Amendment to SB 577
Presented by Nevada Trial Lawyers Association
5/30/01

1. Rewrite Section 1 to read as follows:

1. No stockholder, director or officer of a corporation is individually liable for a debt or liability of the corporation, unless the stockholder, director or officer acts as the alter ego of the corporation or the corporate fiction of a separate entity should be disregarded for any other reason.

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

(a) The corporation is influenced and governed by the stockholder, director officer;

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

(c) Adherence to the corporate fiction of a separate entity, under the circumstances, would sanction fraud or promote an injustice.

2. Section 3 - sub 7 is amended to read as follows:
"Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270 668.045 and 694A.030, a director or officer is not individually liable ***to the corporation or its stockholders*** for any damages as a result of any act or failure to act in his capacity as a director or officer unless
a) His act or failure to act constituted a breach of his fiduciary duties as a director or officer; ***or***
b) His breach of those duties involved intentional misconduct, fraud or knowing violation of law."

3. Section 59 - sub 2 (b) should be amended to delete that the bill is effective on passage and approval and changed to read, ***"shall apply to claims that arise after October 1, 2001."***

4. Section 8 should be changed to restore the statute of limitations to three years as opposed to the two years in the bill.

5. Section 55 should be deleted. Legislative intent should not be included.

4814

ASSEMBLY COMMITTEE ON JUDICIARY EXHIBIT M
Date 5/30/01 Pages 1
Submitted by Bob Crowell

200

)EAN HELLER
Secretary of State

RENEE L. LACEY
Chief Deputy Secretary of State

STATE OF NEVADA

CHARLES E. MOORE
Securities Administrator

SCOTT W. ANDERSON
Deputy Secretary for Commercial Recordings

SUSAN MORANDI
Deputy Secretary for Elections

OFFICE OF THE
SECRETARY OF STATE

May 31, 2001

Assemblyman Bernie Anderson, Chair
Assembly Judiciary Committee
Nevada State Legislature
401 S. Carson Street
Carson City, NV 89701

RE: Senate Bill 577

Dear Assemblyman Anderson:

Pursuant to your request, following is an explanation of our request for different effective dates for certain sections of SB 577. As we discussed, Section 59, Subsection 3, originally set forth an effective date of July 1, 2001 for Sections 4 to 7, 10 to 46 and 49-54 of the Act. These sections of the Act generally affect the requirements and the fees for filing various documents in the Office of the Secretary of State. Because these changes will require substantial revisions to our forms and additional review for processing documents, we requested that the effective date be changed to August 1, 2001. In addition, the August date will provide us with the ability to inform customers of these changes so we can avoid rejecting documents that are filed without the correct fees.

Further, Section 58 of the Act provides this office with funding for "additional personnel, equipment supplies, office space and other costs as are necessary to carry out the provisions of this act." In order to ensure that this office continues to run efficiently, we have requested that Section 58 become effective upon passage and approval. This will enable us to recruit and train necessary additional personnel prior to the August 1, 2001 effective date.

4815

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101 N. Carson Street
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Fax (775) 684-5725

SECURITIES DIVISION:
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Las Vegas, Nevada 89101
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555 E. Washington Avenue
Suite 2900
Las Vegas, Nevada 89101

ASSEMBLY COMMITTEE ON JUDICIARY EXHIBIT N
Date 5/30/01 Pages 2

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Thank you for the opportunity to participate in these proceedings. If you require further information, please do not hesitate to contact me at (775) 684-5714.

Sincerely,

DEAN HELLER
Secretary of State

By: Renee Lacey
Renee L. Lacey
Chief Deputy Secretary of State

cc: Assembly Judiciary Committee

4816

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Amendment to SB 577
Presented by Nevada Trial Lawyers Association
5/30/01

1. Amend Section 1 to read as follows:

*1. Except as otherwise provided by specific statute, no stockholder, director or officer of a corporation ~~formed under the laws of this state~~ is individually liable for a debt or liability of the corporation, **unless** ~~without regard to whether a court determines that~~ the stockholder, director or officer **acts as** ~~should be considered~~ the alter ego of the corporation or ~~that~~ the corporate fiction of a separate entity should be disregarded for any other reason, ~~unless:~~*

~~(a) Otherwise provided in an agreement to which the stockholder, director or officer is a party; or~~

~~(b) A court of competent jurisdiction finds that:~~

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

(1) The corporation is influenced and governed by the stockholder, director or officer;

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

*(3) Adherence to the corporate fiction of a separate entity would sanction fraud **or promote injustice**.*

~~2. For a court to make a finding in satisfaction of subparagraph (3) of paragraph (b) of subsection 1, the court must find that the stockholder, director or officer has committed fraud in connection with the debt or liability of the corporation.~~

2. Section 3 - sub 7 is amended to read as follows:

*"Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270 668.045 and 694A.030, a director or officer is not individually liable **to the corporation or its stockholders** for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven that:*
*a) His act or failure to act constituted a breach of his fiduciary duties as a director or officer; ~~and~~ **or***
b) His breach of those duties involved intentional misconduct, fraud or knowing violation of law."

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ASSEMBLY COMMITTEE ON JUDICIARY EXHIBIT O
Date 5/30/01 Pages 2
Submitted by Bob Crowell

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GARD539

3. Section 59 - sub 2 (b) should be amended to delete that the bill is effective on passage and approval and changed to read, ***"shall apply to claims that arise after October 1, 2001."***

4. Section 8 should be changed to restore the statute of limitations to three (3) years as opposed to the two (2) years in the bill.

5. Section 55 should be deleted. Legislative intent should either not be included or redrafted to state that the legislature, in enacting section 1, does not intend to change the common law doctrine.

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS AND
SENATE COMMITTEE ON FINANCE
JOINT SUBCOMMITTEE ON HUMAN RESOURCES/K-12

Seventy-First Session
May 31, 2001

The Assembly Ways and Means and Senate Finance Joint Subcommittee was called to order at 4:00 p.m., on Thursday, May 31, 2001. Chairman David Goldwater, presided in Room 3137 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

ASSEMBLY MEMBERS PRESENT:

Chairman David Goldwater
Mr. Morse Arberry Jr.
Mrs. Barbara Cegavske
Mr. Joseph Dini, Jr.
Ms. Sheila Leslie

SENATE MEMBERS PRESENT

Senator Bob Coffin
Senator Bernice Mathews
Senator William J. Raggio
Senator Raymond D. Rawson

COMMITTEE MEMBERS ABSENT:

Ms. Sandra Tiffany (Excused)

STAFF MEMBERS PRESENT:

Mark Stevens, Fiscal Analyst
Gary Ghiggeri, Fiscal Analyst
Georgia Rohrs, Program Analyst
Linda Smith, Committee Secretary

Chairman Goldwater emphasized that the Governor and legislative leadership had worked very hard to fully fund the state Distributive School Account for the 2001-2003 biennium.

Senator Raggio said the amounts included in the DSA budget were contingent upon passage of S.B. 577, which increased corporate business fees, and A.B. 460, which would return rental car collection fees to the state. S.B. 577 would result in an additional $29 million across the biennium and A.B. 460 would result in an additional $23.5 million across the biennium.

Senator Raggio referred to two areas of funding that would be provided outside the DSA:

- A 3 percent teacher retention bonus would be payable from the one-shot money previously proposed by the Governor for a 5 percent bonus.

- The $20,000,000 originally included in the one-shot money for teacher training, textbook resources, and information technology, would be allocated for teacher recruitment bonuses and educational technology -- $10,000,000 over the biennium for each area.

Senator Raggio then referred to the DSA budget and explained the recommended adjustments:

- A 2 percent cost-of-living increase would be included in the second year of the biennium. In FY2004 the base budget amount would reflect a 4 percent cost-of-living increase, even though the increase in FY2003 was 2 percent.

- Because cost projections for utilities were understated in The Executive Budget, it was recommended that utility costs in the DSA budget be increased by a total of $2,123,049 -- $518,820 in FY2002 and $1,604,229 in FY2003.

Senator Raggio stressed the importance of understanding all of the education funding that would be available during the upcoming biennium, not just the DSA. Because of the need for a pool of money for utility increases that might not otherwise be addressed in the various budgets, approximately $23 million would be available from a "utility access fund." It was estimated that $17 million needed to be set aside for state agencies, including prisons and universities, and $6.5 million would be available for K-12. The funding would be for additional utility requirements that might occur and was in addition to the inflation factors for utilities already proposed in the DSA and other budgets. There would be access requirements to ensure that the agencies involved, as well as the school districts, had appropriately utilized the funding that was otherwise provided for utility increases. Senator Raggio stressed the importance of having the access fund. In addition, public and private sectors were experiencing substantial increases in health insurance premiums as well as utilities. The proposal would include, although it would not be part of the DSA budget, approximately $13 million that could be accessed for additional costs in health care premiums. Out of concern that school districts might cut essential or desirable programs, $5 million would be set aside to subsidize other vital education programs.

Senator Raggio said the legislature was bound by the Economic Forum projections in determining available revenues. The budget would be balanced if

S.B. 577 and A.B. 460 passed in their present form. The budget was built based upon reversions in excess of $80 million. The reversions were realistic and would provide a balanced budget even with the proposals currently being discussed. In an attempt to provide something further, if revenues came in much stronger than now anticipated, a "trigger" was recommended. Staff had been asked by leadership in both houses to define the point in the ending fund balance, or revenues against ending fund balance, where a trigger would occur. The trigger amount would be based upon staff's determination and staff was to be exempt and immune from lobbying on that point. The revenue stream would be tested on May 1, 2002, and if revenues were strong enough, a trigger in the amount of 1 or 2 percent for additional cost-of-living increases would become effective on July 1, 2002. Whether or not the 2 percent trigger was fulfilled, there would still be the guarantee of inclusion of 4 percent for cost-of-living increases in the base in FY2004. If revenues were not strong enough on May 1, 2002, the Board of Examiners would test again on October 1, 2002, and, if revenues were strong enough at that time, the trigger would "kick in."

Chairman Goldwater thanked Senator Raggio for his hard work and his explanation of the proposed DSA funding and funding outside the DSA dedicated to education. Chairman Goldwater then referred to the proposed performance audits for Washoe and Clark County School Districts. Senator Raggio said Gary Crews, CPA, Legislative Auditor, Audit Division, Legislative Counsel Bureau, had explained that performance audits of that magnitude would be very costly -- approximately $1 million. The suggestion was made, and Senator Raggio hoped it would be accepted by the joint subcommittee, that one position be added to the LCB audit staff. Mr. Crews would assign a veteran auditor to conduct a preliminary survey over the interim of both the Clark County School District and the Washoe County School District to determine what areas might be appropriate for audit. Local school districts conducted financial audits each year and the financial audits were not the concern of the legislature. Most individuals were concerned with other issues such as budget procedures. The proposed preliminary survey would be less costly. Washoe and Clark County School Districts were selected for the audits due to their being the two largest school districts in the state.

Chairman Goldwater and Senator Raggio concurred that language should be included in the funding bill that the base amount for salaries in FY2004 would reflect a 4 percent salary increase.

Senator Mathews wondered if there was still a "hole in the budget." Chairman Goldwater said it was his understanding that passage of S.B. 577 and A.B. 460 would provide a balanced budget.

> SENATOR RAWSON MOVED TO CLOSE THE BUDGET WITH STAFF RECOMMENDATIONS INCLUDING A 2 PERCENT COST-OF-LIVING INCREASE FOR FY2003 AND AN INCREASE IN FUNDING FOR UTILITY COSTS IN THE AMOUNT OF $2,123,049 OVER THE BIENNIUM.
>
> MS. LESLIE SECONDED THE MOTION

Senator Raggio said his explanation of the educational funding included the proposal for the DSA and funding outside of the DSA and assumed the motion was for the appropriate parts of the agreement. The parts that would go into the DSA would be the 2 percent cost-of-living increase for FY2003 and the adjustment required for inflation for utility rates. Funding for the utility access fund, additional costs of health care premiums, and subsidies for other vital

education programs would be appropriated in separate bills. An explanation needed to be included in the bill that stated the funding provided for the health insurance premium increases was a one-time appropriation and did not set a precedent. In response to a question posed by Chairman Goldwater, Mrs. Rohrs stated there was an increase in the amount available for health insurance premiums built into the DSA. The base was what the school districts reported they would be paying in the next biennium for health insurance premiums and there was an increase built into the DSA beyond that amount. Chairman Goldwater asked if the base for the next budget cycle would include the additional funding for health insurance premiums and Senator Raggio indicated the funding would not be rolled into the base. Senator Rawson said the funding was a one-shot appropriation to cover potential insolvency in the health premium area. Senator Mathews noted that the subcommittee appeared to be confused and said language needed to be included in the bill explaining exactly what would happen to the precedent-setting insurance premium amount. Chairman Goldwater said the indication was that the amount did not roll-up, but if the amount was expended it would seem the districts would report what was spent on health insurance and the amount would automatically become part of the base.

Mrs. Cegavske asked how much was included in the DSA for textbooks. Mrs. Rohrs said textbook funding was part of the operating expenses. There was a separate line item for textbooks in the amount of $13.8 million in the first year of the biennium and $14.5 million in the second year of the biennium. For library books, $2.2 million in the first year of the biennium, $2.3 million in the second year of the biennium; for instructional supplies, $21.2 million in the first year and $22.2 million in the second year; and for instructional software, $1.4 million in the first year and $1.4 million in the second year.

Mr. Stevens said he thought Mrs. Cegavske was referring to the $20 million included in the Governor's bill for training, textbooks, and technology. There was also a bill in the Assembly for the same amount of money. The Senate bill had been reviewed in committee and, in its current form, would be a combination of money for technology and for new teacher recruitment bonuses.

Senator Coffin said Senator Raggio had indicated he was comfortable with the $80 million in reversions and knew Senator Raggio had concerns with the reversions earlier in the session because the amounts were much higher than usual. Senator Coffin asked Senator Raggio what had increased his comfort level with the reversion amounts. Senator Raggio said budget cuts still had to be made that were initially proposed. The Governor had recommended some cuts and committees were in the process of doing those cuts to balance the budget. Senator Raggio again stressed that the budget would be balanced based upon $80 million in reversions. After discussions with staff, Senator Raggio felt the projected reversion amounts appeared to be appropriate. However, no one could foretell what the actual amounts would be. The Governor had signed off on the plan and indicated that hiring freezes would continue and that the budgets would be monitored. The reversion amounts were the best estimates of staff who prepared the budgets and individuals who would have to approve the budgets.

Senator Raggio indicated his presentation of the funding was an attempt to finalize the situation and indicated the Governor and Speaker Perkins concurred. Senator Raggio said it took a lot of hard effort to try to address and allay all of the concerns and utilize as efficiently as possible the funding that had been proposed. Anything the subcommittee approved was conditioned upon all parties signing on. It was also conditioned upon the bills being processed and

passed in a form acceptable to both houses. Senator Raggio said there would be a return to the Governor's proposal included in The Executive Budget if the current plan was not adopted.

Mr. Arberry said the plan took a great deal of planning and did not want to send a message to the educators that the legislature did not support them. The legislature did support education and was working very hard to provide funding for education and to provide adequate salaries for educators. Mr. Arberry indicated he was not totally happy with the proposal, but wanted to commend all the individuals who had worked on the plan.

Senator Rawson was concerned that there might be the perception that the legislators could not support anything that was not included in the budget. There was no question this was a difficult budget year and important issues had been set aside due to lack of funding. Legislators had a separate constitutional responsibility and authority to determine good issues and generate those issues and try to fund them through the legislature. Senator Rawson said he would never "buy off" on the idea that if something was not in the Governor's budget, then it was not worthy of consideration and resented the label of "pork" being tied on anything that was not included in the Governor's budget. There were "pork" bills and there were legitimate funding issues. Senator Rawson stated the plan was a good compromise and a good plan.

Senator Coffin stated he too, was happy with what had been proposed and indicated there had been significant changes made to the Governor's recommended budget.

Chairman Goldwater thanked the subcommittee for 4 months of hard work, thanked Senator Rawson for his able stewardship and leadership, and thanked Senator Raggio and Speaker Perkins for the last 40 hours of hard work on the proposal.

Chairman Goldwater said the motion before the subcommittee was the compromise outlined by Senator Raggio and asked all those in favor of the motion to indicate by saying aye.

THE MOTION PASSED UNANIMOUSLY. (Ms. Tiffany was not present to vote.)

****

Chairman Goldwater adjourned the meeting at 4:50 p.m.

RESPECTFULLY SUBMITTED:

Linda J. Smith
Committee Secretary

APPROVED BY:

Assemblyman David Goldwater, Chairman

DATE: 8-15-01

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-First Session
June 1, 2001

The Committee on Judiciary was called to order at 9:30 a.m. on Friday, June 1, 2001. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. The meeting was simultaneously videoconferenced in Room 4412 of the Grant Sawyer Office Building, Las Vegas. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. Mark Manendo, Vice Chairman
Mrs. Sharron Angle
Mr. Greg Brower
Ms. Barbara Buckley
Mr. John Carpenter
Mr. Jerry Claborn
Mr. Tom Collins
Mr. Don Gustavson
Mrs. Ellen Koivisto
Ms. Kathy McClain
Mr. Dennis Nolan
Mr. John Oceguera
Ms. Genie Ohrenschall

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Risa B. Lang, Committee Counsel
Cindy Clampitt, Recording Committee Secretary
Deborah Rengler, Transcribing Committee Secretary

Assembly Bill 484: Revises provisions governing disclosure statement required upon sale of unit in common-interest community. (BDR 10-584)

A letter was submitted to the Chairman from Assemblywoman Vonne Chowning (Exhibit C) recommending further amendment to S.B. 261, deleting Amendment No. 1063 that addressed issues originally proposed in A.B. 484. Chairman Anderson announced that Assemblywoman Chowning reached an agreement with Joan Buchanan, Administrator of the Real Estate Division, Department of Business and Industry, to include a new section on the "Seller's Real Property Disclosure Form." With that understanding, the Assembly Committee on Judiciary would be able to recede from the amendment to the bill if it came back from the Senate.

ASSEMBLYWOMAN BUCKLEY MOVED TO RECEDE FROM THE AMENDMENT NO. 1063 TO S.B. 261.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

MOTION PASSED UNANIMOUSLY.

Chairman Anderson took a brief break at 10:55 a.m. The committee would reconvene for work session.

Chairman Anderson reconvened the committee at 11:10 a.m. to proceed with the work session; he drew the committee's attention to S.B. 577.

Senate Bill 577: Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

Assemblywoman Buckley said the vote on S.B. 577 had been delayed at the request of Speaker Perkins, Chairman Anderson, and Assemblyman Goldwater, in an attempt to find additional revenue to assist in the plight of the educational system and teacher raises. As a result of working with Senator Raggio, the Governor's Office, and many others, the Distributive School Account was able to increase what had previously been announced, adding additional funds for teachers' health insurance and an additional percentage raise to be triggered if revenues were enough. Therefore, no more fees would be added to S.B. 577.

Chairman Anderson announced that the Research Division had prepared a revised amendment (Exhibit D) as submitted by the Nevada Trial Lawyers Association.

Ms. Lang said S.B. 51, that made various changes pertaining to business associations, had already been passed, gone to the Governor, and would be amended to be made consistent with S.B. 577, including the effective date so that the fees came into effect at the same time.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS S.B. 577 WITH THE AMENDMENTS SET FORTH BY THE NEVADA TRIAL LAWYERS ASSOCIATION AND WITH ANY ADDITIONAL AMENDMENTS TO RESOLVE CONFLICTS WITH S.B. 51, ALLOWING THE FEES TO TAKE EFFECT AT THE EARLIEST POSSIBLE DATE.
>
> ASSEMBLYMAN MANENDO SECONDED THE MOTION.

Chairman Anderson clarified the amendments.

Assemblyman Brower informed the committee that he would be voting no on the motion. He said he did not believe the amendment was necessary and was concerned about the ultimate success of the bill.

Assemblyman Carpenter said he did not want Nevada to become a haven for every corporate "crook" in America; he could not support the amendments. Assemblyman Carpenter said he would vote no on the bill.

Assemblywoman Buckley said she supported the motion because the fees were necessary to fund education. She said she had hoped for a more broad-based solution to address the larger issues of teacher salaries and adequately funding education, but if S.B. 577 was the best that could be done to ensure that schools were not left further behind, then she supported the fees. The Senate testimony offered corporations "more predictability under the law" in exchange for the increased fees. Nevada had always been very "business friendly" with the low tax structure, interim committees learning how to attract business, and implementing those recommendations. The amendment codified statutory law instead of relying on case law. It was necessary to make sure the language in S.B. 577 clearly expressed the intent of the Senate and those who testified – to have predictability in Nevada business law. S.B. 577, as amended, would provide the funds needed for education, as well as relief for victims in Nevada.

Assemblyman Nolan agreed with Assemblywoman Buckley. He said he was not in favor of the fees but in light of the alternative, he would support the bill. Assemblyman Nolan asked if the amendment presented (Exhibit D) included consensus language agreed upon by all parties.

Assemblywoman Buckley said the amendment was not consensus language. The additional funds for education agreed upon by the Governor's Office and interested parties were included in the projections and closed in the Distributive School Account budget, adding additional funds for teachers' health insurance and an additional 2 percent raise to be triggered by adequate revenues. Assemblywoman Buckley said S.B. 577 clarified and put forward the Senate's intent by codifying law instead of relying on case law, and preserved the fees for education.

Chairman Anderson said there might have been some confusion regarding other provisions and subsequent agreements that were not reached.

Assemblyman Collins said he did not see the necessity of the amendment, but he did support education; he would vote for the bill.

Assemblywoman Angle said S.B. 577, as written, was a "wonderful way" to fund education and to make Nevada very friendly. Assemblywoman Angle said she supported the bill as it came from the Senate.

Assemblyman Gustavson said he supported education and trying to find every way possible to increase funding for education. He said he would support the fee increases; the bill as a whole was good. But he said he did not support the amendment, so he would be voting no.

Assemblyman Brower asked if the Chair would reconsider the original motion to "do pass" rather than "amend and do pass."

Assemblyman Carpenter said he did not agree with the amendments to Section 1. He suggested only amending the language to include "or promote an injustice."

Chairman Anderson restated the motion from Assemblywoman Buckley, seconded by Assemblyman Manendo to amend and do pass S.B. 577.

Assemblyman Brower said he had made a motion. Chairman Anderson stated that he had not recognized the motion. Assemblyman Brower said he would be forced to vote no.

A ROLL CALL VOTE WAS CALLED.

Assemblyman Nolan asked if the motion failed, would the Chair reconsider a do pass motion. Chairman Anderson said, "No."

MOTION PASSED 10-4 WITH MRS. ANGLE, MR. BROWER, MR. CARPENTER, AND MR. GUSTAVSON VOTING NO.

Chairman Anderson recessed the meeting at 11:30 a.m. to the call of the Chair.

RESPECTFULLY SUBMITTED:

Deborah Rengler by Clc
Deborah Rengler
Committee Secretary

APPROVED BY:

Bernard J. Anderson Jr.
Assemblyman Bernie Anderson, Chairman

DATE: July 10, 2001

Revised Amendment

Amendment to SB 577
Presented by Nevada Trial Lawyers Association
5/30/01

1. Amend Section 1 to read as follows:

*1. Except as otherwise provided by specific statute, no stockholder, director or officer of a corporation ~~formed under the laws of this state~~ is individually liable for a debt or liability of the corporation, **unless** ~~without regard to whether a court determines that~~ the stockholder, director or officer **acts as** ~~should be considered~~ the alter ego of the corporation or ~~that~~ the corporate fiction of a separate entity should be disregarded for any other reason, ~~unless:~~*

~~(a) Otherwise provided in an agreement to which the stockholder, director or officer is a party; or~~

~~(b) A court of competent jurisdiction finds that:~~

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

(1) The corporation is influenced and governed by the stockholder, director or officer;

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

*(3) Adherence to the corporate fiction of a separate entity would sanction fraud **or promote injustice**.*

~~2. For a court to make a finding in satisfaction of subparagraph (3) of paragraph (b) of subsection 1, the court must find that the stockholder, director or officer has committed fraud in connection with the debt or liability of the corporation.~~

2. Section 3 - sub 7 is amended to read as follows:

*"Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270 668.045 and 694A.030, a director or officer is not individually liable **to the corporation or its stockholders** for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven that:*

*a) His act or failure to act constituted a breach of his fiduciary duties as a director or officer; ~~and~~ **or***

b) His breach of those duties involved intentional misconduct, fraud or knowing violation of law."

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D1 of 2

ASSEMBLY COMMITTEE ON JUDICIARY EXHIBIT D
Date 6-1-01 Pages 1-2
Submitted by D. Anthem, Committee

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3. Section 59 - sub 2 (b) should be amended to delete that the bill is effective on passage and approval and changed to read, ***"shall apply to claims that arise after October 1, 2001."***

4. Section 8 should be changed to restore the statute of limitations to three (3) years as opposed to the two (2) years in the bill.

5. Section 55 should be deleted. Legislative intent should either not be included or redrafted to state that the legislature, in enacting section 1, does not intend to change the common law doctrine.

D242

4836

GARD552

more frequently traveled highways of this state a system of ~~[telephones]~~ *communication* for members of the *general* public to report fires, accidents or other emergencies ~~[or]~~ *and* to receive information concerning the conditions for driving on certain highways.

Sec. 2. 1. There is hereby appropriated from the state highway fund to the department of transportation the sum of $500,000 for the establishment and maintenance of an emergency system of call boxes located on Interstate Highway No. 15 from the boundary of the State of California to Lake Mead Drive in Clark County, Nevada.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2003, and reverts to the state highway fund as soon as all payments of money committed have been made.

Sec. 3. This act becomes effective upon passage and approval.".

Amend the title of the bill to read as follows:

"AN ACT relating to highways; requiring the department of transportation to establish along certain highways a system of communication for members of the general public to report emergencies and receive information concerning conditions for driving on those highways; making an appropriation; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows:

"SUMMARY-Requires department of transportation to establish along certain highways system of communication for members of general public to report emergencies and receive information concerning conditions for driving on those highways. (BDR 35-820)".

Assemblywoman Giunchigliani moved the adoption of the amendment.

Remarks by Assemblywoman Giunchigliani.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 143.

Bill read second time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 1195.

Amend the bill as a whole by renumbering sections 3 and 4 as sections 4 and 5 and adding a new section designated sec. 3, following sec. 2, to read as follows:

"Sec. 3. There is hereby appropriated from the state general fund to the administrative office of the courts the sum of $300,000 for the establishment of programs of treatment for the abuse of alcohol or controlled substances pursuant to NRS 453.580 in the First, Third and Ninth Judicial Districts of the State of Nevada which include Carson City and Churchill, Douglas, Lyon and Storey counties.".

Amend sec. 3, page 2, line 2, by deleting: "1 and 2" and inserting: "1, 2 and 3".

Amend the title of the bill, first and second lines, by deleting: "the Second and Eighth Judicial District Courts for continuation" and inserting: "certain judicial districts for continuation or establishment".

Amend the summary of the bill to read as follows:

"SUMMARY—Makes appropriations to certain judicial districts for continuation or establishment of programs of treatment for abuse of alcohol or controlled substances. (BDR S-178)".

Assemblywoman Giunchigliani moved the adoption of the amendment.

Remarks by Assemblymen Giunchigliani and Beers

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 577.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 1172.

Amend section 1, page 1, by deleting lines 4 through 13 and inserting: "*director or officer of a corporation is individually liable for a debt or liability of the corporation, unless:*

(a) The stockholder, director or officer acts as the alter ego of the corporation; or

(b) The corporate fiction of a separate entity should be disregarded for any other reason.

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

(a) The corporation is influenced and governed by the stockholder,".

Amend section 1, page 2, line 1, by deleting "*(2)*" and inserting "*(b)*".

Amend section 1, page 2, line 4, by deleting "*(3)*" and inserting "*(c)*".

Amend section 1, page 2, by deleting lines 5 through 9 and inserting: "*sanction fraud or promote injustice.*".

Amend the bill as a whole by adding a new section designated sec. 1.5, following section 1, to read as follows:

"Sec. 1.5. NRS 78.0295 is hereby amended to read as follows:

78.0295 1. A corporation may correct a document filed by the secretary of state with respect to the corporation if the document contains an inaccurate record of a corporate action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the corporation shall:

(a) Prepare a certificate of correction which:

(1) States the name of the corporation;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by an officer of the corporation.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.".

Amend sec. 3, page 3, line 18, after "*35.230,*" by inserting "*78.300,*".

Amend sec. 3, page 3, line 20, after "*liable*" by inserting: "*to the corporation or its stockholders*".

Amend sec. 3, page 3, line 23, by deleting "*and*" and inserting "*or*".

Amend sec. 4, page 3, line 27, by deleting "under" and inserting "pursuant to".

Amend sec. 4, page 3, line 45, by deleting "amended" and inserting "annual".

Amend sec. 4, pages 3 and 4, by deleting line 49 on page 3 and lines 1 through 3 on page 4, and inserting:

"*4.* Upon filing the ~~[annual]~~ list required by ~~[subsection]~~ :

(a) Subsection 1, the corporation shall pay to the secretary of state a fee of $165.

(b) Subsection 2, the corporation shall pay to the secretary of state a fee".

Amend sec. 4, page 4, by deleting lines 9 and 10 and inserting: "of the fee due pursuant to subsection ~~[3]~~ *4* and a reminder to file the annual list required by subsection 2. Failure of any".

Amend sec. 4, page 4, line 14, by deleting: "~~[3 or 7]~~" and inserting: "~~[3, 6 or 7]~~".

Amend sec. 4, page 4, line 19, after "and" by inserting: "must be accompanied by a fee of $85 for filing. A payment submitted pursuant to this subsection".

Amend sec. 7, page 4, line 47, by deleting "under" and inserting "pursuant to".

Amend sec. 7, page 5, lines 4 and 5, by deleting: "its charter was revoked;" and inserting: "it failed to file each required annual list in a timely manner;".

Amend sec. 7, page 5, line 9, after "fee" by inserting "or fees".

Amend the bill as a whole by deleting sec. 8 and inserting:

"Sec. 8. (Deleted by amendment.)".

Amend the bill as a whole by adding a new section designated sec. 8.5, following sec. 8, to read as follows:

"Sec. 8.5. NRS 78.390 is hereby amended to read as follows:

78.390 1. Every amendment adopted pursuant to the provisions of NRS 78.385 must be made in the following manner:

(a) The board of directors must adopt a resolution setting forth the amendment proposed and declaring its advisability, and either call a special meeting of the stockholders entitled to vote on the amendment or direct that the proposed amendment be considered at the next annual meeting of the stockholders entitled to vote on the amendment.

(b) At the meeting, of which notice must be given to each stockholder entitled to vote pursuant to the provisions of this section, a vote of the stockholders entitled to vote in person or by proxy must be taken for and against the proposed amendment. If it appears upon the canvassing of the votes that stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, as provided in subsections 2 and 4, or as may be required by the provisions of the

articles of incorporation, have voted in favor of the amendment, an officer of the corporation shall sign a certificate setting forth the amendment, or setting forth the articles of incorporation as amended, and the vote by which the amendment was adopted.

(c) The certificate so signed must be filed with the secretary of state.

2. If any proposed amendment would adversely alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series adversely affected by the amendment regardless of limitations or restrictions on the voting power thereof.

3. Provision may be made in the articles of incorporation requiring, in the case of any specified amendments, a larger proportion of the voting power of stockholders than that required by this section.

4. Different series of the same class of shares do not constitute different classes of shares for the purpose of voting by classes except when the series is adversely affected by an amendment in a different manner than other series of the same class.

5. The resolution of the stockholders approving the proposed amendment may provide that at any time before the effective date of the amendment, notwithstanding approval of the proposed amendment by the stockholders, the board of directors may, by resolution, abandon the proposed amendment without further action by the stockholders.

6. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

7. If a certificate filed pursuant to subsection 1 specifies an effective date and if the resolution of the stockholders approving the proposed amendment provides that the board of directors may abandon the proposed amendment pursuant to subsection 5, the board of directors may terminate the effectiveness of the certificate by resolution and by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the stockholders, the board of directors is authorized
to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by an officer of the corporation; and

(f) Is accompanied by a filing fee of ~~[$75.]~~ *$150.*".

Amend sec. 10, page 6, line 46, by deleting "or agreement".

Amend sec. 10, page 7, line 7, by deleting "under" and inserting "pusuant to".

Amend sec. 11, page 7, after line 46, by inserting:

"4. The fee for filing a certificate of termination pursuant to NRS 78.1955, 78.209 or 78.380 is ~~[$75.]~~ *$150.*".

Amend sec. 14, page 8, line 33, by deleting "~~[$15.]~~ *$30.*" and inserting "~~[$20.]~~ *$40.*".

Amend sec. 14, page 8, line 44, by deleting "~~[78.770,]~~ *92A.210*" and inserting "*92A.210,*".

Amend the bill as a whole by adding a new section designated sec. 19.5, following sec. 19, to read as follows:

"Sec. 19.5. NRS 86.226 is hereby amended to read as follows:

86.226 1. A signed certificate of amendment, or a certified copy of a judicial decree of amendment, must be filed with the secretary of state. A person who executes a certificate as an agent, officer or fiduciary of the limited-liability company need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that a certificate does not conform to law, upon his receipt of all required filing fees he shall file the certificate.

2. A certificate of amendment or judicial decree of amendment is effective upon filing with the secretary of state or upon a later date specified in the certificate or judicial decree, which must not be more than 90 days after the certificate or judicial decree is filed.

3. If a certificate specifies an effective date and if the resolution of the members approving the proposed amendment provides that one or more managers or, if management is not vested in a manager, one or more members may abandon the proposed amendment, then those managers or members may terminate the effectiveness of the certificate by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate or judicial decree filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the members, the manager of the company or, if management is not vested in a manager, a designated member is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by a manager of the company or, if management is not vested in a manager, a designated member; and

(f) Is accompanied by a filing fee of ~~[$75.]~~ *$150.*".

Amend sec. 23, page 12, line 27, by deleting "under" and inserting "pursuant to".

Amend sec. 23, page 12, lines 33 and 34, by deleting: "its charter has been revoked;" and inserting: "it failed to file in a timely manner each required annual list;".

Amend sec. 24, page 13, by deleting lines 5 and 6 and inserting:

"(b) Amending or restating the articles of organization, amending the registration of a foreign company or filing a certificate of correction, ~~[$75;]~~ *$150;*".

Amend sec. 24, page 13, by deleting lines 15 and 16 and inserting:

"(h) Filing a certificate of cancellation, ~~[$30;]~~ *$60;*

(i) Executing, filing or certifying any other document, ~~[$20;]~~ *$40;* and

(j) Copies made at the office of the secretary of state, $1 per page.".

Amend sec. 32, page 16, line 36, by deleting "~~[$15.]~~ *$30.*" and inserting "~~[$20.]~~ *$40.*".

Amend sec. 33, page 17, between lines 35 and 36, by inserting:

"6. A filing made pursuant to this section does not satisfy the provisions of NRS 88.355 and may not be substituted for filings submitted pursuant to NRS 88.355.".

Amend sec. 34, page 17, line 37, by deleting "corporation" and inserting "limited partnership".

Amend sec. 40, page 20, line 32, by deleting "~~[$15.]~~ *$30.*" and inserting "~~[$20.]~~ *$40.*".

Amend sec. 42, page 21, by deleting lines 14 through 40 and inserting:

"89.250 1. Except as otherwise provided in subsection 2, a professional association shall, *on or before the first day of the second month after the filing of its articles of association with the secretary of state, and annually thereafter* on or before the last day of the month in which the anniversary date of its organization occurs in each year, furnish a statement to the secretary of state showing the names and residence addresses of all members and employees in ~~[such]~~ *the* association and ~~[shall certify]~~ *certifying* that all members and employees are licensed to render professional service in this state.

2. A professional association organized and practicing pursuant to the provisions of this chapter and NRS 623.349 shall, *on or before the first day of the second month after the filing of its articles of association with the secretary of state, and annually thereafter* on or before the last day of the month in which the anniversary date of its organization occurs in each year, furnish a statement to the secretary of state:

(a) Showing the names and residence addresses of all members and employees of the association who are licensed or otherwise authorized by law to render professional service in this state;

(b) Certifying that all members and employees who render professional service are licensed or otherwise authorized by law to render professional service in this state; and

(c) Certifying that all members who are not licensed to render professional service in this state do not render professional service on behalf of the association except as authorized by law.

3. ~~[The statement must:~~

~~(a) Be made]~~ *Each statement filed pursuant to this section must be:*

(a) Made on a form prescribed by the secretary of state and must not contain any fiscal or other information except that expressly called for by this section.

(b) ~~[Be signed]~~ *Signed* by the chief executive officer of the association.

(c) Accompanied by a declaration under penalty of perjury that the professional association has complied with the provisions of chapter 364A of NRS.

4. Upon filing ~~[the annual]~~ :

(a) The initial statement required by this section, the association shall pay to the secretary of state a fee of $165.

(b) Each annual statement required by this section, the association shall pay to the secretary of state a fee of ~~[$15.]~~ *$85.*

5. As used in this section, "signed" means to have executed or adopted a name, word or mark, including, without limitation, a digital signature as defined in NRS 720.060, with the present intention to authenticate a document.".

Amend sec. 46, page 23, by deleting lines 20 through 39 and inserting:

"92A.210 1. Except as otherwise provided in this section, the fee for filing articles of merger, articles of conversion, articles of exchange, articles of domestication or articles of termination is ~~[$125.]~~ *$325.* The fee for filing the constituent documents of a domestic resulting entity is the fee for filing the constituent documents determined by the chapter of NRS governing the particular domestic resulting entity.

2. The fee for filing articles of merger of two or more domestic corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporation.

3. The fee for filing articles of merger of one or more domestic corporations with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid the fees required by NRS 78.760 and 80.050.

4. The fee for filing articles of merger of two or more domestic or foreign corporations must not be less than ~~[$125.]~~ *$325.* The amount paid pursuant to subsection 3 must not exceed $25,000.".

Amend the bill as a whole by deleting sections 54 and 55, renumbering sections 56 through 59 as sections 60 through 63 and adding new sections designated sections 54 to 59, following sec. 53, to read as follows:

"Sec. 54. Section 29 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 29. NRS 78.390 is hereby amended to read as follows:

78.390 1. Every amendment adopted pursuant to the provisions of NRS 78.385 must be made in the following manner:

(a) The board of directors must adopt a resolution setting forth the amendment proposed and declaring its advisability, and either call a special meeting of the stockholders entitled to vote on the amendment or direct that the proposed amendment be considered at the next annual meeting of the stockholders entitled to vote on the amendment.

(b) At the meeting, of which notice must be given to each stockholder entitled to vote pursuant to the provisions of this section, a vote of the stockholders entitled to vote in person or by proxy must be taken for and against the proposed amendment. If it appears upon the canvassing of the votes that stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater

proportion of the voting power as may be required in the case of a vote by classes or series, as provided in subsections 2 and 4, or as may be required by the provisions of the articles of incorporation, have voted in favor of the amendment, an officer of the corporation shall sign a certificate setting forth the amendment, or setting forth the articles of incorporation as amended, and the vote by which the amendment was adopted.

(c) The certificate so signed must be filed with the secretary of state.

2. If any proposed amendment would adversely alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series adversely affected by the amendment regardless of limitations or restrictions on the voting power thereof.

3. Provision may be made in the articles of incorporation requiring, in the case of any specified amendments, a larger proportion of the voting power of stockholders than that required by this section.

4. Different series of the same class of shares do not constitute different classes of shares for the purpose of voting by classes except when the series is adversely affected by an amendment in a different manner than other series of the same class.

5. The resolution of the stockholders approving the proposed amendment may provide that at any time before the effective date of the amendment, notwithstanding approval of the proposed amendment by the stockholders, the board of directors may, by resolution, abandon the proposed amendment without further action by the stockholders.

6. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

7. If a certificate filed pursuant to subsection 1 specifies an effective date and if the resolution of the stockholders approving the proposed amendment provides that the board of directors may abandon the proposed amendment pursuant to subsection 5, the board of directors may terminate the effectiveness of the certificate by resolution and by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the stockholders, the board of directors is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by an officer of the corporation; and

(f) Is accompanied by a filing fee of ~~[$75.]~~ *$150.*

Sec. 55. Section 55 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 55. 1. A limited-liability company may correct a document filed by the secretary of state with respect to the limited-liability company if the document contains an inaccurate record of a company action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the limited-liability company must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited-liability company;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a manager of the company, or if management is not vested in a manager, by a member of the company.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 56. Section 90 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 90. Chapter 87 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A limited-liability partnership may correct a document filed by the secretary of state with respect to the limited-liability partnership if the document contains an inaccurate record of a partnership action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the limited-liability partnership must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited-liability partnership;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a managing partner of the limited-liability partnership.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 57. Section 93 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 93. 1. A limited partnership may correct a document filed by the secretary of state with respect to the limited partnership if the document contains an inaccurate record of a partnership action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the limited partnership must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited partnership;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a general partner of the limited partnership.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 58. Section 102 of Senate Bill No. 51 of this session is hereby *amended to read as follows:*

Sec. 102. 1. A business trust may correct a document filed by the secretary of state with respect to the business trust if the document contains an inaccurate record of a trust action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the business trust must:

(a) Prepare a certificate of correction that:

(1) States the name of the business trust;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a trustee of the business trust.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 59. Senate Bill No. 51 is hereby amended by adding thereto a new section designated sec. 138, following sec. 137, to read as follows:

Sec. 138. This act becomes effective on August 1, 2001.".

Amend sec. 56, page 27, by deleting lines 29 and 30 and inserting:

"Sec. 60. Sections 1, 2, 3, 9 and 47 of this act do not apply to a claim that arises before the effective date of this section.".

Amend sec. 57, page 27, line 31, by deleting "59" and inserting "63".

Amend sec. 59, page 28, by deleting lines 5 through 14 and inserting:

"Sec. 63. 1. This section and sections 1, 2, 3, 9, 47, 59, 60, 61 and 62 of this act become effective upon passage and approval.

2. Sections 5, 6, 12, 13 to 19, inclusive, 20, 21, 22, 25 to 31, inclusive, 35 to 39, inclusive, 41 to 45, inclusive, and 47 to 53, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On August 1, 2001, for all other purposes.

3. Sections 1.5, 4, 7, 8.5, 10, 11, 14, 19.5, 23, 24, 32, 33, 34, 40, 46 and 54 to 58, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) At 12:01 a.m. on August 1, 2001, for all other purposes.".

Amend the title of the bill by deleting the first line and inserting:

"AN ACT relating to business associations; revising the statutory liability of".

Amend the summary of the bill to read as follows:

"SUMMARY—Revises statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)".

Assemblywoman Buckley moved the adoption of the amendment.

Remarks by Assemblymen Buckley and Lee.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 421.

Bill read second time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 1189.

Amend section 1, page 1, line 2, by deleting "43," and inserting "20,".

Amend the bill as a whole by deleting sec. 3 and renumbering sec. 4 as sec. 3.

Amend the bill as a whole by deleting sec. 5 and renumbering sections 6 through 8 as sections 4 through 6.

Amend the bill as a whole by deleting sec. 9 and renumbering sec. 10 as sec. 7.

Amend the bill as a whole by deleting sections 11 through 28, renumbering sections 29 through 35 as sections 9 through 15 and adding a new section designated sec. 8, following sec. 10, to read as follows:

"Sec. 8. *In conducting any meetings, a rural agricultural residential common-interest community must comply with the provisions set forth in chapter 241 of NRS concerning open meetings which are generally applicable to public bodies.*".

Amend sec. 29, page 8, by deleting lines 13 and 14 and inserting:

"Sec. 9. *An application for a certificate to act as a community manager must:*".

Amend sec. 29, page 8, line 16, by deleting "*30*" and inserting "*10*".

Amend sec. 30, page 8, by deleting lines 18 and 19 and inserting:

"Sec. 10. *1. An applicant for a certificate to act as a community manager must*".

Amend sec. 30, page 8, line 26, by deleting "*license or*".

Amend sec. 30, page 8, line 28, by deleting "*license or*".

Amend sec. 31, page 8, by deleting lines 46 through 48 and inserting: "*permits issued to the holder of a certificate to act as a community manager, the division shall deem the certificate to be suspended at the end of*".

Amend sec. 31, page 9, line 1, by deleting "*license or*".

Amend sec. 31, page 9, line 3, by deleting "*license or*".

Amend sec. 31, page 9, line 5, by deleting: "*a license or*".

Amend sec. 31, page 9, line 8, by deleting "*license or*".

Amend sec. 35, page 9, line 37, by deleting "*A*" and inserting: "*An officer or a*".

Amend sec. 35, page 9, line 47, after "*to*" by inserting: "*an officer or*".

Amend the bill as a whole by deleting sections 36 and 37 and renumbering sections 38 through 41 as sections 16 through 19.

Amend sec. 38, page 11, by deleting lines 28 through 31 and inserting: "*a common-interest community that has at least 2,000 units, some or all of the authority of the members of a master association may be exercised by delegates, including, without limitation, the voting rights of the members of the master association, if the declaration so provides.*".

Amend sec. 39, pages 11 and 12, by deleting lines 39 through 49 on page 11 and lines 1 through 9 on page 12 and inserting: "*constructing any common elements that will be added to the association's common elements, the declarant is responsible for:*

(a) Paying all expenses related to the common elements which are incurred before the conveyance of the common elements to the association; and

(b) Except as otherwise provided in NRS 116.31038, delivering to the association the declarant's share of the amount specified in the study of reserves completed pursuant to subsection 2.

2. Before conveying the common elements to the association, the declarant shall deliver to the association a study of the reserves for the additional common elements which satisfies the requirements of NRS 116.31152.".

Amend sec. 40, page 12, line 10, by deleting "*In*" and inserting: "*Except as otherwise provided in subsection 2, in*".

Amend sec. 40, page 12, by deleting lines 14 through 32 and inserting: "*commercial use only if:*

(a) The governing documents of the association and any master association do not prohibit such use; and

(b) Persons entitled to cast at least a majority of the votes in the association and any master association approve the transient commercial use of the unit.

REQUIRES TWO-THIRDS MAJORITY VOTE (§§ 1.5, 4, 6, 7, 8.5, 10, 11, 12, 13, 14, 15, 16, 18, 19, 19.5, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58)

(REPRINTED WITH ADOPTED AMENDMENTS)

SECOND REPRINT **S.B. 577**

SENATE BILL NO. 577–SENATORS JAMES, RAGGIO, O'DONNELL, AMODEI, RAWSON, JACOBSEN AND MCGINNESS

MAY 24, 2001

Referred to Committee on Judiciary

SUMMARY—Revises statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

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

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

AN ACT *relating to business associations; revising the statutory liability of the stockholders,* directors and officers of a corporation; increasing the fees and revising certain requirements for filing certain documents with the secretary of state; requiring certain fees charged by the secretary of state for special services to be deposited in the state general fund; and providing other matters properly relating thereto.

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

Section 1. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

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

(a) The stockholder, director or officer acts as the alter ego of the corporation; or

(b) The corporate fiction of a separate entity should be disregarded for any other reason.

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

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

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

Senate Bill No. 496.
Bill read third time.
Remarks by Assemblyman Carpenter.
Roll call on Senate Bill No. 496:
YEAS—39.
NAYS—None.
NOT VOTING—Goldwater.
EXCUSED—Freeman, Humke—2.

Senate Bill No. 496 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Senate Bill No. 576.
Bill read third time.
Remarks by Assemblymen Chowning, Gustavson, Lee and Buckley.
Conflict of interest declared by Assemblyman Lee.
Roll call on Senate Bill No. 576:
YEAS—36.
NAYS—Angle, Gustavson—2.
NOT VOTING—Arberry Jr., Lee—2.
EXCUSED—Freeman, Humke—2.

Senate Bill No. 576 having received a two-thirds majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Senate Bill No. 577.
Bill read third time.
Remarks by Assemblymen Anderson, Angle, Buckley and Brower.
Assemblyman Parks requested that the following remarks be entered in the *Journal*.
(To Be Included In Final Journal)
Roll call on Senate Bill No. 577:
YEAS—40.
NAYS—None.
EXCUSED—Freeman, Humke—2.

Senate Bill No. 577 having received a two-thirds majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Senate Bill No. 372.
Bill read third time.
Remarks by Assemblymen Bache, de Braga, Collins, Gibbons and Beers.
Potential conflict of interest declared by Assemblyman de Braga.
Roll call on Senate Bill No. 372:
YEAS—39.
NAYS—None.
NOT VOTING—Carpenter.
EXCUSED—Freeman, Humke—2.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-First Session
June 3, 2001

The Senate Committee on Judiciary was called to order by Chairman Mark A. James at 7:45 p.m. on Sunday, June 3, 2001, on the Senate Floor of the Legislative Building, Carson City, Nevada. There was no Agenda. There was no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Dina Titus
Senator Valerie Wiener
Senator Terry Care

STAFF MEMBERS PRESENT:

Bradley A. Wilkinson, Committee Counsel
Allison Combs, Committee Policy Analyst
Barbara Moss, Committee Secretary

Chairman James said the committee had one bill to discuss, Senate Bill (S.B.) 577.

SENATE BILL 577: Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

SENATOR MCGINNESS MOVED TO NOT CONCUR WITH AMENDMENT NO. 1172 TO S.B. 577.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TITUS AND SENATOR WIENER VOTED NO.)

*****

There being no further business, Chairman James adjourned the meeting at 7:50 p.m.

RESPECTFULLY SUBMITTED:

Heather Dion,
Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE: 6-14-01

duct for such drivers; providing for the impoundment of certain vehicles by the transportation services authority; requiring certain actions with regard to defects and unsafe conditions in vehicles; exempting certain holders of unrestricted gaming licenses that operate motor vehicles from the provisions governing fully regulated carriers; authorizing the transportation services authority to impose a fee for the issuance of identification decals to such exempted holders of unrestricted gaming licenses; requiring the transportation services authority to establish a system of allocation for limousines; providing that certain acts of drivers of fully regulated carriers of passengers are unlawful; providing penalties; and providing other matters properly relating thereto.".

Senator O'Donnell moved that the Senate do not concur in the Assembly amendment to Senate Bill No. 576.

Remarks by Senator O'Donnell.

Conflict of interest declared by Senator Care.

Motion carried.

Bill ordered transmitted to the Assembly.

Senate Bill No. 577.

The following Assembly amendment was read:

Amendment No. 1172.

Amend section 1, page 1, by deleting lines 4 through 13 and inserting: "*director or officer of a corporation is individually liable for a debt or liability of the corporation, unless:*

(a) The stockholder, director or officer acts as the alter ego of the corporation; or

(b) The corporate fiction of a separate entity should be disregarded for any other reason.

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

(a) The corporation is influenced and governed by the stockholder,".

Amend section 1, page 2, line 1, by deleting "*(2)*" and inserting "*(b)*".

Amend section 1, page 2, line 4, by deleting "*(3)*" and inserting "*(c)*".

Amend section 1, page 2, by deleting lines 5 through 9 and inserting: "*sanction fraud or promote injustice.*".

Amend the bill as a whole by adding a new section designated sec. 1.5, following section 1, to read as follows:

"Sec. 1.5. NRS 78.0295 is hereby amended to read as follows:

78.0295 1. A corporation may correct a document filed by the secretary of state with respect to the corporation if the document contains an inaccurate record of a corporate action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the corporation shall:

(a) Prepare a certificate of correction which:

(1) States the name of the corporation;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by an officer of the corporation.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.".

Amend sec. 3, page 3, line 18, after "*35.230,*" by inserting "*78.300,*".

Amend sec. 3, page 3, line 20, after "*liable*" by inserting: "*to the corporation or its stockholders*".

Amend sec. 3, page 3, line 23, by deleting "*and*" and inserting "*or*".

Amend sec. 4, page 3, line 27, by deleting "under" and inserting "pursuant to".

Amend sec. 4, page 3, line 45, by deleting "amended" and inserting "annual".

Amend sec. 4, pages 3 and 4, by deleting line 49 on page 3 and lines 1 through 3 on page 4, and inserting:

"*4.* Upon filing the ~~[annual]~~ list required by ~~[subsection]~~ *:*

(a) Subsection 1, the corporation shall pay to the secretary of state a fee of $165.

(b) Subsection 2, the corporation shall pay to the secretary of state a fee".

Amend sec. 4, page 4, by deleting lines 9 and 10 and inserting: "of the fee due pursuant to subsection ~~[3]~~ *4* and a reminder to file the annual list required by subsection 2. Failure of any".

Amend sec. 4, page 4, line 14, by deleting: "~~[3 or 7]~~" and inserting: "~~[3, 6 or 7]~~".

Amend sec. 4, page 4, line 19, after "and" by inserting: "must be accompanied by a fee of $85 for filing. A payment submitted pursuant to this subsection".

Amend sec. 7, page 4, line 47, by deleting "under" and inserting "pursuant to".

Amend sec. 7, page 5, lines 4 and 5, by deleting: "its charter was revoked;" and inserting: "it failed to file each required annual list in a timely manner;".

Amend sec. 7, page 5, line 9, after "fee" by inserting "or fees".

Amend the bill as a whole by deleting sec. 8 and inserting:

"Sec. 8. (Deleted by amendment.)".

Amend the bill as a whole by adding a new section designated sec. 8.5, following sec. 8, to read as follows:

"Sec. 8.5. NRS 78.390 is hereby amended to read as follows:

78.390 1. Every amendment adopted pursuant to the provisions of NRS 78.385 must be made in the following manner:

(a) The board of directors must adopt a resolution setting forth the amendment proposed and declaring its advisability, and either call a special meeting of the stockholders entitled to vote on the amendment or direct that the

proposed amendment be considered at the next annual meeting of the stockholders entitled to vote on the amendment.

(b) At the meeting, of which notice must be given to each stockholder entitled to vote pursuant to the provisions of this section, a vote of the stockholders entitled to vote in person or by proxy must be taken for and against the proposed amendment. If it appears upon the canvassing of the votes that stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, as provided in subsections 2 and 4, or as may be required by the provisions of the articles of incorporation, have voted in favor of the amendment, an officer of the corporation shall sign a certificate setting forth the amendment, or setting forth the articles of incorporation as amended, and the vote by which the amendment was adopted.

(c) The certificate so signed must be filed with the secretary of state.

2. If any proposed amendment would adversely alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series adversely affected by the amendment regardless of limitations or restrictions on the voting power thereof.

3. Provision may be made in the articles of incorporation requiring, in the case of any specified amendments, a larger proportion of the voting power of stockholders than that required by this section.

4. Different series of the same class of shares do not constitute different classes of shares for the purpose of voting by classes except when the series is adversely affected by an amendment in a different manner than other series of the same class.

5. The resolution of the stockholders approving the proposed amendment may provide that at any time before the effective date of the amendment, notwithstanding approval of the proposed amendment by the stockholders, the board of directors may, by resolution, abandon the proposed amendment without further action by the stockholders.

6. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

7. If a certificate filed pursuant to subsection 1 specifies an effective date and if the resolution of the stockholders approving the proposed amendment provides that the board of directors may abandon the proposed amendment pursuant to subsection 5, the board of directors may terminate the effectiveness of the certificate by resolution and by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the stockholders, the board of directors is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by an officer of the corporation; and

(f) Is accompanied by a filing fee of ~~[$75.]~~ *$150.*".

Amend sec. 10, page 6, line 46, by deleting "or agreement".

Amend sec. 10, page 7, line 7, by deleting "under" and inserting "pursuant to".

Amend sec. 11, page 7, after line 46, by inserting:

"4. The fee for filing a certificate of termination pursuant to NRS 78.1955, 78.209 or 78.380 is ~~[$75.]~~ *$150.*".

Amend sec. 14, page 8, line 33, by deleting "~~[$15.]~~ *$30.*" and inserting "~~[$20.]~~ *$40.*".

Amend sec. 14, page 8, line 44, by deleting "~~[78.770,]~~ *92A.210*" and inserting "92A.210,".

Amend the bill as a whole by adding a new section designated sec. 19.5, following sec. 19, to read as follows:

"Sec. 19.5. NRS 86.226 is hereby amended to read as follows:

86.226 1. A signed certificate of amendment, or a certified copy of a judicial decree of amendment, must be filed with the secretary of state. A person who executes a certificate as an agent, officer or fiduciary of the limited-liability company need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that a certificate does not conform to law, upon his receipt of all required filing fees he shall file the certificate.

2. A certificate of amendment or judicial decree of amendment is effective upon filing with the secretary of state or upon a later date specified in the certificate or judicial decree, which must not be more than 90 days after the certificate or judicial decree is filed.

3. If a certificate specifies an effective date and if the resolution of the members approving the proposed amendment provides that one or more managers or, if management is not vested in a manager, one or more members may abandon the proposed amendment, then those managers or members may terminate the effectiveness of the certificate by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate or judicial decree filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the members, the manager of the company or, if management is not vested in a manager, a designated member is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by a manager of the company or, if management is not vested in a manager, a designated member; and

(f) Is accompanied by a filing fee of ~~[$75.]~~ *$150.*".

Amend sec. 23, page 12, line 27, by deleting "under" and inserting "pursuant to".

Amend sec. 23, page 12, lines 33 and 34, by deleting: "its charter has been revoked;" and inserting: "it failed to file in a timely manner each required annual list;".

Amend sec. 24, page 13, by deleting lines 5 and 6 and inserting:

"(b) Amending or restating the articles of organization, amending the registration of a foreign company or filing a certificate of correction, ~~[$75;]~~ *$150;*".

Amend sec. 24, page 13, by deleting lines 15 and 16 and inserting:

"(h) Filing a certificate of cancellation, ~~[$30;]~~ *$60;*

(i) Executing, filing or certifying any other document, ~~[$20;]~~ *$40;* and

(j) Copies made at the office of the secretary of state, $1 per page.".

Amend sec. 32, page 16, line 36, by deleting "~~[$15.]~~ *$30.*" and inserting "~~[$20.]~~ *$40.*".

Amend sec. 33, page 17, between lines 35 and 36, by inserting:

"6. A filing made pursuant to this section does not satisfy the provisions of *NRS 88.355 and may not* be substituted for filings submitted pursuant to NRS 88.355.".

Amend sec. 34, page 17, line 37, by deleting "corporation" and inserting "limited partnership".

Amend sec. 40, page 20, line 32, by deleting "~~[$15.]~~ *$30.*" and inserting "~~[$20.]~~ *$40.*".

Amend sec. 42, page 21, by deleting lines 14 through 40 and inserting:

"89.250 1. Except as otherwise provided in subsection 2, a professional association shall, *on or before the first day of the second month after the filing of its articles of association with the secretary of state, and annually thereafter* on or before the last day of the month in which the anniversary date of its organization occurs in each year, furnish a statement to the secretary of state showing the names and residence addresses of all members and employees in ~~[such]~~ *the* association and ~~[shall certify]~~ *certifying* that all members and employees are licensed to render professional service in this state.

2. A professional association organized and practicing pursuant to the provisions of this chapter and NRS 623.349 shall, *on or before the first day of the second month after the filing of its articles of association with the secretary of state, and annually thereafter* on or before the last day of the month in which the anniversary date of its organization occurs in each year, furnish a statement to the secretary of state:

(a) Showing the names and residence addresses of all members and employees of the association who are licensed or otherwise authorized by law to render professional service in this state;

(b) Certifying that all members and employees who render professional service are licensed or otherwise authorized by law to render professional service in this state; and

(c) Certifying that all members who are not licensed to render professional service in this state do not render professional service on behalf of the association except as authorized by law.

3. ~~[The statement must:~~

~~(a) Be made:~~ *Each statement filed pursuant to this section must be:*

(a) Made on a form prescribed by the secretary of state and must not contain any fiscal or other information except that expressly called for by this section.

(b) ~~[Be signed]~~ *Signed* by the chief executive officer of the association.

(c) Accompanied by a declaration under penalty of perjury that the professional association has complied with the provisions of chapter 364A of NRS.

4. Upon filing ~~[the annual]~~ *:*

(a) The initial statement required by this section, the association shall pay to the secretary of state a fee of $165.

(b) Each annual statement required by this section, the association shall pay to the secretary of state a fee of ~~[$15.]~~ *$85.*

5. As used in this section, "signed" means to have executed or adopted a name, word or mark, including, without limitation, a digital signature as defined in NRS 720.060, with the present intention to authenticate a document.".

Amend sec. 46, page 23, by deleting lines 20 through 39 and inserting:

"92A.210 1. Except as otherwise provided in this section, the fee for filing articles of merger, articles of conversion, articles of exchange, articles of domestication or articles of termination is ~~[$125.]~~ *$325.* The fee for filing the constituent documents of a domestic resulting entity is the fee for filing the constituent documents determined by the chapter of NRS governing the particular domestic resulting entity.

2. The fee for filing articles of merger of two or more domestic corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporation.

3. The fee for filing articles of merger of one or more domestic corporations with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid the fees required by NRS 78.760 and 80.050.

4. The fee for filing articles of merger of two or more domestic or foreign corporations must not be less than ~~[$125.]~~ *$325.* The amount paid pursuant to subsection 3 must not exceed $25,000.".

Amend the bill as a whole by deleting sections 54 and 55, renumbering sections 56 through 59 as sections 60 through 63 and adding new sections designated sections 54 to 59, following sec. 53, to read as follows:

"Sec. 54. Section 29 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 29. NRS 78.390 is hereby amended to read as follows:

78.390 1. Every amendment adopted pursuant to the provisions of NRS 78.385 must be made in the following manner:

(a) The board of directors must adopt a resolution setting forth the amendment proposed and declaring its advisability, and either call a special meeting of the stockholders entitled to vote on the amendment or direct that the proposed amendment be considered at the next annual meeting of the stockholders entitled to vote on the amendment.

(b) At the meeting, of which notice must be given to each stockholder entitled to vote pursuant to the provisions of this section, a vote of the stockholders entitled to vote in person or by proxy must be taken for and against the proposed amendment. If it appears upon the canvassing of the votes that stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, as provided in subsections 2 and 4, or as may be required by the provisions of the articles of incorporation, have voted in favor of the amendment, an officer of the corporation shall sign a certificate setting forth the amendment, or setting forth the articles of incorporation as amended, and the vote by which the amendment was adopted.

(c) The certificate so signed must be filed with the secretary of state.

2. If any proposed amendment would adversely alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series adversely affected by the amendment regardless of limitations or restrictions on the voting power thereof.

3. Provision may be made in the articles of incorporation requiring, in the case of any specified amendments, a larger proportion of the voting power of stockholders than that required by this section.

4. Different series of the same class of shares do not constitute different classes of shares for the purpose of voting by classes except when the series is adversely affected by an amendment in a different manner than other series of the same class.

5. The resolution of the stockholders approving the proposed amendment may provide that at any time before the effective date of the amendment, notwithstanding approval of the proposed amendment by the stockholders, the board of directors may, by resolution, abandon the proposed amendment without further action by the stockholders.

6. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

7. If a certificate filed pursuant to subsection 1 specifies an effective date and if the resolution of the stockholders approving the proposed amendment provides that the board of directors may abandon the proposed amendment pursuant to subsection 5, the board of directors may terminate the effectiveness of the certificate by resolution and by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the stockholders, the board of directors is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by an officer of the corporation; and

(f) Is accompanied by a filing fee of ~~[$75.]~~ *$150.*

Sec. 55. Section 55 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 55. 1. A limited-liability company may correct a document filed by the secretary of state with respect to the limited-liability company if the document contains an inaccurate record of a company action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the limited-liability company must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited-liability company;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a manager of the company, or if management is not vested in a manager, by a member of the company.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 56. Section 90 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 90. *Chapter 87 of NRS is hereby amended by adding thereto a new section to read as follows:*

1. A limited-liability partnership may correct a document filed by the secretary of state with respect to the limited-liability partnership if the document contains an inaccurate record of a partnership action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the limited-liability partnership must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited-liability partnership;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a managing partner of the limited-liability partnership.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 57. Section 93 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 93. 1. A limited partnership may correct a document filed by the secretary of state with respect to the limited partnership if the document contains an inaccurate record of a partnership action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the limited partnership must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited partnership;

(2) Describes the document, *including, without limitation,* its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a general partner of the limited partnership.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 58. Section 102 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 102. 1. A business trust may correct a document filed by the secretary of state with respect to the business trust if the document contains an inaccurate record of a trust action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the business trust must:

(a) Prepare a certificate of correction that:

(1) States the name of the business trust;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a trustee of the business trust.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ *$150* to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 59. Senate Bill No. 51 is hereby amended by adding thereto a new section designated sec. 138, following sec. 137, to read as follows:

Sec. 138. This act becomes effective on August 1, 2001.".

Amend sec. 56, page 27, by deleting lines 29 and 30 and inserting:

"Sec. 60. Sections 1, 2, 3, 9 and 47 of this act do not apply to a claim that arises before the effective date of this section.".

Amend sec. 57, page 27, line 31, by deleting "59" and inserting "63".

Amend sec. 59, page 28, by deleting lines 5 through 14 and inserting:

"Sec. 63. 1. This section and sections 1, 2, 3, 9, 47, 59, 60, 61 and 62 of this act become effective upon passage and approval.

2. Sections 5, 6, 12, 13 to 19, inclusive, 20, 21, 22, 25 to 31, inclusive, 35 to 39, inclusive, 41 to 45, inclusive, and 47 to 53, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and *performing any other preparatory administrative tasks that are necessary to* carry out the provisions of this act; and

(b) On August 1, 2001, for all other purposes.

3. Sections 1.5, 4, 7, 8.5, 10, 11, 14, 19.5, 23, 24, 32, 33, 34, 40, 46 and 54 to 58, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) At 12:01 a.m. on August 1, 2001, for all other purposes.".

Amend the title of the bill by deleting the first line and inserting:

"AN ACT relating to business associations; revising the statutory liability of".

Amend the summary of the bill to read as follows:

"SUMMARY—Revises statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)".

Senator James moved that the Senate do not concur in the Assembly amendment to Senate Bill No. 577.

Remarks by Senators James and Titus.

Senator James requested that the following remarks be entered in the Journal.

* (The remarks will be in the final Journal.)

Senator Titus moved that the Senate recess subject to the call of the Chair. Motion carried.

Senate in recess at 9:19 p.m.

* ATTACHED

SENATE IN SESSION

At 9:26 p.m.

President Hunt presiding.

Quorum present.

Senators James, Amodei and Raggio requested a roll call vote on Senator James' motion.

Roll call on Senator James' motion:

YEAS—21.

NAYS—None.

The motion having received a majority, Madam President declared it carried.

Motion carried.

Bill ordered transmitted to the Assembly.

Senator Titus requested that her remarks be entered in the Journal.

My vote to not concur on the amendment we just considered is in no way a reflection of my support for the bill as it originally left this house.

REPORTS OF CONFERENCE COMMITTEES

Madam President:

The first Conference Committee concerning Assembly Bill No. 653, consisting of the undersigned members, has met and reports that:

No decision was reached, and recommends the appointment of a second Conference Committee, to consist of 3 members, for the further consideration of the measure.

MICHAEL SCHNEIDER	DAVID R. PARKS
ANN O'CONNELL	P.M. "ROY" NEIGHBORS
BOB COFFIN	SANDRA J. TIFFANY
Senate Conference Committee	*Assembly Conference Committee*

Senator McGinness moved that the Senate adopt the report of the first Conference Committee concerning Assembly No. 653.

Remarks by Senator McGinness.

Motion carried.

APPOINTMENT OF CONFERENCE COMMITTEES

Madam President appointed Senators McGinness, Townsend and Neal as a second Conference Committee to meet with a like committee of the Assembly for the further consideration of Assembly Bill No. 653.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, June 3, 2001

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bill No. 424; Assembly Joint Resolution No. 14.

PATRICIA R. WILLIAMS
Assistant Chief Clerk of the Assembly

MOTIONS, RESOLUTIONS AND NOTICES

Assembly Joint Resolution No. 14.

Read first time.

Senator Rawson moved that the resolution be referred to the Committee on Government Affairs.

Motion carried.

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 424.

Senator Rawson moved that the bill be referred to the Committee on Finance.

Motion carried.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Bills Nos. 87, 208, 319, 367, 428, 444, 464, 477, 494, 500, 505, 531, 573, 574; Senate Concurrent Resolution No. 52; Senate Resolution No. 10; Assembly Bills Nos. 48, 60, 209, 250, 326, 505, 510, 519, 555, 588, 620, 658.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Schneider, the privilege of the floor of the Senate Chamber for this day was extended to Mary Jo Reed and Paul Reed.

Senator Raggio moved that the Senate adjourn until Monday, June 4, 2001 at 10 a.m.

Motion carried.

Senate adjourned at 9:33 p.m.

Approved:

LORRAINE T. HUNT
President of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate

Senator James moved that the Senate do not concur in the Assembly amendment to Senate Bill No. 577.

Remarks by Senators James and Titus.

Senator James requested that his remarks be entered in the Journal.

I would like to make certain that the Senate has a clear understanding of what the Assembly has done in adopting the amendment to this bill. I know that you are looking at the amendment. If you wish to look at the second reprint of the bill in your bill book, it might be easier to follow.

Whether you are looking at the first page of the first reprint, which is on the front under section 1 at lines 7-10 or whether you are looking at the amendment which is the first page, I would direct your attention to the discussion of the doctrine of alter-ego. Under current law, the alter-ego doctrine allows the fiction of the corporation, the corporate entity, to be disregarded if there are two circumstances at issue. If the director, officer or stockholder of the corporation acts as the alter-ego, and continuing to recognize the corporation, would, in the words of our Supreme Court, "sanction a fraud or promote injustice." The Senate version of this bill simply changed the doctrine to say that it would only apply if it were to sanction a fraud. We took out the promoting injustice language. The Assembly has not suggested codifying existing Nevada case law. The Assembly has rewritten this doctrine in a way that has never been rewritten in this country. They have done it where it says, "the stockholder director or officer acts as the alter-ego of the corporation or, in the Assembly amendment, the corporate fiction of a separate entity should be disregarded for any other reason." Any reason—not fraud, not injustice—just any reason. That is the first major change. That change would be a major departure from corporate law throughout the country regarding the alter-ego doctrine. It would set no standard. It would say that for any other reason, the corporate fiction could be disregarded. That is not a change to existing case law. That is not a codification of existing case law. It is taking a huge step backwards in Nevada and making it a place where no one would want to have a corporation. There would be no standard for when the corporation would be disregarded and the personal assets of a person would be at risk.

The second change, if you look at the first reprint of the bill, on the second page, you will see in section 2 there is some stricken language. That language says that the articles of incorporation of a corporation may contain language that limits the liability of the director to two circumstances, fraud or the payment of a dividend at a time when a corporation is insolvent. There are many articles of incorporation on file in the Secretary of State's office that have that provision in them. Those directors have the protection of the articles that they can only be held libel in the instance of fraud or payment of a dividend at a time when the corporation is insolvent. That language is stricken in the Assembly amendment. Look to the next page, the liability protection, now available to a director, is not that protection? What they have under existing law, if they put the provision in their articles, is a mere breach of fiduciary duty. It is mere negligence. Therefore, what this means, if this bill as passed by the Assembly, should pass into law in Nevada then every single attorney in this country that has advised a corporation to incorporate in Nevada has to send a letter. It would be legal malpractice for an attorney who has incorporated his clients' corporation in Nevada not to send a letter to tell them that the law in Nevada has been changed, and the protection they had under their articles is now gone. The protection they have in Nevada law is less than what they used to have. The provision they have in their articles, that limited their liability, is an illegal provision under Nevada law. They must amend their articles and remove it.

Why did I go through that, Madam President? Because those 172,000 corporations, who we have computed conservatively, would continue to increase in numbers of corporations over this coming biennium by 10 or 15 percent and would generate the $29 million, conservatively, for the teacher salaries in this State in the education program proposed by this Senate, myself and the Governor. That money will not, under any circumstances, be generated under the formulation of this bill.

Just the opposite. Many of those 172,000 corporations will disincorporate in Nevada. They will go to Delaware. They will go to Wyoming where they can get this protection in their articles. Remember, we have not given them the option any more under the Assembly version. We have taken out the ability to get that protection. They cannot get it so they have to disincorporate. They have to leave our State. We won't get the $29 million that we need for the education fund under this bill. We won't get the approximately $30 million that we get already, collected by the Secretary of State's office, for the various fees collected from corporations.

This is not a serious endeavor, in my judgment, Madam President and members of the Senate, to come up with an alternate proposal regarding director liability. What the Assembly amendment has done is to make a mockery of corporate law in Nevada. It is to make a mockery of this bill and place us seriously at risk, the entire package of funding for our education system. I do not know if I would agree with, but I could understand having taken this bill and made some modifications, perhaps, attempted to change it back to existing law. But to take this bill and adopt an amendment to it takes us backward. Puts us in a position where every lawyer, and I do not say that lightly, would have to say to his client, "You need to disincorporate in Nevada." If they didn't, they would be guilty of malpractice. To do that is to trifle with the process, Madam President, to trifle with a very serious proposal to fund the under-funded education system in the State, to trifle with the corporate laws of the State, one of the major attractions that Nevada has is favorable corporation laws.

We received a letter from John Fowler. He is the attorney who has represented the State Bar Business Law section in this Legislature for all five sessions that I have been here, and has brought forward the reform in corporate laws to our committee and to the committee in the other House. John Fowler wrote a letter that said in essences, "this would be a disaster." I could show you the letter if anyone has a question, but his letter says essentially this would be a disaster for Nevada corporate law for us to adopt this. Those are the words of John Fowler who has helped us carefully craft our laws and make them the most attractive in the country. We would, in one fell swoop, destroy all of that work and make Nevada the lease attractive place in which to incorporate. I find that to simply make a mockery of not only what this bill is about, the subject matter that is Nevada corporate law, but what it tries to accomplish—raise funds that are desperately needed for our teachers, for our children, for our education system. That is what it has done. I would strongly urge the members of the Senate to not concur in this amendment and hopefully the Assembly will see the great damage this would cause and will recede from their amendment.

Senator Titus moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 9:19 p.m.

SENATE IN SESSION

At 9:26 p.m.

President Hunt presiding.

Quorum present.

Senators James, Amodei and Raggio requested a roll call vote on Senator James' motion.

Roll call on Senator James' motion:

YEAS—21.

NAYS—None.

The motion having received a majority, Madam President declared it carried.

Bill ordered transmitted to the Assembly.

Senator Titus requested that her remarks be entered in the Journal.

My vote to not concur on the amendment we just considered is in no way a reflection of my support for the bill as it originally left this house.

UNFINISHED BUSINESS

RECEDE FROM ASSEMBLY AMENDMENTS

Assemblyman Anderson moved that the Assembly do not recede from its action on Senate Bill No. 286, that a conference be requested, and that Mr. Speaker appoint a first Conference Committee consisting of three members to meet with a like committee of the Senate.

Remarks by Assemblyman Anderson.

Motion carried.

APPOINTMENT OF CONFERENCE COMMITTEES

Mr. Speaker appointed Assemblymen McClain, Gustavson and Claborn as a first Conference Committee to meet with a like committee of the Senate for the further consideration of Senate Bill No. 286.

RECEDE FROM ASSEMBLY AMENDMENTS

Assemblyman Anderson moved that the Assembly do not recede from its action on Senate Bill No. 577, that a conference be requested, and that Mr. Speaker appoint a first Conference Committee consisting of three members to meet with a like committee of the Senate.

Remarks by Assemblyman Anderson.

Motion carried.

APPOINTMENT OF CONFERENCE COMMITTEES

Mr. Speaker appointed Assemblymen Anderson, Brower and Oceguera as a first Conference Committee to meet with a like committee of the Senate for the further consideration of Senate Bill No. 577.

MOTIONS, RESOLUTIONS AND NOTICES

Assembly Concurrent Resolution No. 3.

Resolution read.

The following amendment was proposed by the Committee on Elections, Procedures, and Ethics:

Amendment No. 1239.

Amend the resolution, page 1, line 12, by deleting "subcommittee" and inserting: "committee consisting of three members of the Assembly, two of whom are members of the Assembly Standing Committee on Judiciary and three members of the Senate, two of whom are members of the Senate Standing Committee on Judiciary,".

Amend the resolution, page 1, line 26, by deleting "subcommittee;" and inserting "committee;".

Amend the resolution, page 1, line 28, by deleting "subcommittee" and inserting "committee".

Amend the resolution, page 2, line 2, by deleting "subcommittee;" and inserting "committee;".

Assemblywoman Giunchigliani moved the adoption of the amendment.

Remarks by Assemblywoman Giunchigliani.

Amendment adopted.

Also, I have the honor to inform your honorable body that the Assembly on this day respectfully refused to recede from its action on Senate Bill No. 421, and requests a conference, and appointed Assemblymen Anderson Buckley and Carpenter as a first Conference Committee to meet with a like committee of the Senate.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen McClain, Carpenter and Parks as a first Conference Committee concerning Assembly Bill No. 460.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the reports of the first Conference Committees concerning Senate Bills Nos. 286, 489, Assembly Bills Nos. 94, 133, 271, 483.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Collins, Lee and Carpenter as a second Conference Committee concerning Assembly Bill No. 246.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Koivisto, Brower and Collins as a second Conference Committee concerning Assembly Bill No. 305.

Also, I have the honor to inform your honorable body that the Assembly on this day adopted the reports of the second Conference Committees concerning Assembly Bills Nos. 246, 653.

PATRICIA R. WILLIAMS
Assistant Chief Clerk of the Assembly

UNFINISHED BUSINESS

REPORTS OF CONFERENCE COMMITTEES

Madam President:

The first Conference Committee concerning Senate Bill No. 577, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that the amendment of the Assembly be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. 41, which is attached to and hereby made a part of this report.

Conference Amendment.

Amend section 1, page 1, by deleting lines 5 through 9 and inserting: "*liability of the corporation, unless the stockholder, director or officer acts as the alter ego of the corporation.*".

Amend section 1, page 2, by deleting line 2 and inserting: "*sanction fraud or promote a manifest injustice.*

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

Amend sec. 3, page 3, line 33, by deleting "*78.300,*".

Amend sec. 3, page 3, line 39, by deleting: "*officer; or*" and inserting: "*officer; and*".

Amend sec. 8, page 5, by deleting line 36 and inserting:

"Sec. 8. NRS 78.300 is hereby amended to read as follows:

78.300 1. The directors of a corporation shall not make distributions to stockholders except as provided by this chapter.

2. ~~[In]~~ *Except as otherwise provided in subsection 3 and NRS 78.138, in* case of any ~~[willful or grossly negligent]~~ violation of the provisions of this section, the directors under whose administration the violation occurred ~~[, except those who caused their dissent to be entered upon the minutes of the meeting of the directors at the time, or who not then being present caused their dissent to be entered on learning of such action,]~~ are jointly and severally liable, at any time within 3 years after each violation, to the corporation, and, in the event of its dissolution or insolvency, to its creditors at the time of the violation, or any of them, to the lesser of the full amount of the distribution made or of any loss sustained by the corporation by reason of the distribution to stockholders.

3. The liability imposed pursuant to subsection 2 does not apply to a director who caused his dissent to be entered upon the minutes of the meeting of the directors at the time the action was taken or who was not present at the meeting and caused his dissent to be entered on learning of the action.".

Amend sec. 54, page 30, line 35, by deleting "~~[$75.]~~ *$150.*" and inserting "*$75.*".
Amend sec. 60, page 32, line 35, after "3," by inserting "8,".
Amend sec. 63, page 33, line 9, after "3," by inserting "8,".

	BERNIE ANDERSON
MARK A. JAMES	GREG BROWER
MARK AMODEI	JOHN OCEGUERA
Senate Conference Committee	*Assembly Conference Committee*

Senator James moved that the Senate adopt the report of the first Conference Committee concerning Senate Bill No. 577.

Remarks by Senator James.

Motion carried by a two-thirds majority.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved to take Assembly Bills Nos. 661, 615, as the next orders of business.

Motion carried.

GENERAL FILE AND THIRD READING

Assembly Bill No. 661.

Bill read third time.

Remarks by Senator Neal.

Senator Neal requested that his remarks be entered in the Journal.

Madam President, Assembly Bill No. 661 seems to be proceeding on the notion that what is good for the casinos in Nevada is good for the public. The larger customers with lucrative accounts are demanding that they be able to seek lower costs for electricity. Assembly Bill No. 661 would allow this to happen.

The following consequences will be that the individual household would lack the bargaining power to gain lower rates.

Upon leaving, the utilities will have little incentive to devote resources to maintaining or improving services to low-income people.

Amendment 1235, which was amended into Assembly Bill No. 661 as a consumer measure is a sham. Section 26.65 which allows a large corporation to become a non-profit corporation to get around any mill assessment for the poor and needy because if such non-profits are formed, it seems they would not have to pay any mill tax.

The mill tax is assessed in Section 26.7 when electricity is purchased by a retailer from another for consumption but if they are purchasing power themselves, they would not have to pay the mill tax of 39 cents on each kilowatt-hour of electricity.

Roll call on Assembly Bill No. 661:

YEAS—15.

NAYS—Neal, O'Connell, O'Donnell, Titus, Wiener—5.

NOT VOTING—Raggio.

Assembly Bill No. 661 having received a two-thirds majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved to withdraw the amendment on Assembly Bill No. 343 and take it as the next order of business.

Motion carried.

Assemblywoman Buckley moved that the Assembly concur in the Senate amendment to Assembly Bill No. 460.

Remarks by Assemblywoman Buckley.

Motion carried by a constitutional majority.

Bill ordered to enrollment.

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, June 4, 2001

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day adopted the report of the first Conference Committee concerning Senate Bill No. 577.

MARY JO MONGELLI
Assistant Secretary of the Senate

UNFINISHED BUSINESS

REPORTS OF CONFERENCE COMMITTEES

Mr. Speaker:

The first Conference Committee concerning Senate Bill No. 577, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that the amendment of the Assembly be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. CA41, which is attached to and hereby made a part of this report.

BERNIE ANDERSON	MARK A. JAMES
GREG BROWER	MARK AMODEI
JOHN OCEGUERA	TERRY CARE
Assembly Conference Committee	*Senate Conference Committee*

Conference Amendment No. CA41.

Amend section 1, page 1, by deleting lines 5 through 9 and inserting: "*liability of the corporation, unless the stockholder, director or officer acts as the alter ego of the corporation.*".

Amend section 1, page 2, by deleting line 2 and inserting: "*sanction fraud or promote a manifest injustice.*

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

Amend sec. 3, page 3, line 33, by deleting "*78.300,*".

Amend sec. 3, page 3, line 39, by deleting: "*officer; or*" and inserting: "*officer; and*".

Amend sec. 8, page 5, by deleting line 36 and inserting:

"Sec. 8. NRS 78.300 is hereby amended to read as follows:

78.300 1. The directors of a corporation shall not make distributions to stockholders except as provided by this chapter.

2. ~~[In]~~ *Except as otherwise provided in subsection 3 and NRS 78.138, in* case of any ~~[willful or grossly negligent]~~ violation of the provisions of this section, the directors under whose administration the violation occurred ~~[, except those who caused their dissent to be entered upon the minutes of the meeting of the directors at the time, or who not then being present caused their dissent to be entered on learning of such action,]~~ are jointly and severally liable, at any time within 3 years after each violation, to the corpora-

tion, and, in the event of its dissolution or insolvency, to its creditors at the time of the violation, or any of them, to the lesser of the full amount of the distribution made or of any loss sustained by the corporation by reason of the distribution to stockholders.

3. The liability imposed pursuant to subsection 2 does not apply to a director who caused his dissent to be entered upon the minutes of the meeting of the directors at the time the action was taken or who was not present at the meeting and caused his dissent to be entered on learning of the action.".

Amend sec. 54, page 30, line 35, by deleting "~~[$75.]~~ *$150.*" and inserting "*$75.*".

Amend sec. 60, page 32, line 35, after "3," by inserting "8,".

Amend sec. 63, page 33, line 9, after "3," by inserting "8,".

Assemblywoman Buckley moved that the Assembly adopt the report of the first Conference Committee concerning Senate Bill No. 577.

Remarks by Assemblywoman Buckley.

Motion carried.

Mr. Speaker:

The second Conference Committee concerning Assembly Bill No. 653, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that the amendment of the Senate be concurred in.

It has agreed to recommend that the bill be further amended as set forth in Conference Amendment No. CA38, which is attached to and hereby made a part of this report.

DAVID E. GOLDWATER	MIKE MCGINNESS
BERNIE ANDERSON	RANDOLPH J. TOWNSEND
DAVID BROWN	JOSEPH NEAL
Assembly Conference Committee	*Senate Conference Committee*

Conference Amendment No. CA38.

Amend section 1, page 1, by deleting lines 10 through 12 and inserting: "to NRS 360.670 an amount from the account that is".

Amend section 1, pages 1 and 2, by deleting lines 19 and 20 on page 1 and lines 1 through 5 on page 2.

Amend the bill as a whole by deleting sections 2 and 2.5 and adding new sections designated sections 2 through 2.7, following section 1, to read as follows:

"Sec. 2. NRS 360.690 is hereby amended to read as follows:

360.690 1. Except as otherwise provided in NRS 360.730, the executive director shall estimate monthly the amount each local government, special district and enterprise district will receive from the account pursuant to the provisions of this section.

2. The executive director shall establish a base monthly allocation for each local government, special district and enterprise district by dividing the amount determined pursuant to NRS 360.680 for each local government, special district and enterprise district by 12 and the state treasurer shall, except as otherwise provided in subsections 3, 4 and 5, remit monthly that amount to each local government, special district and enterprise district.

3. If, after making the allocation to each enterprise district for the month, the executive director determines there is not sufficient money avail-

REQUIRES TWO-THIRDS MAJORITY VOTE (§§ 1.5, 4, 6, 7, 8.5, 10, 11, 12, 13, 14, 15, 16, 18, 19, 19.5, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58)

(REPRINTED WITH ADOPTED AMENDMENTS)
THIRD REPRINT **S.B. 577**

SENATE BILL NO. 577–SENATORS JAMES, RAGGIO, O'DONNELL, AMODEI, RAWSON, JACOBSEN AND MCGINNESS

MAY 24, 2001

Referred to Committee on Judiciary

SUMMARY—Revises statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

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

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

AN ACT relating to business associations; revising the statutory liability of the stockholders, directors and officers of a corporation; increasing the fees and revising certain requirements for filing certain documents with the secretary of state; requiring certain fees charged by the secretary of state for special services to be deposited in the state general fund; and providing other matters properly relating thereto.

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

Section 1. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

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

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

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

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

(c) Adherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice.

Sec. 3. 1. There is hereby appropriated from the state general fund to the real estate division of the department of business and industry to investigate complaints, conduct audits and perform any other activities necessary to ensure compliance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended:

For the fiscal year 2001-2002 ..... $22,000

For the fiscal year 2002-2003 ..... $22,000

2. Any balance of the sums appropriated by subsection 1 remaining at the end of the respective fiscal years must not be committed for expenditure after June 30 of the respective fiscal years and reverts to the state general fund as soon as all payments of money committed have been made.

Sec. 4. This act becomes effective on July 1, 2001.

Senate Bill No. 577–Senators James, Raggio, O'Donnell, Amodei, Rawson, Jacobsen and McGinness

CHAPTER 601

AN ACT relating to business associations; revising the statutory liability of the stockholders, directors and officers of a corporation; increasing the fees and revising certain requirements for filing certain documents with the secretary of state; requiring certain fees charged by the secretary of state for special services to be deposited in the state general fund; and providing other matters properly relating thereto.

[Approved: June 15, 2001]

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

Section 1. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

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

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

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

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

(c) Adherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice.

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

Sec. 1.5. NRS 78.0295 is hereby amended to read as follows:

78.0295 1. A corporation may correct a document filed by the secretary of state with respect to the corporation if the document contains an inaccurate record of a corporate action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the corporation shall:

(a) Prepare a certificate of correction which:

(1) States the name of the corporation;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by an officer of the corporation.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ ***$150*** to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 2. NRS 78.037 is hereby amended to read as follows:

78.037 The articles of incorporation may also contain ~~[:~~

~~1. A provision eliminating or limiting the personal liability of a director or officer to the corporation or its stockholders for damages for breach of fiduciary duty as a director or officer, but such a provision must not eliminate or limit the liability of a director or officer for:~~

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

~~(b) The payment of distributions in violation of NRS 78.300.~~

~~2. Any~~] ***any*** provision, not contrary to the laws of this state ~~[, for]~~ ***:***

1. For the management of the business and for the conduct of the affairs of the corporation ~~[, and any provision creating,]~~ ***;***

2. Creating, defining, limiting or regulating the powers of the corporation or the rights, powers or duties of the directors, ~~[and]~~ ***the officers or*** the stockholders, or any class of the stockholders, or the holders of bonds or other obligations of the corporation ~~[, or governing]~~ ***; or***

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

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

78.138 1. Directors and officers shall exercise their powers in good faith and with a view to the interests of the corporation.

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

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

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

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

but a director or officer is not entitled to rely on such information, opinions, reports, books of account or statements if he has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted.

3. Directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation.

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

(a) The interests of the corporation's employees, suppliers, creditors and customers;

(b) The economy of the state and nation;

(c) The interests of the community and of society; and

(d) The long-term as well as short-term interests of the corporation and its stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.

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

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

7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270, 668.045 and 694A.030, a director or officer is not individually liable to the corporation or its stockholders for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven that:

(a) His act or failure to act constituted a breach of his fiduciary duties as a director or officer; and

(b) His breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

Sec. 4. **NRS 78.150** is hereby amended to read as follows:

78.150 1. A corporation organized pursuant to the laws of this state shall, on or before the first day of the second month after the filing of its articles of incorporation with the secretary of state, file with the secretary of state a list, on a form furnished by him, containing:

(a) The name of the corporation;

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

(c) The names and titles of the president, secretary, treasurer and of all the directors of the corporation;

(d) The mailing or street address, either residence or business, of each officer and director listed, following the name of the officer or director; ~~[and]~~

(e) ***The name and street address of the resident agent of the corporation; and***

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

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

3. ***Each list required by subsection 1 or 2 must be accompanied by a declaration under penalty of perjury that the corporation has complied with the provisions of chapter 364A of NRS.***

4. Upon filing the ~~[annual]~~ list required by ~~[subsection]~~ *:*

(a) Subsection 1, the corporation shall pay to the secretary of state a fee of $165.

(b) Subsection 2, the corporation shall pay to the secretary of state a fee of $85.

~~[4.]~~ *5.* The secretary of state shall, 60 days before the last day for filing ~~[the]~~ ***each*** annual list required by subsection 2, cause to be mailed to each corporation *which is required to comply with the provisions of* NRS 78.150 to 78.185, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection ~~[3]~~ *4* and a reminder to file the annual list required by subsection 2. Failure of any corporation to receive a notice or form does not excuse it from the penalty imposed by law.

~~[5.]~~ *6.* If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective in any respect or the fee required by subsection ~~[3, 6 or 7]~~ *4 or 8* is not paid, the secretary of state may return the list for correction or payment.

~~[6.]~~ *7.* An annual list for a corporation not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and must be accompanied by a fee of $85 for filing. A payment submitted pursuant to this subsection does not satisfy the requirements of subsection 2 for the year to which the due date is applicable.

~~[7.]~~ *8.* If the corporation is an association as defined in NRS 116.110315, the secretary of state shall not accept the filing required by this section unless it is accompanied by evidence of the payment of the fee required to be paid pursuant to NRS 116.31155 that is provided to the association pursuant to subsection 4 of that section.

Sec. 5. **NRS 78.155** is hereby amended to read as follows:

78.155 If a corporation has filed the initial or annual list ~~[of officers and directors and designation of resident agent]~~ in compliance with NRS 78.150 and has paid the appropriate fee for the filing, the canceled check received by the corporation constitutes a certificate authorizing it to transact its business within this state until the last day of the month in which the anniversary of its incorporation occurs in the next succeeding calendar year. If the corporation desires a formal certificate upon its payment of the initial or annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

Sec. 6. **NRS 78.170** is hereby amended to read as follows:

78.170 1. Each corporation required to make a filing and pay the fee prescribed in NRS 78.150 to 78.185, inclusive, which refuses or neglects to do so within the time provided shall be deemed in default.

2. For default there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 7. **NRS 78.180** is hereby amended to read as follows:

78.180 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate a corporation which has forfeited its right to transact business pursuant to the provisions of this chapter and restore to the corporation its right to carry on business in this state, and to exercise its corporate privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 78.150; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 78.150 and 78.170 for each year or portion thereof during which it failed to file each required annual list in a timely manner; and

(2) A fee of ~~[$50]~~ *$200* for reinstatement.

2. When the secretary of state reinstates the corporation, he shall:

(a) Immediately issue and deliver to the corporation a certificate of reinstatement authorizing it to transact business as if the filing fee or fees had been paid when due; and

(b) Upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

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

Sec. 8. **NRS 78.300** is hereby amended to read as follows:

78.300 1. The directors of a corporation shall not make distributions to stockholders except as provided by this chapter.

2. ~~[In]~~ ***Except as otherwise provided in subsection 3 and NRS 78.138, in*** case of any ~~[willful or grossly negligent]~~ violation of the provisions of this section, the directors under whose administration the violation occurred ~~[, except those who caused their dissent to be entered upon the minutes of the meeting of the directors at the time, or who not then being present caused their dissent to be entered on learning of such action,]~~ are jointly and severally liable, at any time within 3 years after each violation, to the corporation, and, in the event of its dissolution or insolvency, to its creditors at the time of the violation, or any of them, to the lesser of the full amount of the distribution made or of any loss sustained by the corporation by reason of the distribution to stockholders.

3. The liability imposed pursuant to subsection 2 does not apply to a director who caused his dissent to be entered upon the minutes of the meeting of the directors at the time the action was taken or who was not present at the meeting and caused his dissent to be entered on learning of the action.

Sec. 8.5. **NRS 78.390** is hereby amended to read as follows:

78.390 1. Every amendment adopted pursuant to the provisions of NRS 78.385 must be made in the following manner:

(a) The board of directors must adopt a resolution setting forth the amendment proposed and declaring its advisability, and either call a special meeting of the stockholders entitled to vote on the amendment or direct that the proposed amendment be considered at the next annual meeting of the stockholders entitled to vote on the amendment.

(b) At the meeting, of which notice must be given to each stockholder entitled to vote pursuant to the provisions of this section, a vote of the stockholders entitled to vote in person or by proxy must be taken for and against the proposed amendment. If it appears upon the canvassing of the votes that stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, as provided in subsections 2 and 4, or as may be required by the provisions of the articles of incorporation, have voted in favor of the amendment, an officer of the corporation shall sign a certificate setting forth the amendment, or setting forth the articles of incorporation as amended, and the vote by which the amendment was adopted.

(c) The certificate so signed must be filed with the secretary of state.

2. If any proposed amendment would adversely alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series adversely affected by the amendment regardless of limitations or restrictions on the voting power thereof.

3. Provision may be made in the articles of incorporation requiring, in the case of any specified amendments, a larger proportion of the voting power of stockholders than that required by this section.

4. Different series of the same class of shares do not constitute different classes of shares for the purpose of voting by classes except when the series is adversely affected by an amendment in a different manner than other series of the same class.

5. The resolution of the stockholders approving the proposed amendment may provide that at any time before the effective date of the amendment, notwithstanding approval of the proposed amendment by the stockholders, the board of directors may, by resolution, abandon the proposed amendment without further action by the stockholders.

6. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

7. If a certificate filed pursuant to subsection 1 specifies an effective date and if the resolution of the stockholders approving the proposed amendment provides that the board of directors may abandon the proposed amendment pursuant to subsection 5, the board of directors may terminate the effectiveness of the certificate by resolution and by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the stockholders, the board of directors is authorized
to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by an officer of the corporation; and

(f) Is accompanied by a filing fee of ~~[$75.]~~ *$150.*

Sec. 9. **NRS 78.7502** is hereby amended to read as follows:

78.7502 1. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he ~~[acted]~~ :

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

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

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

2. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he ~~[acted]~~ ***:***

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

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

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

3. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 1 and 2, or in defense of any claim, issue or matter therein, the corporation shall indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense.

Sec. 10. **NRS 78.760** is hereby amended to read as follows:

78.760 1. The fee for filing articles of incorporation is prescribed in the following schedule:

If the amount represented by the total number of shares provided for in the articles is:	
~~[$25,000 or less~~	~~$125~~
~~Over $25,000 and not over]~~ $75,000 ***or less***	$175
Over $75,000 and not over $200,000	225
Over $200,000 and not over $500,000	325
Over $500,000 and not over $1,000,000	425
Over $1,000,000:	
For the first $1,000,000	425
For each additional $500,000 or fraction thereof	225

2. The maximum fee which may be charged pursuant to this section is $25,000 for:

(a) The original filing of articles of incorporation.

(b) A subsequent filing of any instrument which authorizes an increase in stock.

3. For the purposes of computing the filing fees according to the schedule in subsection 1, the amount represented by the total number of shares provided for in the articles of incorporation is:

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

(b) The product of the number of shares multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which shares may be issued and disposed of, if only shares without par value are therein provided for; or

(c) The aggregate par value of the shares with a par value plus the product of the number of shares without par value multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which the shares without par value may be issued and disposed of, if shares with and without par value are therein provided for.

For the purposes of this subsection, shares with no prescribed par value shall be deemed shares without par value.

4. The secretary of state shall calculate filing fees pursuant to this section with respect to shares with a par value of less than one-tenth of a cent as if the par value were one-tenth of a cent.

Sec. 11. **NRS 78.765** is hereby amended to read as follows:

78.765 1. The fee for filing a certificate changing the number of authorized shares pursuant to NRS 78.209 or a certificate of amendment to articles of incorporation that increases the corporation's authorized stock or a certificate of correction that increases the corporation's authorized stock is the difference between the fee computed at the rates specified in NRS 78.760 upon the total authorized stock of the corporation, including the proposed increase, and the fee computed at the rates specified in NRS 78.760 upon the total authorized capital, excluding the proposed increase. In no case may the amount be less than ~~[$75.]~~ ***$150.***

2. The fee for filing a certificate of amendment to articles of incorporation that does not increase the corporation's authorized stock or a certificate of correction that does not increase the corporation's authorized stock is ~~[$75.]~~ ***$150.***

3. The fee for filing a certificate or an amended certificate pursuant to NRS 78.1955 is ~~[$75.]~~ ***$150.***

4. The fee for filing a certificate of termination pursuant to NRS 78.1955, 78.209 or 78.380 is ~~[$75.]~~ ***$150.***

Sec. 12. **NRS 78.767** is hereby amended to read as follows:

78.767 1. The fee for filing a certificate of restated articles of incorporation that does not increase the corporation's authorized stock is ~~[$75.]~~ ***$150.***

2. The fee for filing a certificate of restated articles of incorporation that increases the corporation's authorized stock is the difference between the fee computed pursuant to NRS 78.760 based upon the total authorized stock of the corporation, including the proposed increase, and the fee computed pursuant to NRS 78.760 based upon the total authorized stock of the

corporation, excluding the proposed increase. In no case may the amount be less than ~~[$75.]~~ ***$150.***

Sec. 13. **NRS 78.780** is hereby amended to read as follows:

78.780 1. The fee for filing a certificate of extension of corporate existence of any corporation is an amount equal to one-fourth of the fee computed at the rates specified in NRS 78.760 for filing articles of incorporation.

2. The fee for filing a certificate of dissolution whether it occurs before or after payment of capital and beginning of business is ~~[$30.]~~ ***$60.***

Sec. 14. **NRS 78.785** is hereby amended to read as follows:

78.785 1. The fee for filing a certificate of change of location of a corporation's registered office and resident agent, or a new designation of resident agent, is ~~[$15.]~~ ***$30.***

2. The fee for certifying articles of incorporation where a copy is provided is ~~[$10.]~~ ***$20.***

3. The fee for certifying a copy of an amendment to articles of incorporation, or to a copy of the articles as amended, where a copy is furnished, is ~~[$10.]~~ ***$20.***

4. The fee for certifying an authorized printed copy of the general corporation law as compiled by the secretary of state is ~~[$10.]~~ ***$20.***

5. The fee for reserving a corporate name is $20.

6. The fee for executing a certificate of corporate existence which does not list the previous documents relating to the corporation, or a certificate of change in a corporate name, is ~~[$20.]~~ ***$40.***

7. The fee for executing a certificate of corporate existence which lists the previous documents relating to the corporation is ~~[$20.]~~ ***$40.***

8. The fee for executing, certifying or filing any certificate or document not provided for in NRS 78.760 to 78.785, inclusive, is ~~[$20.]~~ ***$40.***

9. The fee for copies made at the office of the secretary of state is $1 per page.

10. The ~~[fee]~~ ***fees*** for filing articles of incorporation, articles of merger, or certificates of amendment increasing the basic surplus of a mutual or reciprocal insurer must be computed pursuant to NRS 78.760, 78.765 and 92A.210, on the basis of the amount of basic surplus of the insurer.

11. The fee for examining and provisionally approving any document at any time before the document is presented for filing is $100.

Sec. 15. **NRS 80.050** is hereby amended to read as follows:

80.050 1. Except as otherwise provided in subsection 3, foreign corporations shall pay the same fees to the secretary of state as are required to be paid by corporations organized pursuant to the laws of this state, but the amount of fees to be charged must not exceed:

(a) The sum of $25,000 for filing documents for initial qualification; or

(b) The sum of $25,000 for each subsequent filing of a certificate increasing authorized capital stock.

2. If the corporate documents required to be filed set forth only the total number of shares of stock the corporation is authorized to issue without reference to value, the authorized shares shall be deemed to be without par value and the filing fee must be computed pursuant to paragraph (b) of subsection 3 of NRS 78.760.

3. Foreign corporations which are nonprofit corporations and do not have or issue shares of stock shall pay the same fees to the secretary of state as are required to be paid by nonprofit corporations organized pursuant to the laws of this state.

4. The fee for filing a notice of withdrawal from the State of Nevada by a foreign corporation is ~~[$30.]~~ ***$60.***

Sec. 16. **NRS 80.110** is hereby amended to read as follows:

80.110 1. Each foreign corporation doing business in this state shall, on or before the first day of the second month after the filing of its certificate of corporate existence with the secretary of state, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this state occurs in each year, file with the secretary of state ~~[,]~~ ***a list,*** on a form furnished by him, ~~[a list of]~~ ***that contains:***

(a) The names of its president, secretary and treasurer or their equivalent, and all of its directors ~~[and a]~~ ***;***

(b) A designation of its resident agent in this state ~~[, signed by]~~ ***; and***

(c) The signature of an officer of the corporation.

Each list filed pursuant to this subsection must be accompanied by a declaration under penalty of perjury that the foreign corporation has complied with the provisions of chapter 364A of NRS.

2. Upon filing ~~[the list and designation,]~~ ***:***

(a) The initial list required by subsection 1, the corporation shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 1, the corporation shall pay to the secretary of state a fee of $85.

3. The secretary of state shall, 60 days before the last day for filing ~~[the]~~ ***each*** annual list required by subsection 1, cause to be mailed to each corporation required to comply with the provisions of NRS 80.110 to 80.170, inclusive, which has not become delinquent, the blank forms to be completed and filed with him. Failure of any corporation to receive the forms does not excuse it from the penalty imposed by the provisions of NRS 80.110 to 80.170, inclusive.

4. An annual list for a corporation not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

Sec. 17. **NRS 80.120** is hereby amended to read as follows:

80.120 If a corporation has filed the initial or annual list ~~[of officers and directors and designation of resident agent]~~ in compliance with NRS 80.110 and has paid the appropriate fee for the filing, the canceled check received by the corporation constitutes a certificate authorizing it to transact its business within this state until the last day of the month in which the anniversary of its qualification to transact business occurs in the next succeeding calendar year. If the corporation desires a formal certificate upon its payment of the initial or annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

Sec. 18. **NRS 80.150** is hereby amended to read as follows:

80.150 1. Any corporation required to make a filing and pay the fee prescribed in NRS 80.110 to 80.170, inclusive, which refuses or neglects to do so within the time provided, is in default.

2. For default there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50,*** and unless the filing is made and the fee and penalty are paid on or before the first day of the ninth month following the month in which filing

was required, the defaulting corporation by reason of its default forfeits its right to transact any business within this state. The fee and penalty must be collected as provided in this chapter.

Sec. 19. **NRS 80.170** is hereby amended to read as follows:

80.170 1. Except as otherwise provided in subsections 3 and 4, the *secretary of state shall reinstate a corporation which has forfeited or which* forfeits its right to transact business under the provisions of this chapter and restore to the corporation its right to transact business in this state, and to exercise its corporate privileges and immunities if it:

(a) Files with the secretary of state a list ~~[of officers and directors]~~ as provided in NRS 80.110 and 80.140; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 80.110 and 80.150 for each year or portion thereof that its right to transact business was forfeited; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. If payment is made and the secretary of state reinstates the corporation to its former rights, he shall:

(a) Immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business in the same manner as if the filing fee had been paid when due; and

(b) Upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the right to transact business occurred only by reason of failure to pay the fees and penalties.

4. If the right of a corporation to transact business in this state has been forfeited pursuant to the provisions of NRS 80.160 and has remained forfeited for a period of 5 consecutive years, the right is not subject to reinstatement.

Sec. 19.5. **NRS 86.226** is hereby amended to read as follows:

86.226 1. A signed certificate of amendment, or a certified copy of a judicial decree of amendment, must be filed with the secretary of state. A person who executes a certificate as an agent, officer or fiduciary of the limited-liability company need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that a certificate does not conform to law, upon his receipt of all required filing fees he shall file the certificate.

2. A certificate of amendment or judicial decree of amendment is effective upon filing with the secretary of state or upon a later date specified in the certificate or judicial decree, which must not be more than 90 days after the certificate or judicial decree is filed.

3. If a certificate specifies an effective date and if the resolution of the members approving the proposed amendment provides that one or more managers or, if management is not vested in a manager, one or more members may abandon the proposed amendment, then those managers or members may terminate the effectiveness of the certificate by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate or judicial decree filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the members, the manager of the company or, if management is not vested in a manager, a designated member is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by a manager of the company or, if management is not vested in a manager, *a designated member*; and

(f) Is accompanied by a filing fee of ~~[$75.]~~ ***$150.***

Sec. 20. **NRS 86.263** is hereby amended to read as follows:

86.263 1. A limited-liability company shall, on or before the ~~[last]~~ ***first*** day of the ***second*** month ~~[in which the anniversary date of its formation occurs,]~~ ***after the filing of its articles of organization with the secretary of state,*** file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ ***that contains:***

(a) The name of the limited-liability company;

(b) The file number of the limited-liability company, if known;

(c) The names and titles of all of its managers or, if there is no manager, all of its managing members;

(d) The mailing or street address, either residence or business, of each manager or managing member listed, following the name of the manager or managing member; ~~[and]~~

(e) The name and street address of the resident agent of the limited-liability company; and

(f) The signature of a manager or managing member of the limited-liability company certifying that the list is true, complete and accurate.

2. The limited-liability company shall annually thereafter, on or before the last day of the month in which the anniversary date of *its* organization occurs, file with the secretary of state, on a form furnished by him, an amended list containing all of the information required in subsection 1. If the limited-liability company has had no changes in its managers or, if there is no manager, its managing members, since its previous list was filed, no amended list need be filed if a manager or managing member of the limited-liability company certifies to the secretary of state as a true and accurate statement that no changes in the managers or managing members have occurred.

3. Each list required by subsection 1 and each list or certification required by subsection 2 must be accompanied by a declaration under penalty of perjury that the limited-liability company has complied with the provisions of chapter 364A of NRS.

4. Upon filing ~~[the list of managers or managing members,]~~ ***:***

(a) The initial list required by subsection 1, the limited-liability company shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 2 or certifying that no changes have occurred, the limited-liability company shall pay to the secretary of state a fee of $85.

~~[4.]~~ ***5.*** The secretary of state shall, 60 days before the last day for filing ~~[the]~~ ***each*** list required by subsection ~~[1,]~~ ***2,*** cause to be mailed to each limited-liability company required to comply with the provisions of this section, which has not become delinquent, a notice of the fee due under subsection ~~[3]~~ ***4*** and a reminder to file a list ~~[of managers or managing members]~~ ***required by subsection 2*** or a certification of no change. Failure of any company to receive a notice or form does not excuse it from the penalty imposed by law.

~~[5.]~~ *6.* If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective or the fee required by subsection ~~[3]~~ *4* is not paid, the secretary of state may return the list for correction or payment.

~~[6.]~~ *7.* An annual list for a limited-liability company not in default received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year.

Sec. 21. **NRS 86.266** is hereby amended to read as follows:

86.266 If a limited-liability company has filed the ***initial or*** annual list ~~[of managers or members and designation of a resident agent]~~ in compliance with NRS 86.263 and has paid the appropriate fee for the filing, the canceled check received by the limited-liability company constitutes a certificate authorizing it to transact its business within this state until the last day of the month in which the anniversary of its formation occurs in the next succeeding calendar year. If the company desires a formal certificate upon its payment of the annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

Sec. 22. **NRS 86.272** is hereby amended to read as follows:

86.272 1. Each limited-liability company required to make a filing and pay the fee prescribed in NRS 86.263 which refuses or neglects to do so within the time provided is in default.

2. For default there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 23. **NRS 86.276** is hereby amended to read as follows:

86.276 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate any limited-liability company which has forfeited its right to transact business pursuant to the provisions of this chapter and restore to the company its right to carry on business in this state, and to exercise its privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 86.263; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 86.263 and 86.272 for each year or portion thereof during which it failed to file in a timely manner each required annual list; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the limited-liability company, he shall:

(a) Immediately issue and deliver to the company a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the company one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

4. If a company's charter has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 consecutive years, the charter must not be reinstated.

Sec. 24. **NRS 86.561** is hereby amended to read as follows:

86.561 1. The secretary of state shall charge and collect for:

(a) Filing the original articles of organization, or for registration of a foreign company, ~~[$125;]~~ ***$175;***

(b) Amending or restating the articles of organization, amending the registration of a foreign company or filing a certificate of correction, ~~[$75;]~~ ***$150;***

(c) Filing the articles of dissolution of a domestic or foreign company, ~~[$30;]~~ ***$60;***

(d) Filing a statement of change of address of a records or registered office, or change of the resident agent, ~~[$15;]~~ ***$30;***

(e) Certifying articles of organization or an amendment to the articles, in both cases where a copy is provided, ~~[$10;]~~ ***$20;***

(f) Certifying an authorized printed copy of this chapter, ~~[$10;]~~ ***$20;***

(g) Reserving a name for a limited-liability company, $20;

(h) Filing a certificate of cancellation, ~~[$30;]~~ ***$60;***

(i) Executing, filing or certifying any other document, ~~[$20;]~~ ***$40;*** and

(j) Copies made at the office of the secretary of state, $1 per page.

2. The secretary of state shall charge and collect at the time of any service of process on him as agent for service of process of a limited-liability company, $10 which may be recovered as taxable costs by the party to the action causing the service to be made if the party prevails in the action.

3. Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to this chapter.

Sec. 25. ***NRS 87.440*** *is hereby amended to read as follows:*

87.440 1. To become a registered limited-liability partnership, a partnership shall file with the secretary of state a certificate of registration stating each of the following:

(a) The name of the partnership.

(b) The street address of its principal office.

(c) The name of the person designated as the partnership's resident agent, the street address of the resident agent where process may be served upon the partnership and the mailing address of the resident agent if it is different than his street address.

(d) The name and business address of each managing partner in this state.

(e) A brief statement of the professional service rendered by the partnership.

(f) That the partnership thereafter will be a registered limited-liability partnership.

(g) Any other information that the partnership wishes to include.

2. The certificate of registration must be executed by a majority in interest of the partners or by one or more partners authorized to execute such a certificate.

3. The certificate of registration must be accompanied by a fee of ~~[$125.]~~ ***$175.***

4. The secretary of state shall register as a registered limited-liability partnership any partnership that submits a completed certificate of registration with the required fee.

5. The registration of a registered limited-liability partnership is effective at the time of the filing of the certificate of registration.

Sec. 26. **NRS 87.460** is hereby amended to read as follows:

87.460 1. A certificate of registration of a registered limited-liability partnership may be amended by filing with the secretary of state a certificate of amendment. The certificate of amendment must set forth:

(a) The name of the registered limited-liability partnership;

(b) The dates on which the registered limited-liability partnership filed its original certificate of registration and any other certificates of amendment; and

(c) The change to the information contained in the original certificate of registration or any other certificates of amendment.

2. The certificate of amendment must be:

(a) Signed by a managing partner of the registered limited-liability partnership; and

(b) Accompanied by a fee of ~~[$75.]~~ ***$150.***

Sec. 27. **NRS 87.470** is hereby amended to read as follows:

87.470 The registration of a registered limited-liability partnership is effective until:

1. Its certificate of registration is revoked pursuant to NRS 87.520; or

2. The registered limited-liability partnership files with the secretary of state a written notice of withdrawal executed by a managing partner. The notice must be accompanied by a fee of ~~[$30.]~~ ***$60.***

Sec. 28. **NRS 87.490** is hereby amended to read as follows:

87.490 1. If a registered limited-liability partnership wishes to change the location of its principal office in this state or its resident agent, it shall first file with the secretary of state a certificate of change that sets forth:

(a) The name of the registered limited-liability partnership;

(b) The street address of its principal office;

(c) If the location of its principal office will be changed, the street address of its new principal office;

(d) The name of its resident agent; and

(e) If its resident agent will be changed, the name of its new resident agent.

The certificate of acceptance of its new resident agent must accompany the certificate of change.

2. A certificate of change filed pursuant to this section must be:

(a) Signed by a managing partner of the registered limited-liability partnership; and

(b) Accompanied by a fee of ~~[$15.]~~ ***$30.***

Sec. 29. **NRS 87.510** is hereby amended to read as follows:

87.510 1. A registered limited-liability partnership shall ~~[annually,]~~ ***, on or before the first day of the second month after the filing of its certificate of registration with the secretary of state, and annually thereafter*** on or before the last day of the month in which the anniversary date of the filing of its certificate of registration ~~[of limited partnership]~~ with the secretary of state occurs, file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ ***that contains:***

(a) The name of the registered limited-liability partnership;

(b) The file number of the registered limited-liability partnership, if known;

(c) The names of all of its managing partners;

(d) The mailing or street address, either residence or business, of each managing partner; ~~[and]~~

(e) ***The name and street address of the resident agent of the registered limited-liability partnership; and***

(f) The signature of a managing partner of the registered limited-liability partnership certifying that the list is true, complete and accurate.

Each list filed pursuant to this subsection must be accompanied by a declaration under penalty of perjury that the registered limited-liability partnership has complied with the provisions of chapter 364A of NRS.

2. Upon filing ~~[the list of managing partners,]~~ ***:***

(a) The initial list required by subsection 1, the registered limited-liability partnership shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 1, the registered limited-liability partnership shall pay to the secretary of state a fee of $85.

3. The secretary of state shall, at least 60 days before the last day for filing ~~[the]~~ ***each*** annual list required by subsection 1, cause to be mailed to the registered limited-liability partnership a notice of the fee due pursuant to subsection 2 and a reminder to file the annual list ~~[of managing partners.]~~ ***required by subsection 1.*** The failure of any registered limited-liability partnership to receive a notice or form does not excuse it from complying with the provisions of this section.

4. If the list to be filed pursuant to the provisions of subsection 1 is defective, or the fee required by subsection 2 is not paid, the secretary of state may return the list for correction or payment.

5. An annual list that is filed by a registered limited-liability partnership which is not in default more than 60 days before it is due shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

Sec. 30. **NRS 87.520** is hereby amended to read as follows:

87.520 1. A registered limited-liability partnership that fails to comply with the provisions of NRS 87.510 is in default.

2. Any registered limited-liability partnership that is in default pursuant to subsection 1 must, in addition to the fee required to be paid pursuant to NRS 87.510, pay a penalty of ~~[$15.]~~ ***$50.***

3. On or before the 15th day of the third month after the month in which the fee required to be paid pursuant to NRS 87.510 is due, the secretary of state shall notify, by certified mail, the resident agent of any registered limited-liability partnership that is in default. The notice must include the amount of any payment that is due from the registered limited-liability partnership.

4. If a registered limited-liability partnership fails to pay the amount that is due, the certificate of registration of the registered limited-liability partnership shall be deemed revoked on the first day of the ninth month after the month in which the fee required to be paid pursuant to NRS 87.510 was due. The secretary of state shall notify a registered limited-liability partnership, by certified mail, addressed to its resident agent or, if the registered limited-liability partnership does not have a resident agent, to a managing partner, that its certificate of registration is revoked and the amount of any fees and penalties that are due.

Sec. 31. **NRS 87.530** is hereby amended to read as follows:

87.530 1. Except as otherwise provided in subsection 3, the secretary of state shall reinstate the certificate of registration of a registered limited-liability partnership that is revoked pursuant to NRS 87.520 if the registered limited-liability partnership:

(a) Files with the secretary of state the information required by NRS 87.510; and

(b) Pays to the secretary of state:

(1) The fee required to be paid by that section;

(2) Any penalty required to be paid pursuant to NRS 87.520; and

(3) A reinstatement fee of ~~[$50.]~~ *$200.*

2. Upon reinstatement of a certificate of registration pursuant to this section, the secretary of state shall:

(a) Deliver to the registered limited-liability partnership a certificate of reinstatement authorizing it to transact business retroactively from the date the fee required by NRS 87.510 was due; and

(b) Upon request, issue to the registered limited-liability partnership one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not reinstate the certificate of registration of a registered limited-liability partnership if the certificate was revoked pursuant to NRS 87.520 at least 5 years before the date of the proposed reinstatement.

Sec. 32. **NRS 87.550** is hereby amended to read as follows:

87.550 In addition to any other fees required by NRS 87.440 to 87.540, inclusive, and 87.560, the secretary of state shall charge and collect the following fees for services rendered pursuant to those sections:

1. For certifying documents required by NRS 87.440 to 87.540, inclusive, and 87.560, ~~[$10]~~ *$20* per certification.

2. For executing a certificate verifying the existence of a registered limited-liability partnership, if the registered limited-liability partnership has not filed a certificate of amendment, ~~[$20.]~~ *$40.*

3. For executing a certificate verifying the existence of a registered limited-liability partnership, if the registered limited-liability partnership has filed a certificate of amendment, ~~[$20.]~~ *$40.*

4. For executing, certifying or filing any certificate or document not required by NRS 87.440 to 87.540, inclusive, and 87.560, ~~[$20.]~~ *$40.*

5. For any copies made by the office of the secretary of state, $1 per page.

6. For examining and provisionally approving any document before the document is presented for filing, $100.

Sec. 33. **NRS 88.395** is hereby amended to read as follows:

88.395 1. A limited partnership shall ~~[annually,]~~ *, on or before the first day of the second month after the filing of its certificate of limited partnership with the secretary of state, and annually thereafter* on or before the last day of the month in which the anniversary date of the filing of its certificate of limited partnership occurs, file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ *that contains:*

(a) The name of the limited partnership;

(b) The file number of the limited partnership, if known;

(c) The names of all of its general partners;

(d) The mailing or street address, either residence or business, of each general partner; ~~[and]~~

(e) *The name and street address of the resident agent of the limited partnership; and*

(f) The signature of a general partner of the limited partnership certifying that the list is true, complete and accurate.

Each list filed pursuant to this subsection must be accompanied by a declaration under penalty of perjury that the limited partnership has complied with the provisions of chapter 364A of NRS.

2. Upon filing ~~[the list of general partners,]~~ *:*

(a) The initial list required by subsection 1, the limited partnership shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 1, the limited partnership shall pay to the secretary of state a fee of $85.

3. The secretary of state shall, 60 days before the last day for filing ~~[the]~~ *each annual* list required by subsection 1, cause to be mailed to each limited partnership required to comply with the provisions of this section which has not become delinquent a notice of the fee due pursuant to the provisions of *subsection 2 and a reminder to file the annual list. Failure of any limited* partnership to receive a notice or form does not excuse it from the penalty imposed by NRS 88.400.

4. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 2 is not paid, the secretary of state may return the list for correction or payment.

5. An annual list for a limited partnership not in default that is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

6. A filing made pursuant to this section does not satisfy the provisions of NRS 88.355 and may not be substituted for filings submitted pursuant to NRS 88.355.

Sec. 34. **NRS 88.400** is hereby amended to read as follows:

88.400 1. If a limited partnership has filed the list in compliance with NRS 88.395 and has paid the appropriate fee for the filing, the canceled check received by the limited partnership constitutes a certificate authorizing it to transact its business within this state until the anniversary date of the filing of its certificate of limited partnership in the next succeeding calendar year. If the limited partnership desires a formal certificate upon its payment of the annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

2. Each limited partnership which refuses or neglects to file the list and pay the fee within the time provided is in default.

3. For default there must be added to the amount of the fee a penalty of ~~[$15,]~~ *$50,* and unless the filings are made and the fee and penalty are paid on or before the first day of the ninth month following the month in which filing was required, the defaulting limited partnership, by reason of its default, forfeits its right to transact any business within this state.

Sec. 35. **NRS 88.410** is hereby amended to read as follows:

88.410 1. Except as otherwise provided in subsections 3 and 4, the secretary of state may:

(a) Reinstate any limited partnership which has forfeited its right to transact business; and

(b) Restore to the limited partnership its right to carry on business in this state, and to exercise its privileges and immunities,

upon the filing with the secretary of state of the list required pursuant to NRS 88.395, and upon payment to the secretary of state of the ~~[annual]~~ filing fee and penalty set forth in NRS 88.395 and 88.400 for each year or portion thereof during which the certificate has been revoked, and a fee of ~~[$50]~~ *$200* for reinstatement.

2. When payment is made and the secretary of state reinstates the limited partnership to its former rights, he shall:

(a) Immediately issue and deliver to the limited partnership a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the limited partnership one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation occurred only by reason of failure to pay the fees and penalties.

4. If a limited partnership's certificate has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 years, the certificate must not be reinstated.

Sec. 36. **NRS 88.415** is hereby amended to read as follows:

88.415 The secretary of state, for services relating to his official duties and the records of his office, shall charge and collect the following fees:

1. For filing a certificate of limited partnership, or for registering a foreign limited partnership, ~~[$125.]~~ ***$175.***

2. For filing a certificate of amendment of limited partnership or restated certificate of limited partnership, ~~[$75.~~

~~3. For filing a reinstated certificate of limited partnership, $50.~~

~~4. For filing the annual list of general partners and designation of a resident agent, $85.~~

~~5.]~~ ***$150.***

3. For filing a certificate of a change of location of the records office of a limited partnership or the office of its resident agent, or a designation of a new resident agent, ~~[$15.~~

~~6.]~~ ***$30.***

4. For certifying a certificate of limited partnership, an amendment to the certificate, or a certificate as amended where a copy is provided, ~~[$10]~~ ***$20*** per certification.

~~[7.]~~ *5.* For certifying an authorized printed copy of the limited partnership law, ~~[$10.~~

~~8.]~~ ***$20.***

6. For reserving a limited partnership name, or for executing, filing or certifying any other document, $20.

~~[9.]~~ *7.* For copies made at the office of the secretary of state, $1 per page.

~~[10.]~~ *8.* For filing a certificate of cancellation of a limited partnership, ~~[$30.]~~ ***$60.***

Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to this chapter.

Sec. 37. **NRS 88A.600** is hereby amended to read as follows:

88A.600 1. A business trust formed pursuant to this chapter shall ~~[annually,]~~ ***, on or before the first day of the second month after the filing of its certificate of trust with the secretary of state, and annually thereafter*** on or before the last day of the month in which the anniversary date of the filing of its certificate of trust with the secretary of state occurs, file with the secretary of state , on a form furnished by him , a list signed by at least one trustee ~~[containing]~~ ***that contains*** the name and mailing address of its resident agent and at least one trustee. ***Each list filed pursuant to this subsection must be accompanied by a declaration under penalty of perjury that the business trust has complied with the provisions of chapter 364A of NRS.***

2. Upon filing ~~[the list,]~~ ***:***

(a) The initial list required by subsection 1, the business trust shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 1, the business trust shall pay to the secretary of state a fee of $85.

~~[2.]~~ *3.* The secretary of state shall, 60 days before the last day for filing ~~[the]~~ ***each*** annual list required by subsection 1, cause to be mailed to each business trust which is required to comply with the provisions of NRS 88A.600 to 88A.660, inclusive, and which has not become delinquent, the blank forms to be completed and filed with him. Failure of a business trust to receive the forms does not excuse it from the penalty imposed by law.

~~[3.]~~ *4.* An annual list for a business trust not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year.

Sec. 38. **NRS 88A.630** is hereby amended to read as follows:

88A.630 1. Each business trust required to file the ~~[annual]~~ list and pay the fee prescribed in NRS 88A.600 to 88A.660, inclusive, which refuses or neglects to do so within the time provided shall be deemed in default.

2. For default, there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 39. **NRS 88A.650** is hereby amended to read as follows:

88A.650 1. Except as otherwise provided in subsection 3, the secretary of state shall reinstate a business trust which has forfeited its right to transact business pursuant to the provisions of this chapter and restore to the business trust its right to carry on business in this state, and to exercise its privileges and immunities, if it:

(a) Files with the secretary of state the list ~~[and designation]~~ required by NRS 88A.600; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 88A.600 and 88A.630 for each year or portion thereof during which its certificate of trust was revoked; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the business trust, he shall:

(a) Immediately issue and deliver to the business trust a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the business trust one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the certificate of trust occurred only by reason of the failure to file the list or pay the fees and penalties.

Sec. 40. **NRS 88A.900** is hereby amended to read as follows:

88A.900 The secretary of state shall charge and collect the following fees for:

1. Filing an original certificate of trust, or for registering a foreign business trust, ~~[$125.]~~ ***$175.***

2. Filing an amendment or restatement, or a combination thereof, to a certificate of trust, ~~[$75.]~~ ***$150.***

3. Filing a certificate of cancellation, ~~[$125.]~~ ***$175.***

4. Certifying a copy of a certificate of trust or an amendment or restatement, or a combination thereof, ~~[$10]~~ ***$20*** per certification.

5. Certifying an authorized printed copy of this chapter, ~~[$10.]~~ ***$20.***

6. Reserving a name for a business trust, $20.

7. Executing a certificate of existence of a business trust which does not list the previous documents relating to it, or a certificate of change in the name of a business trust, ~~[$20.]~~ ***$40.***

8. Executing a certificate of existence of a business trust which lists the previous documents relating to it, ~~[$20.]~~ ***$40.***

9. Filing a statement of change of address of the registered office for each business trust, ~~[$15.]~~ ***$30.***

10. Filing a statement of change of the registered agent, ~~[$15.]~~ ***$30.***

11. Executing, certifying or filing any certificate or document not otherwise provided for in this section, ~~[$20.]~~ ***$40.***

12. Examining and provisionally approving a document before the document is presented for filing, $100.

13. Copying a document on file with him, for each page, $1.

Sec. 41. **NRS 89.210** is hereby amended to read as follows:

89.210 1. Within 30 days ~~[following]~~ ***after*** the organization of a professional association under this chapter, the association shall file with the secretary of state a copy of the articles of association, duly executed, and shall pay at that time a filing fee of ~~[$25.]~~ ***$175.*** Any such association formed as a common law association before July 1, 1969, shall file, within 30 days ~~[of]~~ ***after*** July 1, 1969, a certified copy of its articles of association, with any amendments thereto, with the secretary of state, and shall pay at that time a filing fee of $25. A copy of any amendments to the articles of association adopted after July 1, 1969, must also be filed with the secretary of state within 30 days after the adoption of such amendments. Each copy of amendments so filed must be certified as true and correct and be accompanied by a filing fee of ~~[$10.]~~ ***$150.***

2. The name of such a professional association must contain the words "Professional Association," "Professional Organization" or the abbreviations "Prof. Ass'n" or "Prof. Org." The association may render professional services and exercise its authorized powers under a fictitious name if the association has first registered the name in the manner required under chapter 602 of NRS.

Sec. 42. **NRS 89.250** is hereby amended to read as follows:

89.250 1. Except as otherwise provided in subsection 2, a professional association shall, ***on or before the first day of the second month after the filing of its articles of association with the secretary of state, and annually thereafter*** on or before the last day of the month in which the anniversary date of its organization occurs in each year, furnish a statement to the secretary of state showing the names and residence addresses of all members and employees in ~~[such]~~ ***the*** association and ~~[shall certify]~~ ***certifying*** that all members and employees are licensed to render professional service in this state.

2. A professional association organized and practicing pursuant to the provisions of this chapter and NRS 623.349 shall, ***on or before the first day of the second month after the filing of its articles of association with the secretary of state, and annually thereafter*** on or before the last day of the month in which the anniversary date of its organization occurs in each year, furnish a statement to the secretary of state:

(a) Showing the names and residence addresses of all members and employees of the association who are licensed or otherwise authorized by law to render professional service in this state;

(b) Certifying that all members and employees who render professional service are licensed or otherwise authorized by law to render professional service in this state; and

(c) Certifying that all members who are not licensed to render professional service in this state do not render professional service on behalf of the association except as authorized by law.

3. ~~[The statement must:~~

~~(a) Be made]~~ ***Each statement filed pursuant to this section must be:***

(a) Made on a form prescribed by the secretary of state and must not contain any fiscal or other information except that expressly called for by this section.

(b) ~~[Be signed]~~ ***Signed*** by the chief executive officer of the association.

(c) Accompanied by a declaration under penalty of perjury that the professional association has complied with the provisions of chapter 364A of NRS.

4. Upon filing ~~[the annual]~~ **:**

(a) The initial statement required by this section, the association shall pay to the secretary of state a fee of $165.

(b) Each annual statement required by this section, the association shall pay to the secretary of state a fee of ~~[$15.]~~ ***$85.***

5. As used in this section, "signed" means to have executed or adopted a name, word or mark, including, without limitation, a digital signature as defined in NRS 720.060, with the present intention to authenticate a document.

Sec. 43. **NRS 89.252** is hereby amended to read as follows:

89.252 1. Each professional association that is required to make a filing and pay the fee prescribed in NRS 89.250 but refuses to do so within the time provided is in default.

2. For default, there must be added to the amount of the fee a penalty of ~~[$5.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 44. **NRS 89.256** is hereby amended to read as follows:

89.256 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate any professional association which has forfeited its right to transact business under the provisions of this chapter and restore the right to carry on business in this state and exercise its privileges and immunities if it:

(a) Files with the secretary of state the statement and certification required by NRS 89.250; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 89.250 and 89.252 for each year or portion thereof during which the articles of association have been revoked; and

(2) A fee of ~~[$25]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the association to its former rights, he shall:

(a) Immediately issue and deliver to the association a certificate of reinstatement authorizing it to transact business, as if the fees had been paid when due; and

(b) Upon demand, issue to the association a certified copy of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the association's articles of association occurred only by reason of its failure to pay the fees and penalties.

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

Sec. 45. NRS 92A.190 is hereby amended to read as follows:

92A.190 1. One or more foreign entities may merge or enter into an exchange of owner's interests with one or more domestic entities if:

(a) In a merger, the merger is permitted by the law of the jurisdiction under whose law each foreign entity is organized and governed and each foreign entity complies with that law in effecting the merger;

(b) In an exchange, the entity whose owner's interests will be acquired is a domestic entity, whether or not an exchange of owner's interests is permitted by the law of the jurisdiction under whose law the acquiring entity is organized;

(c) The foreign entity complies with NRS 92A.200 to 92A.240, inclusive, if it is the surviving entity in the merger or acquiring entity in the exchange and sets forth in the articles of merger or exchange its address where copies of process may be sent by the secretary of state; and

(d) Each domestic entity complies with the applicable provisions of NRS 92A.100 to 92A.180, inclusive, and, if it is the surviving entity in the merger or acquiring entity in the exchange, with NRS 92A.200 to 92A.240, inclusive.

2. When the merger or exchange takes effect, the surviving foreign entity in a merger and the acquiring foreign entity in an exchange shall be deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting owners of each domestic entity that was a party to the merger or exchange. Service of such process must be made by personally delivering to and leaving with the secretary of state duplicate copies of the process and the payment of a fee of ~~[$25]~~ ***$50*** for accepting and transmitting the process. The secretary of state shall forthwith send by registered or certified mail one of the copies to the surviving or acquiring entity at its specified address, unless the surviving or acquiring entity has designated in writing to the secretary of state a different address for that purpose, in which case it must be mailed to the last address so designated.

(b) To agree that it will promptly pay to the dissenting owners of each domestic entity that is a party to the merger or exchange the amount, if any, to which they are entitled under or created pursuant to NRS 92A.300 to 92A.500, inclusive.

3. This section does not limit the power of a foreign entity to acquire all or part of the owner's interests of one or more classes or series of a domestic entity through a voluntary exchange or otherwise.

Sec. 46. NRS 92A.210 is hereby amended to read as follows:

92A.210 1. Except as otherwise provided in this section, the fee for filing articles of merger, articles of conversion, articles of exchange, articles of domestication or articles of termination is ~~[$125.]~~ ***$325.*** The fee for filing the constituent documents of a domestic resulting entity is the fee for filing the constituent documents determined by the chapter of NRS governing the particular domestic resulting entity.

2. The fee for filing articles of merger of two or more domestic corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporation.

3. The fee for filing articles of merger of one or more domestic corporations with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid the fees required by NRS 78.760 and 80.050.

4. The fee for filing articles of merger of two or more domestic or foreign corporations must not be less than ~~[$125.]~~ ***$325.*** The amount paid pursuant to subsection 3 must not exceed $25,000.

Sec. 47. NRS 116.3103 is hereby amended to read as follows:

116.3103 1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are fiduciaries. ~~[and are subject to the insulation from liability provided for directors of corporations by the laws of this state.]~~ The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.

2. The executive board may not act on behalf of the association to amend the declaration , ~~[(NRS 116.2117),]~~ to terminate the common-interest community , ~~[(NRS 116.2118),]~~ or to elect members of the executive board or determine their qualifications, powers and duties or terms of office , ~~[(subsection 1 of NRS 116.31034),]~~ but the executive board may fill vacancies in its membership for the unexpired portion of any term.

3. Within 30 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the budget to all the units' owners, and shall set a date for a meeting of the units' owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all units' owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

Sec. 48. NRS 225.140 is hereby amended to read as follows:

225.140 1. Except as otherwise provided in subsection 2, in addition to other fees authorized by law, the secretary of state shall charge and collect the following fees:

For a copy of any law, joint resolution, transcript of record, or other paper on file or of record in his office, other than a document required to be filed pursuant to Title 24 of NRS, per page.....$1.00

For a copy of any document required to be filed pursuant to Title 24 of NRS, per page ..... .50
For certifying to any such copy and use of the state seal, for each impression 10.00
For each passport or other document signed by the governor and attested by the secretary of state 10.00
For a negotiable instrument returned unpaid 10.00

2. The secretary of state:

(a) Shall charge a reasonable fee for searching records and documents kept in his office.

(b) May charge or collect any filing or other fees for services rendered by him to the State of Nevada, any local governmental agency or agency of the Federal Government, or any officer thereof in his official capacity or respecting his office or official duties.

(c) May not charge or collect a filing or other fee for:

(1) Attesting extradition papers or executive warrants for other states.

(2) Any commission or appointment issued or made by the governor, either for the use of the state seal or otherwise.

(d) May charge a reasonable fee, not to exceed:

(1) Five hundred dollars, for providing service within 2 hours after the time the service is requested; and

(2) One hundred dollars, for providing any other special service, including, but not limited to, providing service more than 2 hours but within 24 hours after the time the service is requested, accepting documents filed by facsimile machine and other use of new technology.

(e) Shall charge a fee, not to exceed the actual cost to the secretary of state, for providing:

(1) A copy of any record kept in his office that is stored on a computer or on microfilm if the copy is provided on a tape, disk or other medium used for the storage of information by a computer or on duplicate film.

(2) Access to his computer data base on which records are stored.

3. ~~[All fees]~~ ***From each fee*** collected pursuant to paragraph (d) of subsection 2 *:*

(a) The entire amount or $50, whichever is less, of the fee collected pursuant to subparagraph (1) of that paragraph and half of the fee collected pursuant to subparagraph (2) of that paragraph must be deposited with the state treasurer for credit to the account for special services of the secretary of state in the state general fund. Any amount remaining in the account at the end of a fiscal year in excess of $2,000,000 must be transferred to the state general fund. Money in the account may be transferred to the secretary of state's operating general fund budget account and must only be used to create and maintain the capability of the office of the secretary of state to provide special services, including, but not limited to, providing service:

~~[(a)]~~ *(1)* On the day it is requested or within 24 hours; or

~~[(b)]~~ *(2)* Necessary to increase or maintain the efficiency of the office.

Any transfer of money from the account for expenditure by the secretary of state must be approved by the interim finance committee.

(b) After deducting the amount required pursuant to paragraph (a), the remainder must be deposited with the state treasurer for credit to the state general fund.

Sec. 49. **NRS 600.340** is hereby amended to read as follows:

600.340 1. A person who has adopted and is using a mark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth, but not limited to, the following information:

(a) Whether the mark to be registered is a trade-mark, trade name or service mark;

(b) A description of the mark by name, words displayed in it ~~[,]~~ or other information;

(c) The name and business address of the person applying for the registration and, if it is a corporation, limited-liability company, limited partnership or registered limited-liability partnership, the state of incorporation or organization;

(d) The specific goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with those goods or services and the class as designated by the secretary of state which includes those goods or services;

(e) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business which must precede the filing of the application; and

(f) A statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the form set forth in the application or in such near resemblance to it as might deceive or cause mistake.

2. The application must:

(a) Be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

(b) Be accompanied by a specimen or facsimile of the mark in duplicate and by a filing fee of ~~[$50]~~ ***$100*** payable to the secretary of state.

3. If the application fails to comply with this section or NRS 600.343, the secretary of state shall return it for correction.

Sec. 50. **NRS 600.355** is hereby amended to read as follows:

600.355 1. If any statement in an application for registration of a mark was incorrect when made or any arrangements or other facts described in the application have changed, making the application inaccurate in any respect without materially altering the mark, the registrant shall promptly file in the office of the secretary of state a certificate, signed by the registrant or his successor or by a member of the firm or an officer of the corporation or association to which the mark is registered, correcting the statement.

2. Upon the filing of a certificate of amendment or judicial decree of amendment and the payment of a filing fee of ~~[$30,]~~ ***$60,*** the secretary of state shall issue, in accordance with NRS 600.350, an amended certificate of registration for the remainder of the period of the registration.

Sec. 51. **NRS 600.360** is hereby amended to read as follows:

600.360 1. The registration of a mark is effective for 5 years from the date of registration and, upon application filed within 6 months before the expiration of that period, on a form to be furnished by the secretary of state, the registration may be renewed for a successive period of 5 years. A

renewal fee of ~~[$25.]~~ ***$50***, payable to the secretary of state, must accompany the application for renewal of the registration.

2. The registration of a mark may be renewed for additional successive 5-year periods if the requirements of subsection 1 are satisfied.

3. The secretary of state shall give notice to each registrant when his registration is about to expire. The notice must be given within the year next preceding the expiration date, by writing to the registrant's last known address.

4. All applications for renewals must include a statement that the mark is still in use in this state.

Sec. 52. NRS 600.370 is hereby amended to read as follows:

600.370 1. A mark and its registration are assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. An assignment must:

(a) Be in writing;

(b) Be signed and acknowledged by the registrant or his successor or a member of the firm or an officer of the corporation or association under whose name the mark is registered; and

(c) Be recorded with the secretary of state upon the payment of a fee of ~~[$50]~~ ***$100*** to the secretary of state who, upon recording the assignment, shall issue in the name of the assignee a certificate of assignment for the remainder of the period of the registration.

2. An assignment of any registration is void as against any subsequent purchaser for valuable consideration without notice, unless:

(a) The assignment is recorded with the secretary of state within 3 months after the date of the assignment; or

(b) The assignment is recorded before the subsequent purchase.

Sec. 53. NRS 600.395 is hereby amended to read as follows:

600.395 The fee for filing a cancellation of registration pursuant to NRS 600.390 is ~~[$25.]~~ ***$50.***

Sec. 54. Section 29 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 29. NRS 78.390 is hereby amended to read as follows:

78.390 1. Every amendment adopted pursuant to the provisions of NRS 78.385 must be made in the following manner:

(a) The board of directors must adopt a resolution setting forth the amendment proposed and declaring its advisability, and ***either*** call a ***special*** meeting ***of the stockholders entitled to vote on the amendment or direct that the proposed amendment be considered at the next annual meeting*** of the stockholders entitled to vote ***on the amendment.***

(b) At the meeting, of which notice must be given to each stockholder entitled to vote pursuant to the provisions of this section, a vote of the stockholders entitled to vote in person or by proxy must be taken for and against the proposed amendment. If it appears upon the canvassing of the votes that stockholders holding shares in the corporation entitling them to exercise at least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, as provided in subsections ***2 and 4,*** or as may be required by the provisions of the articles of incorporation, have voted in favor of the amendment, ***an officer of the corporation shall sign*** a certificate setting forth the amendment, or setting forth the articles of incorporation as amended, and the vote by which the amendment was adopted.

(c) The certificate so ***signed*** must be filed ***with*** the secretary of state.

2. If any proposed amendment would ***adversely*** alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series ***adversely*** affected by the amendment regardless of limitations or restrictions on the voting power thereof.

3. Provision may be made in the articles of incorporation requiring, in the case of any specified amendments, a larger proportion of the voting power of stockholders than that required by this section.

4. Different series of the same class of shares do not constitute different classes of shares for the purpose of voting by classes except when the series is adversely affected by an amendment in a different manner than other series of the same class.

5. The resolution of the stockholders approving the proposed amendment may provide that at any time before the effective date of the amendment, notwithstanding approval of the proposed amendment by the stockholders, the board of directors may, by resolution, abandon the proposed amendment without further action by the stockholders.

6. A certificate filed pursuant to subsection 1 becomes effective upon filing with the secretary of state or upon a later date specified in the certificate, which must not be later than 90 days after the certificate is filed.

7. If a certificate filed pursuant to subsection 1 specifies an effective date and if the resolution of the stockholders approving the proposed amendment provides that the board of directors may abandon the proposed amendment pursuant to subsection 5, the board of directors may terminate the effectiveness of the certificate by resolution and by filing a certificate of termination with the secretary of state that:

(a) Is filed before the effective date specified in the certificate filed pursuant to subsection 1;

(b) Identifies the certificate being terminated;

(c) States that, pursuant to the resolution of the stockholders, the board of directors is authorized to terminate the effectiveness of the certificate;

(d) States that the effectiveness of the certificate has been terminated;

(e) Is signed by an officer of the corporation; and

(f) Is accompanied by a filing fee of $75.

Sec. 55. Section 55 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 55. 1. A limited-liability company may correct a document filed by the secretary of state with respect to the limited-liability company if the document contains an inaccurate record of a company action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the limited-liability company must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited-liability company;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a manager of the company, or if management is not vested in a manager, by a member of the company.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ ***$150*** to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 56. Section 90 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 90. Chapter 87 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A limited-liability partnership may correct a document filed by the secretary of state with respect to the limited-liability partnership if the document contains an inaccurate record of a partnership action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the limited-liability partnership must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited-liability partnership;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a managing partner of the limited-liability partnership.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ ***$150*** to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 57. Section 93 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 93. 1. A limited partnership may correct a document filed by the secretary of state with respect to the limited partnership if the document contains an inaccurate record of a partnership action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the limited partnership must:

(a) Prepare a certificate of correction that:

(1) States the name of the limited partnership;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a general partner of the limited partnership.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ ***$150*** to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 58. Section 102 of Senate Bill No. 51 of this session is hereby amended to read as follows:

Sec. 102. 1. A business trust may correct a document filed by the secretary of state with respect to the business trust if the document contains an inaccurate record of a trust action described in the document or was defectively executed, attested, sealed, verified or acknowledged.

2. To correct a document, the business trust must:

(a) Prepare a certificate of correction that:

(1) States the name of the business trust;

(2) Describes the document, including, without limitation, its filing date;

(3) Specifies the inaccuracy or defect;

(4) Sets forth the inaccurate or defective portion of the document in an accurate or corrected form; and

(5) Is signed by a trustee of the business trust.

(b) Deliver the certificate to the secretary of state for filing.

(c) Pay a filing fee of ~~[$75]~~ ***$150*** to the secretary of state.

3. A certificate of correction is effective on the effective date of the document it corrects except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, the certificate is effective when filed.

Sec. 59. Senate Bill No. 51 is hereby amended by adding thereto a new section designated sec. 138, following sec. 137, to read as follows:

Sec. 138. *This act becomes effective on August 1, 2001.*

Sec. 60. Sections 1, 2, 3, 8, 9 and 47 of this act do not apply to a claim that arises before the effective date of this section.

Sec. 61. Notwithstanding the provisions of section 63 of this act to the contrary, the amendatory provisions of section 42 of this act do not apply to the filing of the statement of a professional association, or the fee for that filing, before August 1, 2001, except that a professional association whose anniversary date for the 2001 calendar year falls on or after August 1, 2001, shall comply with that section as amended by this act, even if the filing is made before August 1, 2001.

Sec. 62. Notwithstanding any provision of NRS 225.140 to the contrary:

1. The state controller shall, without obtaining the approval of the interim finance committee and in addition to any amounts transferred pursuant to that section with the approval of the interim finance committee, transfer from the account for special services of the secretary of state to the secretary of state's operating general fund budget account:

For the fiscal year 2001-2002 ..... $300,000

For the fiscal year 2002-2003 ..... $250,000

2. The secretary of state may expend the amounts transferred pursuant to subsection 1 for such additional personnel, equipment, supplies, office space and other costs as are necessary to carry out the provisions of this act.

Sec. 63. 1. This section and sections 1, 2, 3, 8, 9, 47, 59, 60, 61 and 62 of this act become effective upon passage and approval.

2. Sections 5, 6, 12, 13 to 19, inclusive, 20, 21, 22, 25 to 31, inclusive, 35 to 39, inclusive, 41 to 45, inclusive, and 47 to 53, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On August 1, 2001, for all other purposes.

3. Sections 1.5, 4, 7, 8.5, 10, 11, 14, 19.5, 23, 24, 32, 33, 34, 40, 46 and 54 to 58, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) At 12:01 a.m. on August 1, 2001, for all other purposes.

Senate Bill No. 570–Committee on Legislative Affairs and Operations

CHAPTER 602

AN ACT relating to the legislature; making various changes relating to the legislature and the legislative counsel bureau; and providing other matters properly relating thereto.

[Approved: June 15, 2001]

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

Section 1. Chapter 218 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The legislative counsel bureau may contract for the establishment of an on-site child care facility for children of employees of the legislative branch of government. No money appropriated to the legislative fund or the legislative counsel bureau may be used to pay the cost of establishing and operating the facility.

2. All employees of the child-care facility shall be deemed employees of the state for the purposes of NRS 41.0305 to 41.039, inclusive.

3. The legislative counsel bureau may use the property described in NRS 331.135 for a child-care facility established pursuant to this section.

4. As used in this section, "on-site child care facility" has the meaning ascribed to it in NRS 432A.0275.

Sec. 2. NRS 218.2423 is hereby amended to read as follows:

218.2423 1. Each:

(a) Incumbent assemblyman may request the drafting of not more than 5 legislative measures submitted to the legislative counsel ***on or*** before September 1 preceding the commencement of a regular session of the legislature and not more than 5 legislative measures submitted to the legislative counsel ~~[on or]~~ after September 1 but on or before December 15 preceding the commencement of a regular session of the legislature.

(b) Incumbent senator may request the drafting of not more than 10 legislative measures submitted to the legislative counsel ***on or*** before September 1 preceding the commencement of a regular session of the legislature and not more than 10 legislative measures submitted to the legislative counsel ~~[on or]~~ after September 1 but on or before December 15 preceding the commencement of a regular session of the legislature.

(c) Newly elected assemblyman may request the drafting of not more than 5 legislative measures submitted to the legislative counsel on or before December 15 preceding the commencement of a regular session of the legislature.

(d) Newly elected senator may request the drafting of not more than 10 legislative measures submitted to the legislative counsel on or before December 15 preceding the commencement of a regular session of the legislature.

2. In addition to the number authorized pursuant to subsection 1:

(a) The chairman of each standing committee of the immediately preceding regular legislative session, or a person designated in the place of the chairman by the speaker of the assembly or the majority leader of the senate, as the case may be, may request before the commencement of the next regular legislative session the drafting of not more than 1 legislative measure for introduction by the committee in a subject within the jurisdiction of the committee for every 15 legislative measures that were referred to the respective standing committee during the immediately preceding regular legislative session.

(b) A person designated after a general election as a chairman of a standing committee for the next regular legislative session, or a person designated in the place of a chairman by the person designated as the speaker of the assembly or majority leader of the senate for the next regular legislative session, may request before the commencement of the next regular legislative session the drafting of the remaining number of the legislative measures allowed for the respective standing committee that were not requested by the previous chairman or designee.

Sec. 3. NRS 218.2426 is hereby amended to read as follows:

218.2426 1. In addition to the number authorized pursuant to NRS 218.2423:

(a) The speaker of the assembly and the majority leader of the senate may each request before or during a regular legislative session, without limitation, the drafting of not more than 15 legislative measures for that session.

(b) The minority leader of the assembly and the minority leader of the senate may each request before or during a regular legislative session, without limitation, the drafting of not more than 10 legislative measures for that session.

(c) A person designated after a general election as the speaker of the assembly, the majority leader of the senate, the minority leader of the assembly or the minority leader of the senate for the next regular legislative session may request the drafting of the remaining number of the legislative measures allowed for the respective officer that were not requested by the previous officer.

(a) Immediately issue and deliver to the business trust a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the business trust one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the certificate of trust occurred only by reason of the failure to file the list or pay the fees and penalties.

Sec. 40. NRS 88A.900 is hereby amended to read as follows:

88A.900 The secretary of state shall charge and collect the following fees for:

1. Filing an original certificate of trust, or for registering a foreign business trust, ~~[$125.]~~ ***$175.***

2. Filing an amendment or restatement, or a combination thereof, to a certificate of trust, ~~[$75.]~~ ***$150.***

3. Filing a certificate of cancellation, ~~[$125.]~~ ***$175.***

4. Certifying a copy of a certificate of trust or an amendment or restatement, or a combination thereof, ~~[$10]~~ ***$20*** per certification.

5. Certifying an authorized printed copy of this chapter, ~~[$10.]~~ ***$20.***

6. Reserving a name for a business trust, $20.

7. Executing a certificate of existence of a business trust which does not list the previous documents relating to it, or a certificate of change in the name of a business trust, ~~[$15.]~~ ***$30.***

8. Executing a certificate of existence of a business trust which lists the previous documents relating to it, ~~[$20.]~~ ***$40.***

9. Filing a statement of change of address of the registered office for each business trust, ~~[$15.]~~ ***$30.***

10. Filing a statement of change of the registered agent, ~~[$15.]~~ ***$30.***

11. Executing, certifying or filing any certificate or document not otherwise provided for in this section, ~~[$20.]~~ ***$40.***

12. Examining and provisionally approving a document before the document is presented for filing, $100.

13. Copying a document on file with him, for each page, $1.

Sec. 41. NRS 89.210 is hereby amended to read as follows:

89.210 1. Within 30 days ~~[following]~~ ***after*** the organization of a professional association under this chapter, the association shall file with the secretary of state a copy of the articles of association, duly executed, and shall pay at that time a filing fee of ~~[$25.]~~ ***$175.*** Any such association formed as a common law association before July 1, 1969, shall file, within 30 days ~~[of]~~ ***after*** July 1, 1969, a certified copy of its articles of association, with any amendments thereto, with the secretary of state, and shall pay at that time a filing fee of $25. A copy of any amendments to the articles of association adopted after July 1, 1969, must also be filed with the secretary of state within 30 days after the adoption of such amendments. Each copy of amendments so filed must be certified as true and correct and be accompanied by a filing fee of ~~[$10.]~~ ***$150.***

2. The name of such a professional association must contain the words "Professional Association," "Professional Organization" or the

abbreviations "Prof. Ass'n" or "Prof. Org." The association may render professional services and exercise its authorized powers under a fictitious name if the association has first registered the name in the manner required under chapter 602 of NRS.

Sec. 42. NRS 89.250 is hereby amended to read as follows:

89.250 1. A professional association shall, ***on or before the first day of the second month after the filing of its articles of association with the secretary of state, and annually thereafter*** on or before the last day of the month in which the anniversary date of its organization occurs in each year, furnish a statement to the secretary of state ~~[showing]~~ ***that contains*** the names and residence addresses of all members and employees in ~~[such association and]~~ ***the association. Each statement filed pursuant to this subsection must be accompanied by an affidavit that the professional association has complied with the provisions of chapter 364A of NRS.***

2. The professional association shall certify that all members and employees are licensed to render professional service in this state.

~~[2.]~~ ***3.*** The statement must:

(a) Be made on a form prescribed by the secretary of state and must not contain any fiscal or other information except that expressly called for by this section.

(b) Be signed by the chief executive officer of the association.

~~[3.]~~ ***4.*** Upon filing ~~[the annual]~~ ***:***

(a) The initial statement required by this section, the association shall pay to the secretary of state a fee of $165.

(b) Each annual statement required by this section, the association shall pay to the secretary of state a fee of ~~[$15.~~

~~4.]~~ ***$85.***

5. As used in this section, "signed" means to have executed or adopted a name, word or mark, including, without limitation, a digital signature as defined in NRS 720.060, with the present intention to authenticate a document.

Sec. 43. NRS 89.252 is hereby amended to read as follows:

89.252 1. Each professional association that is required to make a filing and pay the fee prescribed in NRS 89.250 but refuses to do so within the time provided is in default.

2. For default, there must be added to the amount of the fee a penalty of ~~[$5.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 44. NRS 89.256 is hereby amended to read as follows:

89.256 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate any professional association which has forfeited its right to transact business under the provisions of this chapter and restore the right to carry on business in this state and exercise its privileges and immunities if it:

(a) Files with the secretary of state the statement and certification required by NRS 89.250; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 89.250 and 89.252 for each year or portion thereof during which the articles of association have been revoked; and

(2) A fee of ~~[$25]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the association to its former rights, he shall:

(a) Immediately issue and deliver to the association a certificate of reinstatement authorizing it to transact business, as if the fees had been paid when due; and

(b) Upon demand, issue to the association a certified copy of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the association's articles of association occurred only by reason of its failure to pay the fees and penalties.

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

Sec. 45. NRS 92A.190 is hereby amended to read as follows:

92A.190 1. One or more foreign entities may merge or enter into an exchange of owner's interests with one or more domestic entities if:

(a) In a merger, the merger is permitted by the law of the jurisdiction under whose law each foreign entity is organized and governed and each foreign entity complies with that law in effecting the merger;

(b) In an exchange, the entity whose owner's interests will be acquired is a domestic entity, whether or not an exchange of owner's interests is permitted by the law of the jurisdiction under whose law the acquiring entity is organized;

(c) The foreign entity complies with NRS 92A.200 to 92A.240, inclusive, if it is the surviving entity in the merger or acquiring entity in the exchange and sets forth in the articles of merger or exchange its address where copies of process may be sent by the secretary of state; and

(d) Each domestic entity complies with the applicable provisions of NRS 92A.100 to 92A.180, inclusive, and, if it is the surviving entity in the merger or acquiring entity in the exchange, with NRS 92A.200 to 92A.240, inclusive.

2. When the merger or exchange takes effect, the surviving foreign entity in a merger and the acquiring foreign entity in an exchange shall be deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting owners of each domestic entity that was a party to the merger or exchange. Service of such process must be made by personally delivering to and leaving with the secretary of state duplicate copies of the process and the payment of a fee of ~~[$25]~~ ***$50*** for accepting and transmitting the process. The secretary of state shall forthwith send by registered or certified mail one of the copies to the surviving or acquiring entity at its specified address, unless the surviving or acquiring entity has designated in writing to the secretary of

state a different address for that purpose, in which case it must be mailed to the last address so designated.

(b) To agree that it will promptly pay to the dissenting owners of each domestic entity that is a party to the merger or exchange the amount, if any, to which they are entitled under or created pursuant to NRS 92A.300 to 92A.500, inclusive.

3. This section does not limit the power of a foreign entity to acquire all or part of the owner's interests of one or more classes or series of a domestic entity through a voluntary exchange or otherwise.

Sec. 46. NRS 92A.210 is hereby amended to read as follows:

92A.210 ~~[The]~~

1. Except as otherwise provided in this section, the fee for filing articles of merger, articles of exchange or articles of termination is ~~[$125.]~~ ***$325.***

2. The fee for filing articles of merger of two or more domestic corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporation.

3. The fee for filing articles of merger of one or more domestic corporations with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid the fees required by NRS 78.760 and 80.050.

4. The fee for filing articles of merger of two or more domestic or foreign corporations must not be less than $325. The amount paid pursuant to subsection 3 must not exceed $25,000.

Sec. 47. NRS 116.3103 is hereby amended to read as follows:

116.3103 1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are ~~[fiduciaries and are]~~ subject to the ***fiduciary duties and*** insulation from liability provided for directors of corporations by the laws of this state. ~~[The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.]~~

2. The executive board may not act on behalf of the association to amend the declaration , ~~[(NRS 116.2117),]~~ to terminate the common-interest community , ~~[(NRS 116.2118),]~~ or to elect members of the executive board or determine their qualifications, powers and duties or terms of office , ~~[(subsection 1 of NRS 116.31034),]~~ but the executive board may fill vacancies in its membership for the unexpired portion of any term.

3. Within 30 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary

of the budget to all the units' owners, and shall set a date for a meeting of the units' owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all units' owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

Sec. 48. NRS 225.140 is hereby amended to read as follows:

225.140 1. Except as otherwise provided in subsection 2, in addition to other fees authorized by law, the secretary of state shall charge and collect the following fees:

For a copy of any law, joint resolution, transcript of record, or other paper on file or of record in his office, other than a document required to be filed pursuant to Title 24 of NRS, per page $1.00

For a copy of any document required to be filed pursuant to Title 24 of NRS, per page ..... .50

For certifying to any such copy and use of the state seal, for each impression 10.00

For each passport or other document signed by the governor and attested by the secretary of state 10.00

For a negotiable instrument returned unpaid 10.00

2. The secretary of state:

(a) Shall charge a reasonable fee for searching records and documents kept in his office.

(b) May charge or collect any filing or other fees for services rendered by him to the State of Nevada, any local governmental agency or agency of the Federal Government, or any officer thereof in his official capacity or respecting his office or official duties.

(c) May not charge or collect a filing or other fee for:

(1) Attesting extradition papers or executive warrants for other states.

(2) Any commission or appointment issued or made by the governor, either for the use of the state seal or otherwise.

(d) May charge a reasonable fee, not to exceed :

(1) Five hundred dollars, for providing service within 2 hours after the time the service is requested; and

(2) One hundred dollars, for providing any other special service, including, but not limited to, providing service more than 2 hours but within 24 hours after the time the service is requested, accepting documents filed by facsimile machine and other use of new technology.

(e) Shall charge a fee, not to exceed the actual cost to the secretary of state, for providing:

(1) A copy of any record kept in his office that is stored on a computer or on microfilm if the copy is provided on a tape, disk or other medium used for the storage of information by a computer or on duplicate film.

(2) Access to his computer data base on which records are stored.

~~[3. All fees collected pursuant to paragraph (d) of subsection 2 must be deposited with the state treasurer for credit to the account for special services of the secretary of state in the state general fund. Any amount remaining in the account at the end of a fiscal year in excess of $2,000,000 must be transferred to the state general fund. Money in the account may be transferred to the secretary of state's operating general fund budget account and must only be used to create and maintain the capability of the office of the secretary of state to provide special services, including, but not limited to, providing service:~~

~~(a) On the day it is requested or within 24 hours; or~~

~~(b) Necessary to increase or maintain the efficiency of the office.~~

~~Any transfer of money from the account for expenditure by the secretary of state must be approved by the interim finance committee.]~~

Sec. 49. NRS 600.340 is hereby amended to read as follows:

600.340 1. A person who has adopted and is using a mark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth, but not limited to, the following information:

(a) Whether the mark to be registered is a trade-mark, trade name or service mark;

(b) A description of the mark by name, words displayed in it ~~[,]~~ or other information;

(c) The name and business address of the person applying for the registration and, if it is a corporation, limited-liability company, limited partnership or registered limited-liability partnership, the state of incorporation or organization;

(d) The specific goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with those goods or services and the class as designated by the secretary of state which includes those goods or services;

(e) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business which must precede the filing of the application; and

(f) A statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the form set forth in the application or in such near resemblance to it as might deceive or cause mistake.

2. The application must:

(a) Be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

(b) Be accompanied by a specimen or facsimile of the mark in duplicate and by a filing fee of ~~[$50]~~ ***$100*** payable to the secretary of state.

3. If the application fails to comply with this section or NRS 600.343, the secretary of state shall return it for correction.

Sec. 50. NRS 600.355 is hereby amended to read as follows:

600.355 1. If any statement in an application for registration of a mark was incorrect when made or any arrangements or other facts described in the application have changed, making the application

inaccurate in any respect without materially altering the mark, the registrant shall promptly file in the office of the secretary of state a certificate, signed by the registrant or his successor or by a member of the firm or an officer of the corporation or association to which the mark is registered, correcting the statement.

2. Upon the filing of a certificate of amendment or judicial decree of amendment and the payment of a filing fee of ~~[$30.]~~ ***$60,*** the secretary of state shall issue, in accordance with NRS 600.350, an amended certificate of registration for the remainder of the period of the registration.

Sec. 51. NRS 600.360 is hereby amended to read as follows:

600.360 1. *The registration of a mark is effective for 5 years from* the date of registration and, upon application filed within 6 months before the expiration of that period, on a form to be furnished by the secretary of state, the registration may be renewed for a successive period of 5 years. A renewal fee of ~~[$25,]~~ ***$50,*** payable to the secretary of state, must *accompany the application for renewal of the registration.*

2. The registration of a mark may be renewed for additional successive 5-year periods if the requirements of subsection 1 are satisfied.

3. The secretary of state shall give notice to each registrant when his registration is about to expire. The notice must be given within the year next preceding the expiration date, by writing to the registrant's last known address.

4. All applications for renewals must include a statement that the mark is still in use in this state.

Sec. 52. NRS 600.370 is hereby amended to read as follows:

600.370 1. A mark and its registration are assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. An assignment must:

(a) Be in writing;

(b) Be signed and acknowledged by the registrant or his successor or a member of the firm or an officer of the corporation or association under whose name the mark is registered; and

(c) Be recorded with the secretary of state upon the payment of a fee of ~~[$50]~~ ***$100*** to the secretary of state who, upon recording the assignment, shall issue in the name of the assignee a certificate of assignment for the remainder of the period of the registration.

2. An assignment of any registration is void as against any subsequent purchaser for valuable consideration without notice, unless:

(a) The assignment is recorded with the secretary of state within 3 months after the date of the assignment; or

(b) The assignment is recorded before the subsequent purchase.

Sec. 53. NRS 600.395 is hereby amended to read as follows:

600.395 The fee for filing a cancellation of registration pursuant to NRS 600.390 is ~~[$25.]~~ ***$50.***

Sec. 54. NRS 78.770 is hereby repealed.

Sec. 55. It is the intent of the legislature in enacting section 1 of this act to codify the equitable doctrine of the common law known as "piercing the corporate veil," "alter ego" or "disregarding the corporate fiction." In

codifying this equitable doctrine, the legislature intends for the provisions of section 1 of this act to preempt entirely the equitable doctrine as it exists in the common law on the effective date of section 1 of this act. Further, it is the intent of the legislature to change the equitable doctrine, pursuant to section 1 of this act, so that a stockholder, director or officer of a corporation may not be made individually liable for a debt or liability of the corporation unless, among other findings, the court finds that the stockholder, director or officer has actually committed fraud in connection with the debt or liability in question.

Sec. 56. Sections 1, 2, 3, 8, 9, 47 and 55 of this act do not apply to any cause of action that accrues before the effective date of this section.

Sec. 57. Notwithstanding the provisions of section 59 of this act to the contrary, the amendatory provisions of section 42 of this act do not apply to the filing of the statement of a professional association, or the fee for that filing, before August 1, 2001, except that a professional association whose anniversary date for the 2001 calendar year falls on or after August 1, 2001, shall comply with that section as amended by this act, even if the filing is made before August 1, 2001.

Sec. 58. The state treasurer shall transfer any balance remaining unexpended on June 30, 2001, in the account for special services of the secretary of state to the state general fund.

Sec. 59. 1. This section and sections 1, 2, 3, 8, 9, 47, 55, 56 and 57 of this act become effective upon passage and approval.

2. Sections 4 to 7, inclusive, 10 to 41, inclusive, 43 to 46, inclusive, 49 to 54, inclusive, and 58 of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On July 1, 2001, for all other purposes.

3. Section 48 of this act becomes effective at 12:01 a.m. on July 1, 2001.

4. Section 42 of this act becomes effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On August 1, 2001, for all other purposes.

TEXT OF REPEALED SECTION

78.770 Filing fees: Articles of merger; articles of exchange.

1. The fee for filing articles of merger of two or more domestic corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee so computed upon the aggregate amount of the total authorized stock of the constituent corporations.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-First Session
May 25, 2001

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 9:09 a.m., on Friday, May 25, 2001, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was video conferenced to the Grant Sawyer State Office Building, Room 4401, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Dina Titus
Senator Valerie Wiener
Senator Terry Care

STAFF MEMBERS PRESENT:

Bradley A. Wilkinson, Committee Counsel
Allison Combs, Committee Policy Analyst
Ann Bednarski, Committee Secretary

OTHERS PRESENT:

Julie Whitacre, Concerned Citizen, Member, Nevada State Education Association
Kenneth Lange, Lobbyist, Nevada State Education Association
Warren B. Hardy II, Lobbyist, National Federation of Independent Businesses
June Hartman, Concerned Citizen
Rose E. McKinney-James, Lobbyist, Clark County School District
Pat A. Zamora, Lobbyist, Clark County School District
Samuel P. McMullen, Lobbyist, Las Vegas Chamber of Commerce
Danny L. Thompson, Lobbyist, Nevada State AFL-CIO

Dean Heller, Secretary of State
Tom R. Skancke, Lobbyist, Nevada Association of Listed Resident Agents, Inc.
John T. Olive, President, Nevada Association of Listed Resident Agents, Inc.
Renee Lacey, Chief Deputy Secretary of State, Office of the Secretary of State
Scott Anderson, Deputy Secretary, Commercial Recordings Division, Office of the Secretary of State
Robert L. Crowell, Lobbyist, Nevada Trial Lawyers Association

Chairman James opened the meeting stating this bill is one of the only pieces of special interest legislation he has introduced because, he said, the special interest is our children. He said Senate Bill (S.B.) 577 is result-oriented and closes numerous loopholes in our system.

SENATE BILL 577: Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

Chairman James described the loopholes as providing services for high-level corporations and business transactions in Nevada for a number of years without any increase in the cost. He explained the 2 for 1 benefit of S.B. 577 as, first, closing loopholes, thereby providing the state with a means of recovering the cost of doing business, and secondly, generating funds to accomplish a critical objective for the state of Nevada. But, he continued, the best thing about this legislation is it does no harm. This bill, Chairman James said, will keep Nevada as the premier state for incorporation, for doing business, and the best state in the country to locate a corporate domicile. "To boot," he added, "an important enhancement for directors of Nevada companies is the protection provided them by law." Basically, Chairman James explained, S.B. 577 adjusts fees for services through the Office of the Secretary State.

Chairman James welcomed questions regarding the adjustments of fees or the technical application of these adjustments and fees encouraging people to come forward and voice their concerns. Should the answer or solution to their query be unresolved during the meeting, the Chairman encouraged those with questions to please submit them in written form as requests for amendments.

Additionally, Chairman James announced the meeting was being video conferenced to the Grant Sawyer State Office Building in Las Vegas. He acknowledged there were a number of people interested in voicing support for

S.B. 577, both in Carson City and in Las Vegas, who have been waiting for a number of days for an opportunity to testify. He mentioned, again, the result-oriented part of the bill; it generates money for our school children. In order to facilitate discussion with the constraints of time, Chairman James asked groups to organize among themselves to accommodate everyone wishing to be heard.

Chairman James elected to have those in Las Vegas testify first, acknowledging they have been there for days waiting for an opportunity to speak. Julie Whitacre, Concerned Citizen, Member, Nevada State Education Association (NSEA), said there was a representative in Carson City prepared to speak for the teachers' organization.

Kenneth Lange, Lobbyist, Nevada State Education Association (NSEA), testified from the committee room in Carson City. He said he represented the nearly 23,000 teachers and education-support personnel who are members of NSEA. Mr. Lange asked to be on record in support of the efforts of the judiciary committee and their work to find more money for resources for the school children of Nevada. He stated every dollar counts, adding to give every school child in Nevada a $10 workbook would cost approximately $4 million. As part of a larger package, Mr. Lange said, the efforts put into this bill would get this state well on its way to improving the education of its children. He expressed appreciation for the efforts put into S.B. 577 and recognized its complexities, concluding his comments with an urging for the two-thirds majority vote required to further its progress in the Legislature.

Senator Washington said he knew that NSEA had worked on S.B. 577 and been involved with the negotiations. He asked Mr. Lange whether the NSEA is seeking more revenues for education from other sources. Senator Washington said the NSEA plan for funding educational programs would assist him in making his decision on S.B. 577.

Mr. Lange responded he did not know, as the focus has been on S.B. 577 and the immediate and pressing need for revenues for schools. He said there is a fundamental need to look at the tax structure of the state of Nevada and make some changes to assure ongoing funding for our schools. The objective, he said, is to find strong, sustained financial support for our children's futures. With our children's education in mind, he said, NSEA will continue to look at every option to make sustained financial support a reality. He said the role of the NSEA is to advocate for our teachers and for our children.

Senator Washington said he is very aware Governor Guinn is most interested in improving education in the state and, therefore, aiming to make it well-funded. No one should be construed as derelict or remiss regarding education obligations, but it is difficult to take care of the needs of all constituents. The rhetoric goes out claiming legislators are not concerned, or are ill informed. If his support for S.B. 577 is then followed by another initiative to fund education, his constituents would be unhappy with his decision. Therefore, he suggested all parties get together and design a workable, comprehensive plan of action. A plan supported by the state and the citizenry makes it is easier to do what is right for our children. Senator Washington explained he has an obligation to answer to his constituents, adding he is very much in support of improving education, but he needs to know what direction is planned.

Mr. Lange responded there has never been a position before where there are more people expressing a need to be proactive and plan for the future. These statements have come, he said, from the Governor, the Chamber of Commerce, and the Nevada State Education Association. Currently, he said, the environment has been shaped for positive dialogue before the legislative session concludes. Mr. Lange said he recognizes an urgency to move the dialogue along in a very timely manner. He said if planning begins now, and objectives are identified, NSEA and the state would be prepared well before the next legislative session. He continued, noting everyone has an opportunity to engage in community dialogue, and the policy-making discourse Nevada deserves and Senate Bill 577 represents.

Senator James agreed Mr. Lange's comments were consistent with his sentiments and objectives, stating the need is to move forward, but admitting S.B. 577 is not the entire solution; rather, it is the "predicate for" the overall solution. The senator expressed appreciation to the NSEA and others for their interest in attempts to draft a workable solution for Nevada's educational problems. Chairman James agreed with Senator Washington's belief the process of finding solutions is better accomplished by harmonious cooperation.

Warren B. Hardy II, Lobbyist, National Federation of Independent Businesses (NFIB), testified there are over 600,000 small businesses in America with 2500 of them located in Nevada. He said 90 percent of NFIB members have six or fewer employees. Mr. Hardy described the organization as membership-driven explaining he is, therefore, unable to comment on S.B. 577 until the members

have voted and therefore voiced their position. However, Mr. Hardy said, he could comment on his perception of S.B. 577. He said he believes it is a commitment on the part of this Legislature to protect small business; furthermore, he is extremely encouraged by the negotiations conducted over the last few days. Mr. Hardy commented on the interest to preserve and protect small business, describing it as unanimous, complete, and bipartisan. Nevada's small businesses, he added, represent 60 percent of the employment in the state. Mr. Hardy voiced his appreciation for the legislative effort and thanked the committee. Chairman James expressed his appreciation to Mr. Hardy for following the process.

Senator Titus asked Mr. Hardy for verification he is pleased with the negotiations resulting in the current draft of Senate Bill 577. She recalled Mr. Hardy did not feel small business was protected in the original drafting of the bill. Mr. Hardy responded:

> That is correct. We felt there were some concerns that had not been anticipated that had unintended consequences in the first legislation. We are much happier with this proposal because . . . This represents a genuine desire to protect small business.

Senator Washington asked for verification S.B. 577 would not hurt minorities who desire to open and operate small businesses. Mr. Hardy responded, from his understanding of the concept, this bill would not be a detriment to starting any type of small business. Mr. Hardy referenced his own family's business, in operation for 45 years in Nevada without problems, stating when the business incorporated, things remained the same. He said he believed most small, incorporated businesses would mirror his family's experience. Senator Washington said he needed to be sure it is on the record.

Chairman James said Mr. Hardy's comments were apropos and consistent with Senator Porter's concern about protecting small business and ensuring small business will not be hurt by this legislation. Senator James mentioned the lady from the coffee shop across the street and invited her to speak on S.B. 577. June Hartman, Concerned Citizen, announced she was the owner of a coffee shop and was in favor of Senate Bill 577.

Senator Porter said he appreciated the presence of Ms. Hartman because, he said, she represents Nevada's small business people. He said he rarely supports

special interest legislation; however, he said, S.B. 577 is three-pronged. He opined challenges are vastly different in schools today than they were, for example, in the 1960s, stating a reason for expulsion from school years ago was, perhaps, chewing gum in class, but today reasons include violence, rape, and broken families. Senator Porter mentioned the crisis in southern Nevada's schools, which are currently in need of hiring hundreds of professional teachers. He said Senate Bill 577 closes long-ignored corporate loopholes and helps teachers and education. Finally, he said, the majority of the Nevada community is expecting accountability. Accountability, he said, is the final prong he was proposing this morning. Senator Porter said accountability must be included because it goes hand in hand with this legislation. Parents, he said, want assurance the dollars raised by this bill go into the classroom, education is funded properly, and the needs of the students are addressed. He said he is proposing an amendment to S.B. 577 requiring an audit to assure parents and teachers the money is being spent responsibly. Senator Porter applauded Senator James for crafting this bill closing corporate loopholes and improving the educational status of the state.

Senator Washington said he appreciated Senator Porter's comments, particularly those related to an audit amendment being added to the bill. He asked to expand the amendment to include an audit in Washoe County as assurance all schools are effectively using resources properly. He said it is important to use the best technology available in schools and anticipated parents and teachers alike would be pleased.

Rose E. McKinney-James, Lobbyist, Clark County School District, thanked the committee for bringing forth S.B. 577, which she said has been anticipated throughout the entire legislative session. Ms. McKinney-James said she had hoped to return to Clark County with some resources desperately needed in the classroom and for teachers. Particularly, Ms. McKinney-James said, the balanced approach, ensuring dollars would go into the classroom for programs already developed, which address both performance and achievement, was needed. She said she looks forward to the opportunity to study Senator Porter's amendment and stated improved accountability is welcome. She added, however, the auditing aspect, hopefully, will not interfere with the primary goal of the schools: to educate our children. Ms. McKinney-James concluded her comments voicing appreciation for the opportunity to participate, and recognized it as a first step in an expanding discussion over the interim.

Senator Porter reiterated and summarized his thoughts stating the goal of this legislation was to enact a needs-based, result-oriented program assuring parents and the community that educational operations are working to reach the goals desired by the people of this state.

Senator Titus asked what an audit of the Clark County School District would cost. She also wanted to know whether the funds acquired by this legislation would be earmarked for a specific use, or whether the school has the authority to choose how the funding is spent. Ms. McKinney-James responded she believed it was the latter choice as nothing, to her knowledge, has been mentioned, specifically. Senator Titus agreed nothing specific was apparent; however, she added, it seemed to be the direction it is going. She asked the position of the school district.

Chairman James said the bill does not contain the entire program because the Governor will be presenting it. The attention of this plan, he said, is designed to give teachers additional compensation, and part of the funds would go directly to specific programs in the Clark County School District, such as enhancement of technology, textbooks, sports, and music programs. He said this is his perception of what the Governor intends to do. Senator Titus asked if another bill would specify these objectives. Chairman James said those specifics would not be part of S.B. 577; instead, they would be addressed in the budget legislation. He explained this money, proposed to be generated by S.B. 577, is $30 million for an education enhancement program to which legislators aim to give 100 percent support. He explained the concept of accountability proposed by Senator Porter would be part of the entire package, but said he doubted it would be included in S.B. 577. He said the money generated from this bill goes into the General Fund and is allocated when the Governor prepares his budget. Chairman James voiced appreciation for Senator Titus' concerns about how the money would be spent. He continued, stating the discussion today resulted in indications some money will go into the classroom, and some money will go towards giving teachers a salary increase. "However," he said, "it is the Governor who will make those decisions, now that the groundwork has begun."

Senator Washington said it should be understood this bill is to support, continue, and enhance education. Chairman James said his intention with this legislation is to find the means to acquire the money to improve Nevada's education. He said the design of S.B. 577 is to create ongoing, fiscally sound funding to keep things going in Nevada.

Pat Zamora, Lobbyist, Clark County School District, said the cost of an audit would be estimated at a maximum of $15,000 a year.

Samuel P. McMullen, Lobbyist, Las Vegas Chamber of Commerce, said he was accompanied by Kami Dempsey, Director of Governmental Affairs, Las Vegas Chamber of Commerce. Mr. McMullen called the discussion today good, stating testimony is better and more supportive than it would have been 2 days ago. He said many concerns existing just days ago have now been satisfied. One of them, he said, was the impact on small business, but he recognizes now that business, especially small business, has been considered and protected. Mr. McMullen mentioned the one-time fee incorporated into S.B. 577, as opposed to an ongoing charge or long-term taxation, caused some concern to business, but has now been addressed satisfactorily.

Mr. McMullen expressed appreciation for all seven members of the judiciary committee who weighed the concerns of everyone involved in the discussions. The statement prepared for May 22 was one of commitment signed by 30 or 40 business groups that very seriously and sincerely endorsed it. It reflected a great amount of effort and a willingness to participate during the interim in planning for solutions. The business community supports the objective of educational enhancement; it is a "critical focus" during the interim planning. Mr. McMullen made a direct and open invitation to others to provide input and ideas, particularly teachers with whom collaboration and communication is vital. He asked that the record reflect the invitation to collaborate and work together to solve common problems was a most serious invitation.

Chairman James said he is "absolutely committed" to working on accomplishing this budget change through the legislative process. He realized the chamber of commerce was a large group of business interests, both large and small. He then related a dinner conversation he recently had with a businessman who supported S.B. 577 "1000 percent" because he believed, from a businessman's point of view, if schools prepared students better, it would ultimately help business. Chairman James thought this story would set the tone for a cooperative effort between businesses and schools.

Mr. McMullen commented about the chairman's experience, stating the chamber of commerce has been having those kinds of conversations for years. "If you think about it . . . the kind of collaboration we're hoping for in the

interim . . . business has no reason or desire to be at war with education. That is not in anyone's best interest." Mr. McMullen said the lifeblood of business, any business, is its employees. The education system creates good employees; the business-related education programs currently offered are there to help the business community. Mr. McMullen stressed the importance of schools and businesses working together. Chairman James thanked Mr. McMullen and expressed the feeling of a new tone of collaboration, cooperation, and harmony between business and education.

Senator Titus said she respected the pledge put forth by Mr. McMullen on behalf of the Las Vegas Chamber of Commerce. But, she said, she is concerned because during the last interim the Governor had great plans and nothing came of the meetings between mining, business, and gaming. Senator Titus said, "Here we are again, piecing together little Band-Aids during the final hours of the Legislature." She said when Senator Porter presented his audit amendment, she would present an amendment calling for a legislative interim committee to study the taxes proposed for business. Then, she continued, it will be a public forum, where everyone can participate and testify. She thanked Mr. McMullen for his invitation to communicate, and said she believed a legislative interim committee would be better than boardrooms and backrooms.

Mr. McMullen said he appreciated Senator Titus' reference to backrooms, adding he believed, whether or not there was a legislative interim committee, the chamber of commerce still needed their process. He said during the last interim there was a need to get all taxpayers involved in the process for their input, but, instead, it was a missing ingredient. Mr. McMullen said some long-term thinking and planning has already been done, and some analysis has begun regarding the status of the state of Nevada in 10 years in terms of needs and revenues. Business, he said, likes long-term projections for planning, and those pieces of information need to be determined by a governmental process.

Senator Titus agreed with Mr. McMullen stating, again, an open forum with discussion with legislators involved throughout the process would be the way to find a collaborative solution. Mr. McMullen responded he did not see a problem with an open forum, adding accountability is an important issue. The objective is to find a way to measure what teachers do in terms of performance. An argument is expected about the issue, but the business community needs to be comfortable with what happens in the classroom. He voiced an interest in expediting the teacher certification process, as Las Vegas currently has a critical

shortage of teachers, and he felt the process of teacher training takes too long. Another consideration to accelerating teacher training is temporary certification as needed. Mr. McMullen said these are some of the considerations to be addressed by the public.

Chairman James commented on the accountability of teachers issue stating there is no need for any law or to do anything to see accountability. He said, "Just go sit in the back of a classroom . . . Pick any classroom in the state and just go sit in a classroom for the whole day and watch what happens." He said he had done this and believed any businessman would "feel a lot better about this issue" if he took the time to make a classroom visit. He said, "It's tremendous what's happening there [even] with the lack of resources."

Senator Care said there are some provisions in S.B. 577 which do not go to funding: the codification of the heightened "clear and convincing evidence" standard and the codification of the "alter ego doctrine." These address the fiduciary responsibility of a corporation to a shareholder, he said. Senator Care said, in the earlier version of this bill, Mr. McMullen took umbrage with these provisions. He asked whether Mr. McMullen had any position on these provisions.

Mr. McMullen replied, "The jury is still out on those [provisions]." He then said he also represents the retail association that met with chamber officials, and the result of the meeting was both sides agreed corporate boards of directors of corporations might need some protections. Chairman James interjected, reliance on financial advisors, and those who give opinions regarding transactions to allow for an "out," need to be included in the provision. Then, he said, a different standard of proof and codifying fraud must be evident before piercing the corporate veil. Mr. McMullen agreed, and admitted there had been little analytical time spent to date on those provisions. Chairman James remarked the new tone about this legislation was evident in Mr. McMullen's remarks.

Senator Porter focused on accountability in his comments. He said he married a teacher and knows firsthand of the trials and tribulations of a professional educator. A child, he said, is in the classroom about 9 percent of a year and, therefore, is somewhere else 91 percent of the time. He noted parents place a lot of trust and faith in their children's teachers, but there is mistrust of those who manage the educational system. Accountability, he said, is welcomed by

teachers who adhere to the standards required of them. Where something is missing, Senator Porter said, is in management, operations, and procedures in allowing a teacher to teach and a parent to be involved. He voiced great respect for the teaching profession, and said he believed parents expect a lot for the 9 percent of a year children spend in school. Senator Porter announced his desire that emphasis be placed on an audit, which focuses on a look at management's hiring practices, spending, and statistics to ensure professionals can do their jobs.

Danny L. Thompson, Lobbyist, Nevada State AFL-CIO, related each year the Nevada State AFL-CIO has two conventions, one is a constitutional meeting, and the other is a political convention. He continued, stating at the last political convention a resolution passed unanimously supporting a quality schools plan presented by the NSEA. Mr. Thompson said the Nevada State AFL-CIO represents 155,000 members and their families, or 360,000 Nevadans. Therefore, to accommodate the concerns of membership, he said, the Nevada State AFL-CIO leaders debate many issues before a position on any given issue is decided. He used the gaming tax as an example of something the organization opposed, stating the position of the Nevada State AFL-CIO was to diversify Nevada's tax base. Mr. Thompson claimed, with Indian gaming and gaming all over the United States, it would be prudent to seek other entities for state revenue in the form of taxes to avoid a financial disaster.

Mr. Thompson talked about the salary of teachers, stating a starting teacher is paid an average of $26,800 per year in Clark County. Garbage truck drivers, he claimed, earn nearly twice as much money as teachers. He identified the problem as the inability to hire dedicated, well-trained teachers, indicating, currently, there is a need for 1200 new teachers and only 500 have been recruited to date. Mr. Thompson said the shortage of 700 professional teachers is directly related to the $26,800 salary. He said Nevada leads the nation in the dropout rate of high school students, adding this number relates to the teenage pregnancy rate and other social problems. He asserted long-term effects of lacking education include 82 percent of prison populations, mostly high school dropouts. Mr. Thompson said the numbers all connect, stating he believed the best educators are not interested in teaching for a salary of $26,800, citing the Las Vegas teacher shortage as an example. He added the business community is also interested in hiring people who have learned some skills, especially math and science. Those skills, he said, are acquired in school.

Mr. Thompson said the Nevada State AFL-CIO, as a group, is committed to solving the problem. He said he was sent to the judiciary committee meeting with a task: "To solve this problem with whatever means we can." Mr. Thompson thanked the committee, and specifically Chairman James, for "having the courage and the leadership to do something about this." Mr. Thompson said:

> We (Nevada State AFL-CIO) pledge to work with this committee and with whomever to solve this problem. It is in all of our best interests, because all the numbers are connected. If we don't solve this problem now, if we wait 2 years . . . We cannot wait 2 years. This problem is manageable today, and in 2 years it will be out of control . . . We will be here through the rest of the process to work with all parties concerned.

Chairman James thanked Mr. Thompson, agreeing it is the fiscally conservative approach to address these problems now. He said once a problem is identified it gets worse if you wait to solve it.

Senator Washington also commended Mr. Thompson on his comments and those of Mr. McMullen, particularly references made to collaborative efforts. The senator said during his tenure as a legislator he worked on welfare reform, and on standards and accountability measures. He applauded other legislators for their dedication to ensure accountability is part of the educational system in areas of hiring, recruiting, and retaining the best teachers to do the best job for our children.

Senator Washington prefaced his concern with, "Maybe this is just philosophical," and continued, saying he has watched schools, visited prisons, counseled young people and their parents, and he has been part of the process of enacting measures to improve education and get parents involved. However, he said, in a prison setting, if one speaks to an inmate and inquires about his reading skills, for example, his family background and, finally, what the inmate says of his educational background, most have poor reading skills, come from either single or broken homes, and assess their education as "not supportive, denigrated, not encouraging, labeling, and, ultimately, a loss of interest in education." He contrasted his own educational experience to what is increasingly prevalent today. Senator Washington said he was fortunate to finish college and complete an apprenticeship.

Senator Washington said, as a consideration for spending more money on education in acts of hiring teachers and increasing their salaries, the quality of a teacher is vitally important for the overall outlook and future of children. He said he was convinced it is the teacher who has the greatest impact on a child's life, except for their parents. He said not clergy or youth counselors, but teachers most influence the demeanor and concept of self in children. With this conviction in mind, Senator Washington believed not only educational background but also the "heart" of a prospective teacher should be considered. He said a quality teacher wants to see students succeed. Senator Washington said it breaks his heart to see youngsters struggling; he knows their destiny is statistically decided very early in life. He urged those involved to take an overall look at the long-term effects of a poor education. He asked the certification processes, the role of principals, the objective of testing, and the effects of micro-management in the classroom be reassessed. Senator Washington said teachers were not his chief concern, but it is the manner of delivery that bothers him. Senator Washington proclaimed:

> When a child walks out of the educational system and can't fill out an application, or can't apply for an apprenticeship program because he can't add, then it tells me something is wrong. And, when you go down to the prison and 90 percent of them can't read, and then you look at the fact that a disproportionate share of inmates are minorities, something's wrong. Something is wrong. I still believe that education is the key to delivering young people out of the trouble that they're in now.

Mr. Thompson responded to Senator Washington, stating his wife was a social worker in the child abuse unit in Clark County. He said teachers are not expected to solve problems of dysfunctional families; a good, strong family unit solves those. Mr. Thompson applauded Senator Washington's work in the prisons and agreed with many of his comments, but said he felt it was unrealistic to think of teachers as the "be all, end all" of our problems. He concluded with a plea to all join together and solve these problems. "If we don't, we're going to have a lot more problems, come two years."

Chairman James said he was most appreciative of testimony from both the business and education communities. He then welcomed Secretary of State Dean Heller, explaining the Secretary of State's office is the machinery to make

all the plans and proposals work. Chairman James publicly commended Mr. Heller for raising the level of his office by dedication to the tasks before him, and making it the machinery to address this critical issue before the committee. Chairman James said there is a commitment to continue helping Nevada have the best Secretary of State's office in the country.

Secretary of State Dean Heller thanked Chairman James and credited Renee Lacy, chief deputy secretary of state, and Scott Anderson, deputy secretary of state, from his office for the effort put forth to bring the S.B. 577 package together. He then expressed appreciation to Chairman James for including his office in the process.

Secretary of State Heller said, in 1991, corporate functions and statutes were revised, providing for broader application and enticements to bring business to Nevada. One of the provisions was flexibility in the Office of the Secretary of State, the purpose of which, he said, was to allow Nevada to compete against 49 other states for business. He added a corporation could file application anywhere. He explained both the Department of Taxation and the Department of Motor Vehicles and Public Safety compete against no one. Secretary of State Heller said, in 1991 a provision was added to the law to produce a special revenue account giving the flexibility needed to be competitive. He said S.B. 577 alters the flexibility clause somewhat; it is an issue of concern. The Office of the Secretary of State does not want to lose the competitiveness or the flexibility against the other states, he declared. Secretary of State Heller specifically addressed section 58 of S.B. 577 stating, as currently drafted, it would cause an immediate loss of $2 million in payroll and $1.5 million used for technology. He added he was aware the intent was not to cause loss, but reiterated special revenue operating funds placed in the general fund budget account were problematic.

Chairman James acknowledged he was aware of the concern and had already discussed the issue with the Governor and the chairman of finance. He declared his commitment to the Office of the Secretary of State. Secretary of State Heller stated he knew Chairman James' position. Mr. Heller did not want to see fees raised and services cut, pointing out 6 years ago it took 6 to 8 weeks to do a corporate filing, and today it takes, through the special revenue fund, 2 to 3 days. He said those are the type of services Nevada needs to maintain in order to continue to be an attractive place in which to incorporate.

One other concern voiced by the Secretary of State was the continuance of the declaration, "under penalty of perjury," instead of an affidavit. He explained his office experienced a 30 percent rejection rate because businesses forget to file the affidavits, and the "under penalty of perjury" would help the office continue to render efficient service. Chairman James said this issue would be addressed in bill drafting. He repeated this legislation would not be possible without the help of the Office of the Secretary of State and, specifically, of Mr. Heller.

Chairman James then introduced S.B. 51, a corporate business bill addressing similar issues to those of S.B. 577.

SENATE BILL 51: Makes various changes pertaining to business associations. (BDR 7-255)

He explained S.B. 51 had to be processed to concur with the Assembly prior to addressing S.B. 577, which is pending for today on the Senate Floor.

SENATOR MCGINNESS MOVED TO CONCUR WITH THE ASSEMBLY AMENDMENTS TO S.B. 51.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chairman James called a recess of the meeting at 10:32 a.m.

Chairman James reconvened the meeting and called the meeting to order at 4:05 p.m. He announced the committee would hear further testimony on Senate Bill 577.

Tom R. Skancke, Lobbyist, Nevada Association of Listed Resident Agents, Inc., introduced the president of the association John T. Olive. Mr. Skancke voiced support for S.B. 577 and was interrupted by Chairman James, who wanted to publicly thank both Mr. Skancke and Mr. Olive and their clients for making suggestions and actively working on solutions. Chairman James stated there is a reliance on this organization to work closely with the Secretary of State's

office and make known to the business community the annual fee is not being raised.

Mr. Skancke said the suggested language changes in the amendment, initially removed, now need to be reinstated (Exhibit C). He suggested staff from the Office of the Secretary of State, also requesting changes, join him in drafting an amendment for these desired changes.

Chairman James explained why he did not agree with these proposed changes. John Olive, President, Nevada Association of Listed Resident Agents, Inc., accepted Chairman James' explanation and stated if the Office of the Secretary of State concurred, he would too. Chairman James verified with Ms. Lacey (Renee Lacey, Chief Deputy Secretary of State) there is no problem with the language of S.B. 577. Mr. Skancke said, after a review with the committee and Ms. Lacey regarding each suggested change, most questions are answered and his concerns are satisfied. The changes are also consistent with the proposals from the Office of the Secretary of State.

Mr. Olive stated, for the record, appreciation for the work and effort by the judiciary committee on S.B. 577. He said the committee addressed a very important issue to business organizations in the state. Mr. Olive continued, saying there is a dire need for assistance to improve the quality of education in the state. He said the corporate citizens of Nevada feel a responsibility to step forward and offer assistance. He added the corporate fee increase represented a serious attempt to help. Mr. Olive commended the legislators for their strong desire to earmark these fees for the betterment of education, and committed his organization to an ongoing involvement in assuring it happens. Mr. Olive concluded, stating:

> We are in firm support of the need to enhance the quality of the education here in the state. We appreciate the responsiveness of Senator James and others of the committee that have participated in this process in addressing some of our concerns. We believe that the fee increase represents a way of augmenting funding to the state in a way that will help the state to enhance opportunities for economic development as well as growing small businesses here in the state . . . We wanted to just simply express our appreciation and say we are committed to this as an ongoing agenda item for our group to be involved in this.

Chairman James thanked Mr. Olive for his testimony and commentary.

Chairman James then addressed the section of S.B. 577 dealing with the placement of funds generated by this corporate fee increase, stating, for the record:

> The increased fees and the new money generated by this bill from those kinds of fees will go to the General Fund and will be part of the money that is utilized in the way the bill is intended, and the Governor just outlined. The rest of it (special services/revenue funds) will continue to be used in your office (Secretary of State) in the way it has been done . . . The bill drafters are coming up with that specific language so that, in fact, it will not be removed from the secretary of state's budget.

Renee Lacey, Chief Deputy Secretary of State, Office of the Secretary of State, responded to Chairman James' statement, commenting it allays the fears of the Secretary of State. She added the Office of the Secretary of State is already working with the bill drafters, and thanked Chairman James.

Senator Washington asked Ms. Lacey to verify the change regarding affidavits. Ms. Lacey said the change was the word, "affidavits," which has been replaced with the phrase "declaration under penalty of perjury." She said there is an amendment addressing the language change in every appropriate section of S.B. 577 (Exhibit D).

Chairman James asked Scott Anderson, Deputy Secretary of State, Commercial Recordings Division, Office of the Secretary of State, to explain the amendments proposed by his office. Chairman James asked Senator McGinness to preside over the meeting, temporarily.

Senator McGinness invited Ms. Lacey and Mr. Anderson to proceed with the explanation of the amendments.

Ms. Lacey said the first several amendments address Senator Washington's question on the change in language. She said in another proposed amendment, a compromise was reached regarding raising the cap, and explained there would be an amendment allowing her office to take some funds from special services

funds for additional space and additional employees. She said, the fiscal impact and increased number of positions in the Office of the Secretary of State will be online on July 1, 2001, stating the filing forms have to be revised and the office anticipates an increase in business from the liability provisions (Exhibit D).

Senator McGinness asked whether the compromise would be part of S.B. 577. Bradley A. Wilkinson, Committee Counsel, Legal Division, Legislative Counsel Bureau, answered affirmatively.

Ms. Lacey said the other concern was the effective date, stating the amendment proposed a change from July 1 to August 1, 2001. She defended the request, saying the forms have to be revised, and most filings will be rejected simply because there will not be adequate time to give notification of the change in fees without this date change.

Senator McGinness suggested changing all the effective dates to August 1. Ms. Lacey replied only Section 59 of S.B. 577 required a change to August 1, 2001 (Exhibit D).

Senator Care questioned the projections made by the Office of the Secretary of State. Mr. Anderson responded the figures proposed by the resident agents were based upon revenue in volume figures provided by the secretary of state's office 2 weeks ago. He said the estimate of the initial list appeared to be 19,000 filings, but, after working through them, the number of filings appears to be closer to 17,000.

Chairman James returned and resumed presiding over the meeting.

Robert L. Crowell, Lobbyist, Nevada Trial Lawyers Association, began his testimony by calling attention to serious concerns with the immunity language in sections 1 and 3 of S.B. 577. He submitted proposed amendments to the bill (Exhibit E). Chairman James asked him to explain the use of the word "or" instead of "and" in section 3 of S.B. 577. Mr. Crowell responded this change is consistent with existing law. Chairman James said as a matter of prudence, the Legislative Counsel Bureau (LCB) would be consulted on the use of the word "or."

Chairman James then announced a work session to fine-tune the amendments would be convened tomorrow after the floor session, explaining he did not want to eliminate something that would decrease authority.

Senator Care asked Mr. Crowell about shortening the statute of limitations from 3 years to 2 years. Mr. Crowell responded the preference was to leave it as it is at 3 years, but added the issue was not discussed.

Mr. Skancke asked for some clarification of Mr. Crowell's proposed amendments to S.B. 577. He stated he was not an attorney and wanted to know how this changes the bill. Chairman James answered, "It takes out the alter-ego issue, and then it removes the 'clear and convincing evidence' standard, but leaves in place the blanket limitation on liability for officers and directors and lessens the breach of fiduciary duties or intentional misconduct."

Mr. Olive then said his concern is elimination of the phrase, "clear and convincing evidence standard" would weaken the attractiveness of doing business in Nevada. He said the nature of other corporate statutes, including this phrase, would be a positive step for the state, because, he explained, it would make it more difficult to attack an officer or a director from the outside. He said he liked the elevation of that standard of proof from "preponderance" to "clear and convincing."

Senator Titus responded to Mr. Olive stating, "Nevada is already attractive enough for businesses to come." She said the "clear and convincing" phrase was codified long ago, and conditions have changed considerably. Therefore, she did not think it was needed anymore. She continued, pointing out there is no corporate income tax, and fees remain much lower than anyplace else, and, she added, with the inclusion of the opt-out protection, Nevada is still better than Delaware or Wyoming.

Senator Washington said he also is not a lawyer, but thought "clear and convincing evidence" had a significant impact on corporations in regard to piercing the corporate veil. He said he was not convinced it was wise to delete the phrase. Senator Titus said the standard on other civil cases is not as high. She said "clear and convincing evidence" is a standard used in criminal cases. Senator Care added he applauds the chairman for his work on S.B. 577 and, in an effort to address Senator Washington's concern, said the focus should be on

the fees to enhance education, which has been done. Therefore, he added, liability is not the issue.

Mr. Olive joined the conversation, stating the introduction of a higher standard or a "clear and convincing evidence" standard exists only in a couple of other states where it is associated with establishing liability on the part of a corporate principal. Therefore, Nevada would not be the first, and he mentioned Ohio as one state using this standard. "The value of it is that it makes it more attractive for an individual to step forward as a corporate principal and participate in the business start-up," Mr. Olive said. He said Nevada corporation statutes invite small businesses to set up here. Mr. Olive added he would like to see the statutes as encouraging and attractive to market from his business vantage. Mr. Olive then proclaimed:

> There is no other industry in the state of Nevada that is as energetic with regard to the advertising and marketing of the state of Nevada and the things that make it attractive in the business arena as our industry. We recognize this as something that would be important in furthering our efforts to market Nevada across the country.

Mr. Olive continued, asserting "clear and convincing evidence" does increase the level of protection. He said Mr. Crowell's comments regarding section 1 are true; therefore, his interest is only in preserving a new standard of proof, giving more protection to corporate principals.

Senator Washington reminded the committee of a testifier in the previous day's meeting who said he would not object to higher fees if he could retain "clear and convincing evidence" and reduce the liabilities of corporate officers. Senator Washington asked if lowering the fees, but eliminating the higher standard, reduces the appeal of Nevada for business interests.

Mr. Olive answered he did not believe it accurate to equate the impact of the level of fees with the importance attached to increased protection. He said the level of increased protection proposed in S.B. 577 is critical to increase the attractiveness of the state of Nevada.

Chairman James asked for other testimony on S.B. 577. Senator Porter said he wanted to refer back to his comments from this morning, specifically, the portion regarding an audit. He said since this morning he had discussed the bill with Chairman James and staff and concluded S.B. 577 is not the appropriate place to include an auditing section. Senator Porter said an audit section would be added to some other, more appropriate, legislation. Chairman James offered to work with Senator Porter drafting other legislation necessary for inclusion in the education enhancements.

Chairman James closed the hearing on S.B. 577. He said it would be appropriate to move the bill and summarized the proposed amendments. He explained the amendments proposed by the Office of the Secretary of State, with the exception of an increase in cap, would be reworded by the LCB staff to include language to distribute funds to the Secretary of State and the General Fund, as discussed.

Senator Titus asked Chairman James about the increase in staff for the Office of the Secretary of State to accommodate the changes in corporate fees. Ms. Lacey said there is an amendment to provide not only additional employees, but also more space. Mr. Wilkinson confirmed the amendment for these needs would be part of S.B. 577. Ms. Lacey said the fiscal department had participated in the discussion of this amendment and approved it. Chairman James said he would verify this with the finance committee chairman.

The trial lawyers' amendments, Senator James said, were discussed, and the language would be changed as proposed.

After a brief time without commentary from anyone, Chairman James asked whether everyone understood the amendments. He asked for a motion to amend and do pass on that basis.

SENATOR TITUS MOVED TO AMEND AND DO PASS S.B. 577.

SENATOR WIENER SECONDED THE MOTION.

Senator Washington said he still believed "clear and convincing evidence" was important to the bill. He said he supports the bill on the merits of helping education, but he felt it a mistake to delete such protection. He reminded

Chairman James the language was part of the original draft. Chairman James referred to the amended bill as "a good compromise."

THE MOTION CARRIED UNANIMOUSLY.

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Chairman James announced he would present Senate Bill 577 on the Senate Floor. He adjourned the meeting at 4:58 p.m.

RESPECTFULLY SUBMITTED:

Ann Bednarski,
Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE: 9-30-01

AMENDMENTS TO SENATE BILL NO. 577

P.3. Sec. 4(1)***(f) A designation of its resident agent in this state.***

Sec. 4(1)(3) Requirement that an affidavit be included in the initial and annual list attesting compliance with NRS 354A be replaced with language requiring a statement declaring, signed by an officer or agent of the corporation, under penalty of perjury as to the compliance of the corporation with NRS 364A.

P.4. Sec. 4(5) lines 9 and 10, the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

Sec. 5, lines 28 and 29, the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P.6. Sec. 10(1), line 45, "If the amount represented by the ***aggregate*** total number of ***authorized*** shares provided fort in the articles or agreement is:

P. 9, Sec. 16(1), lines 32-34, the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P. 10, Sec. 17, lines 4,5, the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P. 10, Sec. 19(1)(a), line(s) 29, the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P.11. Sec. 20(1)***(f) A designation of its resident agent in this state.***

P.11. Sec. 20(3) Requirement that an affidavit be included in the initial and annual list attesting compliance with NRS 354A be replaced with language requiring a statement declaring, signed by an officer or agent of the corporation, under penalty of perjury as to the compliance of the corporation with NRS 364A.

P. 11 Sec 20(4) the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P. 11 Sec. 20(4)(b) lines 35, 36 [~~or certifying that no changes have occurred~~]

P. 11. Sec. 20(5) lines 42, 43 the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P. 11. Sec. 20(5)(b) lines 43, 44 [~~or a certification of no changes.~~]

P. 12. Sec. 21 line 6, the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P. 15. Sec. 29(1) ***(f) A designation of its resident agent in this state.***

P. 15. Sec.29 lines 8-10 Requirement that an affidavit be included in the initial and annual list attesting compliance with NRS 354A be replaced with language requiring a statement declaring, signed by an officer or agent of the corporation, under penalty of perjury as to the compliance of the corporation with NRS 364A.

P. 15. Sec.29(2) line 11, the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P. 15. Sec.29(3) line 19,20, the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P. 17. Sec. 33(1) ***(f) A designation of its resident agent in this state.***

P. 17. Sec.33 lines 8-10 Requirement that an affidavit be included in the initial and annual list attesting compliance with NRS 354A be replaced with language requiring a statement declaring, signed by an officer or agent of the corporation, under penalty of perjury as to the compliance of the corporation with NRS 364A.

P. 17. Sec.33(2) line 11, the language of this subsection that has been stricken should be included in the bill to be consistent with and reflect the name of the form that has been provided by the Secretary of State's office for the filing of these lists.

P. 19. Sec. 37(1) line 11-13, Requirement that an affidavit be included in the initial and annual list attesting compliance with NRS 354A be replaced with language requiring a statement declaring, signed by an officer or agent of the corporation, under penalty of perjury as to the compliance of the corporation with NRS 364A.

P. 21. Sec. 42(1) lines 12-14, Requirement that an affidavit be included in the initial and annual list attesting compliance with NRS 354A be replaced with language requiring a statement declaring, signed by an officer or agent of the corporation, under penalty of perjury as to the compliance of the corporation with NRS 364A.

P. 23 Sec. 46(4) line 30 ***...pursuant to subsections 2 and 3***

Exhibit D

PROPOSED AMENDMENT TO S.B. 577

OFFERED BY SECRETARY OF STATE DEAN HELLER

May 25, 2001

Amend Section 4, subsection 3, at page 3 of the bill, lines 45 and 46 by deleting the words "an affidavit" and inserting the words "a declaration under penalty of perjury"

Amend Section 16, subsection 1(c), at page 9 of the bill, lines 32 and 33 by deleting the words "an affidavit" and inserting the words "a declaration under penalty of perjury"

Amend Section 20, subsection 3, at page 11 of the bill, line 29 by deleting the words "an affidavit" and inserting the words "a declaration under penalty of perjury"

Amend Section 29, subsection 1(e), at page 15 of the bill, lines 8 and 9 by deleting the words "an affidavit" and inserting the words "a declaration under penalty of perjury"

Amend Section 33, subsection 1(e), at page 17 of the bill, lines 8 and 9 by deleting the words "an affidavit" and inserting the words "a declaration under penalty of perjury"

Amend Section 37, subsection 1, at page 19 of the bill, line 12 by deleting the words "an affidavit" and inserting the words "a declaration under penalty of perjury"

Amend Section 42, subsection 1, at page 21 of the bill, line 13 by deleting the words "an affidavit" and inserting the words "a declaration under penalty of perjury"

Amend Section 48, at page 25 of the bill by deleting the deleted language in subsection 3 and changing $2,000,000 in subsection 3, line 5, to $3,000,000.

Amend the bill as a whole by deleting Section 58 in its entirety, and renumbering section 59 as 58.

Amend Section 59 of the bill, subsection 1(b) at page 27, line 29 by deleting "July" and inserting "August"

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EXHIBIT D Senate Committee on Judiciary

Date: 5-25-01 Page 1 of 1

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GARD474

Presented by Nevada Trial Lawyers May 25, 2001

Section 1. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

~~*1. Except as otherwise provided by specific statute, no stockholder, director or officer of a corporation formed under the laws of this state is individually liable for a debt or liability of the corporation, without regard to whether a court determines that the stockholder, director or officer should be considered the alter ego of the corporation or that the corporate fiction of a separate entity should be disregarded for any other reason, unless:*~~

~~*(a) Otherwise provided in an agreement to which the stockholder, director or officer is a party; or*~~

~~*(b) A court of competent jurisdiction finds by clear and convincing evidence that:*~~

~~*(1) The corporation is influenced and governed by the stockholder, director or officer;*~~

~~*(2) There is such unity of interest and ownership that the corporation and the stockholder, director or officer are inseparable from each other; and*~~

~~*(3) Adherence to the corporate fiction of a separate entity would sanction fraud.*~~

~~*2. For a court to make a finding in satisfaction of subparagraph (3) of paragraph (b) of subsection 1, the court must find that the stockholder, director or officer has committed fraud in connection with the debt or liability of the corporation.*~~

Sec. 2. NRS 78.037 is hereby amended to read as follows:

78.037 The articles of incorporation may also contain[~~:~~

~~1. A provision eliminating or limiting the personal liability of a director or officer to the corporation or its stockholders for damages for breach of fiduciary duty as a director or officer, but such a provision must not eliminate or limit the liability of a director or officer for:~~

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

~~(b) The payment of distributions in violation of NRS 78.300.~~

~~2. Any~~] *any* provision, not contrary to the laws of this state[~~, for~~] *:*

1. For the management of the business and for the conduct of the affairs of the corporation[~~, and any provision creating,~~] *;*

2. Creating, defining, limiting or regulating the powers of the corporation or the rights, powers or duties of the directors, [~~and~~] *the officers or* the stockholders, or any class of the stockholders, or the holders of bonds or other obligations of the corporation[~~, or governing~~] *; or*

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

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

78.138 1. Directors and officers shall exercise their powers in good faith and with a view to the interests of the corporation.

2. In performing their respective duties, directors and officers are entitled to rely on information, opinions, reports, books of account or statements, *including financial statements and other financial data,* that are

prepared or presented by:

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

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

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

but a director or officer is not entitled to rely on such information, opinions, reports, books of account or statements if he has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted.

3. Directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation.

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

(a) The interests of the corporation's employees, suppliers, creditors and customers;

(b) The economy of the state and nation;

(c) The interests of the community and of society; and

(d) The long-term as well as short-term interests of the corporation and its stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.

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

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

7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270, 668.045 and 694A.030, a director or officer is not individually liable <u>to the corporation or its stockholders</u> for any damages as a result of any act or failure to act in his capacity as a director or officer unless ~~it is proven by clear and convincing evidence that:~~

(a) His act or failure to act constituted a breach of his fiduciary duties as a director or officer; ~~and~~ <u>or</u>

(b) His breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

MINUTES OF THE
SENATE COMMITTEE ON FINANCE

Seventy-First Session
May 26, 2001

The Senate Committee on Finance was called to order by Chairman William J. Raggio at 8:19 a.m., on Saturday, May 26, 2001, in Room 2134 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator William J. Raggio, Chairman
Senator Raymond D. Rawson, Vice Chairman
Senator Lawrence E. Jacobsen
Senator Bob Coffin
Senator Bernice Mathews

COMMITTEE MEMBERS ABSENT:

Senator William R. O'Donnell (Excused)
Senator Joseph M. Neal Jr. (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Vonne S. Chowning, Clark County Assembly District Number 28
Assemblyman Richard D. Perkins, Clark County Assembly District Number 23
Assemblywoman Sheila Leslie, Washoe County Assembly District Number 27
Assemblywoman Bonnie L. Parnell, Assembly District Number 40

STAFF MEMBERS PRESENT:

Gary L. Ghiggeri, Senate Fiscal Analyst
Bob Guernsey, Principal Deputy Fiscal Analyst
Jennifer Ruedy, Committee Secretary

OTHERS PRESENT:

Daryl E. Capurro, Lobbyist, Nevada Motor Transport Association
Wm. Gary Crews, CPA, Legislative Auditor, Audit Division, Legislative Counsel Bureau
Daniel G. Miles, Vice Chancellor, Finance and Administration, System Administration Office, University and Community College System of Nevada
Paula Berkley, Lobbyist, EduCare, Community Living Corporation
Brian L. Lahren, Lobbyist, Washoe Association for Retarded Citizens Inc.
Don Hataway, Deputy Director, Budget Division, Department of Administration
Charles Duarte, Medicaid Administrator, Division of Health Care Financing and Policy, Department of Human Resources
Bob Gagnier, Lobbyist, State of Nevada Employees Association (SNEA)
Jeanne Greene, Director, Department of Personnel
Tom Tatro, Fiscal Manager, Management Services and Programs Division, Department of Motor Vehicles and Public Safety

Mr. Ghiggeri stated Exhibit L consists of one page reflecting the revised amounts in the "one-shot" appropriation and the second page indicates the Secretary of State's original request. He noted that if the committee chooses to approve the revised amounts, staff recommends adding the language "and promotional materials for commercial recordings division" at the end of line three of the bill. He pointed out $50,000 is recommended for each year of the biennium in the revised amounts for promotional materials for Commercial Recordings Division, which does not "fall within the definitions in the bill."

Senator Coffin said he believed this is the third bill requesting huge appropriations for the Office of the Secretary of the State. He suggested it would be appropriate to consider the three different measures and pending legislation potentially affecting the Office of the Secretary of the State simultaneously.

Senator Raggio responded that he believed staff had been doing just as Senator Coffin recommended.

Mr. Ghiggeri commented staff worked with the Office of the Secretary of the State to revise the appropriation amount. He pointed out he had also met with representatives of the Office of the Secretary of the State the previous afternoon to discuss some issues regarding S.B. 577.

SENATE BILL 577: Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain *documents with secretary of state. (BDR 7-1547)*

Senator Coffin pointed out S.B. 577 was amended the previous day.

Mr. Ghiggeri commented that a portion of the proceeds resulting from S.B. 577 would fund six new staff for the Office of the Secretary of the State and rental computer hardware, software, and supplies to perform the necessary functions provided in the bill. He pointed out the funding for the operation of that program is linked to the legislation. If the legislation is not approved, then the funding would not be approved, he added.

Senator Coffin inquired about the reliability of the revenue numbers projected in S.B. 577, and whether the potential departure of corporations has been sufficiently taken into consideration. He said he was not trying to block S.B. 464, but he suggested a few more days to review information regarding the bill might be appropriate. He stated some of the figures might be "soft."

Mr. Hataway said S.B. 577 is a "stand alone issue." He noted S.B. 464 is primarily composed of replacement equipment requests, which are necessary for the continuation of business at the Office of the Secretary of the State.

Senator Raggio asked what the total revised appropriation amount would be for S.B. 464.

Mr. Ghiggeri responded the total revised appropriation amount is $467,617. He reminded the committee the additional language "and promotional materials for commercial recordings division" would need to be provided at the end of line three of the bill if the revised appropriation is approved.

Senator Raggio inquired whether the committee had any objections to processing the bill with the revised appropriation amounts. The committee members voiced no objections.

SENATOR MATHEWS MOVED TO AMEND S.B. 464 TO INCLUDE THE LANGUAGE "AND PROMOTIONAL MATERIALS FOR COMMERCIAL RECORDINGS DIVISION" AT THE END OF LINE THREE OF THE BILL AND TO REVISE THE APPROPRIATED AMOUNTS AS OUTLINED IN EXHIBIT L AND TO DO PASS AS AMENDED.

SENATOR JACOBSEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NEAL AND O'DONNELL WERE ABSENT FOR THE VOTE.)

*****

SENATE BILL 491: Makes appropriation to Opportunity Village Foundation. (BDR S-1354)

Senator Raggio explained Ed Guthrie, Executive Director, Opportunity Village Association of Retarded Citizens (ARC) Las Vegas, provided testimony at the hearing on April 18, 2001, indicating the appropriation is intended to revitalize thrift stores operated by the Opportunity Village Foundation.

Mr. Ghiggeri stated staff would recommend including language to require a detailed report of the expenditures be provided to the next Legislature and to require the reversion of any unspent funds.

SENATOR JACOBSEN MOVED TO AMEND S.B. 491 TO PROVIDE FOR A REVERSION OF ANY UNSPENT FUNDING AND TO REQUIRE AN EXPENDITURE REPORT BE PROVIDED TO THE 2003 LEGISLATURE AND TO DO PASS AS AMENDED.

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NEAL AND O'DONNELL WERE ABSENT FOR THE VOTE.)

*****

SENATE BILL 494: Creates Nevada protection account in state general fund. (BDR 31-1430)

Senator Raggio stated S.B. 494 was heard by the committee on April 16, 2001. He explained the Governor originally requested $5 million for the protection of the state to fund activities to prevent the location of the nuclear waste repository in Nevada. He said the Governor recently recommended the appropriation amount be reduced to $4 million. The funding is intended for potential legal expenses, he added. He indicated he would accept a motion to amend the bill to provide a $4 million appropriation and to do pass the bill as amended. He commented this issue is of great interest to the legislators, and the committee should issue a Letter of Intent requesting periodic reports of this account.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-First Session
May 26, 2001

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 2:40 p.m., on Saturday, May 26, 2001, on the Senate Floor of the Legislative Building, Carson City, Nevada. There was no Agenda. There was no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Dina Titus
Senator Valerie Wiener
Senator Terry Care

STAFF MEMBERS PRESENT:

Johnnie Willis, Committee Secretary

Chairman James opened the floor meeting on Senate Bill (S.B.) 577.

SENATE BILL 577: Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

Senator James requested a motion to rescind the amendment to S.B. 577 that was adopted by the committee on May 24, 2001.

In response, Senator Titus inquired whether rescinding the amendment to S.B. 577 would provide more protection, or less protection, for housing association cooperative (co-op) chairmen than it would for corporate boards of directors.

Senator James answered it would leave association boards as they are under current law.

Senator Titus stated, in that event, the action would "water down" the legislation and she could not support it.

SENATOR WASHINGTON MOVED TO RESCIND THE AMENDMENT TO S.B. 577 ADOPTED BY THE SENATE COMMITTEE ON JUDICIARY ON MAY 24, 2001.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TITUS, SENATOR WIENER, AND SENATOR CARE VOTED NO.)

*****

The meeting was adjourned at 2:43 p.m.

RESPECTFULLY SUBMITTED:

Barbara Moss
Barbara Moss,
Committee Secretary

APPROVED BY:

Mark A. James
Senator Mark A. James, Chairman

DATE: 6-14-01

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-First Session
May 26, 2001

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 2:43 p.m., on Saturday, May 26, 2001, on the Senate Floor of the Legislative Building, Carson City, Nevada. There is no Agenda. There is no Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Dina Titus
Senator Valerie Wiener
Senator Terry Care

STAFF MEMBERS PRESENT:

Johnnie Willis, Committee Secretary

Chairman James entertained a motion to amend and do pass Senate Bill (S.B.) 577.

SENATE BILL 577: Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

SENATOR PORTER MOVED TO AMEND AND DO PASS S.B. 577.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

The meeting was adjourned at 2:45 p.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE: 6-14-01

employed as a full-time salaried fireman or emergency medical attendant in this state shall submit to a blood test to screen for hepatitis on or before November, 1, 2001. The blood test must be paid for by the employer of the person. If a person fails to submit to a blood test required by this subsection, the conclusive presumption relating to hepatitis otherwise created by section 4 of this act shall be deemed with regard to that person and for the purposes of section 4 of this act to be a rebuttable presumption that may only be rebutted by clear and convincing evidence that the hepatitis was not contracted during the period in which the person was employed as a full-time salaried firefighter or emergency medical attendant.

3.".

Amend sec. 5, page 5, lines 22 and 23, by deleting: "the conclusive presumption relating to hepatitis created by" and inserting: "a rebuttable presumption that the hepatitis arose out of and in the course of his employment and is compensable in accordance with".

Amend sec. 5, page 5, line 24, after "NRS." by inserting: "The presumption may only be rebutted by clear and convincing evidence that the hepatitis was not contracted during the period in which the person was employed as a full-time salaried firefighter or emergency medical attendant.".

Amend sec. 5, page 5, line 25, by deleting "3." and inserting "4.".

Amend sec. 5, page 5, line 29, by deleting "NRS." and inserting: "NRS, whose primary duties of employment are the provision of emergency medical services.".

Amend the title of the bill to read as follows:

"AN ACT relating to occupational diseases; creating statutory presumptions that hepatitis is an occupational disease for certain firemen and emergency medical attendants; establishing requirements of eligibility for the statutory presumptions; requiring the testing of such employees for the presence of hepatitis; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows:

"SUMMARY—Creates statutory presumptions that hepatitis is occupational disease for certain employees. (BDR 53-843)".

Senator Townsend moved the adoption of the amendment.

Remarks by Senator Townsend.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio moved to consider Senate Bill No. 577 next on the General File.

Remarks by Senator Raggio.

Motion carried.

GENERAL FILE AND THIRD READING

Senate Bill No. 577.

Bill read third time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 1079.

Amend section 1, page 1, by deleting lines 12 and 13 and inserting: "*(b) A court of competent jurisdiction finds that:*".

Amend sec. 3, page 3, by deleting lines 21 and 22 and inserting: "*in his capacity as a director or officer unless it is proven that:*".

Amend sec. 4, page 3, line 38, by deleting "and" and inserting "~~[and]~~".

Amend sec. 4, page 3, line 39, after "(e)" by inserting: "*The name and street address of the resident agent of the corporation; and*

(f)".

Amend sec. 4, page 3, lines 45 and 46, by deleting "*an affidavit*" and inserting: "*a declaration under penalty of perjury*".

Amend sec. 16, page 9, lines 32 and 33, by deleting "*an affidavit*" and inserting: "*a declaration under penalty of perjury*".

Amend sec. 20, page 11, line 15, by deleting "and" and inserting "~~[and]~~".

Amend sec. 20, page 11, line 16, after "(e)" by inserting: "*The name and street address of the resident agent of the limited-liability company; and*

(f)".

Amend sec. 20, page 11, line 29, by deleting "*an affidavit*" and inserting: "*a declaration under penalty of perjury*".

Amend sec. 29, page 15, line 5, by deleting "and" and inserting "~~[and]~~".

Amend sec. 29, page 15, line 6, after "(e)" by inserting: "*The name and street address of the resident agent of the registered limited-liability partnership; and*

(f)".

Amend sec. 29, page 15, lines 8 and 9, by deleting "*an affidavit*" and inserting: "*a declaration under penalty of perjury*".

Amend sec. 33, page 17, line 5, by deleting "and" and inserting "~~[and]~~".

Amend sec. 33, page 17, line 6, after "(e)" by inserting: "*The name and street address of the resident agent of the limited partnership; and*

(f)".

Amend sec. 33, page 17, lines 8 and 9, by deleting "*an affidavit*" and inserting: "*a declaration under penalty of perjury*".

Amend sec. 37, page 19, line 12, by deleting "*an affidavit*" and inserting: "*a declaration under penalty of perjury*".

Amend sec. 42, page 21, line 13, by deleting "*an affidavit*" and inserting: "*a declaration under penalty of perjury*".

Amend sec. 47, page 23, by deleting lines 36 through 40 and inserting: "fiduciaries . ~~[and are subject to the insulation from liability provided for directors of corporations by the laws of this state.]~~ The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business-judgment rule.".

Amend sec. 48, page 25, by deleting lines 2 through 14 and inserting:

"3. ~~[All fees]~~ *From each fee* collected pursuant to paragraph (d) of subsection 2 *:*

(a) The entire amount or $50, whichever is less, of the fee collected pursuant to subparagraph (1) of that paragraph and half of the fee collected pursuant to subparagraph (2) of that paragraph must be deposited with the state

treasurer for credit to the account for special services of the secretary of state in the state general fund. Any amount remaining in the account at the end of a fiscal year in excess of $2,000,000 must be transferred to the state general fund. Money in the account may be transferred to the secretary of state's operating general fund budget account and must only be used to create and maintain the capability of the office of the secretary of state to provide special services, including, but not limited to, providing service:

~~[(a)]~~ *(1)* On the day it is requested or within 24 hours; or

~~[(b)]~~ *(2)* Necessary to increase or maintain the efficiency of the office.

Any transfer of money from the account for expenditure by the secretary of state must be approved by the interim finance committee.

(b) After deducting the amount required pursuant to paragraph (a), the remainder must be deposited with the state treasurer for credit to the state general fund.".

Amend the bill as a whole by deleting sec. 58 and adding a new section designated sec. 58, following sec. 57, to read as follows:

"Sec. 58. Notwithstanding any provision of NRS 225.140 to the contrary:

1. The state controller shall, without obtaining the approval of the interim finance committee and in addition to any amounts transferred pursuant to that section with the approval of the interim finance committee, transfer from the account for special services of the secretary of state to the secretary of state's operating general fund budget account:

For the fiscal year 2001-2002.....$300,000

For the fiscal year 2002-2003.....$250,000

2. The secretary of state may expend the amounts transferred pursuant to subsection 1 for such additional personnel, equipment, supplies, office space and other costs as are necessary to carry out the provisions of this act.".

Amend sec. 59, page 27, by deleting lines 22 through 32 and inserting:

"Sec. 59. 1. This section and sections 1, 2, 3, 8, 9, 47 and 55 to 58, inclusive, of this act become effective upon passage and approval.

2. Section 48 of this act becomes effective at 12:01 a.m. on July 1, 2001.

3. Sections 4 to 7, inclusive, 10 to 46, inclusive, and 49 to 54, inclusive, of this act become effective:".

Amend the title of the bill, second line, after "fees" by inserting: "and revising certain requirements".

Senator James moved the adoption of the amendment.

Remarks by Senator James.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

MOTIONS, RESOLUTIONS AND NOTICES

Senator James moved that Senate Bill No. 577 be placed on third reading and final passage.

Motion carried.

REQUIRES TWO-THIRDS MAJORITY VOTE (§§ 4, 6, 7, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53)

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT **S.B. 577**

SENATE BILL NO. 577–SENATORS JAMES, RAGGIO, O'DONNELL, AMODEI, RAWSON, JACOBSEN AND MCGINNESS

MAY 24, 2001

Referred to Committee on Judiciary

SUMMARY—Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

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

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

AN ACT relating to business associations; limiting the common-law and statutory liability of the stockholders, directors and officers of a corporation; increasing the fees and revising certain requirements for filing certain documents with the secretary of state; requiring certain fees charged by the secretary of state for special services to be deposited in the state general fund; and providing other matters properly relating thereto.

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

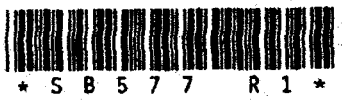
Section 1. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided by specific statute, no stockholder, director or officer of a corporation formed under the laws of this state is individually liable for a debt or liability of the corporation, without regard to whether a court determines that the stockholder, director or officer should be considered the alter ego of the corporation or that the corporate fiction of a separate entity should be disregarded for any other reason, unless:

(a) Otherwise provided in an agreement to which the stockholder, director or officer is a party; or

(b) A court of competent jurisdiction finds that:

(1) The corporation is influenced and governed by the stockholder, director or officer;



GENERAL FILE AND THIRD READING

Senate Bill No. 427.

Bill read third time.

Roll call on Senate Bill No. 427:

YEAS—19.

NAYS—None.

Excused—Neal, O'Donnell—2.

Senate Bill No. 427 having received a constitutional majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Senate Bill No. 577.

Bill read third time.

Remarks by Senators James, Care, Titus, Coffin and Porter.

Senator James requested that the following remarks be entered in the Journal.

* (The remarks will be in the final Journal.)

Senators Rhoads, Townsend and Rawson moved the previous question.

Motion carried.

The question being on the passage of Senate Bill No. 577.

Roll call on Senate Bill No. 577:

YEAS—18.

NAYS—Coffin.

Excused—Neal, O'Donnell—2.

Senate Bill No. 577 having received a two-thirds majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President pro Tempore and Secretary signed Senate Bills Nos. 39, 112, 115, 221, 223, 227, 237, 238, 252, 274, 289, 311, 337, 380, 381, 397, 406, 467, 483, 499, 519, 557; Senate Concurrent Resolution No. 49; Assembly Bills Nos. 7, 29, 33, 44, 74, 92, 165, 171, 180, 192, 199, 201, 245, 253, 257, 264, 267, 294, 302, 344, 402, 431, 440, 446, 463, 488, 491, 501, 536, 547, 563, 576, 601, 604, 622, 628, 636, 649.

Senator Raggio moved that the Senate adjourn until Monday, May 28, 2001 at 10:30 a.m.

Motion carried.

Senate adjourned at 5:01 p.m.

Approved:

LAWRENCE E. JACOBSEN
President pro Tempore of the Senate

Attest: CLAIRE J. CLIFT
Secretary of the Senate

*ATTACHED

Senate Bill No. 577.

Bill read third time.

Remarks by Senators James, Care, Titus, Coffin and Porter.

Senator James requested that the following remarks be entered in the Journal.

SENATOR JAMES:

Thank you, Mr. President pro Tempore. Let me give a brief discussion of this bill because it is an important measure for a number of reasons. First of all, the substantive changes in the bill to Nevada law would codify existing case law to specify that the corporate veil cannot be pierced to hold the stockholder, director or officer individually liable for a debt or liability of the corporation unless the liability is otherwise provided for in an agreement in which the stockholder, director or officer is a party to or the court finds that the corporation is influenced by the stockholder, director or officer and the corporation director and officer are inseparable, and to maintain the corporation as a separate entity under the circumstances would sanction fraud.

Senate Bill No. 577 also provides that directors and officers are not individually liable for damages in their personal capacity for an act or failure to act unless it is proven that their actions or failure to act constituted a breach of fiduciary duty and that breach involved intentional misconduct, fraud or knowing violation of the law. I would point out, Mr. President pro Tempore, that if there is a fraud such as a securities scheme or anything of that nature, then under the circumstances, this law would make those people liable for that fraudulent or intentional conduct.

Currently, Nevada law authorizes corporations to opt into this type of limitation on personal liability in the articles of incorporation. However, according to testimony this provision generally benefits those corporations, many of them large corporations who have the benefit of experienced legal counsel in setting up their Nevada corporations. This would make this protection generally available to all of those people including small business people who may not have that sophisticated legal advice.

Finally, Senate Bill No. 577 allows directors and officers of corporations to rely on information and data provided to them by financial advisors, evaluation advisors, such as a fairness opinion, and investment bankers in addition to the other professionals currently in statute that may be relied upon by directors, boards of directors or committees of boards of directors.

The other major portion of Senate Bill No. 577 increases certain fees. Senate Bill No. 577 increases fees for certain documents that are filed with the Secretary of State by corporations, foreign corporations, limited liability companies, partnerships, limited partnerships and business trusts. The changes in fees include an increase from $85 to $165 for the filing of what is called the initial list of officers and directors. Thereafter, when the annual list is filed, that fee remains at $85. When this list is now filed, they will also provide a declaration under penalty of perjury that the company has complied with the provisions of Nevada's business tax laws which includes the paying of a $25 business license fee, which according to the research of the committee, is rarely paid. It is paid only a small percentage of the time by the people from outside of Nevada who set up a corporation as their domicile and then do business elsewhere.

Other fee increases include the filing fees for the following types of certificates and documents. They are: re-instatement of articles of incorporation or charters, amendments to certain documents filed with the Secretary of State, dissolution, change in location of a

corporation, notice of withdrawal from Nevada by a foreign corporation, filing original articles of organization for limited liability companies or for registration for certain business entities. There are also fee changes for certifying copies of certain documents and executing certificates of corporate existence.

The bulk of these fees, which are charged in this bill have not been changed since 1989, approximately 12 years ago. These are fees that have not been adjusted in the Secretary of State's office for a great deal of time. In many ways, what we are accomplishing here, is allowing the Secretary of State to increase fees associated with the cost of doing business and certainly associated with the level of sophistication that has been increased in the Secretary of State's Office over the past 10 years.

We heard a lot of testimony in the Judiciary Committee about how much has been done in our State to make Nevada the corporate domicile of choice for the entire United States, the Delaware of the West as some people call it. I would prefer to say that Nevada will be better than Delaware as a domicile for any company, nationally, who wishes to set up a domicile in a place with business–friendly laws and a Secretary of State's Office who can respond to the needs of today's businesses. To address the costs incurred by the Secretary of State's Office, and I won't repeat this because it is the same thing I said with respect to the amendment we just adopted, the Secretary of State is allowed to continued to keep a portion of certain expedite fees that he charges at this time. The effective date of the bill is August 1, 2001, to allow the Secretary of State's Office time to adequately inform its customers of the changes. However, the provisions allowing the Secretary of State's Office to access funds from the Account on Special Services is effective on July 1, 2001. Furthermore the effective date of the liability provisions that are set forth in the bill is prospective only. They do not apply to causes of action which accrue prior to the bill's effective date. Any causes of action which accrue prior to that date will be settled under the existing laws regarding the liability of officers and directors regarding the issue of piercing the corporate veil.

I would say, generally, Mr. President pro Tempore, as many of you may know this bill is an integral part of an education enhancement package which was announced by the Governor, yesterday, which has been worked on by myself and by the Judiciary Committee for a number of weeks. Although, this bill, in its draft form was in a number of different permutations, is expected, conservatively estimating from our fiscal division, to generate $30 million over the biennium. That $30 million, under the Governor's program and under the program being supported by this Senate when it passes this bill, today, will go directly to the increases in the salary of our State's teachers, which is part of the Governor's Education Enhancement Package. This is an integral portion of the ongoing funds necessary to: (a) increase teachers' salaries by 2 percent in part of the biennium and (b) position Nevada and the Legislature, next time, to roll up that and the other 2 percent into a 4 percent increase when we return. In addition, these monies are necessary because of their concomitant effect of allowing one-shot funds to be made available for teacher bonuses. Those are recruitment bonuses and retention bonuses for our teachers. It also makes money available directly to classrooms or vital programs for technology and textbooks and for retaining programs like after school programs, music programs and sports programs. These are critical issues. These are probably the most important issues we are going to address this session. That we fund education properly. I

cannot emphasize enough that this bill is necessary. It is integral to this plan, and I would strongly urge my colleagues to support it unanimously.

SENATOR CARE:

Thank you, Mr. President pro Tempore. I will begin with sincere charity. I want to thank the Chairman for the work he has done in helping the crisis in funding public education particularly in southern Nevada. I am going to do that again, today, but I am compelled to speak.

Yesterday afternoon, the Judiciary Committee passed out Senate Bill No. 577 as an amend and do pass, which is the action we took. The action that we took last night gutted what is now section 1 in the bill which deals with alter ego. It also took out, and it is out now, the language about "clear and convincing evidence." It also altered one little word we stuck in last night, the word "or" in section 3. Now the word "and" is back inside the bill. That may not sound like a lot, but I am going to explain that momentarily.

I asked that the language be deleted last night and that one amendment be deleted simply for the following reason. We had another bill, actually a BDR because the bill was never introduced, that was intended to increase, or actually to create, a franchise tax. The theory was that a number of corporations would relocate to Nevada to take advantage of our corporate laws. We had the engaging debate that if we do that, then what do we offer for these corporations to come here? The answer seemed to be, to some extent, that we should limit the liability of the officers and directors of those corporations. That made sense. There was a nexus. But when we got Senate Bill No. 577 last night, that nexus, in my judgment, was no longer there. What we were doing, in essence, was simply raising the fees the Secretary of State charges already. And, in fact, many of those fees have not been altered since 1987 and probably should have been increased some time ago. That was the rational last night, when I and a few others argued, "take out that language that, to such a great degree, limits the liability."

About an hour ago, our committee rescinded that action and adopted the amendment that is now part of Senate Bill No. 577. This is my interpretation of the bill before us now. The Chairman says that all it does is codify existing case law on alter ego. It does that but in my judgment not completely. I realize only four of us in this Chamber are attorneys, but it is important to understand alter ego or piercing the corporate veil. The way the bill reads, now, you would have to demonstrate that the officer or director committed fraud. By adding a simple comma, we could have said "or" that the conduct to recognize the corporate fiction, with that conduct in mind, would constitute an injustice. That is what the courts say now. The courts specifically say, now, you do not have to demonstrate fraud. You can, simply, demonstrate that recognition of a corporate fiction would constitute an injustice. Again, this is legal talk but significant legal talk. That is not in this bill. That would be out. Secondly, in my judgment, in section 3, by keeping the "and" in there instead of "or," it means, to me, that if an officer or director is accused of violating the best judgment rule, now, you have to demonstrate the willful act, the fraud or the knowing violation of the law. You cannot get there by demonstrating negligence. That will not do it. Those are the significant differences with what we did last night and what we have before us today.

We have a lot of wonderful corporations in this State. They are good citizens. Hundreds of them are represented by the lobbyists who walk this hall. Many of us have professional and personal relationships with people who operate those corporations.

Those corporations would have had nothing to worry about with the bill that we passed out of committee last night, nothing at all. Those are good citizens. It is unfortunate, because what we are being asked here, today, by enacting the increases, is that they will protect our children, their welfare, their future, but at the same time, protect some corporate crooks. I know what we are going to do here, but I would like to say it comes at a terrible price.

SENATOR TITUS:

With all due respect to the prime sponsor of Senate Bill No. 577 who has worked very hard to find much needed revenue for education, I have serious reservations about this bill. As non-amended, it includes added immunity, protection for officers and directors of businesses incorporating in Nevada. Protections which give directors of Firestone and Reynolds Tobacco less liability than the officers of a homeowner's association. Such directors will, thus, have greater ability to act without oversight by the courts, essentially allowing them to bilk our residents with impunity. The ability to pierce the corporate veil is a necessary tool, according to our own Supreme Court, to protect our consumers and investors. Without this ability, a widow of a Senator from this body, Mrs. Fransden, would not have been able to win a judgment against an offending officer who attempted to hide behind the corporate shield. The many seniors who lost their life savings in the Harmon Mortgage fiasco would be unable to recoup any of their losses.

I also have philosophical concerns about this bill. Senate Bill No. 577 is designed to provide funding for education. We demand accountability from our educational system. Should we not demand accountability from corporations and businesses that operate in Nevada? Of course. In fact, we should be wary when those individuals seek to have blanket immunity before moving to Nevada. As stated by the sponsor, Nevada already has a pro–business climate and is considered the "Delaware of the West." What a terrible message we are now sending to the business world. We might as well hang out a shingle, "Sleaze balls and rip off artists welcome here."

Unfortunately, I am caught between a rock and a hard place. I have been threatened, and I do not use that term lightly, that if Senate Bill No. 577 does not pass in this exact form, the so-called education funding package deal falls apart, and there will be no money to pay for the critical needs of our schools and no money for teacher raises. I cannot let that happen.

For that reason, I will vote for this bill, but I do so with a heavy heart. Nevada has sold its soul, tarnished is already shaky reputation, today, in exchange for a $30 million band-aid. I will work to have this corrected down the hall because I believe we can find the money needed for education without unnecessarily putting our investors at risk.

SENATOR COFFIN:

Thank you, Mr. President pro Tempore. I cannot match the eloquence of my good friends in my party. I do appreciate the comments that they made. I do wish they could follow their eloquence with their votes. I want to say, I hope they change their minds, and I hope some of you do, too, because I have heard that you are troubled by what the outcome of this bill means. A little history perspective for some of us old-timers. I will take us down memory lane, 14 years, to an April Fool's Day in 1987 when we voted on the subject of a personal income tax in the State of Nevada. It was passed out of here, 16-5 from this House. I was a freshman Senator, then. At that time, looking at the record, I

said, "Be very careful if you do that, because if you rule out anything, it doesn't mean you are for an income tax if you vote 'no' on this bill, but it means there are only a few other places you can go to get the money." The best place to go is business. In 1991, when many of you were sitting right here on this floor, we were faced with another band-aide approach to a sick fiscal system, and we passed it. A lot of you voted against it. I am looking at four or five people on this floor on the other side of the aisle who voted against those measures, against business that day. The price tag then was pretty big. But $15 million a year does not begin to address the issue that is really needed. I have sat through 110 days of budget hearings, and we are a long way from matching revenues to expenditures. Why would we, and in the words of the distinguished Minority Leader, "sell our soul" for a pittance. It is the equivalence of 30 pieces of silver in A.D. 31, inflated rates, I am sure. What is going to happen, by this little amendment as I see it, is that reputable companies are not going to want to come here to save a few dollars. Do you think for a minute that the investors of America are going to want to hold stock in a company domiciled in Nevada with laws looser than Delaware without the experienced Judiciary and the established nearly 200 year-old case law history of Delaware? No.

I am not sure about the words the distinguished Minority Leader used to describe what Nevada will be called, but I will tell you what I would call it. I would call it the place where Butch Cassidy and the Sundance Kid would go, the Hole in the Wall. Instead of being in Utah, it is going to be in Nevada.

The pension funds that we own, we have invested in and that your constituents have are in the hands of the very corporate officers and directors who could, if they chose domicile in Nevada, commit virtually any act and get away with it and waste your money. Make no mistake these subtle changes are significant. Scoundrels can move here, and there are scoundrels in the mutual fund business and in the pension business and in many corporations. If I was one of them, I might consider moving here now. Remember that it is the directors and officers that pick the consultants who say, if they rely upon their advice, they will not be held liable. It is going to be very difficult to hold them liable if they have relied upon some expert. But who is paying the expert? It is the director and the officer who chooses the expert.

So why would we want such a terrible reputation? The stock and bond ratings services would look at a Nevada domiciled corporation in a whole different way if they knew that the officers and directors were going to be held to a lower standard of behavior in the way they manage the assets of a company.

I watched the entire hearing yesterday in Judiciary, and I was proud of the committee because the committee took out the offensive language. That is the first time in a long time the Republicans have lead the charge to raise taxes. I am proud of you for doing it. It has been pretty hard to get you to go along on that, and you have done it. I should congratulate you. If I offended anyone by saying this amount of money is not enough, well, it isn't enough, but it is a step, and you have done this. But you have done it to business, to little business people. You didn't do it to yourself. Some of you are in business, of course, so you might have. I am not incorporated so I won't pay, but someone else will. A lot of people will. A lot of your constituents will. They will go away unhappy wondering why this would happen. They will wonder why those of you who have stood up for them in the past have abandoned them now. It has been stated by Senator Care that you already have the right as a corporation to opt into these limitations

of personal liability in the articles of incorporation, but it is said by the sponsor of the measure that we do not have experienced counsel that can help them do it. I fail to believe that in the two sophisticated cities of Reno and Las Vegas and the similarly situated capitol of this State, Carson City, there aren't enough good attorneys who can do this for their clients. That escapes me. I cannot believe that the two largest law firms in this State, and we all know who they are, cannot do it. They have probably done it already. They probably have specialists in there. I do not buy that argument. Increasing the fees on business is not the way to go. Maybe we should re-initiate the idea of a personal income tax. Maybe we should re-initiate the idea of cutting sales tax and raising property tax. Maybe we should do all of those things that we haven't had the courage to do, and I hold myself just as accountable as you should hold yourselves.

SENATOR JAMES:

Thank you, Mr. President pro Tempore. Let me say that I find it extremely unfortunate that a measure of this nature, as arduously wrought, as fair in administration, as high in purpose as this one, should be subjected to the kind of high rhetoric, stretching of the truth, misstatement of the law, downright fear mongering and the use of scare tactics as we have just seen on the floor today. I will tell you, Mr. President pro Tempore, the only people who are going to give Nevada a black eye are those who would engage in those practices to accomplish their own political objectives. There is nothing in this bill that would give protection, that would give solace, that would give encouragement to scoundrels and people who are out to bilk people of their money—nothing, whatsoever.

I want to talk about the real law because the bill is extremely clear that a director and officer of a corporation is liable for fraud, intentional breach of fiduciary duty and intentional violation of the law.

What are the words that we heard used about the kind of things that would happen if we enacted this? People would be bilked. We could get out our dictionary, but bilking is an intentional scheme to take someone's money. We heard about Harley Harmon. Last time I checked, that was a fraud case. What are we really talking about? Well, we are talking about something called business judgment. We are talking about the members of a board of directors, who are part of a company or are outside directors who have lent their experience, their knowledge and their skills to help guide a company, which is what a board of directors does. We are talking about them and the business judgments they make when they sit in those boardrooms. What are they? About 18 months ago, maybe the business judgment was, "We are not going to invest in any Internet IPOs." Well, the stockholders might sit back and watch other companies that invested in Internet companies or put their money into the Internet bubble and say, "Look, their stocks are going through the roof. Our stocks are stagnant. We have remained in value investments. We have remained in the old economy. We are missing the new economy. They breached their business judgment. They made a mistake. Let's sue them."

Under the old law, you could sue them because you did not get that money. Eighteen months later, the companies who did invest in the new–economy Internet IPO bubbles, and whose stocks went from astronomical heights down to numbers like $5, $3, 20 cents, their shareholders could say, "Wait a minute. You breached your business judgment. You made a mistake. You invested in Internet IPOs. Couldn't you see that the bubble was going to burst and all of those stocks were going to go down?" So you sue them for that.

What we are talking about are boards of directors who act honestly, and let us remember that word, honestly, because you cannot act dishonestly, not under this bill and get away with it in Nevada. That is the message that I hope goes out to the financial markets of this country. Not the one you heard from the three previous speakers. Those people who act honestly on those boards, but maybe they misread the market, maybe they made a business judgment mistake, those people would not be liable in their personal assets for having made that mistake.

If you are a shareholder what recourse do you have? You still have an action against the corporation. You still have all the appraisal rights as a minority shareholder that are offered to you under Nevada laws. You have all of those things. This isn't changing any of that. Nevada companies are a good and a safe place to invest, and they remain more so under the law you have in front of you. Please, I hate to repeat the words like "to protect crooks, to give blanket immunity, to allow sleaze-balls and rip-off artists to come here." Give me some honest legal analysis and tell me where this bill does that. Nowhere.

My colleague on the Judiciary Committee, who I so respect as an attorney, who I turn to every day to give a fair and honest analysis of measures, of all the speakers, let me address him because he did engage me in a legal question. He did not participate in the kind of rhetoric and scare tactics that the others did. He raised the issue, "Does removal of the word 'injustice' from the piercing of the corporate veil standard make a deleterious change in the law?"

Let me give you an example. The word "injustice" is a word without standard when it is applied in this context. What is the standard of injustice? How do you decide as a jury or as a judge what is unjust? Is it unjust that a small business person who incorporates his business and seeks the protection of limited liability to conduct business as a corporation then borrows too much money from "Mega-Bank, Inc.,", a hypothetical nation-wide bank, and then cannot pay back that money but has a few personal assets of his own. It is unjust that "Mega-Bank, Inc." that loaned the money to the small business person should be able to pierce the corporate veil, particularly, in the context of this small business person who may not have kept all the corporate formalities, may have missed a few minutes of meetings, may have mingled some of his accounts unintentionally. By putting all of those things together and adding injustice in a bankruptcy or other context, they can then pierce through the corporate veil and get the small business person's personal assets. Is that injustice? That is the kind of lack of a standard that is allowed in these cases. The corporate entity should not and does not in Nevada allow a person to sanction a fraud to hide behind the corporate veil while having perpetrated a fraud. A person who seeks to get at the assets of a person who set up a corporation as a fraud should have the corporate veil pierced, disregarded by the court. Under this legislation, Mr. President pro Tempore, you would be able to pierce the corporate veil and get at the personal assets of that person, that scoundrel, if you will, who would use the corporation to his advantage to perpetrate a fraud.

I do not know what to say, Mr. President pro Tempore, to the person who stands upon this floor and argues that it would be preferable for us to raise the personal income taxes of Nevadans and to change the Constitution to do that, to raise the personal property taxes of Nevadans as opposed to, and as a realistic alternative, to raising transactional fees for corporations who use the business offices of our Secretary of State. The latter, the one

that is embodied in this bill, is the better, more prudent, fairer way to raise the money necessary to educate our school children properly.

The comment was made that businesses will have all this difficulty, now, incorporating in Nevada because we have changed the law so radically. I have already refuted each and every one of those arguments, Mr. President pro Tempore. One of the things that was thrown out was, "They will just go to Delaware where there are hundreds of years of case law." Over the last 10 years as I shared with the Judiciary Committee just a few days ago, we have made sure that Nevada's laws are in nearly every respect, except where they are better or newer, similar or identical to Delaware's. Therefore, our new business courts that we have created to help these corporations when they have disputes can look to the jurisprudence of Delaware and its great length of jurisprudence.

This bill represents the essence of the legislative process. That essence is the endeavor to accomplish a fine objective through the art of compromise, through the art of working with the Executive Branch, through the art of working in a bipartisan way to accomplish that objective. It is a good bill. It does no damage. It does no violence to the laws of our State. It has no deleterious effect, whatsoever, on the reputation of this great State. We will continue to grow under it, and finally, Mr. President pro Tempore, it sets the predicate for what our Governor has said, and what our Governor under his leadership has set so firmly in place, that we can address the structural issues regarding our tax structure. We can address the structural issues regarding our budget and regarding the funding of our critical education system. I would urge us to take the first step, to disregard the high rhetoric and to vote this bill on to the other House.

SENATOR CARE:

Thank you, Mr. President pro Tempore. I promise to be brief. I want to emphasize that when I gave my analysis of this bill, I twice qualified my remarks by saying quote, "In my judgment." The law is open to interpretation. My fear is that courts will interpret this bill the way I do.

For example, in the judgment rule, corporate officers and directors, the Chairman I am sure would agree, have a duty to review documents, to have a basis for making their decisions. It is one thing to intentionally shirk that duty; it is another to negligently not do that duty. My concern is there is no recourse here against the officer or director who negligently violates the rule.

Finally, it is easy to stand up and say people say things for some sort of political motive. I know all of you in this Chamber, some of you better than others, but you know by now when I stand here and speak, it is because I damn well mean what I say. Thank you.

SENATOR COFFIN:

Thank you, Mr. President pro Tempore. I will try to be brief. Jokingly, I must say, I have never in this Chamber been accused of high rhetoric if, indeed, you were including me among the others who spoke. I do not know. I am not a lawyer and, unfortunately, I am not a former collegiate debate champion as is the distinguished Judiciary Chairman. He has skillfully restated, in some fashion, all of the arguments he has heard against his measure and refuted them, of course, and then judged himself the winner. You learned a lot in collegiate debate. I wish I could do that. I do not have those kinds of skills.

I do want to correct one thing because I was thinking you were leaving the impression that I was for a State income tax. I will restate again as I did on April 1, 1987, that I am not for, currently, a State income tax, and I am not for, currently, a business tax. I say currently because I could be persuaded if it was the right thing to do, and it may be the right thing to do so we do not have to continue to burden business with its already unfair share of the cost of government in Nevada. You are raising a pittance here but creating a remarkable hole in the wall for all of the corporations that may seek here, but you won't get the good ones; you will get the bad ones. I truly appreciate the statements and the assistance I have received from members of the committee, and I know the Chairman did say this has been carefully crafted, but it has moved as fast as any bill I have ever seen. We just got the white sheets, then the blue sheets and then the white sheets all in an hour, and I still have hardly read the bill. I have abstained in the past on some bills like this, but I think, today, I will just vote against it as carefully crafted as it has been portrayed. I do not think that an impartial judge of this debate would say it was. Thank you.

SENATOR PORTER:

Thank you, Mr. President pro Tempore. I do not have the legal background, and most of us don't, to enter the debate on the merits of the liability portion of this bill. I would like to share with you some of the other discussions that we had during the committee hearings that brought this bill about. If we look at education during the 1950s, 1960s and early 1970s, the challenges for us in the classroom and for teachers were students chewing gum, being late for class, skipping class. But if we fast forward to today, the challenges for education, our families and our children have changed so much that we are now looking at helping children learn about violence. We are teaching them what to do about drive-by shootings in southern Nevada. We are teaching them what to do about violence in the classroom and at home. It has changed so dramatically, that even today a child is in the classroom only about 9 percent of a year. That means 91 percent of the time they are someplace else, whether that is at home, where they should be, on the streets or getting into trouble. There have been a lot of challenges and changes impacting us today.

Southern Nevada is one of the fastest growing schools in the country, and we are trying to hire teachers to fill our classrooms. We heard testimony that we need about 1,200 new teachers in southern Nevada, alone, this year, and we only have 500 to 600. Our entry-level teachers start at $26,800. My wife was an educator for a number of years, nearly 17 years in the school library, but as we heard in testimony, we have garbage collectors and even those parking cars that are being paid far more than our entry-level teachers.

What this bill does is a number of things. It takes care of and helps us with a shortage. It also helps to eliminate some corporate loopholes. I have been very critical of this bill as it has evolved, not as to the merits and desires of plugging a gap for us in education, but because I, too, share the concerns of my colleague from North Las Vegas about small business. We looked at different avenues and different ways and wanted to make certain there would be no harm. We had testimony from the Las Vegas Chamber of Commerce, from the National Federation of Independent Business who spoke about, in concept, their support because they didn't have time to visit all of their members and explain to them the bill. This bill closes some corporate loopholes and changes transaction fees that haven't been adjusted in a number of years. I am not one to increase fees, but I think, this is about closing some corporate loopholes.

There is another element that hasn't been addressed that I mentioned in committee. Parents, moms and dads, and the business community want accountability not only of our teachers but also of where the money is going. They want to make certain that if programs need help, we find a way to support those programs. They also expect that if there are programs that should be eliminated, they, too, should be eliminated. They also expect and demand that money is going to the classroom. That those funds are going to our children and not to a bloated bureaucracy as are some of our districts today. More importantly, we want to make certain we are judging education not on the amount of dollars we are spending but on where the funds are going and if they are being spent wisely. The program the Governor is proposing, the program that Senator James and our committee is proposing, is a result-oriented, need-based program. I would encourage the support of the Senate and this Legislature. I also appreciate the business community that has been e-mailing and calling us, being involved in the discussions, but some of the liability questions that were being argued were brought to us on a hand note in committee last night by a special interest group that is also very concerned. I truly believe that this is the beginning. The business community, the elected officials in this Body and the local governments have committed to take this to another level as far as helping education in our next Session.

Senators Rhoads, Townsend and Rawson moved the previous question.

Motion carried.

The question being on the passage of Senate Bill No. 577.

Roll call on Senate Bill No. 577:

YEAS—18.

NAYS—Coffin.

EXCUSED—Neal, O'Donnell—2.

Senate Bill No. 577 having received a two-thirds majority, Mr. President pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Assembly.

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-First Session
May 30, 2001

The Committee on Judiciary was called to order at 7:55 a.m. on Wednesday, May 30, 2001. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. Portions of the meeting were simultaneously videoconferenced in Room 4401 of the Grant Sawyer Office Building, Las Vegas. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. Mark Manendo, Vice Chairman
Mrs. Sharron Angle
Mr. Greg Brower
Ms. Barbara Buckley
Mr. John Carpenter
Mr. Jerry Claborn
Mr. Tom Collins
Mr. Don Gustavson
Mrs. Ellen Koivisto
Ms. Kathy McClain
Mr. Dennis Nolan
Mr. John Oceguera
Ms. Genie Ohrenschall

GUEST LEGISLATORS PRESENT:

Senator Maurice Washington, Washoe Senate District 2
Senator Valerie Wiener, Clark Senate District 3
Senator Mark James, Clark Senate District 8
Speaker Richard Perkins, Assembly District 23
Assemblyman David Goldwater, Assembly District 10

Department of Prisons, S.B. 241 was a strong step forward that would include better follow-through on the issue.

MOTION PASSED WITH MS. BUCKLEY, MR. COLLINS, AND MS. McCLAIN ABSENT FROM THE VOTE.

Chairman Anderson asked Mr. Nolan to present the bill on the Assembly floor.

Chairman Anderson entertained a motion to do pass S.B. 232.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS S.B. 232.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

Assemblyman Gustavson repeated his opposition to the bill saying he did not believe there was a need to collect more information. Assemblyman Carpenter said that collecting information, handled in the correct manner, would be a positive step.

A ROLL CALL VOTE WAS CALLED AND THE MOTION PASSED 10-2 WITH MS. ANGLE AND MR. GUSTAVSON VOTING NO, AND MS. BUCKLEY AND MR. COLLINS ABSENT FROM THE VOTE.

Chairman Anderson recessed the meeting at 9:39 a.m.

Chairman Anderson reconvened the meeting at 10:04 a.m., opened the hearing on S.B. 577 and acknowledged Senator Mark James, Clark County Senatorial District 8.

Senate Bill 577: Revises statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

Senator James said legislation had been processed each session updating and upgrading to ensure that Nevada's corporate laws were the best, the most inviting for business, the fairest, and the most equitable in the country. Senator James gave a brief description of what had happened over the last couple of years in corporate law. It had been a rare occasion when the fees were increased for Secretary of States transactions, the last raise in fees being in 1989. The fee increases in S.B. 577 were modest increases. The intent was to guarantee that Nevada was the "domicile of choice" for corporations around the country. Work was accomplished with the S.C.R. 19 Interim Committee of the Seventieth Session, with recommendations resulting in a number of bills that

had been processed through the Senate Committee on Judiciary. Senator James believed S.B. 577 would generate approximately $30 million in the biennium for the General Fund budget. Senator James reported it was the Governor's desire to utilize these funds to assist in providing raises to the teachers in Nevada.

Senator James said S.B. 577 would accomplish many purposes. He highlighted a number of provisions of the bill and additional key data:

1. Schedule of fees
2. Liabilities of those who serve as directors of corporations as seen in the doctrine of alter ego or piercing the corporate veil
3. 172,000 corporations in Nevada
4. 35,000 bankruptcies last year in Nevada
5. Adherence to the corporate fiction
6. Required corporate formalities

Chairman Anderson interrupted Senator James and indicated that Risa Lang, Committee Counsel, had prepared an *Explanation of Senate Bill No. 577* (Exhibit G). Nick Anthony, Committee Policy Analyst, had prepared a summary on the *Polaris v. Kaplan* Nevada Supreme Court Case (Exhibit H).

Senator James made closing remarks, noting that a Senate amendment deleted the wording, "clear and convincing evidence" leaving the evidence standard at "preponderance of evidence" to show liability under the statute.

Senator James submitted the following exhibits without testimony:
Exhibit I – Video from Senate Judiciary Hearing May 22, 2001
Exhibit J – Letter from S. Craig Tompkins, a director of a number of public companies, in support of S.B. 577

Assemblywoman Buckley said she supported the provisions of the bill that increased the fees. As far as the liability provisions, she had lots of questions. In Section 1, where it said a court determined the issues, was it the intent to eliminate the right to a jury trial? Senator James said that was not the intent. Assemblywoman Buckley asked if it was the intent to take the decision away from a jury and place it in the hands of a judge. Senator James said S.B. 577 did not do that. Assemblywoman Buckley reported there had been some legal opinions to the contrary.

Assemblywoman Buckley called attention to provisions applying to the alter ego doctrine and added, "Why would we want to change a good law that said justice was to be the determining factor?" Senator James said many creditors

would also require a personal guarantee in addition to a corporate guarantee. Fraud was not allowed; otherwise there was a predictable rule. That was justice. Assemblywoman Buckley believed "justice" was in the first version that came out of the Judiciary Committee.

Assemblyman Brower agreed with Assemblywoman Buckley's comments, but he was concerned about any lawsuit that might be prohibited as a result of S.B. 577. Senator James countered S.B. 577 prohibited no type of lawsuit.

Assemblyman Oceguera asked why the corporate veil was not predictable. Senator James said the Nevada Supreme Court case in 1987 set the standard, and hundreds of cases had been decided applying that standard.

Assemblywoman Ohrenschall noted the *Polaris* decision proved that corporate fiction was utilized to "sanction fraud or promote injustice." Did that mean there would be immunity unless fraud could be proven? Senator James said S.B. 577 did not provide immunity. The lower courts required proving fraud, while the higher courts only required proof of injustice. Assemblywoman Ohrenschall felt S.B. 577 would "raise the bar" from not needing to demonstrate fraud to absolutely proving fraud. Senator James agreed. Assemblywoman Ohrenschall asked if S.B. 577 eliminated gross negligence or wanton and woeful disregard, standards that came close but were not fraud. Senator James said the liability was to a third party, and they would need to show fraud.

Chairman Anderson noted he had received a conflict notice affecting S.B. 51 that made various changes pertaining to business associations and increased fees for document corrections.

Dean Heller, Secretary of State, said he wanted to read the conflict notice and return an explanation of the conflicts. He did not see it as a major conflict or that it should hold up the bill, but he was willing to work with the committee to resolve any conflicts. Chairman Anderson wanted assurance that the dollars were generated as intended; the Legal Division would compare S.B. 51 and S.B. 577. Mr. Heller said there were new articles in S.B. 51 that were not included in S.B. 577. Ms. Lang said there were three substantive conflicts that would need to be resolved; otherwise S.B. 51 and S.B. 577 would be made consistent.

Michael Bonner, an attorney in Las Vegas, was asked by Senator James to speak on the advantages of corporations choosing Nevada as their domicile. That involved comparing the Nevada statutes to the Delaware statutes. S.B. 577 clarified issues and strengthened protections as detailed in *Nevada*

Revised Statutes (NRS) 78.307. Mr. Bonner suggested that the language "promote injustice" should be deleted.

James Bilbray, former Senator, Chairman of the Senate Committee on Taxation and practicing attorney, had represented clients and sat on public boards where suing directors was used by many people as a method to recover what was perceived as wrong doings. If Nevada wanted more businesses to come into the state, benefits must be offered; protections for the directors was such a benefit.

Assemblyman Carpenter asked if Delaware had in their law what Nevada wanted to put into their statutes. Mr. Bonner said Delaware had a similar version of liability protection; however, Nevada provisions were better.

Assemblywoman Ohrenschall disclosed she was a director of a number of Nevada corporations, and she had assisted in creating many incorporations. Despite that, she would participate and vote.

Kenneth Lange, Executive Director, Nevada State Education Association, spoke in support of S.B. 577.

Chairman Anderson recessed the meeting at 10:56 a.m. to go to the Assembly floor session. The meeting would reconvene at 4:00 p.m. to continue testimony on S.B. 577.

Chairman Anderson reconvened the meeting at 4:15 p.m., made opening remarks, and noted a quorum was present. Chairman Anderson continued the hearing on S.B. 577.

Derek Rowley, President, Corporate Services Center, spoke in favor of S.B. 577. Mr. Rowley voiced concern over rumored changes that could strip the indemnification provisions from the bill, making it a special interest amendment in favor of one or two groups.

Chairman Anderson declared such allegations were not allowed, and he asked who had made such accusations. Special interest legislation was not done. Chairman Anderson took personal affront at Mr. Rowley's remarks and voiced concern about his further testimony.

Mr. Rowley continued his testimony. He said the indemnification provisions were vital to making the package work. Mr. Rowley said Nevada was not for sale with the bill, the bill did not prevent criminal prosecution of corporate officers or directors, the bill did not prevent personal liability of corporate

officers or directors where fraud existed, and the bill did not prevent individuals from holding corporations responsible for damages incurred. What the bill would do was codify the existing Nevada legal decisions and add a new level of predictability to Nevada's corporate statutes.

Mr. Rowley said there was a liability crisis in the country today. The indemnification provisions of S.B. 577 should be kept whether the fees were increased or not. Mr. Rowley believed there were misconceptions that the corporate filings were stable and the revenues from these filings were predictable. The truth was that corporate filings were a barometer of the economy. While an 8 percent annual growth in corporations was estimated by the Secretary of State's office, Nevada experienced a negative growth through the first quarter of 2001. It was not understood how price-sensitive the incorporation industry was today. There was a great deal of competition for new incorporation, and the ease of the Internet made it simple for price comparison from state to state, service for service. Mr. Rowley said he supported S.B. 577 as written, but he could not support S.B. 577 if the indemnification provisions were removed.

Chairman Anderson said S.B. 577 provided an opportunity to take case law and put it into the relevant statute. He asked if that would be objectionable. Mr. Rowley said it would not necessarily be objectionable. In the effort to promote or market Nevada for business purposes, his company was pleased with the current provisions. The impact of the increased fees was unknown; however, to justify those fees, he believed an additional benefit was needed to keep Nevada at the forefront of the incorporation industry.

Assemblywoman Buckley asked if Wyoming had recently raised their fees. Mr. Rowley said Wyoming raised their renewal fees, creating a $40 increase over the original incorporation fees. Assemblywoman Buckley verified that S.B. 577 did not increase the renewal fees. Mr. Rowley agreed. Since the increase in revenue was based on an increase in new corporate filings, it would be necessary to "sell" Nevada on a continuing, on-going basis in order to generate the revenues.

Chairman Anderson asked Mr. Rowley if he was familiar with the *Polaris v. Kaplan* case. Mr. Rowley said he had only read a summary of the case.

Assemblyman Carpenter asked what kind of corporation would be concerned over a $50 difference in fees. Mr. Rowley said the typical "mom and pop" operation or "people with a good idea" made up a vast majority of the Nevada corporations. They were very conscientious about costs, running their business on a shoestring; they were people with a dream.

Assemblyman Brower said there seemed to be a disconnect between "the stick" of increased fees and "the carrot" of the liability law. Mr. Rowley said the language in Section 1 stabilized the expectation of companies regarding indemnification, and it did not change anything the courts were not already enforcing. Section 3, subsection 7, was very important. Assemblyman Brower then asked what the pitch or "the hook" would be when marketing Nevada. Mr. Rowley said he would pitch low fees and costs, the Nevada tax structure, liability protection, and indemnification provisions. The liability protection was a big deal for individuals.

Chairman Anderson said it was clear there was concern about retaining Section 3, subsection 7, as a crucial provision of the bill, and no other additions were needed for the bill. Mr. Rowley had no other concerns about the bill as long as the indemnification provisions were retained in the law.

Assemblyman Carpenter asked if Mr. Rowley had been talking about income tax laws. Mr. Rowley said he was talking about the lack of a state corporate income tax. Assemblyman Carpenter asked if Wyoming had a state corporate income tax. Mr. Rowley replied Wyoming did not. Assemblyman Carpenter asked if Delaware had a state corporate income tax. Mr. Rowley said Delaware had a state corporate income tax of 8.7 percent.

Assemblyman Collins asked what it would cost Nevada if people went to Wyoming to incorporate. Mr. Rowley said the way the bill was currently written, it was not significant if Nevada lost a large number of corporations to Wyoming. An individual who took a corporation to "domesticate" in Wyoming could do so for approximately $200, and Wyoming had provisions in their law that allowed that corporation to carry its corporate history with it as if it had always existed in Wyoming.

Chairman Anderson asked Mr. Rowley if his company would recommend more corporations in Wyoming over Nevada if the fees increased. Mr. Rowley said his sale staff did not make that decision; they provided the information, and the decision was left up to the customer. Chairman Anderson asked if the "mom and pop" corporations understood the indemnification provisions that Mr. Rowley was trying to protect. Mr. Rowley said they might not have a full understanding of those provisions, which was even more reason to have those provisions in place.

John Olive, President, Nevada Association of Listed Resident Agents (NALRA), represented 35 resident agent companies that collectively represented 50,000 to 55,000 corporations organized within the state of Nevada. Mr. Olive spoke

in support of S.B. 577. The value of codifying case law would allow prospective incorporators to assess the likelihood of success in defending themselves in a case in which they might be drawn in as defendants. Mr. Olive said that the indemnification extension would essentially substitute for the lack of heritage of corporate jurisprudence until the business court had sufficient case law to provide a similar depth of jurisprudence as seen in Delaware.

Chairman Anderson asked how the bill would impact the resident agent industry. Mr. Olive said a study was done at the Advanced Research Institute at University of Nevada, Las Vegas to project the impact of the proposed $500 franchise fee. It was determined that the franchise fee would have precipitated an estimated 80 percent exodus of corporations from the state of Nevada. The study would need to be revised with the increase of fees to reflect their impact; it was estimated there would be some reduction in the number of corporations being formed. Chairman Anderson queried, that by offering the limited liability as provided in S.B. 577, how many additional companies would be attracted to Nevada. Mr. Olive quoted growth projections of 12 to 15 percent.

Assemblyman Brower stated Section 2, page 2, would eliminate a current statutory provision that allowed a corporation to include in its Articles of Incorporation certain liability limiting provisions. Mr. Olive agreed. Assemblyman Brower said Section 3, subsection 7, page 3, addressed the same issue, only making it automatic. Mr. Olive agreed. Assemblyman Brower said the bill would then achieve the same result as current law; it would not be a substantive change in the law. The real issue addressed by the bill would then be the alter ego doctrine in Section 1. Mr. Olive said Section 3, subsection 7, might seem redundant with Section 2, but it was the same spirit as Section 1 that codified current case law; Mr. Olive agreed with Assemblyman Brower's assessment of the bill.

Rose McKinney-James, Clark County School District, offered "unqualified" support for S.B. 577. Ms. McKinney-James believed the funding from the bill would be used for salaries for teachers and to fund those programs and services that had been curtailed.

Bob Crowell, Nevada Trial Lawyers Association (NTLA), supported the fee and funding mechanism set forth in S.B. 577, but was concerned about the corporate immunity. S.B. 577 changed the corporate immunity statutes in Nevada in three ways:

1. Codified the alter ego doctrine or piercing the corporate veil, by changing the case law with respect to proof required to pierce the corporate veil.
2. Extended the officers' and directors' immunity currently in Nevada law to other individuals.

3. Shortened the statute of limitations for bringing actions against officers and directors from three years to two years.

Bill Bradley, Nevada Trial Lawyers Association (NTLA), posed a scenario involving Chairman Anderson and Assemblyman Carpenter for purposes of explaining the ramifications of forming and operating a corporation in Nevada, and, unfortunately, of experiencing fraud in their dealings with another corporation.

Pat Cashill, Nevada Trial Lawyers Association (NTLA), said Nevada had 44 years of corporate case law going back to 1957. The key to the judicial history in Nevada on that issue was the court took the position that there was no fixed criteria to use the alter ego doctrine to pierce the corporate veil. The *Polaris* decision talked about a number of factors that "would sanction fraud or promote injustice" and could lead to piercing the corporate veil:

1. Under-capitalization
2. Co-mingling of funds
3. Unauthorized diversion of funds
4. Treatment of corporate assets as individual's own
5. Failure to observe corporate formalities

Mr. Cashill went on to suggest language retentions and deletions in S.B. 577. He was "gravely" concerned and believed it would be bad social policy to enact the bill as written.

Chairman Anderson asked how the "Bubba and the Cowboy" corporation would be affected if S.B. 577 was enacted. Mr. Bradley agreed the corporation would be left "holding the stick." The importance of the *Polaris* decision (Exhibit K) was seen where the Supreme Court elected to follow the "promote injustice" standard. Trying to prove fraud was an extremely tough burden; fraud was a state of mind, and it was tough to prove a state of mind. Mr. Bradley believed it was important to amend S.B. 577 to include the language "or promote injustice."

Assemblyman Brower asked why a criteria "less than fraud" would be allowed to be used as the standard to pierce the corporate veil. Mr. Crowell said it was difficult to articulate what constituted fraud or the various circumstances that might lead to or give rise to an injustice sufficient to pierce the corporate veil. He believed the Supreme Court answered that question on page 3, Section [2][3] of Exhibit K where it stated, "It is not necessary that the plaintiff prove actual fraud. It is enough if the recognition of the two entities as separate would result in an injustice." The *Polaris* decision continued on the top of

page 4 of Exhibit K, "There is no litmus test for determining when the corporate fiction should be disregarded; the result depends on the circumstances of each case." Mr. Bradley said there were circumstances where it "may not be fraud," but you knew it was wrong. Assemblyman Brower said, "If it walks, talks, and swims like fraud you should be able to prove fraud."

Assemblyman Collins reminded the committee to look at the bigger issue of S.B. 577. Was the issue to deal with the *Polaris* decision or find money for the teachers? Mr. Bradley was in support of funding teacher salaries; however, it was not necessary to significantly change a strong 50-year judicial doctrine in order to accommodate that fee increase. That was why NTLA was offering an amendment.

Assemblyman Manendo asked if S.B. 577 had been in place a couple of years ago, how would that have affected the "Harley Harmon incident" in southern Nevada? Mr. Cashill said the current language in Section 3, subsection 7, page 3, provided immunity to officers or directors for any action committed as an officer or director. He did not believe it was the intent to extend immunity "that far." Mr. Cashill suggested some "limiting" language should be inserted that would limit the immunity to corporate activities in a legitimate sense. Mr. Bradley said Section 3, subsection 7, stated, "unless otherwise provided in NRS..." and that included mortgage and securities issues; there was some protection because it referred to existing provisions in the NRS. Without an amendment, Section 3, subsection 7, would eliminate third party damages, and that was not the intent. Mr. Cashill said there was an inconsistency between existing law in Section 2 that limited the liability and Section 3, subsection 7 that seemed to extend unlimited immunity.

Assemblywoman Buckley asked, when viewing the issue of fraud versus injustice, what definition of fraud would be used if the language of S.B. 577 was approved. Would it be the common law definition of fraud or the definition in NRS 42.001? Mr. Cashill said in the case *Lubey v. Barba* the common law definition was used as a standard. He did not know whether the statute or the common law definition would apply in any case. Assemblywoman Buckley said perpetrators of fraud could "get away with it" by saying there was "no intentional misrepresentation" to deprive a creditor. Mr. Cashill agreed.

Assemblyman Brower disagreed, saying he believed, in a case of "looting the corporation," fraud could be proven. Assemblyman Brower said Section 3, subsection 7, did not give unlimited immunity because it said, "unless it was proven there was fraud, intention misconduct or known violation of the law." Mr. Crowell disagreed with Assemblyman Brower and submitted an amendment

(Exhibit M) that clarified a director could not be shielded from liability for acts outside the corporation, which left intact the rights of a third party.

Chairman Anderson asked for an explanation of the Loomis letter (Exhibit L). Mr. Cashill recalled the circumstances of the case and subsequent judgment against Lange Financial Corporation. The Loomis family had great difficulty collecting the judgment amount, but was able to use the alter ego doctrine to reach through numerous corporate shells to reach the assets of the corporation in order the satisfy the judgment.

Mr. Crowell made closing statements regarding the proposed amendment (Exhibit M) from the NTLA. It included five sections:

1. Rewrote Section 1 using language drawn directly from the *Polaris* decision.
2. Amended language in Section 3, subsection 7, to clarify that the immunity from liability extended to an officer or director only "to the corporation or its stockholders" and to include the word "or" when listing the two actions that might cause liability.
3. Changed the effective date language to include "shall apply to claims that arise after October 1, 2001" in Section 59, subsection 2(b).
4. *Changed Section 8 to restore the statute of limitations to three years.*
5. Deleted Section 55 since legislative intent should not be a part of the bill.

Chairman Anderson asked if the proposed amendment (Exhibit M) had been shared with Senator James. Mr. Cashill said they "talked."

Assemblyman Oceguera asked for clarification from Mr. Bradley concerning comments made relating to Section 2, and to Section 3, subsection 7. Mr. Bradley reiterated the changes as outlined in the NTLA proposed amendment (Exhibit M).

Assemblyman Carpenter said on page 3, line 21, the NTLA proposed to delete "unless it is proven that," and asked why would the NTLA want that taken out. Mr. Bradley said that was a typo; it was their intent to retain that language.

Chairman Anderson clarified the language of the proposed amendment and asked the NTLA to submit a clean copy with any additional changes.

Danny Thompson, Executive Secretary-Treasurer, Nevada State American Federation of Labor-Congress of Industrial Organization (AFL-CIO), said Clark County had a critical need for 1,200 new teachers in 2001-2002, but they had only been able to recruit 500. Mr. Thompson shared statistics regarding high school dropouts, prison inmates, low teacher salaries, portable classrooms, and

lack of books. The problem could not wait; it needed to be solved in the current session. The problem was not going away!

Dave Howard, Reno-Sparks Chamber of Commerce, spoke in support of S.B. 577 with some reservations; he felt the bill did not do enough. Although it was believed that the bill was written to attract new corporations to Nevada, no one had discussed attrition if the economy "goes down the dumps;" there was no guarantee that the economy would continue to encourage growth. And even though Mr. Crowell said the bill would not be retroactive, Mr. Howard felt the provisions of the bill would also apply to those who were already incorporated.

Kami Dempsey, Director, Government Affairs, Las Vegas Chamber of Commerce, spoke in support of S.B. 577 as written. She said it was a first step to finding a solution to help teachers obtain a salary increase without negatively impacting the economy and disproportionately hurting small businesses. The Las Vegas Chamber of Commerce and the business community recently completed a position paper outlining their intention to work during the interim to find a tax package that would fulfill the state's financial needs over the next ten years.

Sam McMullen, Las Vegas Chamber of Commerce and the Retail Association of Nevada, said S.B. 577 contained a very serious issue. Mr. McMullen spoke in support of the bill, but he did not believe it needed an amendment. He reiterated his commitment to work during the interim on a package to be presented to the legislature at the Seventy-Second Session. Mr. McMullen said the bill had been looked at from both sides, as defendants and as plaintiffs, and he believed it to be a fair statement of the law, one that needed to be secured and passed in its current form. He said the real issue was sanctioning fraud; promoting justice was vague and too broad.

Chairman Anderson asked if Mr. McMullen had heard the testimony of the Secretary of State regarding the conflicts between S.B. 51 and S.B. 577. Mr. McMullen said he did not have a problem with conflict amendments; he did have a problem with changing the bill as written. Chairman Anderson stated there were time factors in the bill that may have led to a misunderstanding of the real intent of the bill. Mr. McMullen said he had no problems with the effective date of the law relating to claims. Chairman Anderson asked if Mr. McMullen participated in the drafting of the bill. Mr. McMullen said he had not.

Assemblyman Collins reiterated his question related to the "real issue" under discussion. Was it a test or was it a precedent with strings? Mr. Collins asked, "Are we doing the right thing?" Mr. McMullen said the real question should be,

"How do we guarantee that we actually get out of this bill what we said we were going to get out of it?" In order to increase fees, new provisions were necessary to drive revenue, to secure it, and to expand it in the future.

Assemblywoman Buckley verified the fees that would increase and those that would remain the same. It was good to be a business-friendly state; it was good for the economy. She questioned why an $80 increase required the kind of immunity provisions that could hurt other Nevada businesses? Mr. McMullen did not believe those immunity provisions would hurt any existing Nevada businesses; they were good for Nevada business. In his judgment, he did not think the trade was $80 for those provisions; rather, it was a resolution of budget issues, a marketing tool, and a clarification of current law.

Assemblyman Brower said he did not see the linkage between the fee increase and the change in policy. Regardless of whether the fees were increased, the proposed change in the law was a good policy change for Nevada. Mr. McMullen confirmed that would be good for Nevada. What people wanted most of all was to know what the rules of law were. It would be good for new corporations and would be clarification for existing corporations.

Chairman Anderson asked if Delaware or any other state had similar provisions. Why not take case law and put that into statutory provision? Mr. McMullen said Delaware did have more case law to rely on, but that might not be the question. It was easy for Delaware to attract corporations, especially on the east coast. Nevada needed to create a better attraction for corporations.

Chairman Anderson said the advantage of case law was that once it was on the books, it was there. Like common law, you could continue to make reference to it as it continued to evolve. Case law became a much more reliable predictor of behavior in a litigant society. Mr. McMullen disagreed. The issue was whether or not the stream of revenue was secured. Out-of-state corporations did not want case law to be a determining factor, as they could be the next case. Those corporations wanted to know that the rules were secure. Chairman Anderson said the question was then whether public policy should be put at-risk to fund education. Mr. McMullen did not think there was any risk; it was a clear statement of the policy.

Mary Lau, Executive Director, Retail Association of Nevada, said the issue of increased fees had been brought forward previously without result, and now that issue was being revisited.

Chairman Anderson asked for further testimony. There being none, he announced the committee would be recessed until 9:30 a.m. tomorrow

morning. The testimony phase was at an end. The committee was waiting for additional information from the Legal Division regarding the fiscal impact and those sections in conflict.

Assemblywoman Koivisto asked, if it was such good policy, why had it never come up before. The question was discussed among committee members. Chairman Anderson queried about an interim committee study done by Senator James. Assemblyman Brower was not aware of any Bill Draft Request (BDR) recommendation nor did he recall it being a discussion topic at any of the meetings. Assemblyman Manendo said the interim study committee broke into several panels, and the issue was not raised on his panel.

Ray Bacon, Nevada Manufacturers Association, said during the Business Law Committee, chaired by Mr. Taylor, discussed adding certainty to the law in two separate subcommittees. Mr. Bacon did not recall that specific issue being discussed.

Mr. McMullen said those types of issues were discussed, but until raising fees became a viable option, the counterbalance of those provisions was not necessary.

Chairman Anderson recessed the meeting at 6:46 p.m. until 9:30 a.m. the next morning.

Chairman Anderson reconvened the meeting at 10:00 a.m., the following day, made opening remarks, and noted a quorum was present. Discussion of S.B. 577 resumed.

Chairman Anderson drew attention to a letter from the Secretary of State's office (Exhibit N) that was submitted in response to the request made by the committee. The letter brought clarity to the provisions of S.B. 577 as to when the various sections would apply and why there were different dates for implementation.

Chairman Anderson announced a short recess to handle trouble with the Internet connection; the meeting reconvened in three minutes.

Renee Lacey, Chief Deputy, Secretary of State, said currently initial lists were currently not required for LLCs, LPs, and entities other than corporations; they only filed annual lists. S.B. 51 would require them to submit initial lists, resulting in the need for additional staff in order to maintain the 10-day money-back guarantee.

Chairman Anderson cautioned that conflicts might exist between S.B. 51 and S.B. 577 that would require amendments to make them consistent. As such, the dollar amounts currently in S.B. 577 might not be in the final draft. Mr. Lacey said that issue had been discussed with the Legal Division that would be preparing the amendment. Ms. Lang said S.B. 51 had already been enrolled, but would be amended to be consistent with S.B. 577.

Assemblywoman Buckley said the appropriation in Section 58 seemed excessive. Ms. Lacey said new positions had been discussed with the Fiscal Division, and most would come out of the Special Services Funds. The request to use those Special Services Funds for technology or positions in the office had to go through the Interim Finance Committee. The appropriation in Section 58 came from the portion that went into the Special Services Fund and not from the portion of the increased fees that would go to the General Fund to assist the teachers. Anything over $2 million that remained in the Special Services Fund at the end of the fiscal year went to the General Fund. The appropriation also included estimated funding for leased space. The additional staff, besides reviewing forms and preparing for the new services and the additional review required by the new services, would also staff a counter service that would provide a 2-hour and 24-hour expedited document service.

Assemblywoman Buckley asked why that funding had not been included in the separate bill where the new services were proposed and the new staff was requested. Ms. Lacey said requiring the new lists for LLCs and LPs was a new service not previously proposed. The Secretary of State's budget had been closed; 20 new positions were requested, and the Assembly Committee on Ways and Means approved 12. The Committee on Ways and Means asked the Secretary of State's Office to obtain funding for the remaining staff through S.B. 577 since the additional staff would be needed for the proposed services in the bill.

Assemblyman Manendo asked why the proposed amendment by the NTLA was approved by the Senate Judiciary Committee and then was taken out. Chairman Anderson verified that the proposed amendments presented to the committee were the same amendments that had been presented in the Senate. Mr. Crowell said the amendment presented in the Senate had been slightly different; it had been passed and then reconsidered the next day. He did not know why. Chairman Anderson requested that the amendment be redrafted, with a clean copy provided to the committee. Mr. Crowell submitted a new copy of the proposed amendment (Exhibit O) for the committee's consideration.

Chairman Anderson recessed the meeting at 10:26 a.m. to be reconvened upon the call of the Chair. There being no further business on that day, the meeting was adjourned at 2:30 p.m.

RESPECTFULLY SUBMITTED:

Deborah Rengler dy

Deborah Rengler
Committee Secretary

APPROVED BY:

Bernard J. Anderson, Jr.
Assemblyman Bernie Anderson, Chairman

DATE: July 10, 2001

4774

EXPLANATION OF SENATE BILL No. 577
(First Reprint)
(Prepared by the Legal Division)

Senate Bill No. 577 makes various changes concerning business associations.

Section 1 of S.B. 577 adds a new section to chapter 78 of NRS, which governs private corporations, to limit generally the common-law and statutory liability of corporate stockholders, directors and officers under certain circumstances. This section specifically provides that corporate stockholders, director or officers are immune from individual liability unless: (1) otherwise provided by specific statute; (2) otherwise provided by an agreement entered into by the corporate stockholder, director or officer; or (3) a court finds, in part, that the corporation and the stockholder, director or officer are inseparable and that adherence to the corporate fiction of a separate entity would sanction fraud. The intent of the Legislature in enacting this section is to codify the equitable doctrine of the common-law known as "piercing the corporate veil," "alter ego" or "disregarding the corporate fiction." In addition, it is the intent of the Legislature to change this equitable doctrine so that a director, officer or stockholder of a corporation may not be made individually liable for a debt or liability of the corporation unless the court finds that the director, officer or stockholder of the corporation actually committed fraud in connection with the debt or liability. (See section 55 of the bill.)

Section 2 of S.B. 577 amends NRS 78.037 to remove a provision authorizing the articles of incorporation of a corporation to contain a provision eliminating or limiting the personal liability of a corporate stockholder, director or officer under certain circumstances.

Section 3 of S.B. 577 amends NRS 78.138 to authorize corporate directors and stockholders to rely on certain information, including, without limitation, opinions, reports, and books of account or statements that are prepared or presented by financial advisers, valuation advisers and investment bankers as to matters believed to be in that person's professional or expert competence. Further, this section provides that a corporate director or officer is generally not individually liable for any act or failure to act in his official capacity unless it is proven that his act or omission constituted a breach of his fiduciary duties or involved intentional misconduct, fraud or a knowing violation of law.

Section 4 of S.B. 577 amends NRS 78.150 to require a corporation to include the name and street address of the resident agent of the corporation on the form filed with the secretary of state. In addition, each list required to be filed pursuant to this section is required to be accompanied by a declaration that the corporation has complied with the provisions of chapter 364A which governs business taxes. This section also sets forth a fee that must accompany one of the lists.

Section 6 of S.B. 577 amends NRS 78.170 to increase the penalty required to be paid by a defaulting corporation. Section 7 of S.B. 577 amends NRS 78.180 to increase

the fee that a defaulting corporation must pay for reinstatement. Section 8 of S.B. 577 amends NRS 78.300 to make various changes concerning the liability of corporate directors for unlaw distributions.

Section 9 of S.B. 577 amends NRS 78.7502 to provide that a corporation may indemnify certain persons if they are not liable pursuant to NRS 78.138.

Section 10 of S.B. 577 amends NRS 78.760 to increase the fee for filing certain articles of incorporation. Section 11 of S.B. 577 amends NRS 78.765 to increase the fees for filing a certificate changing the number of authorized shares, a certificate amending the articles of incorporation and a certificate of correction. Section 12 of S.B. 577 amends NRS 78.767 to increase the fee for filing a certificate of restated articles of incorporation. Section 13 of S.B. 577 amends NRS 78.780 to increase the fee for filing a certificate of dissolution. Section 14 of S.B. 577 amends NRS 78.785 to amend various miscellaneous fees.

Section 15 of S.B. 577 amends NRS 80.050 which is in the chapter concerning foreign corporations, to increase the fee for filing a notice of withdrawal from the State of Nevada by a foreign corporation.

Section 16 of S.B. 577 amends NRS 80.110 to require a list of officers and directors filed by a foreign corporation to be accompanied by a declaration that the corporation has complied with the provisions of chapter 364A of NRS concerning business tax. In addition, this section requires a corporation to pay a fee when filing such a list.

Section 18 of S.B. 577 amends NRS 80.150 to increase the penalty for a defaulting foreign corporation. Section 19 of S.B. 577 amends NRS 80.170 to increase the fee that a defaulting foreign corporation must pay for reinstatement.

Section 20 of S.B. 577 amends NRS 86.263 in the chapter concerning limited liability companies, to require such a company to include the name and street address of the resident agent of the company on the form filed with the secretary of state. In addition, each list required to be filed pursuant to this section is required to be accompanied by a declaration that the limited liability company has complied with the provisions of chapter 364A which governs business taxes. This section also sets forth a fee that must accompany one of the lists.

Section 22 of S.B. 577 amends NRS 86.275 to increase the penalty for a defaulting limited liability company. Section 23 of S.B. 577 amends NRS 86.276 to increase the fee that a defaulting limited liability company must pay for reinstatement. Section 24 of S.B. 577 amends NRS 86.561 to increase miscellaneous fees collected by the secretary of state from a limited liability company.

Section 25 of S.B. 577 amends NRS 87.440 to increase the fee that a registered limited liability partnership is required to pay with its certificate of registration. Section

26 of S.B. 577 amends NRS 87.460 to increase the fee that a registered limited liability partnership is required to paid when filing a certificate of amendment. Section 27 of S.B. 577 amends NRS 87.470 to increase the fee required by a registered limited liability partnership when filing a written notice of withdrawal. Section 28 of S.B. 577 amends NRS 87.490 to increase the fee required when such a partnership files a certificate of change of location or resident agent.

Section 29 of S.B. 577 amends NRS 87.510 to require a registered limited liability partnership to include the name and street address of the resident agent of the partnership on the form filed with the secretary of state. In addition, each list required to be filed pursuant to this section is required to be accompanied by a declaration that the partnership has complied with the provisions of chapter 364A which governs business taxes. This section also sets forth a fee that must accompany one of the lists.

Section 30 of S.B. 577 amends NRS 87.520 to increase the penalty required to be paid by a defaulting registered limited liability partnership. Section 31 of S.B. 577 amends NRS 87.530 to increase the fee that a defaulting registered limited liability partnership must pay for reinstatement. Section 32 of S.B. 577 amends NRS 87.550 to increase miscellaneous fees paid by registered limited liability partnerships to the secretary of state.

Section 33 of S.B. 577 amends NRS 88.395 to require a limited partnership to include the name and street address of the resident agent of the partnership on the form filed with the secretary of state. In addition, each list required to be filed pursuant to this section is required to be accompanied by a declaration that the partnership has complied with the provisions of chapter 364A which governs business taxes. This section also sets forth a fee that must accompany one of the lists.

Section 34 of S.B. 577 amends NRS 88.400 to increase the penalty required to be paid by a defaulting limited partnership. Section 35 of S.B. 577 amends NRS 88.410 to increase the fee that a defaulting limited partnership must pay for reinstatement. Section 36 of S.B. 577 amends NRS 88.415 to make various changes concerning the liability of directors of limited partnerships for unlaw distributions.

Section 37 of S.B. 577 amends NRS 88A.600 to require a list of officers and directors filed by a business trust to be accompanied by a declaration that the business trust has complied with the provisions of chapter 364A of NRS concerning business tax. In addition, this section requires a business trust to pay a fee when filing such a list.

Section 38 of S.B. 577 amends NRS 88A.630 to increase the penalty for a defaulting business trust. Section 39 of S.B. 577 amends NRS 88A.650 to increase the fee that a defaulting business trust must pay for reinstatement. Section 40 of S.B. 577 amends NRS 88A.900 to increase miscellaneous fees paid by business trusts to the secretary of state.

Section 41 of S.B. 577 amends NRS 89.210 to increase fees paid to the secretary of state by a professional association for filing articles of association and amendments.

Section 42 of S.B. 577 amends NRS 89.250 to require a list of officers and directors filed by a professional association to be accompanied by a declaration that the professional association has complied with the provisions of chapter 364A of NRS concerning business tax. In addition, this section requires a professional association to pay a fee when filing such a list.

Section 43 of S.B. 577 amends NRS 89.252 to increase the penalty for a defaulting professional association.

Section 44 of S.B. 577 amends NRS 89.256 to increase the fee that a defaulting professional association must pay for reinstatement.

Section 45 of S.B. 577 amends NRS 92A.190 to increase the fee charged in a merger or exchange.

Section 46 of S.B. 577 amends NRS 92A.210. The changes to this section were to move the fees for filing articles of merger of domestic corporations which were in NRS 78.770 (repealed in section 54 of this bill) into NRS 92A.210 because this appears to be a more appropriate place to list these fees.

Section 47 of S.B. 577 amends NRS 116.3103 to remove the insulation from liability provided to officers and members of a executive board of a common-interest community.

Section 48 of S.B. 577 amends NRS 225.140 to provide that certain fees charged by the secretary of state for providing special or expedited services must be deposited in the account for special services of the secretary of state in the state general fund and that the remainder must be deposited for credit to the state general fund.

Section 49 of S.B. 577 amends NRS 600.340 to increase the fee to register a trademark, tradename or service mark in this state. Section 50 of S.B. 577 amends NRS 600.355 to increase the fee for correcting the registration of such a mark. Section 51 of S.B. 577 amends NRS 600.360 to increase the fee for removing the registration of such a mark. Section 52 of the bill amends NRS 600.370 to increase the fee for assigning such a mark. Finally, section 53 of the bill amends NRS 600.395 to increase the fee for canceling the registration of such a mark.

Section 54 of S.B. 577 repeals NRS 78.770 concerning the fees for filing articles of merger of domestic corporations because these fees are moved to NRS 92A.210 (sec. 46).

Section 58 of S.B. 577 transfers money from the account for special services of the secretary of state to the secretary of state's operating general fund budget account.

Polaris v. Kaplan

Supreme Court of Nevada
747 P. 2d 884

ISSUE

On appeal to the Nevada Supreme Court, the issue was whether a salesman and a corporate shareholder officer could be held personally liable, for the debts of the corporation, under the alter ego doctrine. While the court declined to extend liability to the salesman under the facts of the case, the main issue centered on the liability of the shareholder officer.

FACTS

Polaris was an Ohio corporation that manufactured and sold wire products to NMS. By March 1978, NMS owed Polaris over $50,000 and was behind on payments. NMS then issued a promissory note for the outstanding balance.

NMS sold toy distributorships and incorporated in 1976. Bob Davis and Michael Kaplan were the sole shareholders and officers of the corporation. In 1978, NMS ceased its business operations, with a negative equity of over $150,000.

Davis and Kaplan then formed a new corporation, CRI, to sell health and beauty aid distributorships. They were again the sole shareholders and officers. Facts in evidence indicated that Kaplan and Davis did not always follow normal corporate procedures. Both NMS and CRI paid the personal obligations of the officers and unnumbered counter checks were often issued to Davis and Kaplan.

CRI did business in the same location as NMS and used the same bank. It also took assignment of NMS's assets and assumed NMS's liabilities. CRI informed Polaris it had assumed NMS's note; however, Polaris received only one payment. Polaris then brought suit on the promissory note.

RULE

The court enumerated three general requirements for application of the alter ego doctrine: (1) the corporation must be influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice. *McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 282, 317 P.2d 957, 959 (1957).

Further, the court stated that it is not necessary that the plaintiff prove actual fraud. It is enough if the recognition of the two entities as separate would result in an injustice. *Gordon v. Aztec Brewing Company*, 33 Cal.2d 514, 203 P.2d 522, 527 (1979).

ANALYSIS

The court reasoned that CRI's officers treated corporate funds as their own by making bank withdrawals in the form of advances to themselves, for their personal benefit, at a time when the corporation had few real assets and a negative net worth. Further, they found Polaris was damaged because these actions left the corporation without funds to repay the debt.

HOLDING

The court ruled in favor of Polaris and held Kaplan (as shareholder officer) personally liable for the corporation's obligation on the promissory note.

W12926

NEVADA LEGISLATURE

Memo

From the desk of...

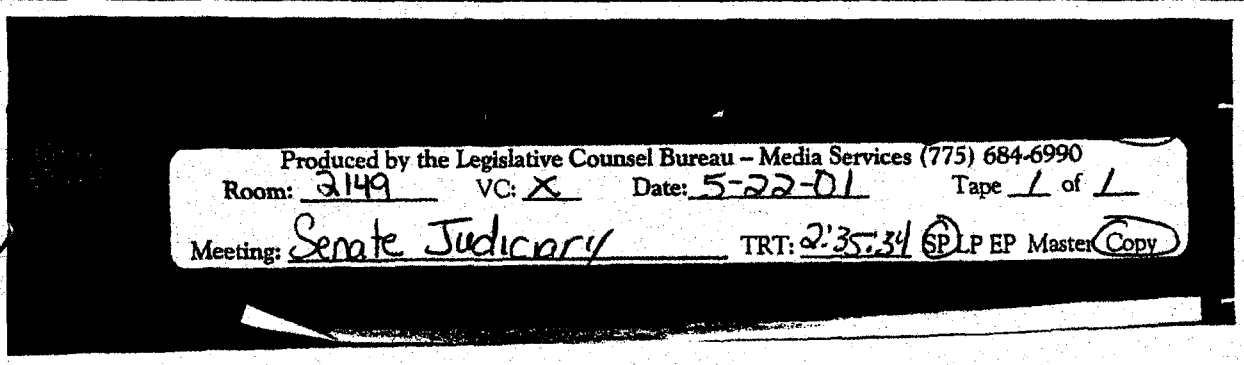
MARK A. JAMES
Senator, Clark No. 8

Kelly -
These are exhibits from this morning's meeting on SB 577. Thanks - Stephanie

3800 Howard Hughes Parkway, Las Vegas, Nevada 89109

Exhibit I (VIDEO)
Submitted by
Senator James

4801



I 2 OF 2

CRAIG
CORPORATION

Via Facsimile: (775) 684-6531
Email: mjames@sen.state.nv.us

May 30, 2001

Senator Mark A. James, Chairman
Senate Committee on Judiciary
Nevada State Senate
401 South Carson Street
Carson City, NV 89701

Re: Proposed Amendments to Directors Liability Statute

Dear Senator James and Members of the Committee:

Thank you for this opportunity to present my thoughts concerning certain proposed amendments to the Nevada Statutes pertaining to the liability of Officers and Directors under Nevada Law.

By way of background, I currently serve as a director of four public companies, Craig Corporation ("Craig"), Citadel Holding Corporation ("Citadel"), Reading Entertainment, Inc. ("Reading") and G&L Realty, Inc. ("G&L"). I am also a director of Fidelity Federal Bank, FSB, which is the wholly owned subsidiary of Bank Plus Corporation. Craig, Citadel and Reading are each Nevada corporations. G&L is a Maryland corporation, and Bank Plus is a Delaware corporation. Craig and G&L are listed on the New York Stock Exchange. Citadel is listed on the American Stock Exchange. Reading and Bank Plus are quoted on the NASDAQ Stock Market. Prior to my association with Craig, I was a partner, specializing in corporate and securities law, with Gibson, Dunn & Crutcher, in Los Angeles. Prior thereto, I served as a law clerk to Justice Dean Bryson on the Oregon Supreme Court, and graduated *Magna Cum Laude* from Harvard Law School in 1976.

Over the years, I have been involved as a lawyer, officer or director in a variety of extra-ordinary corporate transactions. In many cases, those transactions have resulted in litigation. To the best of my recollection, in no case, has such litigation resulted in the overturning of the transaction involved, a finding of ultimate liability on the part of any director or, in my view, any meaningful benefit to the members of the plaintiff class. In my

(213) 239-0555 FAX (213) 239-0
550 South Hope Street, Suite 1825, Los Ang

view, many corporation codes currently are insufficient to reasonably protect independent directors from harassment lawsuits brought by professional plaintiff's counsel primarily with an eye to producing revenues for the law firms involved and with little interest in or likelihood of producing any significant benefit to stockholders.

By way of example, as a director, I am currently a named defendant in three lawsuits, in each case brought by a professional plaintiff's counsel. These lawsuits have been brought notwithstanding the fact that great care was taken to assure the fairness of the transactions involved, notwithstanding the fact that the transactions were approved by special committees comprised of disinterested directors, notwithstanding the representation of such committees by experienced legal counsel and notwithstanding the fact that, in each case, fairness opinions were rendered by reputable financial advisors. In one case, Alphin v. Cotter, et al., Philadelphia County Court of Common Pleas, Trial Division, Case No. 01138, the lawsuit was filed on the basis of the company's press release announcing the anticipated transaction and prior to either the consideration of the transaction by the company's stockholders, or even the circulation of the definitive proxy materials describing the transaction. In other words, the lawsuit was filed even before the plaintiff's counsel had received the materials describing the details of the transaction and the special committee's reasons for recommending the transaction to the company's stockholders. The trial court has entered summary judgment in favor of all defendant directors, however, that case has been pending for more than four years, is currently on appeal by the plaintiff's counsel, and has resulted in the deposition of myself and all of the other directors of the company.

The other two lawsuits both grow out of a possible management buy-out of G&L. These two lawsuits, one in California and one in Maryland, were filed even before any determination was made by the special committee of disinterested directors whether or not to accept management's buy-out proposal. In short, the lawsuits were brought based on the press release by G&L that a management buy-out proposal had been received and was being considered by the special committee, and notwithstanding the fact that any such transaction would be subject to the approval of the stockholders of G&L. In essence, this is the same as someone suing you based on the fact that you had just bought a sports car and that they feared that you might get into an accident involving a third party.

As I am trained as a corporate attorney, I am perhaps less concerned about being named as a defendant in cases of this type than would be someone not similarly trained. I rely on the fact that, so long as I do things right, I will ultimately be vindicated. However, this is

not a view necessarily shared by people less familiar with litigation. Also, cases of this type can adversely affect the credit rating of the directors named in such cases. I am concerned that individuals who would make excellent directors are deterred from serving in these positions as a result of the fact that they can be, and today often are, sued with impunity, whenever an extraordinary corporate transaction is contemplated by the company they serve. There should be some way to balance the scales.

One good way to balance the scales would be to adopt the currently proposed revisions to the statute on director liability. In essence, this assures directors that, unless they are guilty of intentional misconduct, their personal net worths will not be at risk when they attempt to carry out their duties as directors. Given the size of many of the transactions on which the directors of a public company are required to vote, the financial risk to the directors can be significant. It is to be noted that it is not unusual for plaintiff's attorneys to allege multi-million dollar claims against outside directors who will receive no benefit from the transaction other than their directors' fees. If any of these claims were to come home to roost, it could mean financial ruin for the directors involved. This obviously gives plaintiff's counsel considerable leverage to attempt to coerce a nuisance settlement from the company's board of directors.

The introduction of a "clear and convincing" burden of proof would be very helpful in protecting directors from harassing suits, and require plaintiff's counsel to really think out his or her case. In addition, by expanding the list of experts referred to NRS 78.138(2)(b) to include financial advisors, investment bankers and valuation advisors, directors are given clear direction as to the scope of consultants they may rely on in making their decisions.

I believe that another good way to balance the scales is to put plaintiff's counsel at some financial risk, if they choose to proceed in the face of a prima facie case of fair and reasonable action on the part of the defendant directors. At the present time, a strike law firm has no downside risk in bringing a case other than the amount of time that the lawyers at the firm invest in the case. These law firms often do minimal work, and rely on their ability to settle for nuisance value and to collect a quick fee, rather than on their ability to ultimately win at trial.

Although a provision to address this nuisance caused by strike law firms is not a part of the proposed revisions to Chapter 78 of the Nevada Revised Statutes, I would recommend that such a provision be drafted and included as part of a bill for the next legislative session.

In making this recommendation, I suggest that it is not unfair to allow officers and directors to recoup their attorneys' fees from such a plaintiff's counsel, if that counsel fails to prove his or her case. This is, in essence, the rule in major commercial centers such as London, and elsewhere in the English Commonwealth. It will at least assure that strike lawyers do a little homework and research before bringing cases, and, hopefully, stop such counsel from bringing cases based solely on a press release that a company is considering a possible transaction or that a company may be presenting a possible transaction to its stockholders for their consideration. Alternatively, consideration might be given to a statute which:

(a) mandates the recoupment of litigation costs where the plaintiff's case fails to make it out of the pleading stage, or where summary judgment is entered in favor of the defendants; and

(b) gives the judge discretion to award attorney's fees in cases in which the plaintiff fails to prevail at trial.

Further, if a transaction is approved by a majority of the disinterested directors of a company, and if the action of those disinterested directors was supported by a fairness opinion, and if the firm issuing that fairness opinion was selected in a commercially reasonable manner by the disinterested directors, then it seems to me that it is likewise not unfair (i) to establish a presumption that the transaction was in fact fair, and (ii) to require plaintiff's counsel to post a bond in the amount of the anticipated litigation costs and expenses of the defendant officers and directors. Again, it seems to me to be a reasonable goal to balance the playing field that currently exists between plaintiff's counsel and the directors and officers of a company, so that directors know that they have some recourse if they are wrongfully accused of improper behavior and so that plaintiff's counsel knows that it must to do some homework prior to filing a complaint, or be at financial risk. At the present time, these individuals have no recourse and there is no downside to the filing of completely unresearched and spurious complaints by plaintiff's counsel.

As to the proposal to codify and increase the standard for piercing the "corporate veil," I believe that it is a good one. Since many corporations operate through a variety of operating subsidiaries, there is always an issue as to whether these entities will be respected. I think that a statute such as this would be helpful; since it raises the bar for piercing the "corporate veil" to a showing of fraud by "clear and convincing" evidence and it would give corporations operating through subsidiaries greater certainty that the corporate separateness of such entities would be honored. If such a standard were adopted, it would be my recommendation that we reincorporate all of our various subsidiaries in Nevada.

I believe that the changes currently contemplated would increase the attractiveness of Nevada as a state of incorporation for major public companies. I further believe that the adoption of such changes would mitigate the negative impact of increasing the fees assessed against companies choosing to incorporate in Nevada.

Should you have any questions, please feel free to contact me at (213) 239-0555.

Sincerely,

S. Craig Tompkins
President

J 5 of 5

*884 747 P.2d 884

103 Nev. 598

Supreme Court of Nevada.

POLARIS INDUSTRIAL CORPORATION d/b/a Dayton Wire Products, Appellant,
v.
Michael KAPLAN, and Jerome Kaplan, Respondents.
No. 16574.
Dec. 29, 1987.

Promisee brought action on promissory note against original corporate promisor, corporation that assumed promisor's obligation, and corporations' two shareholders officers, who were alleged to be alter egos of corporations. Following summary judgment for promisee against corporations, promisee amended complaint to add as defendants third corporation and salesman, alleging they, too, were alter egos of promisor corporations. After third corporation and one shareholder officer defaulted, the Eighth Judicial District Court, Clark County, Thomas J. O'Donnell, J., entered judgment for salesman and remaining shareholder officer, and promisee appealed. The Supreme Court, held that: (1) salesman who never had interest in or influence over promisor corporations was not corporations' alter ego so as to be liable for corporations' debt, and (2) findings that shareholders officers cashed numerous unnumbered counter checks for their personal benefit, that these withdrawals further thinned capitalization of corporation at time when corporation's obligation on promissory note was not being paid and that corporation had little real assets and negative net worth mandated conclusion that remaining shareholder officer was corporation's alter ego personally liable for corporation's obligation on promissory note.

Affirmed in part; reversed in part.

West Headnotes

[1] Appeal and Error ⇐842(2)
30 ----
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact
30k842(2) Findings of Fact and Conclusions of Law.

[See headnote text below]

[1] Appeal and Error ⇐1010.1(5)
30 ----
30XVI Review
30XVI(I) Questions of Fact, Verdicts, and Findings
30XVI(I)3 Findings of Court
30k1010 Sufficiency of Evidence in Support
30k1010.1 In General
30k1010.1(5) Reasonably Supported Findings.

Judgment based on conflicting evidence will not be disturbed when supported by substantial evidence, unless wrong conclusion was clearly reached.

[2] Corporations ⇐1.4(4)
101 ----
101I Incorporation and Organization
101k1.4 Disregarding Corporate Entity
101k1.4(4) Instrumentality, Agency, or Alter Ego.

Alter ego doctrine only applies when corporation is influenced and governed by person asserted to be alter ego, there is such unity of interests and ownership that one is inseparable from other and facts are such that adherence to corporate fiction of separate entity would, under circumstances, sanction fraud or promote injustice.

[3] Corporations ⇐1.4(4)
101 ----
101I Incorporation and Organization
101k1.4 Disregarding Corporate Entity
101k1.4(4) Instrumentality, Agency, or Alter Ego.

Party seeking application of alter ego doctrine need not prove actual fraud, but rather, that recognition of two entities as separate would result in injustice.

[4] Corporations ⇐1.6(7)
101 ----
101I Incorporation and Organization
101k1.6 Particular Occasions for Determining Corporate Entity
101k1.6(7) Liens, Bonds, Notes and Mortgages.

Absent evidence that salesman ever had any interest in or influence over corporations, salesman was not corporations' alter ego liable for corporations'

4808
ASSEMBLY COMMITTEE ON JUDICIARY EXHIBIT K
Date 5/30/01 Pages 5
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obligation on promissory note.

[5] Corporations ⚖1.4(4)
101 ----
101I Incorporation and Organization
101k1.4 Disregarding Corporate Entity
101k1.4(4) Instrumentality, Agency, or Alter Ego.

Commingling of funds, under capitalization, unauthorized diversion of funds, treatment of corporate assets as individual's own, and failure to observe corporate formalities may indicate existence of alter ego relationship between corporation and shareholder, but such factors are not conclusive.

[6] Corporations ⚖1.4(1)
101 ----
101I Incorporation and Organization
101k1.4 Disregarding Corporate Entity
101k1.4(1) In General.

There is no litmus test for determining whether corporate fiction should be disregarded; result depends *on circumstances of each case.*

[7] Corporations ⚖1.6(3)
101 ----
101I Incorporation and Organization
101k1.6 Particular Occasions for Determining Corporate Entity
101k1.6(3) Debts and Obligations of Corporation; Creditors' Remedies.

Actions pointing to community of interest between individual and corporation must also be cause of plaintiff's injury and must have sanctioned fraud or promoted injustice before corporate veil can be pierced and individual held liable for corporation's obligation to plaintiff.

[8] Corporations ⚖1.7(2)
101 ----
101I Incorporation and Organization
101k1.7 Pleading and Procedure in Determining Corporate Entity
101k1.7(2) Evidence and Fact Questions.

Notations on unnumbered counter checks charging withdrawal of corporate funds to "employee advances" supported trial court's finding that corporation's shareholders officers cashed numerous unnumbered counter checks for their personal benefit.

[9] Evidence ⚖571(1)
157 ----
157XII Opinion Evidence
157XII(F) Effect of Opinion Evidence
157k569 Testimony of Experts
157k571 Nature of Subject
157k571(1) In General.

Auditor's opinions that corporation would have had funds to pay debt if withdrawals by shareholder officers had not further thinned capitalization of corporation and that corporation had few real assets because accounts receivables carried on its books were uncollectable were sufficient to sustain trial court's finding that shareholders' payments to themselves prevented corporation from paying its debt.

[10] Corporations ⚖1.6(7)
101 ----
101I Incorporation and Organization
101k1.6 Particular Occasions for Determining Corporate Entity
101k1.6(7) Liens, Bonds, Notes and Mortgages.

Trial court's findings that corporation's two shareholder officers cashed numerous unnumbered counter checks for their personal benefit, that these withdrawals further thinned capitalization of corporation at time when corporation's debt on promissory note was not being paid and that corporation had little real assets and negative net worth mandated conclusion that shareholder officer was corporation's alter ego personally liable to for corporation's debt on promissory note.

***885** Chris A. Beecroft, Las Vegas, for appellant.

Brown, Wells, Beller & Kravitz, Las Vegas, for respondents.

[103 Nev. 599] OPINION

PER CURIAM:

This case arises from a promissory note originally issued by National Marketing Services (NMS), a now-defunct Nevada corporation, to appellant **Polaris** Industrial Corporation for amounts owing on an account. The note was later assumed by Commercial Resources, Inc. (CRI), another Nevada corporation no longer in existence. In 1979, **Polaris** brought an action on the note against both corporations and their two shareholders and officers, Bob Davis and respondent Michael Kaplan. **Polaris** alleged Davis and [103 Nev. 600] Kaplan were the alter egos of NMS and CRI.

Summary judgment was entered for **Polaris** against the corporations. **Polaris** then amended its complaint to add as defendants Cambist Corporation and respondent Jerome Kaplan alleging they, too, were the alter egos of NMS and CRI. Cambist Corporation and Bob Davis defaulted. The case proceeded to trial against respondents Michael and Jerome Kaplan. The district court concluded **Polaris** had not borne its burden of proof in demonstrating the Kaplans were the alter egos of NMS and CRI. Judgment was entered for the defendants. **Polaris** appeals.

Polaris was an Ohio corporation that custom manufactured wire products. Beginning ***886** in 1976, **Polaris** sold wire display racks to NMS. Initially, NMS paid for the goods in advance. Later, payment was made on delivery. Eventually, NMS requested a thirty-day account. By March 1978, NMS owed **Polaris** *$50,560.16* and was behind on payments. NMS then issued the promissory note that is the basis of this suit.

NMS sold toy distributorships. It was originally a sole proprietorship owned by Michael Kaplan. NMS incorporated in 1976 soon after its first contact with Polaris. Bob Davis and Michael Kaplan were the sole shareholders and officers of the corporation. In its most lucrative year, 1977, NMS realized a profit of about $500,000.00. It ceased to do business the following Spring. The corporate balance sheet reflected a negative equity of $154,144.00 indicating the stockholders had taken out more than they had put in.

Davis and Kaplan formed a new corporation, CRI, to sell health and beauty aid distributorships. They were again the sole shareholders and officers. CRI did business in the same location as NMS and used the same bank. It also took assignment of NMS's assets and assumed NMS's liabilities. CRI informed **Polaris** it had assumed NMS's note. Thereafter, **Polaris** received only one payment. Both NMS and CRI were sold to a party in Missouri after the institution of this suit.

The district court made a number of findings that indicated Kaplan and Davis did not always follow normal corporate procedures. Both NMS and CRI paid the personal obligations of the officers. Unnumbered counter checks were often issued to Davis and Kaplan. (FN1) There was no evidence that capital contributions had actually been made or that stock certificates had been issued. The only evidence of corporate meetings consisted of minutes that generally ratified all previous decisions of the prior year. Despite these findings, the court concluded Polaris had not shown an alter ego relationship between Kaplan and the corporations.

[103 Nev. 601] Jerome Kaplan was Michael Kaplan's brother. He was a salesman for CRI, but never had any interest in the corporation. In July 1979, Jerome formed Cambist Corporation to sell sporting goods distributorships. Cambist shared offices with CRI and paid the rent in return for use of office furniture. Cambist ceased doing business in March 1980. The district court also concluded that Jerome Kaplan was not an alter ego of CRI.

[1] Polaris contends the district court reached the wrong conclusion. The general rule is that where the evidence is conflicting and there is substantial evidence to support the judgment, it will not be disturbed. *Consolazio v. Summerfield*, 54 Nev. 176, 179, 10 P.2d 629, 630 (1932). But there is an exception when it is clear that a wrong conclusion has been reached. *Id.* Our task on appeal is to determine whether the trial court's findings in this case mandated a contrary conclusion.

[2][3] There are three general requirements for application of the alter ego doctrine: (1) the corporation must be influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice. *McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 282, 317 P.2d 957, 959 (1957). It is not necessary that the plaintiff prove actual fraud. It is enough if the recognition of the two entities as separate would result in an injustice. *Gordon v. Aztec Brewing Company*, 33 Cal.2d 514, 203 P.2d 522, 527 (1979)*quoted in McCleary, supra.*

[4] It is admitted that Michael Kaplan, along with Bob Davis, wholly owned and controlled NMS and CRI. However, there is no evidence Jerome Kaplan ever had any interest in or influence over these two corporations. Hence, this appeal fails as to Jerome Kaplan.

***887** [5][6] In determining whether a unity of

interest exists between the individual and the corporation, courts have looked to factors like co-mingling of funds, undercapitalization, unauthorized diversion of funds, treatment of corporate assets as the individual's own, and failure to observe corporate formalities. *See North Arlington Medical Building, Inc. v. Sanchez Construction Co.*, 86 Nev. 515, 522 n. 8, 471 P.2d 240, 244 (1970). These factors may indicate the existence of an alter ego relationship, but are not [103 Nev. 602] conclusive. *See id.* There is no litmus test for determining when the corporate fiction should be disregarded; the result depends on the circumstances of each case. *Mesler v. Bragg Management Co.*, 39 Cal.3d 290, 216 Cal.Rptr. 443, 702 P.2d 601, 606 (1985).

[7] The district court found that the corporation paid Kaplan's personal obligations, that Kaplan made withdrawals of funds for his own use without following corporate procedures and that certain corporate formalities were not observed. These findings point to a unity of interest between the individual and the corporation. However, these actions must also be the cause of **Polaris's** injury and must have sentenced a fraud or promoted an injustice before the corporate veil can be pierced. *See North Arlington Medical Building, supra.*

The record does not reflect how failure to issue stock or keep proper corporate minutes sanctioned a fraud or promoted an injustice to **Polaris**. It also does not establish that an injustice necessarily resulted from the corporation's payment of Kaplan's personal debts. Kaplan testified the payments were in lieu of salary. We also note the district court did not specifically find that the corporations were undercapitalized.

[8][9][10] We are, however, troubled by the district court's conclusion in light of its findings that Davis and Kaplan cashed numerous unnumbered counter checks for their personal benefit and that these withdrawals further thinned the capitalization of CRI which, according to another finding, had little real assets and a negative net worth.

On July 20, 1979, the same day that Polaris served Kaplan and Davis with its complaint, Kaplan withdrew $12,500.00 by unnumbered counter check. A notation on the check charged the withdrawal to Account 140, revealed at a trial to be "Employee Advances." From August 1979 to October 1979, Kaplan and Davis made numerous payments to themselves, Jerome Kaplan and McKenzie Davis. (FN2) CRI's bookkeeper was not apprised of the [103 Nev. 603] withdrawals by unnumbered checks. Kaplan admitted Davis took funds from the corporation to support his gambling habit. He, himself, claimed to have made temporary withdrawals to protect corporate funds from Davis. However, the district court found the funds were taken for the personal use of both officers. This finding is supported by notations on the checks charging them to "employee advances." R. Craig Bird, an auditor retained by Polaris, opined that CRI would have had the funds to pay its debt if the withdrawals had not further thinned the capitalization of the corporation. He also stated that CRI had few real assets because the accounts receivables carried on its books were uncollectable. The district ***888.** court was entitled to accept his opinion. Our review of the record shows the district court's findings concerning the unnumbered counter checks and their effect on the corporation are supported by substantial evidence. They will, therefore, not be disturbed on appeal. *Ivory Ranch v. Quinn River Ranch*, 101 Nev. 471, 472, 705 P.2d 673, 675 (1985).

In light of the findings, it becomes clear that CRI's officers treated corporate funds as their own by making ad hoc withdrawals at the bank in the form of advances to themselves at a time when the corporation's debt to **Polaris** was not being paid, and that **Polaris** was damaged because these actions left the corporation without funds to repay the debt. The essence of the alter ego doctrine is to do justice. *Mesler v. Bragg Management Co., supra*, 702 P.2d at 607. We are compelled to recognize that the district court clearly reached a wrong conclusion in determining that Michael Kaplan had not been shown to be the alter ego of NMS and CRI.

Accordingly, we affirm the judgment of the district court as to Jerome Kaplan, and reverse the judgment as to Michael Kaplan. (FN3)

(FN1.) The counter checks were blank checks obtained at the bank.

(FN2.) The record shows these payments:

July 20, 1979	Michael Kaplan	$12,500.00 *
August, 1979	Bob Davis	5,000.00
August 7, 1979	Michael Kaplan	4,700.00
August 10, 1979	Jerome Kaplan	2,000.00
August 14, 1979	Michael Kaplan	2,500.00
August 16, 1979	McKenzie Davis	1,500.00

August 21, 1979	Bob Davis	1,750.00
August 20, 1979	Cash	4,000.00 *
August 30, 1979	Michael Kaplan	1,500.00 *
October 15, 1979	Cashier's checks (Michael Kaplan, Jerome Kaplan and CRI)	24,863.84 *

* Unnumbered counter checks

(FN3.) Appellant named National Marketing Services, Commercial Resources, Inc., Cambist Corporation, Bob M. Davis, Michael Kaplan and Jerome Kaplan as respondents. However, appellant obtained judgments against all the parties except Michael and Jerome Kaplan, the only respondents to appear in this appeal. Hence, the names of the other parties have been deleted from the caption of this appeal.

May 30, 2001

To : The Nevada Senate
Carson City, Nevada

Mr. Mark A. James,

I, Cebe Loomis, being 85 years of age unfortunately cannot appear before you today. So I have chosen to write to you instead. I lived most of my life in Reno with my husband and former member of the Nevada State Senate, E.F. Loomis. I have recently been informed about the possibility of the altering of a certain Nevada Corporate Law. This deeply disturbs me. As I understand it this new proposal would do irreparable harm to the rights of citizens such as myself.

For over ten years my family and my lawyer have been trying to collect upon a judgement handed down by the Nevada Supreme Court. In this judgement my family was awarded a substantial amount of money from a California company ; Lange Financial Corporation. This money has been impossible to collect. The people of this company have continuously eluded us and have used their corporate setup to hide behind and to protect them from the wrongful actions that they have committed.

I strongly urge you to carefully consider this new proposal and the harm it will inflict upon the citizens of Nevada. The State of Nevada should remain proud about the quality of businesses that it is attempting to attract and should not encourage the mistreatments of it's citizens by depriving them of their regress.

Respectfully,

Cebe W. Loomis

Cebe W. Loomis

4813

ASSEMBLY COMMITTEE ON JUDICIARY EXHIBIT C
Date 5/30/01 Pages 1
Submitted by PAT CASHILL

Case No. 70823

IN THE SUPREME COURT OF THE STATE OF NEVADA

PETER and CHRISTIAN GARDNER, on behalf of minor child, LELAND GARDNER,
Plaintiffs-Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; and THE HONORABLE JERRY A. WIESE II, DISTRICT JUDGE

and

HENDERSON WATER PARK, LLC DBA COWABUNGA BAY WATER PARK, WEST COAST WATER PARKS, LLC, AND DOUBLE OTT WATER HOLDINGS, LLC
Defendants-Real Parties in Interest,

Extraordinary Writ from the Eighth Judicial District Court of the State of Nevada, in and for County of Clark

PETITIONERS' REPLY APPENDIX – VOLUME 2

Donald J. Campbell, Esq.
Philip R. Erwin, Esq.
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SB 577 - 2001

Introduced on May 24, 2001
By James, Raggio, O'Donnell, Amodei, Rawson, Jacobsen, McGinness,

Revises statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

Fiscal Note
Effect On Local Government: *No.*
Effect on the State: *No.*

Hearings

Senate Judiciary	May-22-2001	Discussed as BDR
Senate Judiciary	May-24-2001	Discussed as BDR
Senate Judiciary	May-25-2001	Amend, and do pass as amended
Senate Finance	May-26-2001	Mentioned No Jurisdiction
Senate Judiciary	May-26-2001	Rescind
Senate Judiciary	May-26-2001	Amend, and do pass as amended
Assembly Judiciary	May-30-2001	No Action
Assembly Ways and Means	May-31-2001	Mentioned no jurisdiction
Assembly Judiciary	Jun-01-2001	Amend, and do pass as amended
Senate Judiciary	Jun-03-2001	Do not concur

Bill History

May 24, 2001 Read first time. Referred to Committee on Judiciary. To printer.
Waiver granted effective: May 11, 2001

May 25, 2001 From printer. To committee.

May 26, 2001 From committee: Amend, and do pass as amended. Declared an emergency measure under the Constitution. Read third time. Amended. (Amend. No. 1079). To printer. From printer. To engrossment. Engrossed. First reprint. Placed on General File. Read third time. Passed, as amended. Title approved, as amended. (Yeas: 18, Nays: 1, Excused: 2). To Assembly.

May 28, 2001 In Assembly. Read first time. Referred to Committee on Judiciary. To committee.

June 02, 2001 From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 1172). To printer.

June 03, 2001 From printer. To re-engrossment. Re-engrossed. Second reprint. Read third time. Passed, as amended. Title approved, as amended. (Yeas: 40, Nays: None, Excused: 2). To Senate. In Senate. Assembly Amendment No. 1172 not concurred in. To Assembly.

June 04, 2001 In Assembly. Assembly Amendment No. 1172 not receded from. Conference requested. First Conference Committee appointed by Assembly. To Senate. In Senate. First Conference Committee appointed by Senate. To committee. From committee: Concur in Assembly Amendment No. 1172 and further amend. First Conference report adopted by Senate. First Conference report adopted by Assembly.

June 05, 2001 To printer.

June 11, 2001 From printer. To re-engrossment. Re-engrossed. Third reprint. To enrollment.

June 12, 2001 Enrolled and delivered to Governor.

June 15, 2001 Approved by the Governor. Chapter 601.

Sections 1, 2, 3, 8, 9, 47, 59, 60, 61, 62 and 63 effective June 15, 2001. Sections 5, 6, 12, 13 to 19, inclusive, 20, 21, 22, 25 to 31, inclusive, 35 to 39, inclusive, 41 to 45, inclusive, and 47 to 53, inclusive, effective (a) June 15, 2001 for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and (b) On August 1, 2001, for all other purposes. Sections 1.5, 4, 7, 8.5, 10, 11, 14, 19.5, 23, 24, 32, 33, 34, 40, 46 and 54 to 58, inclusive, effective: (a) June 15, 2001 for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and (b) At 12:01 a.m. August 1, 2001, for all other purposes.

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

BILL SUMMARY

71st REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

SENATE BILL 577
(Enrolled)

Topic

Senate Bill 577 relates to statutory liability of corporate stockholders, directors, and officers, and increases fees for filing certain documents with the Secretary of State.

Summary

Senate Bill 577 provides that no stockholder, director, or officer of a corporation is individually liable for a debt or liability of the corporation unless he acts as an alter ego of the corporation. The bill further specifies that a stockholder, director, or officer acts as an alter ego if: (1) the corporation is influenced by the stockholder, director, or officer; (2) the corporation and the stockholder, director, or officer are inseparable; and (3) adherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice. A court, as a matter of law, must determine the question of whether the stockholder, director, or officer acts as the alter ego of a corporation.

Senate Bill 577 also provides that directors and officers are not individually liable to the corporation or its stockholders for damages resulting from an act or failure to act unless it is proven that their actions or failure to act constituted a breach of fiduciary duties and the breach involved intentional misconduct, fraud, or a knowing violation of the law.

Senate Bill 577 also increases fees for certain documents filed with the Secretary of State by corporations, foreign corporations, limited liability companies, partnerships, limited partnerships, and business trusts. The changes in fees include an increase from $85 to $165 for filing the initial list of officers, directors, managers, managing members, managing partners, and general partners. When this list is filed initially and annually, the bill requires that the business entity provide a declaration under penalty of perjury that it has complied with the provisions of Nevada's business tax laws.

Other fee increases include filings of certificates and documents concerning: reinstatement, amendments to certain documents, dissolution, change of location, notice of withdrawal from Nevada by a foreign corporation, original articles of organization for limited liability companies, or registration of certain business entities. Additional fee changes include an increase, from $10 to $20, for certifying copies of certain documents, and an increase, from $15 to $30, for executing a certificate of corporate existence.

Senate Bill 577 authorizes the Office of the Secretary of State to access $300,000 in Fiscal Year 2001-2002 and $250,000 in Fiscal Year 2002-2003 from the Account for Special Services. These funds may be accessed without approval from the Interim Finance Committee, and may be used for additional personnel, equipment, supplies, office space, and other related costs. The measure also authorizes the Office of the Secretary of State to retain the first $50 from each expedited fee for services provided within two hours. For other special and expedited services, including services provided in 2 to 24 hours, the fee is divided equally between the Secretary of State's Office and the State General Fund.

Effective Date

Most of the provisions of this measure are effective on August 1, 2001, to allow the Secretary of State's Office time to adequately inform its customers of these changes. The provisions allowing the Secretary of State's Office to access funds from the Account for Special Services and dividing the fees for expedited services between the State General Fund and the Secretary of State's Office are effective on July 1, 2001.

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-First Session
May 22, 2001

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:00 a.m., on Tuesday, May 22, 2001, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Dina Titus
Senator Valerie Wiener
Senator Terry Care

STAFF MEMBERS PRESENT:

Bradley A. Wilkinson, Committee Counsel
Allison Combs, Committee Policy Analyst
Carolyn Allfree, Committee Secretary

OTHERS PRESENT:

Michael J. Bonner, Concerned Citizen
Craig Tompkins, Concerned Citizen
John P. Fowler, Chairman, Executive Committee, Business Law Section, State Bar of Nevada
Dean Heller, Secretary of State

Chairman James stated Senate Bill (S.B.) 571 would not be heard, but he would be presenting a proposal for modifications of provisions in Chapter 78 of *Nevada Revised Statutes* (NRS) and other corporate entity-formation and annual license fee statutes. He then turned the chairmanship of the committee over to Senator Jon C. Porter, Vice Chairman.

SENATE BILL 571: Revises provisions governing business tax. (BDR 32-1548)

Vice Chairman Porter opened the hearing on Bill Draft Request (BDR) 7-1547.

BILL DRAFT REQUEST 7-1547: Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (Later introduced as Senate Bill 577.)

Senator Mark A. James, Clark County Senatorial District No. 8, stated BDR 7-1547 is a measure that will take Nevada in a new and positive direction as a state that is business-friendly. He surmised Nevada will be the number one state in the country for a business to incorporate and operate in, or to have as its corporate domicile. He said every year over the past 10 years, the senate judiciary committee has processed a major piece of legislation modifying, amending, and updating the corporate laws of the State of Nevada. The measures have been the work of the Business Law Section of the State Bar of Nevada, chaired by John P. Fowler, he stated. Those changes in Nevada's laws, he asserted, have kept them up to date with Delaware's laws, all the most recent IRS (Internal Revenue Service) revenue rulings, tax court decisions, United States Supreme Court decisions concerning taxation, and other issues important to corporations in deciding where they want to do business and where they want to have their corporate domicile and be registered to do business.

Senator James said, in some ways Nevada's business laws are better than Delaware's, but they are substantially similar and allow Nevada courts to look to the long history of Delaware jurisprudence to decide disputes that arise under Nevada laws. In recent years, new entities have been created for Nevada businesses, including the limited liability company (LLC), business trusts, and business court, he said. All of these things have been done, he said, and filing fees have not been changed in the past 10 years. He made the following remarks:

> We all know that we have . . . an under-funded budget in the state. Our budget is under-funded, by the projected budget, by $121.5 million . . . If you look at the numbers more carefully . . . the numbers are closer to $130 million. In the face of this, I have

been working with . . . Senator O'Donnell [William R. O'Donnell, Clark County Senatorial District No. 5] and Senator Amodei [Mark Amodei, Capital Senatorial District] on coming up with an alternative to simply cutting a budget in a year when it would be extremely deleterious to our education system . . . to do so. So, we bring this measure forward to change the fee structure for the filing of corporations and for the maintenance of corporations in Nevada . . .

Let me tell you how we arrived at this. You cannot constitutionally tax a corporation just because it is domiciled in Nevada and it is resident out-of-state; it is a violation of the commerce clause. You cannot tax or level a fee upon assets or income that are not located within the state; to do so is discriminatory and in violation of the federal constitution. What you have to do is come up with a fee structure that is fair to all corporations who choose to domicile in Nevada and that is based upon some principles that make it fair in terms of the ability of corporations to pay and the benefit they receive from utilizing our corporate form and chartering themselves in Nevada or qualifying to do business in Nevada. [BDR 7-1547], on page 2, creates that structure. For corporations qualifying to do business in Nevada or chartered in Nevada, the minimal fee . . . would be $150 . . . plus 0.35 percent of its net worth in Nevada in excess of $40,000.

I have given you a couple of financial breakdowns which will aid you in understanding how this fee will impact business in Nevada and business outside Nevada that utilizes our state (Exhibit C and Exhibit D) . . . An important characteristic of this is about 87 percent of the corporations now registered in Nevada would pay the minimum fee . . . an increase of $65 . . . When I originally proposed this measure, I proposed there be a $500 fee across-the-board for all corporations . . . We heard a lot of feedback that if you charge $500, that is going to be an increase from $85 . . . and that is too much for a small business to handle . . . People said, "If you do that, we will just go to Wyoming." . . . I never knew Wyoming was such a popular place . . . so I decided to study

> Wyoming and found out that in July of 2000, a new fee structure went into effect in Wyoming. Wyoming places an annual, they call it a license fee, on all corporations, domestic and foreign, having the right to do business . . . in Wyoming; that license fee is at 0.00020 percent, but it is on total assets "situsedd" in Wyoming, with a maximum license fee of $50,000 per year.
>
> What we have presented to the committee is something different, not a license fee based upon total assets, but a license fee based on actual net worth in Nevada, total wealth in Nevada. So, you can see you would not be paying the higher fees if you had a low net worth. So, in that sense, this is based upon the ability to pay. I was very privileged to receive from Carole Vilardo [Lobbyist, Nevada Taxpayers Association] a flyer from her organization on taxation principles, which this fee meets all of.

Senator James said those working on this proposal wanted to know what substantial, additional feature might be offered to make Nevada attractive and ensure corporations will want to come here. He said they received feedback from attorneys in Nevada who said Nevada ought to offer some liability protection to directors of corporations. Section 5, subsection 7, of the bill does that, he said, in providing "a director or officer of a corporation is not individually liable for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven by clear and convincing evidence that, (a) his act or failure to act constituted a breach of his fiduciary duties as a director or officer; and (b) his breach of those duties involved intentional misconduct, fraud or a knowing violation of law." Someone cannot sue a director and seek his personal assets as a result of questioning, after the fact, the business judgment involved in his decision, Senator James said, and he emphasized this does not take away a remedy against the corporation.

According to Senator James, an additional provision proposed in BDR 7-1547, in section 2, is the codification of the principle in existing Nevada law that one cannot pierce the corporate veil and seek to get at the personal assets of a person who is an incorporator or a shareholder of a corporation. Recourse is available, he said, only if it is shown the corporate form is being utilized to perpetrate a fraud and there is a commingling and a unity of interest of ownership and control of the corporation between the entity and the stockholder, director, or officer, and that they are inseparable from each other.

Senator James offered an analysis of the business franchise fee that would be paid by various entities under this bill (Exhibit D). The analysis was prepared by Ted A. Zuend, Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau, from documents on file of public companies either chartered in Nevada or authorized to do business in Nevada. It is testimony to the bill's inherent fairness, he said, because it is a graduated fee based upon ability to pay and upon the wealth of the company. Senator James described the distribution of the franchise fee burden (Exhibit E). He pointed out the maximum fees are going to be paid not only by companies chartering to do business in Nevada to take advantage of Nevada's favorable tax structure which has no income tax and no corporate income tax, but also by those businesses coming here to take advantage of Nevada's booming economy:

Senator James stated:

> Look at the national name brands coming to Nevada to take advantage of our booming economy . . . These companies all either charter here with a subsidiary or with their national company, or they register with the secretary of state to do business here. And, all of these people pay $85 per year to have the benefit of Nevada's corporate laws . . . Under this proposal, based upon the assets they locate in Nevada, the business they do in Nevada, they will pay a graduated fee . . . It is important to understand, I think, for businesses to take advantage of Nevada's lack of a corporate income tax [and] lack of a personal income tax, the income has to be generated in Nevada. The assets, therefore, need to be located in Nevada. And, under those circumstances . . . a fair net worth-based filing fee would apply.

Senator James read from Carole Vilardo's article in the April 2001 issue of "Tax Topics" (a publication of the Nevada Taxpayers Association) concerning taxation principles: "Long range planning should be an integral part of the state's revenue structure and should include forecasting trends in population growth and the corresponding growth in governmental services. The Legislature should adopt a statement of tax policy which encompasses the following principles: Non-Competitive: Revenue sources should not be competitive

between the state and local governments." Senator James said some of the proposals made this session would compete with local government over limited revenue sources. They really are not new revenue sources, he said, they are merely a redirection of revenue sources.

Continuing with Ms. Vilardo's article, Senator James read, "Economic: Revenue sources should reflect the existing state economic structure and consider possible future economic needs. The impact on individuals and businesses should be considered. A systematic, periodic review should be conducted to consider current business practices, loopholes and other impacts such as ease of compliance." He said:

> We have a state that is generating great wealth, tremendous growth, tremendous growth in wealth and new businesses, and yet we have, after a decade of this unprecedented growth, a state budget that is under-funded, an education system that is under-funded, and a state of affairs at our state level where our employees have not received a raise in so long that many of them defect, not to private [business], but to local government, where they get a one-third increase in the amount of money they make for doing the same, exact job. So I think this . . . would take advantage of the existing economic structure of Nevada, would do no damage, no violence to the existing tax structure of the state or business-friendly climate of the state, but it would bring us back to reality in terms of allowing the great wealth that has been generated in our state to benefit our government and those who benefit from our government, such as our children in school.

Senator James resumed reading from Ms. Vilardo's article: "Simplicity: Taxes should be simple to understand and easily complied with. Results will be improved voluntary compliance and reduced administrative costs." He said the fees provided for in BDR 7-1547 are "extremely simple" to comply with and will utilize the same form that is currently filed with the secretary of state's office, with a couple of lines added for business assets and net worth, pursuant to section 6, subsection 1, paragraph (e) through paragraph (g).

Again, from Ms. Vilardo's article, Senator James read, "Stability: Taxes should be stable and predictable." He said Nevada currently has fluctuating revenue sources that depend upon a number of factors and BDR 7-1547 provides for a

much more stable and predictable revenue source. Other principles outlined in Ms. Vilardo's article, he stated, are: taxes should be compatible with other government taxes for ease of compliance; they should be broad-based, with as few exemptions as possible and not favor one taxpayer group over another; they should be equitable, taking the impact on economic growth of the state into consideration; and, collections should be fairly and uniformly enforced. Bill Draft Request 7-1547 meets all these criteria, Senator James said.

Senator James said he thinks this tax can be collected as a fee by the secretary of state, and the secretary of state will be asking for an auditor position to keep track of the fees as they come in, and for additional funds to handle the increased responsibilities of the office. He said it is fully appropriate to use some of those revenues to honor that request.

Senator Titus commended Senator James for his work on this bill, and said there is no one who wants more for schools than she does. She pointed out this proposal is a major change in Nevada's tax policy, and noted this Legislature has never undertaken something this major by going around the Governor. She said when something like this is done, both parties, both Houses, and the executive are needed, and "time is running out."

Senator Titus asked Senator James whether he can tell her where the Governor stands on BDR 7-1547, and Senator James said he cannot speak for the Governor, but he is hopeful. "The portent other members of the Legislature or the Governor will not embrace this is not enough to stop me from proposing it," he said. He said the way this developed was that no one was going to do anything. "We were going to cut the budget and we were going to go home," he said. He said he had some support for his original proposal for the $500 across-the-board fee, but there was much opposition. So, he went to work doing the constitutional research and research on all other 49 states, he said, and combining the results of his research with the Carole Vilardo's "Principles of Tax Policy," he came up with this proposal.

Senator Washington asked whether the protection placed around corporate officers and stockholders will be inducement enough for corporations to come into Nevada, if the filing fees are raised. Senator James answered it is an added incentive. He explained there are two separate issues. One is the protection for a director, he said, so a director is not held liable and his or her personal assets cannot be attached. Directors are the ones who decide where

to incorporate, he said, and this will be a major incentive. Second is the protection regarding the corporate veil, which is a codification of existing case law defining the criteria for when the corporate veil can be pierced to get at the assets of the person who incorporated.

Senator James continued:

> With respect to the fees . . . the places to incorporate . . . are Delaware, Nevada, Texas, and Wyoming. In terms of looking for a domicile, where you are not necessarily going to do business, [where] you are going to charter your company . . . if you go to Delaware, your annual filing fee could be as high as $150,000 . . . The fee in Wyoming is $50,000, based upon your assets in Wyoming, so, Wyoming offers nothing that Nevada does not offer.

Senator Washington noted it has been said this fee increase is driven by the need to fund education. However, he said it is his understanding about $450 million in new money has been appropriated for education. As legislators and policy-makers, they have to be able to answer their constituents, he said. He indicated there are two questions that must be answered: (1) Where is the money going? and, (2) Has everything possible been done to streamline state government and prioritize services the state should render to counties that may not be able to provide those services, while allowing those counties able to provide the services to do so? Senator James answered by describing conditions in the Clark County School District, which is starting $34 million "in the hole."

Senator James said:

> I do not think anybody can make a reasonable case that the education system of this state is over-funded. I do not think anybody can make a reasonable case it is adequately funded. The need is clearly and demonstrably there . . . With respect to state government and whether it is adequately funded, I commend our Governor, because over the last 2 years . . . we went through the first legislative session [and were] very fortunate. We had revenues coming in from existing tax revenues, had surplus in the

> budget we could spend on things we wanted to spend it on . . . But, over the last interim, in a time when it looked like [there was] plenty of money, the Governor took the leadership to conduct a fundamental review of state government . . . that was to demonstrate and to find places where government could be cut. This Governor, who is a former CEO [Chief Executive Officer] of major corporations . . . has made government as streamlined as possible, [and] has presented us [with] a very austere budget for this session . . .
>
> We do not have too much money; there is not a lot of fluff in the budget to . . . make up this $130 million . . . shortfall, based upon the projections of the economic review. So, I think we are at the perfect place to say, "We have presented a very austere state budget . . . We have people that have not had a raise in a number of years, people who are making a lot less than they do in the private sector or in local government, and we have teachers who have not had a salary increase and they are some of the lowest-paid teachers . . . in the country."

Senator Care stated he applauds Senator James's efforts and "you would have to be absolutely blind to not believe there is crisis in funding for public education in Clark County." He asked Senator James whether he has an opinion about the appropriateness of looking at other tax revenues during the interim or in the next legislative session, or whether this fixes everything. Senator James said he is not saying this proposal is a fix for everything, and the Governor has made public statements regarding the need to look at the long-term funding of the state.

Senator James said:

> But . . . you have the secretary of state's office, you have people who are paying an $85-a-year fee . . . a fee that has not been increased in a decade. Most of those companies, if they think about it, probably wonder why they are paying such a low fee. We have a place where we can fairly generate additional revenue, that is all I am saying . . . It does not target any industries . . . Everyone has been saying, "Let's make gaming pay." Well, this makes gaming pay; it makes everybody pay.

Senator Porter said he concurs with what Senator James has said and can appreciate the challenges before education today. Many small business owners are the ones they are trying to help through this legislation by improving education and services to the community. But small businesses think the cards are stacked against them because big businesses are represented by high-paid lobbyists; small business is counting on the legislators to look after their interests, and sometimes when the government thinks it is trying to help them, it really is not.

Senator Porter described the experience of a delicatessen owner whose costs and fees for running her business and providing benefits for her employees are increasing, and who is concerned about the graduated fee schedule proposed in BDR 7-1547, which she read about in the newspaper. Senator Porter said if a business owns a couple of cars and a small building and some inventory, that business may be subject to a fairly high fee. Referring to Exhibit C, he pointed out the $150 franchise fee for a $25,000 business is "0.06" percent of the net worth, and to be fair in spreading out the fees, the franchise fee for a business with a net worth of $51,200,000 should be $300,000, rather than the $50,000 indicated. He asked Senator James how he came up with the fees and whether he talked to some of the small businesses to find out who had $100,000 in assets. Senator James said he looked at other states and at the distribution of estimated net worth of corporations in Nevada to see where the bulk would fall. He said he strongly considered the impact on small business, and 87 percent of the corporations in Nevada will pay the minimum fee. They will not get into the higher fee range unless their net worth goes up; this is a net worth test, not an assets test, he said, and liabilities offset assets.

Senator Porter said he does not think the minimum fee can be categorized as simply an increase of $65, because it would not be unusual for a small business to have an inventory in vehicles and parts and equipment of $100,000 or $200,000, and that would be an increase in the fee from $85 to $710, according to the chart (Exhibit C). Senator James acknowledged that would be correct for a net worth of $200,000, and Senator Porter said he believes the small business is going to be hit the hardest. "When a big corporation goes bankrupt, there is usually a nest egg, but when a small business goes bankrupt, it is just in debt," he said. He said he is very concerned the proposal being presented is going to create a major hardship for those ma-and-pa businesses.

Senator James said that is something that can be explored, but this is designed to minimize the impact on the small businessperson.

Senator Porter stressed that he thinks something is being missed regarding the small businessperson. Senator James noted he has not heard anybody saying Nevada is not going to do something major to change the tax structure and the tax burden. "It is not a question of if; it is a question of when. What we are talking about now is crisis in the funding of the state budget, a fee that has not been increased in 10 years, and an equitable way in which to increase that fee and distribute the burdens fairly among those people who have the ability to pay," he said. He said he welcomes suggestions, but the endeavor here is to ensure the people who have the ability to pay an increased fee are paying it and the wealthiest are paying the largest fee.

Senator Washington said there are issues concerning projects such as the Henderson State College with $150 million to be voted on and contended with. "Is that on the table as well now; are we going to take a look at that and say maybe we cannot afford it at this time?" he asked. Senator James said he thinks there is a "mini-fundamental" review taking place in light of the potential for necessary cuts, and the level of funding that can be given to Henderson State College in this budget is a matter still to be considered. He said he would not like to see the project die, but he hopes the level of funding would be considered along with other pressing needs in the state.

Senator Washington pointed out state workers are making the same appeal for a raise as teachers, and legislators need to balance the needs of state workers, teachers, and other considerations. He said he is trying to take a look at the "big picture." Senator James said he did not know what to say, except state workers are slated to receive a long-awaited and well-deserved raise.

Senator James, addressing Senator Porter's concerns, said those people who conduct business as sole proprietors and do not take advantage of the limited liability offered, or other benefits of incorporation, do not experience any fee increase under BDR 7-1547. Sole proprietors who report a substantial net worth on their federal income tax are the only ones who will be impacted by a modest increase in fees, he said.

Senator James resumed chairmanship of the committee and invited other witnesses to speak.

Michael J. Bonner, Concerned Citizen, Attorney, stated Senator James had asked him to look into a provision to include in BDR 7-1547 to make Nevada a more attractive place in which to domicile a business entity, and he suggested a provision for liability limitation. He said:

> When we look to enhance the attractiveness of Nevada as a place in which to incorporate, we have to recognize . . . businesses outside of the state are going to consider and be counseled on a place in which to incorporate. Typically, they are going to be told, "either the state in which you do business, or Delaware." The vast majority of business entities, as they . . . become public, seasoned companies, are going to Delaware. When we look at our Nevada corporate business statutes, we have to recognize that, due to a variety of factors, if it is Delaware versus home state versus Nevada, if it is a tie . . . if the corporate laws of those jurisdictions are equally favorable . . . typically, they are going to select Delaware. That is just the way it is; that is a part of the business practice in which we operate . . .
>
> The reason for that [is] Delaware has a long history of developing corporate law. It has a court that is recognized as the leading court for jurisdiction in this country; it has a seasoned bar . . . The companies that come to us that are being counseled by investment bankers are often just arbitrarily recommended to incorporate in Delaware. So, when you look at Nevada as a choice, frankly, we have to be better than Delaware. We do not want to do things that will encourage less desirable businesses, because that is not in our best interests. But, what we want to do is give boards of directors and corporate officers, and investment bankers and those who counsel them, an opportunity to say, in Nevada there is this element that may not be present in those other jurisdictions.

Mr. Bonner continued:

> In the bill draft before you are a couple of things that have been added with that in mind . . . Boards of directors, in addition to just running the corporation, have to consider a couple of items in selecting a corporate domicile. Those things include the layers of protection that are available to them, the predictability of legal standards with which they will be faced . . . and they are given a variety of considerations to look at. We know that virtually every state now has a form of director . . . liability protection . . . Most states have indemnification, and we know the marketplace allows directors and corporations to purchase director and officer liability insurance . . .
>
> Directors who come on the boards of publicly-traded companies typically are very successful businesspeople in their own right. They have, typically, large assets; they usually have been extremely successful and are being asked to go on a board of directors because of their expertise, their business acumen, [and] because of the things they can truly bring to a corporation's board to enhance the activity of the board in the best interests of the stockholders. As Senator James said earlier, should they have to do that at the risk of their personal assets being placed on the line.

Mr. Bonner stated, in looking at those issues, a corporation wants predictability, and if Nevada can enhance the liability protection for them and strike the proper balance to not protect those who have participated in a criminal activity or fraud, the State will go a long way to making Nevada an attractive place in which to incorporate. He explained, when he reviewed the bill draft, he looked at a couple of other corporate statutes to see what is out there. As an example, he said Maryland has some attractive features in its corporation statutes. He pointed out the states of Florida, Indiana, Maine, Ohio, and Wisconsin have so-called self-executing statutes, meaning as a matter of statutory law, liability protection is available. Mr. Bonner explained this contrasts with NRS 78.037, which allows a corporation to opt in or place a charter provision in its articles of incorporation with the liability limitation. He noted Ohio has a clear and convincing evidence standard in its statutes.

Mr. Bonner opined Nevada already has a liability immunity statute "equal to, if not better than, Delaware's." He declared it is better than Delaware's because, not only does it cover the liability of directors, but also of executive officers.

Mr. Bonner proposed a new subsection 7 be included in section 5 of the bill. He said it introduces a clear and convincing evidence standard. He added it makes deletions of certain provisions of NRS 78.037, basically for "housekeeping" reasons, and because the provisions will become moot by this statute. He stated, "It makes it an automatic statute, as opposed to an opt-in statute." Mr. Bonner suggested the proposal actually benefits the small "mom-and-pop" operation and is less advantageous to a large corporation.

Mr. Bonner related, in 1987 the Nevada Legislature adopted NRS 78.037, which allows corporations to place in charter a provision of immunizing directors and officers from personal liability. He stated he has probably seen thousands of corporations since 1987, and he can think of only one instance in which a corporation charter did not have that provision because it was, essentially, a small business that apparently did not have the funds to seek legal counsel. He said they formed it based on some office supply form, and missed the director and officer protection.

Mr. Bonner said:

> There is also language that has been added to NRS 78.138 that merely clarifies what we clearly believe is existing law . . . Further, there are essentially mirroring changes suggested to [NRS] 78.300 . . . Presently there is a question as to whether there is a different culpability standard in [NRS] 78.300; this will make the culpability standard the same. [NRS] 78.300 also has a change in the statute of limitations, reducing that to 2 years from 3 [years]. Nevada is presently one of only thirteen states that has a longer than 2-year statute of limitations on the payment of dividends; therefore, we are actually in the minority.

Mr. Bonner noted section 1 of the bill draft request has proposed language which will codify existing Nevada case law on the so-called "alter ego doctrine," or "piercing the corporate veil." He surmised it offered great advantages that can benefit Nevada as a corporate domicile. Essentially, he said, in looking at the doctrine of piercing the corporate veil, traditionally case law is consulted.

He opined the ability of Nevada to provide objective and predictable standards for corporations to evaluate the risk under the alter ego doctrine makes this provision very attractive to corporations considering a domicile in Nevada. He explained it essentially codifies existing case authority, with modifications, and imposes a clear and convincing evidence standard, which "raises the bar" on the evidence necessary for a fraud finding.

Mr. Bonner concluded:

> In short, as a counsel who often is asked by corporations and their boards, "Why Nevada versus Delaware" . . . we think the work this body has done for many years has taken us a great way toward making Nevada a more attractive domicile, [and] we have to make it an objectively determinable more beneficial place in which to incorporate.

Senator Washington asked why the statute of limitations was changed from 3 years to 2 years, and how the new language in section 11 will work. Mr. Bonner replied NRS 78.300 deals with the payment by a corporation of distributions or dividends that violate Nevada statute. If a board of directors authorizes a dividend in violation of that statute, there can be personal liability on the part of the directors, he said. The changes provided for in section 11 would eliminate the confusion that exists regarding the proper standard for liability, he said. Concerning the statute of limitations change, he said it would bring Nevada in line with the majority of jurisdictions.

Senator Care expressed concern the enhanced protection for officers and directors may come at the expense of a third party. He asked Mr. Bonner what other acts an officer or director could currently be liable for in Nevada for which that officer or director would not be held liable if this bill should become law.

Mr. Bonner answered,

> Nevada Revised Statutes 78.037, which is the law we have today, essentially has the immunities from personal liability that the new proposal will have. The distinction between the law today and the proposal is that this will be self-executing, meaning a corporation

> will not have to adopt an amendment to its articles of incorporation; and, it imposes a higher evidentiary standard, the clear and convincing evidence standard versus a preponderance of the evidence standard. But, I believe that the actual language in the proposal does not increase the actual immunity of liability. We have essentially taken what was in NRS 78.037, moved it into the new section, [with] two significant changes: (1) the clear and convincing evidence standard, and (2) making it an automatic statutory provision as opposed to a charter opt-in provision . . . If a corporation had that provision in its articles of incorporation, there would not be a difference . . . What would be different is that, if a lawsuit were brought, there would be a higher proof standard that a plaintiff would need to bring to establish liability, and the establishment of that liability would be dependent on proving intentional misconduct or fraud.

Senator Care said his question actually had to do, not with section 4, but with section 2, subsection 1, paragraph (b), which says, "A court of competent jurisdiction finds by clear and convincing evidence . . . " He asked, "By 'court of competent jurisdiction,' does that become a matter of fact or a matter of law? Is this something for a jury to determine, or is there some sort of pretrial procedure through which the court has to determine . . . whether, in fact, these elements can be established?" Mr. Bonner replied the reference to a court of competent jurisdiction means a finding, as in any litigation, as to whether the jurisdiction of a given court is proper. He said, "As to the rest of the language in the statute . . . the intent is to say that once you get past the jurisdictional element, the burden of proof to establish the piercing of the corporate veil would be a clear and convincing evidence standard."

Senator Wiener commented clear and convincing evidence is a high standard, and she asked how many states have that standard. Mr. Bonner said he had not surveyed every single state, but from the information prepared for him, Ohio has the clear and convincing evidence standard. He added, Delaware does not, so Nevada would be one of the few states, "maybe only one of a couple, that would have a clear and convincing evidence standard on this particular issue."

Senator Care asked whether the statute of limitations becomes 2 years for all causes of action on the date the bill becomes effective, even for causes of

action committed somewhere between the 2- and 3-year period. "Is somebody out of luck?" he asked, and Mr. Bonner replied he did not know the answer. Senator James said they would get an answer.

Senator Washington asked whether clear and convincing evidence is the standard of proof the court must find for liability of a corporation pursuant to section 2, subsection 2, and Mr. Bonner replied it is.

Senator James, responding to Senator Care's earlier question concerning the effective date of the bill with regard to the 2-year statute of limitations, stated the intention is for BDR 7-1547 to be prospective. "You cannot have the standard applicable to pending proceedings . . . We should have the legal department redraft this," he said. Bradley A. Wilkinson, Committee Counsel, pointed out that the question is addressed in section 65, and it is not addressed in the way Senator James said he would like it to be. Senator James said he would like it to be changed so that the bill's provisions apply only to cases filed on or after the effective date.

Craig Tompkins, Concerned Citizen, stated he is CEO and President of Craig Corporation, and Vice Chairman, Citadel Holding Corporation and Reading Entertainment. He said Craig Corporation is a New York Stock Exchange company, but most of its operations are conducted through other companies, some of which are also publicly traded companies, and his companies have recently gone through the process of choosing a new corporate venue.

Mr. Tompkins said a couple of years ago his companies undertook a study to determine whether it made sense to continue to keep all the companies in Delaware. He noted there were concerns regarding staying in Delaware for a couple of reasons, one being it had gotten quite expensive to be a Delaware corporation. He said:

> We had "maxed out" on two of the companies, which is $150,000 apiece, and we were coming close . . . to maxing out in the third. So, we were currently at $350,000 a year and we were looking at being at $450,000 a year. The second thing was that it did not seem to us that Delaware had kept up with what was going on in

> other parts of the country and the world in terms of trying to balance the needs of corporate directors trying to make decisions in an uncertain world . . . So, we were also looking for a state which could afford a balancing of those concerns.

Mr. Tompkins related the corporations ultimately selected Nevada. He said the group liked Nevada because of the very low fees required. Although the committee is considering, here today, an increase in those fees, he said, the fees being discussed are still quite modest compared with the Delaware standard. He stated, "We like the fact that under Nevada law, directors are not automatically subject to lawsuits in Nevada . . . "

Mr. Tompkins continued:

> We like the provisions of the Nevada code, which afford greater protection in terms of using a willful misconduct standard, and we think it is a good idea to allow that across the board and also to allow the clear and convincing evidence standard. Let me talk briefly as to why that is.
>
> In addition to sitting on the boards of our 3 companies, I am also a director of G & L Realty [Corporation], a . . . real estate investment trust; and I am on the board of directors of Fidelity Federal Bank . . . As a lawyer with Gibson, Dunn & Crutcher . . . I had a lot of experience in advising boards of directors involved in both day-to-day and ordinary transactions. Your average director . . . typically attends a meeting every month or so. The compensation varies from company to company; oftentimes it is around . . . $25,000 a year for your average company . . . For most of us, it is not like we are involved everyday in the day-to-day operation of the company . . . Unfortunately, over the last several years, we have become, increasingly, targets of plaintiffs' lawsuits. Yes, it is true that it is only infrequently that liability comes home to roost; most of these cases end up being settled . . .
>
> But . . . you get sued; you get named personally in a complaint . . . What this [bill] does is help even the playing field. It means that when a plaintiff's counsel is thinking about whether or not to sue the directors, that plaintiff's counsel needs to take into account

> what it is that he is going to have to establish, what it is he is going to have to prove . . . When you use a willful misconduct kind of statute or a fraud kind of standard, then the person really has to plead what it is you did wrong. Right now, in Delaware, they do not plead what you did wrong; they just plead that something might go wrong . . . It costs us money to defend these lawsuits, it can adversely affect your credit, [and] it can affect your perception. Another thing it does is, because the amount of damages alleged are so large, and because directors are only human, when your counsel says, "I can settle this case for $600,000," of which $547,000 goes to the lawyers, your attitude is [to settle] . . . It does not relieve the company from liability; it does not interfere with any equitable relief . . . But, should [a director] be liable for $10 million, $20 million, $30 million because of an honest mistake?

Mr. Tompkins said piercing the corporate veil is a very uncertain area. What has been suggested for Nevada is to take the case law, he said, so people looking at Nevada do not have to read a lot of cases to try to ascertain whether the law is current. They will be able to look right at the statute, he asserted. And, he noted, the statute would address much uncertainty. Mr. Tompkins pointed out companies most vulnerable are the small companies. He explained the courts typically looked at case law to determine whether a person followed all the corporate formalities, such as whether the right minutes were kept; whether there was a separate board of directors; and whether there were always separate bank accounts.

Mr. Tompkins stated he has a chief financial officer whose job is to make sure those things get done. He reiterated it is the small business owners who have incorporated specifically to protect their individual assets who are the most vulnerable to having the corporate limitations on liability set aside because they did not follow the proper formalities.

Chairman James interjected, "So, the notion is that a small business owner decides to incorporate and forgets to keep his annual meeting minutes up-to-date, he is not as careful as he should be and there may be some commingling of assets or commingling of the books . . . These kinds of things

occur, and those are not, alone, under this statute, a predicate for disregarding the corporate veil and the limited liability protection. He has to be, in addition, under this language, utilizing the corporation to perpetrate some kind of fraud."

Chairman James commented he did not suppose piercing the corporate veil comes up very often as an issue for large corporations. Mr. Tompkins responded that with subsidiaries there is a significant amount of uncertainty, but if this statute is passed, there will be a greater level of certainty for corporations.

Senator Care asked Mr. Tompkins to describe the kinds of corporate acts for which an officer or director should not be named as a defendant in a lawsuit. He said he would not want to give his constituents the impression because a business is willing to pay more money to incorporate in Nevada, it will get to "walk, scot-free."

Mr. Tompkins replied:

> Most of the problems occur not in terms of the corporation acting as a corporation, because directors typically are not directly liable for the acts of the corporation. For instance, if a corporation sells a defective product, it is the corporation that is sued; it is not the director. If a corporation pollutes a river, it is the corporation that is sued; it is not the director. Where director liability really comes in is in terms of mergers, acquisitions, issuances of stock . . . They are shareholder derivative suits that we are concerned about. So, I do not see that this has much, if any, effect at all in terms of whether a director would be liable to a consumer group or to a member of the public. What I see it doing is making it less likely that, in an extraordinary corporate transaction, the director will be caught up in the litigation, unless the plaintiff's lawyer actually has some evidence or some probable cause to believe that director has actually acted wrongfully.

Senator Care said, "I think the public needed to hear that."

Chairman James asked John Fowler to expound on the status of the Nevada laws in relation to Delaware laws, and the work done in prior sessions.

John P. Fowler, Chairman, Executive Committee, Business Law Section, State Bar of Nevada, explained the history of the Business Law Section's involvement with corporate statutes:

> In 1990, a firm I was then with was hired by Secretary of State Frankie Sue Del Papa to revise Nevada's corporate law. That study of Nevada corporate law, about a 350-page book, contained specific statutory suggestions for changes to Nevada corporate law . . . [in order to] try to become a competitor with Delaware and other states in ease of corporate convenience . . . Following that study, in 1991 a bill was written that was worked on by members of the then business law committee of the state bar, and worked over considerably by the Legislature itself, and it became a bill which started us on the road to improving Nevada's corporate laws for the entire country to use . . . Every session since, since 1993 and forward, the business law section has created a bill to improve Nevada's corporate and limited liability company statutes . . . It is an accomplishment that, I think, has taken us quite far . . . That and . . . the fact that we have retained a situation where there is not corporate or personal income tax, and the fact that the secretary of state's office has worked mightily to keep up and to be a customer-friendly office, as opposed to the archetypal governmental bureaucracy.
>
> We now have a substantial national presence in the corporate law world that brings real benefits to the state [and] it makes it easier for those doing business in the state to use our own state laws. It makes it easier for investment bankers . . . and those companies with assets that they can move to the state, to move them here and use our corporate statutes . . .
>
> In the 1999 Session, Senate Concurrent Resolution (S.C.R.) 19 [of the Seventieth Session] was passed, which created a special subcommittee that studied ways to improve corporate governance . . . and [establish] a business court.

SENATE CONCURRENT RESOLUTION NO. 19 OF THE SEVENTIETH SESSION: Directs Legislative Commission to conduct interim study of methods to encourage corporations and other business entities to organize and conduct business in this state. (BDR 534)

Mr. Fowler stated the S.C.R. 19 of the Seventieth Session committee work resulted in a number of bills, among them S.B. 51 and actions by the Nevada Supreme Court to create a business court in both Clark County and Washoe County.

SENATE BILL NO. 51: Makes various changes pertaining to business associations. (BDR 7-255)

Mr. Fowler continued:

> It has been a long history and a long effort, and it has to be continued; it is not something that can stop, because the corporate world does not stop. New processes, new kinds of ways of doing transactions come about and require a change in corporate and limited liability company statutes . . . I believe . . . the bill . . . shows a further movement in this direction, to make Nevada a friendly place for a corporation to put its charter and to do business.

Chairman James noted, in S.C.R. 19, John H. O. La Gatta, Lobbyist, Catamount Quantum LLC, had proposed the creation of a different kind of fee structure, "and that was the only part we did not do, and is what is contained here. It is not exactly his proposal, but it is a permutation of it, and that is how this is a whole package [and] how John envisioned the outcome of it."

Chairman James asked Dean Heller, Secretary of State, to discuss issues related to his office, fee adjustments included in BDR 7-1547, and the role of resident agents. Mr. Heller stated his office has been a significant source of revenue for the state, and the studies and efforts made over the last 10 years have worked. He said the secretary of state's office has grown 10 to 15 percent per year, from approximately 5,000 corporate annual filings 10 years ago to approximately 50,000 today. He noted the average individual on the staff earned about $100,000 in revenue 10 years ago, and today each individual is earning about $350,000 in revenue for the state.

Mr. Heller said among the biggest clients in the secretary of state's office are the resident agents. He stated:

> [They] do a tremendous service for the state of Nevada. They work very hard in advertising the corporate services we provide . . . It was to everybody's benefit to bring them into the office . . . We probably had a half dozen or eight resident agents in the office, and they probably represented somewhere between 50,000 and 60,000 corporations here . . . and you asked them to give us an alternative . . . and they did discuss some of the filing fees with the office that had not been raised for 10 years and what we could do to raise some of these fees and still remain competitive . . . So, the filing fees and the changes, most of them came through their recommendations. A couple of them were reduced. It took some effort on our part, and one of the fees we did reduce was the annual fee . . . I anticipate our growth will continue. I think we will see a shift in the quality and the quantity of the kind of business we do . . . but, overall, I think this proposal takes us forward.

Chairman James said one of the things the resident agents pointed out is often people start a company and need an entity within which to create the start-up business, which may have a minimal, or even negative, net worth. That is the reasoning behind the fee schedule proposed in BDR 7-1547, he said. "So, people who are start-up companies or small businesses, or people who just want to get their entity going, are going to pay the minimum filing fee of $150, which they [the resident agents] represented was something they could aggressively market," he said.

Mr. Heller added,

> As you struggle with the policy issue here, of course we struggle with the administrative end of this . . . You have requested, and we are preparing, [information regarding] what the fiscal impact will be on our office . . . I think it will be a minimal increase. You are looking at our office, under this proposal, going from $22 million a year in revenue to somewhat over $60 million, or

> $130 [million] for the biennium. I think we can move forward with a minimal increase of six to eight additional employees in the office in order to handle this increase and the change in structure and the way we process some of this paperwork.

Chairman James said it is closer to $85 million or $87 million from the secretary of state's office, because what the Legislative Counsel Bureau (LCB) did in its projections was run just the corporations under Chapter 78 of NRS, which would generate $52 million. He said that does not include 40,000 other kinds of entities that would be on the same schedule. He stated, "[The] LCB did that to leave it at a conservative projection; then the $52 [million] plus the $13 [million] from the additional fees, that is $65 million. It is a very conservative number . . . It accounts for absolutely no growth."

Senator Washington said he is concerned about start-up businesses of single women and minorities, and asked whether this proposal would become a hindrance or disincentive for them. Mr. Heller said the proposed fees were kept as low as possible, with these people in mind. This is not a new tax or a new fee; it is an increase in the filing fee for the annual list of officers, he said. He said a lot of proposals have been on the table, including a business tax proposal, all of which were rejected so people desiring to establish businesses in Nevada would not be faced with all sorts of fees. Mr. Heller pointed out, generally, liabilities are higher than assets for start-up companies, and this proposal is based on net worth.

Senator Porter echoed Senator Washington's concerns, saying he wanted to make sure Nevada is a place where not only the rich can get incorporated. "A lot of these smaller companies do not have major liabilities," he said, adding, "They really kind of 'pay as you go,' because they cannot afford the debt."

Senator Care asked whether financial records submitted to the secretary of state's office could be kept confidential. Chairman James responded the office can have the information remain confidential.

Senator McGinness asked whether the secretary of state's office has some sort of due process in place for determining net worth pursuant to section 31, subsection 4, of BDR 7-1547. Mr. Heller said his office is currently ministerial and accepts documents filed and signed under penalty of perjury, and would

have to put the language of the bill into place administratively. Chairman James stated whatever process the secretary of state's office puts into place would certainly comply with applicable procedural requirements, due process, and the rights of taxpayers.

There being no further business, the meeting was adjourned at 11:05 a.m.

RESPECTFULLY SUBMITTED:

Carolyn Allfree,
Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE: 9-30-01

Franchise Fee Examples

If the Net Worth Attributable to Nevada is:	The Annual Franchise Fee is:	
$25,000	$150	About 87% of corporations registered in Nevada will pay minimum fee.
$40,000	$150	
$50,000	$185	
$100,000	$360	
$200,000	$710	
$400,000	$1,410	
$800,000	$2,810	
$1,600,000	$5,610	
$3,200,000	$11,210	
$6,400,000	$22,410	
$12,800,000	$44,810	
$25,600,000	$50,000	Less than 500 corporations registered in Nevada will pay maximum fee.
$51,200,000	$50,000	

Examples of Companies Allocated Net Worth Subject to Business Franchise Fee

Store/Company	Number of Stores: In Nevada[1]	Number of Stores: Total[1]	Total Net Worth[2] (Millions $'s)	Net Worth: Allocated in Nevada[3] (Millions $'s)	Estimated Business Franchise Fee
Walmart	20	3,118	$31,343.0	$201.0	$50,000
Albertsons	86	2,512	$5,694.0	$194.9	$50,000
Home Depot	11	1,029	$15,004.0	$160.4	$50,000
Gottschalks	3	96	$407.2	$12.7	$44,550
Target Corporation[4]	18	1,307	$6,519.0	$89.8	$50,000
Lithia	5	56	$181.8	$16.2	$50,000
Good Guys	4	79	$90.5	$4.6	$16,051
Bed, Bath & Beyond	1	247	$559.0	$2.3	$7,932
Hertz[5]			$1,674.0	$11.1	$38,883
Nevada First Bank				$15.4	$50,000
First National Bank of Nevada Holding Company				$14.5	$50,000
Wells Fargo[6]			$26.5	$0.7	$2,330
Wells Fargo Bank Nevada National Association[7]				$725.5	$50,000
Park Place Entertainment[8]			$3,740.0	$428.7	$50,000
Stations Casino, Inc.				$288.9	$50,000

umber of stores obtained from information provided in annual 10-K filings with the Securities and Exchange Commission.

et worth amounts taken from financial statements of annual 10-K filings with the Securities and Exchange Commission.

tal Net Worth allocated to Nevada based on the percentage of the total number of stores located in Nevada.

rget Corporation includes Target, Mervyn's, and Marshall Fields Stores

umber of store information not available from annual 10-K report. Nevada's population as a percent of U.S. population was used to allocate tal Net Worth.

ormation on Wells Fargo from National Information Center (Federal Reserve Board).
et worth was allocated using total assets of Nevada banks as percent of total assets of Wells Fargo & Company

ormation from National Information Center (Federal Reserve Board). Represents Net Worth of Wells Fargo branch banks in Nevada.

et Worth Allocated to Nevada based on square footage of Nevada casinos as percentage of total square footage at all properties.
ormation obtained from annual 10-K filings with the Securities and Exchange Commission.

The distribution of the franchise fee burden, based on assets in Nevada, is expected to be as follows:

- **50 percent of the additional franchise fees are to be paid by the largest 4/10ths of one percent of Nevada's businesses registered with the Secretary of State.**
- **75 percent of the additional franchise fees are to be paid by the largest 2.5 percent of Nevada's businesses registered with the Secretary of State.**
- **85 percent of the additional franchise fees are to be paid by the largest 10 percent of Nevada's businesses registered with the Secretary of State.**

Franchise Fee Estimate by Asset Size

Size of Total Assets (000's)	Estimated Nevada Assets	Estimated Nevada Net Worth	Estimated Nevada Corporations	Estimated Nevada Net Worth Per Corporation	Estimated New Tax Revenue
Total	231,207,565	79,471,096	131,882	602,591	52,040,532
Zero Assets	0	0	8,613	0	559,821
$1 to $25	514,803	-122,731	68,062	-1,803	4,424,029
$25 to $62.5	846,974	115,718	20,851	5,550	1,355,283
$62.5 to $125	1,134,658	293,508	12,785	22,958	830,997
$125 to $250	1,537,241	445,884	8,741	51,009	904,994
$250 to $1,250	4,933,120	1,386,988	9,370	148,017	4,151,674
$1,250 to $2,500	2,594,361	789,555	1,494	528,535	2,851,402
$2,500 to $6,250	3,438,599	1,043,192	889	1,172,890	3,584,466
$6,250 to $12,500	3,146,380	1,146,042	357	3,214,235	3,984,405
$12,500 to $25,000	4,346,571	1,654,514	244	6,787,038	5,772,461
$25,000 to $62,500	8,833,573	3,868,709	224	17,275,342	11,197,200
$62,500 & Over	199,881,285	68,849,717	252	272,698,087	12,623,800

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-First Session
May 24, 2001

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:56 a.m., on Thursday, May 24, 2001, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Dina Titus
Senator Valerie Wiener
Senator Terry Care

STAFF MEMBERS PRESENT:

Bradley A. Wilkinson, Committee Counsel
Allison Combs, Committee Policy Analyst
Barbara Moss, Committee Secretary

Chairman James opened the hearing by thanking everyone who had been patient while following the process over the past few days, and he apologized for canceling yesterday's meeting. He said a number of individuals in the Legislature had been working over the past several weeks to address issues regarding the state budget and the critical needs in the education system.

The Senator indicated various plans and proposals had been offered to do the right thing in terms of the budget and the education system, while at the same time to do something innovative, consistent, and in the spirit of Nevada's commitment to remaining a state that is business-friendly, encourages new businesses, and will keep the economy vital and growing. Senator James pointed out that was the spirit and intent of the plans offered in the committee by himself and others in support of those issues in the past few days.

Senator James said there had been discussions with the Governor, which had been very positive. The Senator was pleased to inform everyone those discussions were reaching a happy conclusion. Senator James declared he would defer to the Governor to make an announcement. He remarked members of the committee, as well as other colleagues in the Senate and Assembly, were a large part in reaching the conclusion.

Continuing, Senator James indicated Bill Draft Request (BDR) 7-1547 (Exhibit C) presented on May 22, 2001, was currently being redrafted and would be introduced on the Senate Floor today. He said he would explain what the bill would be, and what part it would play in the Governor's overall plan to address budget issues and critical needs in education.

BILL DRAFT REQUEST 7-1547: Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (Later introduced as Senate Bill 577.)

Senator James explained the proposal to create a new graduated annual list would be removed from the bill. He indicated the bill contained a number of corporate filing fees for mergers and acquisitions, reinstatements of charters, amendments of charters, and certificates, expediting fees for those who have business transactions that are proceeding at a fast pace and need things accomplished in the Secretary of State's office immediately. The Senator noted all of these items in the prior BDR were being increased. He said that together, over the biennium, these fees would raise, at a conservative estimate from the Legislative Counsel Bureau (LCB), $30 million. With the processing of this legislation, Senator James indicated the $30 million would become an integral part of the Governor's plan to address budget and education issues.

Although he did not wish to preview the Governor's plan too extensively, Senator James pointed out the $30 million that would emanate from this bill, should it be processed by the Senate and Assembly, would go directly to classrooms and students, and would save all vital programs. It would go to textbooks, technology, music programs and sports programs. The Senator emphasized there would be no elimination of music programs, sports programs, or any other extra-curricular activities that were associated with schools in Clark County, or elsewhere, if the legislation was passed and embraced the plan that would be presented by the Governor.

In addition, Senator James said this money would be a great part of doing the right thing for hardworking teachers, ensuring they receive the richly deserved salary increase they have earned over the past years. He expressed hope the Nevada educational system would become one of the best, rather than one of the most struggling, in the country.

Further, Senator James indicated his intention was to allow the bill drafters to complete the bill-drafting process, introduce the bill on the Senate Floor, refer it back to the Senate Committee on Judiciary as the committee of jurisdiction, hold a hearing on it tomorrow morning, and propose that it be processed in the Senate immediately.

Senator Porter said he would like to applaud the Governor and Senator James for their efforts on behalf of all the members of the business and education community, as well as the members of the Senate Committee on Judiciary and the Legislature. He pointed out that Senator James summarized the bill quite well. The Senator stated that, conceptually, the program appeared very friendly to the state of Nevada, and was all inclusive. He said it appeared to do exactly as Senator James mentioned, and placed desperately needed dollars in classrooms and programs—from music to sports—and also to those hardworking teachers.

Further, Senator Porter expressed a grave concern shared by Senator James and other members of the committee, which was the impact on small businesses. He pointed out this has been a very fluid process and all angles have been perused in order to do all the right things for all the right reasons. Senator Porter expressed appreciation for the hard work of Senator James and staff on a win-win effort on behalf of the state of Nevada.

In conclusion, Senator James said the bill would be introduced on the Senate Floor today, and he anticipated other ideas being brought forward as the hearing process unfolded. He expounded this was a great start and would meet many of the state's challenges.

Senator Titus indicated she is glad a solution to the problem had been found. She said the approach was one that needed to be studied and she was optimistic about it. The Senator indicated several weeks ago Senator Schneider introduced a bill calling for funding of education that would at least meet the

national average. She noted there was no funding mechanism in the bill, but it was a move to at least address why it has not been done, and seek sources of revenue to make it possible. Senator Titus said the Democrats followed it up with a letter to the majority leader requesting full-blown hearings to look at all the different kinds of things. To Senator James she stated, "We are very pleased there was a response from the Governor and the majority leader, and we are very happy to work with you. We commend you for all you have done and look forward to making this happen."

Senator James thanked Senator Titus for her positive comments. In addition, he thanked the number of people in Las Vegas who were concerned about education, including Moms, Dads, teachers, and the Parent and Teacher Association (PTA) members, who had gathered during the last couple of days. He expressed thanks for their support to the committee in pursuing these matters and expressed regret they were unable to testify. Senator James noted today the committee's time was being utilized to make this announcement. Tomorrow there would be a hearing after the bill was introduced and received a number, and then everyone would have an opportunity to review it and provide their comments. He said at that time everyone would be able to review and digest what, in his opinion, was a "tremendous" plan that would be presented by the Governor and on his schedule at the appropriate time tomorrow.

There being no further business to come before the committee, Senator James adjourned the hearing at 9:32 a.m.

RESPECTFULLY SUBMITTED:

Barbara Moss,
Committee Secretary

APPROVED BY:

Senator Mark A. James, Chairman

DATE: 9-4-01

2/3s Vote Required - §§ 3, 8, 9, 13, 14, 15, 16, 17, 18, 19, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 42, 43, 44, 45, 47, 48, 49, 50, 51, 53, 54, 55, 56, 58, 59, 60, 61, 62

SUMMARY—Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State: No.

AN ACT relating to business associations; limiting the common-law and statutory liability of the stockholders, directors and officers of a corporation; increasing the fees for filing certain documents with the secretary of state; and providing other matters properly relating thereto.

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

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

Sec. 2. ***1. Except as otherwise provided by specific statute, no stockholder, director or officer of a corporation formed under the laws of this state is individually liable for a debt or liability of the corporation, without regard to whether a court determines that the stockholder,***

director or officer should be considered the alter ego of the corporation or that the corporate fiction of a separate entity should be disregarded for any other reason, unless:

(a) Otherwise provided in an agreement to which the stockholder, director or officer is a party; or

(b) A court of competent jurisdiction finds by clear and convincing evidence that:

(1) The corporation is influenced and governed by the stockholder, director or officer;

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

(3) Adherence to the corporate fiction of a separate entity would sanction fraud.

2. For a court to make a finding in satisfaction of subparagraph (3) of paragraph (b) of subsection 1, the court must find that the stockholder, director or officer has committed fraud in connection with the debt or liability of the corporation.

Sec. 3. *1. Except as otherwise provided in this section, the fee for filing the initial or annual list required to be paid pursuant to NRS 78.150 must be determined as follows:*

If the amount of the net worth of the corporation in Nevada is:

Not more than $40,000	*$150*
More than $40,000	*$150, plus an amount equal to 0.35 percent of its net worth in Nevada in excess of $40,000*

2. The maximum fee that may be charged pursuant to this section is $50,000 per year.

3. To determine the net worth of a corporation in Nevada for the purposes of this section, the dollar amount of the assets of the corporation that are situated in or allocated to this state must be divided by the dollar amount of the total assets of the corporation, and the result of that calculation must be multiplied by the dollar amount of the total net worth of the corporation.

4. If the secretary of state determines that the amount of any fee paid pursuant to subsection 1 is not based on the true net worth of the corporation in Nevada, he may compute and determine the amount required to be paid upon the basis of:

(a) The information required to be filed pursuant to NRS 78.150; and

(b) Any other information obtained by the secretary of state from any source.

5. In addition to any other penalty provided by law, any corporation that fails to pay the fee provided for in this section is liable for the payment of a penalty equal to treble the difference between the amount paid and the amount that was required to be paid by this section.

Sec. 4. NRS 78.037 is hereby amended to read as follows:

78.037 The articles of incorporation may also contain ~~[:~~

~~1. A provision eliminating or limiting the personal liability of a director or officer to the corporation or its stockholders for damages for breach of fiduciary duty as a director or officer, but such a provision must not eliminate or limit the liability of a director or officer for:~~

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

~~(b) The payment of distributions in violation of NRS 78.300.~~

~~2. Any~~] *any* provision, not contrary to the laws of this state ~~[, for]~~ *:*

1. For the management of the business and for the conduct of the affairs of the corporation ~~[, and any provision creating,]~~ *;*

2. Creating, defining, limiting or regulating the powers of the corporation or the rights, powers or duties of the directors, ~~[and]~~ *the officers or* the stockholders, or any class of the stockholders, or the holders of bonds or other obligations of the corporation ~~[, or governing]~~ *; or*

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

Sec. 5. NRS 78.138 is hereby amended to read as follows:

78.138 1. Directors and officers shall exercise their powers in good faith and with a view to the interests of the corporation.

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

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

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

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

but a director or officer is not entitled to rely on such information, opinions, reports, books of account or statements if he has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted.

3. Directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation.

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

(a) The interests of the corporation's employees, suppliers, creditors and customers;

(b) The economy of the state and nation;

(c) The interests of the community and of society; and

(d) The long-term as well as short-term interests of the corporation and its stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.

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

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

7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270, 668.045 and 694A.030, a director or officer is not individually liable for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven by clear and convincing evidence that:

(a) His act or failure to act constituted a breach of his fiduciary duties as a director or officer; and

(b) His breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

Sec. 6. NRS 78.150 is hereby amended to read as follows:

78.150 1. A corporation organized under the laws of this state shall, on or before the first day of the second month after the filing of its articles of incorporation with the secretary of state, file with the secretary of state a list, on a form furnished by him, containing:

(a) The name of the corporation;

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

(c) The names and titles of the president, secretary, treasurer and of all the directors of the corporation;

(d) The mailing or street address, either residence or business, of each officer and director listed, following the name of the officer or director; ~~[and]~~

(e) *The total assets of the corporation as reported on its federal income tax return for the preceding calendar year;*

(f) The amount of its assets reported pursuant to paragraph (e) that are situated in or allocated to this state;

(g) The total net worth of the corporation as reported on its federal income tax return for the preceding calendar year; and

(h) The signature of an officer of the corporation certifying that the list is true, complete and accurate.

2. The corporation shall annually thereafter, on or before the last day of the month in which the anniversary date of incorporation occurs in each year, file with the secretary of state, on a form furnished by him, an amended list containing all of the information required in subsection 1.

3. *Each list required by subsection 1 or 2 must be accompanied by an affidavit that the corporation has complied with the provisions of chapter 364A of NRS.*

4. Upon filing ~~[a list of officers and directors,]~~ *the list required by subsection 1 or 2,* the corporation shall pay to the secretary of state ~~[a fee of $85.~~

~~4.]~~ *the fee prescribed by section 3 of this act.*

5. The secretary of state shall, 60 days before the last day for filing the annual list required by subsection 2, cause to be mailed to each corporation which is required to comply with the provisions of NRS 78.150 to 78.185, inclusive, *and section 3 of this act* and which has not become delinquent, a notice of the fee due pursuant to subsection ~~[3]~~ *4* and a reminder to file a list ~~[of officers and directors.]~~ *required by subsection 2.* Failure of any corporation to receive a notice or form does not excuse it from the penalty imposed by law.

~~[5.]~~ *6.* If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective in any respect or the fee required by subsection ~~[3 or 7]~~ *4 or 8* is not paid, the secretary of state may return the list for correction or payment.

~~[6.]~~ *7.* An annual list for a corporation not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 2 for the year to which the due date is applicable.

~~[7.]~~ *8.* If the corporation is an association as defined in NRS 116.110315, the secretary of state shall not accept the filing required by this section unless it is accompanied by evidence of the payment of the fee required to be paid pursuant to NRS 116.31155 that is provided to the association pursuant to subsection 4 of that section.

Sec. 7. NRS 78.155 is hereby amended to read as follows:

78.155 If a corporation has filed the initial or annual list ~~[of officers and directors and designation of resident agent]~~ in compliance with NRS 78.150 and has paid the appropriate fee for the filing, the canceled check received by the corporation constitutes a certificate authorizing it to transact its business within this state until the last day of the month in which the anniversary of its incorporation occurs in the next succeeding calendar year. If the corporation desires a formal certificate upon its payment of the initial or annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

Sec. 8. NRS 78.170 is hereby amended to read as follows:

78.170 1. Each corporation required to make a filing and pay the fee prescribed in NRS 78.150 to 78.185, inclusive, ***and section 3 of this act*** which refuses or neglects to do so within the time provided shall be deemed in default.

2. For default there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 9. NRS 78.180 is hereby amended to read as follows:

78.180 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate a corporation which has forfeited its right to transact business under the provisions of this chapter and restore to the corporation its right to carry on business in this state, and to exercise its corporate privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 78.150; and

(b) Pays to the secretary of state:

(1) The annual filing fee and penalty set forth in NRS ~~[78.150 and]~~ 78.170 ***and section 3 of this act*** for each year or portion thereof during which its charter was revoked; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the corporation, he shall:

(a) Immediately issue and deliver to the corporation a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

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

Sec. 10. NRS 78.215 is hereby amended to read as follows:

78.215 1. A corporation may issue and dispose of its authorized shares for such consideration as may be prescribed in the articles of incorporation or, if no consideration is so prescribed, then for such consideration as may be fixed by the board of directors.

2. ~~[If a consideration is prescribed for shares without par value, that consideration must not be used to determine the fees required for filing articles of incorporation pursuant to NRS 78.760.~~

~~3.]~~ Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's stockholders or to the stockholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

~~[4.]~~ *3.* Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(a) The articles of incorporation so authorize;

(b) A majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(c) There are no outstanding shares of the class or series to be issued.

~~[5.]~~ *4.* If the board of directors does not fix the record date for determining stockholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

Sec. 11. NRS 78.300 is hereby amended to read as follows:

78.300 1. The directors of a corporation shall not make distributions to stockholders except as provided by this chapter.

2. ~~[In]~~ ***Except as otherwise provided in subsection 3 and NRS 78.138, in*** case of any ~~[willful or grossly negligent]~~ violation of the provisions of this section, the directors under whose administration the violation occurred ~~[, except those who caused their dissent to be entered upon the minutes of the meeting of the directors at the time, or who not then being present caused their dissent to be entered on learning of such action,]~~ are jointly and severally liable, at any time within ~~[3]~~ *2* years after each violation, to the corporation, and, in the event of its dissolution or insolvency, to its creditors at the time of the violation, or any of them, to the lesser of the full amount of the distribution made or of any loss sustained by the corporation by reason of the distribution to stockholders.

3. The liability imposed pursuant to subsection 2 does not apply to a director who caused his dissent to be entered upon the minutes of the meeting of the directors at the time the action was taken or who was not present at the meeting and caused his dissent to be entered on learning of the action.

Sec. 12. NRS 78.7502 is hereby amended to read as follows:

78.7502 1. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether

civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he ~~[acted]~~ *:*

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

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

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

2. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint

venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he ~~[acted]~~ *:*

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

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

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

3. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 1 and 2, or in defense of any claim, issue or matter therein, the corporation shall indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense.

Sec. 13. NRS 78.760 is hereby amended to read as follows:

78.760 ~~[1.]~~ The fee for filing articles of incorporation is ~~[prescribed in the following schedule:~~

~~If the amount represented by the total number of shares provided for in the articles or agreement is:~~

~~$25,000 or less ..... $125~~

~~Over $25,000 and not over $75,000 ..... 175~~

~~Over $75,000 and not over $200,000 ..... 225~~

~~Over $200,000 and not over $500,000 ..... 325~~

~~Over $500,000 and not over $1,000,000 ..... 425~~

~~Over $1,000,000:~~

~~— For the first $1,000,000 ..... 425~~

~~— For each additional $500,000 or fraction thereof ..... 225~~

~~— 2. The maximum fee which may be charged under this section is $25,000 for:~~

~~— (a) The original filing of articles of incorporation.~~

~~— (b) A subsequent filing of any instrument which authorizes an increase in stock.~~

~~— 3. For the purposes of computing the filing fees according to the schedule in subsection 1, the amount represented by the total number of shares provided for in the articles of incorporation is:~~

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

~~— (b) The product of the number of shares multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which shares may be issued and disposed of, if only shares without par value are therein provided for; or~~

~~(c) The aggregate par value of the shares with a par value plus the product of the number of shares without par value multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which the shares without par value may be issued and disposed of, if shares with and without par value are therein provided for.~~

~~For the purposes of this subsection, shares with no prescribed par value shall be deemed shares without par value.~~

~~4. The secretary of state shall calculate filing fees pursuant to this section with respect to shares with a par value of less than one tenth of a cent as if the par value were one tenth of a cent.~~] *$175.*

Sec. 14. NRS 78.765 is hereby amended to read as follows:

78.765 ~~[1.]~~ The fee for filing a ~~[certificate changing the number of authorized shares pursuant to NRS 78.209 or a]~~ certificate of amendment to articles of incorporation ~~[that increases the corporation's authorized stock]~~ or a certificate of correction ~~[that increases the corporation's authorized stock is the difference between the fee computed at the rates specified in NRS 78.760 upon the total authorized stock of the corporation, including the proposed increase, and the fee computed at the rates specified in NRS 78.760 upon the total authorized capital, excluding the proposed increase. In no case may the amount be less than $75.~~

~~2. The fee for filing a certificate of amendment to articles of incorporation that does not increase the corporation's authorized stock or a certificate of correction that does not increase the corporation's authorized stock is $75.~~

~~3. The fee for filing a certificate or an amended certificate pursuant to NRS 78.1955 is $75.]~~ *is $125.*

Sec. 15. NRS 78.767 is hereby amended to read as follows:

78.767 ~~[1.]~~ The fee for filing a certificate of restated articles of incorporation ~~[that does not increase the corporation's authorized stock is $75.~~

~~2. The fee for filing a certificate of restated articles of incorporation that increases the corporation's authorized stock is the difference between the fee computed pursuant to NRS 78.760 based upon the total authorized stock of the corporation, including the proposed increase, and the fee computed pursuant to NRS 78.760 based upon the total authorized stock of the corporation, excluding the proposed increase. In no case may the amount be less than $75.]~~ *is $125.*

Sec. 16. NRS 78.780 is hereby amended to read as follows:

78.780 1. The fee for filing a certificate of extension of corporate existence of any corporation is ~~[an amount equal to one fourth of the fee computed at the rates specified in NRS 78.760 for filing articles of incorporation.]~~ *$175.*

2. The fee for filing a certificate of dissolution whether it occurs before or after payment of capital and beginning of business is ~~[$30.]~~ *$60.*

Sec. 17. NRS 78.785 is hereby amended to read as follows:

78.785 1. *The fee for filing a certificate of change of location of a corporation's registered* office and resident agent, or a new designation of resident agent, is ~~[$15.]~~ *$30.*

2. The fee for certifying articles of incorporation where a copy is provided is ~~[$10.]~~ *$20.*

3. The fee for certifying a copy of an amendment to articles of incorporation, or to a copy of the articles as amended, where a copy is furnished, is ~~[$10.]~~ ***$20.***

4. The fee for certifying an authorized printed copy of the general corporation law as compiled by the secretary of state is ~~[$10.]~~ ***$20.***

5. The fee for reserving a corporate name is $20.

6. The fee for executing a certificate of corporate existence which does not list the previous documents relating to the corporation, or a certificate of change in a corporate name, is ~~[$15.]~~ ***$30.***

7. The fee for executing a certificate of corporate existence which lists the previous documents relating to the corporation is ~~[$20.]~~ ***$40.***

8. The fee for executing, certifying or filing any certificate or document not provided for in NRS 78.760 to 78.785, inclusive, is ~~[$20.]~~ ***$40.***

9. The fee for copies made at the office of the secretary of state is $1 per page.

10. The ~~[fee]~~ ***fees*** for filing articles of incorporation, ~~[articles of merger, or]~~ certificates of amendment ~~[increasing the basic surplus]~~ ***to articles of incorporation and articles of merger*** of a mutual or reciprocal insurer ~~[must be computed pursuant to]~~ ***are the fees prescribed by*** NRS 78.760, 78.765 and ~~[78.770, on the basis of the amount of basic surplus of the insurer.]~~ ***92A.210, respectively.***

11. The fee for examining and provisionally approving any document at any time before the document is presented for filing is $100.

Sec. 18. Chapter 80 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, the fee for filing the initial or annual list required to be paid pursuant to NRS 80.110 must be determined as follows:

If the amount of the net worth of the foreign corporation in Nevada is:

Not more than $40,000	*$150*
More than $40,000	*$150, plus an amount equal to 0.35 percent of its net worth in Nevada in excess of $40,000*

2. The maximum fee that may be charged pursuant to this section is $50,000 per year.

3. To determine the net worth of a foreign corporation in Nevada for the purposes of this section, the dollar amount of the assets of the foreign corporation that are situated in or allocated to this state must be divided by the dollar amount of the total assets of the corporation, and the result of that calculation must be multiplied by the dollar amount of the total net worth of the corporation.

4. If the secretary of state determines that the amount of any fee paid pursuant to subsection 1 is not based on the true net worth of the foreign corporation in Nevada, he may compute and determine the amount required to be paid upon the basis of:

(a) The information required to be filed pursuant to NRS 80.110; and

(b) Any other information obtained by the secretary of state from any source.

5. In addition to any other penalty provided by law, any foreign corporation that fails to pay the fee provided for in this section is liable for the payment of a penalty equal to treble the difference between the amount paid and the amount that was required to be paid by this section.

Sec. 19. NRS 80.050 is hereby amended to read as follows:

80.050 1. Except as otherwise provided in subsection ~~[3.]~~ *2,* foreign corporations shall pay the same fees to the secretary of state as are required to be paid by corporations organized pursuant to the laws of this state. ~~[, but the amount of fees to be charged must not exceed:~~

~~(a) The sum of $25,000 for filing documents for initial qualification; or~~

~~(b) The sum of $25,000 for each subsequent filing of a certificate increasing authorized capital stock.~~

~~2. If the corporate documents required to be filed set forth only the total number of shares of stock the corporation is authorized to issue without reference to value, the authorized shares shall be deemed to be without par value and the filing fee must be computed pursuant to paragraph (b) of subsection 3 of NRS 78.760.~~

~~3.]~~ *2.* Foreign corporations which are nonprofit corporations and do not have or issue shares of stock shall pay the same fees to the secretary of state as are required to be paid by nonprofit corporations organized pursuant to the laws of this state.

~~[4.]~~ *3.* The fee for filing a notice of withdrawal from the State of Nevada by a foreign corporation is ~~[$30.]~~ *$60.*

Sec. 20. NRS 80.110 is hereby amended to read as follows:

80.110 1. Each foreign corporation doing business in this state shall, on or before the first day of the second month after the filing of its certificate of corporate existence with the secretary of state, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this state occurs in each year, file with the secretary of state ~~[,]~~ ***a list,*** on a form furnished by him, ~~[a list of]~~ ***that contains:***

(a) The names of its president, secretary and treasurer or their equivalent, and all of its directors ~~[and a]~~ ***;***

(b) A designation of its resident agent in this state ~~[, signed by]~~ ***;***

(c) The total assets of the foreign corporation as reported on its federal income tax return for the preceding calendar year;

(d) The amount of its assets reported pursuant to paragraph (c) that are situated in or allocated to this state;

(e) The total net worth of the foreign corporation as reported on its federal income tax return for the preceding calendar year; and

(f) The signature of an officer of the corporation.

Each list filed pursuant to this subsection must be accompanied by an affidavit that the foreign corporation has complied with the provisions of chapter 364A of NRS.

2. Upon filing the list, ~~[and designation,]~~ the corporation shall pay to the secretary of state ~~[a fee of $85.]~~ ***the fee prescribed by section 18 of this act.***

3. The secretary of state shall, 60 days before the last day for filing the annual list required by subsection 1, cause to be mailed to each corporation required to comply with the provisions of

NRS 80.110 to 80.170, inclusive, ***and section 18 of this act*** which has not become delinquent, the blank forms to be completed and filed with him. Failure of any corporation to receive the forms does not excuse it from the penalty imposed by the provisions of NRS 80.110 to 80.170, inclusive ~~[.]~~ , ***and section 18 of this act.***

4. An annual list for a corporation not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

Sec. 21. NRS 80.120 is hereby amended to read as follows:

80.120 If a corporation has filed the initial or annual list ~~[of officers and directors and designation of resident agent]~~ in compliance with NRS 80.110 and has paid the appropriate fee for the filing, the canceled check received by the corporation constitutes a certificate authorizing it to transact its business within this state until the last day of the month in which the anniversary of its qualification to transact business occurs in the next succeeding calendar year. If the corporation desires a formal certificate upon its payment of the initial or annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

Sec. 22. NRS 80.150 is hereby amended to read as follows:

80.150 1. Any corporation required to make a filing and pay the fee prescribed in NRS 80.110 to 80.170, inclusive, ***and section 18 of this act*** which refuses or neglects to do so within the time provided, is in default.

2. For default there must be added to the amount of the fee a penalty of ~~[$15,]~~ ***$50,*** and unless the filing is made and the fee and penalty are paid on or before the first day of the ninth

month following the month in which filing was required, *the defaulting corporation by reason of* its default forfeits its right to transact any business within this state. The fee and penalty must be collected as provided in this chapter.

Sec. 23. NRS 80.170 is hereby amended to read as follows:

80.170 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate a corporation which has forfeited or which forfeits its right to transact business under the provisions of this chapter and restore to the corporation its right to transact business in this state, and to exercise its corporate privileges and immunities if it:

(a) Files with the secretary of state a list ~~[of officers and directors]~~ as provided in NRS 80.110 and 80.140; and

(b) Pays to the secretary of state:

(1) The annual filing fee and penalty set forth in NRS ~~[80.110 and]~~ 80.150 ***and section 18 of this act*** for each year or portion thereof that its right to transact business was forfeited; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. If payment is made and the secretary of state reinstates the corporation to its former rights, he shall:

(a) Immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business in the same manner as if the filing fee had been paid when due; and

(b) Upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the right to transact business occurred only by reason of failure to pay the fees and penalties.

4. If the right of a corporation to transact business in this state has been forfeited pursuant to the provisions of NRS 80.160 and has remained forfeited for a period of 5 consecutive years, the right is not subject to reinstatement.

Sec. 24. NRS 81.060 is hereby amended to read as follows:

81.060 1. The articles of incorporation must be:

(a) Subscribed by three or more of the original members, a majority of whom must be residents of this state.

(b) Filed, together with a certificate of acceptance of appointment executed by the resident agent of the corporation, in the office of the secretary of state in all respects in the same manner as other articles of incorporation are filed.

2. If a corporation formed under NRS 81.010 to 81.160, inclusive, is authorized to issue stock, there must be paid to the secretary of state for filing the articles of incorporation ~~[the fee applicable to the amount of authorized stock of the corporation which the secretary of state is required by law to collect upon the filing of articles of incorporation which authorize the issuance of stock.]~~ *a fee of $175.*

3. The secretary of state shall issue to the corporation over the great seal of the state a certificate that a copy of the articles containing the required statements of facts has been filed in his office.

4. Upon the issuance of the certificate by the secretary of state, the persons signing the articles and their associates and successors are a body politic and corporate. When so filed, the articles of incorporation or certified copies thereof must be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein.

Sec. 25. Chapter 86 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, the fee for filing the initial or annual list required to be paid pursuant to NRS 86.263 must be determined as follows:

If the amount of the net worth of the limited-liability company in Nevada is:

Not more than $40,000	***$150***
More than $40,000	***$150, plus an amount equal to 0.35 percent of its net worth in Nevada in excess of $40,000***

2. The maximum fee that may be charged pursuant to this section is $50,000 per year.

3. To determine the net worth of a limited-liability company in Nevada for the purposes of this section, the dollar amount of the assets of the company that are situated in or allocated to this state must be divided by the dollar amount of the total assets of the company, and the result of that calculation must be multiplied by the dollar amount of the total net worth of the company.

4. If the secretary of state determines that the amount of any fee paid pursuant to subsection 1 is not based on the true net worth of the limited-liability company in Nevada, he may compute and determine the amount required to be paid upon the basis of:

(a) The information required to be filed pursuant to NRS 86.263; and

(b) Any other information obtained by the secretary of state from any source.

5. In addition to any other penalty provided by law, any limited-liability company that fails to pay the fee provided for in this section is liable for the payment of a penalty equal to treble the difference between the amount paid and the amount that was required to be paid by this section.

Sec. 26. NRS 86.263 is hereby amended to read as follows:

86.263 1. A limited-liability company shall, on or before the ~~[last]~~ *first* day of the *second* month ~~[in which the anniversary date of its formation occurs,]~~ *after the filing of its articles of organization with the secretary of state,* file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ *that contains:*

(a) The name of the limited-liability company;

(b) The file number of the limited-liability company, if known;

(c) The names and titles of all of its managers or, if there is no manager, all of its managing members;

(d) The mailing or street address, either residence or business, of each manager or managing member listed, following the name of the manager or managing member; ~~[and]~~

(e) ***The total assets of the limited-liability company as reported on its federal income tax return for the preceding calendar year;***

(f) The amount of its assets reported pursuant to paragraph (e) that are situated in or allocated to this state;

(g) The total net worth of the limited-liability company as reported on its federal income tax return for the preceding calendar year; and

(h) The signature of a manager or managing member of the limited-liability company certifying that the list is true, complete and accurate.

2. The limited-liability company shall annually thereafter, on or before the last day of the month in which the anniversary date of ***its*** organization occurs, file with the secretary of state, on a form furnished by him, an amended list containing all of the information required in subsection 1. ~~[If the limited-liability company has had no changes in its managers or, if there is no manager, its managing members, since its previous list was filed, no amended list need be filed if a manager or managing member of the limited-liability company certifies to the secretary of state as a true and accurate statement that no changes in the managers or managing members have occurred.]~~

3. ***Each list required by subsection 1 or 2 must be accompanied by an affidavit that the limited-liability company has complied with the provisions of chapter 364A of NRS.***

4. Upon filing the list ~~[of managers or managing members, or certifying that no changes have occurred,]~~ ***required by subsection 1 or 2,*** the limited-liability company shall pay to the secretary of state ~~[a fee of $85.~~

~~4.~~ *the fee prescribed by section 25 of this act.*

5. The secretary of state shall, 60 days before the last day for filing the list required by subsection ~~1,~~ *2*, cause to be mailed to each limited-liability company required to comply with the provisions of this section, which has not become delinquent, a notice of the fee due under subsection ~~3~~ *4* and a reminder to file a list ~~of managers or managing members or a certification of no change.~~ *required by subsection 2.* Failure of any company to receive a notice or form does not excuse it from the penalty imposed by law.

~~5.~~ *6.* If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective or the fee required by subsection ~~3~~ *4* is not paid, the secretary of state may return the list for correction or payment.

~~6.~~ *7.* An annual list for a limited-liability company not in default received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year.

Sec. 27. NRS 86.266 is hereby amended to read as follows:

86.266 If a limited-liability company has filed the ***initial or*** annual list ~~of managers or members and designation of a resident agent~~ in compliance with NRS 86.263 and has paid the appropriate fee for the filing, the canceled check received by the limited-liability company constitutes a certificate authorizing it to transact its business within this state until the last day of the month in which the anniversary of its formation occurs in the next succeeding calendar year. If the company desires a formal certificate upon its payment of the annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

Sec. 28. NRS 86.272 is hereby amended to read as follows:

86.272 1. Each limited-liability company required to make a filing ***as required by NRS 86.263*** and pay the fee prescribed in ~~[NRS 86.263]~~ ***section 25 of this act*** which refuses or neglects to do so within the time provided is in default.

2. For default there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 29. NRS 86.276 is hereby amended to read as follows:

86.276 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate any limited-liability company which has forfeited its right to transact business under the provisions of this chapter and restore to the company its right to carry on business in this state, and to exercise its privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 86.263; and

(b) Pays to the secretary of state:

(1) The annual filing fee and penalty set forth in NRS ~~[86.263 and]~~ 86.272 ***and section 25 of this act*** for each year or portion thereof during which its charter has been revoked; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the limited-liability company, he shall:

(a) Immediately issue and deliver to the company a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the company one or more certified copies of the certificate of reinstatement.

3. *The secretary of state shall not order a reinstatement unless all delinquent fees and* penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

4. If a company's charter has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 consecutive years, the charter must not be reinstated.

Sec. 30. NRS 86.561 is hereby amended to read as follows:

86.561 1. The secretary of state shall charge and collect for:

(a) Filing the original articles of organization, or for registration of a foreign company, ~~[$125;]~~ ***$175;***

(b) Amending or restating the articles of organization, or amending the registration of a foreign company, ~~[$75;]~~ ***$125;***

(c) Filing the articles of dissolution of a domestic or foreign company, ~~[$30;]~~ ***$60;***

(d) Filing a statement of change of address of a records or registered office, or change of the resident agent, ~~[$15;]~~ ***$30;***

(e) Certifying articles of organization or an amendment to the articles, in both cases where a copy is provided, ~~[$10;]~~ ***$20;***

(f) Certifying an authorized printed copy of this chapter, ~~[$10;]~~ ***$20;***

(g) Reserving a name for a limited-liability company, $20;

(h) Executing, filing or certifying any other document, ~~[$20;]~~ ***$40;*** and

(i) Copies made at the office of the secretary of state, $1 per page.

2. The secretary of state shall charge and collect at the time of any service of process on him as agent for service of process of a limited-liability company, $10 which may be recovered as taxable costs by the party to the action causing the service to be made if the party prevails in the action.

3. Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to this chapter.

Sec. 31. Chapter 87 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, the fee for filing the initial or annual list required to be paid pursuant to NRS 87.510 must be determined as follows:

If the amount of the net worth of the registered limited-liability partnership in Nevada is:

Not more than $40,000	***$150***
More than $40,000	***$150, plus an amount equal to 0.35 percent of its net worth in Nevada in excess of $40,000***

2. The maximum fee that may be charged pursuant to this section is $50,000 per year.

3. To determine the net worth of a registered limited-liability partnership in Nevada for the purposes of this section, the dollar amount of the assets of the partnership that are situated in or allocated to this state must be divided by the dollar amount of the total assets of the

partnership, and the result of that calculation must be multiplied by the dollar amount of the total net worth of the partnership.

4. If the secretary of state determines that the amount of any fee paid pursuant to subsection 1 is not based on the true net worth of the registered limited-liability partnership in Nevada, he may compute and determine the amount required to be paid upon the basis of:

(a) The information required to be filed pursuant to NRS 87.510; and

(b) Any other information obtained by the secretary of state from any source.

5. In addition to any other penalty provided by law, any registered limited-liability partnership that fails to pay the fee provided for in this section is liable for the payment of a penalty equal to treble the difference between the amount paid and the amount that was required to be paid by this section.

Sec. 32. NRS 87.440 is hereby amended to read as follows:

87.440 1. To become a registered limited-liability partnership, a partnership shall file with the secretary of state a certificate of registration stating each of the following:

(a) The name of the partnership.

(b) The street address of its principal office.

(c) The name of the person designated as the partnership's resident agent, the street address of the resident agent where process may be served upon the partnership and the mailing address of the resident agent if it is different than his street address.

(d) The name and business address of each managing partner in this state.

(e) A brief statement of the professional service rendered by the partnership.

(f) That the partnership thereafter will be a registered limited-liability partnership.

(g) Any other information that the partnership wishes to include.

2. The certificate of registration must be executed by a majority in interest of the partners or by one or more partners authorized to execute such a certificate.

3. The certificate of registration must be accompanied by a fee of ~~[$125.]~~ *$175.*

4. The secretary of state shall register as a registered limited-liability partnership any partnership that submits a completed certificate of registration with the required fee.

5. The registration of a registered limited-liability partnership is effective at the time of the filing of the certificate of registration.

Sec. 33. NRS 87.460 is hereby amended to read as follows:

87.460 1. A certificate of registration of a registered limited-liability partnership may be amended by filing with the secretary of state a certificate of amendment. The certificate of amendment must set forth:

(a) The name of the registered limited-liability partnership;

(b) The dates on which the registered limited-liability partnership filed its original certificate of registration and any other certificates of amendment; and

(c) The change to the information contained in the original certificate of registration or any other certificates of amendment.

2. The certificate of amendment must be:

(a) Signed by a managing partner of the registered limited-liability partnership; and

(b) Accompanied by a fee of ~~[$75.]~~ *$125.*

Sec. 34. NRS 87.470 is hereby amended to read as follows:

87.470 The registration of a registered limited-liability partnership is effective until:

1. Its certificate of registration is revoked pursuant to NRS 87.520; or

2. The registered limited-liability partnership files with the secretary of state a written notice of withdrawal executed by a managing partner. The notice must be accompanied by a fee of ~~[$30.]~~ *$60.*

Sec. 35. NRS 87.490 is hereby amended to read as follows:

87.490 1. If a registered limited-liability partnership wishes to change the location of its principal office in this state or its resident agent, it shall first file with the secretary of state a certificate of change that sets forth:

(a) The name of the registered limited-liability partnership;

(b) The street address of its principal office;

(c) If the location of its principal office will be changed, the street address of its new principal office;

(d) The name of its resident agent; and

(e) If its resident agent will be changed, the name of its new resident agent.

The certificate of acceptance of its new resident agent must accompany the certificate of change.

2. A certificate of change filed pursuant to this section must be:

(a) Signed by a managing partner of the registered limited-liability partnership; and

(b) Accompanied by a fee of ~~[$15.]~~ *$30.*

Sec. 36. NRS 87.510 is hereby amended to read as follows:

87.510 1. A registered limited-liability partnership shall ~~[annually,]~~ ***, on or before the first day of the second month after the filing of its certificate of registration with the secretary of state, and annually thereafter*** on or before the last day of the month in which the anniversary date of the filing of its certificate of registration ~~[of limited partnership]~~ with the secretary of state occurs, file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ ***that contains:***

(a) The name of the registered limited-liability partnership;

(b) The file number of the registered limited-liability partnership, if known;

(c) The names of all of its managing partners;

(d) The mailing or street address, either residence or business, of each managing partner; ~~[and]~~

(e) ***The total assets of the registered limited-liability partnership as reported on its federal income tax return for the preceding calendar year;***

(f) The amount of its assets reported pursuant to paragraph (e) that are situated in or allocated to this state;

(g) The total net worth of the limited-liability partnership as reported on its federal income tax return for the preceding calendar year; and

(h) The signature of a managing partner of the registered limited-liability partnership certifying that the list is true, complete and accurate.

SH *Each list filed pursuant to this subsection must be accompanied by an affidavit that the registered limited-liability partnership has complied with the provisions of chapter 364A of NRS.*

2. Upon filing the list ~~[of managing partners,]~~ *required by subsection 1,* the registered limited-liability partnership shall pay to the secretary of state ~~[a fee of $85.]~~ *the fee prescribed by section 31 of this act.*

3. The secretary of state shall, at least 60 days before the last day for filing the annual list required by subsection 1, cause to be mailed to the registered limited-liability partnership a notice of the fee due pursuant to subsection 2 and a reminder to file the annual list ~~[of managing partners.]~~ *required by subsection 1.* The failure of any registered limited-liability partnership to receive a notice or form does not excuse it from complying with the provisions of this section.

4. If the list to be filed pursuant to the provisions of subsection 1 is defective, or the fee required by subsection 2 is not paid, the secretary of state may return the list for correction or payment.

5. An annual list that is filed by a registered limited-liability partnership which is not in default more than 60 days before it is due shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

Sec. 37. NRS 87.520 is hereby amended to read as follows:

87.520 1. A registered limited-liability partnership that fails to comply with the provisions of NRS 87.510 is in default.

2. Any registered limited-liability partnership that is in default pursuant to subsection 1 must, in addition to the fee required to be paid pursuant to NRS 87.510, pay a penalty of ~~[$15.]~~ *$50.*

3. On or before the 15th day of the third month after the month in which the fee required to be paid pursuant to NRS 87.510 is due, the secretary of state shall notify, by certified mail, the resident agent of any registered limited-liability partnership that is in default. The notice must include the amount of any payment that is due from the registered limited-liability partnership.

4. If a registered limited-liability partnership fails to pay the amount that is due, the certificate of registration of the registered limited-liability partnership shall be deemed revoked on the first day of the ninth month after the month in which the fee required to be paid pursuant to NRS 87.510 was due. The secretary of state shall notify a registered limited-liability partnership, by certified mail, addressed to its resident agent or, if the registered limited-liability partnership does not have a resident agent, to a managing partner, that its certificate of registration is revoked and the amount of any fees and penalties that are due.

Sec. 38. NRS 87.530 is hereby amended to read as follows:

87.530 1. Except as otherwise provided in subsection 3, the secretary of state shall reinstate the certificate of registration of a registered limited-liability partnership that is revoked pursuant to NRS 87.520 if the registered limited-liability partnership:

(a) Files with the secretary of state the information required by NRS 87.510; and

(b) Pays to the secretary of state:

(1) The fee required to be paid by that section;

(2) Any penalty required to be paid pursuant to NRS 87.520; and

(3) A reinstatement fee of ~~[$50.]~~ *$200.*

2. Upon reinstatement of a certificate of registration pursuant to this section, the secretary of state shall:

(a) Deliver to the registered limited-liability partnership a certificate of reinstatement authorizing it to transact business retroactively from the date the fee required by NRS 87.510 was due; and

(b) Upon request, issue to the registered limited-liability partnership one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not reinstate the certificate of registration of a registered limited-liability partnership if the certificate was revoked pursuant to NRS 87.520 at least 5 years before the date of the proposed reinstatement.

Sec. 39. NRS 87.550 is hereby amended to read as follows:

87.550 In addition to any other fees required by NRS 87.440 to 87.540, inclusive, ***and section 31 of this act*** and 87.560, the secretary of state shall charge and collect the following fees for services rendered pursuant to those sections:

1. For certifying documents required by NRS 87.440 to 87.540, inclusive, ***and section 31 of this act*** and 87.560, ~~[$10]~~ *$20* per certification.

2. For executing a certificate verifying the existence of a registered limited-liability partnership, if the registered limited-liability partnership has not filed a certificate of amendment, ~~[$15.]~~ *$30.*

3. For executing a certificate verifying the existence of a registered limited-liability partnership, if the registered limited-liability partnership has filed a certificate of amendment, ~~[$20.]~~ *$40.*

4. For executing, certifying or filing any certificate or document not required by NRS 87.440 to 87.540, inclusive, *and section 31 of this act* and 87.560, ~~[$20.]~~ *$40.*

5. For any copies made by the office of the secretary of state, $1 per page.

6. For examining and provisionally approving any document before the document is presented for filing, $100.

Sec. 40. Chapter 88 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, the fee for filing the initial or annual list required to be paid pursuant to NRS 88.395 must be determined as follows:

If the amount of the net worth of the limited partnership in Nevada is:

Not more than $40,000	*$150*
More than $40,000	*$150, plus an amount equal to 0.35 percent of its net worth in Nevada in excess of $40,000*

2. The maximum fee that may be charged pursuant to this section is $50,000 per year.

3. To determine the net worth of a limited partnership in Nevada for the purposes of this section, the dollar amount of the assets of the partnership that are situated in or allocated to

this state must be divided by the dollar amount of the total assets of the partnership, and the result of that calculation must be multiplied by the dollar amount of the total net worth of the partnership.

4. If the secretary of state determines that the amount of any fee paid pursuant to subsection 1 is not based on the true net worth of the limited partnership in Nevada, he may compute and determine the amount required to be paid upon the basis of:

(a) The information required to be filed pursuant to NRS 88.395; and

(b) Any other information obtained by the secretary of state from any source.

5. In addition to any other penalty provided by law, any limited partnership that fails to pay the fee provided for in this section is liable for the payment of a penalty equal to treble the difference between the amount paid and the amount that was required to be paid by this section.

Sec. 41. NRS 88.395 is hereby amended to read as follows:

88.395 1. A limited partnership shall ~~[annually,]~~ *, on or before the first day of the second month after the filing of its certificate of limited partnership with the secretary of state, and annually thereafter* on or before the last day of the month in which the anniversary date of the filing of its certificate of limited partnership occurs, file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ *that contains:*

(a) The name of the limited partnership;

(b) The file number of the limited partnership, if known;

(c) The names of all of its general partners;

(d) The mailing or street address, either residence or business, of each general partner; ~~[and]~~

(e) ***The total assets of the limited partnership as reported on its federal income tax return for the preceding calendar year;***

(f) The amount of its assets reported pursuant to paragraph (e) that are situated in or allocated to this state;

(g) The total net worth of the limited partnership as reported on its federal income tax return for the preceding calendar year; and

(h) The signature of a general partner of the limited partnership certifying that the list is true, complete and accurate.

Each list filed pursuant to this subsection must be accompanied by an affidavit that the limited partnership has complied with the provisions of chapter 364A of NRS.

2. Upon filing the list ~~[of general partners,]~~ ***required by subsection 1,*** the limited partnership shall pay to the secretary of state ~~[a fee of $85.]~~ ***the fee prescribed by section 40 of this act.***

3. The secretary of state shall, 60 days before the last day for filing the ***annual*** list required by subsection 1, cause to be mailed to each limited partnership required to comply with the provisions of this section which has not become delinquent a notice of the fee due pursuant to the provisions of subsection 2 and a reminder to file the annual list. Failure of any limited partnership to receive a notice or form does not excuse it from the penalty imposed by NRS 88.400.

4. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 2 is not paid, the secretary of state may return the list for correction or payment.

5. An annual list for a limited partnership not in default that is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

Sec. 42. NRS 88.400 is hereby amended to read as follows:

88.400 1. If a corporation has filed the list in compliance with NRS 88.395 and has paid the appropriate fee for the filing, the canceled check received by the limited partnership constitutes a certificate authorizing it to transact its business within this state until the anniversary date of the filing of its certificate of limited partnership in the next succeeding calendar year. If the limited partnership desires a formal certificate upon its payment of the annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

2. Each limited partnership which refuses or neglects to file the list and pay the fee within the time provided is in default.

3. For default there must be added to the amount of the fee a penalty of ~~[$15,]~~ *$50,* and unless the filings are made and the fee and penalty are paid on or before the first day of the ninth month following the month in which filing was required, the defaulting limited partnership, by reason of its default, forfeits its right to transact any business within this state.

Sec. 43. NRS 88.410 is hereby amended to read as follows:

88.410 1. Except as otherwise provided in subsections 3 and 4, the secretary of state may:

(a) Reinstate any limited partnership which has forfeited its right to transact business; and

(b) Restore to the limited partnership its right to carry on business in this state, and to exercise its privileges and immunities,

upon the filing with the secretary of state of the list required pursuant to NRS 88.395, and upon payment to the secretary of state of the annual filing fee and penalty set forth in NRS ~~[88.395 and]~~ 88.400 ***and section 40 of this act*** for each year or portion thereof during which the certificate has been revoked, and a fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When payment is made and the secretary of state reinstates the limited partnership to its former rights, he shall:

(a) Immediately issue and deliver to the limited partnership a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the limited partnership one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation occurred only by reason of failure to pay the fees and penalties.

4. If a limited partnership's certificate has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 years, the certificate must not be reinstated.

Sec. 44. NRS 88.415 is hereby amended to read as follows:

88.415 The secretary of state, for services relating to his official duties and the records of his office, shall charge and collect the following fees:

1. For filing a certificate of limited partnership, or for registering a foreign limited partnership, ~~[$125.]~~ *$175.*

2. For filing a certificate of amendment of limited partnership or restated certificate of limited partnership, ~~[$75.~~

~~3. For filing a reinstated certificate of limited partnership, $50.~~

~~4. For filing the annual list of general partners and designation of a resident agent, $85.~~

~~5.]~~ *$125.*

3. For filing a certificate of a change of location of the records office of a limited partnership or the office of its resident agent, or a designation of a new resident agent, ~~[$15.~~

~~6.]~~ *$30.*

4. For certifying a certificate of limited partnership, an amendment to the certificate, or a certificate as amended where a copy is provided, ~~[$10]~~ *$20* per certification.

~~[7.]~~ *5.* For certifying an authorized printed copy of the limited partnership law, ~~[$10.~~

~~8.]~~ *$20.*

6. For reserving a limited partnership name, or for executing, filing or certifying any other document, $20.

~~[9.]~~ *7.* For copies made at the office of the secretary of state, $1 per page.

~~[10.]~~ *8.* For filing a certificate of cancellation of a limited partnership, ~~[$30.]~~ *$60.*

SH Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to this chapter.

Sec. 45. Chapter 88A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, the fee for filing the initial or annual list required to be paid pursuant to NRS 88A.600 must be determined as follows:

If the amount of the net worth of the business trust in Nevada is:

Not more than $40,000	*$150*
More than $40,000	*$150, plus an amount equal to 0.35 percent of its net worth in Nevada in excess of $40,000*

2. The maximum fee that may be charged pursuant to this section is $50,000 per year.

3. To determine the net worth of a business trust in Nevada for the purposes of this section, the dollar amount of the assets of the business trust that are situated in or allocated to this state must be divided by the dollar amount of the total assets of the business trust, and the result of that calculation must be multiplied by the dollar amount of the total net worth of the business trust.

4. If the secretary of state determines that the amount of any fee paid pursuant to subsection 1 is not based on the true net worth of the business trust in Nevada, he may compute and determine the amount required to be paid upon the basis of:

(a) The information required to be filed pursuant to NRS 88A.600; and

(b) Any other information obtained by the secretary of state from any source.

5. In addition to any other penalty provided by law, any business trust that fails to pay the fee provided for in this section is liable for the payment of a penalty equal to treble the difference between the amount paid and the amount that was required to be paid by this section.

Sec. 46. NRS 88A.600 is hereby amended to read as follows:

88A.600 1. A business trust formed pursuant to this chapter shall ~~[annually,]~~ *, on or before the first day of the second month after the filing of its certificate of trust with the secretary of state, and annually thereafter* on or before the last day of the month in which the anniversary date of the filing of its certificate of trust with the secretary of state occurs, file with the secretary of state , on a form furnished by him , a list signed by at least one trustee ~~[containing the]~~ *that contains:*

(a) The name and mailing address of its resident agent and at least one trustee ~~[.]~~ *;*

(b) The total assets of the business trust as reported on its federal income tax return for the preceding calendar year;

(c) The amount of its assets reported pursuant to paragraph (b) that are situated in or allocated to this state; and

(d) The total net worth of the business trust as reported on its federal income tax return for the preceding calendar year.

SH ***Each list filed pursuant to this subsection must be accompanied by an affidavit that the business trust has complied with the provisions of chapter 364A of NRS.***

2. Upon filing the list, the business trust shall pay to the secretary of state ~~[a fee of $85.~~ ~~2.]~~ ***the fee prescribed by section 45 of this act.***

3. The secretary of state shall, 60 days before the last day for filing the annual list required by subsection 1, cause to be mailed to each business trust which is required to comply with the provisions of NRS 88A.600 to 88A.660, inclusive, ***and section 45 of this act*** and which has not become delinquent, the blank forms to be completed and filed with him. Failure of a business trust to receive the forms does not excuse it from the penalty imposed by law.

~~[3.]~~ ***4.*** An annual list for a business trust not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year.

Sec. 47. NRS 88A.630 is hereby amended to read as follows:

88A.630 1. Each business trust required to file the ~~[annual]~~ list and pay the fee prescribed in NRS 88A.600 to 88A.660, inclusive, ***and section 45 of this act*** which refuses or neglects to do so within the time provided shall be deemed in default.

2. For default, there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 48. NRS 88A.650 is hereby amended to read as follows:

88A.650 1. Except as otherwise provided in subsection 3, the secretary of state shall reinstate a business trust which has forfeited its right to transact business pursuant to the

provisions of this chapter and restore to the business trust its right to carry on business in this state, and to exercise its privileges and immunities, if it:

(a) Files with the secretary of state the list ~~[and designation]~~ required by NRS 88A.600; and

(b) Pays to the secretary of state:

(1) The annual filing fee and penalty set forth in NRS ~~[88A.600 and]~~ 88A.630 ***and section 45 of this act*** for each year or portion thereof during which its certificate of trust was revoked; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the business trust, he shall:

(a) Immediately issue and deliver to the business trust a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the business trust one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the certificate of trust occurred only by reason of the failure to file the list or pay the fees and penalties.

Sec. 49. NRS 88A.900 is hereby amended to read as follows:

88A.900 The secretary of state shall charge and collect the following fees for:

1. Filing an original certificate of trust, or for registering a foreign business trust, ~~[$125.]~~ ***$175.***

2. Filing an amendment or restatement, or a combination thereof, to a certificate of trust, ~~[$75.]~~ *$125.*

3. Filing a certificate of cancellation, ~~[$125.]~~ *$175.*

4. Certifying a copy of a certificate of trust or an amendment or restatement, or a combination thereof, ~~[$10]~~ *$20* per certification.

5. Certifying an authorized printed copy of this chapter, ~~[$10.]~~ *$20.*

6. Reserving a name for a business trust, $20.

7. Executing a certificate of existence of a business trust which does not list the previous documents relating to it, or a certificate of change in the name of a business trust, ~~[$15.]~~ *$30.*

8. Executing a certificate of existence of a business trust which lists the previous documents relating to it, ~~[$20.]~~ *$40.*

9. Filing a statement of change of address of the registered office for each business trust, ~~[$15.]~~ *$30.*

10. Filing a statement of change of the registered agent, ~~[$15.]~~ *$30.*

11. Executing, certifying or filing any certificate or document not otherwise provided for in this section, ~~[$20.]~~ *$40.*

12. Examining and provisionally approving a document before the document is presented for filing, $100.

13. Copying a document on file with him, for each page, $1.

Sec. 50. Chapter 89 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, the fee for filing the initial or annual statement required to be paid pursuant to NRS 89.250 must be determined as follows:

If the amount of the net worth of the professional association in Nevada is:

Not more than $40,000	*$150*
More than $40,000	*$150, plus an amount equal to 0.35 percent of its net worth in Nevada in excess of $40,000*

2. The maximum fee that may be charged pursuant to this section is $50,000 per year.

3. To determine the net worth of a professional association in Nevada for the purposes of this section, the dollar amount of the assets of the association that are situated in or allocated to this state must be divided by the dollar amount of the total assets of the association, and the result of that calculation must be multiplied by the dollar amount of the total net worth of the association.

4. If the secretary of state determines that the amount of any fee paid pursuant to subsection 1 is not based on the true net worth of the professional association in Nevada, he may compute and determine the amount required to be paid upon the basis of:

(a) The information required to be filed pursuant to NRS 89.250; and

(b) Any other information obtained by the secretary of state from any source.

5. In addition to any other penalty provided by law, any professional association that fails to pay the fee provided for in this section is liable for the payment of a penalty equal to treble

the difference between the amount paid and the amount that was required to be paid by this section.

Sec. 51. *NRS 89.210 is hereby amended to read as follows:*

89.210 1. Within 30 days ~~[following]~~ *after* the organization of a professional association under this chapter, *the* association shall file with the secretary of state a copy of the articles of association, duly executed, and shall pay at that time a filing fee of ~~[$25.]~~ *$175.* Any such association formed as a common law association before July 1, 1969, shall file, within 30 days ~~[of]~~ *after* July 1, 1969, a certified copy of its articles of association, with any amendments thereto, with the secretary of state, and shall pay at that time a filing fee of $25. A copy of any amendments to the articles of association adopted after July 1, 1969, must also be filed with the secretary of state within 30 days after the adoption of such amendments. Each copy of amendments so filed must be certified as true and correct and be accompanied by a filing fee of ~~[$10.]~~ *$125.*

2. The name of such a professional association must contain the words "Professional Association," "Professional Organization" or the abbreviations "Prof. Ass'n" or "Prof. Org." The association may render professional services and exercise its authorized powers under a fictitious name if the association has first registered the name in the manner required under chapter 602 of NRS.

Sec. 52. NRS 89.250 is hereby amended to read as follows:

89.250 1. A professional association shall, *on or before the first day of the second month after the filing of its articles of association with the secretary of state, and annually thereafter*

on or before the last day of the month in which the anniversary date of its organization occurs in each year, furnish a statement to the secretary of state ~~[showing the]~~ ***that contains:***

(a) The names and residence addresses of all members and employees in ~~[such association and]~~ ***the association;***

(b) The total assets of the professional association as reported on its federal income tax return for the preceding calendar year;

(c) The amount of its assets reported pursuant to paragraph (b) that are situated in or allocated to this state; and

(d) The total net worth of the professional association as reported on its federal income tax return for the preceding calendar year.

Each list filed pursuant to this subsection must be accompanied by an affidavit that the professional association has complied with the provisions of chapter 364A of NRS.

2. The professional association shall certify that all members and employees are licensed to render professional service in this state.

~~[2.]~~ ***3.*** The statement must:

(a) Be made on a form prescribed by the secretary of state and must not contain any fiscal or other information except that expressly called for by this section.

(b) Be signed by the chief executive officer of the association.

~~[3.]~~ ***4.*** Upon filing the ~~[annual]~~ statement required by this section, the association shall pay to the secretary of state ~~[a fee of $15.~~

~~4.]~~ ***the fee prescribed by section 50 of this act.***

5. As used in this section, "signed" means to have executed or adopted a name, word or mark, including, without limitation, a digital signature as defined in NRS 720.060, with the present intention to authenticate a document.

Sec. 53. NRS 89.252 is hereby amended to read as follows:

89.252 1. Each professional association that is required to make a filing ***pursuant to NRS 89.250*** and pay the fee prescribed in ~~[NRS 89.250]~~ ***section 50 of this act*** but refuses to do so within the time provided is in default.

2. For default, there must be added to the amount of the fee a penalty of ~~[$5.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 54. NRS 89.256 is hereby amended to read as follows:

89.256 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate any professional association which has forfeited its right to transact business under the provisions of this chapter and restore the right to carry on business in this state and exercise its privileges and immunities if it:

(a) Files with the secretary of state the statement and certification required by NRS 89.250; and

(b) Pays to the secretary of state:

(1) The annual filing fee and penalty set forth in NRS ~~[89.250 and]~~ 89.252 ***and section 50 of this act*** for each year or portion thereof during which the articles of association have been revoked; and

(2) A fee of ~~[$25]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the association to its former rights, he shall:

(a) Immediately issue and deliver to the association a certificate of reinstatement authorizing it to transact business, as if the fees had been paid when due; and

(b) Upon demand, issue to the association a certified copy of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the association's articles of association occurred only by reason of its failure to pay the fees and penalties.

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

Sec. 55. NRS 92A.190 is hereby amended to read as follows:

92A.190 1. One or more foreign entities may merge or enter into an exchange of owner's interests with one or more domestic entities if:

(a) In a merger, the merger is permitted by the law of the jurisdiction under whose law each foreign entity is organized and governed and each foreign entity complies with that law in effecting the merger;

(b) In an exchange, the entity whose owner's interests will be acquired is a domestic entity, whether or not an exchange of owner's interests is permitted by the law of the jurisdiction under whose law the acquiring entity is organized;

(c) The foreign entity complies with NRS 92A.200 to 92A.240, inclusive, if it is the surviving entity in the merger or acquiring entity in the exchange and sets forth in the articles of merger or exchange its address where copies of process may be sent by the secretary of state; and

(d) Each domestic entity complies with the applicable provisions of NRS 92A.100 to 92A.180, inclusive, and, if it is the surviving entity in the merger or acquiring entity in the exchange, with NRS 92A.200 to 92A.240, inclusive.

2. When the merger or exchange takes effect, the surviving foreign entity in a merger and the acquiring foreign entity in an exchange shall be deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting owners of each domestic entity that was a party to the merger or exchange. Service of such process must be made by personally delivering to and leaving with the secretary of state duplicate copies of the process and the payment of a fee of ~~[$25]~~ *$50* for accepting and transmitting the process. The secretary of state shall forthwith send by registered or certified mail one of the copies to the surviving or acquiring entity at its specified address, unless the surviving or acquiring entity has designated in writing to the secretary of state a different address for that purpose, in which case it must be mailed to the last address so designated.

(b) To agree that it will promptly pay to the dissenting owners of each domestic entity that is a party to the merger or exchange the amount, if any, to which they are entitled under or created pursuant to NRS 92A.300 to 92A.500, inclusive.

3. *This section does not limit the power of a foreign entity to acquire all or part of the owner's interests of one or more classes or series of a domestic entity through a voluntary exchange or otherwise.*

Sec. 56. NRS 92A.210 is hereby amended to read as follows:

92A.210 The fee for filing articles of merger, articles of exchange or articles of termination is ~~[$125.]~~ *$175.*

Sec. 57. NRS 116.3103 is hereby amended to read as follows:

116.3103 1. Except as otherwise provided in the declaration, the bylaws, this section or other provisions of this chapter, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board are ~~[fiduciaries and are]~~ subject to the ***fiduciary duties and*** insulation from liability provided for directors of corporations by the laws of this state. ~~[The members of the executive board are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.]~~

2. The executive board may not act on behalf of the association to amend the declaration, ~~[(NRS 116.2117),]~~ to terminate the common-interest community, ~~[(NRS 116.2118),]~~ or to elect members of the executive board or determine their qualifications, powers and duties or terms of office, ~~[(subsection 1 of NRS 116.31034),]~~ but the executive board may fill vacancies in its membership for the unexpired portion of any term.

3. Within 30 days after adoption of any proposed budget for the common-interest community, the executive board shall provide a summary of the budget to all the units' owners,

and shall set a date for a meeting of the units' owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a majority of all units' owners or any larger vote specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the units' owners must be continued until such time as the units' owners ratify a subsequent budget proposed by the executive board.

Sec. 58. NRS 600.340 is hereby amended to read as follows:

600.340 1. A person who has adopted and is using a mark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth, but not limited to, the following information:

(a) Whether the mark to be registered is a trade-mark, trade name or service mark;

(b) A description of the mark by name, words displayed in it ~~[,]~~ or other information;

(c) The name and business address of the person applying for the registration and, if it is a corporation, limited-liability company, limited partnership or registered limited-liability partnership, the state of incorporation or organization;

(d) The specific goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with those goods or services and the class as designated by the secretary of state which includes those goods or services;

(e) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business which must precede the filing of the application; and

(f) A statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the form set forth in the application or in such near resemblance to it as might deceive or cause mistake.

2. The application must:

(a) Be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

(b) Be accompanied by a specimen or facsimile of the mark in duplicate and by a filing fee of ~~[$50]~~ *$100* payable to the secretary of state.

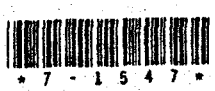
3. If the application fails to comply with this section or NRS 600.343, the secretary of state shall return it for correction.

Sec. 59. NRS 600.355 is hereby amended to read as follows:

600.355 1. If any statement in an application for registration of a mark was incorrect when made or any arrangements or other facts described in the application have changed, making the application inaccurate in any respect without materially altering the mark, the registrant shall promptly file in the office of the secretary of state a certificate, signed by the registrant or his successor or by a member of the firm or an officer of the corporation or association to which the mark is registered, correcting the statement.

2. Upon the filing of a certificate of amendment or judicial decree of amendment and the payment of a filing fee of ~~[$30,]~~ *$60,* the secretary of state shall issue, in accordance with NRS 600.350, an amended certificate of registration for the remainder of the period of the registration.

Sec. 60. NRS 600.360 is hereby amended to read as follows:



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600.360 1. The registration of a mark is effective for 5 years from the date of registration and, upon application filed within 6 months before the expiration of that period, on a form to be furnished by the secretary of state, the registration may be renewed for a successive period of 5 years. A renewal fee of ~~[$25,]~~ *$50,* payable to the secretary of state, must accompany the application for renewal of the registration.

2. The registration of a mark may be renewed for additional successive 5-year periods if the requirements of subsection 1 are satisfied.

3. The secretary of state shall give notice to each registrant when his registration is about to expire. The notice must be given within the year next preceding the expiration date, by writing to the registrant's last known address.

4. All applications for renewals must include a statement that the mark is still in use in this state.

Sec. 61. NRS 600.370 is hereby amended to read as follows:

600.370 1. A mark and its registration are assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. An assignment must:

(a) Be in writing;

(b) Be signed and acknowledged by the registrant or his successor or a member of the firm or an officer of the corporation or association under whose name the mark is registered; and

(c) Be recorded with the secretary of state upon the payment of a fee of ~~[$50]~~ *$100* to the secretary of state who, upon recording the assignment, shall issue in the name of the assignee a certificate of assignment for the remainder of the period of the registration.

2. An assignment of any registration is void as against any subsequent purchaser for valuable consideration without notice, unless:

(a) The assignment is recorded with the secretary of state within 3 months after the date of the assignment; or

(b) The assignment is recorded before the subsequent purchase.

Sec. 62. NRS 600.395 is hereby amended to read as follows:

600.395 The fee for filing a cancellation of registration pursuant to NRS 600.390 is ~~[$25.]~~ *$50.*

Sec. 63. NRS 78.770 is hereby repealed.

Sec. 64. *It is the intent of the legislature in enacting section 2 of this act to codify the* equitable doctrine of the common law known as "piercing the corporate veil," "alter ego" or "disregarding the corporate fiction." In codifying this equitable doctrine, the legislature intends for the provisions of section 2 of this act to preempt entirely the equitable doctrine as it exists in the common law on the effective date of section 2 of this act. Further, it is the intent of the legislature to change the equitable doctrine, pursuant to section 2 of this act, so that a stockholder, director or officer of a corporation may not be made individually liable for a debt or liability of the corporation unless, among other findings, the court finds that the stockholder,

director or officer has actually committed fraud in connection with the debt or liability in question.

Sec. 65. Sections 2, 4, 5, 11, 12, 57 and 64 of this act do not apply to any cause of action that accrues before the effective date of this section.

Sec. 66. Notwithstanding the provisions of section 67 of this act to the contrary, the amendatory provisions of sections 3, 6, 18, 20, 25, 26, 31, 36, 40, 41, 45, 46, 50 and 52 of this act do not apply to the filing of the list of an entity, or the fee for that filing, before August 1, 2001, except that an entity whose anniversary date for the 2001 calendar year falls on or after August 1, 2001, shall comply with those sections as added or amended by this act, even if the filing is made before August 1, 2001.

Sec. 67. 1. This section and sections 1 to 7, inclusive, 11, 12, 18, 20, 21, 25, 26, 27, 31, 36, 40, 41, 45, 46, 50, 52, 57, and 64, 65 and 66 of this act become effective upon passage and approval.

2. Sections 8, 9, 10, 13 to 17, inclusive, 19, 22, 23, 24, 28, 29, 30, 32 to 35, inclusive, 37, 38, 39, 42, 43, 44, 47, 48, 49, 51, 53 to 56, inclusive, and 58 to 63, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On August 1, 2001, for all other purposes.

TEXT OF REPEALED SECTION

78.770 Filing fees: Articles of merger; articles of exchange.

1. The fee for filing articles of merger of two or more domestic corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee so computed upon the aggregate amount of the total authorized stock of the constituent corporations.

2. The fee for filing articles of merger of one or more domestic corporations with one or more foreign corporations is the difference between the fee computed at the rates specified in NRS 78.760 upon the aggregate authorized stock of the corporation created by the merger and the fee so computed upon the aggregate amount of the total authorized stock of the constituent corporations which have paid fees as required by NRS 78.760 and 80.050.

3. In no case may the amount paid be less than $125, and in no case may the amount paid pursuant to subsection 2 exceed $25,000.

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

REQUIRES TWO-THIRDS MAJORITY VOTE (§§ 4, 6, 7, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 49, 50, 51, 52, 53)

S.B. 577

SENATE BILL NO. 577–SENATORS JAMES, RAGGIO, O'DONNELL, AMODEI, RAWSON, JACOBSEN AND MCGINNESS

MAY 24, 2001

Referred to Committee on Judiciary

SUMMARY—Limits common-law and statutory liability of corporate stockholders, directors and officers and increases fees for filing certain documents with secretary of state. (BDR 7-1547)

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

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

AN ACT relating to business associations; limiting the common-law and statutory liability of the stockholders, directors and officers of a corporation; increasing the fees for filing certain documents with the secretary of state; requiring certain fees charged by the secretary of state for special services to be deposited in the state general fund; and providing other matters properly relating thereto.

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

Section 1. Chapter 78 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided by specific statute, no stockholder, director or officer of a corporation formed under the laws of this state is individually liable for a debt or liability of the corporation, without regard to whether a court determines that the stockholder, director or officer should be considered the alter ego of the corporation or that the corporate fiction of a separate entity should be disregarded for any other reason, unless:

(a) Otherwise provided in an agreement to which the stockholder, director or officer is a party; or

(b) A court of competent jurisdiction finds by clear and convincing evidence that:

(1) The corporation is influenced and governed by the stockholder, director or officer;

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

(3) Adherence to the corporate fiction of a separate entity would sanction fraud.

2. For a court to make a finding in satisfaction of subparagraph (3) of paragraph (b) of subsection 1, the court must find that the stockholder, director or officer has committed fraud in connection with the debt or liability of the corporation.

Sec. 2. NRS 78.037 is hereby amended to read as follows:

78.037 The articles of incorporation may also contain ~~[:~~

~~1. A provision eliminating or limiting the personal liability of a director or officer to the corporation or its stockholders for damages for breach of fiduciary duty as a director or officer, but such a provision must not eliminate or limit the liability of a director or officer for:~~

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

~~(b) The payment of distributions in violation of NRS 78.300.~~

~~2. Any~~[***any*** provision, not contrary to the laws of this state ~~[, for]~~ ***:***

1. For the management of the business and for the conduct of the affairs of the corporation ~~[, and any provision creating,]~~ ***;***

2. Creating, defining, limiting or regulating the powers of the corporation or the rights, powers or duties of the directors, ~~[and]~~ ***the officers or*** the stockholders, or any class of the stockholders, or the holders of bonds or other obligations of the corporation ~~[, or governing]~~ ***; or***

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

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

78.138 1. Directors and officers shall exercise their powers in good faith and with a view to the interests of the corporation.

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

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

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

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

but a director or officer is not entitled to rely on such information, opinions, reports, books of account or statements if he has knowledge concerning the matter in question that would cause reliance thereon to be unwarranted.

3. Directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation.

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

(a) The interests of the corporation's employees, suppliers, creditors and customers;

(b) The economy of the state and nation;

(c) The interests of the community and of society; and

(d) The long-term as well as short-term interests of the corporation and its stockholders, including the possibility that these interests may be best served by the continued independence of the corporation.

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

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

7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270, 668.045 and 694A.030, a director or officer is not individually liable for any damages as a result of any act or failure to act in his capacity as a director or officer unless it is proven by clear and convincing evidence that:

(a) His act or failure to act constituted a breach of his fiduciary duties as a director or officer; and

(b) His breach of those duties involved intentional misconduct, fraud or a knowing violation of law.

Sec. 4. NRS 78.150 is hereby amended to read as follows:

78.150 1. A corporation organized under the laws of this state shall, on or before the first day of the second month after the filing of its articles of incorporation with the secretary of state, file with the secretary of state a list, on a form furnished by him, containing:

(a) The name of the corporation;

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

(c) The names and titles of the president, secretary, treasurer and of all the directors of the corporation;

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

(e) The signature of an officer of the corporation certifying that the list is true, complete and accurate.

2. The corporation shall annually thereafter, on or before the last day of the month in which the anniversary date of incorporation occurs in each year, file with the secretary of state, on a form furnished by him, an amended list containing all of the information required in subsection 1.

3. ***Each list required by subsection 1 or 2 must be accompanied by an affidavit that the corporation has complied with the provisions of chapter 364A of NRS.***

4. Upon filing ~~[a list of officers and directors,]~~ ***the list required by:***

(a) Subsection 1, the corporation shall pay to the secretary of state a fee of $165.

(b) Subsection 2, the corporation shall pay to the secretary of state a fee of $85.

~~[4.]~~ ***5.*** The secretary of state shall, 60 days before the last day for filing ~~[the]~~ ***each*** annual list required by subsection 2, cause to be mailed to each corporation which is required to comply with the provisions of NRS 78.150 to 78.185, inclusive, and which has not become delinquent, a notice of the fee due pursuant to subsection ~~[3]~~ ***4*** and a reminder to file a list ~~[of officers and directors.]~~ ***required by subsection 2.*** Failure of any corporation to receive a notice or form does not excuse it from the penalty imposed by law.

~~[5.]~~ ***6.*** If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective in any respect or the fee required by subsection ~~[3 or 7]~~ ***4 or 8*** is not paid, the secretary of state may return the list for correction or payment.

~~[6.]~~ ***7.*** An annual list for a corporation not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 2 for the year to which the due date is applicable.

~~[7.]~~ ***8.*** If the corporation is an association as defined in NRS 116.110315, the secretary of state shall not accept the filing required by this section unless it is accompanied by evidence of the payment of the fee required to be paid pursuant to NRS 116.31155 that is provided to the association pursuant to subsection 4 of that section.

Sec. 5. NRS 78.155 is hereby amended to read as follows:

78.155 If a corporation has filed the initial or annual list ~~[of officers and directors and designation of resident agent]~~ in compliance with NRS 78.150 and has paid the appropriate fee for the filing, the canceled check received by the corporation constitutes a certificate authorizing it to transact its business within this state until the last day of the month in which the anniversary of its incorporation occurs in the next succeeding calendar year. If the corporation desires a formal certificate upon its payment of the initial or annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

Sec. 6. NRS 78.170 is hereby amended to read as follows:

78.170 1. Each corporation required to make a filing and pay the fee prescribed in NRS 78.150 to 78.185, inclusive, which refuses or neglects to do so within the time provided shall be deemed in default.

2. For default there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 7. NRS 78.180 is hereby amended to read as follows:

78.180 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate a corporation which has forfeited its right to transact business under the provisions of this chapter and restore to the corporation its right to carry on business in this state, and to exercise its corporate privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 78.150; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 78.150 and 78.170 for each year or portion thereof during which its charter was revoked; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the corporation, he shall:

(a) Immediately issue and deliver to the corporation a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

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

Sec. 8. NRS 78.300 is hereby amended to read as follows:

78.300 1. The directors of a corporation shall not make distributions to stockholders except as provided by this chapter.

2. ~~[In]~~ ***Except as otherwise provided in subsection 3 and NRS 78.138, in*** case of any ~~[willful or grossly negligent]~~ violation of the provisions of this section, the directors under whose administration the violation occurred ~~[, except those who caused their dissent to be entered upon the minutes of the meeting of the directors at the time, or who not then being present caused their dissent to be entered on learning of such action,]~~ are jointly and severally liable, at any time within ~~[3]~~ ***2*** years after each violation, to the corporation, and, in the event of its dissolution or insolvency, to its creditors at the time of the violation, or any of them, to the lesser of the full amount of the distribution made or of any loss sustained by the corporation by reason of the distribution to stockholders.

3. The liability imposed pursuant to subsection 2 does not apply to a director who caused his dissent to be entered upon the minutes of the meeting of the directors at the time the action was taken or who was not present at the meeting and caused his dissent to be entered on learning of the action.

Sec. 9. NRS 78.7502 is hereby amended to read as follows:

78.7502 1. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he ~~[acted]~~ ***:***

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

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

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

2. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he ~~[acted]~~ ***:***

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

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

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

3. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 1 and 2, or in defense of any claim, issue or matter therein, the corporation shall indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense.

Sec. 10. NRS 78.760 is hereby amended to read as follows:

78.760 1. The fee for filing articles of incorporation is prescribed in the following schedule:

If the amount represented by the total number of shares provided for in the articles or agreement is:	
~~[$25,000 or less~~	~~$125~~
~~Over $25,000 and not over]~~ $75,000 ***or less***	$175
Over $75,000 and not over $200,000	225
Over $200,000 and not over $500,000	325
Over $500,000 and not over $1,000,000	425
Over $1,000,000:	
For the first $1,000,000	425
For each additional $500,000 or fraction thereof	225

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

(a) The original filing of articles of incorporation.

(b) A subsequent filing of any instrument which authorizes an increase in stock.

3. For the purposes of computing the filing fees according to the schedule in subsection 1, the amount represented by the total number of shares provided for in the articles of incorporation is:

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

(b) The product of the number of shares multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which shares may be issued and disposed of, if only shares without par value are therein provided for; or

(c) The aggregate par value of the shares with a par value plus the product of the number of shares without par value multiplied by $1, regardless of any lesser amount prescribed as the value or consideration for which the shares without par value may be issued and disposed of, if shares with and without par value are therein provided for.

For the purposes of this subsection, shares with no prescribed par value shall be deemed shares without par value.

4. The secretary of state shall calculate filing fees pursuant to this section with respect to shares with a par value of less than one-tenth of a cent as if the par value were one-tenth of a cent.

Sec. 11. NRS 78.765 is hereby amended to read as follows:

78.765 1. The fee for filing a certificate changing the number of authorized shares pursuant to NRS 78.209 or a certificate of amendment to articles of incorporation that increases the corporation's authorized stock or a certificate of correction that increases the corporation's authorized stock is the difference between the fee computed at the rates specified in NRS 78.760 upon the total authorized stock of the corporation, including the proposed increase, and the fee computed at the rates specified in NRS 78.760 upon the total authorized capital, excluding the proposed increase. In no case may the amount be less than ~~[$75.]~~ ***$150.***

2. The fee for filing a certificate of amendment to articles of incorporation that does not increase the corporation's authorized stock or a certificate of correction that does not increase the corporation's authorized stock is ~~[$75.]~~ ***$150.***

3. The fee for filing a certificate or an amended certificate pursuant to NRS 78.1955 is ~~[$75.]~~ ***$150.***

Sec. 12. NRS 78.767 is hereby amended to read as follows:

78.767 1. The fee for filing a certificate of restated articles of incorporation that does not increase the corporation's authorized stock is ~~[$75.]~~ ***$150.***

2. The fee for filing a certificate of restated articles of incorporation that increases the corporation's authorized stock is the difference between the fee computed pursuant to NRS 78.760 based upon the total authorized stock of the corporation, including the proposed increase, and the fee computed pursuant to NRS 78.760 based upon the total authorized stock of the corporation, excluding the proposed increase. In no case may the amount be less than ~~[$75.]~~ ***$150.***

Sec. 13. NRS 78.780 is hereby amended to read as follows:

78.780 1. The fee for filing a certificate of extension of corporate existence of any corporation is an amount equal to one-fourth of the fee computed at the rates specified in NRS 78.760 for filing articles of incorporation.

2. The fee for filing a certificate of dissolution whether it occurs before or after payment of capital and beginning of business is ~~[$30.]~~ ***$60.***

Sec. 14. NRS 78.785 is hereby amended to read as follows:

78.785 1. The fee for filing a certificate of change of location of a corporation's registered office and resident agent, or a new designation of resident agent, is ~~[$15.]~~ ***$30.***

2. The fee for certifying articles of incorporation where a copy is provided is ~~[$10.]~~ ***$20.***

3. The fee for certifying a copy of an amendment to articles of incorporation, or to a copy of the articles as amended, where a copy is furnished, is ~~[$10.]~~ ***$20.***

4. The fee for certifying an authorized printed copy of the general corporation law as compiled by the secretary of state is ~~[$10.]~~ ***$20.***

5. The fee for reserving a corporate name is $20.

6. The fee for executing a certificate of corporate existence which does not list the previous documents relating to the corporation, or a certificate of change in a corporate name, is ~~[$15.]~~ ***$30.***

7. The fee for executing a certificate of corporate existence which lists the previous documents relating to the corporation is ~~[$20.]~~ ***$40.***

8. The fee for executing, certifying or filing any certificate or document not provided for in NRS 78.760 to 78.785, inclusive, is ~~[$20.]~~ ***$40.***

9. The fee for copies made at the office of the secretary of state is $1 per page.

10. The ~~[fee]~~ ***fees*** for filing articles of incorporation, articles of merger, or certificates of amendment increasing the basic surplus of a mutual or reciprocal insurer must be computed pursuant to NRS 78.760, 78.765 and ~~[78.770,]~~ ***92A.210*** on the basis of the amount of basic surplus of the insurer.

11. The fee for examining and provisionally approving any document at any time before the document is presented for filing is $100.

Sec. 15. NRS 80.050 is hereby amended to read as follows:

80.050 1. Except as otherwise provided in subsection 3, foreign corporations shall pay the same fees to the secretary of state as are required to be paid by corporations organized pursuant to the laws of this state, but the amount of fees to be charged must not exceed:

(a) The sum of $25,000 for filing documents for initial qualification; or

(b) The sum of $25,000 for each subsequent filing of a certificate increasing authorized capital stock.

2. If the corporate documents required to be filed set forth only the total number of shares of stock the corporation is authorized to issue without reference to value, the authorized shares shall be deemed to be without par value and the filing fee must be computed pursuant to paragraph (b) of subsection 3 of NRS 78.760.

3. Foreign corporations which are nonprofit corporations and do not have or issue shares of stock shall pay the same fees to the secretary of state as are required to be paid by nonprofit corporations organized pursuant to the laws of this state.

4. The fee for filing a notice of withdrawal from the State of Nevada by a foreign corporation is ~~[$30.]~~ ***$60.***

Sec. 16. NRS 80.110 is hereby amended to read as follows:

80.110 1. Each foreign corporation doing business in this state shall, on or before the first day of the second month after the filing of its certificate of corporate existence with the secretary of state, and annually thereafter on or before the last day of the month in which the anniversary date of its qualification to do business in this state occurs in each year, file with the secretary of state ~~[,]~~ ***a list,*** on a form furnished by him, ~~[a list of]~~ ***that contains:***

(a) The names of its president, secretary and treasurer or their equivalent, and all of its directors ~~[and a]~~ ***;***

(b) A designation of its resident agent in this state ~~[, signed by]~~ ***; and***

(c) The signature of an officer of the corporation.

Each list filed pursuant to this subsection must be accompanied by an affidavit that the foreign corporation has complied with the provisions of chapter 364A of NRS.

2. Upon filing ~~[the list and designation,]~~ ***:***

(a) The initial list required by subsection 1, the corporation shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 1, the corporation shall pay to the secretary of state a fee of $85.

3. The secretary of state shall, 60 days before the last day for filing ~~[the]~~ ***each*** annual list required by subsection 1, cause to be mailed to each corporation required to comply with the provisions of NRS 80.110 to 80.170, inclusive, which has not become delinquent, the blank forms to be completed and filed with him. Failure of any corporation to receive the forms does not excuse it from the penalty imposed by the provisions of NRS 80.110 to 80.170, inclusive.

4. An annual list for a corporation not in default which is received by the secretary of state more than 60 days before its due date shall be deemed

an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

Sec. 17. NRS 80.120 is hereby amended to read as follows:

80.120 If a corporation has filed the initial or annual list ~~[of officers and directors and designation of resident agent]~~ in compliance with NRS 80.110 and has paid the appropriate fee for the filing, the canceled check received by the corporation constitutes a certificate authorizing it to transact its business within this state until the last day of the month in which the anniversary of its qualification to transact business occurs in the next succeeding calendar year. If the corporation desires a formal certificate upon its payment of the initial or annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

Sec. 18. NRS 80.150 is hereby amended to read as follows:

80.150 1. Any corporation required to make a filing and pay the fee prescribed in NRS 80.110 to 80.170, inclusive, which refuses or neglects to do so within the time provided, is in default.

2. For default there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50,*** and unless the filing is made and the fee and penalty are paid on or before the first day of the ninth month following the month in which filing was required, the defaulting corporation by reason of its default forfeits its right to transact any business within this state. The fee and penalty must be collected as provided in this chapter.

Sec. 19. NRS 80.170 is hereby amended to read as follows:

80.170 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate a corporation which has forfeited or which forfeits its right to transact business under the provisions of this chapter and restore to the corporation its right to transact business in this state, and to exercise its corporate privileges and immunities if it:

(a) Files with the secretary of state a list ~~[of officers and directors]~~ as provided in NRS 80.110 and 80.140; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 80.110 and 80.150 for each year or portion thereof that its right to transact business was forfeited; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. If payment is made and the secretary of state reinstates the corporation to its former rights, he shall:

(a) Immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business in the same manner as if the filing fee had been paid when due; and

(b) Upon demand, issue to the corporation one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the right to transact business occurred only by reason of failure to pay the fees and penalties.

4. If the right of a corporation to transact business in this state has been forfeited pursuant to the provisions of NRS 80.160 and has remained

forfeited for a period of 5 consecutive years, the right is not subject to reinstatement.

Sec. 20. NRS 86.263 is hereby amended to read as follows:

86.263 1. A limited-liability company shall, on or before the ~~[last]~~ ***first*** day of the ***second*** month ~~[in which the anniversary date of its formation occurs,]~~ ***after the filing of its articles of organization with the secretary of state,*** file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ ***that contains:***

(a) The name of the limited-liability company;

(b) The file number of the limited-liability company, if known;

(c) The names and titles of all of its managers or, if there is no manager, all of its managing members;

(d) The mailing or street address, either residence or business, of each manager or managing member listed, following the name of the manager or managing member; and

(e) The signature of a manager or managing member of the limited-liability company certifying that the list is true, complete and accurate.

2. The limited-liability company shall annually thereafter, on or before the last day of the month in which the anniversary date of ***its*** organization occurs, file with the secretary of state, on a form furnished by him, an amended list containing all of the information required in subsection 1. If the limited-liability company has had no changes in its managers or, if there is no manager, its managing members, since its previous list was filed, no amended list need be filed if a manager or managing member of the limited-liability company certifies to the secretary of state as a true and accurate statement that no changes in the managers or managing members have occurred.

3. Each list required by subsection 1 and each list or certification required by subsection 2 must be accompanied by an affidavit that the limited-liability company has complied with the provisions of chapter 364A of NRS.

4. Upon filing ~~[the list of managers or managing members,]~~ ***:***

(a) The initial list required by subsection 1, the limited-liability company shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 2 or certifying that no changes have occurred, the limited-liability company shall pay to the secretary of state a fee of $85.

~~[4.]~~ ***5.*** The secretary of state shall, 60 days before the last day for filing ~~[the]~~ ***each*** list required by subsection ~~[1,]~~ ***2,*** cause to be mailed to each limited-liability company required to comply with the provisions of this section, which has not become delinquent, a notice of the fee due under subsection ~~[3]~~ ***4*** and a reminder to file a list ~~[of managers or managing members]~~ ***required by subsection 2*** or a certification of no change. Failure of any company to receive a notice or form does not excuse it from the penalty imposed by law.

~~[5.]~~ ***6.*** If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective or the fee required by subsection ~~[3]~~ ***4*** is not paid, the secretary of state may return the list for correction or payment.

~~[6.]~~ *7.* An annual list for a limited-liability company not in default received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year.

Sec. 21. NRS 86.266 is hereby amended to read as follows:

86.266 If a limited-liability company has filed the ***initial or*** annual list ~~[of managers or members and designation of a resident agent]~~ in compliance with NRS 86.263 and has paid the appropriate fee for the filing, the canceled check received by the limited-liability company constitutes a certificate authorizing it to transact its business within this state until the last day of the month in which the anniversary of its formation occurs in the next succeeding calendar year. If the company desires a formal certificate upon its payment of the annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

Sec. 22. NRS 86.272 is hereby amended to read as follows:

86.272 1. Each limited-liability company required to make a filing and pay the fee prescribed in NRS 86.263 which refuses or neglects to do so within the time provided is in default.

2. For default there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 23. NRS 86.276 is hereby amended to read as follows:

86.276 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate any limited-liability company which has forfeited its right to transact business under the provisions of this chapter and restore to the company its right to carry on business in this state, and to exercise its privileges and immunities, if it:

(a) Files with the secretary of state the list required by NRS 86.263; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 86.263 and 86.272 for each year or portion thereof during which its charter has been revoked; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the limited-liability company, he shall:

(a) Immediately issue and deliver to the company a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the company one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation of the charter occurred only by reason of failure to pay the fees and penalties.

4. If a company's charter has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 consecutive years, the charter must not be reinstated.

Sec. 24. NRS 86.561 is hereby amended to read as follows:

86.561 1. The secretary of state shall charge and collect for:

(a) Filing the original articles of organization, or for registration of a foreign company, ~~[$125;]~~ ***$175;***

(b) Amending or restating the articles of organization, or amending the registration of a foreign company, ~~[$75;]~~ ***$150;***

(c) Filing the articles of dissolution of a domestic or foreign company, ~~[$30;]~~ ***$60;***

(d) Filing a statement of change of address of a records or registered office, or change of the resident agent, ~~[$15;]~~ ***$30;***

(e) Certifying articles of organization or an amendment to the articles, in both cases where a copy is provided, ~~[$10;]~~ ***$20;***

(f) Certifying an authorized printed copy of this chapter, ~~[$10;]~~ ***$20;***

(g) Reserving a name for a limited-liability company, $20;

(h) Executing, filing or certifying any other document, ~~[$20;]~~ ***$40;*** and

(i) Copies made at the office of the secretary of state, $1 per page.

2. The secretary of state shall charge and collect at the time of any service of process on him as agent for service of process of a limited-liability company, $10 which may be recovered as taxable costs by the party to the action causing the service to be made if the party prevails in the action.

3. Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to this chapter.

Sec. 25. NRS 87.440 is hereby amended to read as follows:

87.440 1. To become a registered limited-liability partnership, a partnership shall file with the secretary of state a certificate of registration stating each of the following:

(a) The name of the partnership.

(b) The street address of its principal office.

(c) The name of the person designated as the partnership's resident agent, the street address of the resident agent where process may be served upon the partnership and the mailing address of the resident agent if it is different than his street address.

(d) The name and business address of each managing partner in this state.

(e) A brief statement of the professional service rendered by the partnership.

(f) That the partnership thereafter will be a registered limited-liability partnership.

(g) Any other information that the partnership wishes to include.

2. The certificate of registration must be executed by a majority in interest of the partners or by one or more partners authorized to execute such a certificate.

3. The certificate of registration must be accompanied by a fee of ~~[$125.]~~ ***$175.***

4. The secretary of state shall register as a registered limited-liability partnership any partnership that submits a completed certificate of registration with the required fee.

5. The registration of a registered limited-liability partnership is effective at the time of the filing of the certificate of registration.

Sec. 26. NRS 87.460 is hereby amended to read as follows:

87.460 1. A certificate of registration of a registered limited-liability partnership may be amended by filing with the secretary of state a certificate of amendment. The certificate of amendment must set forth:

(a) The name of the registered limited-liability partnership;

(b) The dates on which the registered limited-liability partnership filed its original certificate of registration and any other certificates of amendment; and

(c) The change to the information contained in the original certificate of registration or any other certificates of amendment.

2. The certificate of amendment must be:

(a) Signed by a managing partner of the registered limited-liability partnership; and

(b) Accompanied by a fee of ~~[$75.]~~ ***$150.***

Sec. 27. NRS 87.470 is hereby amended to read as follows:

87.470 The registration of a registered limited-liability partnership is effective until:

1. Its certificate of registration is revoked pursuant to NRS 87.520; or

2. The registered limited-liability partnership files with the secretary of state a written notice of withdrawal executed by a managing partner. The notice must be accompanied by a fee of ~~[$30.]~~ ***$60.***

Sec. 28. NRS 87.490 is hereby amended to read as follows:

87.490 1. If a registered limited-liability partnership wishes to change the location of its principal office in this state or its resident agent, it shall first file with the secretary of state a certificate of change that sets forth:

(a) The name of the registered limited-liability partnership;

(b) The street address of its principal office;

(c) If the location of its principal office will be changed, the street address of its new principal office;

(d) The name of its resident agent; and

(e) If its resident agent will be changed, the name of its new resident agent.

The certificate of acceptance of its new resident agent must accompany the certificate of change.

2. A certificate of change filed pursuant to this section must be:

(a) Signed by a managing partner of the registered limited-liability partnership; and

(b) Accompanied by a fee of ~~[$15.]~~ ***$30.***

Sec. 29. NRS 87.510 is hereby amended to read as follows:

87.510 1. A registered limited-liability partnership shall ~~[annually,]~~ ***, on or before the first day of the second month after the filing of its certificate of registration with the secretary of state, and annually thereafter*** on or before the last day of the month in which the anniversary date of the filing of its certificate of registration ~~[of limited partnership]~~ with the secretary of state occurs, file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ ***that contains:***

(a) The name of the registered limited-liability partnership;

(b) The file number of the registered limited-liability partnership, if known;

(c) The names of all of its managing partners;

(d) The mailing or street address, either residence or business, of each managing partner; and

(e) The signature of a managing partner of the registered limited-liability partnership certifying that the list is true, complete and accurate.

Each list filed pursuant to this subsection must be accompanied by an affidavit that the registered limited-liability partnership has complied with the provisions of chapter 364A of NRS.

2. Upon filing ~~[the list of managing partners,]~~ ***:***

(a) The initial list required by subsection 1, the registered limited-liability partnership shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 1, the registered limited-liability partnership shall pay to the secretary of state a fee of $85.

3. The secretary of state shall, at least 60 days before the last day for filing ~~[the]~~ ***each*** annual list required by subsection 1, cause to be mailed to the registered limited-liability partnership a notice of the fee due pursuant to subsection 2 and a reminder to file the annual list ~~[of managing partners,]~~ ***required by subsection 1.*** The failure of any registered limited-liability partnership to receive a notice or form does not excuse it from complying with the provisions of this section.

4. If the list to be filed pursuant to the provisions of subsection 1 is defective, or the fee required by subsection 2 is not paid, the secretary of state may return the list for correction or payment.

5. An annual list that is filed by a registered limited-liability partnership which is not in default more than 60 days before it is due shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

Sec. 30. NRS 87.520 is hereby amended to read as follows:

87.520 1. A registered limited-liability partnership that fails to comply with the provisions of NRS 87.510 is in default.

2. Any registered limited-liability partnership that is in default pursuant to subsection 1 must, in addition to the fee required to be paid pursuant to NRS 87.510, pay a penalty of ~~[$15.]~~ ***$50.***

3. On or before the 15th day of the third month after the month in which the fee required to be paid pursuant to NRS 87.510 is due, the secretary of state shall notify, by certified mail, the resident agent of any registered limited-liability partnership that is in default. The notice must include the amount of any payment that is due from the registered limited-liability partnership.

4. If a registered limited-liability partnership fails to pay the amount that is due, the certificate of registration of the registered limited-liability partnership shall be deemed revoked on the first day of the ninth month after the month in which the fee required to be paid pursuant to NRS 87.510 was due. The secretary of state shall notify a registered limited-liability partnership, by certified mail, addressed to its resident agent or, if the registered limited-liability partnership does not have a resident agent, to

a managing partner, that its certificate of registration is revoked and the amount of any fees and penalties that are due.

Sec. 31. NRS 87.530 is hereby amended to read as follows:

87.530 1. Except as otherwise provided in subsection 3, the secretary of state shall reinstate the certificate of registration of a registered limited-liability partnership that is revoked pursuant to NRS 87.520 if the registered limited-liability partnership:

(a) Files with the secretary of state the information required by NRS 87.510; and

(b) Pays to the secretary of state:

(1) The fee required to be paid by that section;

(2) Any penalty required to be paid pursuant to NRS 87.520; and

(3) A reinstatement fee of ~~[$50.]~~ ***$200.***

2. Upon reinstatement of a certificate of registration pursuant to this section, the secretary of state shall:

(a) Deliver to the registered limited-liability partnership a certificate of reinstatement authorizing it to transact business retroactively from the date the fee required by NRS 87.510 was due; and

(b) Upon request, issue to the registered limited-liability partnership one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not reinstate the certificate of registration of a registered limited-liability partnership if the certificate was revoked pursuant to NRS 87.520 at least 5 years before the date of the proposed reinstatement.

Sec. 32. NRS 87.550 is hereby amended to read as follows:

87.550 In addition to any other fees required by NRS 87.440 to 87.540, inclusive, and 87.560, the secretary of state shall charge and collect the following fees for services rendered pursuant to those sections:

1. For certifying documents required by NRS 87.440 to 87.540, inclusive, and 87.560, ~~[$10]~~ ***$20*** per certification.

2. For executing a certificate verifying the existence of a registered limited-liability partnership, if the registered limited-liability partnership has not filed a certificate of amendment, ~~[$15.]~~ ***$30.***

3. For executing a certificate verifying the existence of a registered limited-liability partnership, if the registered limited-liability partnership has filed a certificate of amendment, ~~[$20.]~~ ***$40.***

4. For executing, certifying or filing any certificate or document not required by NRS 87.440 to 87.540, inclusive, and 87.560, ~~[$20.]~~ ***$40.***

5. For any copies made by the office of the secretary of state, $1 per page.

6. For examining and provisionally approving any document before the document is presented for filing, $100.

Sec. 33. NRS 88.395 is hereby amended to read as follows:

88.395 1. A limited partnership shall ~~[annually,]~~ ***, on or before the first day of the second month after the filing of its certificate of limited partnership with the secretary of state, and annually thereafter*** on or before the last day of the month in which the anniversary date of the filing of its certificate of limited partnership occurs, file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ ***that contains:***

(a) The name of the limited partnership;

(b) The file number of the limited partnership, if known;

(c) The names of all of its general partners;

(d) The mailing or street address, either residence or business, of each general partner; and

(e) The signature of a general partner of the limited partnership certifying that the list is true, complete and accurate.

Each list filed pursuant to this subsection must be accompanied by an affidavit that the limited partnership has complied with the provisions of chapter 364A of NRS.

2. Upon filing ~~[the list of general partners,]~~ ***:***

(a) The initial list required by subsection 1, the limited partnership shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 1, the limited partnership shall pay to the secretary of state a fee of $85.

3. The secretary of state shall, 60 days before the last day for filing ~~[the]~~ ***each annual*** list required by subsection 1, cause to be mailed to each limited partnership required to comply with the provisions of this section which has not become delinquent a notice of the fee due pursuant to the provisions of subsection 2 and a reminder to file the annual list. Failure of any limited partnership to receive a notice or form does not excuse it from the penalty imposed by NRS 88.400.

4. If the list to be filed pursuant to the provisions of subsection 1 is defective or the fee required by subsection 2 is not paid, the secretary of state may return the list for correction or payment.

5. An annual list for a limited partnership not in default that is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year and does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

Sec. 34. NRS 88.400 is hereby amended to read as follows:

88.400 1. If a corporation has filed the list in compliance with NRS 88.395 and has paid the appropriate fee for the filing, the canceled check received by the limited partnership constitutes a certificate authorizing it to transact its business within this state until the anniversary date of the filing of its certificate of limited partnership in the next succeeding calendar year. If the limited partnership desires a formal certificate upon its payment of the annual fee, its payment must be accompanied by a self-addressed, stamped envelope.

2. Each limited partnership which refuses or neglects to file the list and pay the fee within the time provided is in default.

3. For default there must be added to the amount of the fee a penalty of ~~[$15,]~~ ***$50,*** and unless the filings are made and the fee and penalty are paid on or before the first day of the ninth month following the month in which filing was required, the defaulting limited partnership, by reason of its default, forfeits its right to transact any business within this state.

Sec. 35. NRS 88.410 is hereby amended to read as follows:

88.410 1. Except as otherwise provided in subsections 3 and 4, the secretary of state may:

(a) Reinstate any limited partnership which has forfeited its right to transact business; and

(b) Restore to the limited partnership its right to carry on business in this state, and to exercise its privileges and immunities,

upon the filing with the secretary of state of the list required pursuant to NRS 88.395, and upon payment to the secretary of state of the ~~[annual]~~ filing fee and penalty set forth in NRS 88.395 and 88.400 for each year or portion thereof during which the certificate has been revoked, and a fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When payment is made and the secretary of state reinstates the limited partnership to its former rights, he shall:

(a) Immediately issue and deliver to the limited partnership a certificate of reinstatement authorizing it to transact business as if the filing fee had been paid when due; and

(b) Upon demand, issue to the limited partnership one or more certified copies of the certificate of reinstatement.

3. The secretary of state shall not order a reinstatement unless all delinquent fees and penalties have been paid, and the revocation occurred only by reason of failure to pay the fees and penalties.

4. If a limited partnership's certificate has been revoked pursuant to the provisions of this chapter and has remained revoked for a period of 5 years, the certificate must not be reinstated.

Sec. 36. NRS 88.415 is hereby amended to read as follows:

88.415 The secretary of state, for services relating to his official duties and the records of his office, shall charge and collect the following fees:

1. For filing a certificate of limited partnership, or for registering a foreign limited partnership, ~~[$125.]~~ ***$175.***

2. For filing a certificate of amendment of limited partnership or restated certificate of limited partnership, ~~[$75.~~

~~3. For filing a reinstated certificate of limited partnership, $50.~~

~~4. For filing the annual list of general partners and designation of a resident agent, $85.~~

~~5.]~~ ***$150.***

3. For filing a certificate of a change of location of the records office of a limited partnership or the office of its resident agent, or a designation of a new resident agent, ~~[$15.~~

~~6.]~~ ***$30.***

4. For certifying a certificate of limited partnership, an amendment to the certificate, or a certificate as amended where a copy is provided, ~~[$10]~~ ***$20*** per certification.

~~[7.]~~ *5.* For certifying an authorized printed copy of the limited partnership law, ~~[$10.~~

~~8.]~~ ***$20.***

6. For reserving a limited partnership name, or for executing, filing or certifying any other document, $20.

~~[9.]~~ *7.* For copies made at the office of the secretary of state, $1 per page.

~~[10.]~~ *8.* For filing a certificate of cancellation of a limited partnership, ~~[$30.]~~ ***$60.***

Except as otherwise provided in this section, the fees set forth in NRS 78.785 apply to this chapter.

Sec. 37. NRS 88A.600 is hereby amended to read as follows:

88A.600 1. A business trust formed pursuant to this chapter shall ~~[annually,]~~ ***, on or before the first day of the second month after the filing of its certificate of trust with the secretary of state, and annually thereafter*** on or before the last day of the month in which the anniversary date of the filing of its certificate of trust with the secretary of state occurs, file with the secretary of state, on a form furnished by him, a list signed by at least one trustee ~~[containing]~~ ***that contains*** the name and mailing address of its resident agent and at least one trustee. ***Each list filed pursuant to this subsection must be accompanied by an affidavit that the business trust has complied with the provisions of chapter 364A of NRS.***

2. Upon filing ~~[the list,]~~ *:*

(a) The initial list required by subsection 1, the business trust shall pay to the secretary of state a fee of $165.

(b) Each annual list required by subsection 1, the business trust shall pay to the secretary of state a fee of $85.

~~[2.]~~ *3.* The secretary of state shall, 60 days before the last day for filing ~~[the]~~ ***each*** annual list required by subsection 1, cause to be mailed to each business trust which is required to comply with the provisions of NRS 88A.600 to 88A.660, inclusive, and which has not become delinquent, the blank forms to be completed and filed with him. Failure of a business trust to receive the forms does not excuse it from the penalty imposed by law.

~~[3.]~~ *4.* An annual list for a business trust not in default which is received by the secretary of state more than 60 days before its due date shall be deemed an amended list for the previous year.

Sec. 38. NRS 88A.630 is hereby amended to read as follows:

88A.630 1. Each business trust required to file the ~~[annual]~~ list and pay the fee prescribed in NRS 88A.600 to 88A.660, inclusive, which refuses or neglects to do so within the time provided shall be deemed in default.

2. For default, there must be added to the amount of the fee a penalty of ~~[$15.]~~ ***$50.*** The fee and penalty must be collected as provided in this chapter.

Sec. 39. NRS 88A.650 is hereby amended to read as follows:

88A.650 1. Except as otherwise provided in subsection 3, the secretary of state shall reinstate a business trust which has forfeited its right to transact business pursuant to the provisions of this chapter and restore to the business trust its right to carry on business in this state, and to exercise its privileges and immunities, if it:

(a) Files with the secretary of state the list ~~[and designation]~~ required by NRS 88A.600; and

(b) Pays to the secretary of state:

(1) The ~~[annual]~~ filing fee and penalty set forth in NRS 88A.600 and 88A.630 for each year or portion thereof during which its certificate of trust was revoked; and

(2) A fee of ~~[$50]~~ ***$200*** for reinstatement.

2. When the secretary of state reinstates the business trust, he shall: