

1 incorporated in this state;

2 (b) The name of any foreign corporation authorized to
3 transact business in this state;

4 (c) A name held reserved pursuant to NRS 78.040 or Section
5 11;

6 (d) The name of any limited partnership formed in this
7 state;

8 (e) The name of any foreign limited partnership authorized
9 to transact business in this state; or

10 (f) A name held reserved pursuant to NRS 88.325.

11 2. The secretary of state shall accept for filing in his
12 office the articles of a corporation whose name:

13 (a) Cannot be distinguished from that used by or reserved
14 for another entity formed or authorized to transact business in
15 this state; or

16 (b) Is the same as that used by a foreign corporation or
17 foreign limited partnership authorized to transact business in
18 this state, or reserved for such a use pursuant to NRS 88.325,
19 if the written acknowledged consent of the other entity to the
20 use of the same accompanies the articles or certificate.

21 Note: Adapted from NRS 78.039.

22 We have added to subsection 1(c) the citation to this new
23 nonprofit corporation law permitting the secretary of state to
24 reserve names. This statute contains the change suggested by
25 this study to NRS 78.039 requiring the secretary of state to
26 refuse articles with a name which "cannot be distinguished from"
27 the name of a corporation, limited partnership, etc. already on
28 file. This change reflects modern practice as contained in the
Revised Model Business Code and other recent statutory schemes.

1 Section 11. Name of corporation: Reservation; injunctive
2 relief.

3 1. The secretary of state, when requested to do so, shall
4 reserve, for a period of 90 days, the right to use any name
5 available under NRS 78.039 and Section 10, for the use of any
6 proposed corporation. During the period, a name so reserved is
7 not available for use by any corporation without the consent of
8 the person, firm or corporation at whose request the reservation
9 was made.

10 2. The use by any corporation of a name in violation of
11 NRS 78.039 and Section 10 or subsection 1 of this section may be
12 enjoined, notwithstanding the fact that the articles of
13 incorporation of the corporation may have been filed by the
14 secretary of state.

15 Note: Adapted from NRS 78.040.

16 Section 12. Articles of incorporation: Prohibited names;
17 insurance business.

18 1. The secretary of state must not accept for filing
19 pursuant to this chapter any articles of incorporation or any
20 certificate of amendment of articles of incorporation of any
21 corporation formed or existing pursuant to this chapter if the
22 name of the corporation contains the words "trust," "engineer,"
23 "engineered," "engineering," "professional engineer" or
24 "licensed engineer."

25 2. The secretary of state must not accept for filing any
26 articles of incorporation or any certificate of amendment of
27 articles of incorporation of any corporation formed or existing
28 under this chapter when it appears from the articles or the

1 certificate of amendment that the business to be carried on by
2 the corporation is subject to supervision by the commissioner of
3 insurance.

4 Note: Adapted from NRS 78.045.

5 This statute simply forbids the use of the words listed in
6 subsection 1 in the corporate name. NRS 78.045 permits the use
7 of the word "trust" if the articles are first approved by the
8 commissioner of financial institutions and the various
9 engineering words upon approval by the state board of registered
10 professional engineers. Subsection 2 is almost verbatim from
11 NRS 78.045(2).

12 Section 13. Commencement of corporate existence.

13 1. Upon the filing of the articles of incorporation and
14 the certificate of acceptance pursuant to Section 7, and the
15 payment of the filing fees, the secretary of state must issue to
16 the corporation a certificate that the articles, containing the
17 required statement of facts, have been filed in this office.
18 From the date the articles are filed, the corporation is a body
19 corporate, by the name set forth in the articles, subject to the
20 forfeiture of its charter and dissolution as provided in this
21 chapter.

22 2. The filing of the articles does not, by itself,
23 constitute commencement of business by the corporation.

24 3. The date of commencement of a body corporate may be
25 delayed for ninety (90) days by filing a request to delay
26 commencement of corporate existence which date must be honored
27 by the secretary of state upon receipt of an additional filing
28 fee of \$75.

Note: Adapted from NRS 78.050 with the changes recommended
by this report, where applicable.

1 Section 14. Articles of incorporation: Evidence.

2 A copy of any articles of incorporation filed pursuant to
3 this chapter, and certified by the secretary of state under his
4 official seal, or a copy of the copy thereof, filed with the
5 county clerk, or microfilmed by the county clerk, under the
6 county seal, certified by the clerk, shall be received in all
7 courts and places as prima facie evidence of the facts therein
8 stated, and of evidence of the facts therein stated, and of the
9 existence and due incorporation of the corporation therein named.

10 Note: Adapted from NRS 78.055.

11 POWERS

12 Section 15. General powers.

13 1. Any corporation:

14 (a) Has all the rights, privileges and powers hereby
15 conferred.

16 (b) Has such rights, privileges and powers as may be
17 conferred upon such corporations by any existing law.

18 (c) May at any time exercise such rights, privileges and
19 powers, when not inconsistent with the provisions of this
20 chapter, or with the purposes and objects for which such
21 corporation is organized.

22 2. Every corporation, by virtue of its existence as such,
23 has the power:

24 (a) To have succession by its corporate name for the
25 period limited in its articles of incorporation, and when no
26 period is limited, perpetually, or until dissolved and its
27 affairs wound up according to law.

28 (b) To sue and be sued in any court of law or equity.

1 (c) To make contracts.

2 (d) To hold, purchase and convey real and personal estate
3 and to mortgage or lease any such real and personal estate with
4 its franchises. The power to hold real and personal estate
5 shall include the power to take the same by devise or bequest in
6 this state, or in any other state, territory or country.

7 (e) To appoint such officers and agents as the affairs of
8 the corporation shall require, and to allow them suitable
9 compensation.

10 (f) To make bylaws not inconsistent with the constitution
11 or laws of the United States, or of this state, for the
12 management, regulation and government of its affairs and
13 property, the transfer of its memberships (if any), the
14 transaction of its business, and the calling and holding of
15 meetings of its members (if any) or delegates (if any).

16 (g) To wind up and dissolve itself, or be wound up or
17 dissolved, in the manner mentioned in this chapter.

18 (h) Unless otherwise provided in the articles, to engage
19 in any lawful activity.

20 Note: Adapted from NRS 78.060.

21 Nonprofit corporations should have the same powers to
22 conduct their affairs as business corporations do (with certain
23 exceptions like paying dividends to members). Thus, this
statute has almost the same wording as NRS 78.060 as this study
proposes to change it.

24 Section 16. General powers: Corporate seal or stamp; use
25 not required.

26 1. Every corporation, by virtue of its existence as such,
27 has the power to adopt and use a common seal or stamp, and alter
28 the same at pleasure.

1 2. The use of a seal or stamp by a corporation on any
2 corporate documents is not necessary. The corporation may use a
3 seal or stamp, if it desires, but such use or nonuse shall not
4 in any way affect the legality of the document.

5 Note: Adapted from NRS 78.065.

6 Section 17. Specific powers.

7 Subject to such limitations, if any, as may be contained in
8 its articles, every corporation has the following powers:

9 1. To borrow money and contract debts when necessary for
10 the transaction of its business, or for the exercise of its
11 corporate rights, privileges or franchises, or for any other
12 lawful purpose of its incorporation; to issue bonds, promissory
13 notes, bills of exchange, debentures, and other obligations and
14 evidences of indebtedness, payable at a specified time or times,
15 or payable upon the happening of a specified event or events,
16 whether secured by mortgage, pledge or other security, or
17 unsecured, for money borrowed, or in payment for property
18 purchased, or acquired, or for any other lawful object.

19 2. To guarantee, purchase, hold, take, obtain, receive,
20 subscribe for, own, use, dispose of, sell, exchange, lease,
21 lend, assign, mortgage, pledge, or otherwise acquire, transfer
22 or deal in or with bonds or obligations of, or shares,
23 securities or interests in or issued by, any person, government,
24 governmental agency or political subdivision of government, and
25 to exercise all the rights, powers and privileges of ownership
26 of such an interest, including the right to vote, if any.

27 3. To issue certificates evidencing membership and issue
28 identity cards.

1 4. To make donations for the public welfare or for
2 community funds, hospital charitables, educational, scientific,
3 civil, religious or similar purposes.

4 5. To levy dues, assessments and fees.

5 6. To purchase, take, receive, lease, take by gift,
6 devise or bequest, or otherwise acquire, own, improve, use and
7 otherwise deal in and with real or personal property, or any
8 interest therein, wherever situated.

9 7. To carry on a business for profit and apply any profit
10 that results from the business to any activity in which it may
11 lawfully engage.

12 8. To participate with others in any partnership, joint
13 venture or other association, transaction or arrangement of any
14 kind whether or not such participation involves sharing or
15 delegation of control with or to others.

16 9. To act as trustee under any trust incidental to the
17 principal objects of the corporation, and receive, hold,
18 administer, exchange, and expend funds and property subject to
19 such trust.

20 10. To pay reasonable compensation to officers, directors
21 and employees, to pay pensions, retirement allowances, and
22 compensation for past services and establish employee or
23 incentive benefit plans, trusts and provisions for the benefit
24 of its officers, directors, employees, agents and their
25 families, dependents and beneficiaries and indemnify and buy
26 insurance for a fiduciary of an employee benefit and incentive
27 plan, trust or provision.

28 11. To have one or more offices, and hold, purchase,

1 mortgage and convey real and personal property in this state,
2 and in any of the several states, territories, possessions and
3 dependencies of the United States, the District of Columbia, and
4 any foreign countries.

5 12. To do everything necessary and proper for the
6 accomplishment of the objects enumerated in its articles of
7 incorporation, or necessary or incidental to the protection and
8 benefit of the corporation, and, in general, to carry on any
9 lawful business necessary or incidental to the attainment of the
10 objects of the corporation, whether or not the business is
11 similar in nature to the objects set forth in the articles of
12 incorporation of the corporation, except that:

13 (a) A corporation shall not, by any implication or
14 construction, be deemed to possess the power of issuing bills,
15 notes or other evidences of debt for circulation of money; and

16 (b) This chapter does not authorize the formation of
17 banking corporations to issue or circulate money or currency
18 within this state, or outside of this state, or at all, except
19 the federal currency, or the notes of banks authorized under the
20 laws of the United States.

21 Note: Adapted from NRS 78.070; subsection 3 is adapted
22 from Cal. Corp. Code §7140(f); subsection 4 from Cal. Corp. Code
23 §7140(h); subsection 4 from Cal. Corp. Code §7140(g); subsection
24 6 from MN-PCA §5(d); subsection 7 from Cal. Corp. Code §7140(h);
subsection 8 from Cal. Corp. Code §7140(j); subsection 9 from
Cal. Corp. Code §7140(k); subsection 10 from Minn. Nonprofit
Corporation Act §317A.161(12).

25 This statute provides for powers generally like those
26 granted in NRS 78.070 but deletes those powers relating to
27 shares and adds a number of categories of powers which should be
28 granted to nonprofit corporations. Issuing membership
certificates and making donations are powers which any nonprofit
corporation should have. In addition, those with members should
be able to levy dues, assessments and fees. All such

1 corporations must be able to acquire property by gift.
2 Subsection 7 allows a nonprofit to carry on a business for
3 profit and apply the profits to its activities. Subsection 8
4 allows nonprofits to participate in partnerships and other money
5 making activities. These provisions make clear that a nonprofit
6 can conduct a business enterprise despite its nonprofit nature.
7 The nonprofit corporation statutes we examined all contain
8 similar provisions. Subsection 10 permits nonprofits to pay
9 officers and directors and to provide benefit plans for its
10 directors and employees and their dependents and to buy
11 insurance. This might be under question since nonprofits are,
12 almost by definition, intended not to benefit its members or
13 directors. Again, most modern nonprofit corporation laws
14 contain similar provisions.

15 Finally, subsection 12 is taken almost verbatim from NRS
16 78.070(5).

17 Section 18. Examination of affairs by attorney general.

18 1. A corporation holding assets in charitable trust is
19 subject at all times to examination by the attorney general, on
20 behalf of the state, to ascertain the condition of its affairs
21 and to what extent, if at all, it fails to comply with trusts it
22 has assumed or has departed from the purposes for which it is
23 formed. In case of any such a failure or departure, the
24 attorney general may institute, in the name of the state, the
25 proceeding necessary to correct the noncompliance or departure.

26 2. The attorney general, or any person given relator
27 status by the attorney general, may bring an action to enjoin,
28 correct, obtain damages for or to otherwise remedy a breach of a
charitable trust.

Note: Subsection (1) is adapted from existing NRS 81.340
and 81.400 and Cal. Corp. Code §5250; subsection (2) is adapted
from Cal. Corp. Code §5142.

Although one cannot exactly determine which nonprofit
corporations existing NRS 81.340 and 81.400 apply to, they do
provide for an examination of its affairs by the attorney
general. The wording of existing NRS 81.340 is almost identical
with the wording of the old California Corporations Code and the
new nonprofit laws promulgated by the California legislature in
1978.

1 All the commentators as well as the law review articles and
2 committee notes to the California and Minnesota nonprofit
3 corporation laws provide that the attorney general may bring an
4 action to remedy a breach of a charitable trust by a nonprofit
5 corporation. Subsection 2 provides for this authority in
6 language adapted from the 1978 California Non-Profit Corporation
7 Laws.

8 Please also note that the Attorney General has power to
9 inquire into the officers of all corporations pursuant to the
10 quo warranto procedure at NRS Chapter 35.

11 PRINCIPAL OFFICE AND RESIDENT AGENT;

12 ANNUAL LIST OF OFFICERS AND DIRECTORS

13 Section 19. Resident Agent.

14 Every corporation must have a resident agent in the manner
15 of, and as provided in, NRS 78.090, 78.095, 78.097 and 78.110.
16 The resident agent must comply with the provisions of those
17 sections.

18 Note: The requirements for resident agents contained in
19 NRS Chapter 78 are applicable without change to nonprofit
20 corporations. Therefore, it was thought unnecessary to simply
21 repeat the identical statutory language here. This is one of
22 the few places in this nonprofit corporation law where we refer
23 to statutes in Chapter 78.

24 Section 20. New corporations: Filing requirements; fee.

25 Each corporation must, within 60 days after the filing of
26 its articles of incorporation with the secretary of state:

27 1. File a list of its officers and directors and a
28 designation of its resident agent. The address of the resident
agent must be the same as that of the principal office.

2. Pay to the secretary of state a fee of \$15.00.

3. File a copy of the designation of resident agent in
the office of the county clerk of the county in which the
principal office of the corporation in this state is located.

Note: Adapted from NRS 78.160.

1 This is almost verbatim the same as NRS 78.160. However,
2 existing Chapter 81 providing a filing fee of \$15.00 for the 60
day list rather than the \$30.00 fee set forth at NRS 78.160(2).

3 [81.002] Section 21. Annual list of officers and directors
4 and designation of resident agent: Filing requirements; fee;
5 forms.

6 1. [Beginning on January 1, 1984,] Each corporation must,
7 [organized under the laws of this state shall,] on or before the
8 last date of the month in which the anniversary date of
9 incorporation occurs in each year, file with the secretary of
10 state a list of its officers and directors and a designation of
11 its resident agent in this state, certified by the president,
12 secretary or other officer of the [nonprofit] corporation.

13 2. Upon filing the list of officers and directors and
14 designation of resident agent, the [nonprofit] corporation shall
15 pay to the secretary of state a fee of \$15.

16 3. The secretary of state shall, 60 days before the last
17 day for filing the list required by subsection 1, cause to be
18 mailed to each [nonprofit] corporation, [required to comply with
19 the provisions of this chapter,] and which has not become
20 delinquent, the blank forms to be completed and filed with the
21 secretary of state. Failure of any nonprofit corporation to
22 receive the forms does not excuse it from the penalty imposed by
23 Section 23.

24 Note: These sections numbered 81.110 through 81.135 merely
25 modernize the wording of existing 81.002 through 81.0095. These
26 provisions are very similar to the correlative provisions in NRS
Chapter 78. We have not changed these statutes in any
substantive way.

27 [81.004] Section 22. Contents of annual list; penalties.

28 1. Every list required to be filed under the provisions

1 of this chapter must, after the name of each officer and
2 director listed thereon, set forth his post office box or street
3 address.

4 2. If such addresses are not thus set forth, the
5 secretary of state may refuse to file the list, and the
6 [nonprofit] corporation for which the list has been offered for
7 filing is subject to all the provisions of this chapter relating
8 to failure to file such a list, unless the list is subsequently
9 submitted for filing conformably to the provisions of this
10 chapter.

11 [81.008] Section 23. Defaulting corporations: Penalties
12 and forfeitures.

13 1. Each [nonprofit] corporation required to make the
14 filings and pay the fees prescribed in this chapter which
15 refuses or neglects to do so within the time provided shall be
16 deemed in default.

17 2. For default, there is added to the amount of the fee a
18 penalty of \$5, and unless the filing is made and the fee and
19 penalty are paid on or before the 1st day of the 9th month
20 following the month in which the filing was required, the
21 defaulting corporation, by reason of its default, forfeits:

22 (a) The amount of the fee and penalty to the State of
23 Nevada; and

24 (b) Its right to transact any business within this state.
25 The fee penalty must be collected as provided in this chapter.

26 [81.0085] Section 24. Forfeiture of right to do business:
27 Duties of secretary of state; distribution of assets.

28 1. On or before the 15th day of the 3rd month following

1 the month in which filing was required, the secretary of state
2 shall compile a complete list of all defaulting [nonprofit]
3 corporations, together with the amounts of the filing fees,
4 penalties and costs remaining unpaid.

5 2. Immediately after the 1st day of the 9th month
6 following the month in which filing was required, the secretary
7 of state shall compile a full and complete list containing the
8 names of all [nonprofit] corporations whose right to do business
9 has been forfeited.

10 3. If such a forfeiture of a charter and the right to
11 transact business occurs, all the property and assets of the
12 defaulting [domestic nonprofit] corporation must be held in
13 trust by its directors, as for insolvent corporations, and the
14 same proceedings may be had as are applicable to insolvent
15 corporations. Any interested person may institute those
16 proceedings at any time after a forfeiture has been declared,
17 but if the secretary of state reinstates the charter, the
18 proceedings must be dismissed at once and all property restored
19 to the officers of the [nonprofit] corporation.

20 4. If the corporate assets are distributed, they must be
21 applied to:

22 (a) The payment of the filing fee, penalties and costs due
23 to the state; and

24 (b) The creditors of the [nonprofit] corporation.
25 Any balance remaining must be distributed as set forth in the
26 articles or bylaws or, if no such provisions exist, among the
27 members of the corporation.
28

1 [81.009] Section 25. Reinstatement of defaulting
2 corporations: Duties of secretary of state.

3 1. Subject to the provisions of subsections 3 and 4, the
4 secretary of state may:

5 (a) Reinstate any [nonprofit] corporation which has
6 forfeited its right to transact business under the provisions of
7 this chapter; and

8 (b) Restore its right to carry on business in this state
9 and exercise its corporate privileges and immunities,
10 upon the filing with him of an affidavit stating the reason for
11 the revocation of its charter, and upon payment to him of all
12 filing fees, fees for licenses, penalties, costs and expenses
13 due and in arrears at the time of the revocation of its charter,
14 and also all filing fees, fees for licenses and penalties which
15 have accrued since the renovation of its charter.

16 2. When [such payment is made and] the secretary of state
17 reinstates the [nonprofit] corporation to its former rights, he
18 [shall] must:

19 (a) Immediately issue and deliver to the [nonprofit]
20 corporation a certificate of reinstatement authorizing it to
21 transact business, as if the fees had been paid when due; and

22 (b) Upon demand, issue to the [nonprofit] corporation one
23 certified copy of the certificate of reinstatement, [which it
24 must file in the office of the county clerk of the county in
25 which its principal place of business is located or in any other
26 country which it owns, holds or leases property or transacts
27 business.] Additional copies may be purchased for \$5 each.

28 3. The secretary of state shall not order a reinstatement

1 of a [nonprofit] corporation unless the revocation of its
2 charter occurred only by reason of its failure to pay fees,
3 penalties and costs and all its delinquent fees, penalties and
4 costs have been paid.

5 4. If a corporate charter has been revoked pursuant to
6 the provisions of this chapter and has remained revoked for 10
7 consecutive years, the charter must not be reinstated.

8 [81.0095] Section 26. Reinstatement of defaulting
9 corporations: Name.

10 1. Except as otherwise provided in subsection 2, if any
11 [nonprofit] corporation is suspended from doing business under
12 the provisions of this chapter and the name of the corporation,
13 or one [deceptively similar to] which cannot be distinguished
14 from it, is legally acquired by another corporation or a limited
15 partnership or is reserved for its use before the application
16 for reinstatement of the defaulting corporation, it shall, in
17 its application for reinstatement, submit to the secretary of
18 state some other name under which it desires its corporate
19 existence to be reinstated. If that name [is sufficiently
20 distinctive and different] can be distinguished from the names
21 reserved or otherwise in use, the secretary of state shall issue
22 to the defaulting corporation a certificate of reinstatement
23 under that new name.

24 2. If the defaulting [nonprofit] corporation submits the
25 written consent of the entity reserving or using a name which is
26 the same as or similar to the defaulting corporation's old name
27 or a new name it has submitted, it may be reinstated under that
28 name even though it [is]:

1 (a) Is the [The] same as or [deceptively similar to]
2 cannot be distinguished from the name used by a foreign
3 corporation or foreign limited partnership doing business in
4 Nevada; or

5 (b) [Deceptively similar to] cannot be distinguished from
6 the name used by, or reserved to be used by, a domestic
7 corporation or domestic limited partnership.

8 MEMBERSHIP LISTS AND FINANCIAL RECORDS

9 Section 27. Copies of articles, bylaws and membership
10 lists to be kept at principal office; rights of directors and
11 members; penalties.

12 1. A corporation must keep a copy of the following
13 records at its principal office:

14 (a) A certified copy of its articles and all amendments
15 thereto; and

16 (b) A certified copy of its bylaws and all amendments
17 thereto; and

18 (c) If the corporation has members, a membership ledger or
19 a duplicate membership ledger, revised annually, containing the
20 names, alphabetically arranged, of all persons who are members
21 of the corporation, showing their places of residence, if known
22 and the class of membership held by each; or

23 (d) In lieu of the membership ledger or duplicate
24 membership ledger specified in paragraph (c), a statement
25 setting out the name of the custodian of the membership ledger
26 or duplicate membership ledger, and the present and complete
27 post office address, including street and number, if any, where
28 such membership ledger or duplicate membership ledger specified

1 in this section is kept.

2 2. A corporation must maintain its records in written
3 form or in another form capable of conversion into written form
4 within a reasonable time.

5 3. Any director or any person who has been a member of
6 record of a corporation for at least 6 months, or at least 5
7 percent of the members of the corporation, upon at least 5 days'
8 written demand, has the right to inspect in person or by agent
9 or attorney, during usual business hours, the membership ledger
10 or duplicate ledger, whether kept in the principal office of the
11 corporation in this state or elsewhere as provided in paragraph
12 (d) of subsection 1, and to make copies therefrom. Every
13 corporation that neglects or refuses to keep the membership
14 ledger or duplicate copy thereof open for inspection, as
15 required in this subsection, shall forfeit to the state the sum
16 of \$25 for every day of such neglect or refusal.

17 4. An inspection authorized by subsection 2 may be denied
18 to such member or other person upon his refusal to furnish to
19 the corporation an affidavit that such inspection is not desired
20 for any purpose not relating to his interest as a member,
21 including but not limited to those purposes set forth in
22 subsections 6(a), (b) and (c) below.

23 5. When the corporation keeps and maintains a statement
24 in the manner provided for in paragraph (d) of subsection 1, the
25 information contained thereon must be given to any director or
26 member of such corporation as provided in subsection 2 when the
27 demand is made during business hours. Every corporation that
28 neglects or refuses to keep such statement available, as

1 required in this subsection, shall forfeit to the state the sum
2 of \$25 for every day of such neglect or refusal.

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

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

10 (b) for any commercial purpose or purpose in competition
11 with the corporation;

12 (c) to sell to any person; or

13 (d) for any other purpose not related to his interest as a
14 member.

15 7. Nothing contained in this section, however, shall be
16 deemed or construed in anywise to impair the power or
17 jurisdiction of any court to compel the production for
18 examination of the books of a corporation in any proper case.

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

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

27 10. The corporation may impose a reasonable charge,
28 covering costs of labor, materials, and copies of any documents

1 provided to the member or director.

2 Note: Adapted from NRS 78.105; portions of subsection 6
3 adapted from Cal. Corp. Code §6338(a).

4 We examined closely the rights of members to inspect
5 membership lists as provided in the nonprofit corporation laws
6 of several states. On balance, we found the wording and
7 approach taken by NRS 78.105 to be perfectly acceptable and up
8 to the current standard for nonprofit corporation codes
9 generally. The only real change is contained in subsection 7
10 listing the improper uses for which the list need not be
11 produced. They are adapted from the lists contained in the
12 California Corporations Code. It was thought the members should
13 not be able to obtain a membership list to solicit money from
14 members, to use the list for any commercial purpose (including
15 selling the list to companies for mail solicitation purposes),
16 to sell to anyone or, generally, for any other purpose not
17 related to his interest as a member. This last subsection
18 allows the court to use its discretion and permit the
19 corporation to refuse lists to members who might use them
20 improperly in ways we cannot now anticipate.

21 This statute reflects the changes this report recommends be
22 made to NRS 78.105.

23 Section 28. Right of directors and members to inspect and
24 audit financial records; exceptions.

25 1. Any director or person authorized in writing by at
26 least 15 percent of the members of the corporation upon at least
27 5 days' written demand, is entitled to inspect in person or by
28 agent or attorney, during normal business hours, the books of
account and all financial records of the corporation and to make
extracts therefrom. The right of members and directors to
inspect the corporate records shall not be limited in the
articles or bylaws of any corporation.

2 All costs for making extracts of records shall be
borne by the person exercising his rights under subsection 1.

3 The rights authorized by subsection 1 may be denied to
any director or member upon his refusal to furnish the
corporation an affidavit that such inspection, extracts or audit

1 is not desired for any purpose not related to his interest in
2 the corporation as a director or member. Any director or member
3 or other person, exercising rights under subsection 1, who uses
4 or attempts to use information, documents, records or other data
5 obtained from the corporation, for any purpose not related to
6 the director's or member's interest in the corporation as a
7 director or member, is guilty of a gross misdemeanor.

8 4. A director or member who brings an action or
9 proceeding to enforce any right under this section or to recover
10 damages resulting from its denial:

11 (a) Is entitled to costs and reasonable attorney's fees,
12 if he prevails; or

13 (b) Is liable for such costs and fees, if he does not
14 prevail, in the action or proceeding.

15 5. It shall be a defense to any action to enforce the
16 provisions of this section or for damages or penalties under
17 this section that the person seeking an inspection of the books
18 of account and financial records, or extracts thereof, has used
19 or intends to use any such accounts and records for any of the
20 following reasons:

21 (a) for any commercial purpose or purpose in competition
22 with the corporation;

23 (b) to sell to any person; or

24 (c) for any other purpose not related to his interest as a
25 member or director.

26 6. The rights and remedies of this section are not
27 available to members of any corporation that makes available at
28 no cost to its members a detailed annual financial statement.

1 Note: Adapted from 78.257; subsection 5 adapted from Cal.
2 Corp. Code §6338(a).

3 The right of directors and members to inspect financial
4 records is placed with statutes dealing with stockholders in
5 Chapter 78. We decided it would be best to place all statutes
6 dealing with access to corporate records in the same area.

7 Subsection 5 contains almost the same provisions permitting
8 the corporation to deny the members for an improper purpose as
9 we saw in the new Section 27(6) above.

10 Finally, please note that any director alone can obtain
11 access to the financial records. He need not join with other
12 directors or members in order to do so.

13 DIRECTORS AND OFFICERS

14 Section 29. Board of directors: Number and qualifications.

15 Every corporation must be managed by a board of directors
16 or trustees, all of whom must be at least 18 years of age. A
17 corporation must have at least one director, and may provide in
18 its articles or bylaws for a fixed number of directors or a
19 variable number of directors within a fixed minimum and maximum,
20 and for the manner in which the number of directors may be
21 increased or decreased. Unless otherwise provided in the
22 articles, directors need not be members. The articles or bylaws
23 may provide that some or all the directors or trustees must be
24 chosen by specified persons or by public officials.

25 Note: Adapted from NRS 78.115 and old NRS 81.390.

26 Sections 29 through 32 are adapted without much change from
27 the correlative sections of NRS Chapter 78 as noted. A close
28 examination of prominent new nonprofit corporation laws shows no
improvement has been made from the sections contained in Chapter
78. Existing NRS 81.390 (governing "nonprofit corporations for
advancement of state or local interests") allows directors to be
chosen by other corporations and associations or by public
officials. This structure should be permitted by the new
nonprofit corporations law.

The word "person" in the last sentence is defined at NRS
0.039 for the entire NRS as a natural person, any form of social
or business organization and other non-governmental entity.

1 Section 30. Powers of board of directors: Generally;
2 bylaws.

3 1. Subject only to such limitations as may be provided by
4 this chapter, or the articles, the board of directors or
5 trustees has full control over the affairs of the corporation.

6 2. Unless otherwise provided in the articles and subject
7 to the bylaws adopted by the members (if any), directors may
8 make the bylaws of the corporation.

9 Note: Adapted from NRS 78.120.

10 Section 31. Committees of the board of directors: Powers;
11 names.

12 1. Unless otherwise provided in the articles or bylaws,
13 the board of directors may, by resolution or resolutions passed
14 by a majority of the whole board, designate one or more
15 committees which, to the extent provided in the resolution or
16 resolutions or in the bylaws, have and may exercise the powers
17 of the board of directors in the management of the business and
18 affairs of the corporation, and may have power to authorize the
19 seal of the corporation to be affixed to all papers on which the
20 corporation desires to place a seal.

21 2. Such committee or committees may have such name or
22 names as may be stated in the bylaws or as may be determined
23 from time to time by resolution adopted by the board of
24 directors.

25 3. Each committee must have at least one director.
26 Unless it is otherwise provided in the articles or bylaws, the
27 board of directors may appoint persons who are not directors to
28 serve on the committees.

- 1 4. No such committee has the power to:
- 2 (a) Amend, alter or repeal the bylaws;
- 3 (b) Elect, appoint or remove any member of any such
- 4 committee or any director or officer of the corporation;
- 5 (c) Amend or repeal the articles, adopt a plan of merger
- 6 or a plan of consolidation with another corporation;
- 7 (d) Authorize the sale, lease or exchange of all of the
- 8 property and assets of the corporation;
- 9 (e) Authorize the voluntary dissolution of the corporation
- 10 or revoke proceedings therefor;
- 11 (f) Adopt a plan for the distribution of the assets of the
- 12 corporation; or
- 13 (g) Amend, alter or repeal any resolution of the board of
- 14 directors unless it provides by its terms that it may be
- 15 amended, altered or repealed by a committee.

16 Note: Adapted from NRS 78.125.

17 Section 32. Officers of corporation: Selection; terms;

18 duties.

19 1. Every corporation must have a president or a chairman

20 of the board, a secretary, a treasurer, and a resident agent.

21 They must be chosen by the board of directors and must hold

22 their offices until their successors are chosen and qualify.

23 2. Every corporation may also have one or more vice

24 presidents, assistant secretaries and assistant treasurers, and

25 such other officers and agents as may be deemed necessary.

26 3. All officers must be chosen in such manner, hold their

27 offices for such terms and have such powers and duties as may be

28 prescribed by the bylaws or determined by the board of

1 directors.

2 4. Any person may hold two or more offices.

3 Note: Adapted from NRS 78.130.

4 Section 33. Authority of directors and representatives:

5 Contracts and conveyances.

6 1. The statement in the articles or bylaws of the
7 objects, purposes, powers and authorized business of the
8 corporation constitutes, as between the corporation and its
9 directors, officers or members, an authorization to the
10 directors and a limitation upon the actual authority of the
11 representatives of the corporation. These limitations may be
12 asserted in a proceeding by a director or a member entitled to
13 vote for the election of directors or the attorney general to
14 enjoin the doing or continuation of unauthorized business by the
15 corporation or its officers, or both, in cases where third
16 parties have not acquired rights thereby, or to dissolve the
17 corporation, or in a proceeding by the corporation, by a
18 director or a member entitled to vote for the election of
19 directors suing in a representative suit against the officers or
20 directors of the corporation for violation of their authority.

21 2. No limitation upon the business, purposes or powers of
22 the corporation or upon the powers of the members, officers or
23 directors, or the manner of exercise of such powers, contained
24 in or implied by the articles or bylaws shall be asserted as
25 between the corporation, the directors or members and any third
26 person.

27 3. Any contract or conveyance, otherwise lawful, made in
28 the name of a corporation, which is authorized or ratified by

1 the directors, or is done within the scope of the authority,
2 actual or apparent, given by the directors, binds the
3 corporation, and the corporation acquires rights thereunder,
4 whether the contract is executed or is wholly or in part
5 executory.

6 Note: Adapted from NRS 78.135; right of derivative action
7 given members entitled to vote for directors in Minn. Nonprofit
8 Corp. Act § 317.165; right of derivative action given directors
9 and members in Cal. Corp. Code § 5141, Illinois General Not for
Profit Corp. Act § 103.15 and MN-PCA § 6. NRS 41.520 should be
changed to include members and directors of nonprofit
corporations in the term "shareholders".

10 Nothing in Nevada law determines whether or not members
11 have a right of derivative action against the corporation or its
12 directors and officers. The common law of nonprofit
13 corporations in other states indicates members of nonprofits may
14 have such rights. This statute, in language adapted from NRS
78.135, explicitly gives such rights to members, evoking
generally the common law of derivative actions applicable to
stockholders of business corporations. However, only members
who can vote for directors may file such a derivative action.

15 Section 34. Standards applicable to directors and
16 officers.

17 1. Directors and officers must exercise their powers in
18 good faith and with a view to the interests of the corporation.

19 2. In performing their respective duties, directors and
20 officers are entitled to rely on information, opinions, reports,
21 books of account, or statements, including financial statements
22 and other financial data, that are prepared or presented by:

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

26 (b) Counsel, public accountants, or other persons as to
27 matters reasonably believed to be within the person's
28 professional or expert competence;

1 (c) A committee of the directors upon which the person
2 relying thereon does not serve, duly established in accordance
3 with Section 31, as to matters within the committee's designated
4 authority and matters on which the committee is reasonably
5 believed to merit confidence. A director or officer is not
6 entitled to rely on such information, opinions, reports, books
7 of account, or statements if the director or officer has
8 knowledge concerning the matter in question that would cause
9 reliance thereon to be unwarranted.

10 3. A director or officer must not be found to have failed
11 to exercise the director's or officers' powers in good faith and
12 with a view to the interests of the corporation unless it is
13 proved by clear and convincing evidence that the director or
14 officer has not acted in good faith and in a manner reasonably
15 believed by the director or officer to be with a view to the
16 interests of the corporation.

17 Note: This section contains much of a new statute
18 recommended by this report to be placed after NRS 78.135. It
19 establishes standards by which directors may be judged and a
20 heightened burden of proof for proving deviations from those
21 standards. Omitted are subsection 3 and 4 of the new chapter 78
22 statute which relate specifically to business corporations and
23 to the conduct of directors to hostile takeover battles.

24 Section 35. Restrictions on transactions involving
25 interested directors or officers; compensation of directors.

26 1. Directors and officers must exercise their powers in
27 good faith and with a view to the interests of the corporation.
28 No contract or other transaction between a corporation and one
or more of its directors or officers, or between a corporation
and any corporation, firm or association in which one or more of
its directors or officers are directors or officers or are

1 financially interested, is either void or voidable solely for
2 this reason or solely because any such director or officer is
3 present at the meeting of the board of directors or a committee
4 thereof which authorizes or approves the contract or
5 transaction, or because the vote or votes of common or
6 interested directors are counted for such purpose, if the
7 circumstances specified in any of the following paragraphs
8 exist:

9 (a) The fact of the common directorship or financial
10 interest is disclosed or known to the board of directors or
11 committee and noted in the minutes, and the board or committee
12 authorizes, approves or ratifies the contract or transaction in
13 good faith by a vote sufficient for the purpose as provided in
14 this chapter, the articles or the bylaws without counting the
15 vote or votes of such director or directors.

16 (b) The fact of the common directorship or financial
17 interest is disclosed or known to the members (if any), and they
18 approve or ratify the contract or transaction in good faith by a
19 vote sufficient for the purpose as provided in this chapter, the
20 articles or the bylaws. The votes of the common or interested
21 directors or officers must be counted in any such vote of
22 members.

23 (c) The fact of the common directorship or financial
24 interest is not disclosed or known to the director or officer at
25 the time the transaction is brought before the board of
26 directors of the corporation for action.

27 (d) The contract or transaction is fair as to the
28 corporation at the time it is authorized or approved.

1 2. Common or interested directors may be counted in
2 determining the presence of a quorum at a meeting of the board
3 of directors or a committee thereof which authorizes, approves
4 or ratifies a contract or transaction, and if the votes of the
5 common or interested directors are not counted at such meeting,
6 then a majority of the disinterested directors may authorize,
7 approve or ratify a contract or transaction.

8 3. Unless otherwise provided in the articles or the
9 bylaws, the board of directors may fix the compensation of
10 directors for services in any capacity.

11 Note: Adapted from NRS 78.140.

12 The literature concerning nonprofit corporation law
13 contains much discussion of the duties of directors in nonprofit
14 corporations and the regulation of the dealings of directors
15 with their corporations. California provides for three kinds of
16 nonprofit corporations in their 1978 statutes: Public Benefit
17 Corporations, Mutual Benefit Corporations and Religious
18 Corporations. The standards applicable to directors' loyalty to
the corporation and self dealing transactions differ for each of
the three corporations. Many of the other nonprofit
corporations laws have codified directors' obligations in words
very similar to those used in their business corporation
statutes.

19 We felt that, on balance, the California approach was
20 needlessly complicated. The extremely complex and labyrinthine
21 description of director's duties and the regulation of
22 directors' self dealing transactions with the corporation makes
23 the counsel's job in advising a nonprofit corporation very
24 difficult. The California statutes even provide for differing
25 burdens of going forward with the evidence between the different
26 corporations. This complexity is not, however, compensated by
27 an increase in practical protection for the corporation. The
28 differing standards and shifting burdens of proof set forth in
the California statute would, we believe, result in little real
benefit to the members once discovery and litigation on the
issues actually begins. A director will, as a practical matter,
still have to prove to a judge or jury he was right, no matter
what the complicated statutory provisions provide for. Thus, we
used the same approach contained in our Chapter 78 and provide
for the same directors' duties. This statute contains the
changes to NRS 78.190 (at subsection (c)) suggested in this
report.

1 If a public charitable nonprofit corporation formed under
2 this law diverts funds unjustifiably, the attorney general can
3 examine that corporation pursuant to the powers of "parens
4 patriae" contained in Section 18 and pursuant to the powers
granted the attorney general by the quo warranto procedure in
NRS Chapter 35.

5 SHARES AND DISTRIBUTIONS

6 Section 36. Shares and dividends prohibited.

7 1. A corporation must not have or issue shares of stock.

8 2. A corporation must not be formed for a purpose
9 involving pecuniary gain to its members.

10 3. A corporation must not distribute any gain, profits or
11 dividends to any member, except as otherwise provided in this
12 chapter or upon dissolution or final liquidation as provided in
13 this chapter and in the corporation's articles and bylaws.

14 Note: Adapted from California Corporations Code § 5049,
15 Minn. Nonprofit Corporations Act § 317A.011(6) and Illinois Not
for Profit Corporation Act § 106.05.

16 This is one of the most important single provisions of the
17 new nonprofit corporation law. It provides that there will be
18 no shares of stock and no dividends to members, except as
19 otherwise provided in this chapter or with respect to
dissolution. The exception has been added with Section 17(10)
in mind, permitting a nonprofit corporation to pay reasonable
compensation to officers and provide pension and other benefits.
Most of the nonprofit corporation statutes as well as the Model
Nonprofit Corporation Act contain similar provisions.

21 MEMBERS

22 Section 37. Members

23 1. A corporation may have one or more classes of members
24 or may have no members. In the absence of a provision in its
25 articles or bylaws providing for members, a corporation has no
26 members.

27 2. A corporation may admit any person as a member. The
28 articles or bylaws may establish criteria or procedures for

1 admission. A person may not be admitted as a member without the
2 person's express or implied consent. For the purposes of this
3 subsection and unless otherwise provided in a corporation's
4 articles or bylaws, consent includes, but is not limited to, (a)
5 the contracting for or acceptance of products or services from
6 the corporation; (b) the acceptance of membership benefits
7 knowing that the benefits are available only to members; or (c)
8 taking some other affirmative action that confers membership
9 benefits. If the articles or bylaws provide that a person who
10 contributes to the corporation is a member, a contribution is
11 consent.

12 3. Except as provided in its articles or bylaws, a
13 corporation may admit members for no consideration or for
14 consideration as is determined by the board.

15 4. Members are of one class unless the articles estab-
16 lish, or authorize the board or members to establish, more than
17 one class. Members are entitled to vote and have equal rights
18 and preferences in matters not otherwise provided for by the
19 board or members, unless and to the extent that the articles or
20 bylaws have fixed or limited the rights and preferences of
21 members or different classes of members or provide for nonvoting
22 members. The articles or bylaws may fix the term of membership.

23 5. A corporation may issue certificates showing
24 membership in the corporation.

25 Note: Adapted from Minn. Nonprofit Corp. Act. §317A.401
26 and .403.

27 The Minnesota Nonprofit Corporation Act provides an
28 excellent and well-drafted basis from which the statutes
regarding members, memberships and delegates have been taken.
These statutes are Sections 37 through 43.

1 This statutory scheme concerning members provides much
2 flexibility for the corporation. First, if the articles do not
3 mention members, the corporation has none. The corporation may
4 provide for one or more classes of members and may admit anyone
5 as a member according to criteria in the articles and bylaws.
6 The board is free to set the consideration charged for
7 memberships. A corporation may issue membership certificates.

8 Of the five types of corporations outlined in existing
9 Chapter 81, two co-ops may have members, one requires members,
10 one educational, religious, etc. corporation allows members and
11 the final corporation (for state and local interests) makes no
12 mention of members at all.

13 The California approach provides for generally the same
14 kind of structure as the Minnesota Act, but it is extremely
15 complicated and the wording is far less clear. Under California
16 law, public benefit corporations may or may not have members.
17 Mutual benefit corporations may or may not have members.
18 However, when mutual benefit corporations have no members upon
19 dissolution all the assets of the corporation go to the
20 directors.

21 Section 38. Transfer of membership.

22 1. Except as provided in the articles or bylaws, a member
23 of a corporation may not transfer a membership or a right
24 arising from it.

25 2. Where transfer rights have been provided, a restric-
26 tion on them is not binding with respect to a member holding a
27 membership issued before the adoption of the restriction unless
28 the restriction is approved by the members and the affected
member.

Note: Adapted from Minn. Nonprofit Corp. Act. §317A.405.

Some nonprofit corporation schemes forbid the transfers of
memberships for consideration, for instance, Illinois Not-For-
Profit Corporation Act §107.03. This made little sense to us
and we provided that generally a member may not transfer his
membership, except as provided in the articles or bylaws. This
protects homeowners associations from the separation of
memberships from the real property to which they may be
attached.

The MN-PCA §11 provides generally that the criteria and
standards for members are as provided in the articles or bylaws.

1 Section 39. Liability of members.

2 1. A member of a corporation is not, as such, personally
3 liable for the acts, debts, liabilities, or obligations of the
4 corporation.

5 2. When authority to do so is conferred by the articles
6 or bylaws and subject to any limitations contained in the
7 articles or bylaws, a corporation may levy dues, assessments, or
8 fees upon its members. The dues, assessments, or fees may be
9 imposed upon all classes of members alike or differently upon
10 different classes of members. Members of one or more classes
11 may be exempted.

12 3. A corporation in its articles or bylaws may:

13 (a) fix the amount of the levy and the method of collec-
14 tion of dues, assessments, or fees; or

15 (b) authorize the directors to fix the amount from time to
16 time and determine the methods of collection.

17 4. A corporation in its articles and bylaws may provide
18 for:

19 (a) the enforcement or collection of dues, assessments, or
20 fees;

21 (b) the cancellation of membership, on reasonable notice,
22 for nonpayment of dues, assessments, or fees; and

23 (c) the reinstatement of membership.

24 Note: Adapted from Minn. Nonprofit Corp. Act. §317A.407.

25 This very important provision provides for limited
26 liability of the members very similar to the limited liability
27 provided for stockholders in all business corporation laws. We
28 used the Minnesota wording as it was short and well-drafted.
All the other statutes we reviewed contain similar provisions.

1 Section 40. Resignation.

2 Unless otherwise provided in its articles or bylaws, a
3 member of a corporation may resign at any time. The resignation
4 of a member does not relieve the member from any obligations the
5 member may have to the corporation for dues, assessments, or
6 fees or charges for goods or services. No member may avoid
7 liability for dues, assessments, fees or charges by resigning if
8 the member owes them as a condition of or by reason of the
9 ownership of an interest in real property.

10 Note: Adapted from Minn. Nonprofit Corp. Act. §317A.409;
11 the last sentence is adapted from Cal. Corp. Code §7315.

12 This statute permits a member to resign at any time to
13 avoid dues and assessments. However, if the member acquires his
14 membership by reason of his ownership of real property (as in a
15 homeowners' association) he cannot avoid dues by "resigning".
16 He is a member by reason of the ownership of real property and
17 should not be able to avoid fees by his resignation. This
18 provision is not provided in very many statutory schemes but is
19 important to homeowners associations. See also Section 37.

16 Section 41. Termination.

17 1. A member may not be expelled or suspended, and a
18 membership may not be terminated or suspended except pursuant to
19 a procedure that is fair and reasonable and is carried out in
20 good faith. This section does not apply to the termination of a
21 membership at the end of a fixed term.

22 2. A procedure is fair and reasonable when it is fair and
23 reasonable taking into consideration all of the relevant facts
24 and circumstances. In addition, a procedure is fair and reason-
25 able if it provides:

26 (a) not less than 15 days' prior written notice of the
27 expulsion, suspension, or termination, and the reasons for it;
28 and

1 (b) an opportunity for the member to be heard, orally or
2 in writing, not less than five days before the effective date of
3 the expulsion, suspension, or termination by a person authorized
4 to decide that the proposed expulsion, termination, or suspen-
5 sion not take place.

6 3. A proceeding challenging an expulsion, suspension, or
7 termination, including a proceeding in which defective notice is
8 alleged, must be begun within one year after the effective date
9 of the expulsion, suspension, or termination.

10 4. The expulsion, suspension, or termination of a member
11 does not relieve the member from obligations the member may have
12 to the corporation for dues, assessments, or fees or charges for
13 goods or services.

14 Note: Adapted from Minn. Nonprofit Corp. Act §317A.411.

15 This statute provides that a member must not be expelled or
16 terminated without a fair and reasonable procedure giving him an
17 opportunity to be heard. Subsection (2) provides a safe harbor
18 procedure for all nonprofits to use if they wish. Both the
19 California and Minnesota statutory schemes contain these due
20 process rights for membership termination. See the Minnesota
21 statute described above and Cal. Corp. Code §5341; §7341.

22 Existing NRS 81.090 provides that bylaws may contain the
23 conditions when memberships can cease and the mode and manner of
24 the expulsion of a member. However, it provides that the
25 corporation has the full right to purchase the interest of the
26 member in the property of the corporation at book value as
27 determined by the board.

28 Existing NRS 81.230(4)(f) provides that if the bylaws
contain provisions concerning the succession of membership and
the cessation of membership, a member will have the right to
have a three member board of arbitration appraise his interest
in the association and have the corporation pay for his interest
in money, property or labor within 40 days after expulsion.
These provisions will continue to govern their respective
co-ops.

This statute merely allows a corporation to provide what it
wants to provide in its articles and bylaws concerning
termination and expulsion, subject to the "fair and reasonable"
rule.

1 shares issuable as a result of the merger (either by the
2 conversion of securities issued pursuant to the merger or the
3 exercise of rights and warrants issued pursuant to the merger),
4 will not exceed by more than 20% the total number of
5 participating shares outstanding immediately before a merger.

6 8. As used in subsection (7):

7 (a) "Participating shares" means shares that entitle
8 their holders to participate without limitation in
9 distributions.

10 (b) "Voting shares" mean shares that entitle their
11 holders to vote unconditionally in elections of directors.

12 9. After a merger or share exchange is approved, and
13 at anytime before articles of merger or share exchange are
14 filed, the planned merger or share exchange may be abandoned
15 (subject to any contractual rights), without further
16 shareholder action, in accordance with the procedure set
17 forth in the plan of merger or share exchange or, if none is
18 set forth, in the manner determined by the board of directors.

19 Note: NRS 78.471, taken basically from Model Act §11.03,
20 requires mergers or share exchanges to be approved by the
21 shareholders as follows. In the case of a merger (i) the
22 transaction must always be approved by the shareholders of the
23 disappearing corporation; and (ii) the transaction must be
24 approved by the shareholders of the surviving corporation if the
25 number of voting or participating shares is increased by more
26 than 20% as a result of the transaction. In the case of a share
27 exchange (i) the transaction must always be approved by the
28 shareholders of the corporation whose shares are being acquired;
and (ii) the transaction need not be approved by the
shareholders of the corporation acquiring the shares. Under
Model Act comment, it is believed that the transactions for
which shareholder approval is not required by subsection (7) do
not alter the investors' prospects any more than any other
management decisions and thus should not require a shareholder
vote. In particular, the 20% requirement of subsection (7)(c)
and (d) is identical to repealed NRS 78.470(3)(c) and broadly
consistent with the statutes of several states including

1 Delaware, Michigan, Pennsylvania and also the New York Stock
2 Exchange requirement that shareholders must be consulted if the
3 number of outstanding shares is to be increased by more than
4 18.5%. The new language basically changes NRS 78.470 to address
5 only shareholder approval and leaves the filing requirements to
6 new NRS 78.456. It also makes it clear that the corporations
7 may abandon without shareholder approval a merger or share
8 exchange even though it has been previously approved by the
9 shareholders. Abandonment under this section, however, does not
10 affect contract rights of third parties. Moreover, the plan may
11 require that abandonments be approved by shareholders before
12 they are effective.

13 NRS 78.475 Repeal.

14 NRS 78.480 Repeal.

15 NRS 78.485 Repeal.

16 NRS 78.486 Repeal.

17 NRS 78.487 Repeal.

18 Note: NRS 78.487 violates new NRS 78.489(5) and 78.390.

19 NRS 78.488 Repeal.

20 Note: This section seems obsolete in view of modern
21 corporate practice and inconsistently applied only to "simple
22 merger".

23 NRS 78.489 Merger of subsidiary.

24 1. A parent corporation owning at least 90% of the
25 outstanding shares of each class of a subsidiary corporation
26 may merge the subsidiary into itself without approval of the
27 shareholders of the parent or subsidiary.

28 2. The board of directors of the parent shall adopt
a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the
subsidiary into shares, obligations or other securities of the
parent or any other corporation or into cash or other property
in whole or part.

1 3. The parent shall mail a copy or summary of the plan
2 or merger to each shareholder of the subsidiary who does not
3 waive the mailing requirement in writing.

4 4. The parent may not deliver articles of merger to the
5 secretary of state for filing until at least 30 days after the
6 date it mailed a copy of the plan of merger to each shareholder
7 of the subsidiary who did not waive the mailing requirement.

8 5. Articles of merger under this section may not contain
9 amendments to the articles of incorporation of the parent
10 corporation.

11 Note: The proposed language from Model Act §11.04 defines
12 a "parent" corporation as one that owns at least 90% of the
13 outstanding shares of each class of another corporation and a
14 "subsidiary" corporation as one whose shares are so owned. This
15 proposed section permits merger with subsidiary into its parent
16 corporation upon adoption of a plan of merger by the board of
17 directors of the parent alone. Separate action by the board of
18 directors of the subsidiary is unnecessary because the share
19 ownership of the parent corporation is normally sufficient to
20 permit it to elect or remove the subsidiary's board of
21 directors. Further, the merger transaction need not be approved
22 by the shareholders of either corporation. Approval by the
23 shareholders of the subsidiary is meaningless because the
24 parent's share ownership is sufficient to insure the plan will
25 be approved. Approval by the parent shareholders is also
26 unnecessary because this transaction does not materially change
27 their rights: the ownership of the parent corporation is being
28 changed only from 90% indirect ownership to 100% direct
ownership of the same assets and no significant amendment of the
parent's articles of incorporation is being made. For the same
reason, shareholders of the parent corporation do not have the
right to dissent from the transaction under NRS 78.506.
Minority shareholders of the subsidiary may receive shares,
obligations or other securities of the parent or any other
corporation or cash or other property in whole or in part in
exchange for their shares. These shareholders are entitled to
30 days' notice of the plan before it is effectuated.
Shareholders of the subsidiary have a right to dissent from the
merger transaction under NRS 78.502. The former language in NRS
78.486 which dealt with the "simple" merger of a parent into a
subsidiary has been omitted since such a merger requires
stockholder approval by the stockholders of the parent and is
thus not a true simple merger. It also creates dissenters'
right. New NRS 78.489 is simply a merger of a subsidiary into a
parent and makes no distinction any longer between domestic and

1 foreign corporations. These issues are addressed in subsequent
2 sections.

3 NRS 78.490 Repeal.

4 Note: The purpose of NRS 78.490 is addressed in new NRS
5 78.501(2)(a).

6 NRS 78.491 Articles of merger or share exchange.

7 1. After a plan of merger or share exchange is approved
8 by the shareholders, or adopted by the board of directors if
9 shareholder approval is not required, the surviving or
10 acquiring corporation must deliver to the secretary of state
11 for filing articles of merger or share exchange signed and
12 acknowledged under NRS 11.270 by the president or vice
13 president and secretary or assistant secretary setting forth:

14 (a) The plan of merger or share exchange;

15 (b) If shareholder approval was not required, a statement
16 to that effect;

17 (c) If approval of the shareholders of one or more
18 corporations party to the merger or share exchange was required:

19 (i) a statement that the plan was approved by the
20 unanimous consent of the shareholders, or

21 (ii) a statement that the plan was submitted to the
22 shareholders by the board of directors in accordance with
23 this chapter, and statement of

24 (1) the designation, number of outstanding shares
25 and number of votes entitled to be cast by each class of
26 shares entitled to vote separately on the plan; and

27 (2) either the total number of votes cast for and
28 against the plan by the shareholders of each class of
shares entitled to vote separately on the plan or the

1 total number of undisputed votes cast for the plan
2 separately by the shareholders of each class of shares
3 and a statement that the number cast for the plan
4 by the shareholders of each class of shares was
5 sufficient for approval by the shareholders of that class
6 of shares.

7 2. A merger or share exchange takes effect upon filing
8 or upon a later date as specified in the articles of merger or
9 share exchange which must not be more than 90 days after the
10 articles are filed.

11 Note: From Model Act §11.05, the articles of merger or
12 share exchange formally make the terms of the transaction a
13 matter of public record and the effective date of the articles
14 is the effective date of their filing unless a delayed effective
15 date is utilized. The articles of merger or share exchange must
16 describe whether the plan was submitted to the vote of one or
17 more voting classes of the participating corporations entitled
18 to vote separately on the plan, and if so either the total vote
19 in favor and against the plan or a statement that the plan was
20 approved by at least the number of undisputed votes required to
21 approve the merger or share exchange by each voting class of
22 each participating corporation entitled to vote separately on
23 the plan. The proposed language, in one section, simplifies the
24 manner of effectuating all mergers whether they include domestic
25 corporations, subsidiary mergers, or foreign corporations.

19 NRS 78.495 Repeal.

20 NRS 78.496 Effect of merger or share exchange.

21 1. When a merger takes effect:

22 (a) Every other corporation party to the merger merges
23 into the surviving corporation and the separate existence of
24 every corporation except the surviving corporation ceases;

25 (b) The title to all real estate and other property
26 owned by each corporation party to the merger is vested in
27 the surviving corporation without reversion or impairment;

28 (c) The surviving corporation has all liabilities of

1 each corporation party to the merger;

2 (d) A proceeding pending against any corporation party
3 to the merger may be continued as if the merger did not occur
4 or the surviving corporation may be substituted in the
5 proceeding for the corporation whose existence ceased;

6 (e) The articles of incorporation of the surviving
7 corporation are amended to the extent provided in the plan or
8 merger; and

9 (f) The shares of each corporation party to the merger
10 that are to be converted into shares, obligations or other
11 securities of the surviving or any other corporation or into
12 cash or other property are converted, and the former holders
13 of the shares are entitled only to the rights provided in the
14 articles of merger or to their rights under NRS 78.503 to
15 78.540.

16 2. When a share exchange takes effect, the shares of
17 each acquired corporation are exchanged as provided in the plan,
18 and the former holders of the shares are entitled only to the
19 exchange rights provided in the articles of share exchange or
20 to their rights under NRS 78.503 to 78.540.

21 Note: From Model Act §11.06, the proposed language
22 basically describes in simple and more direct fashion, the legal
23 consequences of a merger or share exchange on its effective
24 date. Repealed NRS 78.495 combines merger effect with the right
25 of directors to abandon before the effective date (see NRS
26 78.471(9)) and the proposed language combines nicely the
27 intended effects of repealed NRS 78.495, 78.500 and 78.525. On
28 the effective date, every disappearing corporation that is a
party to the merger disappears into the surviving corporation
and the surviving corporation automatically becomes the owner of
all real and personal property and becomes subject to all
liabilities, actual or contingent, of each disappearing
corporation. A merger is not a conveyance or transfer and does
not give rise to claims of reverter or impairment of title based
on a prohibited conveyance or transfer. Further, all pending

1 litigation is continued (see repealed NRS 78.525), and the names
2 of the surviving corporation may but need not be, substituted
3 for the name of a disappearing corporation that is a party to
4 litigation. The language further clarifies that the rights of
shareholders after the articles of merger are filed are limited
to their rights under the plan of merger or their rights under
NRS 78.503 to 78.540.

5 NRS 78.500 Repeal.

6 Note: This section, in modern corporate practice, seems
7 unnecessary and merely is an extension of the legal consequences
of a merger described in the proposed language of NRS 78.496.

8 NRS 78.501 Merger or share exchange with foreign
9 corporation.

10 1. One or more foreign corporations may merge or enter
11 into a share exchange with one or more domestic corporations if:

12 (a) In a merger, the merger is permitted by the law of the
13 state or country under whose law each foreign corporation is
14 incorporated and each foreign corporation complies with that law
15 in effecting the merger;

16 (b) In a share exchange, the corporation whose shares
17 will be acquired is a domestic corporation, whether or not a
18 share exchange is permitted by the law of the state or country
19 under whose law the acquiring corporation is incorporated;

20 (c) The foreign corporation complies with NRS 78.456 if
21 it is the surviving corporation of the merger or acquiring
22 corporation of the share exchange; and

23 (d) Each domestic corporation complies with the
24 applicable provision of NRS 78.451 through 78.489 and, if it
25 is the surviving corporation of the merger or acquiring
26 corporation of the share exchange, with NRS 78.491.

27 2. Upon the merger or share exchange taking effect, the
28 surviving foreign corporation of a merger and the acquiring

1 foreign corporation of a share exchange is deemed:

2 (a) To appoint the secretary of state as its agent for
3 service of process in a proceeding to enforce any obligation
4 or the rights of dissenting shareholders of each domestic
5 corporation party to the merger or share exchange. Service of
6 such process must be made by personally delivering to and
7 leaving with the secretary of state, duplicate copies of such
8 process and the payment of a fee of \$25 for accepting and
9 transmitting the process. The secretary of state shall
10 forthwith send by registered or certified mail one of the
11 copies to the surviving or acquiring corporation at its
12 specified address, unless the surviving or acquiring
13 corporation has designated in writing to the secretary of state,
14 a different address for that purpose, in which case it must be
15 mailed to the last address so designated; and

16 (b) To agree that it will promptly pay to the dissenting
17 shareholders of each domestic corporation party to the merger
18 or share exchange the amount, if any, to which they are
19 entitled under NRS 78.503 through 78.540.

20 3. This section does not limit the power of a foreign
21 corporation to acquire all or part of the shares of one or
22 more classes or series of a domestic corporation through a
23 voluntary exchange or otherwise.

24 Note: From Model Act §11.07, with some modification, this
25 proposed section combines repealed NRS 78.475, 78.480, 78.485
26 and 78.490 and permits mergers or share exchanges between
27 domestic and foreign corporations. In connection with a plan of
28 merger, the plan must be permitted under the law of the state or
country of incorporation of the foreign corporation as well as
under the laws of the domestic state. The surviving
corporation, if it is a foreign corporation, must file articles
of merger to accomplish the disappearance of the domestic

1 corporation or corporations and thereby irrevocably appoints the
2 secretary of state as agent for service of process and agrees to
3 pay dissenters in accordance with 78.503 to 78.540. The plan of
4 share exchange, unlike a plan of merger, need not be authorized
5 by the state or country of incorporation of the acquiring
6 foreign corporation if Nevada law authorizes a compulsory share
7 exchange to acquire a class or series of shares of a Nevada
8 corporation. It makes no difference whether the acquiring
9 corporation is foreign or domestic. This kind of transaction
10 does not affect the separate corporate existence of, or impose
11 the liabilities of the disappearing corporation on, the
12 acquiring foreign corporation.

13 NRS 78.502 Merger of domestic corporation and limited
14 partnership.

15 1. One or more domestic corporations may merge with one
16 or more domestic limited partnerships or one or more foreign
17 limited partnerships if:

18 (a) The merger is permitted by the law of the state or
19 country under whose law each foreign limited partnership is
20 formed and in accordance with each limited partnership
21 agreement;

22 (b) The foreign limited partnership complies as much as
23 practicable with NRS 78.491 if it is the surviving entity of
24 the merger;

25 (c) Each domestic corporation complies with the
26 applicable provisions of NRS 78.451 through 78.489, and if it
27 is the surviving entity of the merger, with NRS 78.491;

28 (d) Each domestic limited partnership complies with its
limited partnership agreement and as much as practicable with
the applicable provisions of NRS 78.451 through 78.489 and,
if it is the surviving limited partnership of the merger, with
NRS 78.491. For purposes of this subsection, the plan of merger
required under NRS 78.451(2) must also set forth the manner and

1 basis of converting the shares of each corporation and the
2 partnership interests of each limited partnership into shares,
3 partnership interests, obligations or other securities of the
4 surviving entity or any other corporation or entity or into
5 cash or other property in whole or part.

6 2. Upon the merger taking effect, the surviving foreign
7 limited partnership shall comply with the obligations pertaining
8 to surviving foreign corporations of NRS 78.501(2).

9 Note: This is a new section for Nevada and basically
10 parallels the language of section 263 of the Delaware General
11 Corporation law. Dissenting stockholders would be treated as
12 dissenting shareholders of any other merging corporation provided
13 for under Chapter 78, but dissenting partners of the limited
14 partnership party to the merger would be controlled by the
15 particular limited partnership agreement and the laws of the
16 state under which they are formed, as the case may be.

14 DISSENTERS' RIGHTS

15 NRS 78.503 Definitions.

16 In NRS 78.506 through 78.540, inclusive:

17 1. "Corporation" means the issuer of the shares held by
18 a dissenter before the corporate action, or the surviving or
19 acquiring corporation by merger or share exchange of that
20 issuer.

21 2. "Dissenter" means a shareholder who is entitled to
22 dissent from corporate action under NRS 78.502 and who
23 exercises that right when and in the manner required by NRS
24 78.511 through 78.538.

25 3. "Fair value", with respect to a dissenter's shares,
26 means the value of the shares immediately before the
27 effectuation of the corporate action to which the dissenter
28 objects, excluding any appreciation or depreciation in an

1 anticipation of the corporate action unless exclusion would be
2 inequitable.

3 4. "Interest" means interest from the effective date of
4 the corporate action until the date of payment, at the average
5 rate currently paid by the corporation on its principal bank
6 loans or, if none, at a rate that is fair and equitable under
7 all the circumstances.

8 5. "Record shareholder" means the person in whose name
9 shares are registered in the records of a corporation or the
10 beneficial owner of shares to the extent of the rights granted
11 by a nominee certificate on file with the corporation.

12 6. "Beneficial shareholder" means the person who is a
13 beneficial owner of shares held in a voting trust or by a
14 nominee as the record shareholder.

15 7. Shareholder means the record shareholder or the
16 beneficial shareholder.

17 Note: This new section from Model Act §13.01 contains
18 specialized definitions which are applicable only to particular
19 sections involved. The definition of corporation includes
20 successor or acquiring corporations in mergers or share
21 exchanges within the scope of that definition. The definition
22 of a dissenter is phrased in terms of a shareholder, a term that
23 is itself, specifically defined in subsection (7). The
24 definition of dissenter is also limited since only a shareholder
25 who has performed all the conditions imposed on him in order to
26 obtain payment for his shares is a "dissenter". Under this
27 definition, a shareholder who initially objects, but fails to
28 perform any of these conditions within the time specified, loses
his status as a dissenter under this section. The definition of
fair value deletes the word "cash" from repealed NRS 78.505 and
leaves to the parties (and ultimately to the courts) the details
by which fair value is to be determined within the broad
outlines of the definition. It thus leaves untouched the
accumulated case law about market value based on prior sales,
capitalized earnings and asset value. It specifically preserves
the present language of repealed NRS 78.505, excluding
appreciation and depreciation and in anticipation of the
proposed corporate action, but permits an exception for
equitable considerations. Fair value is also to be determined

1 immediately before the effectuation of the corporate action
2 instead of the day before the shareholder's vote as is the case
3 under most state statutes that address the issue as well as
4 repealed NRS 78.501. This comports with the plan of the Model
5 Act to preserve the dissenter's prior rights as a shareholder
6 until the effective date of the corporate action, rather than
7 leaving him in a twilight zone where he has lost former rights,
8 but not yet gained his new ones. The definition of "interest"
9 is included to make interest computations under this chapter
10 more realistic and consistent with the holding in Southdown
11 v. McGinnis, 89 Nev. 184 (1973). The day from which interest
12 runs has been changed from the day before the shareholders' vote
13 to the effective date of the corporate action in conformity with
14 the change in the valuation date.

15 NRS 78.505 Repeal.

16 NRS 78.506 Right to dissent.

17 1. A shareholder is entitled to dissent from, and obtain
18 payment of the fair value of his shares in the event of, any of
19 the following corporate actions:

20 (a) Consummation of a plan of merger to which the
21 corporation is a party (i) if shareholder approval is required
22 for the merger by NRS 78.471 or the articles of incorporation
23 and the shareholder is entitled to vote on the merger or (ii)
24 if the corporation is a subsidiary, the corporation is a
25 subsidiary and is merged with its parent under NRS 78.489;

26 (b) Consummation of a plan of share exchange to which
27 the corporation is a party as the corporation whose shares will
28 be acquired, if the shareholder is entitled to vote on the plan;

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

2. A shareholder entitled to dissent and obtain

1 payment under NRS 78.503 to 78.540 may not challenge the
2 corporate action creating his entitlement unless the action is
3 unlawful or fraudulent with respect to the shareholder or the
4 corporation.

5 3. Notwithstanding any other provision of this chapter,
6 with respect to a plan of merger or share exchange there shall
7 be no right of dissent in favor of holders of shares of any
8 class or series, which, at the record date fixed to determine
9 the shareholders entitled to receive notice of and to vote at
10 the meeting at which the plan of merger or share exchange is
11 to be acted on, were either (i) listed on a national securities
12 exchange or (ii) held by at least 2,000 record shareholders,
13 unless in either case:

14 (a) The articles of incorporation of the corporation
15 issuing such shares provide otherwise;

16 (b) In the case of plan of merger or share exchange, the
17 holders of the class or series are required under the plan of
18 merger or share exchange to accept for such shares anything
19 except cash, shares or shares and cash in lieu of fractional
20 shares of (i) the surviving or acquiring corporation or (ii)
21 any other corporation which, at the effective date of the plan
22 of merger or share exchange, were either listed on a
23 national securities exchange or held of record by at least
24 2,000 record shareholders; or

25 (c) A combination of cash and shares as set forth in
26 subsections 2(a) and 2(b) of this section.

27 Note: Unlike Model Act §13.02, from which this is
28 basically taken, this retains the "Wall Street" exception of NRS
78.521 for shares that are widely held and publicly traded and

1 expands the exception to include transactions in which the
2 shareholders receive cash rather than shares of a public
3 company. The proposed language also establishes the scope of a
4 shareholder's right to dissent (and his resulting right to
5 obtain payment for his shares) by defining the transactions with
6 respect to which a right to dissent exists. These transactions
7 are (i) a plan of merger if the shareholder is entitled to vote
8 under NRS 78.471 or pursuant to provisions in the articles of
9 incorporation or (ii) is a shareholder of a subsidiary that is
10 merged with the parent under NRS 78.489. The right to vote on a
11 merger under NRS 78.471 extends to corporations whose separate
12 existence disappears in the merger and to the surviving
13 corporations if the number of its outstanding shares is
14 increased by more than 20% as a result of the merger. It
15 includes (i) a share exchange under NRS 78.456 if the
16 corporation is a party whose shares are being acquired by the
17 plan and the shareholder is entitled to vote on the exchange or
18 (ii) any corporate action to the extent the articles, bylaws or
19 a board resolution grant a right of dissent. Corporations may
20 wish to grant on a voluntary basis dissenters' rights in
21 connection with important transactions (e.g., those submitted
22 for shareholder approval). The grant may be to nonvoting
23 shareholders in connection with the transactions that give rise
24 to dissenters' rights with respect to voting shareholders. The
25 grant of dissenters' rights may add to the attractiveness of
26 preferred shares and may satisfy shareholders who would, in the
27 absence of dissenters' rights, sue to enjoin the transaction.
28 Also in situations where the existence of dissenters' rights may
otherwise be disputed, the volunteer offer of those rights under
this section will avoid a dispute. Subsection (2) basically
adopts the New York form as to exclusivity of a dissenters'
remedy under this chapter. The remedy is the exclusive remedy
unless the transaction is unlawful or fraudulent. A theory
underlying this is as follows: when a majority of shareholders
has approved a corporate change, the corporation should be
permitted to proceed even if a minority considers the change
unwise or disadvantageous and persuades a court that this is
correct. Since dissenting shareholders can obtain the fair
value of their shares, they are protected from pecuniary loss.
Thus, in general terms an exclusivity principle is justified,
but the prospect that shareholders may be paid off does not
justify the corporation in proceeding unlawfully or
fraudulently. The proposed repeals from Chapter 78 and the
substitution of the Model Act sections are recommended to
organize dissenters' rights under (i) the right to dissent and
obtain payment, (ii) the procedure for exercise of dissenters'
rights, and (iii) judicial appraisal of shares.

25 NRS 78.507 Repeal.

26 NRS 78.508 Dissent by nominees and beneficial owners.

27 1. A record shareholder may assert dissenters' rights as
28 to fewer than all the shares registered in his name only if he

1 dissents with respect to all shares beneficially owned by any
2 one person and notifies the corporation in writing of the name
3 and address of each person on whose behalf he asserts dissenters'
4 rights. The rights of a partial dissenter under this subsection
5 are determined as if the shares as to which he dissents and his
6 other shares were registered in the names of different
7 shareholders.

8 2. A beneficial shareholder may assert dissenters'
9 rights as to shares held on his behalf only if:

10 (a) He submits to the corporation the record
11 shareholder's written consent to the dissent not later than
12 the time the beneficial shareholder asserts dissenters'
13 rights; and

14 (b) He does so with respect to all shares of which he
15 is the beneficial shareholder or over which he has power to
16 direct the vote.

17 Note: Repealed NRS 78.507 is included in new NRS 78.506.
18 NRS 78.508, as discussed in §13.03 of the Model Act, addresses
19 the relationship between dissenters' rights and the widespread
practice of nominee or street name ownership of publicly held
shares.

20 NRS 78.510 Repeal.

21 NRS 78.511 Notice of dissenters' rights.

22 1. If proposed corporate action creating dissenters'
23 rights under NRS 78.506 is submitted to a vote at a
24 shareholders' meeting, the meeting notice must state that
25 shareholders are or may be entitled to assert dissenters'
26 rights under NRS 78.503 to 78.540 and be accompanied by a copy
27 of these sections.

28 2. If corporate action creating dissenters' rights under

1 NRS 78.506 is taken without a vote of shareholders, the
2 corporation shall notify in writing all shareholders entitled
3 to assert dissenters' rights that the action was taken and send
4 them the dissenters' notice described in NRS 78.522.

5 Note: Taken from § 13.20, the Model Act indicates that
6 this new language requires the corporations to notify record
7 shareholders of the existence of dissenters' rights before the
8 vote is taken on in corporate action. This notice provides the
9 reassurance to investors that the right to dissent is intended
10 to provide because many shareholders have no idea what rights of
11 dissent they have or how to assert them. If the corporation is
12 uncertain whether or not the shareholders have dissenters'
13 rights, it may comply with this notice requirement by stating
14 that the shareholders may have dissenters' rights. A similar
15 requirement of notice is expressly required by proxy rules by
16 the dissenters' rights statutes of several states and possibly
17 under more general disclosure requirements of federal and state
18 securities laws. The language further provides that notice be
19 given after the action is taken in situations where the action
20 is validly taken without a vote of shareholders (e.g., in a
21 merger of the subsidiary into its parent under NRS 78.454.)
22 This notice may be combined with the dissenter's notice required
23 by NRS 78.522.

15 NRS 78.515 Repeal.

16 Note: Intent of repealed NRS 78.515 is addressed in NRS
17 78.522(2), 78.526(2), 78.536, and 78.539(5). Moreover, NRS
18 78.515 appeared to conflict with NRS 78.471(9).

18 NRS 78.516 Notice of intent to demand payment.

19 1. If proposed corporate action creating dissenters'
20 rights under NRS 78.506 is submitted to a vote at a
21 shareholders' meeting, a shareholder who wishes to assert
22 dissenters' rights (i) must deliver to the corporation before
23 the vote is taken, written notice of his intent to demand
24 payment for his shares if the proposed action is effectuated
25 and (ii) must not vote his shares in favor of the proposed
26 action.

27 2. A shareholder who does not satisfy the requirements
28 of subsection (a) is not entitled to payment for his shares

1 under this chapter.

2 Note: Taken from Model Act §13.21, if a shareholders' vote
3 is called for, this section requires the shareholder to give
4 notice of his intent to demand payment before the vote on the
5 corporate action is taken similar to repealed NRS 78.505. This
6 notice enables other voters to determine how much of a cash
7 payment may be required. It also serves to limit the number of
8 persons to whom the corporation must give further notice
9 including the technical details of depositing share
10 certificates. This subsection has no application to actions
11 taken without a shareholder vote. In order to be and remain a
12 dissenter eligible to demand payment for his shares, this
13 section requires that a shareholder must not only give the
14 notice required by this action, but must also vote against, or
15 at least abstain from voting on, the proposal. This is
16 different from repealed NRS 78.505 which requires the
17 shareholder to vote against the agreement in addition to
18 objecting thereto in writing.

11 NRS 78.520 Repeal.

12 Note: Appears to be addressed in NRS 78.516(2).

13 NRS 78.521 Repeal.

14 Note: This exception to the right to dissent is addressed
15 in NRS 78.506(3).

16 NRS 78.522 Dissenters' notice.

17 1. If proposed corporate action creating dissenter's
18 rights under NRS 78.506 is authorized at a shareholders'
19 meeting, the corporation shall deliver a written dissenters'
20 notice to all shareholders whom satisfied the requirements of
21 NRS 78.516.

22 2. The dissenters' notice must be sent no later than 10
23 days after effectuation of corporate action, and must:

24 (a) State where the payment demand must be sent and where
25 and when certificates for certificated shares must be deposited;

26 (b) Inform holders of uncertificated shares to what
27 extent transfer of the shares will be restricted after the
28 payment demand is received;

1 (c) Supply a form for demanding payment that includes
2 the date of the first announcement to news media or to
3 shareholders of the terms of the proposed corporate action and
4 requires that the person asserting dissenters' rights certify
5 whether or not he acquired beneficial ownership of the shares
6 before that date;

7 (d) Set a date by which the corporation must receive the
8 payment demand, which date may not be fewer than 30 nor more
9 than 60 days after the date the subsection (1) notice is
10 delivered; and

11 (e) Be accompanied by a copy of NRS 78.503 to 78.540,
12 inclusive.

13 Note: Adapted from Model Act §13.22, the basic purpose of
14 this new section is to require the corporation to tell all
15 actual or potential dissenters what they must do in order to
16 take advantage of their right of dissent. The requirements of
17 what the notice (called the dissenters' notice) must contain are
18 spelled out in detail to insure that the notice serves this
19 basic purpose. The new language simplifies the perfection
20 process previously split between repealed NRS 78.505 and 78.507.
21 In case of an action that is submitted to the vote of the
22 shareholders, the dissenters' notice must be sent only to those
23 persons who gave notice of their intention to dissent under NRS
24 78.516 and who refrained from voting in favor of the proposed
25 action. In case of a transaction not involving a vote by
26 shareholders, the dissenters' notice must be sent to all persons
27 who are eligible to dissent and demand payment. In either case,
28 the dissenters' notice must be sent within 10 days after the
effectuation of corporate action is taken and must be
accompanied by a copy of pertinent sections. The date of notice
is a Model Act modification which requires notification within
10 days from shareholder approval of action creating dissenter's
rights.

24 NRS 78.525 Repeal.

25 Note: This statute is addressed in the wording of new NRS
26 78.496(1)(d).

27 NRS 78.526 Duty to demand payment.

28 1. A shareholder sent a dissenters' notice described in

1 NRS 78.522 must (i) demand payment, (ii) certify whether he
2 acquired beneficial ownership of the shares before the date
3 required to be set forth in the dissenters' notice pursuant to
4 NRS 78.522(2)(c) and (iii) deposit his certificates in
5 accordance with the terms of the notice.

6 2. The shareholder who demands payment and deposits his
7 share certificates under subsection (1) retains all other
8 rights of a shareholder until those rights are cancelled or
9 modified by the taking of the proposed corporate action.

10 3. The shareholder who does not demand payment or
11 deposit his share certificates where required, each by the date
12 set in the dissenters' notice, is not entitled to payment for
13 his shares under NRS 78.503 to 78.540.

14 Note: Adapted from Model Act §13.23, the demand for
15 payment required by this section is the definitive statement by
16 the dissenter. In case of a transaction involving a vote by
17 shareholders, it is a confirmation of the intention expressed
18 earlier. In case of any other transaction it is the person's
19 first statement of position. In either event, the filing of
20 these demands informs the corporation of the extent of the
21 potential cash if it proceeds with the proposed corporate
22 action. It also requires a person who files a demand to deposit
23 shares certificates as directed by the corporation in its
24 dissenters' notice. This change assumes that the corporation
25 will retain the certificates until it fails to effectuate the
26 proposed corporate action. It thus avoids the need of sending
27 the certificates back to the shareholders only to be surrendered
28 again when payment is made. This section clarifies the
perfection process of repealed NRS 78.505 and 78.507 and changes
the status under 78.515 so that a shareholder who deposits his
shares retains all of the rights of a shareholder until those
rights are modified by effectuation of the proposed corporate
action.

25 NRS 78.530 Repeal.

26 Note: This statute is addressed in the wording of new NRS
27 78.496(1)(c).

28 NRS 78.531 Share restrictions.

1. The corporation may restrict the transfer of

1 uncertificated shares from the date the demand for their
2 payment is received.

3 2. The person for whom dissenters' rights are asserted
4 as to uncertificated rights retains all other rights of a
5 shareholder until those rights are cancelled or modified by
6 the taking of the proposed corporate action.

7 Note: From Model Act §13.24, this new section deals with
8 uncertificated shares in the dissent process with minor
9 modification to the Model Act. NRS 78.526 requires certificated
10 shares to be deposited as directed in the corporation's
11 dissenters' notice. The restrictions on transfer of
12 uncertificated shares provided by this section impose an
analogous restriction on uncertificated shares for the same
reasons. It also makes express that the restrictions on
transfer of shares provided by this section does not affect any
other rights of the shareholder until those rights are modified
by the corporate action.

13 NRS 78.535 Repeal.

14 Note: This section seems to be addressed in NRS 78.451 and
15 78.496.

16 NRS 78.536 Payment.

17 1. Except as provided in NRS 78.537, within 30 days
18 after receipt of a payment demand, the corporation shall pay
19 each dissenter who complied with NRS 78.526, the amount the
20 corporation estimates to be the fair value of his shares, plus
21 accrued interest. The obligation of the corporation under this
22 subsection may be enforced by the district court (i) of the
23 county where the corporations' principal office is located, or
24 if none in Nevada, where its resident agent is located, or (ii)
25 at the election of any dissenter residing or having its
26 principal office in Nevada, of the county where the dissenter
27 resides or has its principal office. The court shall dispose
28 of the complaint on an expedited basis.

1 2. The payment must be accompanied by:

2 (a) The corporation's balance sheet as of the end of a
3 fiscal year ending not more than 16 months before the date
4 of payment, an income statement for that year, a statement of
5 changes in the shareholders' equity for that year, and the
6 latest available interim financial statements, if any;

7 (b) A statement of the corporation's estimate of the fair
8 value of the shares;

9 (c) An explanation of how the interest was calculated;

10 (d) A statement of the dissenters' rights to demand
11 payment under NRS 78.538; and

12 (e) A copy of NRS 78.503 through 78.540, inclusive.

13 Note: This new section, with some modification from Model
14 Act §13.25, changes the relative balance between corporation and
15 dissenting shareholders by requiring immediate payment by the
16 corporation upon the receipt of the demand for payment. The
17 corporation may not wait for a final agreement on value before
18 making payment, and the shareholder has the immediate use of the
19 amount determined by the corporation to represent fair value
20 without waiting for the conclusion of appraisal proceedings.
21 This obligation to make immediate payment is based on the view
22 that since the person's rights as a shareholder are terminated
23 with the completion of the transaction, he should have immediate
24 use of the money to which the corporation agrees it has no
25 further claim. The difference of opinion over the total amount
26 to be paid should not delay payment of the amount that is
27 undisputed. Since the shareholder must decide whether or not to
28 accept the payment in full satisfaction, he must be furnished at
this time with the financial information specified in the
section with the reminder of his further rights and liabilities
and with a copy of the relevant sections. This is a major
change from that existing under current Nevada law.

24 NRS 78.537 After-acquired shares.

25 1. A corporation may elect to withhold payment required
26 by NRS 78.536 from a dissenter unless he was the beneficial
27 owner of the shares before the date set forth in the dissenters'
28 notice as the date of the first announcement to news media or

1 to shareholders of the terms of the proposed corporate action.

2 2. To the extent the corporation elects to withhold
3 payment under subsection (1), after taking the proposed
4 corporate action, it shall estimate the fair value of the
5 shares, plus accrued interest, and shall offer to pay this
6 amount to each dissenter who agrees to accept it in full
7 satisfaction of his demand. The corporation shall send with
8 its offer a statement of its estimate of the fair value of the
9 shares, an explanation of how the interest was calculated, and
10 a statement of the dissenters' right to demand payment under
11 NRS 78.538.

12 Note: Adapted from Model Act §13.27, this provides for
13 separate treatment of shares required on or after the date of
14 public announcement of the proposed corporate action and this
15 date is specified by the corporation in its dissenters' notice
16 under NRS 78.522. At that corporation's option, holders of
17 shares acquired on or after this date are not entitled to
18 immediate payment under NRS 78.536. Rather, they may receive
19 only an offer of payment which is conditioned on their agreement
20 to accept it in full satisfaction of their claim. If the right
21 of unconditional immediate payment were granted as to all
22 after-acquired shares, speculators and others might be tempted
23 to buy shares merely for the purpose of dissenting. Since the
24 function of dissenters' rights is to protect investors against
25 unforeseen changes, there is no need to give equally favorable
26 treatment to purchasers who knew or should have known about the
27 proposed changes. This is a brand new section for Nevada and
28 corporations are given discretion whether to apply the section
to after-acquired shares. Considerations of simplicity and
harmony may prompt the corporation to make immediate payment for
shares acquired on or after the specified date as well as for
preacquired shares.

23 NRS 78.538 Procedure if shareholder dissatisfied with
24 payment or offer.

25 1. A dissenter may notify the corporation in writing of
26 his own estimate of the fair value of his shares and amount of
27 interest due, and demand payment of his estimate (less any
28 payment under NRS 78.536), or reject the corporation's offer

1 under NRS 78.538 and demand payment of the fair value of his
2 shares and interest due, if the dissenter believes that the
3 amount paid under NRS 78.536 or offered under NRS 78.538 is
4 less than the fair value of his shares or that the interest due
5 is incorrectly calculated.

6 2. A dissenter waives his right to demand payment under
7 this section unless he notifies the corporation of his demand
8 in writing under subsection (1) within 30 days after the
9 corporation made or offered payment for his shares.

10 Note: Taken from Model Act §13.28, this section encourages
11 a negotiated settlement where a shareholder is dissatisfied with
12 a payment or offer of payment. The dissenter who is not content
13 with the corporation's remittance must state in writing the
14 amount he is willing to accept. A dissenter who acquired his
15 shares after public announcement of the transaction and is
16 dissatisfied with the corporation's offer must also state in
17 writing the amount he is willing to accept. A dissenter cannot,
18 by remaining silent, force the corporation into the expense and
19 delay of a judicial appraisal. Furthermore, if his supplemental
20 demand is unreasonable, he runs the risk of being assessed
21 litigation expenses under NRS 78.540. These provisions are
22 designed to encourage settlement without a judicial proceeding.
23 The dissenter must make a supplemental demand within 30 days
24 from receipt of payment or offer of payment in order to permit
25 the corporation to make an early decision on initiating
26 appraisal proceeding. If he fails to do so, he loses the right
27 to demand additional payment under subsection (2).

28 NRS 78.539 Court action.

1 1. If a demand for payment under NRS 78.538 remains
2 unsettled, the corporation shall commence a proceeding within
3 60 days after receiving the payment demand and petition the
4 court to determine the fair value of the shares and accrued
5 interest. If the corporation does not commence the proceeding
6 within the 60-day period, it shall pay each dissenter whose
7 demand remains unsettled the amount demanded.

8 2. A corporation shall commence the proceeding in the

1 district court of the county where a corporation's principal
2 office (or if none in the state, its resident agent) is
3 located. If the corporation is a foreign corporation without
4 a resident agent in the state, it shall commence the
5 proceeding in the county and the state where the principal
6 office of the domestic corporation merged with or whose shares
7 were required by the foreign corporation was located.

8 3. The corporation shall make all dissenters (whether or
9 not residents of Nevada) whose demands remain unsettled
10 parties to the proceeding as in an action against their shares
11 and all parties must be served with a copy of the petition.
12 Nonresidents may be served by registered or certified mail or
13 by publications as provided by law.

14 4. The jurisdiction of the court in which the proceeding
15 is commenced under subsection (2) is plenary and exclusive. The
16 court may appoint one or more persons as appraisers to receive
17 evidence and recommend decision on the question of fair value.
18 The appraisers have the powers described in the order appointing
19 them, or any amendment to it. The dissenters are entitled to
20 the same discovery rights as parties in other civil proceedings.

21 5. Each dissenter made a party to the proceeding is
22 entitled to judgment (i) for the amount, if any, by which the
23 court finds the fair value of his shares, plus interest,
24 exceeds the amount paid by the corporation, or (ii) for the
25 fair value, plus accrued interest, of his after-acquired
26 shares for which the corporation elected to withhold payment
27 under NRS 78.537.

28 Note: Adapted from Model Act §13.30, this section

1 significantly changes the procedure under repealed NRS 78.510,
2 but retains the concept of judicial appraisal as the ultimate
3 means of determining fair value. Petition is to be commenced by
4 the corporation within 60 days after receiving a demand for
5 payment under NRS 78.538 and subsection (1) makes this time
6 period jurisdictional. If the petition is not commenced within
7 the period, the corporation must pay the additional amounts
8 demanded by the shareholders under NRS 78.538. Important
9 changes are that appraisers may be appointed within the
10 discretion of the court and if the corporation fails to commence
11 a judicial proceeding to establish the fair value of the shares
12 as is required by this section, it must pay the full amount
13 claimed under NRS 78.538. It also clarifies discovery rights.

14 NRS 78.540 Court costs and counsel fees.

15 1. The court in an appraisal proceeding commenced under
16 NRS 78.539 shall determine all costs of the proceeding,
17 including the reasonable compensation and expenses of
18 appraisers appointed by the court. The court shall assess the
19 costs against the corporation, except that the court may assess
20 costs against all or some of the dissenters, in amounts the
21 court finds equitable, to the extent the court finds the
22 dissenters acted arbitrarily, vexatiously, or not in good
23 faith in demanding payment under NRS 78.538.

24 2. The court may also assess the fees and expenses of
25 counsel and experts for the respective parties, in amounts the
26 court finds equitable:

27 (a) against the corporation and in favor of any and all
28 dissenters if the court finds the corporation did not
29 substantially comply with the requirements of NRS 78.511 through
30 78.538; or

31 (b) against either the corporation or a dissenter in favor
32 of any other party, if the court finds that the party against
33 whom the fees and expenses are assessed acted arbitrarily,
34 vexatiously, or not in good faith with respect to the rights

1 provided by NRS 78.503 through 78.540.

2 3. If the court finds that the services of counsel for
3 any dissenter were of substantial benefit to other dissenters
4 similarly situated, and that the fees for those services should
5 not be assessed against the corporation, the court may award to
6 those counsel reasonable fees to be paid out of the amounts
7 awarded the dissenters who were benefited.

8 4. In a proceeding commenced under NRS 78.536(1), the
9 court may assess the costs against the corporation, except
10 that the court may assess costs against all or some of the
11 dissenters who are parties to the proceeding, in amounts
12 the court finds equitable, to the extent the court finds that
13 such parties did not act in good faith in instituting the
14 proceeding.

15 5. Nothing in this section shall preclude any party in
16 a proceeding commenced under either NRS 78.539 or 78.536(1)
17 from applying the provisions of either NRCP 68 or NRS 17.115.

18 Note: Modified from Model Act §13.31, this new section
19 clarifies that generally the costs of the appraisal proceeding
20 should be assessed against the corporation. The court is,
21 however, authorized to assess these costs in whole or in part
22 against the dissenters if it concludes they acted arbitrarily,
23 vexatiously, or not in good faith in making demand for
24 additional payment. Similarly, counsel fees may be charged
25 against the corporation or against dissenters upon a finding of
26 a failure to comply in good faith with the requirements of
27 relevant sections. Individual dissenters in turn can be called
28 upon to pay counsel fees for other dissenters if the court finds
that the services were of substantial benefit to the other
dissenters. The purpose of all these grants of discretion with
respect to costs and counsel fees is to increase the incentives
of both sides to proceed in good faith under this chapter to
attempt to resolve their disagreement without the need of a
formal judicial appraisal of the value of shares. Subsections
(4) and (5) are additions to the Model Act.

Summary note: The essence of this report is that all of
the current Nevada sections dealing with mergers and dissenters'

1 rights are repealed and replaced with a clearer organization and
2 the greatly simplified wording from the Model Act, retaining
3 important provisions from current Nevada statutes to preserve
4 the corporate philosophy in this state. Additionally,
5 compulsory share exchanges and mergers of corporations with
6 limited partnerships have been approved. Substantively, the
7 primary changes are found in the perfection process of
8 dissenters' rights and in the judicial appraisal of fair value
9 should a corporation and dissenters be unable to reach an
10 agreement as to fair value. For example, the appraisal process
11 has been greatly simplified with (i) the court merely having the
12 discretion to appoint one or more appraisers should it deem it
13 necessary to determine fair value of shares, (ii) discovery
14 rights being clarified and (iii) the court having enormous
15 discretion in the award of fees and costs.

9 BUSINESS COMBINATIONS

10 In addition to control shares legislation, more than twenty
11 jurisdictions have enacted "business combination" legislation.
12 This type of legislation is designed to insure to the extent
13 reasonably practicable that an acquirer who obtains control of a
14 specified percentage of the voting power of certain corporations
15 will not be able to hold the corporation "hostage" to the
16 acquirer's share position, whether by using the corporation's
17 assets for purposes not in the best interests of the corporation
18 and its other shareholders, by forcing unwise transactions that
19 benefit the acquirer to the detriment of the other shareholders,
20 or by using other means to treat other shareholders unfairly
21 after the acquirer obtains its significant ownership position.
22 See Introductory Comment to Chapter 43 of the Indiana
23 Corporation Act (the "Indiana Act").

24 New York was the first jurisdiction to enact business
25 combination legislation. The Delaware legislature also
26 determined that business combination legislation was the most
27 appropriate method of deterring the potential abuses which often
28 surface in the context of battles for corporate control, most
notably coercive effects of the so-called two-tier, front-end
loaded tender offer. The constitutionality of the Delaware
business combination legislation has been upheld in three
Delaware cases. BNS, Inc. v. Koopers Co., 683 F.Supp. 458
(D.Del. 1988); RP Acquisition Corp. v. Staley Continental, Inc.,
686 F.Supp. 476 (D.Del. 1988); City Capitol Associates
Limited Partnership v. Interco Inc., 696 F. Supp. 1551, aff'd
860 F.2d 60 (3d Cir. 1988).

As would be expected, however, in light of the powerful
takeover lobby present in Delaware, the Delaware legislation is
somewhat watered down in comparison to the forms of business
combination legislation enacted in other jurisdictions. For
example, (1) Delaware has a higher threshold as to what
constitutes an "interested shareholder" (20% of the voting
power, as opposed to the more common 10%), (2) Delaware has a
shorter waiting period during which certain business

1 combinations are prohibited (3 years, as opposed to the more
2 common 5 years), (3) Delaware provides an exception to the
3 waiting period in the event a business combination is approved
4 after the fact by the Board of Directors and is also approved by
5 two-thirds of the voting stock not owned by the interested
6 shareholder, and (4) Delaware does not seek to regulate what the
acquirer can do with its control position after expiration of
the waiting period, whereas most of the other statutes require
some form of disinterested shareholder approval and/or
satisfaction of fairness criteria in order for a business
combination to be effected after the waiting period.

7 These differences are significant, and there may be some
8 concern that the more common and more restrictive forms of
9 business combination statutes in effect in other jurisdictions
10 would not pass constitutional muster. In addition, Delaware
11 does not have a control share statute in addition to its
12 business combination statute. At the present time, more than
fifteen jurisdictions have takeover statutes in addition to
business combination statutes. For example, Arizona, Idaho,
Indiana, Minnesota, Missouri, Nebraska, Ohio, South Carolina,
Tennessee and Wisconsin each have both control share and
business combination statutes.

13 However, the Seventh Circuit Court of Appeals has recently
14 determined that the business combination statutes in effect in
15 Wisconsin are not preempted by the Williams Act and do not
16 violate the Commerce Clause of the United States Constitution.
17 Amanda Acquisition Corp. v. Universal Foods Corp., 877 F.2d 496
18 (7th Cir. 1989). The result in Amanda is quite comforting, as
19 Wisconsin has a strict version of business combination
20 legislation, and also has in effect both control share
21 legislation and fair price legislation. In addition, the court
22 in Amanda was not sympathetic to the wisdom of state takeover
23 statutes; indeed the court stated "If our views of the wisdom of
24 state law mattered, Wisconsin's takeover statute would not
survive." However, the court noted at the end of the opinion
that "a law can be both economic folly and constitutional." Id.
quoting 481 U.S. at 96-97 (Scalia J., concurring). Wisconsin's
law may well be folly; we are confident that it is
constitutional. Amanda, supra; see also, West Point-Pepperel,
Inc. v. Farley, Inc., 711 F.Supp. 1088 (N.D. Ga. 1988);
Vernitron Corp. v. Kollmorgen Corp., No. 89 Civ. 0241 (S.D.N.Y.
Feb. 15, 1989); Sroufe and Gelband, "Business Combination
Statutes: A 'Meaningful Opportunity' for Success?", 45 Bus. Law.
891 (1990).

25 Thus, Nevada will be acting within the scope of its power
26 to regulate the internal affairs of domestic corporations by
27 enacting a form of business combination legislation in addition
28 to the control share legislation which is presently in effect.

29 As to the form of business combination statute which should
30 be enacted in Nevada, the following draft of legislation is
31 substantially similar to Chapter 43 of the Indiana Act. We have

1 used Indiana's law as a model for several reasons:

2 1. Nevada's Control Share statutes were patterned after
3 Indiana's and consistency in reference to certain defined terms
will be maintained;

4 2. Indiana's statutes have received a mild form of
5 implicit approval, as they were in existence at the time when
the United States Supreme Court decided CTS, and are
6 substantially similar to the Wisconsin statute approved in
Amanda;

7 3. Indiana follows a similar codification procedure as is
8 used in Nevada (i.e. definitions each have their own section),
which should reduce the need for any significant time being
9 spent by the Legislative Counsel Bureau in amending the proposed
legislation contained in this study; and,

10 4. The Indiana statute contains superior Comments which
11 are a significant aid in understanding the purpose and intent
behind each section of the statute. Following each of the
12 proposed statutes, we have printed these comments, as contained
in the version of the Indiana Code published by the Michie
13 Company, subject to minor revisions. Ind. Code Ann. §§23-43-1
through 23-1-43-24 (Burns 1990).

14 A final word of caution may be in order prior to an
15 unqualified recommendation of the Indiana statute. As mentioned
above, Delaware probably had a more balanced viewpoint presented
16 to its legislature than did Indiana, in light of the substantial
presence of acquirers during the Delaware legislative hearings.
17 Acquirers choose jurisdictions in which to incorporate also, and
may determine that the Nevada legislative scheme unfairly
reduces the ability to raise venture capital. The court in
18 Amanda shared these reservations, and certain commentators are
of the opinion that while control share legislation enhances
19 shareholder wealth, business combination statutes do not
necessarily do so. See, e.g., Ind. Code Ann. §§23-1-43-1
20 through 23-1-43-24 (Burns 1990). "The Promise of State
Takeover Statutes", 86 Mich. L.R. 1635 (1988). For this reason,
21 it may be wise to consider whether Nevada should modify the
enclosed business combination legislation in a fashion similar
22 to Delaware.

23 On the other hand, a growing number of jurisdictions and
24 some commentators have recognized that shareholders are not the
only legitimate constituency for either boards of directors or
25 state legislators. Many state statutes are now authorizing a
board of directors to consider the interest of non-shareholder
26 constituencies when facing difficult decisions with respect to
corporate control, for instance the interests of employees and
27 suppliers along with the state and national economy. Most, if
not all, commentators who are skeptical with respect to the
28 propriety of state takeover measures disregard the impact of
takeovers on these non-shareholder constituencies. However, it

1 appears that a state legislator may appropriately determine that
2 the interests of these constituencies should be taken into
3 account when enacting these types of statutes. See, Ind. Code
4 Ann. §§23-43-1 through 23-1-43-24 (Burns 1990).
5 "Missing the Point about State Takeover Statutes", 87 Mich. L.R.
6 846 (1989).

7 Once again, the notes to the following statutes are largely
8 those appended to the correlative sections of the Indiana
9 statutes. Ind. Code Ann. §§23-43-1 through 23-1-43-24 (Burns
10 1990). The statutes have been slightly rewritten to conform to
11 the drafting style used in the Nevada Revised Statutes and the
12 notes changed to correct references to other statutes.

13 Section 1. Definitions.

14 As used in Sections 1 through 25, inclusive, of this Act,
15 unless the context otherwise requires, the words and terms
16 defined in Sections 2 through 18, inclusive, have the meanings
17 assumed to them in those sections.

18 Note: The purpose of this Act is to ensure to the extent
19 reasonably practicable that an acquirer who obtains control of
20 10% or more of the voting power of a "resident domestic
21 corporation" will not be able to hold that corporation "hostage"
22 to the acquirer's share position, whether by using the
23 corporation's assets for purposes not in the best interests of
24 the corporation and its other shareholder, by forcing on the
25 corporation unwise transactions that benefit the acquirer to the
26 detriment of the corporation and its other shareholders, or by
27 using other means to treat other shareholders unfairly after the
28 acquirer obtains its significant ownership position. This Act
generally applies to Nevada corporations with more than 100
shareholders that have a class of voting shares registered with
the Securities and Exchange Commission (the "SEC") under section
12, 15 U.S.C. §781, of the Securities Exchange Act of 1934, as
amended, 15 U.S.C. §§78a et seq. (the "Exchange Act") - though
such corporations can "opt out" of this Act and other Nevada
corporations with more than 100 shareholders may of "opt in."
See sections 14, 21 and 23 and the notes thereto.

23 Section 2. "Affiliate" defined.

24 "Affiliate" means a person that directly, or indirectly
25 through one (1) or more intermediaries, is controlled by, or is
26 under common control with, a specified person.

27 Note: The definition of "affiliate" mirrors the definition
28 contained in Reg. 12b-2, 17 C.F.R. §240.12b-2, promulgated under
the Exchange Act, as that regulation existed on January 8, 1986.

1 This definition is the operative definition for reports filed
2 pursuant to sections 12, 13 and 15(d) of the Exchange Act, 15
U.S.C. §§781, 78m & 78o(d).

3 "Person," as used in this section and elsewhere in this
4 Act, has the same broad meaning it has throughout the Nevada
Revised Statutes under NRS 0.039.

5 Section 3. "Announcement date" defined.

6 "Announcement date," when used in reference to any business
7 combination, means the date of the first public announcement of
8 the final, definitive proposal for the business combination.

9 Note: The "announcement date" definition reflects the fact
10 that corporations subject to this Act - since they will
generally be publicly-held corporations with a class of voting
11 shares registered with the SEC under section 12 of the Exchange
Act, 15 U.S.C. §781, (see Section 21 and note) - will usually be
12 obligated to announce publicly the vast majority of transactions
that constitute "business combinations" under section 6.

13 Section 4. "Associate" defined.

14 "Associate," when used to indicate a relationship with any
15 person, means:

16 1. Any corporation or organization of which the person is
17 an officer or partner or is, directly or indirectly, the
18 beneficial owner of ten percent (10%) or more of any class of
19 voting shares;

20 2. Any trust or other estate in which the person has a
21 substantial beneficial interest or as to which the person serves
22 as trustee or in a similar fiduciary capacity; and

23 3. Any relative or spouse of the person, or any relative
24 of the spouse, who has the same home as the person.

25 Note: The definition of "associate" follows the definition
26 contained in Reg. 12b-2, 17 C.F.R. §240.12b-2, promulgated under
the Exchange Act, as that regulation existed on January 8, 1986.

27 Section 5. "Beneficial owner" defined.

28 "Beneficial owner," when used with respect to any shares,

1 means a person that:

2 1. Individually or with or through any of its affiliates
3 or associates, beneficially owns the shares (directly or
4 indirectly);

5 2. Individually or with or through any of its affiliates
6 or associates, has:

7 (a) The right to acquire the shares (whether the right is
8 exercisable immediately or only after the passage of time) under
9 any agreement, arrangement, or understanding (whether or not in
10 writing), or upon the exercise of conversion rights, exchange
11 rights, warrants or options, or otherwise (however, a person is
12 not considered the beneficial owner of shares tendered under a
13 tender or exchange offer made by the person or any of the
14 person's affiliates or associates until the tendered shares are
15 accepted for purchase or exchange); or

16 (b) The right to vote the shares under any agreement,
17 arrangement, or understanding (whether or not in writing);
18 however, a person is not considered the beneficial owner of any
19 shares under this clause if the agreement, arrangement, or
20 understanding to vote the shares arises solely from a revocable
21 proxy or consent given in response to a proxy or consent
22 solicitation made in accordance with the applicable regulations
23 under the Exchange Act and is not then reportable on a Schedule
24 13D under the Exchange Act, or any comparable or successor
25 report; or

26 3. Has any agreement, arrangement, or understanding
27 (whether or not in writing) for the purpose of acquiring,
28 holding, voting (except voting under a revocable proxy or

1 consent as described in subsection 2(b) of this section), or
2 disposing of the shares with any other person that beneficially
3 owns, or whose affiliates or associates beneficially own,
4 directly or indirectly, the shares.

5 Note: For purposes of this Act (including the percentage
6 ownership and "control" tests of section 9), section 5 defines
7 "beneficial owner" broadly to include all persons who may be
8 able, directly or indirectly, to exercise control over the
9 ownership or voting power of shares of a corporation. Thus, an
10 acquirer cannot evade application of the Act simply because its
11 control over a corporation's shares is exercised through devices
other than direct record and beneficial ownership. At the same
time, though, the mere fact that another shareholder votes his
shares in the same way as a potential acquirer will not, without
more, make the acquirer the "beneficial owner" of the other
shareholder's shares, if the two are not acting in concert.

12 1. Subsection 1 makes a person the "beneficial owner" of
13 all shares that it owns either (a) directly or indirectly, and
14 (b) either individually or with or through any of its
15 "affiliates or associates," as defined in sections 2 and 4,
respectively. Thus, if one entity is an affiliate or an
associate of another, each will be the "beneficial owner," for
purposes of this Act, of all shares directly or indirectly owned
or controlled by either or both.

16 2. Subsection 2 makes a person the "beneficial owner" of
17 all shares as to which it has the right, pursuant to an
18 agreement or other arrangement, to acquire or exercise control
19 over either the ownership or voting power. Subsection 2 does
20 not, however, make a person the "beneficial owner" of shares
21 tendered to the person (or its affiliates or associates) under a
22 tender or exchange offer, until the shares are accepted for
23 purchase or exchange. Likewise, subsection 2 does not make a
24 person the "beneficial owner" of shares legitimately voted
pursuant to a revocable proxy or consent given by another
shareholder in a proxy contest, if (a) the proxy or consent
solicitation was in accordance with applicable Exchange Act
regulations, and (b) the other shareholder's relationship with
the person is not such that it is reportable under section 13(d)
of the Exchange Act, 15 U.S.C. § 78m(d), or any comparable or
successor provision.

25 3. Subsection 3 is an inclusive definitional provision
26 that makes a person the "beneficial owner" of any shares of
27 which another person (or its affiliates or associates) is also
28 the "beneficial owner," if the two have any written or oral
agreement, arrangement or understanding with respect to
acquiring, holding, voting (except for the "proxy" exception of
subsection 2(b)) or disposing of the shares. This is similar to
the "group" approach adopted by the SEC under the Exchange Act.

1 See Reg. 13d-a5, 17 C.F.R. § 240.13d-5.

2 Section 6. "Business combination" defined.

3 "Business combination," when used in reference to any
4 resident domestic corporation and any interested shareholder of
5 the resident domestic corporation, means any of the following:

6 1. Any merger or consolidation of the resident domestic
7 corporation or any subsidiary of the resident domestic
8 corporation with:

9 (a) The interested shareholder; or

10 (b) Any other corporation (whether or not itself an
11 interested shareholder of the resident domestic corporation)
12 that is, or after the merger or consolidation would be, an
13 affiliate or associate of the interested shareholder.

14 2. Any sale, lease, exchange, mortgage, pledge, transfer,
15 or other disposition (in one (1) transaction or a series of
16 transactions) to or with the interested shareholder or any
17 affiliate or associate of the interested shareholder of assets
18 of the resident domestic corporation of any subsidiary of the
19 resident domestic corporation:

20 (a) Having an aggregate market value equal to five percent
21 (5%) or more of the aggregate market value of all the assets,
22 determined on a consolidated basis, of the resident domestic
23 corporation;

24 (b) Having an aggregate market value equal to five percent
25 (5%) or more of the aggregate market value of all the
26 outstanding shares of the resident domestic corporation; or

27 (c) Representing ten percent (10%) or more of the earning
28 power or net income, determined on a consolidated basis, of the

1 resident domestic corporation.

2 3. The issuance or transfer by the resident domestic
3 corporation or any subsidiary of the resident domestic
4 corporation (in one (1) transaction or a series of transactions)
5 of any shares of the resident domestic corporation or any
6 subsidiary of the resident domestic corporation that have an
7 aggregate market value equal to five percent (5%) or more of the
8 aggregate market value of all the outstanding shares of the
9 resident domestic corporation to the interested shareholder or
10 any affiliate or associate of the interested shareholder or
11 except under the exercise of warrants or rights to purchase
12 shares offered, or a dividend or distribution paid or made, pro
13 rata to all shareholders of the resident domestic corporation.

14 4. The adoption of any plan or proposal for the
15 liquidation or dissolution of the resident domestic corporation
16 proposed by, or under any agreement, arrangement, or
17 understanding (whether or not in writing) with, the interested
18 shareholder or any affiliate or associate of the interested
19 shareholder.

20 5. Any:

21 (a) Reclassification of securities (including without
22 limitation any share split, share dividend, or other
23 distribution or shares in respect of share, or any reverse share
24 split);

25 (b) Recapitalization of the resident domestic corporation;

26 (c) Merger or consolidation of the resident domestic
27 corporation with any subsidiary of the resident domestic
28 corporation; or

1 (d) Other transaction (whether or not with or into or
2 otherwise involving the interested shareholder)
3 proposed by, or under any agreement, arrangement, or
4 understanding (whether or not in writing) with, the interested
5 shareholder or any affiliate or associate of the interested
6 shareholder, that has the effect (directly or indirectly) of
7 increasing the proportionate share of the outstanding shares of
8 any class or series of voting shares or securities convertible
9 into voting shares of the resident domestic corporation or any
10 subsidiary of the resident domestic corporation that is directly
11 or indirectly owned by the interested shareholder or any
12 affiliate or associate of the interested shareholder, except as
13 a result of immaterial changes due to fractional share
14 adjustments.

15 6. Any receipt by the interested shareholder or any
16 affiliate or associate of the interested shareholder of the
17 benefit (directly or indirectly, except proportionately as a
18 shareholder of the resident domestic corporation), of any loans,
19 advances, guarantees, pledges, or other financial assistance or
20 any tax credits or other tax advantages provided by or through
21 the resident domestic corporation.

22 Note: Section 6's definition of "business combination"
23 specifies the transactions subject to this Act's rules.
24 Consistent with the shareholder protection purposes of the Act,
25 the definition is intended to include virtually any kind of
26 transaction that would allow a potential acquirer to use the
27 corporation's assets to finance the acquisition or otherwise to
28 benefit its own interests rather than the interests of the
29 corporation and its other shareholders.

27 (1) Under Subsection 1, a "business combination" includes
28 any merger (whether forward or reverse), with (a) an "interested
29 shareholder", as defined in section 11, or (b) any other
30 corporation that, after the merger, would be an affiliate or an

1 associate of the interested shareholder. Absent this Act, a
2 merger would be one very easy way to effect a transfer of assets
from a corporation subject to the Act.

3 (2) Subsection 2 includes in the definition of "business
4 combination" any direct shift of assets from the covered
corporation to the interested shareholder or its affiliates or
5 associates - whether by sale, lease, exchange, mortgage, pledge,
transfer or other disposition, in a single transaction or a
6 series of transactions - where the value of the assets being
transferred equals (a) 5% or more of the "market value" (as
7 defined in section 12(2) of the corporation's total assets; (b)
5% or more of the "market value" (as defined in section 12(1))
8 of the corporation's outstanding shares; or (c) the
corporation's earning power or net income. The tests are
9 alternative, nor cumulative: If the value of the assets being
transferred exceeds any one of the three specified thresholds,
10 the transfer will be a "business combination."

11 (3) Subsection 3 makes the term "business combination"
include any issuance of a covered corporation's shares to an
12 interested shareholder or its affiliates or associates, if (a)
the value of the shares being issued equals 5% or more of the
13 aggregate "market value" (as defined in section 12(1)) of the
corporation's outstanding shares, and (b) the shares are not
14 being issued under the exercise of warrants or rights offered,
or a dividend or distribution paid or made, pro rata to all
15 shareholders. Thus, an attempted disproportionate issuance of
shares to an interested shareholder is subject to this Act's
16 rules.

17 (4) Under subsection 4, a "business combination" also
includes any plan or proposal for liquidation or dissolution of
18 a covered resident domestic corporation proposed by, or under
any written or oral agreement, arrangement or understanding
19 with, an interested shareholder or its affiliates or associates.

20 (5) Subsection 5 defines a "business combination" to
include any kind of transaction proposed by, or under any
21 written or oral agreement, arrangement or understanding with, an
interested shareholder or its affiliates or associates that
22 could result in any disproportionate increase in the ownership
of the covered corporation by the interested shareholder or its
23 affiliates or associates.

24 (6) Subsection (6) includes in the definition of "business
combination" other disproportionate transfers of money,
25 property, benefits or advantages to the interested shareholder
to its affiliates or associates, whether through loans,
26 advances, guarantees, pledges, tax credits, other tax advantages
or other financial assistance (such as compensating balances.)

27 Section 7. "Common shares" defined.

28 "Common shares" means any shares other than preferred

1 shares.

2 Note: Because NRS 78.195 as amended pursuant to this
3 report's recommendations does not distinguish between "common"
4 and "preferred stock", section 7 defines the former term, and
5 section 13 provides a complementary definition of the latter,
6 for purposes of this Act. Section 7 simply excludes from the
7 definition of "common stock" any shares properly determined to
8 be "preferred stock" under section 13, but otherwise is
9 inclusive.

10 Section 8. "Consummation date" defined.

11 "Consummation date," with respect to any business
12 combination, means the date of consummation of the business
13 combination or, in the case of a business combination as to
14 which a shareholder vote is taken, the later of:

- 15 1. The business day before the vote; or
- 16 2. Twenty (20) days before the date of consummation of
17 the business combination.

18 Note: Section 8 defines the "consummation date" for a
19 business combination as either (a) the date the business
20 combination is in fact consummated, or (b) if a shareholder vote
21 is taken on the transaction, the later of (i) the date before
22 the vote, and (ii) 20 days before the date the business
23 combination is in fact consummated. This definition is intended
24 to assure that the values tested under the Act's "market value"
25 tests, see sections 6, 12 and 20(3), reflect a true trading
26 market, unaffected by the closing of the "business combination"
27 transaction itself.

28 Section 9. "Control," "controlling," "controlled by" and
"under common control with" defined.

- 1 "Control", including the terms "controlling,"
2 "controlled by," and "under common control with," means the
3 possession (directly or indirectly) of the power to direct or
4 cause the direction of the management and policies of a person,
5 whether through the ownership of voting securities, by contract,
6 or otherwise.

- 7 2. A person's beneficial ownership of ten percent (10%)

1 or more of the voting power of a corporation's outstanding
2 voting shares creates a presumption that the person has control
3 of the corporation.

4 3. Notwithstanding subsections 1 and 2 of this section, a
5 person is not considered to have control of a corporation if the
6 person holds voting power, in good faith and not for the purpose
7 of circumventing this act, as an agent, bank, broker, nominee,
8 custodian, or trustee for one (1) or more beneficial owners who
9 do not as individuals or as a group have control of the
10 corporation.

11 Note: Section 9 provides an inclusive, but fairly
12 standard, definition of "control."

13 (1) Subsection 1 follows the definition of "control"
14 contained in Reg. 12b-2, 17CFR §240.12b-2, promulgated under the
Exchange Act, as that regulation existed on January 8, 1986.

15 (2) Under subsection 2, 10% "beneficial ownership," as
16 defined in section 5 establishes a presumption of "control."
17 The presumption is conclusive unless it is rebutted under the
rules of subsection 3. General arguments that the 10% owner
does not have "real control" are irrelevant.

18 Subsection 2's 10% threshold is the same as that used in
19 section 16(a) of the Exchange Act, 15 U.S.C. §78p(a), to give
20 rise to liability for short-swing profits in purchases and sales
21 of publicly traded shares, and exists in other Exchange Act
22 contexts as well. Here, as under the Exchange Act, the reason
23 for the 10% threshold is that a shareholder with that degree of
24 control can, if it wishes, obtain inside information that can be
abused, or otherwise exert influence over the policies of a
publicly-held corporation sufficient to consider the shareholder
to be part of corporate management. See also note to section
11(1). The 10% threshold adopted for purposes of this Act is
lower than the one-fifth, one-third and one-half thresholds
adopted for purposes of NRS 78.378 through 78.3793, inclusive.
See section 2 and note.

25 (3) Subsection 3 excludes from the presumption of control
26 those institutional holders whose aggregate holdings for the
27 accounts of other shareholders exceed 10%, if (a) the vote of
28 such shares in a proxy fight must be directed by the true
beneficial owners, and (b) the true beneficial owners themselves
do not individually or as a group have "control" over the
corporation.

1 Section 10. "Exchange Act" defined.

2 "Exchange Act" means the Act of Congress known as the
3 Securities Exchange Act of 1934, as amended.

4 Note: Section 10 defines the term "Exchange Act" for ease
5 of reference throughout this Act to the Securities Exchange Act
6 of 1934, as amended, 15 U.S.C. §§78a et seq.

6 Section 11. "Interested shareholder" defined.

7 1. "Interested shareholder," when used in reference to
8 any resident domestic corporation, means any person (other than
9 the resident domestic corporation or any subsidiary of the
10 resident domestic corporation) that is:

11 (a) The beneficial owner, directly or indirectly, of ten
12 percent (10%) or more of the voting power of the outstanding
13 voting shares of the resident domestic corporation; or

14 (b) An affiliate or associate of the resident domestic
15 corporation and at any time within the five (5) year period
16 immediately before the date in question was the beneficial
17 owner, directly or indirectly, of ten percent (10%) or more of
18 the voting power of the then outstanding shares of the resident
19 domestic corporation.

20 2. For the purpose of determining whether a person is an
21 interested shareholder, the number of voting shares of the
22 resident domestic corporation considered to be outstanding
23 includes shares considered to be beneficially owned by the
24 person through application of section 5 of this Act, but does
25 not include any other unissued shares of voting shares of the
26 resident domestic corporation that may be issuable under any
27 agreement, arrangement, or understanding, or upon exercise of
28 conversion rights, warrants or options, or otherwise.

1 Note: (1) Subsection 1's definition of "interested
2 shareholder" is one of the keys to this Act, since the Act's
3 substantive prohibitions involve transactions between a resident
4 domestic corporation and an "interested shareholder." Because
5 shares owned by the resident domestic corporation itself to its
6 subsidiaries may not be voted and thus have no control
7 implications, neither the corporation nor any of its
8 subsidiaries is a "person" who can be an "interested
9 shareholder" of that corporation. "Subsidiary" of a "resident
10 domestic corporation" is defined for purposes of this Act in
11 section 17.

12 Subsection 1 includes in the definition any person who,
13 directly or indirectly, owns 10% or more of the voting power of
14 the resident domestic corporation. The 10% figure has analogs
15 not only in the Exchange Act, see note to section 9(2), but also
16 in other state statutes. Also, a 10% holding can give a
17 shareholder sufficient leverage to force "greenmail," i.e.,
18 redemption of his shares at a premium. The 10% threshold
19 adopted for purposes of this Act is lower than the one-fifth,
20 one-third and one-half thresholds adopted for purposes of NRS
21 78.370 to 78.3793, inclusive. See section 2 and note.

22 Subsection 2 includes as an "interested shareholder" an
23 "affiliate" or "associate" of the resident domestic corporation,
24 as defined in sections 2 and 4, respectively, who held as much
25 as a 10% beneficial ownership position at any time during the
26 preceding five years. Such persons will often have used that
27 ownership to put themselves in a position of "control" over the
28 corporation as effectively as if they still held a 10% interest.

(2) Subsection 2 provides that, for purposes of
determining whether a person is an "interested shareholder," but
(1) the number of outstanding shares of the corporation, and (2)
the number of shares owned by that person, will be deemed to
include any shares that the person has the right to acquire
through any of the means described in section 5, such as written
or oral agreements, arrangements or understandings or exercise
of conversion rights, exchange rights, warrants or options.
Such inclusion is proper, because a person attempting to obtain
control of a corporation is highly likely to exercise whatever
share acquisition rights are available to it. However, shares
that might be issuable to other persons through any of the means
described in section 5 are not included in calculating the
number of outstanding shares of the corporation, since there is
no corresponding likelihood that such other persons will
exercise such rights. This approach comports with that taken by
the SEC in determining (1) a "beneficial owner of a security"
under section 13(d) of the Exchange Act, 15 U.S.C. §78m(d), and
(2) a "reporting person" under section 16(a) of the Exchange
Act, 15 U.S.C. §78p(a). See Regs. 13D-3(d) & 16A-2(b), 17
C.F.R. §§240.13d-3(d) & 240.16a-2(b).

Section 12. "Market value" defined.

1 "Market value," when used in reference to the shares or
2 property of any resident domestic corporation, means the
3 following:

4 1. In the case of shares, the highest closing sale price
5 of a share during the thirty (30) day period immediately
6 preceding the date in question on the composite tape for New
7 York Stock Exchange listed shares, or, if the shares are not
8 quoted on the composite tape or not listed on the New York Stock
9 Exchange, on the principal United States securities exchange
10 registered under the Exchange Act on which the shares are
11 listed, or, if the shares are not listed on any such exchange,
12 the highest closing bid quotation with respect to a share during
13 the thirty (30) day period preceding the date in question on the
14 National Association of Securities Dealers, Inc. Automated
15 Quotations System or any system then in use, or if no such
16 quotation is available, the fair market value on the date in
17 question of a share as determined by the board of directors of
18 the resident domestic corporation in good faith.

19 2. In the case of property other than cash or shares, the
20 fair market value of the property on the date in question as
21 determined by the board of directors of the resident domestic
22 corporation in good faith.

23 Note: Section 12's definition of "market value" protects
24 the shareholders of corporations covered by this Act in two
25 contexts - determining the amount of assets that an acquirer can
26 transfer from the corporation, see section 6 and note, and
determining the amount of consideration that shareholders can
ultimately receive for their shares, see section 20(3) and note.

27 (1) Subsection 1 provides that the "market value" of a
28 share is its highest closing sale price during the 30-day period
preceding the date in question, as reported on the Composite
Tape for New York Stock Exchange listed securities; the

1 reporting system for other exchanges recognized by the SEC or
2 the Automated Quotation System for the National Association of
3 Securities Dealers, Inc., or any similar system then in use.
4 This Act's recognition of these established quotation systems is
5 consistent with the "market exception" to dissenters' rights.
6 NRS 78.521.

7 If the shares are not quoted on any generally recognized
8 quotation system, the board of directors of the corporation may
9 conclusively determine their value on the date in question, so
10 long as its determination is made in good faith.

11 Subsection 2 provides that the "market value" of property
12 other than shares is its value on the date in question as
13 determined by the board of directors of the resident domestic
14 corporation. As with its determination of the value of shares
15 not quoted on a recognized quotation system, the board's
16 determination of the "market value" of property other than
17 shares is conclusive, if the determination is made in good
18 faith.

19 Section 13. "Preferred shares" defined.

20 "Preferred shares" means any class or series of shares of a
21 resident domestic corporation that under the bylaws or articles
22 of incorporation of the resident domestic corporation:

23 1. Is entitled to receive payment of dividends before any
24 payment of dividends on some other class or series of shares; or

25 2. Is entitled in the event of any voluntary liquidation,
26 dissolution, or winding up of the corporation to receive payment
27 or distribution of a preferential amount before any payments or
28 distributions are received by some other class or series of
29 shares.

30 Note: Chapter 78 does not define "preferred stock" as
31 such. Moreover, for financial reporting or tax purposes, a
32 given security can be considered debt, preferred stock or a
33 hybrid, without regard to characteristics that may implicate
34 control. However, because NRS 78.195 distinguishes between
35 "common" and "preferred stock," section 7 defines the former
36 term, and section 13 provides a complementary definition of the
37 latter, for purposes of this Act.

38 (1) Subsection 1 includes within the definition of
39 "preferred stock" any shares that, by their terms, are entitled
40 to dividends before payment of dividends on any other class or

1 series of shares.

2 (2) Subsection 2 defines "preferred stock" to include any
3 shares that by their terms are entitled to preferential payments
4 on liquidation, dissolution or winding up of the corporation
before payments are made to any other class or series of shares.

5 Section 14. "Resident domestic corporation" defined.

6 1. "Resident domestic corporation" means a corporation
7 that has two hundred (200) or more shareholders.

8 2. A resident domestic corporation does not cease to be a
9 resident domestic corporation by reason of events occurring or
10 actions taken while the resident domestic corporation is subject
11 to this Act.

12 Note: (1) Subsection 1 defines which corporations are
13 "resident domestic corporations" subject to this Act. As the
term implies, the first requirement is that the corporation be a
Nevada corporation.

14 Second, a "resident domestic corporation" must have 200 or
15 more shareholders. NRS 78.3788 contains the same "200
shareholder" rule. The "200 or more shareholder" rule limits
16 the applicability of this Act to corporations in which share
ownership is fairly dispersed, since it is precisely in such
17 corporations that changes of control can occur in market
transactions, and minority shareholders might not be in a
18 position effectively to protect themselves.

19 Under section 21, a resident domestic corporation must
generally also have a class of voting shares registered with the
20 SEC under section 12 of the Exchange Act, 15 U.S.C. §781, before
this Act's rules will apply. However, while corporations that
21 have such a class of registered shares may "opt out" of this Act
and corporations without such a class of registered shares may
22 "opt in," see sections 21 and 23 and notes, corporations that do
not meet the definition of "resident domestic corporation" -
23 i.e., Nevada corporations with 200 or more shareholders - are
not covered by this Act.

24 (2) Subsection 2 establishes that events or actions that
25 occur while a resident domestic corporation is subject to this
Act cannot make the corporation no longer subject to the Act.
26 In other words, action taken after a person has become an
"interested shareholder" cannot be used to avoid applicability
27 of this Act to a resident domestic corporation. For example, an
acquirer cannot evade this Act by first taking steps to reduce
28 the number of shareholders to less than 200, then engage freely
in transactions that are prohibited or regulated by this Act.

1 Section 15. "Share" defined.

2 "Share" means:

3 1. Any share or similar security, any certificate of
4 interest, any participation in any profit sharing agreement, any
5 voting trust certificate, or any certificate of deposit for a
6 share; and

7 2. Any security convertible, with or without
8 consideration, into shares, or any warrant, call, or other
9 option or privilege of buying shares without being bound to do
10 so, or any other security carrying any right to acquire,
11 subscribe to, or purchase shares.

12 Note: The control context presents special issues which
13 require a broad definition of "share". Accordingly, section 15
14 defines the "share," for purposes of this Act, to include
15 securities in addition to those defined in section 24 that can
16 give a person the ability to acquire the ownership or voting
17 power of shares.

18 (1) Subsection 1 includes in this Act's definition of
19 "share" not only "shares" as defined in section 24, but also
20 securities that could represent interests implicating control,
21 such as voting trust certificates, participations in profit
22 sharing arrangements, certificates of deposits for a share and
23 the like. Exchange Act Reg. 16a-2, 17 C.F.R. §240.16a-2,
24 follows a similar approach.

25 (2) Subsection 2 adds to this Act's definition of "share"
26 any security that, while not currently a "share" as defined in
27 section 24, can be transformed into such a share, including
28 options, warrants, rights, calls, convertible securities and the
like.

23 Section 16. "Share acquisition date" defined.

24 "Share acquisition date," with respect to any person and
25 any resident domestic corporation, means the date that the
26 person first becomes an interested shareholder of the resident
27 domestic corporation.

28 Note: Section 16 defines "share acquisition date" - which
is the operative date for application of this Act's rules, (see

1 sections 20 & 21 and notes) - as the date on which a person
2 becomes an "interested shareholder" as defined in section 11.

3 Section 17. "Subsidiary" defined.

4 "Subsidiary" of any resident domestic corporation means any
5 other corporation of which a majority of the outstanding voting
6 shares entitled to be cast are owned (directly or indirectly) by
7 the resident domestic corporation.

8 Note: Section 17's definition includes all "tiered"
9 subsidiaries: If Corporation A owns a majority of the voting
10 shares of Corporation B, which in turn owns a majority of the
11 voting shares of Corporation C, Corporation C is a "subsidiary"
12 of Corporation A for purposes of this Act.

13 Section 18. "Voting shares" defined.

14 "Voting shares" means shares of capital stock of a
15 corporation entitled to vote generally in the election of
16 directors.

17 Note: Section 18 provides that "voting shares" mean shares
18 "entitled to vote generally in the election of directors."
19 Under NRS 78.195 shares may have full or limited voting power.
20 Whatever other voting or other rights shares may have, however,
21 if they are "entitled to vote generally in the election of
22 directors" they are "voting shares" for purposes of this Act.

23 Section 19. Combination with resident domestic corporation
24 and interested shareholder of the corporation.

25 1. Notwithstanding any other provision of this Act
26 (except sections 21 through 25 of this Act), a resident domestic
27 corporation may not engage in any business combination with any
28 interested shareholder of the resident domestic corporation for
a period of five (5) years following the interested
shareholder's share acquisition date unless the business
combination or the purchase of shares made by the interested
shareholder on the interested shareholder's share acquisition
date is approved by the board of directors of the resident

1 domestic corporation before the interested shareholder's share
2 acquisition date.

3 2. If a good faith proposal regarding a business
4 combination is made in writing to the board of directors of the
5 resident domestic corporation, the board of directors shall
6 respond, in writing, within thirty (30) days or such shorter
7 period, if any, as may be required by the Exchange Act, setting
8 forth its reasons for its decision regarding the proposal.

9 3. If a good faith proposal to purchase shares is made in
10 writing to the board of directors of the resident domestic
11 corporation, the board of directors, unless it responds
12 affirmatively in writing within thirty (30) days or such shorter
13 period, if any, as may be required by the Exchange Act, is
14 considered to have disapproved the share purchase.

15 Note: (1) Section 19(1) prohibits, for a period of five
16 years after an interested shareholder's share acquisition date,
17 any of the "business combinations" defined in section 6 between
18 the resident domestic corporation and the interested
19 shareholder, unless either (a) the proposed business
20 combination, or (b) the acquisition of voting power that made
21 the person an "interested shareholder," was approved by the
22 corporation's board of directors before the share acquisition
23 date.

24 The effect of this provision is that an acquirer that is
25 serious about acquiring control of a corporation covered by this
26 Act must either (a) be willing and financially able to wait five
27 years before taking value out of the acquired corporation (in
28 which case it must still comply with section 20), or (b)
negotiate either the proposed business combination or the
proposed acquisition of control itself with the shareholders'
elected representatives on the board of directors, before the
acquirer obtains a potentially coercive block of voting power
that could distort the results of the negotiations.

Subsection 1's rules do not apply if the resident domestic
corporation is not subject to this Act for any of the reasons
set forth in sections 21 through 23, or if the interested
shareholder is one described in sections 24 or 25. The fact
that the proposed business combination would satisfy the tests
of section 20 has no effect, however, on subsection 1's

1 five-year prohibition of the transaction.

2 (2) Subsection 2 requires the board of directors of a
3 resident domestic corporation to consider and respond to a
4 written "good faith proposal regarding a business combination"
5 within 30 days of receipt of the proposal, unless the Exchange
6 Act requires a more rapid response. The reference to shorter
7 response periods that may be imposed by the Exchange Act - such
8 as the requirement of Reg. 14d-9, 17 C.F.R. §240.14d-9, that a
9 board of directors must make a recommendation with respect to a
10 tender offer within ten days of its commencement - underscores
11 that subsection 2 does not contradict or purport to supersede
12 applicable Federal statutes or rules.

13 (3) Subsection 3 creates a statutory presumption that a
14 board of directors that does not respond to a written "good
15 faith proposal to purchase shares" within 30 days (or such
16 shorter period as may be required under the Exchange Act) will
17 be deemed to have disapproved the proposal. Like subsection 2,
18 subsection 3 does not contradict or purport to supersede
19 applicable Federal statutes or rules.

20 However, unlike subsection 2's rules about a "proposal
21 regarding a business combination," subsection 3 does not itself
22 require a board response to a "proposal to purchase shares"
23 (although a response may be required under Exchange Act rules
24 such as Reg. 14d-9, 18 C.F.R. §240.14d-9, which requires a board
25 recommendation with respect to a tender offer within ten days of
26 its commencement). But by creating a presumption that a board
27 that does not respond to a share acquisition proposal will be
28 deemed to have disapproved it, subsection 3, in combination with
29 subsection 2, "closes the loop" for a potential acquirer - i.e.,
30 makes it possible in every case for the acquirer to proceed with
31 knowledge of the board's position about the proposed share
32 acquisition as well as the proposed business combination.

33 Given the definitions of "beneficial owner" and "share" for
34 purposes of this Act, the phrase "proposal to purchase shares"
35 in subsection 3 includes any proposal directly or indirectly to
36 acquire voting power that will be sufficient to make the
37 acquirer an "interested shareholder."

38 Section 20. Authorized business combinations.

39 Notwithstanding any other provision of this Act (except
40 sections 19 and 21 through 25), a resident domestic corporation
41 may not engage at any time in any business combination with any
42 interested shareholder of the resident domestic corporation
43 other than a business combination meeting all requirements of
44 the articles of incorporation of the domestic corporation and

1 the requirements specified in any of the following:

2 1. A business combination approved by the board of
3 directors of the resident domestic corporation before the
4 interested shareholder's share acquisition date, or as to which
5 the purchase of shares made by the interested shareholder on the
6 interested shareholder's share acquisition date had been
7 approved by the board of directors of the resident domestic
8 corporation before the interested shareholder's share
9 acquisition date.

10 2. A business combination approved by the affirmative
11 vote of the holders of stock representing a majority of the
12 outstanding voting power not beneficially owned by the
13 interested shareholder proposing the business combination, or
14 any affiliate or associate of the interested shareholder
15 proposing the business combination, at a meeting called for that
16 purpose no earlier than five (5) years after the interested
17 shareholder's share acquisition date.

18 3. A business combination that meets all of the following
19 conditions:

20 (a) The aggregate amount of the cash and the market value
21 as of the consummation date of consideration other than cash to
22 be received per share by holders of outstanding common shares of
23 the resident domestic corporation in the business combination is
24 at least equal to the higher of the following:

25 (i) The highest per share price paid by the
26 interested shareholder, at a time when the interested
27 shareholder was the beneficial owner (directly or
28 indirectly) of five percent (5%) or more of the outstanding

1 voting shares of the resident domestic corporation, for any
2 common shares of the same class or series acquired by it
3 within the five (5) year period immediately before the
4 announcement date with respect to the business combination
5 or within the five (5) year period immediately before, or
6 in, the transaction in which the interested shareholder
7 became an interested shareholder, whichever is higher;
8 plus, in either case, interest compounded annually from the
9 earliest date on which the highest per share acquisition
10 price was paid through the consummation date at the rate
11 for one (1) year United States Treasury obligations from
12 time to time in effect; less the aggregate amount of any
13 cash dividends paid, and the market value of any dividends
14 paid other than in cash, per common share since the
15 earliest date, up to the amount of the interest.

16 (ii) The market value per common share on the
17 announcement date with respect to the business combination
18 or on the interested shareholder's share acquisition date,
19 whichever is higher; plus interest compounded annually from
20 that date through the consummation date at the rate for one
21 (1) year United States Treasury obligations from time to
22 time in effect; less the aggregate amount of any cash
23 dividends paid, and the market value of any dividends paid
24 other than in cash, per common share since that date, up to
25 the amount of the interest.

26 (b) The aggregate amount of the cash and the market value
27 as of the consummation date of consideration other than cash to
28 be received per share by holders of outstanding shares of any

1 class or series of shares, other than common shares, of the
2 resident domestic corporation is at least equal to the highest
3 of the following (whether or not the interested shareholder has
4 previously acquired any shares of the class or series of
5 shares):

6 (i) The highest per share price paid by the
7 interested shareholder, at a time when the interested
8 shareholder was the beneficial owner (directly or
9 indirectly) of five percent (5%) or more of the outstanding
10 voting shares of the resident domestic corporation, for any
11 shares of the class or series of shares acquired by it
12 within the five (5) year period immediately before the
13 announcement date with respect to the business combination
14 or within the five (5) year period immediately before, or
15 in, the transaction in which the interested shareholder
16 became an interested shareholder, whichever is higher;
17 plus, in either case, interest compounded annually from the
18 earliest date on which the highest per share acquisition
19 price was paid through the consummation date at the rate
20 for one (1) year United States Treasury obligations from
21 time to time in effect; less the aggregate amount of any
22 cash dividends paid, and the market value of any dividends
23 paid other than in cash, per share of the class or series
24 of shares since the earliest date, up to the amount of the
25 interest.

26 (ii) The highest preferential amount per share to
27 which the holders of shares of the class or series of
28 shares are entitled in the event of any voluntary

1 liquidation, dissolution, or winding up of the resident
2 domestic corporation, plus the aggregate amount of any
3 dividends declared or due as to which the holders are
4 entitled before payment of dividends on some other class or
5 series of shares (unless the aggregate amount of the
6 dividends is included in the preferential amount).

7 (iii) The market value per share of the class or
8 series of shares on the announcement date with respect to
9 the business combination or on the interested shareholder's
10 share acquisition date, whichever is higher; plus interest
11 compounded annually from that date through the consummation
12 date at the rate for one (1) year United States Treasury
13 obligations from time to time in effect; less the aggregate
14 amount of any cash dividends paid, and the market value of
15 any dividends paid other than in cash, per share of the
16 class or series of shares since that date, up to the amount
17 of the interest.

18 (c) The consideration to be received by holders of a
19 particular class or series of outstanding shares (including
20 common shares) of the resident domestic corporation in the
21 business combination is in cash or in the same form as the
22 interested shareholder has used to acquire the largest number of
23 shares of the class or series of shares previously acquired by
24 it, and the consideration shall be distributed promptly.

25 (d) The holders of all outstanding shares of the resident
26 domestic corporation not beneficially owned by the interested
27 shareholder immediately before the consummation of the business
28 combination are entitled to receive in the business combination

1 cash or other consideration for the shares in compliance with
2 subsections (a), (b), and (c).

3 (e) After the interested shareholder's share acquisition
4 date and before the consummation date with respect to the
5 business combination, the interested shareholder has not become
6 the beneficial owner of any additional voting shares of the
7 resident domestic corporation except:

8 (i) As part of the transaction that resulted in the
9 interested shareholder becoming an interested shareholder;

10 (ii) By virtue of proportionate share splits, share
11 dividends, or other distributions of shares in respect of
12 shares not constituting a business combination under
13 section 6(5) of this Act;

14 (iii) Through a business combination meeting all of
15 the conditions of section 19 of this Act this section; or

16 (iv) Through purchase by the interested shareholder
17 at any price that, if the price had been paid in an
18 otherwise permissible business combination the announcement
19 date and consummation date of which were the date of the
20 purchase, would have satisfied the requirements of
21 subsections (a), (b) and (c).

22 Note: Section 20 protects the shareholders of a "resident
23 domestic corporation" covered by the Act even after expiration
24 of the five-year absolute prohibition of section 19 by requiring
25 that any business combination between the corporation and an
26 "interested shareholder" after the five-year absolute
27 prohibition of section 19 by requiring that any business
28 combination between the corporation and an "interested
29 shareholder" after the five-year period must satisfy the
30 conditions of either subsection (a), (b) or (c).

31 Section 20 does not apply, however, to a business
32 combination that meets the prior board approval requirements of
33 section 19. Also, section 20 is inapplicable if the resident

1 domestic corporation is not subject to this Act for any of the
2 reasons set forth in sections 21 through 23 or if the interested
shareholder is one described in sections 24 or 25.

3 (1) Subsection 1 reiterates the board of director approval
4 exceptions set forth in section 19(1), thereby permitting the
5 board of a resident domestic corporation to consider and approve
6 transactions that the board believes are in the best interests
7 of the corporation or its shareholders. As in section 19(1),
8 however, either the "business combination" or the acquirer's
9 acquisition of sufficient voting power to make it an "interested
shareholder" must be approved before the acquirer's "share
acquisition date." In effect, this means that any "business
combination" permissible under subsection 1 will also have been
permissible under section 19, but will not have occurred during
the first five years after the acquirer became an "interested
shareholder."

10 (2) Subsection 2 allows a business combination between the
11 resident domestic corporation and the interested shareholder to
12 occur after section 19's five-year period has elapsed if the
13 transaction is approved by disinterested shareholders - i.e.,
14 shareholders other than the "interested shareholder" and its
15 associates and affiliates. This subsection permits other
16 shareholders to approve a business combination after the
five-year prohibition expires, if it is their decision to do so.
The five-year prohibition prevents the "interested shareholder"
from taking quick action that could distort that choice or
otherwise be detrimental to the interests of the corporation or
its other shareholders.

17 (3) Subsection 3 protects other shareholders of the
18 resident domestic corporation as to both the amount and kind of
19 consideration they will receive, in the event a business
combination with the interested shareholder that has not been
approved under subsections 1 or 2 nonetheless takes place after
the expiration of section 19's five-year period.

20 In essence, subsection 3(a)'s rules establish that holders
21 of the corporation's "common stock" will receive, with interest,
22 no less than the greater of (a) the highest price paid by the
23 interested shareholder for such shares during the various
24 periods described in subsection 3(a)(i), or (b) the higher of
25 the market value of such shares on the two dates described in
26 subsection 3(a)(ii). In general, subsection 3(a) is intended to
ensure that holders of common stock receive no less than the
higher of (a) what they would have gotten on the original buyout
of the resident domestic corporation, plus the economic benefit
they had to forego by not being "taken out" initially, or (b)
the market value of their shares.

27 Subsection 3(b) establishes essentially identical rules to
28 protect the holders of "preferred stock" but adds a third
criterion - namely, that the consideration holders of preferred
shares receive also cannot be less than the highest preferential

1 amount to which they would be entitled on any voluntary
2 liquidation, dissolution or winding-up of the corporation, plus
3 accrued dividends if appropriate. Again, the subsection's
4 purpose is to prevent an acquirer from discriminating against
other shareholders by driving down the value of the corporation
and squeezing them out at an unfair price.

5 Subsection 3(c) requires that holders of both common and
6 preferred stock receive either cash or the same kind of
7 consideration received by the largest number of shareholders
8 previously "taken out" by the interested shareholder, and that
9 they receive such consideration promptly on the completion of
the business combination. The subsection thus prevents an
acquirer from taking unfair advantage of remaining shareholders
by giving them a form of consideration less valuable than that
previously received by other shareholders, or by delaying the
payment of such consideration.

10 Subsection 3(d) requires an "interested shareholder" to
11 purchase all remaining shares, not just one class or series.
12 Without this rule, an acquirer could "pick and choose" in a way
that harms one or another group of shareholders at a time when
they would have no effective remedy.

13 Finally, subsection 3(e) prohibits any business combination
14 that would otherwise be permissible under subsection 3 if the
15 interested shareholder has become the beneficial owner of
16 additional voting shares other than in ways permitted under this
17 Act. In effect, this subsection prevents an acquirer from
evading this Act's rules by acquiring shares in ways that would
be disadvantageous to both the selling shareholders and the
remaining shareholders.

18 Section 21. Corporations registered with SEC excepted.

19 This Act does not apply to any business combination of a
20 resident domestic corporation that does not, as of the share
21 acquisition date, have a class of voting shares registered with
22 the Securities and Exchange Commission under Section 12 of the
23 Exchange Act, unless the corporation's articles of incorporation
24 provide otherwise.

25 Note: Section 21 provides that this Act applies only to
26 resident domestic corporatoin that (a) have a class of voting
27 shares registered under sectoin 12 of the Exchange Act, 15
28 U.S.C. §781, or (b) have elected to be governed by the Act in
their articles of incorporation. Corporations that do not meet
the definition of "resident domestic corporation" - i.e., a
Nevada corporation with 200 or more shareholders, section 14 -
are not covered by the Act, regardless whether they have shares

1 registered under the Exchange act or would be willing to elect
2 governance of their articles. However, this section allows
3 corporations with 200 or more shareholders to "opt in". The
4 Act's rules are generally inappropriate for corporations with
few shareholders, and most appropriate for widely dispersed,
publicly-held corporations.

5 Section 22. Applicability of Act.

6 This Act does not apply to any business combination of a
7 resident domestic corporation the articles of incorporation of
8 which have been amended to provide that the resident domestic
9 corporation is subject to this Act and that has not had a class
10 of voting shares registered with the Securities and Exchange
11 Commission under Section 12 of the Exchange Act on the effective
12 date of the amendment, and that is a business combination with
13 an interested shareholder whose share acquisition date is before
14 the effective date of the amendment.

15 Note: Section 22 provides that the Act will not apply to a
16 business combination of a resident domestic corporation that (a)
17 amended its articles of incorporation to provide that it is
18 subject to the Act, and (b) did not have a class of voting
19 shares registered under section 12 of the Exchange Act, 15
20 U.S.C. §781, on the effective date of the amendment, if the
business combination is one with an interested shareholder whose
share acquisition date precedes the effective date of the
amendment. This rule prohibits a corporation from retroactively
prohibiting a business combination with a person who was an
interested shareholder before the corporation became subject to
the Act.

21 Section 23. Election not to be governed by Act.

22 This Act does not apply to any business combination of a
23 resident domestic corporation:

24 1. The original articles of incorporation of which
25 contain a provision expressly electing not to be governed by
26 this Act;

27 2. That, within 30 days after the effective date of this
28 Act, adopts an amendment to the resident domestic corporation's

1 bylaws expressly electing not to be governed by this Act; an
2 election under this subsection may be rescinded by subsequent
3 amendment of the bylaws; or

4 3. That adopts an amendment to the resident domestic
5 corporation's articles of incorporation, approved by the
6 affirmative vote of the holders, other than interested
7 shareholders and their affiliates and associates, of a majority
8 of the outstanding voting power of the resident domestic
9 corporation, excluding the voting shares of interested
10 shareholders and their affiliates and associates, expressly
11 electing not to be governed by this Act, if the amendment to the
12 articles of incorporation is not to be effective until eighteen
13 (18) months after the vote of the resident domestic
14 corporation's shareholders and does not apply to any business
15 combination of the resident domestic corporation with an
16 interested shareholder whose share acquisition date is on or
17 before the effective date of the amendment.

18 Note: Section 23 allows a resident domestic corporation to
19 elect, in certain circumstances, not to be governed by the Act.

20 (1) Subsection 1 authorizes a resident domestic
21 corporation's original articles of incorporation to contain a
22 provision that the corporation will not be governed by the Act.
23 The articles may thereafter be amended to "opt back in" to the
24 Act; but subsection 1's "opt out" authorization applies to the
original articles only. If a corporation's original articles
did not "opt out" of coverage, any subsequent amendment of the
articles to effect such an "opt out" must satisfy the
requirements of subsection 3.

25 (2) Subsection 2 authorizes a resident domestic
26 corporation to adopt a bylaws amendment providing that the
27 corporation would not be governed by the Act. Rescission of
28 that election by subsequent amendment of the bylaws is allowed.

29 (3) Subsection 3 allows a resident domestic corporation
currently covered by this Act to "opt out" of such coverage for
the future by appropriate amendment of its articles of

1 incorporation. However, to prevent this authority from being
2 used to circumvent the Act's protections, the amendment (a) must
3 be approved by the affirmative vote of holders of a majority of
4 the outstanding voting power other than those held by an
5 "interested shareholder" or its associates or affiliates; (b)
6 cannot take effect until at least 18 months after its adoption;
7 and (c) does not apply to a business combination with an
8 interested shareholder whose share acquisition date was on or
9 before the effective date of the amendment.

10 Section 24. Combinations involving inadvertent interested
11 shareholders excepted.

12 This Act does not apply to any business combination of a
13 resident domestic corporation with an interested shareholder of
14 the resident domestic corporation who became an interested
15 shareholder inadvertently, if the interested shareholder:

16 1. As soon as practicable, divests itself of a sufficient
17 amount of the voting power of the corporation so that it no
18 longer is the beneficial owner (directly or indirectly) of ten
19 percent (10%) or more of the outstanding voting power of the
20 resident domestic corporation; and

21 2. Would not at any time within the five (5) year period
22 preceding the announcement date with respect to the business
23 combination have been an interested shareholder but for the
24 inadvertent acquisition.

25 Note: Section 24 provides that the Act will not apply to a
26 business combination with an interested shareholder whose
27 acquisition of more than 10% of the resident domestic
28 corporation's outstanding voting power was truly inadvertent,
provided that the "inadvertent" interested shareholder (1)
divests itself "as soon as practicable" of a sufficient number
of voting shares to fall back below the 10% threshold, and (2)
but for the inadvertent acquisition, would not have been an
interested shareholder at any time during the five-year period
preceding the announcement date for the business combination.

Section 25. Interested shareholders prior to January 1,
1991, excepted.

1 This Act does not apply to any business combination with an
2 interested shareholder who was an interested shareholder on
3 January 1, 1991.

4 Note: Section 25 provides that this Act will not apply to
5 a business combination with a person who was already an
6 interested shareholder on January 1, 1991. The new rules on
7 business combinations established by the Act apply only to
persons who became interested shareholders after it was publicly
known that those rules were being considered.

8
9 SALE OF ASSETS; DISSOLUTION AND WINDING UP

10 NRS 78.565 through 78.620 No change.

11 INSOLVENCY; RECEIVERS AND TRUSTEES

12 NRS 78.622 No change.

13 NRS 78.625 Repeal.

14 Note: The original purpose of NRS 78.625 was to prevent
15 the transfer of property by directors, officers and stockholders
16 when a corporation had become insolvent. This section was
17 originally instituted in 1925 and was modeled after Section 66
18 of the Stock Corporation Law of New York. See, Caesar v.
19 Bernard, 141 N.Y.S. 659 (1913) (text of Section 66 of the Stock
20 Corporation Law). The New York law was later changed to Section
15 and then to Sections 719 and 720 of the Business Corporation
Law. Section 15 was essentially the same as Section 66 and NRS
78.625. However, Section 719 and 720 do not contain provisions
from Section 66 relating to the personal liability of directors
and officers who cause the fraudulent transfers. We could find
no current equivalent to Nevada's NRS 78.625 in modern corporate
statutory schemes.

21 The Bankruptcy Code and the Uniform Fraudulent Transfer Act
22 ("UFTA") now provide uniform, well-used and well-understood
23 protections against fraudulent transfers. The UFTA is found at
24 NRS Chapter 112. The Bankruptcy Code provisions are found at 11
25 U.S.C. §548 [preference within one year before the filing of the
bankruptcy petition] and 11 U.S.C. §547 [trustee's avoidance
powers]. NRS 78.625 merely duplicates protections for creditors
found in other, more modern and better known codes. There is no
longer any need for this statute and we recommend its repeal.

26 NRS 78.626 through NRS 78.680, inclusive. No change.

27 NRS 78.685 [Creditor or receiver may demand jury trial on
28 presentation] Adjudication of claim; [verdict subject to

1 control] appeal to court.

2 [1. Any creditor or claimant who shall, upon order of the
3 court, lay his claim before such receiver may demand that a jury
4 shall decide thereon. In like manner the receiver may demand
5 that the same shall be referred to a jury. In either case the
6 demand shall be entered on the minutes of the court, and
7 thereupon an issue shall be made up between the parties, under
8 the direction of the district court, which may order a jury
9 impaneled, as in other cases, to try the same.

10 [2. The verdict of the jury shall be subject to the
11 control of the court, as in suites originally instituted
12 therein, and when rendered, if not set aside by the court, shall
13 be certified by the clerk of the court to the receiver. The
14 creditor shall be considered in all respects as having proved
15 his debt or claim for the amount so ascertained to be due.]

16 1. The clerk of the district court, immediately upon the
17 expiration of the time fixed for the filing of claims, in
18 compliance with NRS 78.675 must notify the trustee or receiver
19 of the filing of the claims. The trustee or receiver must
20 inspect the claims and notify each claimant within thirty days
21 of his decision. The trustee or receiver may require all
22 creditors whose claims are disputed to submit themselves to an
23 examination in relation to their claims, and to produce such
24 books and papers relating to their claims as the trustee or
25 receiver requests. The trustee or receiver has the power to
26 examine, under oath or affirmation, all witnesses produced
27 before him regarding the claims, and must pass upon and allow
28 or disallow the claims, or any part thereof, and notify the

1 claimants of his determination.

2 2. Every creditor or claimant who has received notice
3 from the receiver or trustee that his claim has been disallowed
4 in whole or in part may appeal to the district court within 30
5 days thereafter. The court after hearing, shall determine the
6 rights of the parties.

7 Note: Currently, NRS 78.685 allows the creditor or
8 claimant to demand a jury trial on his claim. The jury verdict
9 is then subjected to the control of the court. None of the
10 comparable statutes have a similar provision. Under the
11 Delaware Statute, a trustee or receiver approves or disapproves
12 of a creditors claim and the creditor may then appeal to the
13 chancery court. Del. Code Ann., tit. 8, §296. Under the
14 Pennsylvania Statutes the corporation may determine whether a
15 claim should be accepted or rejected. Pa.C.S.A. §§1993; 1995.
16 Dissatisfied creditors then may presumably go to the court for
17 recompense, although the statutes does not so specifically
18 state. The Rev. MBCA does not deal with this problem.

19 The United States Bankruptcy Code states that a judge may
20 order that cases are not to be tried to the jury, unless they
21 involve personal injury or wrongful death claims.

22 I have amended this statute by deleting the current
23 language, and inserting a modified version of Del. Code Ann.,
24 tit. 8, §296. The current statute could produce major backlog
25 in a district court in a case of dissolution of a large entity,
26 such as a large insurance company. If all the creditors of an
27 insurance company could demand jury trials on their claims, the
28 court would be busy hearing these claims from now until
eternity. The Delaware system allows these claims to be
disposed of by the receiver, and allows dissatisfied creditors
to then appeal to the court. The proposed statute appears to
allow the necessary checks and balances on the receiver, while
significantly shortening the procedure.

22 NRS 78.690 Repeal.

23 Note: This section should be deleted because the revision
24 of NRS 78.685 has deleted the option of a jury trial.

25 NRS 78.695 through NRS 78.720, inclusive. No change.

26 REINCORPORATION; RENEWAL AND REVIVAL OF CHARTERS

27 NRS 78.725 through NRS 78.740, inclusive. No change.

28 SUITS AGAINST CORPORATIONS DIRECTORS, OFFICERS,
EMPLOYEES, AGENTS AND STOCKHOLDERS

1 NRS 78.745 through NRS 78.752, inclusive. No change.

2 FEE PAYABLE TO SECRETARY OF STATE

3 NRS 78.755 Secretary of state to collect required
4 fees[.]; power to employ new technology.

5 1. The secretary of state, for services relating to his
6 official duties and the records of his office, shall charge and
7 collect the fees designated in NRS 78.760 to 78.785, inclusive.

8 2. The secretary of state has authority to accept the
9 filing of documents by facsimile machine and to employ new
10 technology to aid in the performance of all duties required by
11 law. The secretary of state may establish rules, fee schedules
12 and regulations not inconsistent with law, for filing documents
13 by facsimile machine and for the adoption, employment and use
14 of new technology in the performance of his duties.

15 NRS 78.760 Filing fees: Articles of incorporation [and
16 agreements of consolidation].

17 1. The fee for filing articles of incorporation [or
18 agreements of consolidation providing for shares] is prescribed
19 in the following schedule:

20 If the [amount represented by the total] number of shares
21 provided for in the articles or agreement is:

22	[\$]25,000 or less	\$125
	Over [\$]25,000 and not over [\$]75,000	175
23	Over [\$]75,000 and not over [\$]200,000	225
	Over [\$]200,000 and not over [\$]500,000	325
24	Over [\$]500,000 and not over [\$]1,000,000	425
	Over [\$]1,000,000:	
25	For the first [\$]1,000,000	425
	For each additional [\$]500,000	
26	or fraction thereof	225

27 2. The maximum fee which may be charged under this section
28 is \$25,000 for:

1 (a) The original filing of articles of incorporation or
2 agreements of consolidation.

3 (b) A subsequent filing of any instrument which authorizes
4 an increase in [capital stock] the number of shares.

5 [3. For the purposes of computing the filing fees
6 according to the schedule in subsection 1, the amount
7 represented by the total number of shares provided for in the
8 articles of incorporation or the agreement of consolidation is:

9 (a) The aggregate par value of the shares, if only shares
10 with a par value are therein provided for;

11 (b) The product of the number of shares multiplied by \$10,
12 regardless of any lesser amount prescribed as the value or
13 consideration for which shares may be issued and disposed of, if
14 only shares without par value are therein provided for; or

15 (c) The aggregate par value of the shares with a par value
16 plus the product of the number of shares without par value
17 multiplied by \$10, regardless of any lesser amount prescribed as
18 the value or consideration for which the shares without par
19 value may be issued and disposed of, if shares with and without
20 par value are therein provided for.

21 The value of a corporate share must not be less than one-tenth
22 of a cent.]

23 Note: Since we advocate abolishing par/no par stock, the
24 sliding scale filing fee schedule must now be based on the
25 number of shares. We have simply dropped the dollar signs and,
translating the fee schedule into the par value concept, in
effect assume a par value of \$1.00 per share.

26 Subsection 3 may be dropped altogether. It is now
27 irrelevant.

28 NRS 78.765 Filing fees: Certificate of amendment

1 increasing authorized capital stock.

2 1. The fee for filing a certificate of amendment to a
3 certificate of incorporation in order to increase the
4 corporation's [authorized capital stock] number of shares is the
5 difference between the fee computed at the rates specified in
6 NRS 78.760 upon the total [authorized capital stock] number
7 of shares of the corporation, including the proposed increase,
8 and the fee computed at the rates specified in NRS 78.760 upon
9 the total [authorized capital] number of shares, excluding the
10 proposed increase.

11 2. In no case may the amount be less than \$75.

12 NRS 78.767 No change.

13 NRS 78.770 Filing fees: [Certificate of consolidation or
14 merger] articles of merger or share exchange.

15 1. The fee for filing [a certificate of consolidation or
16 merger] articles of merger of two or more domestic corporations
17 is the difference between the fee computed at the rates
18 specified in NRS 78.760 upon the aggregate [authorized capital
19 stock] number of shares of the corporation created by the
20 [consolidation or] merger and the fee so computed upon the
21 aggregate [amount of the total authorized capital stock] number
22 of shares of the constituent corporations.

23 2. The fee for filing [a certificate of consolidation or]
24 articles of merger of one or more domestic corporations with one
25 or more foreign corporations is the difference between the fee
26 computed at the rates specified in NRS 78.760 upon the aggregate
27 [authorized capital stock] number of shares of the corporation
28 created by the [consolidation or] merger and the fee so computed

1 upon the aggregate [amount of the total authorized capital
2 stock] number of shares of the constituent corporations which
3 have paid fees as required by NRS 78.760 and 80.050.

4 3. In no case may the amount paid be less than \$75, and in
5 no case may the amount paid pursuant to subsection 2 exceed
6 \$25,000.

7 4. The fee for filing articles of share exchange is \$125.

8 NRS 78.775 Filing fees: Certificate of amendment not
9 increasing [authorized capital stock] number of shares;
10 certificates of [reduction of capital and retirement of
11 preferred stock.

12 The fee for filing:

13 1. An amended certificate of incorporation before payment
14 of capital and not involving an increase of [authorized capital
15 stock] the number of shares; or

16 2. An amendment to the certificate of incorporation not
17 involving an increase of [authorized capital stock;] the number
18 of shares

19 [3. A certificate of reduction of capital; or

20 [4. A certificate of retirement of preferred stock]
21 is \$75.

22 Note: Corporations no longer need to reduce capital since
23 the distinctions between par and no par stock, the requirement
24 of capital, and preferred stock no longer exist. Thus,
subsections 3 and 4 are no longer necessary.

25 NRS 78.780 No change.

26 NRS 78.785 Miscellaneous fees.

27 1. The fee for filing a certificate of change of location
28 of a corporation's principal office or resident agent, or a new

1 designation of resident agent is \$15.

2 2. The fee for filing a designation of resident agent,
3 other than as provided in NRS 78.160, is \$25.

4 3. The fee for certifying articles of incorporation where
5 a copy is provided is \$10.

6 4. The fee for certifying a copy of an amendment to
7 articles of incorporation, or to a copy of the articles as
8 amended where a copy is furnished, is [\$5] \$10.

9 5. The fee for certifying an authorized printed copy of
10 the general corporation law as compiled by the secretary of
11 state is [\$5] \$10.

12 6. The fee for certifying the reservation of a corporate
13 name is [\$10] \$20.

14 7. The fee for executing a certificate of corporate
15 existence which does not list the previous documents relating to
16 the corporation, or a certificate of change in a corporate name,
17 is [\$10] \$15.

18 8. The fee for executing, certifying or filing any
19 certificate not provided for in NRS 78.760 to 78.785, inclusive,
20 is \$20.

21 9. The fee for comparing any document or paper submitted
22 for certification, with the record thereof, to ascertain whether
23 any corrections are required to be made before certifying, is 20
24 cents for each folio of 100 words of each document or paper
25 compared.

26 10. The fee for copies made at the office of the secretary
27 of state is \$1 per page.

28 11. The fee for copying and providing the copy of the list

1 of the corporate officers is the fee for copying the necessary
2 pages.

3 12. The fee for filing a certificate of the change of
4 address of a resident agent is \$15, plus \$1 for each corporation
5 which he represents.

6 13. The fee for filing articles of incorporation,
7 [agreements or certificates of consolidation,] certificates of
8 merger or certificates of amendment increasing the basic surplus
9 of a mutual or reciprocal insurer must be computed pursuant to
10 NRS 78.760, 78.765 and 78.770, on the basis of the amount of
11 basic surplus of the insurer.

12 14. The fee for reviewing documents before filing and
13 informing the person submitting the document whether or not
14 the document may be lawfully filed is \$100.

1 doing business in this state [include]:

2 [1.] (a) Maintaining, defending, or settling any
3 proceeding;

4 (b) Holding meetings of the board of directors or
5 stockholders or carrying on other activities concerning internal
6 corporate affairs;

7 (c) Maintaining bank accounts;

8 (d) Maintaining offices or agencies for the transfer,
9 exchange, and registration of the corporation's own securities
10 or maintaining trustees or depositaries with respect to those
11 securities;

12 (e) Making sales through independent contractors;

13 [2.] (f) Soliciting or receiving orders, outside this
14 state through or in response to letters, circulars, catalogs or
15 other forms of advertising, accepting those orders outside of
16 this state and filling them by shipping goods into this state;
17 [and]

18 (g) Creating or acquiring indebtedness, mortgages,
19 and security interests in real or personal property;

20 (h) Securing or collecting debts or enforcing
21 mortgages and security interests in property securing the debts;

22 (i) Owning, without more, real or personal property;

23 [3.] (j) Isolated transactions completed within 30 days
24 and not a part of a series of similar transactions

25 (k) The production of motion pictures as defined in
26 NRS 231.020; and

27 (l) Transacting business in interstate commerce.

28 2. The list of activities in subsection 1 is not

1 exhaustive.

2 3. A person which is not doing business in this state
3 pursuant to the provisions of this section is not required to
4 qualify or comply with any provision of NRS 80.010 to 80.230,
5 inclusive, chapter 645B of NRS or Titles 55 and 56 of NRS unless
6 such person:

7 (a) Maintains an office in this state for the
8 transaction of business, or

9 (b) Solicits or accepts deposits in the state, except
10 pursuant to NRS 666.225 to 666.375, inclusive.

11 4. For the purposes of this section:

12 (a) A solicitation of a deposit is made in this
13 state, whether or not either party is present in this state, if
14 the solicitation:

15 (1) Originates in this state; or

16 (2) Is directed by the solicitor to a destination in this
17 state and received where it is directed, or at a post office
18 in this state if the solicitation is mailed.

19 (b) A solicitation of a deposit is accepted in this
20 state if acceptance:

21 (1) Is communicated to the solicitor in this state; and

22 (2) Has not previously been communicated to the
23 solicitor, orally or in writing, outside this state.

24 Acceptance is communicated to the solicitor in this state,
25 whether or not either party is present in this state, if the
26 depositor directs it to the solicitor reasonably believing the
27 solicitor to be in this state and it is received where it is
28 directed, or at any post office in this state if the acceptance

1 is mailed.

2 (c) A solicitation made in a newspaper or other
3 publication of general, regular and paid circulation is not made
4 in this state if the publication:

5 (1) Is not published in this state; or

6 (2) Is published in this state but has had more than
7 two-thirds of its circulation outside this state during the
8 12 months preceding the solicitation. If a publication is
9 published in editions, each edition is a separate publication
10 except for material common to all editions.

11 (d) A solicitation made in a radio or television
12 program or other electronic communication received in this state
13 which originates outside this state is not made in this state.
14 A radio or television program or other electronic communication
15 shall be deemed to have originated in this state if the
16 broadcast studio or origination source of transmission is
17 located within the state, unless:

18 (1) The program or communication is syndicated and
19 distributed from outside this state for redistribution to
20 the general public in this state;

21 (2) The program is supplied by a radio, television or
22 other electronic network with electronic signal originating
23 from outside this state for redistribution to the general
24 public in this state;

25 (3) The program or communication is an electronic signal
26 that originates outside this state and is captured for
27 redistribution to the general public in this state by a
28 community antenna or cable, radio, cable television or other

1 electronic system; or

2 (4) The program or communication consists of an
3 electronic signal which originates within this state, but which
4 is not intended for redistribution to the general public in this
5 state.

6 Note: NRS 80.015 was added to the NRS during the 1989
7 legislative session. The above additions to subsection 1 of the
8 statute are based primarily on Section 15.01 of the Model
9 Business Corporation Act ("MBCA"). Approximately thirty-eight
10 jurisdictions have provisions which are the same or similar to
11 the MBCA. The listed activities were believed to be appropriate
12 by the drafters of the MBCA and the legislatures of these states
13 in order to eliminate the frequent ambiguity which arises when
14 the concept of "doing business" is litigated in the courts, and
15 to provide for consistency in result. See MBCA Section 15.01
16 and Official Comment thereto.

17 The most expansive, and perhaps controversial, portions are
18 subsections 1(g) and 1(h). Inclusion of these subsections would
19 eliminate the need for NRS 80.240 through 80.260, inclusive,
20 with respect to "short-form" qualification of entities which
21 conduct certain activities involving secured lending in the
22 state. However, subsection 1(g) differs from the MBCA provision
23 when taken in combination with subsection 3 in that the
24 solicitation or acceptance of deposits in Nevada would expressly
25 require qualification to do business. Subsection 4 contains the
26 definitional provisions with respect to the solicitation or
27 acceptance of deposits which are presently contained in NRS
28 80.240(6).

Subsection 1(k) carries over the limited exemption for the
production of motion pictures currently contained in NRS
80.240(1)(g). Inclusion of this provision should continue to
encourage the production of motion pictures in Nevada.

Subsection 3 is intended to clarify that irrespective of
whether or not a foreign corporation only conducts the types of
business enumerated in subsection 1, the foreign corporation
must qualify if it maintains an office in Nevada for the
transaction of business. Subsection 3 also carries over from
NRS 80.240(5) the concept that a person which is otherwise
exempt from qualification and which does not (a) maintain an
office in the state for the transaction of business, or (b)
solicit or accept deposits in this state, is exempt from the
provisions of NRS Chapter 645B and NRS Titles 55 and 56.

Two of the terms used in the above amendment are
defined in the NRS 0.037 and 0.039. NRS 0.037 provides that
"mortgage" includes a deed of trust, and NRS 0.039 contains a
broad definition of "person" including the various entities that

1 are subject to the substantive requirements of NRS Chapter 80.

2 Whether or not to enact these amendments is a policy
3 question. As stated above, most jurisdictions and the MBCA have
4 provisions similar in effect to those outlined above. On the
5 negative side, enactment of these provisions may result in a
6 loss of revenue due to fewer qualification filings. On the
7 positive side, enactment would potentially encourage the inflow
8 of capital into this state from foreign lenders and would
9 provide a more definitive set of standards which should reduce
10 litigation. In addition, we are informed that the number of
11 corporations which are using the existing "short-form"
12 qualification procedures is relatively insubstantial. On
13 balance, we would recommend passage.

14 NRS 80.190 through 80.180 No change.

15 NRS 80.190 Repeal.

16 Note: NRS 80.190 requires a foreign corporation to
17 annually publish a statement of its last calendar year's
18 business. This requirement only applies to foreign
19 corporations, and not to Nevada corporations.

20 An equal protection challenge to this statute is
21 conceivable, as there is no apparent rational basis for the
22 different treatment of domestic and foreign corporations. To
23 the extent that the information published serves a valid public
24 purpose, it would appear that such a justification would apply
25 with equal force to a Nevada corporation. Moreover, several of
26 the people responding to our survey recommended repeal of this
27 section.

28 NRS 80.200 through 80.230 No change.

NRS 80.240 through 80.260 Repeal.

NRS 80.270 No change.

Nonprofit

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1 stockholders and stock which are inapplicable to nonprofits.
2 All the Chapter 78 statutes anticipate stockholders with
3 pecuniary motives will closely oversee the management of their
4 corporation.

5 After examining these problems, we concluded that we had no
6 choice but to draft a completely new nonprofit corporation law.
7 This law is intended to replace the two types of nonprofit
8 corporations found in Chapter 81, the cemetery associations in
9 Chapter 83, the hospitals and charitable asylums found in
10 Chapter 85 and both types of nonprofits found in Chapter 86. We
11 recommend repeal of all those statutes.

12 The statutes creating the three types of cooperatives found
13 in Chapter 81 should remain. One of the cooperative
14 associations, NRS 81.010 through 81.160, inclusive, anticipates
15 the issuance of stock. Therefore, we provided in this new
16 nonprofit corporation law and in changes to NRS 81.010, that
17 Chapter 78 will continue to govern all matters not specifically
18 provided for in those statutes.

19 The other two kinds of cooperative associations do not
20 anticipate the issuance of stock. Therefore, we have provided
21 that the new nonprofit corporation law generally applies to
22 them, except for two specific exceptions and except as
23 specifically otherwise provided in the Chapter 81 statutes.

24 We recommend the repeal of Chapter 82. We provide in the
25 new nonprofit corporation law that the Chapter 82 corporations
26 continue to exist as presently constituted for two more years.
27 In that two year period, they must file articles of
28 incorporation under the new nonprofit corporation law. After
the two year period expires, their existence automatically
ceases.

We recommend the repeal of Chapters 83, 85 and 86 (with a
few exceptions). Those corporations will continue to exist but
will, after the passage of the nonprofit corporation law, be
governed by the nonprofit corporation law exclusively.

GENERAL PROVISIONS

Section 1. Definitions; construction.

1. As used in this chapter:

(a) "Articles of incorporation" and "articles" are
synonymous terms and unless the context otherwise requires,
include all certificates filed pursuant to Sections 7, 60, 62,
64 and 65, inclusive, and any agreement of merger filed pursuant
to Sections 66 to 73, inclusive.

1 (b) "Directors" and "trustees" are synonymous terms.

2 (c) Unless otherwise provided in the articles or bylaws,
3 the word "member" means (without regard to what a person is
4 called in the articles or bylaws) any person or persons who on
5 more than one occasion has the right pursuant to the articles or
6 bylaws to vote for the election of a director or directors. A
7 person is not a member by virtue of any rights he has as a
8 delegate or director or any rights he has to designate a
9 director or directors.

10 (d) "Principal office," "principal place of business," and
11 "principal office in this state," are synonymous terms referring
12 to the office maintained in this state as required by NRS

13 _____.

14 (e) "Public benefit corporation" is a corporation formed
15 or existing pursuant to this chapter that: (i) is recognized as
16 exempt under section 501(c)(3) of the Internal Revenue Code of
17 1954 in effect on October 1, 1991, future amendments to such
18 section and the corresponding provisions of the future Internal
19 Revenue laws; (ii) is organized for a public or charitable
20 purpose and which upon dissolution must distribute its assets to
21 the United States, a state or a person which is recognized as
22 exempt under §501(c)(3) of the Internal Revenue Code as
23 described above; or (iii) is organized only for a public or
24 charitable purpose and not for the private gain or benefit of
25 any person.

26 (f) "Receiver" includes receivers and trustees appointed
27 as provided in this chapter.

28 2. As used in Section 5 through Section 98, except as the

1 context otherwise requires, "corporation" means a corporation
2 organized or governed by this chapter.

3 3. General terms and powers given in this chapter must
4 not be restricted by the use of special terms, or be held to be
5 restricted by any grant of special powers contained in this
6 chapter.

7 Note: Adapted from NRS 78.010; subsection (e) is adapted
8 from NRS 81.570, Minn. Nonprofit Corp. Act §317A.813(i),
9 Tennessee Nonprofit Corp. Act §98-68-104 and Cal. Corp. Code
§5130; subsection (f) is adapted from Rev. MNPCA §1.40(21).

10 The definition of "articles of incorporation," etc. are
carried over from existing NRS 78.010.

11 The definition of "public benefit corporation" is for use
12 in statutes requiring public benefit corporations to submit
13 copies of the documents to the attorney general's office a
14 certain number of days before filing amendments to the articles
15 or dissolving or merging with other corporations. This allows a
16 heightened degree of attorney general oversight to make sure
assets given to public benefit corporations are not diverted to
private use, thereby violating the public trust such
corporations hold, the conditions by which the corporation may
have acquired assets or the representations made to the public
when assets or money were solicited from the public.

17 The definition of the word "corporation" is provided to
18 avoid constantly repeating throughout the statutes "a
19 corporation organized pursuant to this chapter" or similar
20 wording. The definition does not apply to Sections 2, 3 and 4.
Those statutes discuss corporations existing before the new
nonprofit corporation scheme goes into effect.

21 The definition of "member" is added to ensure that
22 organizations with many people using their services often called
"members" -- like the Y.M.C.A. -- are not required to send all
notices to all those people.

23 Section 2. Applicability of chapter; effect on
24 corporations existing before October 1, 1991.

25 1. This chapter applies to the following corporations,
26 which are hereafter governed by the provisions of this chapter:

27 (a) Corporations hereafter organized in this state
28 pursuant to the provisions of this chapter.

1 (b) Corporations organized pursuant to the following
2 repealed statutes as they existed on September 30, 1991 and all
3 predecessor acts: NRS 81.290 through 81.340, inclusive; NRS
4 81.350 through 81.400 inclusive; NRS 83.010 through 83.100
5 inclusive; NRS 85.010 through 85.070, inclusive; and NRS 86.010
6 through 86.190.

7 (c) Except where the following statutes are inconsistent
8 with the provisions of this chapter, corporations organized
9 pursuant to: NRS 81.170 through 81.280, inclusive; and NRS
10 81.410 through 81.540, inclusive.

11 (d) Corporations organized and still existing pursuant to
12 the statutes described in subsection 1(b) above whose charters
13 are renewed or revived in the manner provided in this chapter.

14 (e) Corporations having shares or capital stock organized
15 and existing on September 30, 1991 pursuant to the statutes
16 described in subsection 1(b) and 1(c) above and subsection 2
17 below which elect to accept this chapter as provided in
18 Section 3.

19 2. Except as otherwise specifically provided therein,
20 corporations organized and existing pursuant to NRS 81.010
21 through 81.160, inclusive, and predecessor acts, are governed by
22 the provisions of NRS Chapter 78.

23 3. Except as provided in subsection 4, neither the
24 existence of corporations formed or existing before October 1,
25 1991, nor any liability, cause of action, right, privilege or
26 immunity validly existing in favor of or against any such
27 corporation on October 1, 1991, are affected, abridged, taken
28 away or impaired by this chapter, or by any change in the

1 requirements for the formation of corporations provided by this
2 chapter, nor by the amendment or repeal of any laws under which
3 such prior existing corporations were formed or created.

4 4. Corporations existing, or organized and existing,
5 pursuant to NRS 82.010 through 82.690 and NRS 86.100 through
6 86.180, as those statutes existed on September 30, 1991, and all
7 predecessor acts, continue to exist and are governed by this
8 chapter until October 1, 1993 when their existence shall cease.
9 However, at any time before October 1, 1993, any such
10 corporation may file articles with the secretary of state
11 conforming to the requirements of this chapter, or conforming to
12 the requirements of NRS Chapter 84, and stating that the
13 corporation elects to be governed by this chapter or by NRS
14 Chapter 84. Upon filing those articles with the secretary of
15 state as described above, the existence of any such corporation
16 continues and the corporation is thereafter governed by the
17 provisions of this chapter or by the provisions of NRS Chapter
18 84 and this chapter, as set forth in the articles which are so
19 filed.

20 Note: Adapted generally from NRS 78.015; subsection (1) is
21 adapted from Model Non-Profit Corporation Act §83(c).

22 We recommend that both the nonprofit corporations provided
23 for in existing Chapter 81 (existing NRS 81.290-81.400) be
24 repealed. All three types of cooperatives in Chapter 81 will
remain. Chapters 82, 83, 85 and 86 will be repealed for the
most part. Chapter 84 (corporations sole, most particularly the
Catholic Church) remains in force.

25 The cooperatives formed pursuant to existing NRS 81.010
26 through 81.150, labeled "Nonprofit Cooperative Corporations",
27 are able to issue stock. The new nonprofit corporation law
28 forbids the issuance of stock and does not discuss the rights of
stockholders. Thus, those co-ops will be governed by Chapter
78, (which provides for stock and the rights of stockholders)
except as specifically provided in their special statutes.

1 We recommend that Chapter 82 be repealed. This chapter
2 deems certain lodges and fraternities, two churches, the
3 American Legion, the V.F.W., the WCTU and the Nevada Library
4 Association to be "bodies corporate and politic." None of these
5 organizations (except the WCTU) were required to file articles
with the secretary of state's office. Chapter 82 appears to be
one creating corporations by special acts of the legislature,
forbidden by the Nevada Constitution, Article 8, Section 1.

6 NRS 86.100 through 86.180 allows the incorporation of
7 "churches, congregations, religious, moral, beneficial,
8 charitables, literacy or scientific associations or societies"
9 by filing a "certificate of appointment of the trustees or
10 directors" with the county clerk. In keeping with the universal
practice of a central state filing place for articles, we
believe full articles of incorporation should be filed in the
secretary of state's office for each of these entities. We
believe we should abolish the extremely antiquated statutes by
which each of them were formed.

11 Under subsection 4, each of these Chapter 82 and NRS 86.100
12 through 86.180 corporations have 2 years from the projected
13 effective date of the new act to file new articles and conform
14 with the requirements of the new nonprofit chapter or form a
15 corporation sole under Chapter 84 if they are a hierarchial
church. If they do not file new articles under either this
chapter or Chapter 84, their existence ceases on October 1,
1993.

16 October 1, 1991 is the reference date since a new set of
17 statutes written during the 1991 session will go into effect
then.

18 Section 3. Stock corporations; procedures to accept
19 chapter.

20 Any corporation with shares or capital stock organized
21 pursuant to the statutes described in 81.015(1)(b), 1(c) and
22 (2), may elect to accept this chapter in the following manner:

23 1. If there are members or stockholders entitled to vote
24 thereon, the board of directors must adopt a resolution
25 recommending that the corporation accept this chapter, adopt new
26 articles of incorporation conforming to this chapter and any
27 other statutes pursuant to which the corporation may have been
28 organized and directing that the question of such acceptance and

1 adoption be submitted to a vote of an annual or special meeting
2 of the members or stockholders entitled to vote thereon.

3 Written notice stating that the purpose, or one of the purposes,
4 of such meeting is to consider electing to accept this chapter
5 and the adoption of new articles of incorporation must be given
6 to each member and stockholder entitled to vote at such meeting,
7 within the time and in the manner provided in this chapter for
8 the giving of notice of meetings of members. The election to
9 accept this chapter and adopt new articles of incorporation
10 require for adoption at least a majority of the votes which
11 members or stockholders present at such meeting in person or by
12 proxy are entitled to cast.

13 2. If there are no members or stockholders entitled to
14 vote thereon, election to accept this chapter and adopt new
15 articles of incorporation conforming to the provisions of this
16 chapter may be made at a meeting of the board of directors
17 pursuant to majority vote of the directors in office.

18 3. A certificate of election to accept this chapter must
19 be signed by the president or a vice president and by the
20 secretary or an assistant secretary and acknowledged in the
21 manner prescribed by NRS 14.270 before a person authorized by
22 the laws of this state to take acknowledgments of deeds and must
23 set forth:

24 (a) The name of the corporation.

25 (b) A statement by the corporation that it has elected to
26 accept this chapter and adopt new articles of incorporation
27 conforming to the provisions of this chapter and any other
28 statutes pursuant to which the corporation may have been

1 organized.

2 (c) If there are members or stockholders entitled to vote
3 thereon, a statement setting forth the date of the meeting of
4 such members or stockholders at which the election to accept
5 this chapter and adopt new articles was made, that a quorum was
6 present at such meeting and that such acceptance and adoption
7 was authorized by at least a majority of the votes which members
8 or stockholders present at such meeting in person or by proxy
9 were entitled to cast.

10 (d) If there are no members or stockholders entitled to
11 vote thereon, a statement of such fact, the date of the meeting
12 of the board of directors at which election to accept and adopt
13 was made, that a quorum was present at such meeting and that
14 such acceptance and adoption was authorized by a majority vote
15 of the directors present at such meeting.

16 (e) A statement that, in addition, the corporation
17 followed the requirements of the law under which it was
18 organized, its old articles of incorporation and its old bylaws
19 so far as applicable in effecting such acceptance.

20 (f) A statement that the attached copy of the articles of
21 incorporation of the corporation shall be the new articles of
22 incorporation of the corporation.

23 (g) If the corporation has issued shares of stock, a
24 statement of such fact including the number of shares
25 theretofore authorized, the number issued and outstanding and
26 that from and after the effective date of the certificate of
27 acceptance the authority of the corporation to issue shares of
28 stock shall be thereby terminated.

1 4. The certificate so signed and acknowledged must be
2 filed in the office of the secretary of state.

3 5. Upon the issuance of a certificate of acceptance, the
4 election of the corporation to accept this chapter is effective
5 and the corporation has the powers and privileges and is subject
6 to the duties, restrictions, penalties and liabilities given to
7 and imposed upon the corporation by this chapter and by any
8 other statutes pursuant to which it was created. The articles
9 of incorporation attached to the certificate are thereafter the
10 articles of incorporation of the corporation. The holders of
11 shares of stock issued by the corporation shall thereafter be
12 members of the corporation with one vote for each share of stock
13 so surrendered, unless the articles so adopted and attached to
14 the certificate provide otherwise.

15 Note: Adapted from optional provisions of MN-PCA, §§37A,
16 37B, 37C and 37D.

17 The Model Non-Profit Corporation Act notes that certain
18 states have nonprofit corporation laws permitting the issuance
19 of stock. Like the MN-PCA, this new non-profit corporation law
20 does not permit the issuance of stock. At least one of the
21 co-ops provided for in existing Chapter 81 permits the issuance
22 of stock. We provide at Section 2(1)(d) that the new chapter
does not apply to the stock non-profit co-ops which do not
choose to be converted into nonprofit corporations without
shares pursuant to this new chapter. If they do so choose to be
converted, they are governed by the new chapter, as well as the
special statutes pursuant to which they were formed.

23 Section 4. Limitations on incorporation under chapter;
24 compliance with other laws.

25 No insurance company, stock fire insurance company, surety
26 company, express company, trust company, stock savings and loan
27 association, or corporation organized for the purpose of
28 conducting a banking business may be organized under this

1 chapter.

2 Note: Adapted from NRS 78.020.

3 This statute removes from the operation of this chapter
4 many of the entities removed from Chapter 78 of the NRS. No
5 stock insurance companies or stock savings and loan associations
6 should be governed by this chapter. However, mutual insurance
7 companies and mutual savings and loan associations should be
8 governed by co-op statutes two of which are, except as
9 specifically provided in their special statutes, governed by
10 this chapter. Banks have a stand-alone corporation law of their
11 own. The other companies listed are identical with those
12 excepted from the coverage of Chapter 78, as provided in NRS
13 78.020.

14 Section 5. Reserved power of state to amend or repeal
15 chapter; chapter part of corporation's charter.

16 This chapter may be amended or repealed at the pleasure of
17 the legislature, and every corporation created under this
18 chapter, or availing itself of any of the provisions of this
19 chapter, and all members and delegates of such corporation shall
20 be bound by such amendment. Such amendment or repeal shall not
21 take away or impair any remedy against any corporation, or its
22 officers, for any liability which shall have been previously
23 incurred. This chapter, and all amendments thereof, shall be a
24 part of the charter of every corporation, except so far as the
25 same are inapplicable and inappropriate to the objects of the
26 corporation.

27 Note: Adapted from NRS 78.025.

28 Section 6. Corporate documents: Microfilming and return.

The secretary of state may microfilm any document which is
filed in his office by a corporation pursuant to this chapter
and may return the original document to the corporation.

Note: Adapted from NRS 78.027.

28

1
2 FORMATION

3 Section 7. Filing of articles of incorporation and
4 certificate of acceptance of appointment of resident agent.

5 1. One or more natural persons may associate to establish
6 a corporation no part of the income or profit of which is
7 distributable to its members, directors or officers, except as
8 provided in this chapter, for the transaction of any lawful
9 business, or to promote or conduct any legitimate object or
10 purpose, pursuant and subject to the requirements of this
11 chapter, by:

12 (a) Executing, acknowledging and filing in the office of
13 the secretary of state articles of incorporation;

14 (b) Filing a certificate of acceptance of appointment,
15 executed by the resident agent of the corporation, in the office
16 of the secretary of state.

17 2. The articles of incorporation must be as provided in
18 Section 8, and the secretary of state must require it to be in
19 the form prescribed. If any articles are defective in this
20 respect, the secretary of state must return them for correction.

21 Note: Adapted from NRS 78.030.

22 We have placed the definition of a nonprofit corporation
23 found in many statutory schemes in this statute at the preamble
24 to subsection 1.

25 We have omitted provisions for filing copies of the
26 articles with the county clerk. Since this report on Chapter 78
27 recommends eliminating that requirement from Chapter 78, we
28 anticipate eliminating it from this new chapter as well.

Section 8. Articles of incorporation: Required provisions.

The articles of incorporation must set forth:

1. The name of the corporation. A name appearing to be

1 that of a natural person and containing a given name or initials
2 must not be used as a corporate name except with an additional
3 word or words such as "Incorporated," "Limited," "Inc.," "Ltd.,"
4 "Company," "Co.," "Corporation," "Corp.," or other word which
5 identifies it as not being a natural person.

6 2. The name of the county, and the city or town, and the
7 place within the county, city or town in which its principal
8 office or place of business is to be located in this state,
9 giving the street and number wherever practicable, and if not so
10 described as to be easily located within the county, city or
11 town, the secretary of state shall refuse to issue this
12 certificate until the location is marked and established.

13 3. That the corporation is a nonprofit corporation.

14 4. The nature of the business, or objects or purposes
15 proposed to be transacted, promoted or carried on by the
16 corporation. It is sufficient to state, either alone or with
17 other purposes, that the corporation may engage in any lawful
18 activity, subject to expressed limitations, if any. Such a
19 statement makes all lawful activities within the objects or
20 purposes of the corporation.

21 5. Whether the members of the governing board must be
22 styled directors or trustees of the corporation, and the number,
23 names and post office, street or business addresses of the first
24 board of directors or trustees, together with any desired
25 provisions relative to the right to change the number of
26 directors as provided in Section 47.

27 6. The names and post office, street or business
28 addresses of each of the incorporators signing the articles of

1 incorporation.

2 7. Whether or not the corporation is to have perpetual
3 existence, and, if not, the time when its existence is to cease.

4 Note: Adapted from NRS 78.035.

5 Most of this is taken directly from NRS 78.035. New
6 subsection 3 requires a statement that the corporation is a
7 nonprofit corporation. This statute omits NRS 78.035(4)
discussing stock and 78.035(6) discussing par value and
assessability.

8 Section 9. Articles of incorporation: Optional provisions.

9 The articles of incorporation may also contain:

10 1. A provision eliminating or limiting the personal
11 liability of a director or officer to the corporation or its
12 members for damages for breach of fiduciary duty as a director
13 or officer, but such a provision must not eliminate or limit the
14 liability of a director or officer for:

15 (a) Acts or omissions which involve intentional
16 misconduct, fraud or a knowing violation of law; or

17 (b) The payment of distributions in violation of Section
18 35.

19 2. Any provision subordinating the corporation to the
20 authority of a head organization or any person, and providing
21 for its dissolution when its charter is surrendered to, taken
22 away by or revoked by the head organization or any person
23 granting it.

24 3. Any provision providing that, upon dissolution of the
25 corporation and the payment of its debts and the provision for
26 other matters as required by this chapter, the assets of the
27 corporation shall be distributed to the head organization or any
28 person.

1 4. Any provision allowing members or directors, or
2 classes of members or directors, to have more or less than one
3 vote in any election or any other matter presented to the
4 members or directors for a vote.

5 5. Any provision allowing or providing for delegates with
6 some or all the authority of members.

7 6. Any provision, not contrary to the laws of this state,
8 for the management of the business and for the conduct of the
9 affairs of the corporation, and any provision creating,
10 defining, limiting or regulating the powers of the corporation
11 or the rights, powers or duties of the directors, members (if
12 any) or delegates (if any), or any class of members, delegates,
13 or directors, or the holders of bonds as other obligations of
14 the corporation.

15 Note: Adapted from NRS 78.037; subsections 2-4 adapted
16 from Cal. Corp. Code §9132.

17 Subsections 2 through 4 are necessary for certain nonprofit
18 corporations. Subsection (2) provides for the authority of a
19 head organization, like a subordinate lodge to the grand dragon
20 of a lodge of some kind or a superior church. Subsection (3)
21 provides for distribution of assets upon dissolution to the head
22 corporation. Subsection (5) allows delegates. The Nevada
23 Medical Association is an organization providing that members
24 elect delegates who in turn elect directors. Subsection (6) is
25 adapted from existing NRS 78.037(2) but substituting members and
26 delegates for stockholders in the statutory language.

27 Section 10. Name of corporation: Use of indistinguishable
28 name prohibited; exception.

1 1. Except as otherwise provided in subsection 2, the
2 secretary of state must refuse to accept for filing in his
3 office the articles of any corporation whose name cannot be
4 distinguished from:

5 (a) The name of any other corporation formed or

IN THE SUPREME COURT OF THE STATE OF NEVADA

WYNN RESORTS LIMITED,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK; AND THE
HONORABLE ELIZABETH
GONZALEZ, DISTRICT JUDGE,
DEPT. XI,

Respondent,

and

KAZUO OKADA, UNIVERSAL
ENTERTAINMENT CORP.
AND ARUZE USA, INC.,

Real Parties in Interest.

Case No. _____

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Tracie K. Lindeman
Clerk of Supreme Court
**APPENDIX IN SUPPORT OF
WYNN RESORTS, LIMITED'S
PETITION FOR WRIT OF
PROHIBITION OR
ALTERNATIVELY, MANDAMUS**

VOLUME I OF VI

DATED this 29th day of March, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 29th day of March, 2016, I electronically filed and served by electronic mail and United States Mail a true and correct copy of the above and foregoing **APPENDIX IN SUPPORT OF PETITIONER WYNN RESORTS LIMITED'S PETITION FOR WRIT OF PROHIBITION OR ALTERNATIVELY, MANDAMUS** properly addressed to the following:

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78.NV
1990

STUDY OF NEVADA CORPORATE LAW

**VARGAS & BARTLETT
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We had the invaluable assistance and advice from a large number of people. First, we must recognize the invaluable assistance, patience and tolerance of Karen Easton who, under great pressure, exhibited serenity, and cheerfully gave technical advice and expertise. She kept us all on track and, more or less, on time.

The Business Law Committee of the State Bar of Nevada produced a long list of suggestions which was the starting point for all our work on Chapter 78. Thanks to the committee and its members, Douglas G. Crosby, Thomas W. Davis, II, Michael J. Toigo, Kenneth A. Woloson, Michael J. Bonner and Martha J. Ashcraft.

We also obtained suggestions from others concerning business corporations. Figuring prominently in the early work were Kirk S. Schumacher and Robert E. Armstrong, who suggested drafting a limited liability company statute based on Wyoming's.

Karen Zupon and Cindy Woodgate at the Secretary of State's office provided us insight into the problems and rewards of administering the rapidly-expanding operation of a modern Secretary of State's office.

Robert O. Vaughan of Elko provided advice and assistance in drafting the nonprofit corporation law from the point of view of an attorney for cooperatives. Two kinds of cooperative associations will be governed by the new nonprofit law, if it is enacted.

Many members of the Nevada State Bar submitted suggestions in response to the Secretary of State's letter to all Nevada attorneys seeking suggestions. They are too numerous to name but we appreciate all their suggestions, both great and small.

Finally, we must salute those at Vargas & Bartlett who participated in the research and drafting of this report. They are: Rew R. Goodenow, Jeffrey J. Whitehead, C. Thomas Burton, Jr., David S. McElroy, John N. Brewer, H. Gregory Nasky, Barbara C. Mendez, Martha J. Ashcraft, Georlen K. Spangler, Paul Lal, Sam Basile, Kelly Boyle and Greg Barnard.

Thanks to all of you. We all hope this study will assist the Secretary of State, the Legislative Counsel's Office and the 1991 Legislature in drafting new corporate statutes for Nevada.

John P. Fowler
Vargas & Bartlett
July 30, 1990

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EXECUTIVE SUMMARY

Vargas & Bartlett has completed its study of Nevada's corporate laws and submits this report as the product of that study. We were engaged by the Secretary of State to study Chapters 78, 80, 81 through 86 and 89 to determine what changes should be made to keep Nevada in the forefront of corporate law. We have compared the Nevada statutes with the statutes of many other states and have sought to streamline corporate procedures and make them easy to use.

All of the following sections of this report contain a short introduction. Suggested statutory language amending existing statutes or complete new statutes follow the introduction, each accompanied by detailed notes explaining why the change are made or the new statute is suggested. The notes also show the source of much of the new language.

We recommend extensive changes to Chapter 78, the statute regulating Nevada Business Corporations. We suggest eliminating the distinction between par and no par stock, eliminating the terms "preferred" and "special" stock and the concepts of "capital" and "surplus". We suggest repealing the old "first generation" takeover bid legislation. The most important parts of that legislation were declared unconstitutional and the remainder should be removed from the books.

We recommend a complete overhaul of the merger statutes to make the statutory language easier to read and more understandable. We recommend that Nevada adopt a share exchange procedure, abolish the outmoded concept of consolidations and permit mergers between corporations and limited partnership. We also recommend that the dissenters' rights procedures be simplified so that dissenters' rights lawsuits are less expensive and less cumbersome to conduct.

We recommend that Nevada enact a Business Combination statute prohibiting mergers and other major corporate transactions for a period of five years after an "interested shareholder" acquires a certain percentage of a corporation's shares. The prohibition has no affect if the transaction proposed by the interested shareholder is approved by the board of directors.

Finally, we propose the Nevada Secretary of State be given general power to permit the filing of documents by facsimile machine and the power to adopt rules, regulations and procedures to meet the challenge of new communications

technology. The pace of technological change in the computer age with respect to the receipt, storage and transmission of documents quickly makes obsolete legislation passed by a legislature which meets only every two years.

In the nonprofit corporation area, we have drafted a complete new nonprofit corporation law governing almost all types of nonprofit corporations which may arise. We recommend that statutes creating the three types of cooperative corporations remain largely intact but provide that two of the three kinds of co-ops be regulated (except as specifically set forth in their specific statutes) by the new nonprofit corporation law. The remaining co-op will be otherwise regulated by the business corporation law found at Chapter 78.

As to foreign corporations, we propose that foreign corporations which conduct only certain transactions involving little actual contact with the state be exempted from the requirement of qualification with the Nevada Secretary of State. However, if those corporations do any of the transactions in combination with maintaining an office in this state or with accepting or soliciting deposits in this state, they must qualify and, possibly, be subject to our banking laws.

We suggest small changes to Chapter 89 regulating professional corporations.

Finally, we briefly examined the operation of the Secretary of State's office and the statute permitting the Secretary of State to render and charge for special services. We recommend that the Secretary of State open a Las Vegas office. We propose that the Secretary of State be allowed to charge fees for certain special services which she now has no power to charge for at all.

It was a pleasure drafting this report for the Secretary of State. We hope the report will be useful in drafting legislation encouraging the flow of commerce into Nevada and making our corporate laws the most advanced, simplest and accessible to the public of any in the nation.

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1 An unnecessarily detailed procedure for the exercise of
2 cumulative voting has been deleted from the statute. Now, the
3 corporation need only be notified before the shareholders
meeting for cumulative voting to be invoked. NRS 78.360.

4 For years, corporations have had to mail notices of
5 meetings, etc. to shareholders even though the corporation knows
6 that the mailing will be returned undeliverable. Now, if two
consecutive notices are returned undeliverable, further notices
need not be sent. NRS 78.370.

7 We recommend that the "first generation" takeover bid
8 legislation at NRS 78.376 through 78.3778 be repealed. The most
important operative portions of the statute have been declared
unconstitutional. There is no reason to leave the remaining
9 sections on the books.

10 We recommend a complete replacement of our merger statutes.
11 The new statutes eliminate the concept of consolidation and
12 permit share exchanges and mergers with limited partnerships.
13 The Revised Model Business Corporation Act (1984) was used as a
14 model for much of the statutory language. In all cases, the
15 procedures actually effecting a merger or share exchange are
16 similar to the old procedures. However, the new statutory
wording is much clearer, the number of statutes has been reduced
and the organization is much improved. We have given statutory
section numbers to each of the merger statutes in order to make
the cross references between the sections in this area
understandable. See statutes labeled NRS 78.451, 78.456,
78.471, 78.489, 78.491, 78.496, 78.501 and 78.502.

17 The dissenters' rights provisions have also been changed
18 and largely replaced. Statutory language taken largely from the
19 Model Business Corporations Act (1984) has been used to properly
20 reflect the language contained in the revamped merger area. See
21 statutes labeled NRS 78.503, 78.506, 78.508, 78.511, 78.516,
22 78.522, 78.526, 78.531, 78.536, 78.537, 78.538, 78.539 and
23 78.540. The court procedure to determine the fair value of the
shares has been greatly simplified. No longer must the
corporation appoint three appraisers who render a report to
which a party may object resulting in yet another trial before
the court with new experts. See existing NRS 78.510. New NRS
78.539 makes dissenters' rights actions less expensive to all
parties concerned.

24 We recommend that Nevada enact a business combination
25 statute placed immediately following the new dissenters' rights
26 statutes. The business combination statutes we recommend are
27 largely those obtained from Chapter 43 of the Indiana
28 Corporation Act. This new act prohibits, for a period of five
years after an interested shareholder acquires a certain
percentage of the corporation's shares, any "business
combination" between the Nevada corporation and the interested
shareholder or his affiliates unless the board of directors
approves the transaction. See Section 19 of the new Act. A

1 "business combination" is defined at Section 6 of the new Act as
2 a merger with the person, a sale lease or exchange of the
3 corporation's assets having a market value equal to 5% or more
4 of its assets, an issuance of the Nevada's corporation's stock
equal to 5% or more of the market value of that stock, and the
adoption of any plan of liquidation or a reclassification of
securities involving the interested party.

5 We have made a few changes in the area of insolvency and
6 receivers. At NRS 78.685, we recommend that the trustee or
7 receiver of the corporation inspect creditor's claims himself
8 and make an initial determination of their validity. The
creditor may appeal to the district court after the receiver or
trustee rules on the claim and the court has the right to decide
the claim without a jury.

9 We have also given the power to the Secretary of State to
10 employ new technology. Specifically, the statutes allow the
11 filing of documents by fax machines and the Secretary of State
12 to pass regulations concerning these matters. NRS 78.755. We
13 have changed the statutes regarding filing fees, computing the
14 filing fees of articles and amendments to articles by the number
of shares described in those documents, not the authorized
capital. As we have seen, the concepts of "capital" and
"surplus" have been abolished. See NRS 78.760. Other filing
fees have been changed in certain respects. See NRS 78.785.

15 GENERAL PROVISIONS

16 NRS 78.010 Definitions; construction.

17 1. As used in this chapter:

18 (a) "articles", "articles of incorporation," "certificate
19 of incorporation," and "restated articles" are synonymous terms
20 and unless the context otherwise requires, include all
21 certificates filed pursuant to NRS 78.030, 78.195, 78.207,
22 78.380, 78.385, 78.390, and 78.403, [and 78.410 to 78.445,]
23 inclusive, and any [agreement] articles of [consolidation or]
24 merger filed pursuant to NRS [78.450 to 78.490]
25 78.451 to 78.502, inclusive.

26 (b) "Directors" and "trustees" are synonymous terms.

27 (c) "Receiver" includes receivers and trustees appointed
28 as provided in this chapter or in NRS Chapter 32.

1 (d) "Principal office," "principal place of business," and
2 "principal office in this state," are synonymous terms referring
3 to the office maintained in this state as required by NRS
4 78.090.

5 (e) "Stockholder of record" means a person whose name
6 appears on the stock ledger of the corporation.

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

11 Note: The changes in this section were suggested by the
12 State Bar of Nevada's Business Law Committee ("B.L.C."). They
13 clarify the defined terms. The addition of NRS Chapter 32 gives
14 receivers appointed by that chapter the benefit of definition
15 and discussion of their substantive powers and procedures
16 contained in NRS 78.565 through 78.720.

15 NRS 78.015 Applicability of chapter; effect on
16 corporations existing before April 1, 1925.

17 1. The provisions of this chapter apply to:

18 (a) Corporations hereafter organized in this state except:
19 [such]

20 (i) corporations as are expressly excluded by the
21 provision of this chapter ; and

22 (ii) corporations described in Section 2 of Chapter .

23 (b) Corporations whose charters are renewed or revised in
24 the manner provided in NRS 78.730.

25 (c) Corporations organized and still existing under any
26 prior act or any amendment thereto.

27 (d) Close corporations, unless otherwise provided in NRS
28 Chapter 78A.

1 (e) All insurance companies, mutual fire insurance
2 companies, surety companies, express companies, railroad
3 companies, and public utility companies now existing and
4 heretofore formed under any other act or law of this state,
5 subject to special provisions concerning any class of
6 corporations inconsistent with the provisions of this chapter,
7 in which case such special provisions continue to apply.

8 2. Neither the existence of corporations formed or
9 existing before April 1, 1925, nor any liability, cause of
10 action, right, privilege or immunity validity existing in favor
11 of or against any such corporation on April 1, 1925, are
12 affected, abridged, taken away or impaired by this chapter, or
13 by any other change in the requirements for the formation of
14 corporations provided by this chapter, nor by the amendment or
15 repeal of any laws under which such prior existing corporations
16 were formed or created.

17 Note: Chapter 78 should no longer govern nonprofit
18 corporations to be governed by the new nonprofit corporation law
19 recommended by this report. The additional language at NRS
78.015(1)(a) excludes such nonprofits.

20 NRS 78.020-78.027 No change.

21 FORMATION

22 NRS 78.030 Filing of articles and certificate of
23 acceptance of appointment of resident agent.

24 1. One or more natural persons may associate to establish
25 a corporation for the transaction of any lawful business, or to
26 promote or conduct any legitimate object or purpose, pursuant
27 and subject to the requirements of this chapter, by:

28 (a) Executing, acknowledging and filing in the office of

1 the secretary of state articles of incorporation, [or a
2 certificate of incorporation]; and

3 (b) Filing a certificate of acceptance of appointment,
4 executed by the resident agent of the corporation, in the office
5 of the secretary of state. [;and]

6 [(c) Filing copies of the articles of incorporation and the
7 certificate of acceptance, certified under the hand and official
8 seal of the secretary of state, in the office of the clerk of
9 the county in which the principal place of business in the
10 company is intended to be located. The county clerk may
11 microfilm these copies for filing in his records rather than
12 filing he copies.]

13 2. The articles of incorporation [or certificate of
14 incorporation,] must be as provided in NRS 78.035, and the
15 secretary of state shall require it to be in the form
16 prescribed. If any articles [or certificates] are defective in
17 this respect, the secretary of state shall return them for
18 correction.

19 Note: Changes made to this section eliminate the need for
20 local county filings, as was done under the Revised Model
21 Business Code Annotated ("Rev. MBCA") as adopted in Georgia
22 under O.C.G.A. §14-2-120 or Rev. MBCA §1.20. With modern
23 telephone and fax communications, the business would no longer
24 need to have copies of corporate documents stored at the local
25 county courthouse. An unnecessary step in the filing process is
26 eliminated.

27 Similar changes to other statutes in Chapter 78 and in the
28 nonprofit chapters also eliminate the county filings.

29 NRS 78.035 Articles of incorporation: required provisions.

30 The [certificates or] articles of incorporation must set
31 forth:

32 1. The name of the corporation. A name appearing to be

1 that of a natural person and containing a given name or initials
2 must not be used as a corporate name except with an additional
3 word or words such as "Incorporated," "Limited," "Inc.," "Ltd.,"
4 "Company," "Co.," "Corporation," "Corp.," or other word which
5 identifies it as not being a natural person.

6 2. The name of the county, and the city or town, and the
7 place within the county, city or town in which its principal
8 office or place of business is to be located in this state,
9 giving the street and number wherever practicable, and if not so
10 described as to be easily located within the county, city or
11 town, the secretary of state shall refuse to issue his
12 certificate until the location is marked and established.

13 [3. The nature of the business, or objects or purposes
14 proposed to be transacted, promoted or carried on by the
15 corporation. It is sufficient to state, either alone or with
16 other purposes, that the corporation may engage in any lawful
17 activity, subject to expressed limitations, if any. Such a
18 statement makes all lawful activities within the objects or
19 purposes of the corporation.]

20 [4. The amount of the total authorized capital stock of
21 the corporation, and the number and par value of the shares of
22 which it is to consist or, if the corporation is to issue shares
23 without par value, the total number of shares that may be issued
24 by the corporation, the number of shares, if any, which are to
25 have a par value, and the par value of each thereof, and the
26 number of shares which are to be without par value. If the
27 corporation is to issue more than one class of stock, there must
28 be set forth therein a statement that more than one class of

1 stock is authorized, whether each class if preferred, special or
2 common, and the total number of shares of each class of stock
3 which the corporation may issue. If the corporation is to issue
4 any class or series of stock which is preferred as to dividends,
5 assets or otherwise, over stock of any other class or series,
6 there must be set forth in the articles of incorporation the
7 limits, if any, of variation between the respective classes or
8 series of each class, as to designation, voting, amount of
9 preference upon distribution of assets, rate of dividends,
10 premium or redemption, conversion rights or other variations,
11 but in any corporation the articles of incorporation may vest
12 authority in the board of directors to fix and determine the
13 designations, rights, preferences or other variations of each
14 class or series within each class as provided in NRS 78.195.]

15 3. The number of shares the corporation is authorized to
16 issue and, if more than one class or series of stock is
17 authorized, the classes, series and the number of shares of each
18 class or series which the corporation is authorized to issue,
19 unless the articles authorize the board of directors to fix and
20 determine in a resolution the price, series and number of each
21 class or series as provided in NRS 78.195.

22 [5] 4. Whether the members of the governing board must
23 be styled directors or trustees of the corporation and the
24 number, names and post office, street or business addresses of
25 the first board of directors, together with any desired
26 provisions relative to the right to change the number of
27 directors as provided in NRS 78.115.

28 [6. Whether or not capital stock, after the amount of the

1 subscription price, or par value, has been paid in is subject to
2 assessment to pay the debts of the corporation. Unless
3 provision is made in the original certificate or articles of
4 incorporation for assessment upon paid-up stock, no paid-up
5 stock and no stock issued as fully paid up, may ever be
6 assessed, and the articles of incorporation must not be amended
7 in this particular.]

8 [7] 5. The name and post office, street or business
9 address of each of the incorporators signing the [certificate
10 or] articles of incorporation.

11 [8. Whether or not the corporation is to have perpetual
12 existence, and, if not, the time when its existence is to
13 cease.]

14 Note: Several changes are suggested for this section to
15 reflect current corporate practice. The provisions requiring
16 statements that the corporation have perpetual existence and may
17 conduct any lawful business activity have both been deleted and
18 placed in NRS 78.060. Perpetual existence is assumed under Rev.
19 MBCA §3.02 and under the Pennsylvania corporate scheme, See 15
20 Pa.C.S.A. §1501(a)(1). Pennsylvania also assumes a corporation
is organized to conduct any lawful activity, See 15 Pa.C.S.A.
§1301; Rev. MBCA §2.02 (1986 Revised Edition). Corporations
rarely choose to make stock assessable. We recommend that a new
subsection 3 of NRS 78.195 be created using the second sentence
of existing NRS 78.035(6) to allow for assessability, if
desired, but generally providing for non-assessability.

21 Finally, changes to new subsections 4 and 5 allow the
22 addresses of the incorporators and directors to be their post
23 office, street or business addresses. This clarifies a previous
ambiguity as to whether an incorporator or director could use
his business address in the articles.

24 NRS 78.037 Articles of incorporation: Optional
25 provisions.

26 The certificate or articles of incorporation may also
27 contain:

28 1. A provision eliminating or limiting the personal

1 liability of a director or officer to the corporation or its
2 stockholders for damages for breach of fiduciary duty as a
3 director or officer, but such a provision must not eliminate or
4 limit the liability of a director or officer for:

5 (a) Acts or omissions which involve intentional
6 misconduct, fraud or a knowing violation of law; or

7 (b) The payment of [dividends] distributions in violation
8 of NRS 78.300.

9 2. Any provision, not contrary to the laws of this state,
10 for the management of the business and for the conduct of the
11 affairs of the corporation, and any provision creating,
12 defining, limiting or regulating the powers of the corporation
13 or the rights, powers or duties of the directors, and the
14 stockholders, or any class of the stockholders, or the holders
15 of bonds as other obligations of the corporation, or governing
16 the distribution or division of the profits of the corporation.

17 Note: With the revision to statutes relating to stock,
18 eliminating the concepts of par and no-par stock, the
19 terminology has also changed. NRS 78.300 now uses the word
"distributions".

20 NRS 78.039 Name of corporation: Use of same or
21 [deceptively similar] indistinguishable names prohibited;
22 consent of other entity to use of name.

23 1. Except as otherwise provided in subsection 2, the
24 secretary of state shall refuse to accept for filing in his
25 office the articles [or certificate] of incorporation of any
26 corporation whose name [is the same as or deceptively similar
27 to:] cannot be distinguished from:

28 (a) The name of any other corporation formed or

1 incorporated in this state;

2 (b) The name of any foreign corporation authorized to
3 transact business in this state;

4 (c) A name held reserved pursuant to NRS 78.040;

5 (d) The name of any limited partnership formed in this
6 state;

7 (e) The name of any foreign limited partnership authorized
8 to transact business in this state; or

9 (f) A name held reserved pursuant to NRS 88.325.

10 2. The secretary of state shall accept for filing in his
11 office the articles or certificate of a corporation whose name
12 [is]:

13 (a) [Deceptively similar to] Cannot be distin-
14 guished from that used by or reserved for another entity formed
15 or authorized to transact business in this state; or

16 (b) Is [T]the same as that used by a foreign corporation
17 or foreign limited partnership authorized to transact business
18 in this state, or reserved for such a use pursuant to NRS
19 88.325,

20 if the written acknowledged consent of the other entity to the
21 use of the name accompanies the articles or certificate.

22 3. For the purposes of this section, the name of one
23 corporation must not be deemed distinguishable from another
24 solely because its name contains distinctive lettering, a
25 distinctive mark, a trade mark or a trade name or any
26 combination of these.

27 Note: Modern business corporation statutes make it easier
28 for secretaries of state to determine if a corporate name is
sufficiently distinguishable to permit a corporation to file

1 under its chosen name. Thus, if a corporate name can be
2 distinguished from another corporate name on file, the name can
be used. A change from "Inc." to "Co." would be enough.

3 Subsection 3 was added to make clear that a corporation
4 cannot distinguish its names from others through the use of a
5 name spelled identically to another but employing distinctive
6 typography or a distinctive mark, for example, using a star in
lieu of an apostrophe, or a distinctive first letter, or using
all capitals or all small case lettering, instead of the more
normal initial capital letters.

7 NRS 78.040; 78.045 No change.

8 NRS 78.050 Commencement of corporate existence.

9 1. Upon the filing of [the certificate or] the articles
10 of incorporation and the certificate of acceptance pursuant to
11 NRS 78.030(1), and the payment of the filing fees to the
12 secretary of state, the secretary of state shall issue to the
13 corporation a certificate that the articles, containing the
14 required statement of facts, have been filed in his office. From
15 the date [of the certificate the persons so acting, their
16 successors and assigns are] the articles are filed, the
17 corporation is a body corporate, by the name set forth in the
18 [certificate or] articles of incorporation, subject to the
19 forfeiture of its charter or dissolution as provided in this
20 chapter.

21 2. Neither the incorporator(s) nor the
22 director(s) designated in the articles of incorporation
23 shall thereby be considered subscribers or stockholders
24 of the corporation.

25 3. The filing of the articles of incorporation
26 does not, by itself, constitute commencement of
27 business by the corporation.

28 4. The date of commencement of a body corporate may be

1 delayed for ninety (90) days by filing a request to delay
2 commencement of corporate existence which date must be honored
3 by the secretary of state upon receipt of an additional filing
4 fee of \$75.

5 Note: The second sentence of subsection 1 is a
6 modification of the Business Law Committee's suggestions. The
7 commencement date of the existence of a corporation has been
8 changed to be the date the articles are filed. The Business Law
Committee suggested Nevada follow the Delaware General
Corporation Law and begin corporate existence on the date of
filing the articles.

9 New Subsections 2, 3 and 4 were suggested by the B.L.C.
10 New Subsection 3 limits incorporators' or directors' liability
11 as subscribers or stockholders. Our sources did not contain
comparable sections. New Subsection 3 allows a corporation to
delay the commencement of business.

12 New Subsection 4 allows the Secretary of State to hold
13 articles for a period of ninety (90) days, for an extra filing
14 fee, to allow new flexibility in commencement of corporate
existence. Other statutes have comparable provisions. Del.
Code Ann., tit. 8, §103(d); Revised MBCA § 2.04 and § 1.23(b).

15 NRS 78.055 No change.

16 POWERS

17 NRS 78.060 General powers.

18 1. Any corporation organized under the provisions of this
19 chapter:

20 (a) Shall have all the rights, privileges and powers
21 hereby conferred.

22 (b) Shall have such rights, privileges and powers as may
23 be conferred upon corporations by any existing law.

24 (c) May at any time exercise such rights, privileges and
25 powers, when not inconsistent with the provisions of this
26 chapter, or with the purposes and objects for which such
27 corporation is organized.

28 2. Every corporation, by virtue of its existence as such,

1 shall have power:

2 (a) Unless otherwise provided in its articles,
3 to have perpetual existence and [T]to have succession by its
4 corporate name [for the period limited in its certificate or
5 articles of incorporation, and when no period is limited,
6 perpetually, or] until dissolved and its affairs wound up
7 according to law.

8 (b) To sue and be sued in any court of law or equity.

9 (c) To make contracts.

10 (d) To hold, purchase and convey real and personal estate
11 and to mortgage or lease any such real and personal estate with
12 its franchises. The power to hold real and personal estate
13 shall include the power to take the same by devise or bequest in
14 this state, or in any other state, territory or country.

15 (e) To appoint such officers and agents as the affairs of
16 the corporation shall require, and to allow them suitable
17 compensation.

18 (f) To make bylaws not inconsistent with the constitution
19 or laws of the United States, or of this state, for the
20 management, regulation and government of its affairs and
21 property, the transfer of its stock, the transaction of its
22 business, and the calling and holding of meetings of its
23 stockholders.

24 (g) To wind up and dissolve itself, or be wound up or
25 dissolved, in the manner mentioned in this chapter.

26 (h) Unless otherwise provided in the articles,
27 to engage in any lawful activity.

28 Note: The additional language picks up the necessary

1 powers to engage in any lawful activity and to have perpetual
2 existence deleted from NRS 78.035. These powers should be given
3 to every Nevada corporation without the necessity of providing
for them in the articles.

4 As to new subsection (2)(h), Pennsylvania assumes a
5 corporation may conduct any lawful business unless otherwise
restricted. 15 Pa. C.S.A. §1301.

6 Revised new subsection (2)(a) presumes perpetual existence
7 unless otherwise provided. Both the Rev. MBCA and Pennsylvania
adopt this concept in the corporate powers area. See Pa.C.S.A.
8 §1501(a)(1) and Rev. MBCA §3.02.

9 NRS 78.065 - 78.085 No change.

10 PRINCIPAL OFFICE AND RESIDENT AGENT

11 NRS 78.090 Resident agent in state; powers of
12 corporation acting as resident agent; penalties for
13 noncompliance; service of process, demands and notices on
resident agent.

14 1. Except during any period of vacancy described in NRS
15 78.097, every corporation [shall] must have a resident agent,
16 who may be either a natural person or a corporation, resident or
17 located in this state. Every resident agent must have a
18 mailing address, such as a post office box, which may be
19 different from its physical address, and must have a physical
20 street address, where it maintains an office for personal
21 service. The address of the resident agent is the principal
22 office of the corporation in this state.

23 2. The resident agent may be any bank or banking
24 corporation, or other corporation, foreign or domestic, located
25 and doing business in this state, and the bank or corporation
26 acting as resident agent may:

27 (a) Act as the fiscal or transfer agent of any state,
28 municipality, body politic or corporation and in that capacity

1 may receive and disburse money.

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

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

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

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

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

1 Note: In 1987 and 1989, several technical changes were
2 made to this section originally enacted in 1925, and codified in
3 CL 1929, §1677, 1678 and amended in 1959 and 1969. The section
4 remains little changed.

5 Nevada is unique among the comparable group of statutes, in
6 that it uses the term "resident agent" rather than "registered
7 agent". This difference in terminology has no legal
8 significance.

9 Presently, Nevada, unlike Delaware and the Rev. MBCA, does
10 not explicitly allow the resident agent to be a foreign
11 corporation doing business in Nevada. We recommend this change
12 for the benefit of the great number of professional corporation
13 service companies which perform this service for corporations
14 principally located in a distant state.

15 The statute presently does not refer to the address of the
16 resident agent. Because service of process in Nevada requires
17 personal service in many cases under NRS 14.020 and NRCP 4(d),
18 the statute should require that the address of the resident
19 agent must include a physical street address where service can
20 be effected. Our suggestions contain language similar to that
21 contained in the official comments to the MBCA.

22 The Bar Proposals change the statute to require that the
23 office of the resident agent be the same as that of the
24 registered office. This clarifies the reference to provide
25 certainty and predictability of location and consistency of
26 reference, as these terms are used elsewhere in Chapter 78.

27 NRS 78.095 Change of address of resident agent.

28 1. The location of the office of any resident agent of
corporations in any county in the state may be transferred from
one address to another, in the same county upon the making and
executing by the resident agent of a certificate, acknowledged
before a person authorized by the laws of this state to take
acknowledgment of deeds, setting forth the names of all the
corporations represented by the resident agent, and the address
at which the resident agent has maintained the principal office
for each such corporations, and further certifying to the new
address to which the resident agency will be transferred and at
which the resident agent will thereafter maintain the principal

1 office for each of the corporations recited in the certificate.

2 2. Upon the filing of the certificate in the office of
3 the Secretary of State [and a copy thereof in the office of the
4 County Clerk of the County where the principal place of business
5 is located], the principal office in the state of each of the
6 corporations recited in the certificate is located at the new
7 address of the resident agent thereof as given in the
8 certificate.

9 Note: We have discussed completely doing away with the
10 system of County filing in Nevada's corporate laws. This is one
11 of the statutes where County filing has been required.
12 Subsection 2 provides that the certificate required to change
13 location of resident agent be filed in the office of the County
14 Clerk of the county where the principal place of business is
15 located. None of the comparable statutes, except Delaware,
16 require County filing. The proposed language deletes this
17 requirement.

14 NRS 78.097 Filing of statement of resignation of
15 resident agent; notice to corporation of resignation; filing
16 new certificate of acceptance after death, resignation or
17 removal of resident agent.

18 1. Any resident agent who desires to resign must file
19 with the secretary of state a signed statement that he is
20 unwilling to continue to act as the agent of the corporation for
21 service of process. The execution of this statement must be
22 acknowledged. A resignation is not effective until the signed
23 statement is filed with the secretary of state.

24 2. The statement of resignation may contain an
25 acknowledged statement of each corporation affected appointing
26 a successor resident agent for that corporation. A certificate
27 of acceptance executed by the new resident agent must accompany
28 the statement.

1 3. [2]. Upon the filing of the statement with the
2 secretary of state, the capacity of the person as resident agent
3 terminates[,]. [and the secretary of state] If the statement of
4 resignation contains no statement by the corporation appointing
5 a successor resident agent, the resident agent [shall forthwith]
6 must immediately give written notice, by mail, to the
7 corporation of the filing of the statement and its effect. The
8 notice must be addressed to any officer of the corporation other
9 than the resident agent.

10 4. [3]. If a resident agent dies, resigns or removes from
11 the state, the corporation, within thirty days thereafter,
12 [shall] must file with the Secretary of State a Certificate of
13 Acceptance executed by the new resident agent. The Certificate
14 must set forth the name and complete address of the new resident
15 agent.

16 Note: There are several differences between the comparable
17 statutes in this area, and each statute has desirable aspects.
18 For instance, in Delaware, a resident agent may file a Statement
19 of Resignation coupled with an appointment of its successor,
20 Del. Code Ann., tit. 8, §135, or a simple Statement of
21 Resignation not coupled with the appointment of a successor.
22 Del. Code Ann., tit. 8 §136. The appointment of a successor by
23 the resident agent is allowed only with the ratification of the
24 corporation. Where no successor is appointed, the resignation
25 is not effective until the end of the sixty day period. The
26 resident agent must notify the corporation of its resignation on
27 or before thirty days prior thereto. The Secretary of State
28 notifies the County where the resident office is located of the
resignation.

 Pennsylvania allows resignation by filing a Statement of
Change with the Department of State. 15 Pa.C.S.A. §108. The
Pennsylvania statute requires prompt notice by the agent to the
corporation, but not a new filing. However, if an agent
resigns, the office remains at the same place with the agent
having no further responsibility, until the corporation changes
the location of the office. The Pennsylvania committee found
that this change was not important, because of the service of
process rules which allow service on basically any office of the
corporation within the state. This is not recommended for

1 Nevada, even though we have similar service rules, because it
2 would serve as a trap for the unwary, and would delay litigation
unnecessarily.

3 Section 503 of Rev. the MBCA allows resignation of the
4 registered agent by filing two copies of a Statement of
5 Resignation, which may be for the agent, or for the agent and
6 the office as well. After filing, the Secretary of State mails
one copy to the registered office, if not discontinued, and the
other to the principal office. The resignation is effected on
the 31st day after filing. Rev. MBCA §15.09 has the same
requirement for a foreign corporation.

8 In order to ease the transition where a resident agent
9 resigns, we suggest allowing the resident agent to resign and
10 the corporation to appoint a successor, provided that the
11 corporation ratifies the appointment. This suggestion is
reflected in the suggested changes. This will allow the whole
process to be completed with one document, saving time and
simplifying the process.

12 Since the B.L.C. Proposals require that the registered
13 office be the same as the address of the resident agent, the
14 Secretary of State would not necessarily know where the officers
15 of the corporation can be reached. See NRS 78.010(c) and
78.090(1). We recommend that the resident agent be required to
give the corporation notice of its resignation as required by
Delaware. Otherwise, the Secretary of State may not know where
to send the required notice.

16 NRS 78.105 [Copies of articles, bylaws and duplicate
17 stock ledgers or statements] Records to be kept at principal
18 office; inspection, [rights or judgment creditors and
19 stockholders;] penalties.

20 1. A corporation must keep a copy of the following
21 records at its principal office:

22 [1. Every corporation shall keep and maintain at its
23 principal office in this state:]

24 (a) A certified copy of its certificate of incorporation
25 or articles of incorporation, and all amendments thereto; and

26 (b) A certified copy of its bylaws and all amendments
27 thereto; and

28 (c) A stock ledger or a duplicate stock ledger, revised

1 annually, containing the names, alphabetically arranged, of all
2 persons who are stockholders of the corporation, showing their
3 places of residence, if known, and the number of shares held by
4 them respectively; or

5 (d) In lieu of the stock ledger or duplicate stock ledger
6 specified in paragraph (c), a statement setting out the name of
7 the custodian of the stock ledger or duplicate stock ledger, and
8 the present and complete post office address, including street
9 and number, if any, where such stock ledger or duplicate stock
10 ledger specified in this section is kept.

11 2. A corporation must maintain its records in written
12 form or in another form capable of conversion into written
13 form within a reasonable time.

14 [2] 3. Any person who has been a stockholder of record
15 of a corporation for at least 6 months immediately preceding his
16 demand, or any person holding, or thereunto authorized in
17 writing by the holders of, at least 5 percent of all its
18 outstanding shares, upon at least 5 days' written demand[, or
19 any judgment creditor of the corporation without prior demand,]
20 shall have the right to inspect in person or by agent or
21 attorney, during usual business hours, the stock ledger or
22 duplicate stock ledger, whether kept in the principal office of
23 the corporation in this state or elsewhere as provided in
24 paragraph (d) of subsection 1, and to make extracts therefrom.
25 Holders of voting trust certificates representing shares of the
26 corporation shall be regarded as stockholders for the purpose of
27 this subsection. Every corporation that neglects or refuses to
28 keep the stock ledger or duplicate copy thereof open for

1 inspection, as required in this subsection, shall forfeit to the
2 state the sum of \$25 for every day of such neglect or refusal.

3 [3] 4. An inspection authorized by subsection 1 may be
4 denied to such stockholder or other person upon his refusal to
5 furnish to the corporation an affidavit that such inspection is
6 not desired for a purpose which is in the interest of a business
7 or object other than the business of the corporation and that he
8 has not at any time sold or offered for sale any list of
9 stockholders of any domestic or foreign corporation or aided or
10 abetted any person in procuring any such record of stockholders
11 for any such purpose.

12 [4] 5. If any [officer of agent of any such] corporation
13 willfully neglects or refuses to make any proper entry in such
14 stock ledger or duplicate copy thereof, or neglects or refuses
15 to permit an inspection of such stock ledger or duplicate
16 thereof upon demand by a person entitled to inspect the same, or
17 refuses to permit extracts to be taken therefrom as provided in
18 subsections 3, [2] and [3] 4, such corporation and such officer
19 or agent shall be jointly and severally liable to the person
20 injured for all damages resulting to him therefrom.

21 [5] 6. When the corporation keeps and maintains a
22 statement in the manner provided for in paragraph (d) of
23 subsection 1, the information contained thereon shall be given
24 to any [judgment creditor of the corporation or to any]
25 stockholder of such corporation demanding such information, when
26 the demand is made during business hours. Every corporation
27 that neglects or refuses to keep such statement available, as in
28 this subsection required, shall forfeit to the state the sum of

1 \$25.00 for every day of such neglect or refusal.

2 [6. If any officer or agent of any such corporation
3 willfully neglects or refuses to keep the statement current and
4 accurate, or neglects or refuses to give the information
5 contained thereon, upon demand, to a person entitled to such
6 information, such corporation and such officer or agent shall be
7 jointly and severally liable to the person injured for all
8 damages resulting to him therefrom.]

9 7. It shall be a defense, however, to any action for
10 penalties under this section that the person suing has at any
11 time sold, or offered for sale, any list of stockholders of such
12 corporation, or any other corporation, or has aided or abetted
13 any person in procuring any such stock list for any such
14 purpose, or that the person suing desired inspection for a
15 purpose which is in the interest of a business or object other
16 than the business of the corporation.

17 8. Nothing contained in this section, however, shall be
18 deemed or construed in anywise to impair the power or
19 jurisdiction of any court to compel the production for
20 examination of the books of a corporation in any proper case.

21 9. In every instance where an attorney or other agent
22 of the stockholder seeks the right of inspection, the demand
23 must be accompanied by a power of attorney executed by the
24 stockholder authorizing the attorney or other agent to inspect
25 on behalf of the stockholder.

26 10. The right to copy records under subsection 3
27 includes, if reasonable, the right to make copies by photo-
28 graphic, xerographic, or other means.

1 11. The corporation may impose a reasonable charge,
2 covering the costs of labor, materials and the cost of copies
3 of any documents provided to the stockholder.

4 Note: This statute was enacted in 1925, and amended in
5 1951, 1959, 1963, and 1965. The 1951 amendment added the
6 requirement that the stock ledger be revised annually, and
7 allowed the duplicate stock ledger to be kept in the principal
8 office in this state. The 1959 amendment added the requirement
9 that judgment creditors be allowed to inspect the corporation's
10 books. The 1959 amendment also added the liability of officers
11 and directors for failing to keep the books current and
12 accurate. The 1963 amendment added the exception to the right
of inspection for persons who had previously sold or offered for
sale a list of stockholders, or aided anyone in doing so. It
also added to the defense of damages for refusal that the person
suing for inspection had an object other than the best interests
of the corporation in mind. The 1965 amendment allowed judgment
creditors to inspect the corporation's books required by this
statute without prior demand.

13 This statute has been construed in favor of stockholder
14 inspection in several different cases. See Cenergy Corp. v.
15 Bryson Oil & Gas, 662 F.Supp. 1144 (D. Nev. 1987); Garaventa v.
16 Garaventa, 61 Nev. 110, 118 P.2d 703 (1941). No reported
decisions in Nevada have construed the creditors' right to
inspect. There is no legislative history surrounding these
amendments.

17 Nevada appears to be the only state which grants a
18 statutory right of inspection to judgment creditors of the
19 corporation. Rev. MBCA §1728. The writers of the Rev. MBCA
20 maintain that the Nevada Statute does not grant judgment
21 creditors of a corporation which is listed and traded on a
recognized stock exchange or that furnishes its shareholders
detailed financial statements the right to inspect. However,
the statute does not specifically so provide. The authors have
probably confused this statute with NRS 78.257, which governs
the stockholders' rights to inspect financial records.

22 Some criticize this statute because creditors already have
23 the right to pretrial discovery once the creditors file
24 lawsuits. It is not immediately apparent why creditors of
25 corporations should be granted a right to discovery if they have
26 not yet filed a lawsuit. There has never been a recorded case
27 in Nevada which construed the statute with respect to creditors.
None of the comparable jurisdictions have a similar requirement.
Since normal pretrial discovery rules adequately protect
creditors, we recommend the repeal of the creditor's right to
inspect pursuant to this statute.

28 Pennsylvania at 15 Pa.C.S.A. §1508, contains a requirement
that a power of attorney be required for any non-stockholder to

1 inspect the corporate records maintained in accordance with that
2 provision. This requirement should be adopted in order to
foster respect for and prevent misuse of the right to inspect.

3 Wherever possible, we have left intact the existing Nevada
4 statutory language, and the provisions unrelated to the above
changes.

5 The suggested changes deal differently with noncompliance.
6 The personal liability for directors and officers has been
7 deleted, and replaced with corporate liability determined by the
8 court. This reflects better the nature of modern corporate
9 liability and responsibility. In addition, a reasonableness
standard has been inserted to allow for those situations where
the inspection has been denied in reliance upon a reasonable
ground, which is later found insufficient.

10 NRS 78.110 Change of resident agent or location of
11 principal office.

12 Whenever any corporation created pursuant to this chapter
13 desires to change the location within the state of its principal
14 office, or change its resident agent, or both, the change may be
15 effected [in the following manner] by filing with the Secretary
16 of State a certificate of change that sets forth:

17 [1. The board of directors shall adopt a resolution
18 reciting the change in the location of the principal office of
19 the corporation within this state, or the change of the resident
20 agent, or both.

21 2. The board of directors shall file a certificate
22 containing a copy of the resolution, certified by the president
23 and secretary, or vice president and assistant secretary, of the
24 corporation, in the office of the secretary of state and in the
25 office of the county clerk of the county where the principal
26 office of the corporation is located.

27 3. If the corporation changes its resident agent, the
28 board of directors shall also file, in the manner required by

1 subsection 2, a certificate of acceptance executed by the new
2 resident agent.

3 4. From and after the time of the filing of copies of the
4 resolution and, if required, the certificate of acceptance, the
5 change is effective.]

6 1. The name of the corporation;

7 2. That the change authorized by this section is
8 effective from and after the filing of the certificate of
9 change;

10 3. The street address of its current principal office;

11 4. If the current principal office is to be changed,
12 the street address of the new principal office;

13 5. The name of its current resident agent;

14 6. If the current resident agent is to be changed,
15 the name of the new resident agent and the new resident

16 agent's certificate of acceptance attached to the

17 certificate of change. The certificate of change must be

18 signed by two officers or directors of the corporation, and

19 acknowledged before a person authorized by the laws of the

20 state to take acknowledgements of deeds.

21 Note: This section allows the corporation to change its
22 resident agent and the location of its principal office. The
23 statute currently requires the board of directors to adopt a
24 resolution, and file a certificate containing a copy of the
25 resolution certified by the president and secretary or the vice
26 president and assistant secretary with the Secretary of State
and the county where the principal office is located. If the
resident agent is changed, the board must also file a
certificate of acceptance of a new one. The change then becomes
effective from the date of filing.

27 As the official comment to §5.02 of the Rev. MBCA states,
28 changes of registered office or registered agent are usually
routine matters which do not affect the rights of shareholders.
The Rev. MBCA permits these changes without a formal amendment

1 of the articles of incorporation, without approval of the
2 shareholders, and even without formal approval of the board of
3 directors. Delaware, at Del. Code Ann., tit. 8, §133, requires
4 a resolution by the board of directors and a certificate
5 certifying the change, executed, acknowledged and filed with the
6 Secretary of State, and with the County Recorder. Delaware law
7 is, therefore, similar in requirements to Nevada's.
8 Pennsylvania has separate sections for domestic and foreign
9 corporations. 15 Pa.C.S.A. §§5507(b) and 6144(b). Corporations
10 can change the registered agent or registered office by amending
11 the articles or certificate of authority, or by filing a
12 statement under corporate seal executed by two officers setting
13 out: the corporate name, the address of the existing agent, the
14 address of the new agent, and the procedure by which the change
15 was authorized. For a domestic corporation the change requires
16 approval of the majority of the board of directors.

17 Only 14 jurisdictions do not have statutes which expressly
18 require that the statement of change be authorized by an officer
19 or director of the corporation. Most jurisdictions specify that
20 the authorization must be in the form of a resolution adopted by
21 the board of directors.

22 The change of resident agent or location of principal
23 office by the corporation is purely an administrative function
24 and does not affect the rights of stockholders. We have
25 redrafted the Nevada statute to reflect this approach. The
26 proposed statute also deletes the requirement of county filing.

27 DIRECTORS AND OFFICERS

28 NRS 78.115 No Change.

NRS 78.120 Powers of the board of directors: Generally;
bylaws.

1. Subject only to such limitations as may be provided by
this chapter, or the [certificate or] articles of incorporation
of the corporation[, or an amendment thereof], the board of
directors [or trustees] shall have full control over the affairs
of the corporation.

2. Subject to the bylaws, if any, adopted by the
stockholders, the directors may make the bylaws of the
corporation.

3. The selection of a time frame for the achievement

1 of corporate goals is the responsibility of the directors.

2 Note: In conjunction with the enactment of a new NRS
3 78.135 (see below), we also suggest the addition of a new
4 subsection 3 to NRS 78.120 with respect to the powers of the
5 board of directors. Subsection 3 is derived from the recently
6 enacted Sec. 1701.59(A) of the Ohio corporation act, and
7 codifies the holding of the Delaware courts in Paramount
8 Communication, Inc. v. Time, Inc., Revised March 9, 1990.

9 NRS 78.125 Committees of the board of directors: Powers;
10 names.

11 1. Unless it shall be otherwise provided in the
12 [certificate or] articles of incorporation, or an amendment
13 thereof, the board of directors may, by resolution or resolu-
14 tions passed by a majority of the whole board, designate one or
15 more committees [, each committee to consist of one or more of
16 the directors of the corporation,] which, to the extent provided
17 in the resolution or resolutions or in the bylaws of the
18 corporation, shall have and may exercise the powers of the board
19 of directors in the management of the business and affairs of
20 the corporation, and may have power to authorize the seal of the
21 corporation to be affixed to all papers on which the corporation
22 desires to place its seal.

23 2. Such committee or committees [shall] must have such
24 name or names as may be stated in the bylaws of the corporation
25 or as may be determined from time to time by resolution adopted
26 by the board of directors.

27 3. Each committee must consist of at least one director.
28 Unless the articles of incorporation or the bylaws provide
29 otherwise, the board of directors may appoint natural persons
30 who are not directors to serve on committees.

31 Note: The Bar Proposals recommend that the statute be

1 changed to expressly permit non-director membership on
2 committees, with the limitation that such committees be subject
3 to the direction and control of the board of directors. Because
4 this change would contribute to greater flexibility in the
5 economy of management, we recommend these changes.

6 NRS 78.130; NRS 78.135. No change.

7 78. Standards applicable to directors and officers.

8 1. Directors and officers must exercise their powers
9 in good faith and with a view to the interests of the
10 corporation.

11 2. In performing their respective duties, directors
12 and officers are entitled to rely on information, opinions,
13 reports, books of account, or statements, including
14 financial statements and other financial data, that are
15 prepared or presented by:

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

19 (b) Counsel, public accountants, or other persons
20 as to matters reasonably believed to be within the person's
21 professional or expert competence;

22 (c) A committee of the directors upon which the
23 person relying thereon does not serve, duly established in
24 accordance with NRS 78.125, as to matters within the
25 committee's designated authority and matters on which the
26 committee is reasonably believed to merit confidence. A
27 director or officer is not entitled to rely on such
28 information, opinions, reports, books of account, or
statements if the director or officer has knowledge
concerning the matter in question that would cause reliance

1 thereon to be unwarranted.

2 3. Directors and officers, in exercising their
3 respective powers with a view to the interests of the
4 corporation, may in their discretion consider any of the
5 following:

6 (a) The interests of the corporation's employees,
7 suppliers, creditors, and customers;

8 (b) The economy of the state and nation;

9 (c) Community and societal considerations; and,

10 (d) The long-term as well as short-term interests of the
11 corporation and its stockholders, including the possibility
12 that these interests may be best served by the continued
13 independence of the corporation.

14 4. Directors may resist a change or potential change in
15 control of the corporation if the directors by a majority vote
16 of a quorum determine that the change or potential change is
17 opposed to or not in the best interest of the corporation

18 (a) upon consideration of the interests of the
19 corporation's stockholders and any of the matters set forth
20 in subsection 3 of this section, or

21 (b) because the amount or nature of the indebtedness and
22 other obligations to which the corporation or any successor or
23 the property of either may become subject in connection with
24 the change or potential change in control provides reasonable
25 grounds to believe that, with a reasonable period of time, any
26 of the following would apply:

27 (1) the assets of the corporation or any successor
28 would be or become less than its liabilities plus its stated

1 capital, if any;

2 (2) the corporation or any successor would be or
3 become insolvent; or,

4 (3) any voluntary or involuntary proceeding under
5 the federal bankruptcy laws concerning the corporation or any
6 successor would be commenced by any person.

7 5. A director or officer must not be found to have
8 failed to exercise the director's or officer's powers in good
9 faith and with a view to the interests of the corporation
10 unless it is proved by clear and convincing evidence that the
11 director or officer has not acted in good faith and in a manner
12 reasonably believed by the director or officer to be with a
13 view to the interests of the corporation.

14 Note: In 1987, Nevada enacted one of the better provisions
15 in existence with respect to limitation of the liability of
16 directors and officers of a corporation the its shareholders.
17 NRS 78.037(1). Most other jurisdictions have now enacted
18 similar legislation, in light of the difficulty in attracting
19 competent management and obtaining director's and officer's
20 liability coverage in the absence of such provisions. Although
there are some additional modifications which appear in other
jurisdictions, Nevada's legislation establishes one of the
clearest and easiest to understand standards for imposition of
liability. For this reason, we recommend no change in the
language of 78.037(1).

21 On the other hand, because there are many occasions where
22 the business judgment of directors and officers is called into
23 question which would not be subject to 78.037(1) (e.g. cases
24 seeking equitable relief; corporations which have not "opted-in"
25 to the statute) many jurisdictions have enacted legislation
which more clearly defines the factors which a board of
directors may properly consider when making decisions. These
factors are especially important in the context of decisions
relating to corporate control and planning.

26 The only two statutes in Nevada which presently address the
27 powers and standards applicable to the decisions of a board of
28 directors and the officers are NRS 78.120 and the first sentence
of NRS 78.140. NRS 78.120 provides in essence that "the board
of directors or trustees shall have full control over the
affairs of the corporation" and have the power to make the

1 bylaws of the corporation, subject to any bylaws adopted by the
2 shareholders. The first sentence of NRS 78.140 provides that
3 "Directors and officers shall exercise their powers in good
faith and with a view to the interests of the corporation."

4 We suggest that the legislature add a new section to the
5 Nevada Revised Statutes with respect to the standards applicable
6 to the board of directors and officers. This new section could
7 appear and be codified at NRS 78.137. The language is largely
derived from a review of similar provisions which have recently
enacted in several jurisdictions, including Indiana, Ohio,
Arizona and Virginia.

8 78.140 Restrictions on transactions involving interested
9 directors or officers; compensation of directors.

10 1. Directors and officers [shall] must exercise their
11 powers in good faith and with a view to the interests of the
12 corporation. No contract or other transaction between a
13 corporation and one or more of its directors or officers, or
14 between a corporation and any corporation, firm or association
15 in which one or more of its directors or officers are directors
16 or officers or are financially interested, is either void or
17 voidable solely for this reason or solely because any such
18 director or officer is present at the meeting of the board of
19 directors or a committee thereof which authorizes or approves
20 the contract or transaction, or because the vote or votes of
21 common or interested directors are counted for such purpose, if
22 the circumstances specified in any of the following paragraphs
23 exist:

24 (a) The fact of the common directorship or financial
25 interest is disclosed or known to the board of directors or
26 committee and noted in the minutes, and the board of committee
27 authorizes, approves or ratifies the contract or transaction in
28 good faith by a vote sufficient for the purpose without counting

1 the vote or votes of such director or directors.

2 (b) The fact of the common directorship or financial
3 interest is disclosed or known to the stockholders, and they
4 approve or ratify the contract or transaction in good faith by a
5 majority vote or written consent of stockholders holding a
6 majority of the shares entitled to vote; the votes of the common
7 or interested directors or officers shall be counted in any such
8 vote of stockholders.

9 (c) The fact of the common directorship or financial
10 interest is not disclosed or known to the director or officer
11 at the time the transaction is brought before the board of
12 directors of the corporation for action.

13 (d) [(c)] The contract or transaction is fair as to the
14 corporation at the time it is authorized or approved.

15 2. Common or interested directors may be counted in
16 determining the presence of a quorum at a meeting of the board
17 of directors or a committee thereof which authorizes, approves
18 or ratifies a contract or transaction, and if the votes of the
19 common or interested directors are not counted at such meeting,
20 then a majority of the disinterested directors may authorize,
21 approve or ratify a contract or transaction.

22 3. Unless otherwise provided in the certificate or
23 incorporation or the bylaws, the board of directors may fix the
24 compensation of directors for services in any capacity.

25 Note: The Nevada, Delaware and Pennsylvania statutes are
26 similar to MBCA (1984) §8.31. The MBCA has now changed.
27 Subchapter F breaks down the conflicting interest transactions
28 for directors into a detailed definitions, and provisions
providing for action by the court, directors, and shareholders.
No state has adopted the Rev. MBCA Subchapter F.

1 We recommend leaving this statute essentially the same. It
2 is much simpler than the Rev. MBCA, and the Rev. MBCA does not
3 add anything of substance to the current framework, except that
4 the director must know there is a conflict before liability may
5 be attached. This change is reflected in the recommended
6 changes. This change also reflects the B.L.C. Proposals' change
7 to NRS 78.145, which requires that the director know the nature
8 of his conduct in order to be liable for them.

9 NRS 78.145 Repeal.

10 Note: The B.L.C. Proposals edited this statute to clarify
11 that the penalty for directors' false and fraudulent statements
12 arises only in cases where officers and directors know their
13 statements to be false or fraudulent. Our recommendation is
14 that the statute be repealed. None of the comparable statutory
15 schemes have such a provision. This is probably because the
16 statute duplicates federal and common law covering director
17 liability. In addition, the subject matter of this statute is
18 covered, as to directors' and officers' liability to stock-
19 holders, in NRS Chapter 90, which applies to securities
20 transactions.

21 ANNUAL LIST OF OFFICERS AND DIRECTORS;
22 DESIGNATION OF RESIDENT AGENT

23 NRS 78.150 No change.

24 Note: This statute provides that each corporation organ-
25 ized under the laws of Nevada must file an annual list of
26 officers and directors, and a designation of its resident agent
27 certified by a corporate officer with the secretary of state,
28 along with a \$50.00 fee. The statute also requires the
secretary of state to mail the blank forms to the corporation 60
days before the list is due.

Delaware and Pennsylvania have no similar provision for all
corporations, although Delaware does require an annual report
for foreign corporations. Del. Code Ann., tit. 8, Section 374.
The Rev. MBCA requires that each domestic corporation file
during the first part of the year an annual report setting forth
the name of the corporation, where the corporation is
incorporated, the address of the corporation, the directors' and
officers' names and addresses, a brief description of the
corporation's business, the total authorized shares of the
corporation, and the total issued shares of the corporation.
Rev. MBCA §16.22. All the information must be current, and the
secretary of state is required to return incomplete reports to
the corporation and allow 30 days for refiling.

Nevada's annual filing requirement satisfies Nevada's
interest in having current data concerning vital aspects of the
corporation. There is no reason to change it.

28 NRS 78.155 Certificate of authorization to transact

1 business.

2 When the annual fee for filing the list of officers and
3 directors and designation of resident agent has been paid, the
4 cancelled check received by the corporation constitutes a
5 certificate authorizing it to transact its business within this
6 state until the anniversary date of its incorporation in the
7 next succeeding calendar year. If the corporation desires a
8 formal certificate upon its payment of the annual fee, its
9 payment must be accompanied by a self-addressed, stamped
10 envelope and an additional fee of \$25.00.

11 Note: Delaware has no similar statute. Pennsylvania
12 provides for a certificate of authority for foreign
13 corporations, but there is no corresponding provision for
14 domestic corporations. Rev. MBCA §1.28 provides that any person
may obtain a certificate of authorization or existence
concerning a corporation for a fee.

15 Those businesses wishing to have a formal certificate for
16 display, or verification, should be able to obtain one.
17 Consequently, the present statute should be left intact.
18 However, to defray the costs associated with the secretary of
19 state's issuing such a certificate, both in terms of the time
involved in drafting the certificate, and in the record keeping
necessary, the secretary of state should be able to charge a
fee. The fee of \$25.00 seems to be in keeping with the basic
fee structure set forth in NRS 78.785.

20 NRS 78.160 New corporations: Filing requirements; fee.

21 Each corporation organized pursuant to the laws of this
22 state shall, within 60 days after the filing of its articles of
23 incorporation with the secretary of state:

24 1. File a list of its officers and directors and a
25 designation of its resident agent. The address of the resident
26 agent must be the same as that of the principal office.

27 2. Pay to the secretary of state a fee of \$50.00.

28 [3. File a copy of the designation of resident agent in

1 the office of the county clerk of the county in which the
2 principal office of the corporation in this state is located.]

3 Note: This statute requires every corporation to file a
4 list of officers, directors, and resident agent, including
5 address and name of each, and to pay a \$50.00 fee within 60 days
6 after the filing of the articles of incorporation. This statute
also requires the filing of a designation of resident agent.
The proposed change deletes the requirement of county filing.

7 NRS 78.165 Addresses of officers and directors; penalty
8 for failure to file.

9 1. Every list required to be filed under the provisions
10 of NRS 78.150 to 78.185, inclusive, must, after the name of each
11 officer and director listed thereon, set forth the post office,
12 [or] street or business address of each officer and director.

13 2. If the addresses are not stated for each person on any
14 list offered for filing, the secretary of state may refuse to
15 file the list, and the corporation for which the list has been
16 offered for filing is subject to all the provisions of NRS
17 78.150 to 78.185, inclusive, relating to failure to file the
18 list within or at the times therein specified, unless a list is
19 subsequently submitted for filing which conforms to the
20 provisions of NRS 78.150 to 78.185, inclusive.

21 Note: The change to this statute clarifies that an officer
22 or director may use his or her business address in the annual
list of officers and directors.

23 NRS 78.170 No change.

24 NRS 78.175 Forfeiture of charters of defaulting
25 corporations: Duties of secretary of state; distribution of
26 corporate assets.

27 1. On or before the 15th day of the 3rd month following
28 the month in which filing was required, the secretary of state

1 shall compile a complete list of all defaulting corporations,
2 together with the amount of the filing fee, penalties and costs
3 remaining unpaid.

4 2. Immediately after the 1st day of the 9th month
5 following the month in which filing was required, the secretary
6 of state [shall] must compile a full and complete list
7 containing the names of all corporations whose right to do
8 business has been forfeited. The secretary of state shall
9 forthwith notify [the several county clerks in whose offices the
10 articles of incorporation which have been forfeited are on file
11 and shall also] by letter addressed to its president or
12 secretary [notify] each corporation of the forfeiture of its
13 charter. [In case of a reinstatement, the secretary of state
14 shall also notify immediately the county clerks of the fact.]

15 3. In case of forfeiture of the charter and of the right
16 to transact business thereunder, all the property and assets of
17 the defaulting domestic corporation shall be held in trust by
18 the directors of the corporation as for insolvent corporations,
19 and the same proceedings may be had with respect thereto as are
20 applicable to insolvent corporations. Any person interested may
21 institute proceedings at any time after a forfeiture has been
22 declared, but if the secretary of state reinstates the charter
23 the proceedings shall at once be dismissed and all property
24 restored to the officers of the corporation.

25 4. Where the assets are distributed they shall be
26 applied:

27 (a) To the payment of the filing fee, penalties and costs
28 due to the state;

1 (b) To the creditors of the corporation; and

2 (c) Any balance remaining shall be distributed among the
3 stockholders.

4 Note: This statute provides for the functions of the
5 secretary of state when a corporation forfeits its charter, and
6 for the distribution of corporate assets upon forfeiture. This
statute is primarily ministerial, and fulfills its essential
function. We have deleted county filings from this statute.

7 NRS 78.180 Reinstatement of defaulting corporations:

8 Duties of secretary of state.

9 1. Except as otherwise provides in subsections 3 and 4,
10 the secretary of state may:

11 (a) Reinstate any corporation which has forfeited its
12 right to transact business under the provisions of NRS 78.150 to
13 78.185, inclusive; and

14 (b) Restore to the corporation its right to carry on
15 business in this state, and to exercise its corporate privileges
16 and immunities, if it:

17 (1) Files with the secretary of state an affidavit
18 stating the reason for the revocation of its charter; and

19 (2) Pays to the secretary of state all filing fees,
20 licenses, penalties, costs and expenses due and in arrears at
21 the time of the revocation of its charter, and all filing fees,
22 licenses and penalties which have accrued since the revocation
23 of its charter.

24 2. When [payment is made and] the secretary of state
25 reinstates the corporation [to its former rights] he [shall]
26 must:

27 (a) Immediately issue and deliver to the corporation a
28 certificate of reinstatement authorizing it to transact business

1 as if the filing fee had been paid when due; and

2 (b) Upon demand, issue to the corporation one or more
3 certified copies of the certificate of reinstatement_ [, a copy
4 of which must be filed in the office of the county clerk of the
5 county in which the principal place of business of the
6 corporation is located or in any other county in which it owns,
7 holds or leases property or transacts business].

8 3. The secretary of state shall not order a reinstatement
9 unless all delinquent fees, penalties and costs have been paid,
10 and the revocation of the charter occurred only by reason of
11 failure to pay the fees, penalties and costs.

12 4. If a corporate charter has been revoked pursuant to
13 the provisions of NRS 78.175 and has remained revoked for a
14 period of 5 consecutive years, the charter must not be
15 reinstated.

16 Note: This statute sets forth the procedure for rein-
17 statement of defaulting corporations. All of the comparable
18 statutes contain similar reinstatement provisions. Although
19 there are some differences between these statutes, none seem to
be particularly superior. The Nevada statute accomplishes its
purpose sufficiently. Consequently, we recommend that the
statute remain essentially unchanged.

20 However, we have changed subsection 2 to make the reference
21 specific with regard to its requirement of full compliance
22 before reinstatement. A change is made to subsection (b) to
reflect the elimination of county filings.

23 NRS 78.185 Acquisition of new name by defaulting
24 corporation upon reinstatement.

25 1. Except as otherwise provided in subsection 2, if any
26 corporation is suspended from doing business under the
27 provisions of this chapter or any previous act of the legis-
28 lature of Nevada and the name of the corporation[, or]

1 cannot be distinguished from one [deceptively similiar to it,]:

2 (a) Legally acquired by another corporation or a limited
3 partnership; or

4 (b) Reserved for the use of a proposed corporation or
5 limited partnership, before the application for reinstatement of
6 the defaulting corporation, the defaulting corporation [shall]
7 must, in its application for reinstatement, submit to the
8 secretary of state some other name under which it desires its
9 corporation existence to be reinstated. If that name is
10 [sufficiently distinctive and different] distinguishable from
11 any name reserved or otherwise in use, the secretary of state
12 [shall] must issue to the defaulting corporation a certificate
13 of reinstatement under that new name.

14 2. If the defaulting corporation submits the written
15 consent of the entity reserving or using a name which is the
16 same as or cannot be distinguished from [similar to] the
17 defaulting corporation's old name or a new name it has submitted
18 it may be reinstated under that name. [even though it is:

19 (a) The same as or deceptively similar to the name used by
20 a foreign corporation or foreign limited partnership doing
21 business in Nevada; or

22 (b) Deceptively similar to the name used by, or reserved
23 to be used by, a domestic corporation or domestic limited
24 partnership].

25 3. For the purposes of this section, the name of one
26 corporation must not be deemed distinguishable from another
27 solely because its name contains distinctive lettering, a
28 distinctive mark, a trade mark or a trade name or any

1 combination of those.

2 Note: This statute governs a reinstated corporation's
3 right to use its name. When a corporation defaults under the
4 statutes, it may lose the right to use its name. The Delaware
5 and Pennsylvania statutes have similar provisions. The MBCA
6 does not. The Nevada statute allows a subsequent user of the
7 corporation's name to consent to the corporation's continued use
8 after reinstatement, a condition not allowed by the comparable
9 statutes.

10 The change in this statute reflects the clarification of
11 the standard for reserved names. A name may now be reserved if
12 "distinguishable from" the name already reserved or in use. The
13 new wording and new subsection 3 sets forth the new clarified
14 standard.

15 Several other changes have been made. "Must" has been
16 substituted for "shall" to reflect the Legislative Counsel
17 Bureau's preferred form. More importantly, the verbiage in
18 Subsection 2 has been deleted. It is unnecessary to redescribe
19 the nature of the conflicting name reservation. Finally, as
20 provided in recommended changes to NRS 78.039, new subsection 3
21 clarifies what "distinguishable" means.

22 STOCK, DIVIDENDS AND SECURITIES

23 NRS 78.____ Definition of "distribution".

24 As used in NRS 78.195 through 78.300, inclusive, unless
25 the context otherwise requires, the word "distribution" means
26 a direct or indirect transfer of money or other property
27 (except its own shares) or incurrence of indebtedness by a
28 corporation to or for the benefit of its shareholders in
respect of any of its shares. A distribution may be in the
form of a declaration or payment of a dividend, a purchase,
redemption, or other acquisition of shares, a distribution of
indebtedness, or otherwise.

29 NRS 78.195 [Classes and kinds of stock; rights of
30 stockholders.] Authorized stock.

31 [1. Every corporation may issue one or more classes or
32 kinds of stock, any of which may be of stock with or without par

1 value, with full or limited voting powers or without voting
2 powers and with such designations, preferences and relative,
3 participating, optional or other special rights, or
4 qualifications, limitations or restrictions thereof, as are
5 stated in the articles of incorporation or in the resolution
6 providing for the issuance of the stock adopted by the board of
7 directors pursuant to authority expressly vested in it by the
8 provisions of the articles of incorporation.]

9 [2. Any voting power, designation, preference, right,
10 qualification, limitation or restriction on any class or series
11 of stock may be made dependent upon any fact which may be
12 ascertained outside of the articles of incorporation or the
13 resolution providing for the issuance of such stock adopted by
14 the board of directors, if the manner in which a fact may
15 operate upon the voting power, designation, preference, right,
16 qualification, limitation or restriction on such class or series
17 of stock is stated in the articles of incorporation or the
18 resolution.]

19 [3. Any class or kind of stock may be special stock,
20 whether the corporation has the power to issue one or more
21 classes or kinds of stock. The power to increase or decrease or
22 otherwise adjust the capital stock as provided in this chapter
23 applies to all classes of stock.]

24 [4. Any preferred or special stock may be made subject to
25 redemption at such times and prices, and may be issued in such
26 series, with such designations, preferences, and relative,
27 participating, optional or other special rights, qualifications,
28 limitations or restrictions thereof as are stated in the

1 articles of incorporation or in the resolution providing for the
2 issuance of such stock adopted by the board of directors.]

3 [5. The holder of preferred or special stock of any class
4 or series thereof is entitled to receive dividends at such
5 rates, on such conditions and at such times as are stated in the
6 articles of incorporation or in the resolution providing for the
7 issuance of such stock adopted by the board of directors,
8 payable in preference to, or in relation to, the dividends
9 payable on any other class or classes of stock, and cumulative
10 or noncumulative as stated.]

11 1. Every corporation must prescribe the classes, series,
12 and the number of shares of each class or series which the
13 corporation is authorized to issue in the articles of
14 incorporation. If more than one class or series of stock is
15 authorized, the articles of incorporation may vest authority
16 in the board of directors to fix and determine in a resolution
17 the price or value to be received for stock and the classes,
18 series and the number of each class or series of stock. If
19 more than one class or series of stock is authorized, the
20 articles of incorporation or the resolution of the board of
21 directors passed pursuant to a provision of the articles must
22 prescribe a distinguishing designation for each class and
23 series. Before the issuance of shares of a class or series,
24 the voting powers, designations, preferences, limitations,
25 restrictions and relative rights of that class or series of
26 stock must be described in the articles of incorporation or the
27 resolution of the board of directors.

28 2. Except as provided in subsection 7, all shares of a

1 class must have voting powers, preferences, designations,
2 limitations, restrictions and relative rights identical with
3 those of other shares of the same class except to the extent
4 otherwise permitted by this section. All shares of a series
5 must have voting powers, designations, preferences, limitations,
6 restrictions and relative rights identical with those of other
7 series of the same class.

8 3. Unless otherwise provided in the articles of
9 incorporation, no stock issued as fully paid up may ever be
10 assessed and the articles of incorporation must not be amended
11 in this particular.

12 4. The articles of incorporation must authorize:

13 (a) one or more classes of shares that together have
14 unlimited voting rights, and

15 (b) one or more classes of shares that together are
16 entitled to receive the net assets of the corporation upon
17 dissolution.

18 5. The articles of incorporation, or the resolution of
19 the board of directors pursuant thereto, may authorize one or
20 more classes of stock that:

21 (a) have special, conditional, or limited voting powers,
22 or no right to vote, except to the extent otherwise prohibited
23 by this chapter;

24 (b) are redeemable or convertible:

25 (i) at the option of the corporation, the
26 shareholders, or another person or upon the occurrence of
27 a designated event;

28 (ii) for cash, indebtedness, securities or other

1 property;

2 (iii) in a designated amount or in an amount
3 determined in accordance with a designated formula or by
4 reference to extrinsic data or events;

5 (c) entitle the stockholders to distributions calculated
6 in any manner, including dividends that may be cumulative,
7 noncumulative, or partially cumulative;

8 (d) have preference over any other class of shares with
9 respect to distributions, including dividends and distributions
10 upon the dissolution of the corporation.

11 (e) have powers, designations, preferences, limitations,
12 restrictions and relative rights dependent upon any fact which
13 may be ascertained outside of the articles of incorporation or
14 the resolution if the manner in which a fact may operate on
15 such class or series of stock is stated in the articles of
16 incorporation or the resolution.

17 The description of voting powers, designations, preferences,
18 qualifications, limitations, restrictions, and relative rights
19 of the share classes contained herein is not exhaustive or
20 exclusive.

21 6. [Any rate, condition or time for payment of dividends
22 of] Any voting power, designation, preference, right,
23 qualification, limitation or restriction on any class or series
24 of stock may be made dependent upon any fact or event which may
25 be ascertained outside the articles of incorporation or the
26 resolution providing for the issuance of such stock adopted by
27 the board of directors, [providing for the dividends provided
28 that] if the manner in which a fact or event may operate upon

1 the [rate, condition or time of payment for such dividends]
2 voting power, designation, preference, right, qualification,
3 limitation, or restriction on such class or series of stock is
4 stated in the articles of incorporation or the resolution.

5 [7. When a dividend upon the preferred and special stocks,
6 if any, to the extent of the preference to which such stocks are
7 entitled, has been paid or declared and set apart for payment, a
8 dividend on any remaining class of stock may then be paid out of
9 the remaining assets of the corporation available for
10 dividends.]

11 [8. The holders of the preferred or special stocks of any
12 class or series thereof are entitled to such rights upon the
13 dissolution of, or upon any distribution of the assets of, the
14 corporation as are stated in the articles of incorporation or in
15 the resolution providing for the issuance of such stock adopted
16 by the board of directors.]

17 [9. Any preferred or special stocks of any class or series
18 thereof may be made convertible into, or exchangeable for,
19 shares of any other class or classes or of any other series of
20 the same or any other class or classes of stock of the
21 corporation at such prices or at such rates of exchange and with
22 such adjustments as are stated in the articles of incorporation
23 or in the resolution providing for the issuance of such stocks
24 adopted by the board of directors.]

25 [10.] 7. If the corporation is authorized to issue more
26 than one class of stock or more than one series of any class,
27 the voting powers, designations, preferences, [and relative,
28 participating, optional or other special] rights,

1 qualifications, limitations or restrictions of the various
2 classes of stock or series thereof, must be set forth in full or
3 summarized on the face or back of each certificate which the
4 corporation issues to represent such stock, or on the
5 informational statement sent pursuant to NRS 78.235, except
6 that, in lieu thereof, the certificate or informational
7 statement may contain a statement setting forth the office or
8 agency of the corporation from which a stockholder may obtain a
9 copy of a statement setting forth in full or summarizing the
10 voting powers, designations, preferences, [and relative,
11 participating, optional or other special rights] rights,
12 qualifications, limitations and restrictions of the various
13 classes of stock or series thereof [and the qualifications,
14 limitations or restrictions of such rights.] The corporation
15 [shall] must furnish to its stockholders upon request and
16 without charge, a copy of any such statement or summary.

17 [11. If the corporation is authorized to issue only special
18 stock, each certificate or informational statement sent pursuant
19 to NRS 78.235 must set forth in full or summarize the rights of
20 the holders of the stock and, when stock of any class or series
21 thereof is issued, the designations, preferences and rights
22 which have not been set forth in the articles of incorporation,
23 the designations, preferences and relative, participating,
24 optional or other special rights of such stock and the
25 qualifications, limitations or restrictions of such rights must
26 be set forth in a certificate made under the seal of the
27 corporation and signed by its president, or a vice president,
28 and its secretary, or an assistant secretary, and acknowledged

1 by the president or vice president before a person authorized by
2 the laws of Nevada to take acknowledgments of deeds, and the
3 certificate must be filed and a copy recorded in the same manner
4 as articles of incorporation are required to be filed and
5 recorded.]

6 [12] 8. The provisions of this section do not restrict the
7 directors of a corporation from taking action to protect the
8 interests of the corporation and its stockholders, including but
9 not limited to, adopting or executing plans, arrangements or
10 instruments that deny rights, privileges, power or authority to
11 a holder of a specified number of shares or percentage of share
12 ownership or voting power.

13 Note: The revisions to this statute abolish the
14 distinction between "preferred" and "common" shares of stock.
15 As one commentator observed, "[t]his distinction has little
16 meaning today when a corporation can create a class of 'common'
17 shares with important preferential rights and a class of
18 'preferred' shares with rights subordinate to those of the
19 common shares." The approach of the revised Model Business Code
20 breaks away from the antiquated, inherited concepts and develops
21 more flexible language, which directs more focus upon the actual
22 characteristics of the security. Similarly, the concept of
23 "special stock" which was embodied in NRS 78.195 has been
24 eliminated. Nevada practitioners often have wondered what is
25 special stock and how or why it is different from common and
26 preferred. Apparently, the concept was believed to be necessary
27 to authorize stock with characteristics that did not clearly
28 fall within the traditional "common" and "preferred" class
perimeters. With the abolition of these traditional
designations, the concept of special stock seems unnecessary.

In the absence of traditional "common" and "preferred"
stock concepts, subsection 4 mandates that two fundamental
corporate characteristics will always exist -- unlimited voting
rights and the right to receive the net assets of the
corporation upon dissolution. This subsection thus ensures that
there is always in existence (a) a class or classes of
shareholders to elect the board of directors and make
fundamental corporate decisions and (b) one or more classes of
shareholders who share in the ultimate residual interest in the
corporation. These two characteristics need not be placed in a
single class of stock, but rather may be divided as desirable.

1 The provisions concerning redemption and exchange of
2 securities have been expanded. Under NRS 78.195(5), it was not
3 clear on the face of the statute whether a redemption which is a
4 "put" (exercisable by the shareholder or a third party) was
5 permissible. Since stock restrictions may create a right
6 identical to shareholder's ability to "put" the stock back to
7 the corporation, there seems little reason to leave this
8 ambiguity of the face of the statute. The provisions of NRS
9 78.195 have been expanded to allow clearly stock to be converted
10 or exchanged not only for other classes of stock, but also for
11 cash, indebtedness, or other property.

12 New subsection 1 makes clear that the articles may give the
13 board the power to set the rights etc. of a class of stock.
14 This power is also contained in NRS 78.035(4) which refers to
15 this section.

16 New subsection 3 provides for nonassessability of stock and
17 has been moved from NRS 78.035(6). The articles no longer must
18 state whether or not stock is assessable. Now, stock will be
19 assumed to be nonassessable unless the articles provide
20 otherwise.

21 NRS 78.197 No change.

22 NRS 78.200 Rights or options to purchase [capital] stock.

23 Every corporation shall have the power to create and issue,
24 whether [or not] in connection with the issue and sale of any
25 shares of stock or other securities of the corporation, rights
26 and options entitling the holders thereof to purchase from the
27 corporation any shares of its [capital] stock of any class or
28 classes, such right or options to be evidenced by or in such
instrument or instruments as shall be approved by the board of
directors. The terms upon which, the time or times, which may
be limited or unlimited in duration, at or within which, and the
price or prices at which any such shares may be purchased from
the corporation upon the exercise of any such right or option
shall be such as shall be fixed and stated in the [certificate
or] articles of incorporation, or in any amendment thereto, or
in a resolution or resolutions adopted by the board of directors

1 providing for the creation and issue of such rights or options,
2 and, in every case, set forth or incorporated by reference in
3 the instrument or instruments evidencing such rights or
4 options[;].[provided:

5 1. That in case the shares of stock of the corporation to
6 be issued upon the exercise of such rights or options shall be
7 shares having a par value, the price or prices to be received
8 therefor shall not be less than the par value thereof; and

9 2. That in case the shares of stock so to be issued shall
10 be shares of stock without par value, the consideration therefor
11 shall be determined in the manner provided in this chapter for
12 the fixing of the consideration for the issue of such stock.]

13 Note: The changes made to this statute are substantially
14 technical, except for the deletion of the sections which mandate
15 the manner in which the price of the stock shall be set. These
16 sections have been deleted consistent with the approach taken by
17 these proposed amendments to eliminate the concepts of par
18 value, surplus and stated capital from the Nevada corporate
19 code.

17 NRS 78.205 No change.

18 NRS 78.206 No change.

19 Note: NRS 78.206 gives appraisal rights to stockholders
20 cashed out in a reduction of shares. Since the reduction of
21 shares and cashing out of minority shareholders in this context
22 usually involves the freezing out of minority shareholders
23 and/or a corporation "going private", the protection contained
24 in NRS 78.206 seems reasonable without being unduly burdensome
25 to the corporation. Sufficient question must exist concerning
26 the price a shareholder will be paid for his fractional shares
27 that at least 15% or more of the outstanding shares of the
28 corporation must demand an appraisal. The appraisal demand must
be made timely, so that the corporation is not burdened with
stockholder "after the fact" discontent.

26 NRS 78.2065 No change.

27 NRS 78.207 No change.

28 NRS 78.210 Repeal.

1 NRS 78. Issuance of shares.

2 1. The board of directors may authorize shares to be
3 issued for consideration consisting of any tangible or
4 intangible property or benefit to the corporation, including
5 but not limited to cash, promissory notes, services performed,
6 contracts for services to be performed, or other securities
7 of the corporation.

8 2. Before the corporation issues shares, the board of
9 directors must determine that the consideration received or to
10 be received for the shares to be issues is adequate. The
11 judgment of the board of directors as to the adequacy of the
12 consideration received for the shares issued is conclusive in
13 the absence of actual fraud in the transaction.

14 3. When the corporation receives the consideration for
15 which the board of directors authorized the issuance of shares,
16 the shares issued therefor are fully paid and nonassessable.

17 4. The corporation may place in escrow shares issued for
18 a contract for future services or benefits or a promissory note,
19 or make any other arrangements to restrict the transfer of the
20 shares. The corporation may credit distributions in respect of
21 the shares against their purchase price, until the services are
22 performed, the benefits are received or the promissory note is
23 paid. If the services are not performed, the benefits are not
24 received, or the promissory note is not paid, the shares
25 escrowed or restricted and the distributions credited may be
26 cancelled in whole or in part.

27 Note: This statute is intended to replace NRS 78.210. It
28 once again reflects the recommendation to modernize the concepts
concerning capital structure of Nevada corporations.

1 Commentators have long argued that the statutory structure
2 embodying "par value" and "legal capital" is complex and
3 confusing, often frustrating management's need for financing
4 flexibility. Worse yet, it is clear that these rules do not
5 provide the once-contemplated protection for shareholders or
6 creditors.

7 Therefore, this proposed new statute eliminates completely
8 the idea of "par value" and the concept that the price to be
9 paid for stock is in any manner related thereto. There is no
10 arbitrary minimum price at which shares must be issued. Fair
11 consideration for the stock is left as a matter of the business
12 judgment of the board of directors. Concerns relating to the
13 dilution of a shareholder's interest if a large number of shares
14 are issued for overvalued property were not effectively
15 addressed by setting a minimum price through the par value
16 device, in any event. Therefore, equal treatment of
17 shareholders and the value of any type of property or
18 opportunity to the corporation is better left within the realm
19 of the directors fiduciary obligations.

20 NRS 78.215 Consideration for shares. [without par value.]

21 1. A corporation[s] may issue and dispose of their
22 authorized shares [without nominal or par value,] for such
23 consideration[s] as may be prescribed in the [certificate or]
24 articles of incorporation, or in any amendment thereof, or, if
25 no consideration is so prescribed, then for such consideration
26 as may be fixed by the board of directors.

27 [2. If a consideration is prescribed for shares without
28 par value, such consideration shall not be used to determine the
fees required for filing articles of incorporation pursuant to
NRS 78.760.]

2. Upon authorization by the board of directors, the
corporation may issue its own shares in exchange for or in
conversion of its outstanding shares, or distribute its own
shares, pro rata to its shareholders or the shareholders of one
or more classes or series, to effectuate stock dividends or
splits. Any such transaction shall not require consideration.

1 However, no such issuance of shares of any class or series may
2 be made to the holders of shares of any other class or series
3 unless it is expressly provided for in the articles of
4 incorporation, or is authorized by any affirmative vote or the
5 written consent of the holders of at least a majority of the
6 outstanding shares of the class or series in which the
7 distribution is to be made.

8 NRS 78.220 No change.

9 NRS 78.225 Stockholder's liability: No individual
10 liability except on unpaid subscription contract.

11 Unless otherwise provided in the articles of incorporation,
12 [n]o stockholder [in] of any corporation formed under the laws
13 of this state shall be individually liable for the debts or
14 liabilities of such corporation, except that such stockholder
15 may become personally liable by reason of his own acts or
16 conduct. [Where a written contract of subscription has been
17 made between the corporation and the subscriber for shares of
18 stock, but only in that event, a holder of shares of stock not
19 fully paid shall be personally liable to the corporation in an
20 amount not in excess of the amount unpaid on shares held by him,
21 at the subscription price.] A purchaser of shares of
22 stock from the corporation is not liable to the corporation or
23 its creditors with respect to the shares, except to pay the
24 consideration for which the shares were authorized to be
25 issued or which was specified in the written subscription
26 agreement.

27 Note: The proposed revisions to this statute do not change
28 the basic rule of non-liability of shareholders for corporate
acts or debts. The suggested revisions recognize that

1 shareholders, as a matter of contract, may accept greater than
2 the statutorily recognized levels of responsibility through the
3 articles of incorporation. The clause added to the first
4 sentence also recognizes that the shareholder may assume further
liability by his own actions, i.e. the exercise of apparent
authority.

5 The second sentence deals with the responsibility for
6 payment by the purchaser of shares of the corporation. The new
7 second sentence was inserted in order to use language consistent
8 with earlier statutory revisions related to the power of the
9 board of directors to determine adequate consideration for the
10 corporation's stock. No substantive change from the existing
statute is intended. As in the existing version of NRS 78.225,
questions related to the rights of subsequent purchasers of
stock and the power of the corporation to cancel shares if the
agreed upon consideration has not been paid are left to the
Uniform Commercial Code. See, NRS 104.8202 and 104.8301.

11 NRS 78.230; 78.235; 78.240 No change.

12 NRS 78.242 Restrictions on transfer of corporation
13 securities.

14 1. Subject to the limitation imposed by NRS 104.8204, a
15 written restriction on the transfer or registration of transfer
16 of a security of a corporation, if permitted by this section,
17 may be enforced against the holder of the restricted security or
18 any successor or transferee of the holder, including an
19 executor, administrator, trustee, guardian or other fiduciary
20 entrusted with like responsibility for the person or estate of
21 the holder.

22 2. A restriction on the transfer or registration of
23 transfer of [securities] the stock of a corporation may be
24 imposed either by the [certificate] articles of incorporation or
25 by the bylaws or by an agreement among any number of [security
26 holders] shareholders or between one or more shareholders and
27 the corporation. No restriction so imposed is binding unless
28 the shareholders [of the securities] are parties to an agreement

1 or voted in favor of the restriction.

2 3. A restriction on the transfer or the registration of
3 transfer of shares is valid and enforceable against the
4 transferee of the shareholder if the restriction is authorized
5 by this section and its existence is noted conspicuously on the
6 front or back of the stock certificate or is contained in the
7 information statement required by NRS 78.235. Unless so noted,
8 a restriction is not enforceable against a person without
9 knowledge of the restriction.

10 [3.] 4. A restriction on the transfer or registration of
11 transfer of [securities] stock of a corporation is permitted by
12 this section if it:

13 (a) [O]obligates the shareholder [of the restricted
14 securities] first to offer to the corporation or to any other
15 shareholder or shareholders [of securities] of the corporation
16 or to any other person and persons or to any combination of the
17 foregoing a prior opportunity, to be exercised within a
18 reasonable time, to acquire the [restricted securities] stock;

19 (b) [O]obligates the corporation or any holder of the
20 [securities] stock of the corporation or any other person or any
21 combination of the foregoing to purchase [the securities] stock
22 which [are] is the subject of an agreement respecting the
23 purchase and sale of the [restricted securities] stock;

24 (c) [R]requires the corporation or any [specified
25 proportion of the holders of any class of securities of the
26 corporation] shareholder or shareholders to consent to any
27 transfer of the [restricted securities] stock or to approve the
28 proposed transferee of [the restricted securities] stock;

1 (d) [P]prohibits the transfer of the [restricted
2 securities] stock to designated persons or classes of persons,
3 and such designation is not manifestly unreasonable; or

4 [4.](e) [Any restriction on the transfer of] prohibits the
5 transfer of shares [of a corporation for the purpose of
6 maintaining its status as an electing small business corporation
7 under subchapter S of the United States Internal Revenue Code
8 (26 U.S.C. §§ 1371 et seq.) is conclusively presumed to be for a
9 reasonable purpose.]

10 (i) to maintain the corporation's status when it is
11 dependant on the number or identity of its shareholders;

12 (ii) to preserve exemptions under the federal, or
13 state tax or securities laws; or

14 (iii) for any other reasonable purpose.

15 5. Any other lawful restriction on transfer or
16 registration of transfer of [securities] stock is permitted by
17 this section.

18 6. For the purposes of this section, "shares" or "stock"
19 include a security convertible into or carrying a right to
20 subscribe for or to acquire shares.

21 NRS 78.245; 78.250; 78.257 No change.

22 NRS 78.265 Repeal.

23 NRS 78.____ [Preemptive right of stockholders to acquire
24 new stock; exceptions.] Shareholders' preemptive rights.

25 1. The shareholders of a corporation do not have a
26 preemptive right to acquire the corporation's unissued shares
27 except to the extent the articles of incorporation so provide.

28 2. A statement included in the articles of incorporation

1 that "the corporation elects to have preemptive rights" or
2 words of similar import, shall mean that, unless the articles
3 of incorporation otherwise provide:

4 (a) The shareholders of the corporation have a preemptive
5 right, granted on uniform terms and conditions prescribed by
6 the board of directors to provide a fair and reasonable
7 opportunity to exercise the right to acquire proportional
8 amounts of the corporation's unissued shares upon the decision
9 of the board of directors to issue them.

10 (b) A shareholder may waive his preemptive right. A
11 waiver evidenced by a writing is irrevocable even though it is
12 not supported by consideration.

13 (c) There is no preemptive right with respect to:

14 (i) shares issued as compensation to directors,
15 officers, agents, or employees of the corporation, its
16 subsidiaries or affiliates;

17 (ii) shares issued to satisfy conversion or option
18 rights created to provide compensation to directors,
19 officers, agents or employees of the corporation, its
20 subsidiaries or affiliates;

21 (iii) shares authorized in articles of incorporation
22 that are within six months from the effective date of
23 incorporation;

24 (iv) shares sold otherwise than for money.

25 (d) Holders of shares of any class without general voting
26 rights but without preferential rights to distributions or
27 assets have no preemptive rights to distributions or assets
28 unless the shares with preferential rights are convertible into

1 or carry a right to subscribe for or acquire shares without
2 preferential rights.

3 (f) Shares subject to preemptive rights that are not
4 acquired by shareholders may be issued to any person for a
5 period of one year after being offered to shareholders at a
6 consideration set by the board of directors that is not lower
7 than the consideration set for the exercise of preemptive
8 rights. An offer at a lower consideration or after the
9 expiration of one year is subject to the shareholders'
10 preemptive rights.

11 3. For purposes of this section, "shares" includes a
12 security convertible into or carrying a right to subscribe for
13 or acquire shares.

14 Note: The presently existing NRS 78.265 provides an "opt
15 out" mechanism for preemptive rights. Unless the articles of
16 incorporation expressly limit or deny preemptive rights, a
17 shareholder has a preemptive right to acquire unissued shares of
18 the corporation's stock. The proposed amended statute adopts an
19 "opt in" mechanism for preemptive rights. Unless an affirmative
20 reference to these rights appears in the articles of
21 incorporation, no preemptive rights exist. The "opt in"
22 approach has been adopted by the Model Business Code as well as
23 twenty-one jurisdictions. It is believed to be the preferable
24 approach because preemptive rights thereby become a thoughtful
25 part of corporate planning in contexts where such rights are
26 appropriate, rather than being a trap for the unwary who are
27 unaware of the need to specifically exclude such rights in the
28 articles of incorporation. The corporation also is less likely
to inadvertently fail to offer the stock when such rights are
expressly granted, rather than existent by default.

23 NRS 78.270 Repeal.

24 NRS 78.275; 78.280 No change.

25 NRS 78.283 Repeal.

26 NRS 78.285 Repeal.

27 NRS 78.290 Repeal.

28

1 NRS 78.____ Distributions to shareholders.

2 1. A board of directors may authorize and the
3 corporation may make distributions to its shareholders subject
4 to restriction by the articles of incorporation and the
5 limitation in subsection 2 below.

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

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

9 (b) the corporation's total assets would be less than the
10 sum of its total liabilities plus (unless the articles of
11 incorporation permit otherwise) the amount that would be needed,
12 if the corporation were to be dissolved at the time of
13 distribution, to satisfy the preferential rights upon
14 dissolution of shareholders.

15 3. The board of directors may base a determination that a
16 distribution is not prohibited under subsection 2 above either
17 of financial statements prepared on the basis of accounting
18 practices that are reasonable in the circumstances or on a fair
19 valuation or other method that is reasonable in the
20 circumstances.

21 4. The effect of a distribution under subsection 2 is
22 measured:

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

26 (i) the date money or other property is transferred
27 or debt incurred by the corporation, or

28 (ii) the date upon which the shareholder ceases to be

- 1 a shareholder with respect to the acquired shares;
2 (b) in the case of any other distribution of
3 indebtedness, as of the date the indebtedness is distributed:
4 (c) in all other cases, as of:
5 (i) the date the distribution is authorized if the
6 payment occurs within 120 days after the date of
7 authorization; or
8 (ii) the date the payment is made if it occurs more
9 than 120 days after the date of authorization.

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

15 Note: The new statute replaces NRS 78.290 and relates to
16 dividends, now called distributions. It is consistent with the
17 general approach taken herein abandoning the outdated concepts
18 of par value, legal capital and the like. Most traditional
19 dividend statutes contained elaborate provisions establishing
20 "stated capital," "capital surplus," and "earned surplus" to
21 establish a baseline concerning what could be paid out to
22 shareholders. However, the net effect of these statutes is that
23 distribution of most or all of corporation's net assets was
24 permitted, if the shareholders wished this to be done.

25 The provisions proposed above eliminate the distinctions
26 surrounding various types of surplus but retain the equity
27 insolvency and balance sheet considerations.

28 NRS 78.295 Liability of directors as to [dividends]
distributions.

A director shall be fully protected in relying in good
faith upon the books and records of the corporation or
statements prepared by any of its officers as to the value and
amount of assets, liabilities or net profits of the corporation,

1 or any other facts pertinent to the existence and amount of
2 [surplus or other] funds from which [dividends might]
3 distributions may properly be declared.

4 78.300 Liability of directors for unlawful payment of
5 [dividends] distributions; exoneration from liability.

6 1. The directors of a corporation shall not make
7 [dividends or other] distributions to stockholders except as
8 provided by this chapter.

9 2. In case of any willful or grossly negligent violation
10 of the provisions of this section, the directors under whose
11 administration the violation occurred, except those who caused
12 their dissent to be entered upon the minutes of the meeting of
13 the directors at the time, or who not then being present caused
14 their dissent to be entered on learning of such action, are
15 jointly and severally liable, at any time within 3 years after
16 each violation, to the corporation, and, in the event of its
17 dissolution or insolvency, to its creditors at the time of the
18 violation, or any of them, to the lesser of the full amount of
19 the dividend made or of any loss sustained by the corporation by
20 reason of the dividend or other distribution to stockholders.

21 78.307 No change.

22 MEETINGS, ELECTIONS, VOTING AND NOTICE

23 NRS 78.310 No change.

24 NRS 78.315 Director's meetings: Quorum; consent for
25 actions taken without meeting; participation by telephone or
26 similar method.

27 1. Unless the [certificate or] articles of incorporation,
28 or any amendment thereof, or the by-laws, provide for a lessor

1 proportion, a majority of the board of directors of the
2 corporation, at a meeting duly assembled, is necessary to
3 constitute a quorum for the transaction of business, and the act
4 of a majority of the directors present at a meeting at which a
5 quorum is present is the act of the board of directors or
6 trustees.

7 2. Unless otherwise restricted by the articles of
8 incorporation or by-laws, any action required or permitted to be
9 taken at any meeting of the Board of Directors or of any
10 committee thereof may be taken without a meeting if, before
11 or after to the action, a written consent thereto is signed by
12 all the members of the Board or of such committee. Such written
13 consent [shall] must be filed with the minutes of proceedings of
14 the Board or committee.

15 3. Unless otherwise restricted by the articles of
16 incorporation or by-laws, members of the Board of Directors or
17 the governing body of any corporation, or of any committee
18 designated by such Board or body, may participate in a meeting
19 of such Board, body or committee by means of a conference
20 telephone network or a similar communications method by which
21 all persons participating in the meeting can hear each other.
22 Participation in a meeting pursuant to this subsection
23 constitutes presence in person at such meeting. Each person
24 participating in the meeting shall sign the minutes thereof.
25 The minutes may be signed in counterparts.

26 Note: This statute sets forth the voting requirements and
27 procedure for director's meetings. All the comparable states
28 have similar provisions.

28 In order to avoid a "trap for the unwary", where action has

1 been taken without strict compliance with the statute, we have
2 included language contained in the Pennsylvania statute which
3 provides that written consent may be given before or after the
meeting or date of action taken.

4 NRS 78.320 [Consent of stockholders in lieu of meeting.]
5 Stockholders' meetings: Quorum, consent for actions taken
6 without meeting; participation by telephone or similar method.

7 1. Unless the articles of incorporation, or an
8 amendment thereof, or the bylaws provide for a lesser
9 proportion, stockholders holding at least a majority of the
10 voting power are necessary to constitute a quorum for the
11 transaction of business, and the act of stockholders holding
12 at least a majority of the voting power present at a meeting
13 at which a quorum is present is the act of the stockholders.

14 [1] 2. Unless otherwise provided in the articles of
15 incorporation or the bylaws, and except for the removal of
16 directors pursuant to NRS 78.335, any action required or
17 permitted to be taken at any meeting of the stockholders may
18 be taken without a meeting if a written consent thereto is
19 signed by [which may be taken by the vote of stockholders at a
20 meeting may be taken without a meeting if authorized by the
21 written consent of] stockholders holding at least a majority of
22 the voting power, except that:

23 (a) If any greater portion of voting power is required for
24 such an action at a meeting, then the greater proportion of
25 written consents is required; and

26 (b) This general provision for action by written consent
27 does not supersede any specific provision for action by written
28 consent contained in this chapter.

1 [2] 3. In no instance where action is authorized by
2 written consent need a meeting of stockholders be called or
3 noticed. The written consent must be filed with the minutes
4 of proceedings of the stockholders.

5 [3. A written consent is not valid unless it is:

6 (a) Signed by the stockholder;

7 (b) Dated, as to the date of the stockholder's signature;
8 and

9 (c) Delivered to the corporation, in the manner prescribed
10 in subsection 4, within 60 days after the earliest date that a
11 stockholder signed the written consent.

12 [4. Delivery of a written consent must be made personally
13 or by certified or registered mail, return receipt requested, to
14 the corporation's principal place of business, principal office
15 in this state or officer or agent who has custody of the book in
16 which the minutes of meetings of stockholders are recorded.

17 [5. If any action is taken which was authorized by written
18 consent.

19 (a) Prompt notice of the action must be given to any
20 stockholders who did not consent in writing.

21 (b) Any certificate required to be filed must state that
22 written consent and notice has been given in accordance with the
23 provisions of this section.]

24 4. Unless otherwise restricted by the articles
25 of incorporation or bylaws, stockholders may participate
26 in a meeting of stockholders by means of a conference telephone
27 network or a similar communications method by which all persons
28 participating in the meeting can hear each other. Participation

1 in a meeting pursuant to this subsection constitutes presence in
2 person at such meeting.

3 Note: The B.L.C. Proposals suggest certain changes to
4 clarify matters of quorum, procedure, and to delete several
5 procedural provisions enacted by the 1989 legislature, which
6 have proved to be either unworkable, or unnecessarily
7 complicated. The changes also allow telephone network
8 conferencing previously permitted only for directors' meetings.
9 NRS 78.315. These changes both modernize and simplify the
statute. In addition, we recommend clarifying all the statutes
in Chapter 78 dealing with stockholder votes so that all votes
are taken and counted according to voting power, not the number
of shares. This change takes into account shares with multiple
votes or fractions of votes.

10 Finally, the changes to subsection 2 make clear that
11 the only act of stockholders which cannot be accomplished by
written consent is the removal of directors.

12 NRS 78.325 No change.

13 NRS 78.330 No change.

14 The comparable states have each had differing provisions on
15 this general subject. Del. Code Ann., tit. 8, §223 provides
16 that vacancies and newly created directorships may be filled by
17 a majority of the directors in office, or by a court of chancery
18 if no directors remain in office. It does not require that at
19 least 1/4 of the directors be elected every year, as does
20 Nevada. Pa.C.S.A. §1725 simply provides that directors are
21 elected by the shareholders. This would allow maximum
22 flexibility for election to be determined by the articles and
23 bylaws. However, the Nevada statute is not necessarily more
24 restrictive, simply more explicit, excepting the requirement
25 that 1/4 of the directors be elected every year. Rev. MBCA
§8.03 provides that directors must be elected at the annual
shareholder's meeting every year unless staggered elections are
authorized. It also provides that at least 1/3 of the directors
must be elected every year. Rev. MBCA §7.28 provides that
unless otherwise provided in the articles, directors must be
elected by a plurality of the quorum of entitled shareholders.
The Rev. MBCA provisions are, probably, unnecessarily
restrictive. So long as the elections are held pursuant to the
established requirements for meetings and actions in Nevada, the
sufficient certainty and fairness should be attained under the
Nevada statute. Consequently, we do not recommend changing this
statute.

26 NRS 78.335 Directors: Removal; filing of vacancies.

27 1. Any director may be removed from office by the vote of
28 stockholders representing not less than two-thirds of the

1 voting power of the issued and outstanding capital stock
2 entitled to voting power, provided:

3 (a) That in case of corporations which have provided in
4 their articles of incorporation for the election of directors by
5 cumulative voting, no director may be removed from office under
6 the provisions of this section except upon the vote of
7 stockholders owning sufficient shares to have prevented his
8 election to office in the first instance; and

9 (b) That the [certificate or] articles of incorporation
10 may require the concurrence of a larger percentage of the stock
11 entitled to voting power in order to remove a director.

12 2. No director may be removed from office by the written
13 consent of stockholders.

14 [2.] 3. All vacancies, including those caused by an
15 increase in the number of directors, may be filled by a majority
16 of the remaining directors, though less than a quorum, unless it
17 is otherwise provided in the articles of incorporation.

18 [3.] 4. Unless otherwise provided in the articles of
19 incorporation, when one or more directors give notice of his or
20 their resignation to the board, effective at a future date, the
21 board may fill the vacancy or vacancies to take effect when the
22 resignation or resignations become effective, each director so
23 appointed to hold office during the remainder of the term of
24 office of the resigning director or directors.

25 Note: All of the comparable statutes contain cumulative
26 voting requirements similar to Nevada's, in that a removal may
27 be stopped if the votes against removal could elect the
28 director.

28 Nevada requires a 2/3 vote for removal, except for the case
of cumulative voting. Delaware requires only a majority, except

1 where there is cumulative voting, or staggered term boards.
2 Staggered term boards are removable only for cause.
3 Pennsylvania law states that directors may be removed for cause
4 only, by a majority of those entitled to vote, except for
5 cumulative voting. Pa.C.S.A. §1726. Furthermore, directors may
6 be removed without cause by a unanimous vote. A court may
7 remove for dishonest acts. Pa.C.S.A. §1725 also provides that
8 the board may select alternate board members. Rev. MBCA §8.08
9 provides that shareholders may remove board members with or
10 without cause unless the articles of incorporation provide
11 otherwise. If voting groups are formed, then removal may only
12 be accomplished by the voting group from which a director is
13 elected. Removal may be accomplished only at a meeting called
14 for that purpose. Rev. MBCA §8.09 provides that a court may
15 remove directors. Vacancies are filled under Rev. MBCA §8.10 by
16 the board or shareholders.

17 This statute was amended in 1989 to remove the words "or
18 written consent", presumably to require an actual stockholders'
19 meeting in order to remove directors. In the face of the
20 otherwise clear wording of NRS 78.320, we have amended that
21 statute to specifically except NRS 78.335 from its general
22 effect. We have added new subsection 2 to this statute to
23 further clarify the issue.

24 The 2/3 vote required for removal should remain the same.
25 We do not think it is wise to include a bifurcated requirement
26 for "cause" and "without cause" removals, as several of the
27 other statutes do. A corporation is a democracy, and the
28 desires of the majority ought to prevail. The threshold vote
for removing directors should not be reduced to a majority. A
large shareholder might not be able to prevent the election by a
resolute minority of one or two directors, but could, after the
general election, vote all his shares for the removal of the
minority director. Consequently, the 2/3 vote is more
desirable.

1 NRS 78.340 No change.

2 None of the comparable statutes contain similar provisions.
3 This statute states that a failure to hold an election of
4 directors on a regular day does not dissolve the corporation. A
5 repeal of this statute might raise the implication that the
6 failure to elect directors might dissolve the corporation.

7 NRS 78.345 No change.

8 This statute provides that if there is no election within
9 six months of the annual meeting, the stockholders may apply to
10 the district court to appoint a board. Appointees have the same
11 power, number, etc. as a regular board. The Rev. MBCA has no
12 similar provision. Del. Code Ann., tit. 8, §§ 226 and 227
13 provide that a custodian or receiver may be appointed in the
14 case of deadlock and a master may be appointed to hold
15 elections. Pa.C.S.A. §1767 allows the court to appoint a board

1 upon deadlock. However, neither of these provisions really
2 address the issue addressed by this statute, since this statute
3 does not apply to deadlock. This statute applies only to
elections. To this extent, it should be left intact, as it
serves a legitimate purpose.

4 NRS 78.346 Appointment of custodian or receiver of
5 corporation on deadlock or for other cause.

6 1. Any stockholder may apply to the district court to
7 appoint one or more persons to be custodians, and, if the
8 corporation is insolvent, to be receivers of the corporation
9 when:

10 (a) The business of the corporation is suffering or is
11 threatened with irreparable injury because the directors are
12 so divided respecting the management of the affairs of the
13 corporation that the required vote for action by the board of
14 directors cannot be obtained and the stockholders are unable
15 to terminate this division; or

16 (b) The corporation has abandoned its business and has
17 failed within a reasonable time to take steps to dissolve,
18 liquidate, or distribute its assets in accordance with this
19 chapter.

20 2. A custodian appointed under this section has all the
21 powers and title of a trustee appointed under NRS 78.590,
22 NRS 78.635 and NRS 78.650, but the authority of the custodian
23 is to continue the business of the corporation and to not to
24 liquidate its affairs and distribute its assets, except when
25 the district court otherwise orders and except in cases arising
26 under of subsection (1)(b) of this section.

27 Note: The deadlock problem is a very real and timely
28 problem in the case of widely held, and even closely held
corporations. The larger a state and corporate community

1 becomes, the more frequent become these types of impasses. For
2 that reason, Nevada should adopt a provision which solves the
3 deadlock problem in an orderly and efficient fashion. Of the
4 Delaware and Pennsylvania statutes, the Delaware statute is the
5 more desirable. It is shorter, clearer, and more neutral in
6 terms of its effect on the shareholders. There is also more
7 judicial gloss accompanying the Delaware Section. Del. Code
8 Ann., tit. 8, §226. Consequently, We have modeled a new
9 statute, NRS 78.346, after the Delaware provision.

6 NRS 78.350 Voting rights of stockholders; determination
7 of stockholders entitled to notice of and to vote at meeting;
8 fixing date when stockholders entitled to give consent in lieu
9 of meeting.

10 1. Unless otherwise provided in the articles of incor-
11 poration, or in the resolution providing for the issuance of
12 the stock adopted by the board of directors pursuant to
13 authority expressly vested in it by the provisions of the
14 articles of incorporation, every stockholder of record of a
15 corporation is entitled at each meeting of stockholders thereof
16 to one vote for each share of stock standing in his name on the
17 books of the corporation. If the articles of incorporation, or
18 the resolution providing for the issuance of the stock adopted
19 by the board of directors pursuant to authority expressly
20 vested in it by the articles of incorporation, provide for more
21 or less than one vote for any shares, on any matter, every
22 reference in this chapter to a majority or other proportion of
23 stock shall refer to such majority or other proportion of the
24 votes of such stock.

25 2. Unless contrary provisions are contained in the
26 articles of incorporation, the directors may prescribe a period
27 not exceeding 60 days before any meeting of the stockholders
28 during which no transfer of stock on the books of the

1 corporation may be made, or may fix a day not more than 60 days
2 before the holding of any such meeting as the day as of which
3 stockholders entitled to notice of and to vote at such meetings
4 must be determined. Only stockholders of record on that day are
5 entitled to notice or to vote at such meeting.

6 [3. The directors may adopt a resolution prescribing a
7 date upon which the stockholders of record are entitled to give
8 written consent pursuant to NRS 78.320. The date prescribed by
9 the directors may not precede nor be more than 10 days after the
10 date the resolution is adopted by the directors. If the
11 directors do not adopt a resolution prescribing a date upon
12 which the stockholders of record are entitled to give written
13 consent pursuant to NRS 78.320 and;

14 (a) No prior action by the directors is required by this
15 chapter, the date is the first date on which a valid written
16 consent is delivered in accordance with the provisions of NRS
17 78.320.

18 (b) Prior action by the directors is required by this
19 chapter, the date is at the close of business on the day which
20 the directors adopt the resolution taking the required action.]

21 [4]3. The provisions of this section do not restrict the
22 directors from taking action to protect the interests of the
23 corporation and its stockholders, including, but not limited to,
24 adopting or executing plans, arrangements or instruments that
25 deny rights, privileges, power or authority to a holder or
26 holders of a specified number of shares or percentage of share
27 ownership or voting power.

28 Note: The B.L.C. Proposals contain language designated to

1 clarify that when corporations have multiple vote shares, the
2 multiple vote shares are to be taken into account when
3 determining the proportion of votes necessary to approve matters
4 requiring a proportion to vote. The Bar Proposals also delete a
5 more detailed reference to how a resolution prescribing the date
6 of a stockholder's meeting is adopted, in favor of a general
7 statement that a resolution may be made.

8 NRS 78.355 No change.

9 NRS 78.360 Cumulative voting.

10 [1.] The [certificate or] articles of incorporation of
11 any corporation, or any amendment thereof, may provide that at
12 all elections of directors of the corporation each holder of
13 stock possessing voting power is entitled to as many votes as
14 equal the number of his shares of stock multiplied by the number
15 of directors to be elected, and that he may cast all of such
16 votes for a single director or may distribute them among the
17 number to be voted for or any two or more of them, as he may see
18 fit. In order to exercise the right of cumulative voting, one
19 or more of the stockholders calling or requesting a vote by
20 cumulative voting must give notice before the vote to the
21 president or secretary of the corporation that the stockholder
22 desires that the voting for the election of directors be
23 cumulative.

24 [2. If the certificate or articles of incorporation of a
25 corporation, or any amendment thereof, contains the provisions
26 authorized by subsection 1, the stockholders of such corporation
27 and any proxyholders for such stockholders are entitled to
28 exercise the right of cumulative voting at any meeting held for
the election of directors, if:

(a) Not less than 48 hours before the time fixed for
holding such meeting, if notice of the meeting has been given at

1 least ten days prior to the date of the meeting, and otherwise
2 not less than 24 hours before such time, a stockholder of such
3 corporation has given notice in writing to the president or the
4 secretary of the corporation that he desires that the voting at
5 such election of directors shall be cumulative; and

6 (b) At such meeting, prior to the commencement of voting
7 for the election of directors, an announcement of the giving of
8 such notice has been made by chairman or secretary of the
9 meeting or by or on behalf stockholder giving such notice.

10 Notice to stockholders of the requirements of paragraph (a)
11 shall be contained in the notice calling such meeting or in the
12 proxy material accompanying such notice.

13 3. The provisions of subsection 2 applicable only to
14 corporations which have filed a registration statement under the
15 Securities Act of 1933 (15 U.S.C. §§77(a) et seq.).]

16 Note: This statute is an "opt-in" cumulative voting
17 statute. It allows the corporation to provide for cumulative
18 voting in its articles or bylaws. All the comparable statutes
19 interpret the term "cumulative voting" in basically the same
20 way. The Nevada statute requires notice of cumulative voting
21 prior to a meeting held for election of directors where
22 cumulative voting will take place. The notice requirement is
23 only applied to corporations which have filed a registration
24 statement under the Securities Act of 1933. Nevada is the only
25 state which limits the notice requirement to these corporations
26 registering under the Securities Act. There does not seem to be
27 any rational reason for doing so. Delaware does not require
28 notice. Del. Code Ann., tit. 8, §214. Pennsylvania also does
not require notice. Pa.C.S.A. §1758(c). Rev. MBCA §7.28 does
require 48 hours advance notice.

24 Most corporations will not elect to have cumulative voting.
25 Those that do probably have a good reason for doing so. In that
26 case, the directors and shareholders should already know of the
27 cumulative voting possibility. The allowance of cumulative
28 voting poses practical difficulties in terms of logistics or
computation. The notice of cumulative voting should be
required. It would be better to leave the determination of what
type of notice is most efficient and practicable to the articles
or bylaws. Consequently, we recommend deleting the second and

1 third subsections of the statute. A sentence is added to the
2 remaining first subsection to clarify this measure. The word
"certificate" is also deleted from the first subsection.

3 NRS 78.365 Voting trusts.

4 1. A stockholder, by agreement in writing, may transfer
5 his stock to a voting trustee or trustees for the purpose of
6 conferring the right to vote thereon for a period not exceeding
7 [10] 15 years upon the terms and conditions therein stated. Any
8 certificate of stock so transferred must be surrendered and
9 canceled and new certificates therefor issued to the trustee or
10 trustees in which it must appear that they are issued pursuant
11 to the agreement, and in the entry of ownership in the proper
12 books of the corporation that fact must also be noted, and
13 thereupon the trustee or trustees may vote upon the stock so
14 transferred during the terms of the agreement. A duplicate of
15 every such agreement must be filed in the principal office of
16 the corporation and at all times during its terms be open to
17 inspection by any stockholder or his attorney.

18 2. At any time within the 2 years next preceding the
19 expiration of an agreement entered into pursuant to the
20 provisions of subsection 1, or the expiration of an extension of
21 that agreement, any beneficiary of the trust may, by written
22 agreement with the trustee or trustees, extend the duration of
23 the trust for a time not to exceed [10] 15 years after the
24 scheduled expiration date of the original agreement or the
25 latest extension. An extension is not effective unless the
26 trustee, before the expiration date of the original agreement or
27 the latest extension, files a duplicate of the agreement
28 providing for the extension in the principal office of the

1 corporation. An agreement providing for an extension does not
2 affect the rights or obligations of any person not a party to
3 that agreement.

4 3. An agreement between two or more stockholders, if in
5 writing and signed by them, may provide that in exercising any
6 voting rights the stock held by them must be voted upon:

7 (a) Pursuant to the provisions of the agreement;

8 (b) As they may subsequently agree; or

9 (c) In accordance with a procedure agreed upon.

10 4. An agreement entered into pursuant to the provisions
11 of subsection 3 is not effective for a term of more than [10] 15
12 years, but at any time within the 2 years next preceding the
13 expiration of the agreement the parties thereto may extend its
14 duration for as many additional periods, each not to exceed [10]
15 15 years, as they wish.

16 5. An agreement entered into pursuant to the provisions
17 of subsection 1 or 3 is not invalidated by the fact that by its
18 terms its duration is more than [10] 15 years, but its duration
19 shall be deemed amended to conform with the provisions of this
20 section.

21 Note: The changes shown in the list of statutory changes
22 restore the maximum term of a voting trust to a term of 15
23 years, consistent with the pre-1989 time limit. This change is
in accordance with the B.L.C. Proposals.

24 NRS 78.370 Notice of stockholders' meetings: Signature;
25 contents; service; publication; waiver; exception.

26 1. Whenever under the provisions of this chapter
27 stockholders are required or authorized to take any action at a
28 meeting, the notice of the meeting shall be in writing and

1 signed by the president or a vice president, or the secretary,
2 or an assistant secretary, or by such other person or persons as
3 the bylaws may prescribe or permit or the directors shall
4 designate.

5 2. Such notice shall state the purpose or purposes for
6 which the meeting is called and the time when, and the place,
7 which may be within or without this state, where it is to be
8 held.

9 3. A copy of such notice shall be either delivered
10 personally to, or shall be mailed postage prepaid, to each
11 stockholder of record entitled to vote at such meeting not less
12 than 10 nor more than 60 days before such meeting. If mailed,
13 it shall be directed to a stockholder at his address as it
14 appears upon the records of the corporation, and upon such
15 mailing of any such notice the service thereof shall be
16 complete, and the time of the notice shall begin to run from the
17 date upon which such notice is deposited in the mail for
18 transmission to such stockholder. Personal delivery of any such
19 notice to any officer of a corporation or association, or to any
20 member of a partnership, shall constitute delivery of such
21 notice to such corporation, association or partnership.

22 4. The [certificate or] articles of incorporation, or an
23 amendment thereof, or the bylaws may require that such notice be
24 also published in one or more newspapers.

25 5. Notice duly delivered or mailed to a stockholder in
26 accordance with the provision of this section and the provi-
27 sions, if any, of the [certificate or] articles of incorpo-
28 ration, or an amendment thereof, or the bylaws, shall be deemed

1 sufficient, and in the event of the transfer of his stock after
2 such delivery or mailing and prior to the holding of the meeting
3 it shall not be necessary to deliver or mail notice of the
4 meeting upon the transferee.

5 6. Any stockholder may waive notice of any meeting by a
6 writing signed by him, or his duly authorized attorney, either
7 before or after the meeting.

8 7. Unless otherwise provided in the articles of
9 incorporation or the bylaws, whenever notice is required to be
10 given, under any provision of this chapter or the articles of
11 incorporation or bylaws of any corporation, to any stockholder
12 to whom:

13 (a) notice of 2 consecutive annual meetings, and all
14 notices of meetings or of the taking of action by written
15 consent without a meeting to such person during the period
16 between such 2 consecutive annual meetings, or

17 (b) all, and at least 2, payments (if sent by first-class
18 mail) of dividends or interest on securities during a 12-month
19 period,

20 have been mailed addressed to such person at his
21 address as shown on the records of the corporation and have
22 been returned undeliverable, the giving of further notices to
23 such person is not required. Any action or meeting taken or
24 held without notice to such person has the same force and
25 effect as if the notice had been duly given. If any such
26 person delivers to the corporation a written notice setting
27 forth his current address, the requirement that notice
28 be given to such person is reinstated. In the event that the

1 action taken by the corporation is such as to require the
2 filing of a certificate under any of the other sections of
3 this title, the certificate need not state that notice was not
4 given to persons to whom notice was not required to be given
5 pursuant to this subsection.

6 Note: New subsection 7 has been added to solve the problem
7 in today's widely held corporation of continuing to correspond
8 with stockholders who have ceased to exist or simply cannot be
9 located. The language is adopted from Del. Code Ann., tit. 8,
\$230. This new provision should reduce the cost to corporations
of attempting to run down disinterested stockholders.

10 NRS 78.375 No change.

11 TAKEOVER BIDS

12 NRS 78.376 through NRS 78.3778, inclusive. Repeal.

13 Note: In 1969, Nevada enacted a "first generation" form of
14 takeover legislation regulating takeover bids, NRS 78.376
15 through 78.3778, inclusive. This form of statute regulates
16 disclosure and timing with respect takeover bids, similar to the
17 federal Williams Act. However, due to the similarity of this
type of legislation with the Williams Act, many courts have held
these types of statutes to be unconstitutional. Indeed, in
Batus, Inc. v. McKay, 684 F.Supp. 637 (D.Nev. 1988), the federal
district court for the District of Nevada held the Nevada
takeover bid statutes to be unconstitutional.

18 Some jurisdictions (e.g. Minnesota and Ohio) have attempted
19 to cure the constitutional infirmities by removing many of the
20 substantive provisions which conflict with the Williams Act and
21 by creating a state bureaucracy to examine the sufficiency of
22 disclosures with respect to takeover bids. The amended
Minnesota legislation was held to be constitutional in
Cardiff Acquisitions, Inc. v. Hatch, 751 F.2d 906 (8th Cir.
1985).

23 However, other jurisdictions which have the more modern
24 forms of takeover statute in place have chosen to avoid creation
25 of an additional arm of the state to examine takeover bid
disclosures, and have consequently repealed their first
generation statutes (e.g. Pennsylvania).

26 It is our view that the Nevada takeover bid statutes have
27 outlived their usefulness, in light of our control share
28 legislation and potential enactment of our proposed business
combination legislation. The Williams Act already requires
sufficient disclosure in the context of a takeover bid, and for
these reasons we suggest that NRS 798.376 through 78.3778,

1 inclusive, be repealed.

2 ACQUISITION OF CONTROLLING INTEREST

3 Nevada's Control Share Acquisition legislation was enacted
4 during the 1987 legislative session in response to the decision
5 of the United States Supreme Court in CTS Corp. v. Dynamics
6 Corp. of America, 107 S. Ct. 1637 (1987) ("CTS"). The court
7 held in CTS that Indiana's Control Share legislation was not
8 preempted by the federal Williams Act pertaining to tender
9 offers, and did not violate the commerce clause of the United
10 States Constitution. Thus, CTS cleared the way for state
11 regulation or mergers and acquisitions to the extent that the
12 regulation involves corporate statutes affecting the internal
13 affairs of domestic corporations.

9 Today, over twenty states have enacted control share
10 legislation similar to Indiana's. During the 1989 legislative
11 session, these statutes were reviewed to determine if any
12 improvements had been made on the Indiana model. Several areas
13 of difference and potential ambiguity were discovered, which
14 resulted in the enactment of A.B. 768 by the 1989 Nevada
15 legislature.

13 Nevada's control share legislation remains competitive, and
14 little reason is seen for further amendment. Our legislation
15 provides significant shareholder protection and should serve to
16 attract corporations and recognize Nevada as a favorable
17 corporate domicile.

16 NRS 78.378 through 78.379, inclusive. No change.

17 NRS 78.3791 Approval of voting rights of acquiring
18 person.

19 Except as otherwise provided by the [certificate or]
20 articles of incorporation of the issuing corporation, a
21 resolution of the stockholders granting voting rights to the
22 control shares acquired by an acquiring person must be approved
23 by:

24 1. The holders of a majority of the [outstanding shares]
25 voting power of the corporation; and

26 2. If the acquisition will result in any change of the
27 kind described in subsection 2 of NRS 78.390.

28 Note: One technical amendment which is appropriate

1 involves the vote required in order to confer voting rights on
2 the acquiring person. This study seeks to resolve the
3 ambiguities in Chapter 78 with respect to whether or not a
majority of shares or the majority of the voting power is
required for certain corporate action.

4 NRS 78.3792 and 78.3793 No change.

5 AMENDMENTS AND RESTATEMENT OF ARTICLES; REDUCTION OF CAPITAL

6 NRS 78.380 and 78.385 No change.

7 NRS 78.390 Amendment of articles of incorporation after
8 payment of capital: Procedure.

9 1. Every amendment adopted pursuant to the provisions of
10 NRS 78.385 [shall] must be made in the following manner:

11 (a) The board of directors [shall] must adopt a resolution
12 setting forth the amendment proposed, declaring its advisability
13 and call a meeting, either annual or special, of the
14 stockholders entitled to vote for the consideration thereof.

15 (b) At the meeting, of which notice [shall] must be given
16 to each stockholder entitled to vote pursuant to the provisions
17 of this section, a vote of the stockholders entitled to vote in
18 person or by proxy shall be taken for and against the proposed
19 amendment. If it appears upon the canvassing of the votes that
20 stockholders holding shares in the corporation entitling them to
21 exercise at least a majority of the voting power (or such
22 greater proportion of [the outstanding shares] voting power as
23 may be required in the case of a vote by classes or series, as
24 provided in subsections 2 and 4, or as may be required by the
25 provisions of the [certificate or] articles of incorporation, or
26 an amendment thereof) have voted in favor of the amendment, the
27 president, or vice president, and secretary, or assistant
28 secretary, [shall] must execute a certificate setting forth the

1 amendment, or setting forth the [certificate or] articles of
2 incorporation as amended, and the vote by which the amendment
3 was adopted, and the president, or vice president, and
4 secretary, or assistant secretary, [shall] must acknowledge the
5 certificate before a person authorized by the laws of the place
6 where the acknowledgment is taken to take acknowledgments of
7 deeds.

8 (c) The certificate so executed and acknowledged, [shall]
9 must be filed in the office of the secretary of state and upon
10 filing the certificate the articles of incorporation are amended
11 accordingly. [A copy of the certificate, certified by the
12 secretary of state, shall be filed in the office of the county
13 clerk of the county where the corporation maintains its
14 principal office.]

15 2. If any proposed amendment would alter or change any
16 preference or any relative or other right given to any class or
17 series of outstanding shares, then such amendment must be
18 approved by the vote, in addition to the affirmative vote
19 otherwise required, of the holders of shares representing a
20 majority of the [outstanding shares] voting power of each class
21 or series affected by the amendment regardless of limitations or
22 restrictions on the voting power thereof.

23 3. It is lawful to make provision in the [certificate or]
24 articles of incorporation, or an amendment thereof, requiring,
25 in the case of any specified amendments, a larger [vote]
26 proportion of the voting power of stockholders than that
27 required by this section.

28 4. Different series of the same class of shares do not

1 constitute different classes of shares for the purpose of voting
2 by classes except when the series is adversely affected by an
3 amendment in a different manner than other series of the same
4 class.

5 Note: We recommend that this statute be clarified to
6 require a majority vote of the voting power of shareholders, not
a majority of shares.

7 We also recommend that the requirement of county filing be
8 removed.

9 78.395 Adoption of amended articles of incorporation:
10 Procedure.

11 1. If the provisions of NRS 78.150 and 78.160 have been
12 complied with, the board of directors and stockholders of any
13 corporation, when amending any portion of its articles of
14 incorporation pursuant to the provisions of NRS 78.385 and
15 78.390, may, at the same time, pursuant to the procedure
16 prescribed in NRS 78.390 to effect an amendment of articles,
17 adopt amended articles of incorporation, which must:

18 (a) Be titled "amended articles of incorporation."

19 (b) Set forth in full every provision of the original
20 articles of incorporation as of record in the office of the
21 secretary of state, including the execution and acknowledgment
22 thereof, as amended to date.

23 (c) State, after each provision of the amended articles,
24 whether or not it has been amended; and if any provision of the
25 articles has been amended it must be made to read as it was last
26 amended, and the date of the certificate last amending it must
27 be stated.

28 (d) Include the provisions of the articles which were

1 never amended.

2 2. Upon the filing with the secretary of state of the
3 certificate of amendment, the articles of incorporation are
4 amended accordingly. [A copy of such certificate must be filed
5 with the county clerk of the county in which the original
6 articles of incorporation have been filed.]

7 3. Notice of any meeting of stockholders at which the
8 adoption of the subject amended articles of incorporation is to
9 be considered must specifically state the purpose to consider
10 the adoption thereof at the meeting.

11 Note: We have removed the requirement for a filing with
12 the county clerk's office.

13 NRS 78.400 through 78.403, inclusive. No change.

14 NRS 78.410 through 78.445 Repeal.

15 Note: These statutes all deal with the reduction of
16 capital, the methods by which it can be accomplished, and how
17 the "surplus" which results can be used. We recommend that the
18 concepts of par value stock, capital and surplus be eliminated
19 entirely. See notes to NRS 78.195 et seq. The complicated
20 procedures for the reduction of capital become unnecessary and
21 we recommend their repeal.

19 MERGER [OR CONSOLIDATION] OR SHARE EXCHANGE

20 We have arbitrarily assigned statute numbers to the new
21 statutes in this area and in the "Dissenters' Rights" area in
22 order to allow one statute to refer to the other understandably.
23 These statute numbers are not necessarily those that will be
24 used by the Legislative Counsel Bureau upon final codification.

25 NRS 78.450 Repeal.

26 NRS 78.451. Merger of domestic corporations authorized.

27 1. One or more corporations may merge into another
28 corporation if the board of directors of each corporation
adopts and its shareholders (if required by NRS 78.452) approve
a plan of merger.

1 2. The plan of merger must set forth:

2 (a) The name of each corporation planning to merge and
3 the name of the surviving corporation into which each other
4 corporation plans to merge;

5 (b) The terms and conditions of the merger; and

6 (c) The manner and basis of converting the shares of
7 each corporation into shares, obligations, or other securities
8 of the surviving or any other corporation or into cash or
9 other property in whole or part.

10 3. The plan of merger may set forth:

11 (a) Amendments to the articles of incorporation of the
12 surviving corporation; and

13 (b) Other provisions relating to the merger.

14 Note: The proposed language comes from the Model Act
15 §11.01 which describes a merger as a transaction by which one or
16 more corporations disappear into the surviving corporation which
17 becomes vested with all the business and assets and becomes
18 liable for the debts and liabilities, of each disappearing
19 corporation. Earlier versions of the Model Act also provided
20 for a "consolidation", which was similar to a merger, except
21 that all corporate parties to the transaction disappeared and an
22 entirely new corporation was created. In modern corporate
23 practice, consolidation transactions are obsolete since it is
24 nearly always advantageous for one of the parties in the
25 transaction to be the surviving corporation. (If creation of a
26 new entity is considered desirable, a new entity may be created
27 before the merger and the disappearing entities merged into it).
28 As a result, all references to a statutory "consolidation" have
been deleted from Chapter 78.

23 Proposed NRS 78.451 authorizes a statutory merger to be
24 accomplished by (i) the adoption of a plan of merger under NRS
25 78.451(1), (ii) approval of the transaction by the shareholders
26 (if required by NRS 78.471) and (iii) filing articles of merger
27 under NRS 78.491. Upon the effective date of the merger, the
28 surviving corporation becomes vested with all the assets of the
disappearing corporation and becomes subject to their
liabilities. Under the proposed language, there are virtually
no restrictions or limitations on the terms of a statutory
merger. Shareholders of the disappearing corporation may
receive securities of the surviving corporation, securities of a
third corporation, e.g. shares issued by the parent of the

1 surviving or disappearing corporation (which may be publicly
2 traded and marketable while the shares of the surviving or
3 disappearing corporation are not), or cash or other property (a
4 "cash" or "cash-out" merger). Some of the holders of a single
5 class shares may be required to accept securities or properties
6 while the remaining holders may be compelled to accept different
7 securities, property or cash. The capitalization of the
8 surviving corporation may be restructured in the merger or its
9 articles of incorporation may be amended by the plan of merger
10 in any way deemed appropriate. Any other provisions considered
11 necessary or desirable with respect to the merger may be
12 included in the plan of merger. Merger transactions may give
13 rise to voting by separate classes of shareholders under NRS
14 78.471(6), and dissenting shareholders may have dissenters'
15 rights under NRS 78.501 through 78.516, inclusive.

9 NRS 78.455 Repeal.

10 NRS 78.456 Share exchange.

11 1. A corporation may acquire all of the outstanding
12 shares of one or more classes or series of another corporation
13 if the board of directors of each corporation adopts and its
14 shareholders (if required by NRS 78.471) approve the exchange.

15 2. The plan of exchange must set forth:

16 (a) The name of the corporation whose shares will be
17 acquired and the name of the acquiring corporation;

18 (b) The terms and conditions of the exchange;

19 (c) The manner and basis of exchanging the shares to be
20 acquired for shares, obligations or other securities of the
21 acquiring or any other corporation or for cash or other
22 property in whole or part.

23 3. The plan of exchange may set forth other provisions
24 relating to the exchange.

25 4. This section does not limit the power of a
26 corporation to acquire all or part of the shares of one or
27 more classes or series of another corporation through a
28 voluntary exchange or otherwise.

1 Note: The proposed language from Model Act §11.02
2 establishes a procedure by which a direct exchange of shares for
3 cash or other consideration in corporate combinations may be
4 affected under the same safeguards applicable to statutory
5 mergers or similar transactions. A share exchange under this
6 section is binding upon all shareholders of the acquired class
7 or series of shares. It is often desirable to affect a
8 reorganization or combination so that the corporation being
9 acquired does not go out of existence, but becomes a subsidiary
10 of the acquiring corporation or holding company, the securities
11 of which are issued as part of the transaction. These
12 objectives often are particularly important in the formation of
13 holding company systems for, or for the acquisition of,
14 insurance companies and banks, but are not limited to these
15 transactions. In the absence of a share exchange procedure,
16 this kind of transaction often may be accomplished only by the
17 process of a "reverse triangular merger": the formation of a
18 new subsidiary of the acquiring or holding company, followed by
19 a merger of that subsidiary into the corporation to be acquired
20 in which securities of the new subsidiary's parents are
21 exchanged for securities of the corporation to be acquired. The
22 proposed language provides a straightforward procedure to
23 accomplish the same end. Under this section, all shares of the
24 particular class or series of shares must be acquired. However,
25 shares of one or more classes or series may be excluded from the
26 plan or may be included on different basis. After the plan is
27 adopted and approved by the shareholders as required by 78.471,
28 it is binding on all holders of shares of the class or series to
be acquired. Members of the class or series, however, have the
right to dissent under subsequent sections. Twenty four
jurisdictions specifically authorizing companies share exchanges
and define the procedure for such exchange.

18 NRS 78.460 Repeal.

19 NRS 78.465 Repeal.

20 Note: The purpose of repealed 78.455 is included in
21 78.451(1) and (2). The purpose of repealed 78.460 is included
22 in 78.451(3)(a). The purpose of repealed 78.465 is included in
23 78.451(3)(b).

24 NRS 78.470 Repeal.

25 NRS 78.471 Shareholder action on plan.

26 1. After adopting a plan of merger or share exchange,
27 the board of directors of each corporation party to the merger,
28 and the board of directors of the corporation whose shares will
be acquired in the share exchange, must submit the plan of
merger (except as provided in subsection (7)) or share exchange

1 for approval by its shareholders.

2 2. For a plan of merger or share exchange to be approved:

3 (a) The board of directors must recommend the plan of

4 merger or share exchange to the shareholders, unless the board

5 of directors determines that because of a conflict of interest

6 or other special circumstances it should make no recommendation

7 and it communicates the basis for its determination to the

8 shareholders with the plan; and

9 (b) The shareholders entitled to vote must approve the

10 plan.

11 3. The board of directors may condition its submission

12 of the proposed merger or share exchange on any basis.

13 4. The corporation must notify each shareholder,

14 whether or not entitled to vote, of the proposed shareholders'

15 meeting in accordance with NRS 78.370. The notice must also

16 state that the purpose, or one of the purposes, of the meeting

17 is to consider the plan of merger or share exchange and

18 contain or be accompanied by a copy or summary of the plan.

19 5. Unless this chapter, the articles of incorporation,

20 or the board of directors (acting pursuant to subsection (3))

21 require a greater vote or a vote by classes of shareholders,

22 the plan of merger or share exchange to be authorized must be

23 approved by a majority of the voting power unless shareholders

24 of a class of shares are entitled to vote thereon as a class.

25 If shareholders of a class of shares are so entitled, the plan

26 must be approved by a majority of all votes entitled to be

27 cast on the plan by each class and representing a majority of

28 all votes entitled to be voted.

1 6. Separate voting by a class of shareholders is
2 required:

3 (a) On a plan of merger if the plan contains a provision
4 that, if contained in the proposed amendment to articles of
5 incorporation, would entitle particular shareholders to vote as
6 a class on the proposed amendment; and

7 (b) On a plan of share exchange by each class or series
8 of shares included in exchange, with each class or series
9 constituting a separate voting class.

10 7. Action by the shareholders of the surviving
11 corporation or plan of merger is not required if:

12 (a) The articles of incorporation of the surviving
13 corporation will not differ from its articles before the merger;

14 (b) Each shareholder of the surviving corporation whose
15 shares were outstanding immediately before the effective date
16 of the merger will hold the same number of shares, with
17 identical designations, preferences, limitations and relative
18 rights, immediately after;

19 (c) The number of voting shares outstanding immediately
20 after the merger, plus the number of voting shares issued as
21 a result of the merger (either by the conversion of securities
22 issued pursuant to the merger or the exercise of rights and
23 warrants issued pursuant to the merger), will not exceed by
24 more than 20% the total number of voting shares of the
25 surviving corporation outstanding immediately before the merger;
26 and

27 (d) The number of participating shares outstanding
28 immediately after the merger, plus the number of participating