest of the objecting stockholder vests in the person or persons making the payment or deposit.

3. In winding up and liquidating the business and affairs of the corporation, the trustees have the duties imposed upon them, and the benefit of the presumptions established, by NRS 78.138.

Sec. 52. NRS 78.746 is hereby amended to read as follows:

78.746 1. On application to a court of competent jurisdiction by ~~{a}~~ any judgment creditor of a stockholder, the court may charge the stockholder's stock with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the stockholder's stock.

2. ~~{This}~~ Subject to the provisions of NRS 78.747, this section:

(a) Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stock of the judgment debtor. No other remedy, including, without limitation, foreclosure on the stockholder's stock or a court order for directions, accounts and inquiries that the debtor or stockholder might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the corporation, and no other remedy may be ordered by a court.

(b) Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.

(c) Applies only to a corporation that:

(1) Has ~~{more than 1 but}~~ fewer than 100 stockholders of record at any time.

(2) Is not a publicly traded corporation or a subsidiary of a publicly traded corporation, either in whole or in part.

(3) Is not a professional corporation as defined in NRS 89.020.

~~{(b)}~~ (d) Does not apply to any liability of a stockholder that exists as the result of an action filed before July 1, 2007.

~~{(c)}~~ Provides the exclusive remedy by which a judgment creditor of a stockholder or an assignee of a stockholder may satisfy a judgment out of the stockholder's stock of the corporation.

~~{(d)}~~ Does not deprive any stockholder of the benefit of any exemption applicable to the stockholder's stock.

(e) Does not supersede any ~~{private}~~ written agreement between a stockholder and a creditor if the ~~{private}~~ written agreement does not conflict with the corporation's articles of incorporation, bylaws or any shareholder agreement to which the stockholder is a party.

3. As used in this section, "rights of an assignee" means the rights to receive the share of the distributions or dividends paid by the corporation to which the judgment debtor would otherwise be entitled. The term does not include the rights to participate in the management of the business or affairs of the corporation or to become a director of the corporation.



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Current through Legislation passed by the 130th General Assembly
and filed with the Secretary of State through File 140 (SB 143)

TITLE 17. CORPORATIONS – PARTNERSHIPS
PARTNERSHIPS
CHAPTER 1776. OHIO UNIFORM PARTNERSHIP ACT (1997)
TRANSFEREES AND CREDITORS OF PARTNER

Go to the Ohio Code Archive Directory

ORC Ann. 1776.50 (2014)

§ 1776.50. (RUPA 504) Partner's transferable interest subject to charging order

(A) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the economic interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(B) A charging order constitutes a lien on the judgment debtor's economic interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(C) At any time before foreclosure, an interest charged may be redeemed by any of the following:

- (1) The judgment debtor;
- (2) One or more of the other partners by using property other than partnership property;
- (3) One or more of the other partners, with the consent of all of the partners whose interests are not so charged, by using partnership property.

(D) Nothing in this chapter deprives a partner of any right under exemption laws with respect to the partner's interest in the partnership.

(E) This section provides the exclusive remedy by which a judgment creditor of a partner, or partner's transferee, may satisfy a judgment out of the judgment debtor's economic interest in the partnership.

HISTORY:

152 v H 332, § 1, eff. 8-6-08.

NOTES:

Section Notes

OFFICIAL COMMENT

Revised Uniform Partnership Act § 504.

1. Section 504 continues the UPA Section 28 charging order as the proper remedy by which a judgment creditor of a partner may reach the debtor's transferable interest in a partnership to satisfy the judgment. Subsection (a) makes the charging order available to the judgment creditor of a transferee of a partnership interest. Under Section 503(b), the transferable interest of a partner or transferee is limited to the partner's right to receive distributions from the partnership and to seek judicial liquidation of the partnership. The court may appoint a receiver of the debtor's share of the distributions due or to become due and make all other orders that may be required.

2. Subsection (b) is new and codifies the case law under the UPA holding that a charging order constitutes a lien on the debtor's transferable interest. The lien may be foreclosed by the court at any time, and the purchaser at the foreclosure sale has the Section 503(b) rights of a transferee. For a general discussion of the charging order remedy, see *1 Alan R. Bromberg & Larry E. Ribstein, Partnership* (1993), at 3:69.

3. Subsection (c) continues the UPA Section 28(2) right of the debtor or other partners to redeem the partnership interest before the foreclosure sale. Redemption by the partnership (i.e., with partnership property) requires the consent of all the remaining partners. Neither the UPA nor RUPA provide a statutory procedural framework for the redemption.

4. Subsection (d) provides that nothing in RUPA deprives a partner of his rights under the State's exemption laws. That is essentially the same as UPA Section 28(3).

5. Subsection (e) provides that the charging order is the judgment creditor's exclusive remedy. Although the UPA nowhere states that a charging order is the exclusive process for a partner's individual judgment creditor, the courts have generally so interpreted it. See, e.g., *Matter of Fischke*, 11 B.R. 913 (E.D. Va. 1981); *Baum v. Baum*, 51 Cal. 2d 610, 335 P.2d 481 (1959); *Atlantic Mobile Homes, Inc. v. LeFever*, 481 So. 2d 1002 (Fla. App. 1986).

Notwithstanding subsection (e), there may be an exception for the enforcement of family support orders. Some States have unique statutory procedures for the enforcement of support orders. In Florida, for example, a court may issue an "income deduction order" requiring any person or entity providing "income" to the obligor of a support order to remit to the obligee or a depository, as directed by the court, a specified portion of the income. Fla. Stat. § 61.1301 (1993). "Income" is broadly defined to include any form of payment to the obligor, including wages, salary, compensation as an independent contractor, dividends, interest, or other payment, regardless of source. Fla. Stat. § 61.046(4) (1993). That definition includes distributions payable to an obligor partner. A charging order under RUPA would still be necessary to reach the obligor's entire partnership interest, however.

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Case Notes

ENFORCEMENT OF JUDGMENT.

In a case where a creditor was attempting to enforce a judgment, a trial court did not err by determining that the creditor was only entitled to sell one-half of the property jointly held by one debtor and his wife. Under R.C. 1776.60, there was a procedure to foreclose on the interest of a debtor partner that protected the interest of the non-debtor partner in the asset. *Random House, Inc. v. Eszterhas*, 2010 Ohio App. LEXIS 5331, 2010 Ohio 6441, (Dec. 23, 2010).



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Current through Legislation passed by the 138th General Assembly
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TITLE 23. COURTS -- COMMON PLEAS
CHAPTER 2329. EXECUTION AGAINST PROPERTY
EXEMPTIONS

Go to the Ohio Code Archive Directory

ORC Ann. 2329.66 (2014)

§ 2329.66. Exempted interests and rights [See 2011 editor's note for adjustments for inflation]

(A) Every person who is domiciled in this state may hold property exempt from execution, garnishment, attachment, or sale to satisfy a judgment or order, as follows:

(1) (a) In the case of a judgment or order regarding money owed for health care services rendered or health care supplies provided to the person or a dependent of the person, one parcel or item of real or personal property that the person or a dependent of the person uses as a residence. Division (A)(1)(a) of this section does not preclude, affect, or invalidate the creation under this chapter of a judgment lien upon the exempted property but only delays the enforcement of the lien until the property is sold or otherwise transferred by the owner or in accordance with other applicable laws to a person or entity other than the surviving spouse or surviving minor children of the judgment debtor. Every person who is domiciled in this state may hold exempt from a judgment lien created pursuant to division (A)(1)(a) of this section the person's interest, not to exceed one hundred twenty-five thousand dollars, in the exempted property.

(b) In the case of all other judgments and orders, the person's interest, not to exceed one hundred twenty-five thousand dollars, in one parcel or item of real or personal property that the person or a dependent of the person uses as a residence.

(c) For purposes of divisions (A)(1)(a) and (b) of this section, "parcel" means a tract of real property as identified on the records of the auditor of the county in which the real property is located.

(2) The person's interest, not to exceed three thousand two hundred twenty-five dollars, in one motor vehicle;

(3) The person's interest, not to exceed four hundred dollars, in cash on hand, money due and payable, money to become due within ninety days, tax refunds, and money on deposit with a bank, savings and loan association, credit union, public utility, landlord, or other person, other than personal earnings.

(4) (a) The person's interest, not to exceed five hundred twenty-five dollars in any particular item or ten thousand seven hundred seventy-five dollars in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, firearms, and hunting and fishing equipment that are held primarily for the personal, family, or household use of the person;

(b) The person's aggregate interest in one or more items of jewelry, not to exceed one thousand three hundred fifty dollars, held primarily for the personal, family, or household use of the person or any of the person's dependents.

(5) The person's interest, not to exceed an aggregate of two thousand twenty-five dollars, in all implements, professional books, or tools of the person's profession, trade, or business, including agriculture;

(6) (a) The person's interest in a beneficiary fund set apart, appropriated, or paid by a benevolent association or society, as exempted by section 2329.63 of the Revised Code;

(b) The person's interest in contracts of life or endowment insurance or annuities, as exempted by section 3911.10 of the Revised Code;

(c) The person's interest in a policy of group insurance or the proceeds of a policy of group insurance, as exempted by section 3917.05 of the Revised Code;

(d) The person's interest in money, benefits, charity, relief, or aid to be paid, provided, or rendered by a fraternal benefit society, as exempted by section 3921.18 of the Revised Code;

(e) The person's interest in the portion of benefits under policies of sickness and accident insurance and in lump sum payments for dismemberment and other losses insured under those policies, as exempted by section 3923.19 of the Revised Code.

(7) The person's professionally prescribed or medically necessary health aids;

(8) The person's interest in a burial lot, including, but not limited to, exemptions under section 517.09 or 1721.07 of the Revised Code;

(9) The person's interest in the following:

(a) Moneys paid or payable for living maintenance or rights, as exempted by section 3304.19 of the Revised Code;

(b) Workers' compensation, as exempted by section 4123.67 of the Revised Code;

(c) Unemployment compensation benefits, as exempted by section 4141.32 of the Revised Code;

(d) Cash assistance payments under the Ohio works first program, as exempted by section 5107.75 of the Revised Code;

(e) Benefits and services under the prevention, retention, and contingency program, as exempted by section 5108.08 of the Revised Code;

(f) Disability financial assistance payments, as exempted by section 5115.06 of the Revised Code;

(g) Payments under section 24 or 32 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

(10) (a) Except in cases in which the person was convicted of or pleaded guilty to a violation of section 2921.41 of the Revised Code and in which an order for the withholding of restitution from payments was issued under division (C)(2)(b) of that section, in cases in which an order for withholding was issued under section 2907.15 of the Revised Code, in cases in which an order for forfeiture was issued under division (A) or (B) of section 2929.192 of the Revised Code, and in cases in which an order was issued under section 2929.193 or 2929.194 of the Revised Code, and only to the extent provided in the order, and except as provided in sections 3105.171, 3105.63, 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, the person's rights to or interests in a pension, benefit, annuity, retirement allowance, or accumulated contributions, the person's rights to or interests in a participant account in any deferred compensation program offered by the Ohio public employees deferred compensation board, a government unit, or a municipal corporation, or the person's other accrued or accruing rights or interests, as exempted by section 145.56, 146.13, 148.09, 742.47, 3307.41, 3309.66, or 5505.22 of the Revised Code, and the person's rights to or interests in benefits from the Ohio public safety officers death benefit fund;

(b) Except as provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, the person's rights to receive or interests in receiving a payment or other benefits under any pension, annuity, or similar plan or contract, not including a payment or benefit from a stock bonus or profit-sharing plan or a payment included in division (A)(6)(b) or (10)(a) of this section, on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the person and any of the person's dependents, except if all the following apply:

(b) The plan or contract was established by or under the auspices of an insider that employed the person at the time the person's rights or interests under the plan or contract arose.

(ii) The payment is on account of age or length of service.

(iii) The plan or contract is not qualified under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

(c) Except for any portion of the assets that were deposited for the purpose of evading the payment of any debt and except as provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, the person's rights or interests in the assets held in, or to directly or indirectly receive any payment or benefit under, any individual retirement account, individual retirement annuity, "Roth IRA," "529 plan," or education individual retirement account that provides payments or benefits by reason of illness, disability, death, retirement, or age or provides payments or benefits for purposes of education, to the extent that the assets, payments, or benefits described in division (A)(10)(c) of this section are attributable to or derived from any of the following or from any earnings, dividends, interest, appreciation, or gains on any of the following:

(i) Contributions of the person that were less than or equal to the applicable limits on deductible contributions to an individual retirement account or individual retirement annuity in the year that the contributions were made, whether or not the person was eligible to deduct the contributions on the person's federal tax return for the year in which the contributions were made;

(ii) Contributions of the person that were less than or equal to the applicable limits on contributions to a Roth IRA or education individual retirement account in the year that the contributions were made;

(iii) Contributions of the person that are within the applicable limits on rollover contributions under subsections 219, 402(c), 403(a)(4), 403(b)(8), 408(b), 408(d)(3), 408A(c)(3)(B), 408A(d)(3), and 530(d)(5) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended;

(iv) Contributions by any person into any plan, fund, or account that is formed, created, or administered pursuant to, or is otherwise subject to, section 529 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

(d) Except for any portion of the assets that were deposited for the purpose of evading the payment of any debt and except as provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, the person's rights or interests in the assets held in, or to receive any payment under, any Keogh or "HLR 10" plan that provides benefits by reason of illness, disability, death, retirement, or age, to the extent reasonably necessary for the support of the person and any of the person's dependents.

(e) The person's rights to or interests in any assets held in, or to directly or indirectly receive any payment or benefit under, any individual retirement account, individual retirement annuity, "Roth IRA," "529 plan," or education individual retirement account that a decedent, upon or by reason of the decedent's death, directly or indirectly left to or for the benefit of the person, either outright or in trust or otherwise, including, but not limited to, any of those rights or interests in assets or to receive payments or benefits that were transferred, conveyed, or otherwise transmitted by the decedent by means of a will, trust, exercise of a power of appointment, beneficiary designation, transfer or payment on death designation, or any other method or procedure.

(f) The exemptions under divisions (A)(10)(a) to (e) of this section also shall apply or otherwise be available to an alternate payee under a qualified domestic relations order (QDRO) or other similar court order.

(g) A person's interest in any plan, program, instrument, or device described in divisions (A)(10)(a) to (e) of this section shall be considered an exempt interest even if the plan, program, instrument, or device in question, due to an error made in good faith, failed to satisfy any criteria applicable to that plan, program, instrument, or device under the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 1, as amended.

(11) The person's right to receive spousal support, child support, an allowance, or other maintenance to the extent reasonably necessary for the support of the person and any of the person's dependents;

(12) The person's right to receive, or moneys received during the preceding twelve calendar months from, any of the following:

(a) An award of reparations under sections 2743.51 to 2743.72 of the Revised Code, to the extent exempted by division (D) of section 2743.66 of the Revised Code;

(b) A payment on account of the wrongful death of an individual of whom the person was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the person and any of the person's dependents;

(c) Except in cases in which the person who receives the payment is an inmate, as defined in section 2969.21 of the Revised Code, and in which the payment resulted from a civil action or appeal against a government entity or employee, as defined in section 2969.21 of the Revised Code, a payment, not to exceed twenty thousand two hundred dollars, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the person or an individual for whom the person is a dependent;

(d) A payment in compensation for loss of future earnings of the person or an individual of whom the person is or was a dependent, to the extent reasonably necessary for the support of the debtor and any of the debtor's dependents.

(13) Except as provided in sections 3119.80, 3119.81, 3121.02, 3121.03, and 3123.06 of the Revised Code, personal earnings of the person owed to the person for services in an amount equal to the greater of the following amounts:

(a) If paid weekly, thirty times the current federal minimum hourly wage; if paid biweekly, sixty times the current federal minimum hourly wage; if paid semimonthly, sixty-five times the current federal minimum hourly wage; or if paid monthly, one hundred thirty times the current federal minimum hourly wage that is in effect at the time the earnings are payable, as prescribed by the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C. 206(a)(1), as amended;

(b) Seventy-five per cent of the disposable earnings owed to the person.

(14) The person's right in specific partnership property, as exempted by the person's rights in a partnership pursuant to section 1776.50 of the Revised Code, except as otherwise set forth in section 1776.50 of the Revised Code;

(15) A seal and official register of a notary public, as exempted by section 147.04 of the Revised Code;

(16) The person's interest in a tuition unit or a payment under section 3334.09 of the Revised Code pursuant to a tuition payment contract, as exempted by section 3334.15 of the Revised Code;

(17) Any other property that is specifically exempted from execution, attachment, garnishment, or sale by federal statutes other than the "Bankruptcy Reform Act of 1978," 92 Stat. 2549, 11 U.S.C.A. 101, as amended;

(18) The person's aggregate interest in any property, not to exceed one thousand seventy-five dollars, except that division (A)(18) of this section applies only in bankruptcy proceedings.

(B) On April 1, 2010, and on the first day of April in each third calendar year after 2010, the Ohio judicial conference shall adjust each dollar amount set forth in this section to reflect any increase in the consumer price index for all urban consumers, as published by the United States department of labor, or, if that index is no longer published, a generally available comparable index, for the three-year period ending on the thirty-first day of December of the preceding year. Any adjustments required by this division shall be rounded to the nearest twenty-five dollars.

The Ohio judicial conference shall prepare a memorandum specifying the adjusted dollar amounts. The judicial conference shall transmit the memorandum to the director of the legislative service commission, and the director shall publish the memorandum in the register of Ohio. (Publication of the memorandum in the register of Ohio shall continue until the next memorandum specifying an adjustment is so published.) The judicial conference also may publish the memorandum in any other manner it concludes will be reasonably likely to inform persons who are affected by its adjustment of the dollar amounts.

(C) As used in this section:

(1) "Disposable earnings" means net earnings after the garnishee has made deductions required by law, excluding the deductions ordered pursuant to section 3119.80, 3119.81, 3121.02, 3121.03, or 3123.06 of the Revised Code.

(2) "Insider" means:

(a) If the person who claims an exemption is an individual, a relative of the individual, a relative of a general partner of the individual, a partnership in which the individual is a general partner, a general partner of the individual, or a corporation of which the individual is a director, officer, or in control;

(b) If the person who claims an exemption is a corporation, a director or officer of the corporation, a person in control of the corporation, a partnership in which the corporation is a general partner, a general partner of the corporation, or a relative of a general partner, director, officer, or person in control of the corporation;

(c) If the person who claims an exemption is a partnership, a general partner in the partnership, a general partner of the partnership, a person in control of the partnership, a partnership in which the partnership is a general partner, or a relative in, a general partner of, or a person in control of the partnership;

(d) An entity or person to which or whom any of the following applies:

(i) The entity directly or indirectly owns, controls, or holds with power to vote, twenty per cent or more of the outstanding voting securities of the person who claims an exemption, unless the entity holds the securities in a fiduciary or agency capacity without sole discretionary power to vote the securities or holds the securities solely to secure to debt and the entity has not in fact exercised the power to vote.

(ii) The entity is a corporation, twenty per cent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the person who claims an exemption or by an entity to which division (C)(2)(d)(i) of this section applies.

(iii) A person whose business is operated under a lease or operating agreement by the person who claims an exemption, or a person substantially all of whose business is operated under an operating agreement with the person who claims an exemption.

(iv) The entity operates the business or all or substantially all of the property of the person who claims an exemption under a lease or operating agreement.

(e) An insider, as otherwise defined in this section, of a person or entity to which division (C)(2)(d)(i), (ii), (iii), or (iv) of this section applies, as if the person or entity were a person who claims an exemption;

(f) A managing agent of the person who claims an exemption.

(3) "Participant account" has the same meaning as in section 148.01 of the Revised Code.

(4) "Government unit" has the same meaning as in section 148.06 of the Revised Code.

(D) For purposes of this section, "interest" shall be determined as follows:

(1) In bankruptcy proceedings, as of the date a petition is filed with the bankruptcy court commencing a case under Title 11 of the United States Code;

(2) In all cases other than bankruptcy proceedings, as of the date of an appraisal, if necessary under section 2329.68 of the Revised Code, or the issuance of a writ of execution.

An interest, as determined under division (D)(1) or (2) of this section, shall not include the amount of any lien otherwise valid pursuant to section 2329.661 of the Revised Code.

HISTORY:

RS § 5430; S&S 602, 603; S&C 1143; 70 v 132; 93 v 316; GC § 11725; 111 v 386; 115 v 432; Bureau of Code Revision, 10-1-53; 128 v 353 (Eff 11-9-59); 132 v H 737 (Eff 12-14-67); 133 v S 85 (Eff 9-16-70); 135 v H 278 (Eff 11-21-73); 136 v H 1 (Eff 6-13-75); 137 v H 1 (Eff 8-26-77); 138 v H 674 (Eff 9-28-79); 138 v H 736 (Eff 10-16-80); 140 v S 171 (Eff 6-13-84); 140 v H 265 (Eff 9-20-84); 141 v H 509 (Eff 12-1-86); 142 v H 231 (Eff 10-5-87); 143 v H 514 (Eff 1-1-91); 144 v H 298 (Eff 7-26-91); 144 v S 300 (Eff 11-5-92); 144 v H 478 (Eff 1-14-93); 145 v H 173 (Eff 12-31-93); 145 v S 324 (Eff 7-1-94); 146 v H 249 (Eff 7-17-95); 146 v S 150 (Eff 11-24-95); 146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 455 (Eff 10-17-96); 146 v H 668 (Eff 12-6-96); 147 v H 408 (Eff 10-1-97); 147 v H 108 (Eff 3-22-99); 147 v S 170 (Eff 3-30-99); 148 v H 222 (Eff 11-2-99); 148 v S 190 (Eff 7-13-2000); 148 v H 628 (Eff 9-21-2000); 148 v S 180 (Eff 3-22-2001); 149 v H 94 (Eff 9-5-2001); 150 v H 95, § 1, eff. 6-26-03; 151 v H 66, § 101.01, eff. 9-29-05; 152 v S 3, § 1, eff. 5-15-08; 152 v H 332, § 1, eff. 8-6-08; 152

UNIFORM PARTNERSHIP ACT (1914)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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Conference of Commissioners on Uniform State Laws, and copies of the
act may be ordered from them at 211 East Ontario Street, Suite 1300,
Chicago, Illinois 60611.

§ 28. Partner's Interest Subject to Charging Order

(1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:

(a) With separate property, by any one or more of the partners, or

(b) With partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this act shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.

UNIFORM PARTNERSHIP ACT (1997)

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES**

at its

**ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-FIFTH YEAR
SAN ANTONIO, TEXAS
JULY 12 - JULY 19, 1996**

WITH PREFATORY NOTE AND COMMENTS

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By

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

**Approved by the American Bar Association
San Antonio, Texas, February 4, 1997**

2/27/98

Addendum000033

7. Other rules that apply in the case of transfers include Section 601(4)(ii) (expulsion of partner who transfers substantially all of partnership interest); Section 601(6) (dissociation of partner who makes an assignment for benefit of creditors); and Section 801(6) (transferee has standing to seek judicial winding up).

SECTION 504. PARTNER'S TRANSFERABLE INTEREST SUBJECT TO CHARGING ORDER.

(a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than partnership property, by one or more of the other partners; or

(3) with partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This [Act] does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

Comment

1. Section 504 continues the UPA Section 28 charging order as the proper remedy by which a judgment creditor of a partner may reach the debtor's transferable interest in a partnership to satisfy the judgment. Subsection (a) makes the charging order available to the judgment creditor of a transferee of a partnership interest. Under Section 503(b), the transferable interest of a partner or transferee is limited to the partner's right to receive distributions from the partnership and to seek judicial liquidation of the partnership. The court may appoint a receiver of the debtor's share of the distributions due or to become due and make all other orders that may be required.

2. Subsection (b) is new and codifies the case law under the UPA holding that a charging order constitutes a lien on the debtor's transferable interest. The lien may be foreclosed by the court at any time, and the purchaser at the foreclosure sale has the Section 503(b) rights of a transferee. For a general discussion of the charging order remedy, see *1 Alan R. Bromberg & Larry E. Ribstein, Partnership* (1988), at 3:69.

3. Subsection (c) continues the UPA Section 28(2) right of the debtor or other partners to redeem the partnership interest before the foreclosure sale. Redemption by the partnership (i.e., with partnership property) requires the consent of all the remaining partners. Neither the UPA nor RUPA provide a statutory procedural framework for the redemption.

4. Subsection (d) provides that nothing in RUPA deprives a partner of his rights under the State's exemption laws. That is essentially the same as UPA Section 28(3).

5. Subsection (e) provides that the charging order is the judgment creditor's exclusive remedy. Although the UPA nowhere states that a charging order is the exclusive process for a partner's individual judgment creditor, the courts have generally so interpreted it. See, e.g., *Matter of Pischke*, 11 B.R. 913 (E.D. Va. 1981); *Baum v. Baum*, 51 Cal. 2d 610, 335 P.2d 481 (1959); *Atlantic Mobile Homes, Inc. v. LeFever*, 481 So. 2d 1002 (Fla. App. 1986).

**UNIFORM LIMITED PARTNERSHIP ACT (1976)
WITH 1985 AMENDMENTS**

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**Approved and Recommended for Enactment
in All the States**

At its

**ANNUAL CONFERENCE
MEETING IN ITS NINETY-FOURTH YEAR
IN MINNEAPOLIS, MINNESOTA
AUGUST 2-9, 1985**

With Prefatory Note and Comments

**Approved by the American Bar Association
Baltimore, Maryland, February 11, 1986**

derived from Section 19(3) of the prior uniform law 1916 Act. The last sentence is now first appeared in the 1976 Act.

SECTION 703. RIGHTS OF CREDITOR. On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This [Act] does not deprive any partner of the benefit of any exemption laws applicable to his [or her] partnership interest.

COMMENT

Section 703 is derived from Section 22 of the prior uniform law 1916 Act but has not carried over some provisions that were thought to be superfluous. For example, references in Section 22(1) to specific remedies have been omitted, as has a prohibition in Section 22(2) against discharge of the lien with partnership property. Ordinary rules governing the remedies available to a creditor and the fiduciary obligations of general partners will determine those matters.

SECTION 704. RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER.

- (a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) (i) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership agreement, or (2) (ii) all other partners consent.
- (b) An assignee who has become a limited partner has, to the extent

UNIFORM LIMITED PARTNERSHIP ACT (2001)

Drafted by the

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

and by it

**APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES**

at its

**ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TENTH YEAR
WHITE SULPHUR SPRINGS, WEST VIRGINIA
AUGUST 10-17, 2001**

WITH PREFATORY NOTE AND COMMENTS

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By

**NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS**

December 2, 2009

Addendum000038

Source – RUPA Section 503, except for subsection (g), which derives from RULPA Section 704(b). Following RUPA, this Act uses the words “transfer” and “transferee” rather than the words “assignment” and “assignee.” See RUPA Section 503.

Subsection (a)(2) – The phrase “by itself” is significant. A transfer of all of a person’s transferable interest could lead to dissociation via expulsion, Sections 601(b)(4)(B) and 603(4)(B).

Subsection (a)(3) – Mere transferees have no right to intrude as the partners carry on their activities as partners. Moreover, a partner’s obligation of good faith and fair dealing under Sections 305(b) and 408(d) is framed in reference to “the limited partnership and the other partners.” See also Comment to Section 1102(b)(3) and Comment to Section 1106(b)(3).

SECTION 703. RIGHTS OF CREDITOR OF PARTNER OR TRANSFEEE.

(a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

(b) A charging order constitutes a lien on the judgment debtor’s transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

(1) by the judgment debtor;

(2) with property other than limited partnership property, by one or more of the other partners; or

(3) with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(d) This [Act] does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

Comment

Source – RUPA Section 504 and ULLCA Section 504.

This section balances the needs of a judgment creditor of a partner or transferee with the needs of the limited partnership and non-debtor partners and transferees. The section achieves that balance by allowing the judgment creditor to collect on the judgment through the transferable interest of the judgment debtor while prohibiting interference in the management and activities of the limited partnership.

Under this section, the judgment creditor of a partner or transferee is entitled to a charging order against the relevant transferable interest. While in effect, that order entitles the judgment creditor to whatever distributions would otherwise be due to the partner or transferee whose interest is subject to the order. The creditor has no say in the timing or amount of those distributions. The charging order does not entitle the creditor to accelerate any distributions or to otherwise interfere with the management and activities of the limited partnership.

Foreclosure of a charging order effects a permanent transfer of the charged transferable interest to the purchaser. The foreclosure does not, however, create any rights to participate in the management and conduct of the limited partnership's activities. The purchaser obtains nothing more than the status of a transferee.

Subsection (a) – The court's power to appoint a receiver and "make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require" must be understood in the context of the balance described above. In particular, the court's power to make orders "which the circumstances may require" is limited to "giv[ing] effect to the charging order."

Example: A judgment creditor with a charging order believes that the limited partnership should invest less of its surplus in operations, leaving more funds for distributions. The creditor moves the court for an order directing the general partners to restrict re-investment. This section does not authorize the court to grant the motion.

Example: A judgment creditor with a judgment for \$10,000 against a partner obtains a charging order against the partner's transferable interest. The limited partnership is duly served with the order. However, the limited partnership subsequently fails to comply with the order and makes a \$3000 distribution to the partner. The court has the power to order the limited partnership to turn over \$3000 to the judgment creditor to "give effect to the charging order."

The court also has the power to decide whether a particular payment is a distribution, because this decision determines whether the payment is part of a transferable interest subject to a charging order. (To the extent a payment is not a distribution, it is not part of the transferable interest and is not subject to subsection (c). The payment is therefore subject to whatever other creditor remedies may apply.)

Subsection (c)(3) – This provision requires the consent of all the limited as well as general partners.

SECTION 704. POWER OF ESTATE OF DECEASED PARTNER. If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in Section 702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under Section 304.

Comment

Section 702 strictly limits the rights of transferees. In particular, a transferee has no right to participate in management in any way, no voting rights and, except following dissolution, no information rights. Even after dissolution, a transferee's information rights are limited. See Section 702(c).

This section provides special informational rights for a deceased partner's legal representative for the purposes of settling the estate. For those purposes, the legal representative may exercise the informational rights of a current limited partner under Section 304. Those rights are of course subject to the limitations and obligations stated in that section – e.g., Section

REQUIRES TWO-THIRDS MAJORITY VOTE (§ 42)

(Reprinted with amendments adopted on April 26, 2005)

SECOND REPRINT

S.B. 453

SENATE BILL NO. 453—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE SECRETARY OF STATE)

MARCH 29, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning business entities.
(BDR 7-576)

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

EXPLANATION — Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to business entities; providing for a charging order by the court concerning a stockholder's stock under certain circumstances; revising various provisions concerning the timing, form and contents of certain filings by various business entities; clarifying that certain corporations and associations which are homeowners' associations must comply with certain requirements; providing that a person who knowingly files a forged or false record is subject to civil liability under certain circumstances; establishing certain fees for services provided to business entities; making various other changes concerning business entities; and providing other matters properly relating thereto.

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 a new section to read as follows:
- 3 1. *On application to a court of competent jurisdiction by a*
- 4 *judgment creditor of a stockholder, the court may charge the*
- 5 *stockholder's stock with payment of the unsatisfied amount of the*
- 6 *judgment with interest. To the extent so charged, the judgment*
- 7 *creditor has only the rights of an assignee of the stockholder's*
- 8 *stock.*



1 2. *This section:*

2 (a) *Applies only to a corporation that:*

3 (1) *Has more than one, but fewer than 75 stockholders of*
4 *record at any time;*

5 (2) *Is not a subsidiary of a publicly traded corporation,*
6 *either in whole or in part; and*

7 (3) *Is not a professional corporation, as defined in*
8 *NRS 89.020.*

9 (b) *Does not apply to any liability of a stockholder that exists*
10 *as the result of an action filed before October 1, 2005.*

11 (c) *Provides the exclusive remedy by which a judgment*
12 *creditor of a stockholder or an assignee of a stockholder may*
13 *satisfy a judgment out of the stockholder's stock of the*
14 *corporation.*

15 (d) *Does not deprive any stockholder of the benefit of any*
16 *exemption applicable to the stockholder's stock.*

17 (e) *Does not supersede any private agreement between a*
18 *stockholder and a creditor.*

19 **Sec. 2. NRS 78.150 is hereby amended to read as follows:**

20 **78.150 1. A corporation organized pursuant to the laws of**
21 **this State shall, on or before the last day of the first month after the**
22 **filing of its articles of incorporation with the Secretary of State, file**
23 **with the Secretary of State a list, on a form furnished by him,**
24 **containing:**

25 (a) **The name of the corporation;**

26 (b) **The file number of the corporation, if known;**

27 (c) **The names and titles of the president, secretary and treasurer,**
28 **or the equivalent thereof, and of all the directors of the corporation;**

29 (d) **The address, either residence or business, of each officer and**
30 **director listed, following the name of the officer or director;**

31 (e) **The name and address of the lawfully designated resident**
32 **agent of the corporation [;] in this State; and**

33 (f) **The signature of an officer of the corporation certifying that**
34 **the list is true, complete and accurate.**

35 **2. The corporation shall annually thereafter, on or before the**
36 **last day of the month in which the anniversary date of incorporation**
37 **occurs in each year, file with the Secretary of State, on a form**
38 **furnished by him, an annual list containing all of the information**
39 **required in subsection 1.**

40 **3. Each list required by subsection 1 or 2 must be accompanied**
41 **by:**

42 (a) **A declaration under penalty of perjury that the corporation:**

43 (1) **Has complied with the provisions of NRS 360.780; and**



1 4. If the articles of association of a professional association
2 have been revoked pursuant to the provisions of this chapter and
3 have remained revoked for 10 consecutive years, the articles must
4 not be reinstated.

5 Sec. 37. NRS 21.075 is hereby amended to read as follows:

6 21.075 1. Execution on the writ of execution by levying on
7 the property of the judgment debtor may occur only if the sheriff
8 serves the judgment debtor with a notice of the writ of execution
9 pursuant to NRS 21.076 and a copy of the writ. The notice must
10 describe the types of property exempt from execution and explain
11 the procedure for claiming those exemptions in the manner required
12 in subsection 2. The clerk of the court shall attach the notice to the
13 writ of execution at the time the writ is issued.

14 2. The notice required pursuant to subsection 1 must be
15 substantially in the following form:

16
17 **NOTICE OF EXECUTION**

18
19 **YOUR PROPERTY IS BEING ATTACHED OR**
20 **YOUR WAGES ARE BEING GARNISHED**

21
22 A court has determined that you owe money to
23 _____(name of person), the judgment creditor. He has
24 begun the procedure to collect that money by garnishing your
25 wages, bank account and other personal property held by
26 third persons or by taking money or other property in your
27 possession.

28 Certain benefits and property owned by you may be
29 exempt from execution and may not be taken from you. The
30 following is a partial list of exemptions:

- 31 1. Payments received under the Social Security Act.
32 2. Payments for benefits or the return of contributions
33 under the Public Employees' Retirement System.
34 3. Payments for public assistance granted through the
35 Welfare Division of the Department of Human Resources or a
36 local governmental entity.
37 4. Proceeds from a policy of life insurance.
38 5. Payments of benefits under a program of industrial
39 insurance.
40 6. Payments received as disability, illness or
41 unemployment benefits.
42 7. Payments received as unemployment compensation.
43 8. Veteran's benefits.
44 9. A homestead in a dwelling or a mobile home, not to
45 exceed \$200,000, unless:



1 (a) The judgment is for a medical bill, in which case all of
2 the primary dwelling, including a mobile or manufactured
3 home, may be exempt.

4 (b) Allodial title has been established and not relinquished
5 for the dwelling or mobile home, in which case all of the
6 dwelling or mobile home and its appurtenances are exempt,
7 including the land on which they are located, unless a valid
8 waiver executed pursuant to NRS 115.010 is applicable to the
9 judgment.

10 10. A vehicle, if your equity in the vehicle is less than
11 \$15,000.

12 11. Seventy-five percent of the take-home pay for any
13 pay period, unless the weekly take-home pay is less than 30
14 times the federal minimum wage, in which case the entire
15 amount may be exempt.

16 12. Money, not to exceed \$500,000 in present value,
17 held in:

18 (a) An individual retirement arrangement which conforms
19 with the applicable limitations and requirements of 26 U.S.C.
20 § 408;

21 (b) A written simplified employee pension plan which
22 conforms with the applicable limitations and requirements of
23 26 U.S.C. § 408;

24 (c) A cash or deferred arrangement that is a qualified plan
25 pursuant to the Internal Revenue Code;

26 (d) A trust forming part of a stock bonus, pension or
27 profit-sharing plan that is a qualified plan pursuant to sections
28 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
29 seq.; and

30 (e) A trust forming part of a qualified tuition program
31 pursuant to chapter 353B of NRS, any applicable regulations
32 adopted pursuant to chapter 353B of NRS and section 529 of
33 the Internal Revenue Code, 26 U.S.C. § 529, unless the
34 money is deposited after the entry of a judgment against the
35 purchaser or account owner or the money will not be used by
36 any beneficiary to attend a college or university.

37 13. All money and other benefits paid pursuant to the
38 order of a court of competent jurisdiction for the support,
39 education and maintenance of a child, whether collected by
40 the judgment debtor or the State.

41 14. All money and other benefits paid pursuant to the
42 order of a court of competent jurisdiction for the support and
43 maintenance of a former spouse, including the amount of any
44 arrearages in the payment of such support and maintenance to
45 which the former spouse may be entitled.



1 15. A vehicle for use by you or your dependent which is
2 specially equipped or modified to provide mobility for a
3 person with a permanent disability.

4 16. A prosthesis or any equipment prescribed by a
5 physician or dentist for you or your dependent.

6 17. Payments, in an amount not to exceed \$16,150,
7 received as compensation for personal injury, not including
8 compensation for pain and suffering or actual pecuniary loss,
9 by the judgment debtor or by a person upon whom the
10 judgment debtor is dependent at the time the payment is
11 received.

12 18. Payments received as compensation for the wrongful
13 death of a person upon whom the judgment debtor was
14 dependent at the time of the wrongful death, to the extent
15 reasonably necessary for the support of the judgment debtor
16 and any dependent of the judgment debtor.

17 19. Payments received as compensation for the loss of
18 future earnings of the judgment debtor or of a person upon
19 whom the judgment debtor is dependent at the time the
20 payment is received, to the extent reasonably necessary for
21 the support of the judgment debtor and any dependent of the
22 judgment debtor.

23 20. Payments received as restitution for a criminal act.

24 21. *Stock of certain corporations, subject to the*
25 *provisions of section 1 of this act.*

26 ↪ These exemptions may not apply in certain cases such as a
27 proceeding to enforce a judgment for support of a person or a
28 judgment of foreclosure on a mechanic's lien. You should
29 consult an attorney immediately to assist you in determining
30 whether your property or money is exempt from execution. If
31 you cannot afford an attorney, you may be eligible for
32 assistance through(name of organization in
33 county providing legal services to indigent or elderly
34 persons).

35 36 PROCEDURE FOR CLAIMING EXEMPT PROPERTY

37
38 If you believe that the money or property taken from you
39 is exempt, you must complete and file with the clerk of the
40 court a notarized affidavit claiming the exemption. A copy of
41 the affidavit must be served upon the sheriff and the judgment
42 creditor within 8 days after the notice of execution is mailed.
43 The property must be returned to you within 5 days after you
44 file the affidavit unless you or the judgment creditor files a
45 motion for a hearing to determine the issue of exemption. If



1 this happens, a hearing will be held to determine whether the
2 property or money is exempt. The motion for the hearing to
3 determine the issue of exemption must be filed within 10 days
4 after the affidavit claiming exemption is filed. The hearing to
5 determine whether the property or money is exempt must be
6 held within 10 days after the motion for the hearing is filed.

7 **IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE**
8 **TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD**
9 **AND THE MONEY GIVEN TO THE JUDGMENT**
10 **CREDITOR, EVEN IF THE PROPERTY OR MONEY IS**
11 **EXEMPT.**

12 **Sec. 38. NRS 21.090 is hereby amended to read as follows:**

13 **21.090 1. The following property is exempt from execution,**
14 **except as otherwise specifically provided in this section:**

15 (a) Private libraries not to exceed \$1,500 in value, and all family
16 pictures and keepsakes.

17 (b) Necessary household goods, as defined in 16 C.F.R. §
18 444.1(f) as that section existed on January 1, 1987, and yard
19 equipment, not to exceed \$10,000 in value, belonging to the
20 judgment debtor to be selected by him.

21 (c) Farm trucks, farm stock, farm tools, farm equipment,
22 supplies and seed not to exceed \$4,500 in value, belonging to the
23 judgment debtor to be selected by him.

24 (d) Professional libraries, office equipment, office supplies and
25 the tools, instruments and materials used to carry on the trade of the
26 judgment debtor for the support of himself and his family not to
27 exceed \$4,500 in value.

28 (e) The cabin or dwelling of a miner or prospector, his cars,
29 implements and appliances necessary for carrying on any mining
30 operations and his mining claim actually worked by him, not
31 exceeding \$4,500 in total value.

32 (f) Except as otherwise provided in paragraph (o), one vehicle if
33 the judgment debtor's equity does not exceed \$15,000 or the
34 creditor is paid an amount equal to any excess above that equity.

35 (g) For any pay period, 75 percent of the disposable earnings of
36 a judgment debtor during that period, or for each week of the period
37 30 times the minimum hourly wage prescribed by section 6(a)(1) of
38 the federal Fair Labor Standards Act of 1938, 29 U.S.C. § 206(a)(1),
39 and in effect at the time the earnings are payable, whichever is
40 greater. Except as otherwise provided in paragraphs (n), (r) and (s),
41 the exemption provided in this paragraph does not apply in the case
42 of any order of a court of competent jurisdiction for the support of
43 any person, any order of a court of bankruptcy or of any debt due for
44 any state or federal tax. As used in this paragraph, "disposable



1 earnings" means that part of the earnings of a judgment debtor
2 remaining after the deduction from those earnings of any amounts
3 required by law, to be withheld.

4 (h) All fire engines, hooks and ladders, with the carts, trucks and
5 carriages, hose, buckets, implements and apparatus thereto
6 appertaining, and all furniture and uniforms of any fire company or
7 department organized under the laws of this State.

8 (i) All arms, uniforms and accoutrements required by law to be
9 kept by any person, and also one gun, to be selected by the debtor.

10 (j) All courthouses, jails, public offices and buildings, lots,
11 grounds and personal property, the fixtures, furniture, books, papers
12 and appurtenances belonging and pertaining to the courthouse, jail
13 and public offices belonging to any county of this State, all
14 cemeteries, public squares, parks and places, public buildings, town
15 halls, markets, buildings for the use of fire departments and military
16 organizations, and the lots and grounds thereto belonging and
17 appertaining, owned or held by any town or incorporated city, or
18 dedicated by the town or city to health, ornament or public use, or
19 for the use of any fire or military company organized under the laws
20 of this State and all lots, buildings and other school property owned
21 by a school district and devoted to public school purposes.

22 (k) All money, benefits, privileges or immunities accruing or in
23 any manner growing out of any life insurance, if the annual
24 premium paid does not exceed \$1,000. If the premium exceeds that
25 amount, a similar exemption exists which bears the same proportion
26 to the money, benefits, privileges and immunities so accruing or
27 growing out of the insurance that the \$1,000 bears to the whole
28 annual premium paid.

29 (l) The homestead as provided for by law, including a
30 homestead for which allodial title has been established and not
31 relinquished and for which a waiver executed pursuant to NRS
32 115.010 is not applicable.

33 (m) The dwelling of the judgment debtor occupied as a home for
34 himself and family, where the amount of equity held by the
35 judgment debtor in the home does not exceed \$200,000 in value and
36 the dwelling is situated upon lands not owned by him.

37 (n) All property in this State of the judgment debtor where the
38 judgment is in favor of any state for failure to pay that state's
39 income tax on benefits received from a pension or other retirement
40 plan.

41 (o) Any vehicle owned by the judgment debtor for use by him or
42 his dependent that is equipped or modified to provide mobility for a
43 person with a permanent disability.

44 (p) Any prosthesis or equipment prescribed by a physician or
45 dentist for the judgment debtor or a dependent of the debtor.



- 1 (q) Money, not to exceed \$500,000 in present value, held in:
2 (1) An individual retirement arrangement which conforms
3 with the applicable limitations and requirements of 26 U.S.C. § 408;
4 (2) A written simplified employee pension plan which
5 conforms with the applicable limitations and requirements of 26
6 U.S.C. § 408;
7 (3) A cash or deferred arrangement which is a qualified plan
8 pursuant to the Internal Revenue Code;
9 (4) A trust forming part of a stock bonus, pension or profit-
10 sharing plan which is a qualified plan pursuant to sections 401 et
11 seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and
12 (5) A trust forming part of a qualified tuition program
13 pursuant to chapter 353B of NRS, any applicable regulations
14 adopted pursuant to chapter 353B of NRS and section 529 of the
15 Internal Revenue Code, 26 U.S.C. § 529, unless the money is
16 deposited after the entry of a judgment against the purchaser or
17 account owner or the money will not be used by any beneficiary to
18 attend a college or university.
19 (r) All money and other benefits paid pursuant to the order of a
20 court of competent jurisdiction for the support, education and
21 maintenance of a child, whether collected by the judgment debtor or
22 the State.
23 (s) All money and other benefits paid pursuant to the order of a
24 court of competent jurisdiction for the support and maintenance of a
25 former spouse, including the amount of any arrearages in the
26 payment of such support and maintenance to which the former
27 spouse may be entitled.
28 (t) Payments, in an amount not to exceed \$16,150, received as
29 compensation for personal injury, not including compensation for
30 pain and suffering or actual pecuniary loss, by the judgment debtor
31 or by a person upon whom the judgment debtor is dependent at the
32 time the payment is received.
33 (u) Payments received as compensation for the wrongful death
34 of a person upon whom the judgment debtor was dependent at the
35 time of the wrongful death, to the extent reasonably necessary for
36 the support of the judgment debtor and any dependent of the
37 judgment debtor.
38 (v) Payments received as compensation for the loss of future
39 earnings of the judgment debtor or of a person upon whom the
40 judgment debtor is dependent at the time the payment is received, to
41 the extent reasonably necessary for the support of the judgment
42 debtor and any dependent of the judgment debtor.
43 (w) Payments received as restitution for a criminal act.
44 (x) *Stock of certain corporations, subject to the provisions of*
45 *section 1 of this act.*



2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

5 3. Any exemptions specified in subsection (d) of section 522 of
6 the Bankruptcy Act of 1978, 11 U.S.C. § 522(d), do not apply to
7 property owned by a resident of this State unless conferred also by
8 subsection 1, as limited by subsection 2.

9 Sec. 39. NRS 31.045 is hereby amended to read as follows:

10 31.045 1. Execution on the writ of attachment by attaching
11 property of the defendant may occur only if:

12 (a) The judgment creditor serves the defendant with notice of
13 the execution when the notice of the hearing is served pursuant to
14 NRS 31.013; or

15 (b) Pursuant to an ex parte hearing, the sheriff serves upon the
16 judgment debtor notice of the execution and a copy of the writ at the
17 same time and in the same manner as set forth in NRS 21.076.

18 ↪ If the attachment occurs pursuant to an ex parte hearing, the clerk
19 of the court shall attach the notice to the writ of attachment at the
20 time the writ is issued.

21 2. The notice required pursuant to subsection 1 must be
22 substantially in the following form:

NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED

Plaintiff, _____ (name of person), alleges that you owe him money. He has begun the procedure to collect that money. To secure satisfaction of judgment the court has ordered the garnishment of your wages, bank account or other personal property held by third persons or the taking of money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received under the Social Security Act.
2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.
3. Payments for public assistance granted through the Welfare Division of the Department of Human Resources or a local governmental entity.
4. Proceeds from a policy of life insurance.



1 5. Payments of benefits under a program of industrial
2 insurance.

3 6. Payments received as disability, illness or
4 unemployment benefits.

5 7. Payments received as unemployment compensation.

6 8. Veteran's benefits.

7 9. A homestead in a dwelling or a mobile home, not to
8 exceed \$200,000, unless:

9 (a) The judgment is for a medical bill, in which case all of
10 the primary dwelling, including a mobile or manufactured
11 home, may be exempt.

12 (b) Allodial title has been established and not relinquished
13 for the dwelling or mobile home, in which case all of the
14 dwelling or mobile home and its appurtenances are exempt,
15 including the land on which they are located, unless a valid
16 waiver executed pursuant to NRS 115.010 is applicable to the
17 judgment.

18 10. A vehicle, if your equity in the vehicle is less than
19 \$15,000.

20 11. Seventy-five percent of the take-home pay for any
21 pay period, unless the weekly take-home pay is less than 30
22 times the federal minimum wage, in which case the entire
23 amount may be exempt.

24 12. Money, not to exceed \$500,000 in present value,
25 held in:

26 (a) An individual retirement arrangement which conforms
27 with the applicable limitations and requirements of 26 U.S.C.
28 § 408;

29 (b) A written simplified employee pension plan which
30 conforms with the applicable limitations and requirements of
31 26 U.S.C. § 408;

32 (c) A cash or deferred arrangement that is a qualified plan
33 pursuant to the Internal Revenue Code;

34 (d) A trust forming part of a stock bonus, pension or
35 profit-sharing plan that is a qualified plan pursuant to sections
36 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
37 seq.; and

38 (e) A trust forming part of a qualified tuition program
39 pursuant to chapter 353B of NRS, any applicable regulations
40 adopted pursuant to chapter 353B of NRS and section 529 of
41 the Internal Revenue Code, 26 U.S.C. § 529, unless the
42 money is deposited after the entry of a judgment against the
43 purchaser or account owner or the money will not be used by
44 any beneficiary to attend a college or university.



1 13. All money and other benefits paid pursuant to the
2 order of a court of competent jurisdiction for the support,
3 education and maintenance of a child, whether collected by
4 the judgment debtor or the State.

5 14. All money and other benefits paid pursuant to the
6 order of a court of competent jurisdiction for the support and
7 maintenance of a former spouse, including the amount of any
8 arrearages in the payment of such support and maintenance to
9 which the former spouse may be entitled.

10 15. A vehicle for use by you or your dependent which is
11 specially equipped or modified to provide mobility for a
12 person with a permanent disability.

13 16. A prosthesis or any equipment prescribed by a
14 physician or dentist for you or your dependent.

15 17. Payments, in an amount not to exceed \$16,150,
16 received as compensation for personal injury, not including
17 compensation for pain and suffering or actual pecuniary loss,
18 by the judgment debtor or by a person upon whom the
19 judgment debtor is dependent at the time the payment is
20 received.

21 18. Payments received as compensation for the wrongful
22 death of a person upon whom the judgment debtor was
23 dependent at the time of the wrongful death, to the extent
24 reasonably necessary for the support of the judgment debtor
25 and any dependent of the judgment debtor.

26 19. Payments received as compensation for the loss of
27 future earnings of the judgment debtor or of a person upon
28 whom the judgment debtor is dependent at the time the
29 payment is received, to the extent reasonably necessary for
30 the support of the judgment debtor and any dependent of the
31 judgment debtor.

32 20. Payments received as restitution for a criminal act.

33 21. *Stock of certain corporations, subject to the*
34 *provisions of section 1 of this act.*

35 ↪ These exemptions may not apply in certain cases such as
36 proceedings to enforce a judgment for support of a child or a
37 judgment of foreclosure on a mechanic's lien. You should
38 consult an attorney immediately to assist you in determining
39 whether your property or money is exempt from execution. If
40 you cannot afford an attorney, you may be eligible for
41 assistance through (name of organization in
42 county providing legal services to the indigent or elderly
43 persons).



PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt or necessary for the support of you or your family, you must file with the clerk of the court on a form provided by the clerk a notarized affidavit claiming the exemption. A copy of the affidavit must be served upon the sheriff and the judgment creditor within 8 days after the notice of execution is mailed. The property must be returned to you within 5 days after you file the affidavit unless the judgment creditor files a motion for a hearing to determine the issue of exemption. If this happens, a hearing will be held to determine whether the property or money is exempt. The hearing must be held within 10 days after the motion for a hearing is filed.

IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE JUDGMENT CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

If you received this notice with a notice of a hearing for attachment and you believe that the money or property which would be taken from you by a writ of attachment is exempt or necessary for the support of you or your family, you are entitled to describe to the court at the hearing why you believe your property is exempt. You may also file a motion with the court for a discharge of the writ of attachment. You may make that motion any time before trial. A hearing will be held on that motion.

IF YOU DO NOT FILE THE MOTION BEFORE THE TRIAL, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE PLAINTIFF, EVEN IF THE PROPERTY OR MONEY IS EXEMPT OR NECESSARY FOR THE SUPPORT OF YOU OR YOUR FAMILY.

Sec. 40. NRS 31.050 is hereby amended to read as follows:

31.050 Subject to the order for attachment and the provisions of section 1 of this act and chapter 104 of NRS, the right of shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.



**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
May 5, 2005**

The Committee on Judiciary was called to order at 8:20 a.m., on Thursday, May 5, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Gam Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel

Allison Combs, Committee Policy Analyst
Carole Snider, Committee Attaché

OTHERS PRESENT:

Robert C. Kim, Chairman, Executive Committee, Business Law Section,
State Bar of Nevada
Pat Cashill, Legislative Advocate, representing the Nevada Trial Lawyers
Association
Renee Parker, Chief Deputy, Office of the Secretary of State, State of
Nevada
Scott Anderson, Deputy, Commercial Records, Office of the Secretary of
State, State of Nevada
Misty Grimmer, Legislative Advocate, representing the Nevada Resident
Agent Association
Derek Rowley, President, Nevada Resident Agent Association
Bill Bradley, Legislative Advocate, representing the Nevada Trial Lawyers
Association
Erin Breen, Director, Safe Community Partnership, Las Vegas, Nevada

Chairman Anderson:

[Meeting called to order and roll taken.] An amendment has just come over from the Senate relative to A.B. 91. This bill dealt with the fee for court reporters, and it returns the cost of getting copies back to their original place. They went from 55 cents to \$1, as that is where the majority of their costs were. There are a few other technical changes, but they are not a substantial change overall. It is my intention to concur with the recommendation unless somebody has a disagreement with it. Therefore, we will avoid a conference committee.

Let us turn our attention to S.B. 338.

Senate Bill 338 (1st Reprint): Makes various changes concerning business associations. (BDR 7-728)

Robert C. Kim, Chairman, Executive Committee, Business Law Section, State Bar of Nevada:

Senate Bill 338 is a bill sponsored by the State Bar and is a product of various suggestions from the business lawyer group in Nevada. It is an attempt to add new features, refine, correct, and modify things that we see in practice that we realize may need some fine tuning. What I have provided and am submitting

Assemblywoman Buckley:

I think I will try to work along the lines of the public entity interaction, whether it is grants or zoning auctions. If you are setting up an LLC here and you are not involved in one of these situations, you do not have the extra burden of disclosure. We will try to do a balancing act. I think you said it quite well. We want to keep our business-friendly environment, but on the other hand, we don't want to allow it to be used to defraud and participate in public corruption.

Chairman Anderson:

The hearing on S.B. 338 is closed. Let's turn our attention to S.B. 453.

Senate Bill 453 (2nd Reprint): Makes various changes concerning business entities. (BDR 7-576)

Renee Parker, Chief Deputy, Office of the Secretary of State, State of Nevada:
We have a proposed amendment to the bill to salvage some of the non-controversial provisions of my notary bill that was defeated.

Scott Anderson, Deputy, Commercial Recordings, Office of the Secretary of State, State of Nevada:

You have before you testimony submitted for S.B. 453 (Exhibit D). Senate Bill 453 proposes numerous changes that will further standardize the filings process by our office. Some of the provisions are housekeeping provisions, cleaning up many of the provisions that are not standard, or they help our customers to know what to do when filing with our office and help streamline the processes in our office. There is also some streamlining in the electronic filing and advancement of our business practices.

There are numerous sections that are standard throughout Title 7, and a number of sections will be affected by this bill. Sections 1 and 37 through 40 are provisions regarding charging orders that were presented by the Nevada Resident Agents Association.

Sections 2, 6, 20, 21, 24, 25, 29, 31, 33, and 34 clarify the address requirements on the annual list of officers and gives us an additional 30 days to get the annual list of officers out to our customers. This will give them additional time to submit to our office.

Section 3 requires that the number of shares per designation when a corporation files a certificate of designation be submitted. That will help us properly identify the certificate of designation when it is withdrawn.

[Scott Anderson, continued.] Section 4 removes an antiquated fee. Sections 5, 22, 26, and 30 remove the provisions that the customer provide us with a copy of a document to be filed, stamped, and returned to them. This has caused a number of problems, in that it is difficult for us to actually verify that the document they are presenting is an exact duplicate of what is on file with our office. We are also scanning these documents into our system now. For us to scan additional documents that are virtually the same is inefficient. This removes that requirement and allows us to provide an exact copy from what we have scanned into the system.

Sections 7 through 14 add provisions for homeowners' and unit owners' associations that were added last session. The Legislative Counsel Bureau felt that it was necessary to add these to other sections, as those entities could be formed for purposes of homeowners' or unit owners' associations.

Section 23 decreases a fee. We took out the fee increases that were in our original bill that standardized the fees. As you stated earlier, at risk of having our bill vetoed, we pulled those provisions except for the fee decrease.

Sections 15, 19, and 27 standardize provisions for restated or amended and restated articles. Section 16 standardizes the renewal provisions in Chapter 82 to those of other corporations.

Section 17 allows for limited liability companies (LLCs) to be organized for insurance purposes with approval of the Insurance Commissioner, as there are certain LLCs that can be formed for insurance purposes.

Section 18 is a word cleanup. Section 28 is a Bar Association change, which we support. Section 32 standardizes the wording in NRS [Nevada Revised Statutes] 88A.210 to reflect similar changes from the 2003 Session. Sections 35 and 36 are changes proposed by the Legislative Counsel Bureau, and we are amendable to those.

Section 41 adds provisions to Chapter 225 of NRS for filing of forged or fraudulent documents or knowingly filing false documents in the Office of the Secretary of State. The International Association of Commercial Administrators and the National Association of Secretaries of State has a bogus filing task force that was set up to minimize the number of harassment or bogus liens filed against public officials. We added the provisions to our bill draft, and the Legislative Counsel Bureau expanded that to include, basically, all filings within the Office of the Secretary of State. If someone knowingly files a false or fraudulent document, there is some sort of penalty and a process that we can go through, other than submitting these to the District Attorney's Office.

Currently, we submit these to them, and they sit in a file to be looked at later, and we never hear anything back on those.

[Scott Anderson, continued.] On the Senate side, there was some concern in regard to certain filings, mainly election filings. So there was an amendment to our bill that limited these provisions to Uniform Commercial Code filings and commercial recording filings under Title 7. This would impose civil penalties of \$10,000 or actual damages, whichever is greater, for violations. It gives us the authority to refer complaints to the Attorney General for investigation.

Section 42 adds a 1-hour expedite service. Currently, we have two 24-hour expedited services. Our customers have stated that they would like a "while you wait" or a 1-hour service. Delaware offers this, and they say this is a great service that allows them to specifically time certain filings. We propose that we have this 1-hour service available in our office. This would be within 1 hour, or "while you wait," and the service is provided for a fee of an additional \$1,000.

Additionally, Section 42 adds the ability for our office to charge a reasonable fee for searching and for canceling or removing documents that have been submitted to our office but not yet processed. We have thousands of documents in our office every day in different stages of processing. It is extremely difficult when a customer calls or sends some sort of request to remove their filing from this process. To do that, we feel it was necessary for us to go ahead and charge them a fee for this service. We felt this would be based on a current fee structure within our office. We have our special services fund that currently supports half of our salaries. This is a fund that is created by our expedite fees. Currently, this fund supports half our salaries, and the original purpose of this fund was to enhance our technology in the office. It was not to enhance the staff, so to speak.

Right now, we have a new system that has gone in place, and likely, our expedite fee will go down. The current \$62.50 we collect on each expedite fee will probably not support the salaries that we have coming out of there. We have asked that this be put back up to the half of the fee to go to the special services fund.

Lastly, Section 43 adds some provisions for the filing of a specimen of a trademark. We are just adding that the specimen is on 8 1/2 by 11 white paper for scanning and storage purposes, rather than cups, hats, and Frisbees.

Chairman Anderson:

In Section 23, you mentioned decreasing the fee for forms from limited liability companies. How much is your office going to lose from decreasing this fee?

Scott Anderson:

Currently, the fee is \$175.00. We are reducing it to \$75.00 to match the other organizational filing fees. We get 100 to 150 filings every year at the most, so we are looking at \$10,000 to \$15,000 decrease in revenue, as compared to the \$60 million we bring in.

Chairman Anderson:

So, the loss of the \$10,000 is not equal to the need for additional dollars in Section 42 that keeps alive this other fund. You cannot do a transfer within the Secretary of State's Office with those fee dollars?

Scott Anderson:

Those are separate and strictly General Fund dollars.

Chairman Anderson:

So, it is a \$10,000 loss to the General Fund?

Renee Parker:

The Fiscal Analysis Division is aware of this change. They did not pull it on the Senate side. I don't think they are worried about it, because if the \$1,000 expedite fee goes through, even with our office putting half in the special services fund, the other half of the expedite fees collected go directly to the General Fund. That should generate more than enough revenue to cover the loss.

Chairman Anderson:

In Sections 5, 22, 26, and 30, it removes the provision for a customer to provide a copy of the documents. Then we see on Section 43, you are adding requirements for dollars like this expedite service fee. Your expedite service fee is a pretty simple bill, as you will be charging more money. If we are trying to be business friendly, then we should do it quickly, if we can. I thought that was what the Secretary of State was all about.

Scott Anderson:

Yes, that is what we are all about. We have thousands of documents that come in on a daily basis, and to put a filing that comes in on a normal basis ahead of the thousands of others without this special service fee would be unfair. We felt, since other states have been offering this expedited service, that we would be able to do that as well.

Chairman Anderson:

Whose copy is considered to be the legal document—the one that is on file in the Secretary of State's Office, or the one in the hands of the corporation?

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Scott Anderson:

The official record is the record that is on file with the Secretary of State. We do certify the records and send them out.

Chairman Anderson:

That is not going to lessen in any way, in Sections 5, 22, 26, and 30, the integrity of that document?

Renee Parker:

Actually, it will probably increase the integrity of the document. The problem is when they furnish their copy now; in certain circumstances, it does not match the original copy on file. They made a change, and they forgot to file the changed document. We were certifying copies that customers were submitting. We had to match the copy that is on file with the copy they submit. This way, we would take the official record in our office and create the copy from what is on file.

Pat Cashill, Legislative Advocate, representing the Nevada Trial Lawyers Association:

Section 41, in our view, falls in the category of "put your faith in the Lord, but keep your powder dry." In a sense, it creates a remedy for a person who has been the victim of false filing or who has been defrauded or otherwise injured because of a document filed with the Secretary of State, such as articles of incorporation. On the Senate side, we had a technical but essential modification of the bill, and that was in Section 41, subsection 1(c), which reads, "...is being filed in bad faith or for the purpose of harassing or defrauding any person." The originally-written bill used the conjunctive "and," as opposed to the "or" that we urged that committee to support, which it did.

To Ms. Parker's credit and Mr. Anderson's credit, each brought to my attention this morning the fact that the bill, in its second reprint, is different than the bill we agreed to on the Senate side. Subsection 6(b) of the bill is now limited to records filed pursuant to Title 7 of NRS or Article 9 of the Uniform Commercial Code. I have questioned Mr. Anderson, and he informs me that the intent of that limitation is not in any way to restrict the right of action created for a person who has been defrauded as a result of document that is filed with a false intent. I would appreciate the Chairman or some other member of the Committee ascertaining that is the case. I have no reason to doubt the good faith of the Secretary of State in this respect and appreciate their candor. It is the trial lawyers' objective to see to it that the right of action created by Section 41 is as broad as possible.

Chairman Anderson:

You want the reassurance that Section 41 does not limit the question to the right of action and that you would like us to do a short, independent investigation relative to that question, reassuring that it is limiting to the Uniform Commercial Code. We made some extensive changes to the Uniform Commercial Code and Title 7. We have not acted on those Senate bills. Also, the third part and the nature of the new amendment from the Senate side was to exclude the documents. We are familiar with these documents as a result of being elected to public office, because we are frequently in contact with the Secretary of State's Office for clarification. So, we know that when one of us does not do our addition correctly, they won't get upset with us. Is that what you want to make sure we are doing?

Pat Cashill:

That is a tough question to answer. I think so.

Chairman Anderson:

No?

Pat Cashill:

Correct.

Renee Parker:

Section 41, subsection 5 provides that the remedies and penalties in rates are cumulative and don't abrogate any other rights, remedies, or penalties in the statutes. That was put in there to address Mr. Cashill's concerns about it affecting other remedies.

Chairman Anderson:

The next work session is scheduled for Wednesday of next week, so we would anticipate that we would have the question answered specifically. We will ask Ms. [Allison] Combs to reassert a limited investigation. We will also have Legal take a look at it.

Renee Parker:

I would like to add some of the provisions from our notary bill—not the controversial education provisions, but just the provisions that go to some of the problems we had with enforcement and some of the issues that were raised during the interim. You have the amendment (Exhibit E).

Section 1 of the amendment provides for a gross misdemeanor for a notary public or a person who aids and abets a notary public to notarize a signature of an individual who is not in the presence of a notary. It only makes that provision

if they willfully notarize that document. We do have many notaries, and the original reason for the education was they think that they are notaries and all we do is notarize signatures. They are technically required to do more than that. They are supposed to identify the person whose signature they are notarizing.

[Renee Parker, continued.] We have had several problems, and we get a couple hundred complaints a year. We do have provisions where we hold hearings, and we do fine notaries. Many of them are just a simple mistake. They didn't realize they needed to identify the person, so they notarize the document, and it wasn't the same person who signed it. In other instances, it is fraudulent and they willfully notarize a document, knowing that the person in front of them is not necessarily the person who signed it. Most of those instances relate to quitclaim deeds of property. The person who is harmed has to retain an attorney. There are fraud provisions in this statute, but in consulting with the Attorney General's Office and some of the district attorneys, they felt if we put this provision in a notary statute and we do voluntary notary education, that would allow us to point it out and address some of these issues. It would also provide a more severe penalty for willfully engaging in that conduct.

Sections 2 and 6 relate to authentications of notary signatures generally called "apostilles." Under the Hague Treaty, we do the apostille when we authenticate a notary signature for documents used out of the country, and many times they relate to adoptions. Section 6 was the Legislature Counsel Bureau's determination of how we fit it in the statute. This was to delete the current provisions that you see being deleted in Section 6. We put them into Section 2 to address and distinguish between an apostille, which is an authentication of a notary signature to be used out of the country, and the certification of the notary signature, which is another type of apostille that is used within the United States. The banks and other entities want a certification, and there is currently no specific provision for a certification in that distinction. The apostilles are a separate creature created under that treaty. This is just to distinguish that and, in addition, to allow us to refuse to issue an authentication if we have information that the document may be used for unlawful purposes.

We have received warnings from the Department of State for fraudulent authentications, but we do not have clear authority to reject them. These people say they want to get a passport. What they are doing is saying—under the common law courts—is that we are appointing ourselves notary, we want an authentication of this notarized document, and we don't have them in our office. This is another provision where you can go through other provisions in the statutes and get there. In addition, if we received a warning from the Department of State, we currently don't have the authority to reject it if it looks legitimate on its face. This would allow us to do that.

[Renee Parker, continued.] Sections 3 and 5 are just conforming to changes in the current statutes, to add some of these provisions and references to these provisions.

Section 4 would authorize us to request the Attorney General to take action to enjoin a person from impersonating a notary. A similar situation is where we have groups of people—oftentimes the same people that file some of these bogus filings—and they appoint themselves a notary under the common law courts and start notarizing documents. It is hard to get enforcement, the way the statutes are drafted. The Attorney General has recommended we allow them to go obtain a restraining order.

Chairman Anderson:

Since you have done away with the training classes in Section 2, the payment of the fee of \$20 is not a requirement that we are mandating, but a fee for persons that utilizes a notary, because many notaries do their work for nothing. I think in our building we must have 14 or 15 notaries who work in various departments. That is not unusual for banks and other trade organizations to have—among their staff—people who have notary responsibilities. In most cases, if you are known to them, they do not go through a big hassle. On the other hand, if you bring somebody with you who they do not know, then they usually ask for identification if they have been well trained.

Renee Parker:

The \$20 fee does not relate to notarizing signatures. It relates to us doing an authentication of the apostille documents. It is currently the same fee as provided in Section 6, which is being deleted. It is just being moved into Section 2, so it applies to an authentication or a certification. Those are the documents we prepare that authenticate the notary signatures, so they can use them out of the country for an adoption, marriage, or to transport a deceased family member. Those are the most common circumstances in which they are used. That is the fee to our office for the apostille. It is the current fee. It just is being moved from Section 6 to Section 2, because we now have this distinction of the certifications.

Chairman Anderson:

We need this, because the U.S. State Department is concerned about the methodology in which we are currently following, and our statutes are not clear enough in this area.

Renee Parker:

That is the purpose for another one of these sections, because it is under the Hague Convention where the apostilles originated. Now, there have been some

issues of fraudulent apostilles, and the U.S. State Department will issue warnings. The Attorney General, in consultation with them, has concerns that there is not enough meat in these statutes for us to refuse to authenticate some of those documents.

Assemblyman Carpenter:

Say a person wants to lease some property from my wife and me. They send a document on Friday afternoon by Federal Express. They want this document back by Wednesday of the next week so they can take it to their boss to have it approved. There is a person that has been notarizing my signature for 20 years and works in an attorney's office. We try to find him over the weekend, and he is not around. So I sign the document, and my wife takes it down to the notary. He notarizes it Monday morning, even though I'm in Carson City. Under this scenario, would the notary and myself be committing any gross misdemeanor?

Renee Parker:

No. Because we do have situations where you are known to the notary, they can notarize your signature if they have been notarizing it for years. Section 1 is a person who is not in the presence of the notary public or unknown to the notary public. So in the circumstance of the notary public who has never notarized your signature, they would be committing a gross misdemeanor. In circumstances of someone you are known to, they would not be.

Assemblywoman Ohrenschall:

Can you go over the apostille again?

Renee Parker:

I do not think the statutes actually say apostille, but that is the terminology used under the Hague Convention. It is an authentication of a document that is intended to be used in a foreign country. Most often, it is for adoptions. What happens is they need paperwork from someone who, in the United States, is intending to adopt somebody outside of the country. They will need their paperwork—for example, a birth certificate—to hand it to a judge or somebody overseeing the adoption outside of the country. They may not view that document as a legitimate document. Under the Hague Convention, many of the states and countries that are under the convention will accept the document if you get an authentication through the Office of the Secretary of State. We authenticate a notary's signature on the apostille on the birth certificate or document. Then they can use that outside of the country, and it is deemed to be a legitimate document.

Assemblywoman Ohrenschaff:

In other words, what you are saying is that if it says "Mary Doe, notary," you are verifying that your records show that, in fact, there was a Mary Doe who was a notary on that date.

Renee Parker:
Correct.

Assemblywoman Buckley:

In Section 1, it says you have to either be not in the presence, or unknown, if the person does not provide documentary evidence. The statute allows for another person that can attest that it is the person they say it is. The reason I ask is because sometimes, we notarize legal documents for free for people who are low income. We oftentimes notarize for the homeless. Sometimes we have to really patch this together, so we will get a shelter worker who once saw their identification to notarize that yes, they swear this is the person.

I just want to make sure that gross misdemeanor in a situation like that is a lot different than someone pulling a scam on a quitclaim deed. If it only says documentary evidence, would that not allow—for example, in NRS 240.1655—an oath or affirmation of a credible witness? Would this still allow that type of identification method? Or instead, use documentary evidence not meeting the requirements of the existing statute, which does allow a little bit of leeway?

Renee Parker:

It was not our intent to prohibit a currently-allowed practice. I think in those situations, you have the homeless person there and you have somebody else attesting. This would prohibit the person not in the presence of the notary. I think the homeless person is there. The certification requirement in the statutes states you can have somebody else attest that they know this person, this is their signature, and they have seen their identification. I don't think this prohibits this, but if you want to have Legal look at it further and double-check, it was certainly not our intent, because that practice is allowed for those situations you described. We are not trying to affect that.

Assemblywoman Buckley:

I was just concerned, because it says "or."

Renee Parker:

If they willfully notarize the signature of a person who is not in the presence of the notary, I think in your situation they are in the presence, so you have already satisfied one part of this.

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Assemblywoman Buckley:

Okay, as long as that was the intent. Maybe in redrafting, we can make sure it is clear.

Misty Ginner, Legislative Advocate, representing the Nevada Resident Agent Association:

As Mr. Anderson mentioned, Section 1 of this bill is an amendment that we worked with the Secretary of State's Office on when it was on the Senate side. I think you have the handout that provides a good explanation of what Section 1 does (Exhibit F).

To start with, I would like to give you a little bit more information on the industry itself. As we have been talking about all morning, the corporate entity filing industry in Nevada is very healthy. There are in excess of 220,000 entities that are filed in Nevada. As little comparison to other states, in most states, it is a ratio of 1 entity to every 164 people. In Nevada, it is 1 in every 42 people. More than 80 percent of those entities are represented by resident agents. Most of them use no resources of the state aside from the Secretary of State's Office. The benefit to the state is 100 percent benefit and no burden.

Just to give you an idea of how much this has benefited the state of Nevada, in 2001 and in 2003, when the Legislature was looking for sources of revenue, this is the place they were able to come. The filing fees provided funding of education in 2001 to the tune of about \$27 million. Last session, when you were putting together the tax package, we were also able to work with you to come up with the scheme where certain fees were raised and other fees were decreased in a way that would not hurt the industry, but would generate the money the State was looking for. Over the biennium it is about \$75 million. The proposal we have today is essentially another way to keep the corporate filing industry in Nevada very healthy, so that it will always be here for the State.

Derek Rowley, President, Nevada Resident Agent Association:

I would like to walk you through Sections 1 and 37 through 40, pertaining to the charging order issue. You should have the handout before you that discusses these issues (Exhibit F).

This proposal originally came from a meeting of the Executive Committee of the Nevada Resident Agent Association. Last fall, we met and discussed issues that pertained to the trends in corporate filings. Prior testimony indicated the dramatic increase in all of the C [corporate] filings. Corporate filings during the same period have been relatively flat. That is of concern to us, because Nevada's reputation is primarily based on what is known as the incorporation

industry. We had a discussion about what we could do to reinvigorate corporate filings in the state of Nevada. This is the issue that came from that.

[Derek Rowley, continued.] What Section 1 does is create a charging order applicable to the stock of certain closely held corporations. Charging order, as we came before this Committee, makes changes in some of the charging order statutes pertaining to LLCs and limited partnerships. The charging order is the remedy that is available to the creditor of an individual who currently owns an ownership interest in limited partnerships and limited liability companies. What the charging order does is make the creditor an assignee of any income paid to that individual who owns that business interest.

The purpose behind the existing charging order limitation is that in a closely held business enterprise where individuals have relationships of partnerships—or small, family-owned business—the innocent partner has the potential to suffer economic consequences of loss. This loss would occur if a creditor to another partner is able to come in and seize that business interest. In the event of a corporation, for example, if the majority stockholder has a creditor who is able to attach and seize that stock, they can take the place of that stockholder, and they would have the ability to vote that stock in favor of liquidation of the corporation. That causes a lot of economic problems to the innocent and minority partners in LLCs and limited partnerships.

To our knowledge, the charging order has never been made available to stock of corporations. Corporate theory has traditionally been that shareholders or stockholders of corporations are considered to be blind to one another. That is certainly true with a publicly traded company. If a creditor of a stockholder of Microsoft were able to seize that stock in satisfaction of a judgment, it does not have any negative impact on any of the other shareholders, because there is a market for that. However, in a privately held company where there are a limited number of shareholders, the reality of the business world is that these small, closely held entities, of which Nevada has really specialized in developing that market, have great potential for loss.

What we have proposed to the Legislature is that the ability of a closely held corporation in Nevada to provide that same type of charging order protection for stockholders be added to the state law. Section 1, subsection 1 does that. It uses the same language that is currently in statutes—pertaining to LLC and limited partnership law—in creating the charging order interest with regard to the stock of a closely held company.

It is important to understand that this charging order does not apply to actions against the corporation itself. If the corporation itself had creditors or had legal

issues, this charging order would not provide any protection. This only applies to creditors' rights against individuals who own an ownership interest in that entity.

[Derek Rowley, continued.] Section 1, subsection 2 outlines some limitations on this right that we have carefully considered. One of the limitations is in subsection 2(a)(1). It states the corporation must have at least 2 stockholders and must have fewer than 75 stockholders in order to be eligible for this right. The reason for requiring more than 1 stockholder has to do with the fact with the innocent party rule. If there is not more than 1 stockholder present in a corporation, there is no innocent party to protect.

There have been some court decisions that have not allowed charging order interests to be upheld in bankruptcy cases in Colorado. I think there is a reference we have provided regarding that. So, we have written that into the statute, requiring that there be an innocent party. We want to make sure that the legal theory behind the charging order proposal is sound and applies only to relatively closely held companies. So, we put a cap on this of up to 75 stockholders. That cap is somewhat arbitrary, but it is defensible. The reason we have chosen that number is that historically, the 75 stockholder limitation has been what the IRS [U.S. Internal Revenue Service] recognizes as being eligible for subchapter selection, which is applicable to small businesses. We have chosen to use that as the proposed cap.

Number 2 of that subsection is that the corporation cannot be a subsidiary of a publicly traded company. In other words, it is not the intention of providing this charging order limitation so that publicly held companies, where stockholders were blind to one another, can assert this charging order limitation by virtue of creating a subsidiary that has only a couple of shareholders. It is not the intent of this, so it is not provided.

Number 3 in that subsection applies only to corporations that are not professional corporations as defined in *Nevada Revised Statutes* (NRS) 89.020. Typically, with professional corporations, there has always been a public policy issue that those professionals who are licensed in certain professions should have some liability in the area in which they are licensed. It would not be our intent to exempt if it would be in conflict with existing policy.

There were issues that were raised before the Business Law Committee, where they had some concerns about making sure this proposal did not override any existing agreements, since we have added that to the statutes as well. Sections 37 through 40 of the bill were added by bill drafting to bring other areas of law

that pertained to execution of judgments in compliance and harmony with our proposal in subsection 1.

Chairman Anderson:

You are proposing changes here within the purview of the Business Law Section in the Secretary of State's Office. Did they see any problems with any of the ideas that you are suggesting?

Derek Rowley:

We have met with the Secretary of State's Office. We have met with Mr. Kim of the Bar Association's business law section. We have discussed these proposals with the Trial Lawyers Association as well. We have addressed every issue that they have brought up. As far as I know, we have the support of all of them.

Chairman Anderson:

Is this a "hold-your-breath-and-wait-and-see" deal?

Derek Rowley:

We have actively communicated with all those parties that chose to testify. We have not been made aware of any concerns by any parties.

Robert Kim:

Yes, Mr. Rowley has had the State look at his language and added a few comments to it, which recognizes what third-party entities may enter into on their own in different secured transactions. We have no objection to the inclusion of this in the bill.

Chairman Anderson:

Because of the issue that was raised in Colorado and their loss of 2,100 corporations, as we can see in your report here, what we are trying to do is make it very clear that these kind of judicial actions are going to take place here in Nevada. These actions will occur unless there is some proven legal responsibility and protecting the assets of other corporate members.

Derek Rowley:

The legal ruling in Colorado applied to a specific LLC case in bankruptcy. There was a single-member LLC who was trying to rely on the charging order to protect creditors from foreclosing on the assets of the company. The court ruled that it could not be upheld because there were no innocent parties. The declining numbers in corporate filings that I have given you in my report does not directly correlate to that. The general purpose for us giving this proposal is that we are trying to make a preemptive strike to assure that Nevada's position

as a preferred corporate climate is primary in the minds of those who make those decisions.

[Derek Rowley, continued.] Adding the charging order to the stock of a closely held corporation would give Nevada a benefit that doesn't exist in any other state currently. It is our hope that by adding this provision, it will allow Nevada to retain its position as being a top corporate climate and will continue to attract filings. One comment that was made to me by an attorney that I have discussed this proposal with is this may be one of the most significant changes in corporate statutes in the last 50 years, in terms of attracting new filings. We certainly hope that will be the case.

Chairman Anderson:

I am sure the part of the market that you are dealing with would find that to be a true statement.

Pat Cashill:

We are communicating, as we speak, with Bob Crowell to ascertain what position he took on the bill. I cannot say anything about it at this point.

Renee Parker:

We did meet with the Nevada Resident Agent Association and with Mr. Kim. It really is more of a policy issue the way it was presented, and this would create a more business-friendly environment. We did ask that they contact the Nevada Trial Lawyers Association in an effort to determine what their concerns might be. There was no opposition in the Senate. We support it if it does create this business-friendly environment, and we have not heard any opposition to date. For us, that would change if there was some opposition. If it is going to encourage the formation of more businesses, keeping us on the business-friendly edge, we are for it. If there is some opposition that is brought forth that we have not considered, we would like to consider that, and we may change our position.

Assemblywoman Buckley:

I would like to run this by some bankruptcy lawyers. We all want to be business friendly, but what we are talking about is where another business is owed money and the right of that business to collect their money from someone being able to shield assets. We just cannot throw out "let's be business friendly" without really realizing what we are doing here. I would like to consult with a couple of bankruptcy attorneys to make sure we are being fair to those businesses who are owed money.

Chairman Anderson:

It is the Chair's intention that we will put this on work session for Wednesday. I would ask that those questions be closed by Tuesday morning at 9:00. I would suggest that Ms. Combs would like to have that information by Tuesday morning at 9:00 a.m. for preparation to move it into our work session document for next Wednesday.

Renee Parker:

We agree with Assemblywoman Buckley's comments. That is why we did ask for other input. We are fully in support in doing that type of investigation.

Pat Cashill:

We will comply and get word back to Ms. Combs by Tuesday at 9:00 a.m.

Chairman Anderson:

The hearing on S.B. 453 is closed. Let's turn our attention to S.B. 337.

Senate Bill 337 (1st Reprint): Makes changes pertaining to intoxicating substances. (BDR 3-784)

Senator Valerie Wiener, Clark County Senatorial District No. 3:

[Submitted Exhibit G and Exhibit H.] Today I appear before you to urge your support for S.B. 337, which deals with what is commonly called "social hosting." Before I discuss this particular legislation, I would like to provide some background information on the bill.

In 2003, I sponsored S.C.R. 15 of the 72nd Legislative Session, which addressed the problem of alcohol and drug abuse by young adults while driving motor vehicles. During the hearing in the Assembly, Kathy Bartosz, a grants analyst in the Department of Human Resources, Division of Child and Family Services, came forward unexpectedly to testify with great enthusiasm. With the permission of her agency, she offered some dedicated dollars to conduct a study (Exhibit G), which was a massive study that was accomplished based on that resolution. In that study, I will refer to some different pieces of information, because they are pretty substantial in supporting why I am here before you today. It does provide a comprehensive look at underage alcohol consumption in our state.

As you will note, this was a cooperative effort between Human Resources, the Department of Public Safety, the Department of Transportation, and the Department of Education. In the report (Exhibit G), on pages 4 and 5, you will

Charging Order Protection for Nevada Corporations

A White Paper by the Nevada Resident Agent Association

2005 Legislature

**By Derek G. Rowley
NRAA President**

February 2005

ASSEMBLY JUDICIARY

DATE: 6-5-05 EXHIBIT F PAGE 1 OF 12

SUBMITTED BY: Derek Rowley

Addendum000072

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Executive Summary

The right of a judgment creditor to collect against the assets of a judgment debtor varies depending upon the nature of the assets. Some asset types – primarily liquid assets – can be directly attached, while other asset types have limitations on attachment by the judgment creditor. Assets that cannot generally be directly taken by a judgment creditor usually provide for other recourse, such as potential foreclosure and forced sale of assets, or the imposition of a “charging order” against future income of assets.

When the assets of a judgment debtor include ownership interest in business entities, the rights of the creditor have also traditionally varied, depending upon the specific type of business entity owned. This variance creates inconsistencies in the application of creditors’ remedies against different types of business interests.

The Nevada Resident Agent Association (NRAA) proposes to the Nevada Legislature that charging order protection be provided as the judgment creditor remedy against the ownership of corporate stock of small business corporations, consistent with the application of the charging order as it currently applies to limited partnerships and limited liability companies.

This paper discusses the use of the charging order in support of legislative changes which would standardize the remedies of creditors under Nevada law. Additionally, the changes proposed in this paper would create a significant advantage for the State of Nevada in attracting additional commercial recordings and associated revenues, particularly in the area of promoting new corporate filings.

Introduction

Background

A charging order is an order by a court of proper jurisdiction which places a "charge" in the amount owed against the property of a judgment debtor. While the charging order does not normally provide immediate relief to the creditor, it may safeguard the value of the asset in the future.

Currently, charging order relief in Nevada is provided as a creditor's remedy against a debtor's ownership interest in either a limited partnership (LP) or limited liability company (LLC). The charging order generally prevents the creditor from foreclosing upon the ownership interest in the LP or LLC, and from forcing a sale of the entity's interest or assets to satisfy the judgment.

The purpose and theory behind the charging order limitation is to protect innocent partners (in the case of an LP) or members (in the case of an LLC) from being forced to inherit potentially hostile parties as partners/members in a partnership-type arrangement as the result of creditor foreclosure or forced sale. Such a consequence would likely have serious and significant negative economic impact on innocent partner/members.

The charging order remedy protects the value of the creditor's interest, while also protecting the innocent partner/member. The creditor becomes an "assignee" of any income that the debtor would derive from the ownership interest. As a result, any amounts that would normally be paid to the debtor/owner, whether as distribution of profit or by virtue of the unforced, market-value sale of the entity ownership interest - which could include the exercise of internal partnership/LLC agreement provisions allowing existing innocent partner/members to exercise buy-out options to divest the interest of debtor/owner.

In most states, the charging order remedy is one of several alternatives available to the judgment creditor and the court. However, the 2003 Nevada Legislature amended the Nevada Revised Statutes to join 8 other states in making the charging order the sole remedy available to creditors. This change has had a significant impact, particularly in LLC filings. Several legal newsletters and websites have discussed the 2003 changes in Nevada's charging order application.¹

¹ For a sampling of these discussions, see Commerce Clearing House Business Owner's Toolkit: http://www.toolkit.cch.com/text/V12_4476.asp; American Bar Association Magazine, May 2004: <http://www.abanet.org/hppt/publications/magazine/2004/ma/letters.html>; Asset Protection Corp.:

Charging Order Protection for Corporate Stock

Charging order protection for corporations is not currently available in any jurisdiction that we can identify. This places the stock of a corporation, including closely held or family owned companies, in jeopardy of potential foreclosure and forced sale to satisfy judgment creditors. The legal theory behind for this distinction between ownership of corporate stock as compared with ownership of LP or LLC interests is that stockholders are traditionally thought to be insulated and blind from one another; they are not generally considered to have a relationship or commitment to each other comparable to the partnership.

CCH Business Owner's Toolkit, published by Commerce Clearing House, one of the world's leading legal publishers offers the following analysis:

"In theory, the relationship among corporate shareholders is an impersonal one (as opposed to that in a partnership or limited liability company). Therefore, when satisfying an owner's personal debt liability, the law allows a creditor who has acquired the shares through attachment to participate in management of the corporation. Thus, the creditor may vote the shares in favor of liquidation or in other ways unfavorable to the debtor's interests. In a small, closely held corporation, this is a real possibility. When you hold a majority interest in the corporation, and this interest is attached by a creditor with a charging order, your creditor may vote to liquidate the business to satisfy the debt. Even setting up your corporation as a statutory close corporation does not eliminate the risk that personal creditors of the owner will be able to attach and then vote the shares in favor of a liquidation of the business."²

However, this legal concept does not reflect the reality of the business world, particularly in Nevada, where corporate statutes have been specifically drafted over time to attract small business corporate filings, as opposed to publicly-traded entities. The typical Nevada corporate filing is a micro-business with shareholders numbering from one to several. The relationship of these shareholders can be closely compared to that of partners, both in terms of their exercise of ownership and management rights.

Likewise, the potential of foreclosure or liquidation of the stock of a judgment debtor can have the same serious and negative economic impact on innocent shareholders as the charging order seeks to forestall where the entity is an LP or LLC.

By providing charging order protection for small business corporations, Nevada can take a tremendous step toward protecting existing shareholders of Nevada corporate entities. Further, by breaking this new ground in the area of corporate law, Nevada will see significant increase in its market share for new corporate filings and enhance its reputation as an international incorporation center.

<http://www.assetprotectioncorp.com/assetprotectionunderRULPAandLLC.html>; and dozens of websites by Nevada resident agents.

² http://www.toolkit.cch.com/text/P12_4471.asp

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Limitations of Corporate Charging Order Protection

The Nevada Resident Agent Association has carefully considered the ramifications of adding charging order protection to small business corporations. This protection, as proposed by NRAA, is intended to comply with the generally accepted legal theories currently governing charging order legislation:

1. It is intended to protect stockholders who have a partnership-type relationship with other stockholders in a small business, and who have potential to suffer economic loss in the event of foreclosure or liquidation by judgment creditors of other stockholders.
2. It is intended to comply with existing legal developments in the area of charging order application pertaining to single-member LLC's.²
3. It does not protect the corporation or corporate assets from judgments against the corporation directly. Thus, the charging order would not be used to insulate the corporation from risk associated with product liability, defects, errors and omissions, etc. that result from the corporation carrying on its business. The charging order only provides innocent party protection from outside judgments against owners.

Single Owner Corporations

In 2003, a federal judge in Colorado denied charging order protection for single member LLC and allowed the bankruptcy trustee to take possession of the single-member LLC's assets to benefit creditors. This determination was made due to the fact that no innocent third-party member of the LLC existed, and thus there was no economic interest to protect.

NRAA assumes that this legal standard would also apply to single shareholder corporations. As a result, our proposal requires that more than one shareholder is required for charging order protection to be an available remedy.

Conformity to Federal Sub-Chapter S Status Qualifications

Because the intent of this proposal is to provide charging order protection in circumstances related to small business where stockholders are likely to have partnership-type relationships, it was necessary to consider an appropriate cap on the number of stockholders in order to ensure that this measure provides

² Ashley Albright, *Blupic*, (2003)

small business benefits. After considerable discussion, NRAA determined that the federal qualification guidelines for S Corporation eligibility provided an appropriate cap inasmuch as the S corporation election is provided for the intent of providing partnership-type taxation to small business corporation. Clearly, the Internal Revenue Service considers corporations with fewer than 75 shareholders to be a small business.

Publicly Traded Corporations

Stock of a publicly traded Nevada corporation would not be eligible for charging order protection under the NRAA proposal, due to the fact the corporation's status as a public entity removes the partnership/owner relationship that the charging order is designed to protect. In a publicly traded company, stockholders truly are "impersonal" and blind to one another. In addition, stockholders of publicly traded corporations have already assumed the risk associated with potentially hostile stockholders; and statutory and case law pertaining to hostile takeovers are already provided.

Subsidiary Corporations

It is not the intention of the NRAA that charging order protection should be available to corporations that exist as subsidiaries of publicly traded companies, for the same reasons outlined above.

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Section 4

The Declining Market of Corporate Filings

According to the Annual Report of Jurisdictions published at the 2004 conference of the International Association of Commercial Administrators (IACA), 19 of the 41 states reporting indicated that corporate filings had declined in those states in the period 2002 to 2003. The combined total of all reporting states indicated that corporate filings rose a mere 2.44% overall. This compares with only 2 of 41 states reporting a decline in LLC filing during the same period, with a combined growth in LLC filings of 21.97% nationally.

	<u>2002</u> <u>Corps</u>	<u>2003</u> <u>Corps</u>	<u>% Growth</u>
Alabama	8,273	6,837	-3.76%
Alaska	844	879	3.98%
Arizona	10,806	11,515	6.56%
Arkansas	5,938	5,837	-0.99%
California	78,885	83,763	6.12%
Colorado	19,144	16,976	-11.32%
Connecticut	2,532	2,498	-1.34%
Delaware	38,256	32,188	-11.24%
Florida	135,578	161,559	19.16%
Georgia	31,787	32,311	1.69%
Hawaii	3,830	3,195	5.45%
Iowa	4,336	4,384	1.06%
Indiana	11,237	11,184	-0.47%
Kansas	4,517	4,419	-2.82%
Louisiana	6,267	5,694	-9.14%
Maine	2,582	2,538	1.51%
Maryland	16,867	17,031	0.97%
Massachusetts	12,544	11,941	-4.81%
Minnesota	13,254	13,545	2.20%
Mississippi	4,375	4,176	-4.59%
Missouri	12,556	12,132	-3.33%
Nebraska	2,966	3,017	1.72%
Nevada	28,612	28,128	1.78%
New Hampshire	1,688	1,737	3.58%
New Jersey	25,543	22,198	-13.10%
New Mexico	2,259	2,370	4.91%
New York	77,650	78,104	0.58%
North Carolina	20,975	21,841	4.13%
Ohio	15,885	15,888	-0.14%
Oregon	8,710	8,912	2.32%
Pennsylvania	18,159	17,888	-1.49%
Rhode Island	2,483	2,337	-2.73%
South Dakota	14,954	15,379	2.84%
Tennessee	7,143	7,209	0.92%
Texas	48,188	46,684	-3.10%
Utah	10,303	7,785	-24.44%

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Virginia	19,292	19,397	0.55%
Washington	12,869	12,394	2.55%
West Virginia	1,328	1,436	10.23%
Wisconsin	5,788	5,643	-2.37%
Wyoming	2,253	1,877	-12.87%
TOTALS	748,022	763,203	2.05%

For 2003, the report shows a total of 763,203 new corporate filings, compared with 748,023 new LLC filings. Based on those numbers and the trends reported in the 2004 IACA report, we expect that when the 2005 is released with final 2004 figures, it will show that new LLC filings will have surpassed total new corporate filings for the first time.

While the growth in LLC filings is a healthy trend for the economy, as well as for the Commercial Recordings Division and resident agents, the lack of growth or decline in corporate filings is cause for some concern. Since corporate filings have always been a historical staple revenue source generated by the Secretary of State's office and resident agent marketing efforts, any decline in corporate filing numbers will likewise be reflected in a decline in commercial recording fees generated by future new corporate filings.

The NRAA believes that the proposal to provide charging order protection to the stock of Nevada small business corporations will reinvigorate corporate filings in Nevada. Of particular interest to the NRAA is in positioning Nevada to capture a greater share of the market that is currently filing corporate entities in Florida -- at a rate, we note, that far exceeds the baseline incorporation level that is supported by the population of the state. A large proportion of Florida corporate filings are generated by law firms who are attracted to Florida's general climate for asset protection (as evidenced by Florida's unlimited homestead exemption on the value of residential real estate).

We feel that the addition of charging order protection for Nevada corporate entities will provide the state with a significant tool to gain national market share in the incorporation market, and to continue to aggressively compete with states such as Florida, Delaware, Wyoming and South Dakota for the importation of corporate filings and its associated revenues and economic development impacts.

Possible Objections

It is difficult for our Association to fully anticipate all of the possible objections that might arise from our proposal. As groups raise legitimate concerns, we are prepared to sit down with these parties and discuss these concerns rationally in the pursuit of resolving problem issues or reaching workable compromises whenever possible. Nevertheless, as we have discussed this issue at the level of our Executive Board, we have identified the following possible objections:

Unreasonable Protection for Debtors

Clearly, the proposal to add charging order protection to small business corporation stock provides a degree of additional protection from judgment creditors that are not now present. Some, particularly those involved in seeking and collecting judgments, may perceive that this charging order protection may prevent or hinder the collection on legal judgments, or that the charging order has potential for abuse in creditor/debtor relationships.

We would argue that the current law - where foreclosure and forced sale of corporate stock can result - may provide less protection to creditor than the charging order proposal. If stock of a closely-held corporation is liquidated in an auction on the steps of the county courthouse under foreclosure proceedings, the creditor is unlikely to receive anything close to full value for corporate stock or assets because the forced sale does not take place in an environment that enables the stock to be sold at its highest value.

In preparation for bringing this proposal to the legislature, we have discussed this concept with several Nevada attorneys who practice in the area of business law. It was universally noted that the forced liquidation of closely-held corporate stock is rare due to the fact that the creditor is unable to receive sufficient value to justify the expense of the proceedings in such a circumstance.

While the charging order on corporate stock may delay the creditor's ability to collect on the judgment, the likelihood may be much greater that the creditor is able to collect on the full amount, either through the attachment of future dividend distributions or at some future point of sale or transfer of corporate stock.

Potential for Abuse

Some may argue that the charging order has potential for abuse and fraud. Those who would attempt to use the corporation as a tool for fraud are also likely to attempt to hide behind the protection of the corporate veil and any connected charging order limits.

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In the event of criminal fraud (and related sanctions and penalties), the charging order would have no application. In civil actions or suits, the charging order would generally apply to judgments obtained against individual shareholders UNLESS the entity is also named as a party to the action, and the court finds that fraud or "manifest injustice" is present in the corporation's involvement or activity. In the presence of fraud or manifest injustice, the corporation veil can be pierced and individuals can be held personally liable.⁴ The court has wide latitude to deal with matters of fraud and abuse.

Unreasonable Protection from Liability for Corporate Actions

If the charging order is not properly understood, it may seem to the uninformed that we propose to create additional barriers to legitimate claims against the corporation. Such is not the case. The charging order does not apply to actions against the corporation. Any injured party with a legitimate claim or action against a corporate entity may pursue that action in the courts. If a judgment is obtained against the corporation itself, all assets of the corporation are potentially available for satisfaction of the judgment. In other words, a corporation cannot use a charging order to prevent satisfaction of claims against the entity for any reason.

⁴ NRS 78.747

Section 6

Conclusions

Providing charging order protection to Nevada small business corporations will give Nevada a significant competitive edge that will have reap tremendous economic benefits for many years. This proposal breaks new legal ground in the area of corporate law in a manner that no other state can currently match. While the Nevada Resident Agent Association is unable to predict the specific impact these changes will have on Nevada filings, we do predict that the consequences will be substantial. If passed, the addition of charging order protection for Nevada corporations will catch the attention of the entire legal community, and will become the subject of a tremendous amount of technical "buzz" and publicity for Nevada's advantages.

This proposal represents an attempt to provide equal treatment among the available business entity types regarding the protection of the economic interests of innocent partner/stockholders of Nevada corporations. However, the charging order also provides important protections to ensure that creditors will receive full value remedies, and thus protects their economic interests as well.

Further, the proposal seeks to provide long-term protection and reinforcement of Nevada's commercial filing staple: the corporation. As Nevada competes with many other states for market share in the corporate filing world, it will be poised to attract a large number of filings that currently go elsewhere.

Impacted NRS Sections

- NRS 78 Private Corporations
- NRS 78A Close Corporations
- NRS 21 Enforcement of Judgments

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Information in this document is subject to change without notice.

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(Reprinted with amendments adopted on April 23, 2007)

FIRST REPRINT

S.B. 317

SENATE BILL NO. 317—SENATOR CARE

MARCH 19, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions relating to agents for service of process and business entities. (BDR 7-445)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

EXPLANATION — Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to business entities; establishing provisions relating to the judgment execution of a stockholder's stock; revising the provisions relating to the location of a registered office of a corporation; revising the provisions relating to the maintenance of a corporation's records at its registered office; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law allows a court to charge the interest of a partner in a partnership or
- 2 limited partnership or a member of a limited-liability company for payment of an
- 3 unsatisfied judgment under certain circumstances. (NRS 86.401, 87.280, 87.4342,
- 4 88.535) Section 1 of this bill provides that a court may charge a stockholder's stock
- 5 with payment of an unsatisfied judgment under certain circumstances.
- 6 Existing law requires every corporation to have a resident agent who resides or
- 7 is located in this State. (NRS 78.090) Section 2 of this bill requires every resident
- 8 agent to maintain a physical street address. Section 2 also requires the physical
- 9 street address of the registered office of a resident agent who acts as a resident
- 10 agent for multiple business entities to be in a location zoned for such use.
- 11 Existing law establishes provisions relating to the maintenance of a
- 12 corporation's records at its registered office. (NRS 78.105) Section 3 of this bill
- 13 requires certain records to be maintained for a period of 3 years by a new resident
- 14 agent who replaces a previous resident agent.
- 15 Existing law provides that certain benefits and property may be exempt from
- 16 execution. (NRS 21.075, 21.090, 31.045) Sections 4-7 of this bill provide that stock
- 17 of certain corporations may be exempt from execution under certain circumstances.



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 a new section to read as follows:

3 1. On application to a court of competent jurisdiction by a
4 judgment creditor of a stockholder, the court may charge the
5 stockholder's stock with payment of the unsatisfied amount of the
6 judgment with interest. To the extent so charged, the judgment
7 creditor has only the rights of an assignee of the stockholder's
8 stock.

9 2. This section:

10 (a) Applies only to a corporation that:

11 (1) Has one or more but fewer than 75 stockholders of
12 record at any time.

13 (2) Is not a subsidiary of a publicly traded corporation,
14 either in whole or in part.

15 (3) Is not a professional corporation, as defined in
16 NRS 89.020.

17 (b) Does not apply to any liability of a stockholder that exists
18 as the result of an action filed before October 1, 2007.

19 (c) Provides the exclusive remedy by which a judgment
20 creditor of a stockholder or an assignee of a stockholder may
21 satisfy a judgment out of the stockholder's stock of the
22 corporation.

23 (d) Does not deprive any stockholder of the benefit of any
24 exemption applicable to the stockholder's stock.

25 (e) Does not supersede any private agreement between a
26 stockholder and a creditor.

27 **Sec. 2.** NRS 78.090 is hereby amended to read as follows:

28 78.090 1. Except during any period of vacancy described in
29 NRS 78.097, every corporation must have a resident agent who
30 resides or is located in this State. Every resident agent must {have}
31 maintain a physical street address for {the} receiving service of
32 process, {and} which is the registered office of the corporation in
33 this State. If the resident agent is in the business of acting as a
34 resident agent for multiple business entities, the physical street
35 address of the registered office must be in a location that is zoned
36 for such use. The resident agent may have a separate mailing
37 address, such as a post office box, which may be different from the
38 street address. {The street address of the resident agent is the
39 registered office of the corporation in this State.}

40 2. If the resident agent is a bank or corporation, it may:



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1 (a) Act as the fiscal or transfer agent of any state, municipality,
2 body politic or corporation and in that capacity may receive and
3 disburse money.

4 (b) Transfer, register and countersign certificates of stock, bonds
5 or other evidences of indebtedness and act as agent of any
6 corporation, foreign or domestic, for any purpose required by
7 statute, or otherwise.

8 (c) Act as trustee under any mortgage or bond issued by any
9 municipality, body politic or corporation, and accept and execute
10 any other municipal or corporate trust not inconsistent with the laws
11 of this State.

12 (d) Receive and manage any sinking fund of any corporation,
13 upon such terms as may be agreed upon between the corporation
14 and those dealing with it.

15 3. Every corporation organized pursuant to this chapter which
16 fails or refuses to comply with the requirements of this section is
17 subject to a fine of not less than \$100 nor more than \$500, to be
18 recovered with costs by the State, before any court of competent
19 jurisdiction, by action at law prosecuted by the Attorney General or
20 by the district attorney of the county in which the action or
21 proceeding to recover the fine is prosecuted.

22 4. All legal process and any demand or notice authorized by
23 law to be served upon a corporation may be served upon the resident
24 agent of the corporation in the manner provided in subsection 2 of
25 NRS 14.020. If any demand, notice or legal process, other than a
26 summons and complaint, cannot be served upon the resident agent,
27 it may be served in the manner provided in NRS 14.030. These
28 manners and modes of service are in addition to any other service
29 authorized by law.

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

31 78.105 1. A corporation shall keep a copy of the following
32 records at its registered office:

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

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

37 (c) A stock ledger or a duplicate stock ledger, revised annually,
38 containing the names, alphabetically arranged, of all persons who
39 are stockholders of the corporation, showing their places of
40 residence, if known, and the number of shares held by them
41 respectively. In lieu of the stock ledger or duplicate stock ledger,
42 the corporation may keep a statement setting out the name of the
43 custodian of the stock ledger or duplicate stock ledger, and the
44 present and complete mailing or street address where the stock
45 ledger or duplicate stock ledger specified in this section is kept.



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1 2. A stock ledger, duplicate stock ledger or statement setting
2 out the name of the custodian of the stock ledger or duplicate
3 stock ledger described in paragraph (c) of subsection 1 must be
4 maintained by the new resident agent of the corporation for a
5 period of 3 years following the resignation or removal of the
6 resident agent or the dissolution of the corporation by the
7 Secretary of State.

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

21 {3-} 4. If any corporation willfully neglects or refuses to make
22 any proper entry in the stock ledger or duplicate copy thereof, or
23 neglects or refuses to permit an inspection of the records required by
24 subsection 1 upon demand by a person entitled to inspect them, or
25 refuses to permit copies to be made therefrom, as provided in
26 subsection {2-} 3, the corporation is liable to the person injured for
27 all damages resulting to him therefrom.

28 {4-} 5. When the corporation keeps a statement in the manner
29 provided for in paragraph (c) of subsection 1, the information
30 contained thereon must be given to any stockholder of the
31 corporation demanding the information, when the demand is made
32 during business hours. Every corporation that neglects or refuses to
33 keep a statement available, as in this subsection required, shall
34 forfeit to the State the sum of \$25 for every day of such neglect or
35 refusal.

36 {5-} 6. In every instance where an attorney or other agent of
37 the stockholder seeks the right of inspection, the demand must be
38 accompanied by a power of attorney signed by the stockholder
39 authorizing the attorney or other agent to inspect on behalf of the
40 stockholder.

41 {6-} 7. The right to copy records under subsection {2-} 3
42 includes, if reasonable, the right to make copies by photographic,
43 xerographic or other means.



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1 {7.} 8. The corporation may impose a reasonable charge to
2 recover the costs of labor and materials and the cost of copies of any
3 records provided to the stockholder.

4 Sec. 4. NRS 21.075 is hereby amended to read as follows:

5 21.075 1. Execution on the writ of execution by levying on
6 the property of the judgment debtor may occur only if the sheriff
7 serves the judgment debtor with a notice of the writ of execution
8 pursuant to NRS 21.076 and a copy of the writ. The notice must
9 describe the types of property exempt from execution and explain
10 the procedure for claiming those exemptions in the manner required
11 in subsection 2. The clerk of the court shall attach the notice to the
12 writ of execution at the time the writ is issued.

13 2. The notice required pursuant to subsection 1 must be
14 substantially in the following form:

15
16 NOTICE OF EXECUTION

17
18 YOUR PROPERTY IS BEING ATTACHED OR
19 YOUR WAGES ARE BEING GARNISHED
20

21 A court has determined that you owe money to
22 (name of person), the judgment creditor. He has
23 begun the procedure to collect that money by garnishing your
24 wages, bank account and other personal property held by
25 third persons or by taking money or other property in your
26 possession.

27 Certain benefits and property owned by you may be
28 exempt from execution and may not be taken from you. The
29 following is a partial list of exemptions:

30 1. Payments received pursuant to the federal Social
31 Security Act, including, without limitation, retirement and
32 survivors' benefits, supplemental security income benefits
33 and disability insurance benefits.

34 2. Payments for benefits or the return of contributions
35 under the Public Employees' Retirement System.

36 3. Payments for public assistance granted through the
37 Division of Welfare and Supportive Services of the
38 Department of Health and Human Services or a local
39 governmental entity.

40 4. Proceeds from a policy of life insurance.

41 5. Payments of benefits under a program of industrial
42 insurance.

43 6. Payments received as disability, illness or
44 unemployment benefits.

45 7. Payments received as unemployment compensation.



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8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, not to exceed \$350,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.

10. A vehicle, if your equity in the vehicle is less than \$15,000.

11. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

12. Money, not to exceed \$500,000 in present value, held in:

(a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

13. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.



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14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

15. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

16. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

17. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss, by the judgment debtor or by a person upon whom the judgment debtor is dependent at the time the payment is received.

18. Payments received as compensation for the wrongful death of a person upon whom the judgment debtor was dependent at the time of the wrongful death, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

19. Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

20. Payments received as restitution for a criminal act.

21. *Stock of certain corporations, subject to the provisions of section 1 of this act.*

These exemptions may not apply in certain cases such as a proceeding to enforce a judgment for support of a person or a judgment of foreclosure on a mechanic's lien. You should consult an attorney immediately to assist you in determining whether your property or money is exempt from execution. If you cannot afford an attorney, you may be eligible for assistance through (name of organization in county providing legal services to indigent or elderly persons).

PROCEDURE FOR CLAIMING EXEMPT PROPERTY

If you believe that the money or property taken from you is exempt, you must complete and file with the clerk of the court a notarized affidavit claiming the exemption. A copy of



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1 the affidavit must be served upon the sheriff and the judgment
2 creditor within 8 days after the notice of execution is mailed.
3 The property must be returned to you within 5 days after you
4 file the affidavit unless you or the judgment creditor files a
5 motion for a hearing to determine the issue of exemption. If
6 this happens, a hearing will be held to determine whether the
7 property or money is exempt. The motion for the hearing to
8 determine the issue of exemption must be filed within 10 days
9 after the affidavit claiming exemption is filed. The hearing to
10 determine whether the property or money is exempt must be
11 held within 10 days after the motion for the hearing is filed.
12

13 IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE
14 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD
15 AND THE MONEY GIVEN TO THE JUDGMENT
16 CREDITOR, EVEN IF THE PROPERTY OR MONEY IS
17 EXEMPT.

18 Sec. 5. NRS 21.090 is hereby amended to read as follows:

19 21.090 1. The following property is exempt from execution,
20 except as otherwise specifically provided in this section or required
21 by federal law:

22 (a) Private libraries, works of art, musical instruments and
23 jewelry not to exceed \$5,000 in value, belonging to the judgment
24 debtor or a dependent of the judgment debtor, to be selected by the
25 judgment debtor, and all family pictures and keepsakes.

26 (b) Necessary household goods, furnishings, electronics,
27 wearing apparel, other personal effects and yard equipment, not to
28 exceed \$12,000 in value, belonging to the judgment debtor or a
29 dependent of the judgment debtor, to be selected by the judgment
30 debtor.

31 (c) Farm trucks, farm stock, farm tools, farm equipment,
32 supplies and seed not to exceed \$4,500 in value, belonging to the
33 judgment debtor to be selected by him.

34 (d) Professional libraries, equipment, supplies, and the tools,
35 inventory, instruments and materials used to carry on the trade or
36 business of the judgment debtor for the support of himself and his
37 family not to exceed \$10,000 in value.

38 (e) The cabin or dwelling of a miner or prospector, his cars,
39 implements and appliances necessary for carrying on any mining
40 operations and his mining claim actually worked by him, not
41 exceeding \$4,500 in total value.

42 (f) Except as otherwise provided in paragraph (o), one vehicle if
43 the judgment debtor's equity does not exceed \$15,000 or the
44 creditor is paid an amount equal to any excess above that equity.



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1 (g) For any workweek, 75 percent of the disposable earnings of
2 a judgment debtor during that week, or 50 times the minimum
3 hourly wage prescribed by section 6(a)(1) of the federal Fair Labor
4 Standards Act of 1938, 29 U.S.C. § 206(a)(1), and in effect at the
5 time the earnings are payable, whichever is greater. Except as
6 otherwise provided in paragraphs (n), (r) and (s), the exemption
7 provided in this paragraph does not apply in the case of any order of
8 a court of competent jurisdiction for the support of any person, any
9 order of a court of bankruptcy or of any debt due for any state or
10 federal tax. As used in this paragraph:

11 (1) "Disposable earnings" means that part of the earnings of
12 a judgment debtor remaining after the deduction from those earnings
13 of any amounts required by law to be withheld.

14 (2) "Earnings" means compensation paid or payable for
15 personal services performed by a judgment debtor in the regular
16 course of business, including, without limitation, compensation
17 designated as income, wages, tips, a salary, a commission or a
18 bonus. The term includes compensation received by a judgment
19 debtor that is in the possession of the judgment debtor,
20 compensation held in accounts maintained in a bank or any other
21 financial institution or, in the case of a receivable, compensation
22 that is due the judgment debtor.

23 (h) All fire engines, hooks and ladders, with the carts, trucks and
24 carriages, hose, buckets, implements and apparatus thereunto
25 appertaining, and all furniture and uniforms of any fire company or
26 department organized under the laws of this State.

27 (i) All arms, uniforms and accouterments required by law to be
28 kept by any person, and also one gun, to be selected by the debtor.

29 (j) All courthouses, jails, public offices and buildings, lots,
30 grounds and personal property, the fixtures, furniture, books, papers
31 and appurtenances belonging and pertaining to the courthouse, jail
32 and public offices belonging to any county of this State, all
33 cemeteries, public squares, parks and places, public buildings, town
34 halls, markets, buildings for the use of fire departments and military
35 organizations, and the lots and grounds thereto belonging and
36 appertaining, owned or held by any town or incorporated city, or
37 dedicated by the town or city to health, ornament or public use, or
38 for the use of any fire or military company organized under the laws
39 of this State and all lots, buildings and other school property owned
40 by a school district and devoted to public school purposes.

41 (k) All money, benefits, privileges or immunities accruing or in
42 any manner growing out of any life insurance, if the annual
43 premium paid does not exceed \$15,000. If the premium exceeds that
44 amount, a similar exemption exists which bears the same proportion
45 to the money, benefits, privileges and immunities so accruing or



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1 growing out of the insurance that the \$15,000 bears to the whole
2 annual premium paid.

3 (l) The homestead as provided for by law, including a
4 homestead for which allodial title has been established and not
5 relinquished and for which a waiver executed pursuant to NRS
6 115.010 is not applicable.

7 (m) The dwelling of the judgment debtor occupied as a home for
8 himself and family, where the amount of equity held by the
9 judgment debtor in the home does not exceed \$350,000 in value and
10 the dwelling is situated upon lands not owned by him.

11 (n) All property in this State of the judgment debtor where the
12 judgment is in favor of any state for failure to pay that state's
13 income tax on benefits received from a pension or other retirement
14 plan.

15 (o) Any vehicle owned by the judgment debtor for use by him or
16 his dependent that is equipped or modified to provide mobility for a
17 person with a permanent disability.

18 (p) Any prosthesis or equipment prescribed by a physician or
19 dentist for the judgment debtor or a dependent of the debtor.

20 (q) Money, not to exceed \$500,000 in present value, held in:

21 (1) An individual retirement arrangement which conforms
22 with the applicable limitations and requirements of section 408 or
23 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

24 (2) A written simplified employee pension plan which
25 conforms with the applicable limitations and requirements of section
26 408 of the Internal Revenue Code, 26 U.S.C. § 408;

27 (3) A cash or deferred arrangement which is a qualified plan
28 pursuant to the Internal Revenue Code;

29 (4) A trust forming part of a stock bonus, pension or profit-
30 sharing plan which is a qualified plan pursuant to sections 401 et
31 seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

32 (5) A trust forming part of a qualified tuition program
33 pursuant to chapter 353B of NRS, any applicable regulations
34 adopted pursuant to chapter 353B of NRS and section 529 of the
35 Internal Revenue Code, 26 U.S.C. § 529, unless the money is
36 deposited after the entry of a judgment against the purchaser or
37 account owner or the money will not be used by any beneficiary to
38 attend a college or university.

39 (r) All money and other benefits paid pursuant to the order of a
40 court of competent jurisdiction for the support, education and
41 maintenance of a child, whether collected by the judgment debtor or
42 the State.

43 (s) All money and other benefits paid pursuant to the order of a
44 court of competent jurisdiction for the support and maintenance of a
45 former spouse, including the amount of any arrearages in the



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1 payment of such support and maintenance to which the former
2 spouse may be entitled.

3 (t) Payments, in an amount not to exceed \$16,150, received as
4 compensation for personal injury, not including compensation for
5 pain and suffering or actual pecuniary loss, by the judgment debtor
6 or by a person upon whom the judgment debtor is dependent at the
7 time the payment is received.

8 (u) Payments received as compensation for the wrongful death
9 of a person upon whom the judgment debtor was dependent at the
10 time of the wrongful death, to the extent reasonably necessary for
11 the support of the judgment debtor and any dependent of the
12 judgment debtor.

13 (v) Payments received as compensation for the loss of future
14 earnings of the judgment debtor or of a person upon whom the
15 judgment debtor is dependent at the time the payment is received, to
16 the extent reasonably necessary for the support of the judgment
17 debtor and any dependent of the judgment debtor.

18 (w) Payments received as restitution for a criminal act.

19 (x) Payments received pursuant to the federal Social Security
20 Act, including, without limitation, retirement and survivors'
21 benefits, supplemental security income benefits and disability
22 insurance benefits.

23 (y) *Stock of certain corporations, subject to the provisions of*
24 *section 1 of this act.*

25 2. Except as otherwise provided in NRS 115.010, no article or
26 species of property mentioned in this section is exempt from
27 execution issued upon a judgment to recover for its price, or upon a
28 judgment of foreclosure of a mortgage or other lien thereon.

29 3. Any exemptions specified in subsection (d) of section 522 of
30 the Bankruptcy Act of 1978, 11 U.S.C. § 522(d), do not apply to
31 property owned by a resident of this State unless conferred also by
32 subsection 1, as limited by subsection 2.

33 Sec. 6. NRS 31.045 is hereby amended to read as follows:

34 31.045 1. Execution on the writ of attachment by attaching
35 property of the defendant may occur only if:

36 (a) The judgment creditor serves the defendant with notice of
37 the execution when the notice of the hearing is served pursuant to
38 NRS 31.013; or

39 (b) Pursuant to an ex parte hearing, the sheriff serves upon the
40 judgment debtor notice of the execution and a copy of the writ at the
41 same time and in the same manner as set forth in NRS 21.076.

42 ↪ If the attachment occurs pursuant to an ex parte hearing, the clerk
43 of the court shall attach the notice to the writ of attachment at the
44 time the writ is issued.



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2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

**YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED**

Plaintiff, _____ (name of person), alleges that you owe him money. He has begun the procedure to collect that money. To secure satisfaction of judgment the court has ordered the garnishment of your wages, bank account or other personal property held by third persons or the taking of money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, not to exceed \$350,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.



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10. A vehicle, if your equity in the vehicle is less than \$15,000.

11. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

12. Money, not to exceed \$500,000 in present value, held in:

(a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

13. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

15. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

16. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

17. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss,



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1 by the judgment debtor or by a person upon whom the
2 judgment debtor is dependent at the time the payment is
3 received.

4 18. Payments received as compensation for the wrongful
5 death of a person upon whom the judgment debtor was
6 dependent at the time of the wrongful death, to the extent
7 reasonably necessary for the support of the judgment debtor
8 and any dependent of the judgment debtor.

9 19. Payments received as compensation for the loss of
10 future earnings of the judgment debtor or of a person upon
11 whom the judgment debtor is dependent at the time the
12 payment is received, to the extent reasonably necessary for
13 the support of the judgment debtor and any dependent of the
14 judgment debtor.

15 20. Payments received as restitution for a criminal act.

16 21. *Stock of certain corporations, subject to the*
17 *provisions of section 1 of this act.*

18 * These exemptions may not apply in certain cases such as
19 proceedings to enforce a judgment for support of a child or a
20 judgment of foreclosure on a mechanic's lien. You should
21 consult an attorney immediately to assist you in determining
22 whether your property or money is exempt from execution. If
23 you cannot afford an attorney, you may be eligible for
24 assistance through (name of organization in
25 county providing legal services to the indigent or elderly
26 persons).

27 28 PROCEDURE FOR CLAIMING EXEMPT PROPERTY

29
30 If you believe that the money or property taken from you
31 is exempt or necessary for the support of you or your family,
32 you must file with the clerk of the court on a form provided
33 by the clerk a notarized affidavit claiming the exemption. A
34 copy of the affidavit must be served upon the sheriff and the
35 judgment creditor within 8 days after the notice of execution
36 is mailed. The property must be returned to you within 5 days
37 after you file the affidavit unless the judgment creditor files a
38 motion for a hearing to determine the issue of exemption. If
39 this happens, a hearing will be held to determine whether the
40 property or money is exempt. The hearing must be held
41 within 10 days after the motion for a hearing is filed.

42
43 IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE
44 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD
45 AND THE MONEY GIVEN TO THE JUDGMENT



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CREDITOR, EVEN IF THE PROPERTY OR MONEY IS EXEMPT.

If you received this notice with a notice of a hearing for attachment and you believe that the money or property which would be taken from you by a writ of attachment is exempt or necessary for the support of you or your family, you are entitled to describe to the court at the hearing why you believe your property is exempt. You may also file a motion with the court for a discharge of the writ of attachment. You may make that motion any time before trial. A hearing will be held on that motion.

IF YOU DO NOT FILE THE MOTION BEFORE THE TRIAL, YOUR PROPERTY MAY BE SOLD AND THE MONEY GIVEN TO THE PLAINTIFF, EVEN IF THE PROPERTY OR MONEY IS EXEMPT OR NECESSARY FOR THE SUPPORT OF YOU OR YOUR FAMILY.

Sec. 7. NRS 31.050 is hereby amended to read as follows:

31.050 Subject to the order for attachment and the provisions of section 1 of this act and chapter 104 of NRS, the right of shares which the defendant may have in the stock of any corporation or company, together with the interest and profits therein, and all debts due such defendant, and all other property in this State of such defendant not exempt from execution, may be attached, and if judgment be recovered, be sold to satisfy the judgment and execution.

28



REQUIRES TWO-THIRDS MAJORITY VOTE (§ 29)

(Reprinted with amendments adopted on May 25, 2007)

SECOND REPRINT

S.B. 242

SENATE BILL NO. 242—SENATORS AMODEI AND CARE

MARCH 8, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning agents for service of process and business entities. (BDR 7-460)

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

EXPLANATION—Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to business entities; enacting the Model Registered Agents Act; revising the provisions relating to the maintenance of a corporation's records at its registered office; establishing provisions relating to the judgment and execution of a stockholder's stock; requiring registered agents to verify certain information concerning the entities represented in certain circumstances; prohibiting registered agents from performing financial transactions in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires certain entities to appoint and maintain a resident agent who is located in this State and upon whom all legal process and any notice may be served. (NRS 14.020) This bill changes the term resident agent to registered agent and establishes two types of registered agent, which are called commercial registered agents and noncommercial registered agents.

Section 32 of this bill allows an individual or an entity to become listed as a commercial registered agent by filing with the Secretary of State a statement containing certain information. Under section 31 of this bill, when an entity files with the Secretary of State the document which creates the entity, the entity must include in that document the name of the entity's commercial registered agent, the name and address of the entity's noncommercial registered agent or the title of a position with the entity if service of process is to be sent to the person holding that position. In addition, section 31 requires the entity to file a certificate of acceptance of appointment signed by the registered agent.

Section 37 of this bill provides that any registered agent may resign from the representation of an entity by filing a statement of resignation for the entity and paying the fee required by section 29 of this bill. If a noncommercial registered



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18 agent wishes to resign from the representation of all entities, the agent must file a
19 statement of resignation for each entity represented by the agent. However, under
20 section 33 of this bill a commercial registered agent may resign from the
21 representation of all entities by filing with the Secretary of State a termination
22 statement and providing notice of the termination to each entity represented by the
23 agent.

24 Existing law provides that if the name of a resident agent is changed because of
25 certain actions, the resident agent must file a certificate with the Secretary of State
26 and pay a \$100 fee. (NRS 78.110, 80.070, 82.193, 86.235, 87.490, 88.331,
27 88A.540) Section 36 of this bill provides that if a commercial registered agent
28 changes its name, address or type or jurisdiction of organization, the agent must file
29 with the Secretary of State a statement of change. The filing of this statement
30 changes the registered agent information for each entity represented by the agent.
31 Section 35 of this bill provides that if a noncommercial registered agent changes its
32 name or address, the agent must file with the Secretary of State a statement of
33 change for each entity represented by the agent.

34 Section 40.2 of this bill requires certain registered agents who represent entities
35 that engage in business activities that are regulated pursuant to chapter 604A or 675
36 of NRS to verify that the entity they represent has the appropriate license from the
37 Commissioner of Financial Institutions. In addition, section 40.2 prohibits a
38 registered agent who represents such an entity from performing any financial
39 transactions on behalf of the represented entity in his capacity as registered agent.

40 Section 40.4 of this bill authorizes the Commissioner of Financial Institutions
41 to issue an order to a registered agent to cease and refrain from providing certain
42 services if the represented entity does not have the required license. Section 40.4
43 further provides for an administrative fine of up to \$1,000 against a registered agent
44 who fails to comply with such an order.

45 Section 40.6 of this bill allows the Secretary of State to adopt regulations.
46 Section 40.6 further authorizes the Secretary of State to seek to enjoin a registered
47 agent from engaging in certain conduct.

48 Existing law allows certain actions with respect to entities to be filed in the
49 district court of the county in which the office of the entity's resident agent is
50 located. (NRS 78.345, 78.630, 82.306, 82.471, 82.486, 92A.460, 92A.490) This bill
51 provides that these actions must be brought in the district court of the county in
52 which the entity's principal office is located or, if the entity's principal office is not
53 located in this State, in the district court in Carson City.

54 Existing law allows a court to charge the interest of a partner in a partnership or
55 limited partnership or a member of a limited-liability company for payment of an
56 unsatisfied judgment under certain circumstances. (NRS 86.401, 87.280, 87.4342,
57 88.535) Section 43.5 of this bill provides that a court may charge a stockholder's
58 stock with payment of an unsatisfied judgment under certain circumstances.

59 Existing law establishes provisions relating to the maintenance of a
60 corporation's records at its registered office. (NRS 78.105) Section 49.5 of this bill
61 requires certain records to be maintained for a period of 3 years by a new registered
62 agent who replaces a previous registered agent.

63 Existing law provides that certain benefits and property may be exempt from
64 execution. (NRS 21.075, 21.090, 31.045) Sections 171.2-171.6 of this bill provide
65 that stock of certain corporations may be exempt from execution under certain
66 circumstances.

67 Sections 184.7, 184.9 190.7 and 190.9 of this bill specifically authorize the
68 Commissioner of Financial Institutions to investigate the business of a registered
69 agent who represents a person licensed pursuant to chapter 604A or 675 of NRS.
70 (NRS 604A.710, 604A.810, 675.380 and 675.430)



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

- 1 Section 1. Title 7 of NRS is hereby amended by adding
2 thereto a new chapter to consist of the provisions set forth as
3 sections 2 to 43, inclusive, of this act.
- 4 Sec. 2. This chapter may be cited as the Model Registered
5 Agents Act.
- 6 Sec. 3. As used in this chapter, unless the context otherwise
7 requires, the words and terms defined in sections 4 to 28,
8 inclusive, of this act have the meanings ascribed to them in those
9 sections.
- 10 Sec. 4. "Appointment of agent" means a statement
11 appointing an agent for service of process filed by a domestic
12 entity that is not a filing entity or a nonqualified foreign entity
13 under section 38 of this act.
- 14 Sec. 5. "Commercial registered agent" means an individual
15 or a domestic or foreign entity listed under section 32 of this act.
- 16 Sec. 6. "Domestic entity" means an entity whose internal
17 affairs are governed by the law of this State.
- 18 Sec. 7. "Entity" means a person that has a separate legal
19 existence or has the power to acquire an interest in real property
20 in its own name other than:
- 21 1. An individual;
- 22 2. A testamentary, inter vivos or charitable trust, with the
23 exception of a business trust, statutory trust or similar trust;
- 24 3. An association or relationship that is not a partnership by
25 reason of NRS 87.070, subsection 3 of NRS 87.4322 or similar
26 provisions of the law of any other jurisdiction;
- 27 4. A decedent's estate; or
- 28 5. A public corporation, government or governmental
29 subdivision, agency or instrumentality or a quasi-governmental
30 instrumentality.
- 31 Sec. 8. "Filing entity" means an entity that is created by the
32 filing of a public organic document.
- 33 Sec. 9. "Foreign entity" means an entity other than a
34 domestic entity.
- 35 Sec. 10. "Foreign qualification document" means an
36 application for a certificate of authority or other foreign
37 qualification filing with the Secretary of State by a foreign entity.
- 38 Sec. 11. "Governor" means a person by or under whose
39 authority the powers of an entity are exercised and under whose
40 direction the business and affairs of the entity are managed
41 pursuant to the organic law and organic rules of the entity.
- 42 Sec. 12. 1. "Interest" means:



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- 1 (a) *A governance interest in an unincorporated entity;*
- 2 (b) *A transferable interest in an unincorporated entity; or*
- 3 (c) *A share or membership in a corporation.*

4 2. *As used in this section:*

5 (a) *"Governance interest" means the right under the organic*
6 *law or organic rules of an entity, other than as a governor, agent,*
7 *assignee or proxy, to:*

8 (1) *Receive or demand access to information concerning, or*
9 *the books and records of, the entity;*

10 (2) *Vote for the election of the governors of the entity; or*

11 (3) *Receive notice of or vote on any or all issues involving*
12 *the internal affairs of the entity.*

13 (b) *"Transferable interest" means the right under an entity's*
14 *organic law to receive distributions from the entity.*

15 **Sec. 13.** *"Interest holder" means a direct holder of an*
16 *interest.*

17 **Sec. 14.** *"Jurisdiction of organization," with respect to an*
18 *entity, means the jurisdiction whose law includes the organic law*
19 *of the entity.*

20 **Sec. 15.** *"Noncommercial registered agent" means a person*
21 *that is not listed as a commercial registered agent under section 32*
22 *of this act and that is:*

23 1. *An individual or a domestic or foreign entity that serves in*
24 *this State as the agent for service of process of an entity; or*

25 2. *The individual who holds the office or other position in an*
26 *entity that is designated as the agent for service of process*
27 *pursuant to subparagraph (2) of paragraph (b) of subsection 1 of*
28 *section 31 of this act.*

29 **Sec. 16.** *"Nonqualified foreign entity" means a foreign entity*
30 *that is not authorized to transact business in this State pursuant to*
31 *a filing with the Secretary of State.*

32 **Sec. 17.** *"Nonresident LLP statement" means:*

33 1. *A certificate of registration of a domestic registered*
34 *limited-liability partnership that does not have an office in this*
35 *State; or*

36 2. *The foreign qualification filing of a foreign registered*
37 *limited-liability partnership that does not have an office in this*
38 *State.*

39 **Sec. 18.** *"Organic law" means the statutes, if any, other than*
40 *this chapter, governing the internal affairs of an entity.*

41 **Sec. 19.** *"Organic rules" means the public organic document*
42 *and private organic rules of an entity. As used in this section,*
43 *"private organic rules" means the rules, whether or not in a*
44 *record, that govern the internal affairs of an entity, are binding on*



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1 all of its interest holders and are not part of its public organic
2 document, if any.

3 **Sec. 20.** "Person" means an individual, corporation, estate,
4 trust, partnership, limited-liability company, business or similar
5 trust, association, joint venture, public corporation, government or
6 governmental subdivision, agency or instrumentality, or any other
7 legal or commercial entity.

8 **Sec. 21.** "Public organic document" means the public record
9 the filing of which creates an entity, and any amendment to or
10 restatement of that record.

11 **Sec. 22.** "Qualified foreign entity" means a foreign entity
12 that is authorized to transact business in this State pursuant to a
13 filing with the Secretary of State.

14 **Sec. 23.** "Record" means information that is inscribed on a
15 tangible medium or that is stored in an electronic or other medium
16 and is retrievable in perceivable form.

17 **Sec. 24.** "Registered agent" means a commercial registered
18 agent or a noncommercial registered agent.

19 **Sec. 25.** "Registered agent filing" means:

- 20 1. The public organic document of a domestic filing entity;
- 21 2. A nonresident LLP statement;
- 22 3. A foreign qualification document;
- 23 4. An appointment of agent; or
- 24 5. Any other filing with the Secretary of State under an
25 entity's organic law that must include the information required
26 pursuant to section 31 of this act.

27 **Sec. 26.** "Represented entity" means:

- 28 1. A domestic filing entity;
- 29 2. A domestic or qualified foreign limited-liability partnership
30 that does not have an office in this State;
- 31 3. A qualified foreign entity;
- 32 4. A domestic or foreign unincorporated nonprofit
33 association for which an appointment of agent has been filed;
- 34 5. A domestic entity that is not a filing entity for which an
35 appointment of agent has been filed; or
- 36 6. A nonqualified foreign entity for which an appointment of
37 agent has been filed.

38 **Sec. 27.** "Sign" means, with present intent to authenticate or
39 adopt a record:

- 40 1. To execute or adopt a tangible symbol; or
- 41 2. To attach to or logically associate with the record an
42 electronic sound, symbol or process.

43 **Sec. 28.** "Type," with respect to an entity, means a generic
44 form of entity:

- 45 1. Recognized at common law; or



1 2. Organized under an organic law, whether or not some
2 entities organized under that organic law are subject to provisions
3 of that law that create different categories of the form of entity.

4 **Sec. 29.** 1. The Secretary of State shall collect the following
5 fees when a filing is made under this chapter:

6 (a) For a commercial registered agent listing statement, \$75.

7 (b) For a commercial registered agent termination statement,
8 \$100.

9 (c) For a statement of change, \$60.

10 (d) For a statement of resignation, \$100 for the first entity
11 listed on the statement of resignation and \$1 for each additional
12 entity listed on the statement of resignation.

13 (e) For a statement appointing an agent for service of process,
14 \$60.

15 2. The Secretary of State shall collect the following fees for
16 copying and certifying a copy of any document filed under this
17 chapter:

18 (a) For copying any document, \$2 per page.

19 (b) For certifying a copy of any document, \$30.

20 **Sec. 29.5.** 1. Each record filed with the Secretary of State
21 pursuant to this chapter must be on or accompanied by a form
22 prescribed by the Secretary of State.

23 2. The Secretary of State may refuse to file a record which
24 does not comply with subsection 1 or which does not contain all of
25 the information required by statute for filing the record.

26 3. If the provisions on the form prescribed by the Secretary of
27 State conflict with the provisions of any record that is submitted
28 for filing with the form:

29 (a) The provisions of the form control for all purposes with
30 respect to information that is required by statute to appear in the
31 record in order for the record to be filed; and

32 (b) Unless otherwise provided in the record, the provisions of
33 the record control in every other situation.

34 4. The Secretary of State may by regulation provide for the
35 electronic filing of records with the Office of the Secretary of
36 State.

37 **Sec. 30.** Whenever a provision of this chapter other than
38 paragraph (d) of subsection 1 of section 37 of this act requires that
39 a filing state an address, the filing must state:

40 1. An actual street address or rural route box number in this
41 State; and

42 2. A mailing address in this State, if different from the
43 address under subsection 1.



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1 **Sec. 31. 1. A registered agent filing must state:**

2 **(a) The name of the represented entity's commercial registered**
3 **agent; or**

4 **(b) If the entity does not have a commercial registered agent:**

5 **(1) The name and address of the entity's noncommercial**
6 **registered agent; or**

7 **(2) The title of an office or other position with the entity if**
8 **service of process is to be sent to the person holding that office or**
9 **position, and the address of the business office of that person.**

10 **2. The appointment of a registered agent pursuant to**
11 **paragraph (a) or (b) of subsection 1 must be accompanied by a**
12 **certificate of acceptance of the appointment by the registered**
13 **agent.**

14 **Sec. 32. 1. An individual or a domestic or foreign entity**
15 **may become listed as a commercial registered agent by filing with**
16 **the Secretary of State a commercial registered agent listing**
17 **statement signed by or on behalf of the person which states:**

18 **(a) The name of the individual or the name, type and**
19 **jurisdiction of organization of the entity;**

20 **(b) That the person is in the business of serving as a**
21 **commercial registered agent in this State; and**

22 **(c) The address of a place of business of the person in this**
23 **State to which service of process and other notice and documents**
24 **being served on or sent to entities represented by it may be**
25 **delivered.**

26 **2. If the name of a person filing a commercial registered**
27 **agent listing statement is not distinguishable on the records of the**
28 **Secretary of State from the name of another commercial**
29 **registered agent listed under this section, the person must adopt a**
30 **fictitious name that is distinguishable and use that name in its**
31 **statement and when it does business in this State as a commercial**
32 **registered agent. For the purposes of this subsection, a proposed**
33 **name is not distinguishable from another name solely because one**
34 **or the other contains distinctive lettering, a distinctive mark, a**
35 **trademark or a trade name or any combination of these. The**
36 **Secretary of State may adopt regulations that interpret the**
37 **requirements of this subsection.**

38 **3. A commercial registered agent listing statement takes**
39 **effect on filing.**

40 **4. The Secretary of State shall note the filing of the**
41 **commercial registered agent listing statement in the index of**
42 **filings maintained by the Secretary of State for each entity**
43 **represented by the registered agent at the time of the filing. The**
44 **statement has the effect of deleting the address of the registered**
45 **agent from the registered agent filing of each of those entities.**



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1 **Sec. 33. 1. A commercial registered agent may terminate its**
2 **listing as a commercial registered agent by filing with the**
3 **Secretary of State a commercial registered agent termination**
4 **statement signed by or on behalf of the agent which states:**

5 **(a) The name of the agent as currently listed under section 32**
6 **of this act; and**

7 **(b) That the agent is no longer in the business of serving as a**
8 **commercial registered agent in this State.**

9 **2. A commercial registered agent termination statement takes**
10 **effect on the 31st day after the day on which it is filed.**

11 **3. The commercial registered agent shall promptly furnish**
12 **each entity represented by it with notice in a record of the filing of**
13 **the commercial registered agent termination statement.**

14 **4. When a commercial registered agent termination statement**
15 **takes effect, the registered agent ceases to be an agent for service**
16 **of process on each entity formerly represented by it. Termination**
17 **of the listing of a commercial registered agent under this section**
18 **does not affect any contractual rights a represented entity may**
19 **have against the agent or that the agent may have against the**
20 **entity.**

21 **Sec. 34. 1. A represented entity may change the**
22 **information currently on file pursuant to section 31 of this act by**
23 **filing with the Secretary of State a statement of change signed on**
24 **behalf of the entity which states:**

25 **(a) The name of the entity; and**

26 **(b) The information that is to be in effect as a result of the**
27 **filing of the statement of change.**

28 **2. The interest holders or governors of a domestic entity need**
29 **not approve the filing of:**

30 **(a) A statement of change under this section; or**

31 **(b) A similar filing changing the registered agent or registered**
32 **office of the entity in any other jurisdiction.**

33 **3. If a filing made pursuant to subsection 1 results in a**
34 **change of the registered agent of the represented entity, the filing**
35 **must include the information required pursuant to section 31 of**
36 **this act.**

37 **4. A statement of change filed under this section takes effect**
38 **on filing.**

39 **5. Instead of using the procedures in this section, a**
40 **represented entity may change the information currently on file**
41 **under section 31 of this act by amending its most recent registered**
42 **agent filing in the manner provided by the laws of this State other**
43 **than this chapter for amending that filing.**

44 **Sec. 35. 1. If a noncommercial registered agent changes its**
45 **name or its address as currently in effect with respect to a**



1 represented entity pursuant to section 31 of this act, the agent
2 shall file with the Secretary of State, with respect to each entity
3 represented by the agent, a statement of change signed by or on
4 behalf of the agent which states:

- 5 (a) The name of the entity;
6 (b) The name and address of the agent as currently in effect
7 with respect to the entity;
8 (c) If the name of the agent has changed, its new name; and
9 (d) If the address of the agent has changed, the new address.

10 2. A statement of change filed under this section takes effect
11 on filing.

12 3. A noncommercial registered agent shall promptly furnish
13 the represented entity with notice in a record of the filing of a
14 statement of change and the changes made by the filing.

15 **Sec. 36.** 1. If a commercial registered agent changes its
16 name, its address as currently listed under subsection 1 of section
17 32 of this act or its type or jurisdiction of organization, the agent
18 shall file with the Secretary of State a statement of change signed
19 by or on behalf of the agent which states:

- 20 (a) The name of the agent as currently listed under subsection
21 1 of section 32 of this act;
22 (b) If the name of the agent has changed, its new name;
23 (c) If the address of the agent has changed, the new address;
24 and

25 (d) If the type or jurisdiction of organization of the agent has
26 changed, the new type or jurisdiction of organization.

27 2. The filing of a statement of change under subsection 1 is
28 effective to change the information regarding the commercial
29 registered agent with respect to each entity represented by the
30 agent.

31 3. A statement of change filed under this section takes effect
32 on filing.

33 4. A commercial registered agent shall promptly furnish each
34 entity represented by it with notice in a record of the filing of a
35 statement of change relating to the name or address of the agent
36 and the changes made by the filing.

37 5. If a commercial registered agent changes its address
38 without filing a statement of change as required by this section,
39 the Secretary of State may cancel the listing of the agent under
40 section 32 of this act. A cancellation under this subsection has the
41 same effect as a termination under section 33 of this act. Promptly
42 after cancelling the listing of an agent, the Secretary of State shall
43 serve notice in a record on the:

44 (a) Governors of each entity represented by the agent, stating
45 that the agent has ceased to be an agent for service of process on



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1 the entity and that, until the entity appoints a new registered agent,
2 service of process may be made in the manner provided by NRS
3 14.030; and

4 (b) Agent, stating that the listing of the agent has been
5 cancelled under this section.

6 **Sec. 37. 1.** A registered agent may resign at any time with
7 respect to a represented entity by filing with the Secretary of State
8 a statement of resignation signed by or on behalf of the agent
9 which states:

10 (a) The name of the entity;

11 (b) The name of the agent;

12 (c) That the agent resigns from serving as agent for service of
13 process for the entity; and

14 (d) The name and address of the person to which the agent will
15 send the notice required by subsection 3.

16 2. A statement of resignation takes effect on the earlier of the
17 31st day after the day on which it is filed or the appointment of a
18 new registered agent for the represented entity.

19 3. The registered agent shall promptly furnish the
20 represented entity with notice in a record of the date on which a
21 statement of resignation was filed.

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

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

29 **Sec. 38. 1.** A domestic entity that is not a filing entity or a
30 nonqualified foreign entity may file with the Secretary of State a
31 statement appointing an agent for service of process signed on
32 behalf of the entity which includes, without limitation:

33 (a) The name, type and jurisdiction of organization of the
34 entity; and

35 (b) The information required pursuant to section 31 of this act.

36 2. A statement appointing an agent for service of process
37 takes effect on filing.

38 3. The appointment of a registered agent under this section
39 does not qualify a nonqualified foreign entity to do business in this
40 State and is not sufficient alone to create personal jurisdiction
41 over the nonqualified foreign entity in this State.

42 4. A statement appointing an agent for service of process may
43 not be rejected for filing because the name of the entity filing the
44 statement is not distinguishable on the records of the Secretary of
45 State from the name of another entity appearing in those records.



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1 The filing of a statement appointing an agent for service of
2 process does not make the name of the entity filing the statement
3 unavailable for use by another entity.

4 5. An entity that has filed a statement appointing an agent for
5 service of process may cancel the statement by filing a statement
6 of cancellation, which shall take effect upon filing, and must state
7 the name of the entity and that the entity is cancelling its
8 appointment of an agent for service of process in this State. A
9 statement appointing an agent for service of process, which has
10 not been cancelled earlier, is effective for a period of 5 years after
11 the date of filing.

12 6. A statement appointing an agent for service of process for
13 a nonqualified foreign entity terminates automatically on the date
14 the entity becomes a qualified foreign entity.

15 Sec. 39. A registered agent is an agent of the represented
16 entity authorized to receive service of any process, notice or
17 demand required or permitted by law to be served on the entity.

18 Sec. 40. The only duties under this chapter required of a
19 registered agent who has complied with this chapter are:

20 1. To forward to the represented entity at the address most
21 recently supplied to the agent by the entity any process, notice or
22 demand that is served on the agent;

23 2. To provide the notices required by this chapter to the entity
24 at the address most recently supplied to the agent by the entity;

25 3. If the agent is a noncommercial registered agent, to keep
26 current the information required pursuant to section 31 of this act
27 in the most recent registered agent filing for the entity; and

28 4. If the agent is a commercial registered agent, to keep
29 current the information listed for it under subsection 1 of section
30 32 of this act.

31 Sec. 40.2. 1. If a registered agent knows or reasonably
32 should know that the entity for which he is the registered agent
33 engages in any business activity that is regulated pursuant to
34 chapter 604A or 675 of NRS and the registered agent or a
35 subsidiary or affiliate of the registered agent performs any service
36 for the represented entity other than:

37 (a) Delivering documents for filing to state or local
38 governmental entities;

39 (b) Forwarding unopened mail;

40 (c) Any service described in section 40 of this act;

41 (d) Accounting services incidental to the formation of the
42 entity for which he serves as registered agent provided in
43 accordance with chapter 628 of NRS; or

44 (e) Legal services incidental to the formation of the entity for
45 which he serves as registered agent if he is an attorney who is



1 licensed to practice law in this State or performs such services
2 under the supervision of an attorney who is licensed to practice
3 law in this State,

4 the registered agent shall verify with the Division of Financial
5 Institutions of the Department of Business and Industry that the
6 person is licensed pursuant to chapter 604A or 675 of NRS, as
7 applicable.

8 2. If a registered agent determines pursuant to subsection 1
9 that the represented entity is not licensed as required pursuant to
10 chapter 604A or 675 of NRS, the registered agent shall notify the
11 Commissioner of Financial Institutions.

12 3. A registered agent who accepts an appointment to act as
13 the registered agent for a represented entity whom the registered
14 agent knows or reasonably should know engages in business
15 activities which are regulated pursuant to chapter 604A or 675 of
16 NRS shall not perform any financial transactions on behalf of the
17 represented entity in his capacity as registered agent.

18 **Sec. 40A. 1.** If the Commissioner of Financial Institutions
19 determines, after investigation, that a represented entity of a
20 registered agent has failed to comply with the provisions of
21 chapter 604A or 675 of NRS, the Commissioner may issue an
22 order to the registered agent to cease and refrain from providing
23 all services for the represented entity other than those services set
24 forth in section 40 of this act.

25 2. A registered agent who receives an order pursuant to
26 subsection 1 shall immediately notify the represented entity. The
27 represented entity shall be deemed to have received the order on
28 the date that it is received by the registered agent.

29 3. Any contract between a registered agent, its subsidiary or
30 affiliate and the represented entity entered into on or after July 1,
31 2007, shall be deemed to include a provision that provides for the
32 termination of the contract or agreement without liability to the
33 registered agent, its subsidiary or affiliate, upon the issuance of an
34 order issued pursuant to this section, except for any agreement for
35 the provision of the services set forth in section 40 of this act. Any
36 provision of a contract which conflicts with this subsection is void.
37 Failure to include such a provision in a contract is not a defense
38 in an action brought to enforce or terminate the contract.

39 4. An order issued pursuant to subsection 1 is a final decision
40 for the purposes of judicial review pursuant to chapter 233B of
41 NRS. A registered agent shall comply with any such order pending
42 judicial review.

43 5. If the Commissioner of Financial Institutions finds that a
44 registered agent has failed to comply with an order issued
45 pursuant to this section, the Commissioner may impose an



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1 administrative fine of not more than \$1,000 upon the registered
2 agent. Any fine collected pursuant to this section must be
3 deposited with the State Treasurer for credit to the State General
4 Fund.

5 **Sec. 40.6.** 1. The Secretary of State may adopt such
6 regulations as he deems necessary to carry out and ensure
7 compliance with the provisions of this chapter and any other
8 provision of law which governs the conduct of registered agents.

9 2. Upon application of the Secretary of State, the district
10 court may enjoin any person from serving as a registered agent or
11 as an officer, director or managing agent of a registered agent if
12 the court finds that:

13 (a) The registered agent failed to comply with any provision of
14 law governing the conduct of registered agents after reasonable
15 notice and an opportunity to correct the failure; or

16 (b) The registered agent engaged in conduct in his capacity as
17 registered agent that was intended to deceive or defraud the public
18 or to promote illegal activities.

19 **Sec. 41.** The appointment or maintenance in this State of a
20 registered agent does not by itself create the basis for personal
21 jurisdiction over the represented entity in this State. The address
22 of the agent does not determine venue in an action or proceeding
23 involving the entity.

24 **Sec. 42.** In applying and construing this chapter,
25 consideration must be given to the need to promote consistency of
26 the law with respect to its subject matter among states that enact it.

27 **Sec. 43.** This chapter modifies, limits and supersedes the
28 federal Electronic Signatures in Global and National Commerce
29 Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or
30 supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or
31 authorize electronic delivery of any of the notices described in
32 Section 103(b) of that Act, 15 U.S.C. § 7003(b).

33 **Sec. 43.5.** Chapter 78 of NRS is hereby amended by adding
34 thereto a new section to read as follows:

35 1. On application to a court of competent jurisdiction by a
36 judgment creditor of a stockholder, the court may charge the
37 stockholder's stock with payment of the unsatisfied amount of the
38 judgment with interest. To the extent so charged, the judgment
39 creditor has only the rights of an assignee of the stockholder's
40 stock.

41 2. This section:

42 (a) Applies only to a corporation that:

43 (1) Has more than 1 but fewer than 75 stockholders of
44 record at any time.



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1 (2) Is not a subsidiary of a publicly traded corporation,
2 either in whole or in part.

3 (3) Is not a professional corporation, as defined in
4 NRS 89.020.

5 (b) Does not apply to any liability of a stockholder that exists
6 as the result of an action filed before July 1, 2007.

7 (c) Provides the exclusive remedy by which a judgment
8 creditor of a stockholder or an assignee of a stockholder may
9 satisfy a judgment out of the stockholder's stock of the
10 corporation.

11 (d) Does not deprive any stockholder of the benefit of any
12 exemption applicable to the stockholder's stock.

13 (e) Does not supersede any private agreement between a
14 stockholder and a creditor.

15 Sec. 44. NRS 78.010 is hereby amended to read as follows:

16 78.010 1. As used in this chapter:

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

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

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

29 (d) "Principal office" means the office, in or out of this State,
30 where the principal executive offices of a domestic or foreign
31 corporation are located.

32 (e) "Receiver" includes receivers and trustees appointed by a
33 court as provided in this chapter or in chapter 32 of NRS.

34 {(e)} (f) "Record" means information that is inscribed on a
35 tangible medium or that is stored in an electronic or other medium
36 and is retrievable in perceivable form.

37 {(f)} (g) "Registered agent" has the meaning ascribed to it in
38 section 24 of this act.

39 (h) "Registered office" means the office maintained at the street
40 address of the {resident agent.

41 ~~—(g) "Resident agent" means the agent appointed by the~~
42 ~~corporation upon whom process or a notice or demand authorized~~
43 ~~by law to be served upon the corporation may be served.~~

44 ~~—(h)} registered agent.~~

45 (i) "Sign" means to affix a signature to a record.



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1 ~~{(i)}~~ (i) "Signature" means a name, word, symbol or mark
2 executed or otherwise adopted, or a record encrypted or similarly
3 processed in whole or in part, by a person with the present intent to
4 identify himself and adopt or accept a record. The term includes,
5 without limitation, an electronic signature as defined in
6 NRS 719.100.

7 ~~{(j)}~~ (k) "Stockholder of record" means a person whose name
8 appears on the stock ledger of the corporation.

9 ~~{(k)}~~ (l) "Street address" of a ~~{resident}~~ registered agent means
10 the actual physical location in this State at which a ~~{resident}~~
11 registered agent is available for service of process.

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

15 Sec. 45. NRS 78.030 is hereby amended to read as follows:

16 78.030 1. One or more persons may establish a corporation
17 for the transaction of any lawful business, or to promote or conduct
18 any legitimate object or purpose, pursuant and subject to the
19 requirements of this chapter, by ~~{~~:

20 ~~—(a) Signing} signing and filing in the Office of the Secretary of~~
21 ~~State articles of incorporation . {; and~~

22 ~~—(b) Filing a certificate of acceptance of appointment, signed by~~
23 ~~the resident agent of the corporation, in the Office of the Secretary~~
24 ~~of State.}~~

25 2. The articles of incorporation must be as provided in NRS
26 78.035, and the Secretary of State shall require them to be in the
27 form prescribed. If any articles are defective in this respect, the
28 Secretary of State shall return them for correction.

29 Sec. 46. NRS 78.035 is hereby amended to read as follows:

30 78.035 The articles of incorporation must set forth:

31 1. The name of the corporation. A name appearing to be that of
32 a natural person and containing a given name or initials must not be
33 used as a corporate name except with an additional word or words
34 such as "Incorporated," "Limited," "Inc.," "Ltd.," "Company,"
35 "Co.," "Corporation," "Corp.," or other word which identifies it as
36 not being a natural person.

37 2. ~~The {name of the person designated as the corporation's~~
38 ~~resident agent, the street address of the resident agent where process~~
39 ~~may be served upon the corporation, and the mailing address of the~~
40 ~~resident agent if different from the street address.}~~ information
41 required pursuant to section 31 of this act.

42 3. The number of shares the corporation is authorized to issue
43 and, if more than one class or series of stock is authorized, the
44 classes, the series and the number of shares of each class or series
45 which the corporation is authorized to issue, unless the articles



1 certificate of the Secretary of State showing either fact, which is
2 conclusive evidence of the fact so certified to be made a part of the
3 return of service, or if the {registered office} *street address of the*
4 *registered agent* of the artificial person is not staffed as required
5 pursuant to NRS 14.020, which fact is to be made part of the return
6 of service, the artificial person may be served with any and all legal
7 process, or a demand or notice described in NRS 14.020, by
8 delivering a copy to the Secretary of State, or, in his absence, to any
9 deputy secretary of state, and such service is valid to all intents and
10 purposes. The copy must:

11 (a) Include a specific citation to the provisions of this section.
12 The Secretary of State may refuse to accept such service if the
13 proper citation is not included.

14 (b) Be accompanied by a fee of \$10.

15 The Secretary of State shall keep a copy of the legal process
16 received pursuant to this section in his office for at least 1 year after
17 receipt thereof and shall make those records available for public
18 inspection during normal business hours.

19 2. In all cases of such service, the defendant has 40 days,
20 exclusive of the day of service, within which to answer or plead.

21 3. Before such service is authorized, the plaintiff shall make or
22 cause to be made and filed an affidavit setting forth the facts,
23 showing that due diligence has been used to ascertain the
24 whereabouts of the officers of the artificial person to be served, and
25 the facts showing that direct or personal service on, or notice to, the
26 artificial person cannot be had.

27 4. If it appears from the affidavit that there is a last known
28 address of the artificial person or any known officers thereof, the
29 plaintiff shall, in addition to and after such service on the Secretary
30 of State, mail or cause to be mailed to the artificial person or to the
31 known officer, at such address, by registered or certified mail, a
32 copy of the summons and a copy of the complaint, and in all such
33 cases the defendant has 40 days after the date of the mailing within
34 which to appear in the action.

35 5. This section provides an additional manner of serving
36 process, and does not affect the validity of any other valid service.

37 Sec. 171.2. NRS 21.075 is hereby amended to read as follows:

38 21.075 1. Execution on the writ of execution by levying on
39 the property of the judgment debtor may occur only if the sheriff
40 serves the judgment debtor with a notice of the writ of execution
41 pursuant to NRS 21.076 and a copy of the writ. The notice must
42 describe the types of property exempt from execution and explain
43 the procedure for claiming those exemptions in the manner required
44 in subsection 2. The clerk of the court shall attach the notice to the
45 writ of execution at the time the writ is issued.



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2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

**YOUR PROPERTY IS BEING ATTACHED OR
YOUR WAGES ARE BEING GARNISHED**

A court has determined that you owe money to _____ (name of person), the judgment creditor. He has begun the procedure to collect that money by garnishing your wages, bank account and other personal property held by third persons or by taking money or other property in your possession.

Certain benefits and property owned by you may be exempt from execution and may not be taken from you. The following is a partial list of exemptions:

1. Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

2. Payments for benefits or the return of contributions under the Public Employees' Retirement System.

3. Payments for public assistance granted through the Division of Welfare and Supportive Services of the Department of Health and Human Services or a local governmental entity.

4. Proceeds from a policy of life insurance.

5. Payments of benefits under a program of industrial insurance.

6. Payments received as disability, illness or unemployment benefits.

7. Payments received as unemployment compensation.

8. Veteran's benefits.

9. A homestead in a dwelling or a mobile home, not to exceed \$350,000, unless:

(a) The judgment is for a medical bill, in which case all of the primary dwelling, including a mobile or manufactured home, may be exempt.

(b) Allodial title has been established and not relinquished for the dwelling or mobile home, in which case all of the dwelling or mobile home and its appurtenances are exempt, including the land on which they are located, unless a valid waiver executed pursuant to NRS 115.010 is applicable to the judgment.



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10. A vehicle, if your equity in the vehicle is less than \$15,000.

11. Seventy-five percent of the take-home pay for any workweek, unless the weekly take-home pay is less than 50 times the federal minimum hourly wage, in which case the entire amount may be exempt.

12. Money, not to exceed \$500,000 in present value, held in:

(a) An individual retirement arrangement which conforms with the applicable limitations and requirements of section 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

(b) A written simplified employee pension plan which conforms with the applicable limitations and requirements of section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

(c) A cash or deferred arrangement that is a qualified plan pursuant to the Internal Revenue Code;

(d) A trust forming part of a stock bonus, pension or profit-sharing plan that is a qualified plan pursuant to sections 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

(e) A trust forming part of a qualified tuition program pursuant to chapter 353B of NRS, any applicable regulations adopted pursuant to chapter 353B of NRS and section 529 of the Internal Revenue Code, 26 U.S.C. § 529, unless the money is deposited after the entry of a judgment against the purchaser or account owner or the money will not be used by any beneficiary to attend a college or university.

13. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support, education and maintenance of a child, whether collected by the judgment debtor or the State.

14. All money and other benefits paid pursuant to the order of a court of competent jurisdiction for the support and maintenance of a former spouse, including the amount of any arrearages in the payment of such support and maintenance to which the former spouse may be entitled.

15. A vehicle for use by you or your dependent which is specially equipped or modified to provide mobility for a person with a permanent disability.

16. A prosthesis or any equipment prescribed by a physician or dentist for you or your dependent.

17. Payments, in an amount not to exceed \$16,150, received as compensation for personal injury, not including compensation for pain and suffering or actual pecuniary loss,



1 by the judgment debtor or by a person upon whom the
2 judgment debtor is dependent at the time the payment is
3 received.

4 18. Payments received as compensation for the wrongful
5 death of a person upon whom the judgment debtor was
6 dependent at the time of the wrongful death, to the extent
7 reasonably necessary for the support of the judgment debtor
8 and any dependent of the judgment debtor.

9 19. Payments received as compensation for the loss of
10 future earnings of the judgment debtor or of a person upon
11 whom the judgment debtor is dependent at the time the
12 payment is received, to the extent reasonably necessary for
13 the support of the judgment debtor and any dependent of the
14 judgment debtor.

15 20. Payments received as restitution for a criminal act.

16 21. Stock of a corporation described in subsection 2 of
17 section 43.5 of this act except as set forth in that section.

18 ↪ These exemptions may not apply in certain cases such as a
19 proceeding to enforce a judgment for support of a person or a
20 judgment of foreclosure on a mechanic's lien. You should
21 consult an attorney immediately to assist you in determining
22 whether your property or money is exempt from execution. If
23 you cannot afford an attorney, you may be eligible for
24 assistance through (name of organization in
25 county providing legal services to indigent or elderly
26 persons).

27 PROCEDURE FOR CLAIMING EXEMPT PROPERTY

28
29 If you believe that the money or property taken from you
30 is exempt, you must complete and file with the clerk of the
31 court a notarized affidavit claiming the exemption. A copy of
32 the affidavit must be served upon the sheriff and the judgment
33 creditor within 8 days after the notice of execution is mailed.
34 The property must be returned to you within 5 days after you
35 file the affidavit unless you or the judgment creditor files a
36 motion for a hearing to determine the issue of exemption. If
37 this happens, a hearing will be held to determine whether the
38 property or money is exempt. The motion for the hearing to
39 determine the issue of exemption must be filed within 10 days
40 after the affidavit claiming exemption is filed. The hearing to
41 determine whether the property or money is exempt must be
42 held within 10 days after the motion for the hearing is filed.
43



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1 IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE
2 TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD
3 AND THE MONEY GIVEN TO THE JUDGMENT
4 CREDITOR, EVEN IF THE PROPERTY OR MONEY IS
5 EXEMPT.

6 Sec. 1714. NRS 21.090 is hereby amended to read as follows:

7 21.090 1. The following property is exempt from execution,
8 except as otherwise specifically provided in this section or required
9 by federal law:

10 (a) Private libraries, works of art, musical instruments and
11 jewelry not to exceed \$5,000 in value, belonging to the judgment
12 debtor or a dependent of the judgment debtor, to be selected by the
13 judgment debtor, and all family pictures and keepsakes.

14 (b) Necessary household goods, furnishings, electronics,
15 wearing apparel, other personal effects and yard equipment, not to
16 exceed \$12,000 in value, belonging to the judgment debtor or a
17 dependent of the judgment debtor, to be selected by the judgment
18 debtor.

19 (c) Farm trucks, farm stock, farm tools, farm equipment,
20 supplies and seed not to exceed \$4,500 in value, belonging to the
21 judgment debtor to be selected by him.

22 (d) Professional libraries, equipment, supplies, and the tools,
23 inventory, instruments and materials used to carry on the trade or
24 business of the judgment debtor for the support of himself and his
25 family not to exceed \$10,000 in value.

26 (e) The cabin or dwelling of a miner or prospector, his cars,
27 implements and appliances necessary for carrying on any mining
28 operations and his mining claim actually worked by him, not
29 exceeding \$4,500 in total value.

30 (f) Except as otherwise provided in paragraph (o), one vehicle if
31 the judgment debtor's equity does not exceed \$15,000 or the
32 creditor is paid an amount equal to any excess above that equity.

33 (g) For any workweek, 75 percent of the disposable earnings of
34 a judgment debtor during that week, or 50 times the minimum
35 hourly wage prescribed by section 6(a)(1) of the federal Fair Labor
36 Standards Act of 1938, 29 U.S.C. § 206(a)(1), and in effect at the
37 time the earnings are payable, whichever is greater. Except as
38 otherwise provided in paragraphs (n), (r) and (s), the exemption
39 provided in this paragraph does not apply in the case of any order of
40 a court of competent jurisdiction for the support of any person, any
41 order of a court of bankruptcy or of any debt due for any state or
42 federal tax. As used in this paragraph:

43 (1) "Disposable earnings" means that part of the earnings of
44 a judgment debtor remaining after the deduction from those earnings
45 of any amounts required by law to be withheld.



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1 (2) "Earnings" means compensation paid or payable for
2 personal services performed by a judgment debtor in the regular
3 course of business, including, without limitation, compensation
4 designated as income, wages, tips, a salary, a commission or a
5 bonus. The term includes compensation received by a judgment
6 debtor that is in the possession of the judgment debtor,
7 compensation held in accounts maintained in a bank or any other
8 financial institution or, in the case of a receivable, compensation
9 that is due the judgment debtor.

10 (h) All fire engines, hooks and ladders, with the carts, trucks and
11 carriages, hose, buckets, implements and apparatus thereunto
12 appertaining, and all furniture and uniforms of any fire company or
13 department organized under the laws of this State.

14 (i) All arms, uniforms and accouterments required by law to be
15 kept by any person, and also one gun, to be selected by the debtor.

16 (j) All courthouses, jails, public offices and buildings, lots,
17 grounds and personal property, the fixtures, furniture, books, papers
18 and appurtenances belonging and pertaining to the courthouse, jail
19 and public offices belonging to any county of this State, all
20 cemeteries, public squares, parks and places, public buildings, town
21 halls, markets, buildings for the use of fire departments and military
22 organizations, and the lots and grounds thereto belonging and
23 appertaining, owned or held by any town or incorporated city, or
24 dedicated by the town or city to health, ornament or public use, or
25 for the use of any fire or military company organized under the laws
26 of this State and all lots, buildings and other school property owned
27 by a school district and devoted to public school purposes.

28 (k) All money, benefits, privileges or immunities accruing or in
29 any manner growing out of any life insurance, if the annual
30 premium paid does not exceed \$15,000. If the premium exceeds that
31 amount, a similar exemption exists which bears the same proportion
32 to the money, benefits, privileges and immunities so accruing or
33 growing out of the insurance that the \$15,000 bears to the whole
34 annual premium paid.

35 (l) The homestead as provided for by law, including a
36 homestead for which allodial title has been established and not
37 relinquished and for which a waiver executed pursuant to NRS
38 115.010 is not applicable.

39 (m) The dwelling of the judgment debtor occupied as a home for
40 himself and family, where the amount of equity held by the
41 judgment debtor in the home does not exceed \$350,000 in value and
42 the dwelling is situated upon lands not owned by him.

43 (n) All property in this State of the judgment debtor where the
44 judgment is in favor of any state for failure to pay that state's



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1 income tax on benefits received from a pension or other retirement
2 plan.

3 (o) Any vehicle owned by the judgment debtor for use by him or
4 his dependent that is equipped or modified to provide mobility for a
5 person with a permanent disability.

6 (p) Any prosthesis or equipment prescribed by a physician or
7 dentist for the judgment debtor or a dependent of the debtor.

8 (q) Money, not to exceed \$500,000 in present value, held in:

9 (1) An individual retirement arrangement which conforms
10 with the applicable limitations and requirements of section 408 or
11 408A of the Internal Revenue Code, 26 U.S.C. §§ 408 and 408A;

12 (2) A written simplified employee pension plan which
13 conforms with the applicable limitations and requirements of section
14 408 of the Internal Revenue Code, 26 U.S.C. § 408;

15 (3) A cash or deferred arrangement which is a qualified plan
16 pursuant to the Internal Revenue Code;

17 (4) A trust forming part of a stock bonus, pension or profit-
18 sharing plan which is a qualified plan pursuant to sections 401 et
19 seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et seq.; and

20 (5) A trust forming part of a qualified tuition program
21 pursuant to chapter 353B of NRS, any applicable regulations
22 adopted pursuant to chapter 353B of NRS and section 529 of the
23 Internal Revenue Code, 26 U.S.C. § 529, unless the money is
24 deposited after the entry of a judgment against the purchaser or
25 account owner or the money will not be used by any beneficiary to
26 attend a college or university.

27 (r) All money and other benefits paid pursuant to the order of a
28 court of competent jurisdiction for the support, education and
29 maintenance of a child, whether collected by the judgment debtor or
30 the State.

31 (s) All money and other benefits paid pursuant to the order of a
32 court of competent jurisdiction for the support and maintenance of a
33 former spouse, including the amount of any arrearages in the
34 payment of such support and maintenance to which the former
35 spouse may be entitled.

36 (t) Payments, in an amount not to exceed \$16,150, received as
37 compensation for personal injury, not including compensation for
38 pain and suffering or actual pecuniary loss, by the judgment debtor
39 or by a person upon whom the judgment debtor is dependent at the
40 time the payment is received.

41 (u) Payments received as compensation for the wrongful death
42 of a person upon whom the judgment debtor was dependent at the
43 time of the wrongful death, to the extent reasonably necessary for
44 the support of the judgment debtor and any dependent of the
45 judgment debtor.



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(v) Payments received as compensation for the loss of future earnings of the judgment debtor or of a person upon whom the judgment debtor is dependent at the time the payment is received, to the extent reasonably necessary for the support of the judgment debtor and any dependent of the judgment debtor.

(w) Payments received as restitution for a criminal act.

(x) Payments received pursuant to the federal Social Security Act, including, without limitation, retirement and survivors' benefits, supplemental security income benefits and disability insurance benefits.

(y) Stock of a corporation described in subsection 2 of section 43.5 of this act except as set forth in that section.

2. Except as otherwise provided in NRS 115.010, no article or species of property mentioned in this section is exempt from execution issued upon a judgment to recover for its price, or upon a judgment of foreclosure of a mortgage or other lien thereon.

3. Any exemptions specified in subsection (d) of section 522 of the Bankruptcy Act of 1978, 11 U.S.C. § 522(d), do not apply to property owned by a resident of this State unless conferred also by subsection 1, as limited by subsection 2.

Sec. 171.6. NRS 31.045 is hereby amended to read as follows:

31.045 1. Execution on the writ of attachment by attaching property of the defendant may occur only if:

(a) The judgment creditor serves the defendant with notice of the execution when the notice of the hearing is served pursuant to NRS 31.013; or

(b) Pursuant to an ex parte hearing, the sheriff serves upon the judgment debtor notice of the execution and a copy of the writ at the same time and in the same manner as set forth in NRS 21.076.

↪ If the attachment occurs pursuant to an ex parte hearing, the clerk of the court shall attach the notice to the writ of attachment at the time the writ is issued.

2. The notice required pursuant to subsection 1 must be substantially in the following form:

NOTICE OF EXECUTION

YOUR PROPERTY IS BEING ATTACHED OR YOUR WAGES ARE BEING GARNISHED

Plaintiff, (name of person), alleges that you owe him money. He has begun the procedure to collect that money. To secure satisfaction of judgment the court has ordered the garnishment of your wages, bank account or other



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1 personal property held by third persons or the taking of
2 money or other property in your possession.

3 Certain benefits and property owned by you may be
4 exempt from execution and may not be taken from you. The
5 following is a partial list of exemptions:

6 1. Payments received pursuant to the federal Social
7 Security Act, including, without limitation, retirement and
8 survivors' benefits, supplemental security income benefits
9 and disability insurance benefits.

10 2. Payments for benefits or the return of contributions
11 under the Public Employees' Retirement System.

12 3. Payments for public assistance granted through the
13 Division of Welfare and Supportive Services of the
14 Department of Health and Human Services or a local
15 governmental entity.

16 4. Proceeds from a policy of life insurance.

17 5. Payments of benefits under a program of industrial
18 insurance.

19 6. Payments received as disability, illness or
20 unemployment benefits.

21 7. Payments received as unemployment compensation.

22 8. Veteran's benefits.

23 9. A homestead in a dwelling or a mobile home, not to
24 exceed \$350,000, unless:

25 (a) The judgment is for a medical bill, in which case all of
26 the primary dwelling, including a mobile or manufactured
27 home, may be exempt.

28 (b) Allodial title has been established and not relinquished
29 for the dwelling or mobile home, in which case all of the
30 dwelling or mobile home and its appurtenances are exempt,
31 including the land on which they are located, unless a valid
32 waiver executed pursuant to NRS 115.010 is applicable to the
33 judgment.

34 10. A vehicle, if your equity in the vehicle is less than
35 \$15,000.

36 11. Seventy-five percent of the take-home pay for any
37 workweek, unless the weekly take-home pay is less than 50
38 times the federal minimum hourly wage, in which case the
39 entire amount may be exempt.

40 12. Money, not to exceed \$500,000 in present value,
41 held in:

42 (a) An individual retirement arrangement which conforms
43 with the applicable limitations and requirements of section
44 408 or 408A of the Internal Revenue Code, 26 U.S.C. §§ 408
45 and 408A;



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1 (b) A written simplified employee pension plan which
2 conforms with the applicable limitations and requirements of
3 section 408 of the Internal Revenue Code, 26 U.S.C. § 408;

4 (c) A cash or deferred arrangement that is a qualified plan
5 pursuant to the Internal Revenue Code;

6 (d) A trust forming part of a stock bonus, pension or
7 profit-sharing plan that is a qualified plan pursuant to sections
8 401 et seq. of the Internal Revenue Code, 26 U.S.C. §§ 401 et
9 seq.; and

10 (e) A trust forming part of a qualified tuition program
11 pursuant to chapter 353B of NRS, any applicable regulations
12 adopted pursuant to chapter 353B of NRS and section 529 of
13 the Internal Revenue Code, 26 U.S.C. § 529, unless the
14 money is deposited after the entry of a judgment against the
15 purchaser or account owner or the money will not be used by
16 any beneficiary to attend a college or university.

17 13. All money and other benefits paid pursuant to the
18 order of a court of competent jurisdiction for the support,
19 education and maintenance of a child, whether collected by
20 the judgment debtor or the State.

21 14. All money and other benefits paid pursuant to the
22 order of a court of competent jurisdiction for the support and
23 maintenance of a former spouse, including the amount of any
24 arrearages in the payment of such support and maintenance to
25 which the former spouse may be entitled.

26 15. A vehicle for use by you or your dependent which is
27 specially equipped or modified to provide mobility for a
28 person with a permanent disability.

29 16. A prosthesis or any equipment prescribed by a
30 physician or dentist for you or your dependent.

31 17. Payments, in an amount not to exceed \$16,150,
32 received as compensation for personal injury, not including
33 compensation for pain and suffering or actual pecuniary loss,
34 by the judgment debtor or by a person upon whom the
35 judgment debtor is dependent at the time the payment is
36 received.

37 18. Payments received as compensation for the wrongful
38 death of a person upon whom the judgment debtor was
39 dependent at the time of the wrongful death, to the extent
40 reasonably necessary for the support of the judgment debtor
41 and any dependent of the judgment debtor.

42 19. Payments received as compensation for the loss of
43 future earnings of the judgment debtor or of a person upon
44 whom the judgment debtor is dependent at the time the
45 payment is received, to the extent reasonably necessary for



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1 the support of the judgment debtor and any dependent of the
2 judgment debtor.

3 20. Payments received as restitution for a criminal act.

4 21. *Stock of a corporation described in subsection 2 of*
5 *section 43.5 of this act except as set forth in that section.*

6 ~ These exemptions may not apply in certain cases such as
7 proceedings to enforce a judgment for support of a child or a
8 judgment of foreclosure on a mechanic's lien. You should
9 consult an attorney immediately to assist you in determining
10 whether your property or money is exempt from execution. If
11 you cannot afford an attorney, you may be eligible for
12 assistance through _____ (name of organization in
13 county providing legal services to the indigent or elderly
14 persons).

15
16 **PROCEDURE FOR CLAIMING EXEMPT PROPERTY**

17
18 If you believe that the money or property taken from you
19 is exempt or necessary for the support of you or your family,
20 you must file with the clerk of the court on a form provided
21 by the clerk a notarized affidavit claiming the exemption. A
22 copy of the affidavit must be served upon the sheriff and the
23 judgment creditor within 8 days after the notice of execution
24 is mailed. The property must be returned to you within 5 days
25 after you file the affidavit unless the judgment creditor files a
26 motion for a hearing to determine the issue of exemption. If
27 this happens, a hearing will be held to determine whether the
28 property or money is exempt. The hearing must be held
29 within 10 days after the motion for a hearing is filed.
30

31 **IF YOU DO NOT FILE THE AFFIDAVIT WITHIN THE**
32 **TIME SPECIFIED, YOUR PROPERTY MAY BE SOLD**
33 **AND THE MONEY GIVEN TO THE JUDGMENT**
34 **CREDITOR, EVEN IF THE PROPERTY OR MONEY IS**
35 **EXEMPT.**

36
37 If you received this notice with a notice of a hearing for
38 attachment and you believe that the money or property which
39 would be taken from you by a writ of attachment is exempt or
40 necessary for the support of you or your family, you are
41 entitled to describe to the court at the hearing why you
42 believe your property is exempt. You may also file a motion
43 with the court for a discharge of the writ of attachment. You
44 may make that motion any time before trial. A hearing will be
45 held on that motion.



* S B 2 4 2 R 2 *

1 IF YOU DO NOT FILE THE MOTION BEFORE THE
2 TRIAL, YOUR PROPERTY MAY BE SOLD AND
3 THE MONEY GIVEN TO THE PLAINTIFF, EVEN IF THE
4 PROPERTY OR MONEY IS EXEMPT OR NECESSARY
5 FOR THE SUPPORT OF YOU OR YOUR FAMILY.

6 Sec. 171.8. NRS 31.050 is hereby amended to read as follows:

7 31.050 Subject to the order for attachment and the provisions
8 of section 43.5 of this act and chapter 104 of NRS, the right of
9 shares which the defendant may have in the stock of any corporation
10 or company, together with the interest and profits therein, and all
11 debts due such defendant, and all other property in this State of such
12 defendant not exempt from execution, may be attached, and if
13 judgment be recovered, be sold to satisfy the judgment and
14 execution.

15 Sec. 172. NRS 108.227 is hereby amended to read as follows:

16 108.227 1. In addition to the requirements of NRS 108.226, a
17 copy of the notice of lien must be served upon the owner of the
18 property within 30 days after recording the notice of lien, in one of
19 the following ways:

20 (a) By personally delivering a copy of the notice of lien to the
21 owner or {resident} registered agent of the owner;

22 (b) By mailing a copy of the notice of lien by certified mail
23 return receipt requested to the owner at his place of residence or his
24 usual place of business or to the {resident} registered agent of the
25 owner at the address of the {resident} registered agent; or

26 (c) If the place of residence or business of the owner and the
27 address of the {resident} registered agent of the owner, if applicable,
28 cannot be determined, by:

29 (1) Fixing a copy of the notice of lien in a conspicuous place
30 on the property;

31 (2) Delivering a copy of the notice of lien to a person there
32 residing, if such a person can be found; and

33 (3) Mailing a copy of the notice of lien addressed to the
34 owner at:

35 (I) The place where the property is located;

36 (II) The address of the owner as identified in the deed;

37 (III) The address identified in the records of the office of
38 the county assessor; or

39 (IV) The address identified in the records of the county
40 recorder of the county in which the property is located.

41 2. If there is more than one owner, failure to serve a copy of
42 the notice of lien upon a particular owner does not invalidate a
43 notice of lien if properly served upon another owner.

44 3. Each subcontractor who participates in the construction,
45 improvement, alteration or repair of a work of improvement shall



* S B 2 4 2 R 2 *

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
April 12, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9 a.m. on Thursday, April 12, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Lora Nay, Committee Secretary

OTHERS PRESENT:

William R. Uffelman, Nevada Bankers Association
Scott Scherer, Nevada Resident Agent Association
Scott Anderson, Deputy for Commercial Recordings, Office of the Secretary of State

Senate Committee on Judiciary
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CHAIR AMODEI:
We will discuss Senate Bill (S.B.) 212.

SENATE BILL 212: Revises provisions governing the issuance of nonrestricted gaming licenses in certain counties. (BDR S-998)

Senator Michael A. Schneider has indicated he is still working on issues regarding unintended consequences.

SENATOR CARE:

I requested that we get a response from the Nevada Gaming Commission on how they would proceed under the proposed language and the proposed amendment, especially circumstances beyond the control of the holder of the license. We have not received anything.

CHAIR AMODEI:

I indicated to Senator Schneider that if he wants to continue to work the issue to narrow the potential application of the scope due to concerns of the Nevada Resort Association and how to apply this by the State Gaming Control Board, he can continue to do that. There are gaming bills coming from the other House which would be germane, and if he wants to update us on the concept at some point, I will provide him that opportunity.

We will go to S.B. 291.

SENATE BILL 291: Revises certain provisions governing civil practice in actions in which plaintiff is a nonresident or foreign corporation. (BDR 2-1309)

SENATOR CARE:

I have looked at the correspondence from William Cashill and Randall Tindall's reply and his proposed amendment (Exhibit C, the original is on file in the Research Library), pages 5 through 12. I have suggestions. I am not worried about the constitutionality of the out-of-state plaintiff posting of the bond. Currently, the figure is \$500. It probably ought to be raised to \$1,000. If the defendant can demonstrate circumstances where that figure ought to be raised during the course of the litigation, then I am agreeable to saying the additional undertaking must be ordered. That does take discretion away from the court, but if the defendant is located in Nevada and can make the case, then that figure ought to be increased. The language is unnecessary in laying out the

**Senate Committee on Judiciary
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SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR WASHINGTON WAS ABSENT FOR THE VOTE.)

CHAIR AMODEE:

Senate Bill 317 concerns agents for service of process.

SENATE BILL 317: Makes various changes to provisions relating to agents for service of process. (BDR 7-445)

SENATOR CARE:

The Committee members have a proposed amendment. The resident agents and their representatives have agreed on this language and the Secretary of State is no longer involved. In the name of legislative intent, we ought to get a comment from Mr. Scherer. The so-called charging order deals with the rights of a judgment creditor against a stockholder when that would apply and corresponding language changes related to writs of execution and writs of garnishment.

SCOTT SCHERER (Nevada Resident Agent Association):

The proposed amendment removes most of the existing sections of S.B. 317, including the section dealing with the moratorium on corporation sole. It provided the charging order protection amendment. If there is a judgment against a shareholder of a small corporation, you could get a charging order which would allow you to garnish or attach the stream of income to that shareholder but not execute and take away other shares and force your way into a closely held corporation and create disharmony. Small corporations are 75 shareholders or less which is the threshold under Internal Revenue Service rules. This is something that is already available to other business entities, such as partnerships, so it is not something unique. It is just currently not available to corporations. Many small corporations are more like partnerships so that is the reason for this.

There were a few changes to the two sections kept in the bill. Section 3 is renumbered as section 2. There were unnecessary provisions because they are already covered in NRS. Section 2 says if you are in the business of being

Senate Committee on Judiciary
April 12, 2007
Page 8

a registered agent, you must have a location that is properly zoned under local zoning law for that business. Section 5 is renumbered to section 3.

SENATOR CARE:

This Committee has already passed S.B. 242, the Model Registered Agents Act, with amendments from the Secretary of State's Office. There may be conflicting language, but the model act, unlike the uniform acts, is immensely malleable. I have no objection to the language in section 6.

SCOTT ANDERSON: (Deputy for Commercial Recordings, Office of the Secretary of State):

We came to an agreement with the resident agents that we would pull our amendment reserving the right to come back with other language if needed.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 317.

SENATOR CARE:

The amendment before the Committee is the one contained in the work session document Exhibit C.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR WASHINGTON WAS ABSENT FOR THE VOTE.)

CHAIR AMODEI:

Next is Senate Bill 471.

SENATE BILL 471: Revises provisions relating to the registration of sex offenders and offenders convicted of a crime against a child. (BDR 14-1426)

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 471.

SENATOR NOLAN SECONDED THE MOTION.

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session
May 7, 2007**

The Committee on Judiciary was called to order by Chair Bernie Anderson at 9:07 a.m., on Monday, May 7, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Clark County Senatorial District No.7

Minutes ID: 1235



Addendum000130

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Darlene Rubin, Committee Secretary

OTHERS PRESENT:

Scott Anderson, Deputy Secretary of State for Commercial Recording,
Office of the Secretary of State
Scott Scherer, representing Nevada Resident Agents Association

Thomas Connolly, Senior Manager, CT Corporation, San Francisco,
California

Randall Tindall, Attorney at Law, Las Vegas
Steve Burris, representing Nevada Trial Lawyers Association

Bill Bradley, Nevada Trial Lawyers Association
Neena Laxalt, representing CT Resident Agents

Chairman Anderson:

Meeting called to order and roll called. Let us turn our attention to
Senate Bill 242 (1st Reprint).

Senate Bill 242 (1st Reprint): Enacts the Model Registered Agents Act.
(BDR 7460)

Senator Terry Care, Clark County Senatorial District No. 7:

Senate Bill 242 (R1), the Model Registered Agents Act, is a lengthy bill—
110 pages as now written, with 195 sections. Sections 3 through 28 are
definitions, Section 29 has filing fees for the Secretary of State, and Section
29.5 has some language provided by the Secretary of State that refers to filing.
The core of the bill is contained in Sections 30 through 41. There are three
definitions I would like to call to the Committee's attention. You all know what
a "resident agent" is: corporations, other entities, nonprofit corporations, limited
liability companies, and others have a resident agent on file with the Secretary
of State. That means that when those entities get sued, service of process can
be made on the resident agent as opposed to the appropriate person for that
entity. Nevada uses the term "resident agent," and it is the only state to use
that term. Every other state uses "registered agent." Massachusetts was the
last state to make the change about three years ago. That is why this bill is
called the "Model Registered Agents Act."

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additional court time, and driving up the cost of litigation. To get a handle on just how important this is, I note that none of the "Big Four" insurance companies is present.

I know that this Committee occasionally looks for ways to shorten our laws as opposed to lengthening them, and this is one law that is antiquated; it is no longer necessary in today's environment. Rather than see this bill amended to strengthen it and make the judge's discretion nondiscretion, this is a law that could be taken off our books.

Assemblyman Home:

Mr. Bradley, you are in opposition to the increase of the \$1,000 as well as the removal of the discretionary language in paragraph 2?

Bill Bradley:

Yes, I am. It is a formality in today's environment. I have never had a bond chased because these cases successfully resolve. If there are costs at the end of the case, if we lose, the costs are going to be pursued by the insurance company against that individual. However, once that case starts moving forward, there may be an appeal, and everyone talks about dropping the costs if there is no appeal. This law goes back to 1911; there is no longer a reason for this law—it is out of date.

Chairman Anderson:

Is there any further opposition to S.B. 291(R1)? [There was none.] We will close the hearing on S.B. 291(R1).

We will open the hearing on Senate Bill 317 (1st Reprint).

Senate Bill 317 (1st Reprint): Makes various changes to provisions relating to agents for service of process and business entities. (BDR 7-445)

Scott Scherer, representing Nevada Resident Agents Association:

I am appearing on behalf of Nevada Resident Agents Association. Senate Bill 317 (1st Reprint) does three things. First, and most important, it provides a simple mechanism for enforcing judgments against small, closely-held corporations—i.e., to create a charging order that currently exists for partnerships in the State of Nevada—and would now allow that charging order for small corporations with 75 shareholders or less not publicly traded, which is the threshold for subchapter S corporations. The reason for this is there is not a ready public market for small, closely-held corporations, so if the shares were to be seized—if there was a judgment against someone who happened to own shares in a small corporation—it is difficult to recognize the value out of those shares. Moreover, most of those closely-held corporations are family-owned

and they would then be disrupted. This mechanism currently exists for partnerships in the State, and this would simply apply it to small corporations as well. There would be a charging order, so that any dividends or income from that corporation to which the shareholder was entitled would go to pay the judgment creditor. It would be similar to a writ of garnishment, but instead of garnishing wages, it would attach to their stream of income from that corporation. It is an appropriate balance for those small companies. It would not apply to someone who owns all of the shares; in that case, the entire company could be taken and sold.

Section 2 provides that a registered agent for multiple business entities—i.e., one in the business of being a registered agent—must have their office in a location properly zoned for that business. The reason is that some people will conduct business from their home. Some may live in gated communities and there have been instances where a process server has tried to serve the registered agent and been unable to gain access. It would be left to the local governments to determine the appropriate zone for that use. The bill simply states that the registered agent comply with the local zoning laws.

Section 3 provides that the records of a resident agent have to be kept for three years following resignation. This goes back to the testimony I gave earlier on S.B. 242 (1st Reprint) with regard to requests from law enforcement and others in Washington, D.C., saying that we must have a greater knowledge of our customers and maintain records that they might have access to through appropriate means to aid them in their investigations. It also gives the resident agent a bright line as to their obligations. Currently there is no standard for maintaining records. The rest of the bill adds to the provisions in current law regarding enforcement of judgment and writs of garnishment, and are procedural with regard to implementing Section 1, creating a charging order of protection for small, closely-held corporations.

Assemblyman Carpenter:

Where you say that the address must be in a location that is zoned for such use, sometimes in the rural areas there may not be any zoning. So how would this bill apply in those situations?

Scott Scherer:

The intent was to simply leave it to the local governments to decide the appropriate zoning. If it is not contrary to the local ordinances it would not be a violation of this statute. The idea was that if one was running a business from home and that was contrary to the local ordinances, it would be a violation of this statute. Going back to S.B. 242 (R1), the amendment we offered giving the Secretary of State regulatory authority would tie in there, and they could

take some action against the commercial registered agent to enforce this statutory requirement. Each local government would decide what zoning was appropriate.

Assemblyman Carpenter:

What if one is running a business from their home and it is not actually zoned commercial. Would that be a problem here, if it was residential?

Scott Scherer:

It would be a problem if the local government said it was a problem—if they say that kind of business cannot be conducted at that location because it is zoned residential. If that particular use is minimal and is permissible in a residential area, and the permit to do that had been obtained, then it could be done. If the local government says no, that the business has to be conducted in a commercial or other designated zone, then one would have to comply. This would apply to the commercial registered agent, not one who was simply a registered agent, as I have been for nonprofits, youth sports leagues, charities, or others, where I have agreed to serve but did not charge a fee.

Chairman Anderson:

Apparently the question of residence is the concern. Does this bill become discriminatory toward smaller resident agents who may not be located in the proper zoning area?

Scott Scherer:

I do not believe so. They should already be in compliance with the local ordinances. This bill simply brings it into the state law and gives the Secretary of State some jurisdiction to enforce that. However, certainly it is more likely that a smaller registered agent is going to be trying to operate in a residential zone or another zone that may not be appropriate. The purpose of a registered agent is to be available for service of process and documents, and if they live in a gated community, or someplace not accessible to the public, that defeats the purpose.

Scott Anderson, Deputy Secretary of State for Commercial Recordings, Office of the Secretary of State:

The Secretary of State is not opposed to this legislation; specifically we are supportive of anything that allows for proper service. That is why registered agents are appointed or consent to serve.

Chairman Anderson:

I see no further questions. Does anyone wish to speak in opposition? [There was no one.] I have received this morning an email in opposition from Business First Formations, Inc., (Exhibit D) signed by Megan Hughes. Her bottom line is

that as written, it creates an unnecessary burden on small business owners by requiring them to establish a staffed commercial location, and an unfair financial advantage for attorneys and CPAs by exempting them from the registration and yearly licensing requirement, and does not achieve the intended goal of timely service and meaningful safeguards for clients. We will make sure you all receive copies and will include it in the meeting record.

Is there anything further on S.B. 317 (R1)? [There was nothing.] We will close the hearing on S.B. 317 (R1).

[Meeting adjourned at 10:43 a.m.]

RESPECTFULLY SUBMITTED:

Darlene Rubin
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____