

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

COMMISSIONER OF INSURANCE  
FOR THE STATE OF NEVADA AS  
RECEIVER OF LEWIS AND CLARK  
LTC RISK RETENTION GROUP,  
INC.,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK, AND THE  
HONORABLE NANCY L. ALLF,  
DISTRICT JUDGE, DEPARTMENT  
NO. XXVII,

Respondents,

ROBERT CHUR, STEVE FOGG,  
MARK GARBER, CAROL HARTER,  
ROBERT HURLBUT, BARBARA  
LUMPKIN, JEFF MARSHALL, ERIC  
STICKELS, UNI-TER UNDER-  
WRITING MANAGEMENT CORP.,  
UNI-TER CLAIMS SERVICES  
CORP., and U.S. RE CORPORATION

Real Parties  
in Interest

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) Supreme Court No.

) Electronically Filed  
) Dist. Ct. Case No. Sep 29 2020 10:31 a.m.  
) Elizabeth A. Brown  
) Clerk of Supreme Court

) **APPENDIX TO PETITION**  
) **FOR A WRIT OF MANDAMUS**  
) **VOLUME 3 OF 10**

### Chronological Index

Doc No.	Description	Vol.	Bates Nos.
1	Complaint, filed 12/23/2014	1	PA000001-PA000133
2	Motion to Dismiss, filed 12/11/2015	1	PA000134-PA000146
3	Opposition to Motion to Dismiss, filed 1/15/2016	1	PA000147-PA000162
4	Transcript re: Directors' Motion to Dismiss, hearing held on 1/27/2016	1	PA000163-PA000171
5	Notice of Entry of Order Granting in Part and Denying in Part Motion to Dismiss, filed 2/26/2016	1	PA000172-PA000177
6	First Amended Complaint, filed 4/1/2016	1	PA000178-PA000696
7	Motion to Dismiss First Amended Complaint, filed 4/18/2016	2	PA000697-PA000723
8	Decision and Order, filed 5/4/2016	2	PA000723-PA000732
9	Opposition to Motion to Dismiss First Amended Complaint, filed 5/5/2016	2	PA000733-PA000820
10	Reply to Motion to Dismiss First Amended Complaint, filed 5/19/2016	2	PA000821-PA000831
11	Second Amended Complaint, filed 6/13/2016	2	PA000832-PA001353
12	Supplemental Motion to Dismiss First Amended Complaint, filed 7/18/2016	2	PA001354-PA001358
13	Third Amended Complaint, filed 8/5/2016	2, 3	PA001359-PA001887

14	U.S. Re Corporation's Answer to Third Amended Complaint, filed 8/12/2016	3	PA001888-PA001903
15	Uni-Ter Claims Services Corp.'s Answer to Third Amended Complaint, filed 8/12/2016	3	PA001904-PA001919
16	Second Supplement to Motion to Dismiss First Amended Complaint, filed 9/2/2016	3	PA001920-PA001923
17	Notice of Entry of Order Denying Motion to Dismiss First Amended Complaint, filed 10/11/2019	3	PA001924-PA001928
18	Answer to Third Amended Complaint [Directors'], filed 10/21/2016	3	PA001929-PA001952
19	Motion for Judgment on the Pleadings, filed 8/14/2018	3, 4	PA001953-PA002232
20	Opposition to Motion for Judgment on the Pleadings, filed 9/19/2018	4, 5	PA002233-PA002584
21	Reply to Motion for Judgment on the Pleadings, filed 10/4/2018	6	PA002585-PA002700
22	Transcript re: hearing held on 10/11/2018 re: all pending motions	6	PA002701-PA002722
23	Order Denying Motion for Judgment on the Pleadings, filed 11/2/2018	6	PA002723-PA002725
24	Motion for Reconsideration, filed 11/29/2018	6	PA002726-PA002744
25	Opposition to Motion for Reconsideration, filed 12/27/2018	6	PA002745-PA002758
26	Reply to Motion for Reconsideration, filed 1/4/2019	6	PA002759-PA002772
27	Transcript re: hearing held on 1/9/2019 re: Motion for Reconsideration	6	PA002773-PA002791
28	Scheduling Order, filed 1/29/2019	6	PA002792-PA002794

29	Order Denying Motion for Reconsideration, filed 2/11/2019	6	PA002795-PA002798
30	Motion for Stay Pending Petition, filed 3/8/2019	6	PA002799-PA002812
31	Joinder to Motion for Stay Pending Petition, filed 3/11/2019	7	PA002813-PA002822
32	Opposition to Motion for Stay Pending Petition, filed 3/12/2019	7	PA002823-PA002856
33	Reply to Motion for Stay Pending Petition, filed 3/13/2019	7	PA002857-PA002863
34	Court Minutes re: Motion to Stay Pending Petition, 3/14/2019	7	PA002864-PA002865
35	Order Granting Motion for Stay, filed 4/4/2019	7	PA002866-PA002868
36	Motion to Lift Stay, filed 7/2/2019	7	PA002869-PA002886
37	Opposition to Motion to Lift Stay, filed 7/9/2019	7	PA002887-PA002892
38	Response to Motion to Lift Stay, filed 7/10/2019	7	PA002893-PA002897
39	Court Minutes re: Motion to Lift Stay, 7/11/2019	7	PA002898-PA002899
40	Notice of Entry of Order Denying Motion to Lift Stay, filed 8/12/2019	7	PA002900-PA002905
41	Motion for Clarification, filed 4/6/2020	7	PA002906-PA002915
42	Limited Opposition to Motion for Clarification [Directors'], filed 4/8/2020	7	PA002916-PA002920
43	Limited Opposition to Motion for Clarification [Uni-Ter], filed 4/9/2020	7	PA002921-PA002940



44	Transcript re: hearing held on 4/10/2020 re: Motion for Clarification	7	PA002941-PA002954
45	Notice of Entry of Order re: Motion for Clarification, filed on 4/28/2020	7	PA002955-PA002960
46	Transcript re: hearing held on 6/18/2020 re: Motion for Clarification	7	PA002961-PA002971
47	Notice of Entry of Order re: Motion for Clarification, filed 6/30/2020	7	PA002972-PA002981
48	Motion for Leave to File Fourth Amended Complaint, filed 7/2/2020	7	PA002982-PA003013
49	Opposition to Motion for Leave to File Fourth Amended Complaint [Directors'], filed 7/17/2020	7	PA003014-PA003044
50	Opposition to Motion for Leave to File Fourth Amended Complaint [Unit-Ter], filed 7/17/2020	8	PA003045-PA003072
51	Reply to Motion for Leave to file Fourth Amended Complaint, filed 7/21/2020	8	PA003073-PA003245
52	Transcript re: hearing held on 7/23/2020 re: all pending motions	8	PA003246-PA003273
53	Answer to Third Amended Complaint [U.S. Re Corporation], filed 8/7/2020	9	PA003274-PA003289
54	Amended Answer to Third Amended Complaint [Uni-Ter Underwriting Management Corp.], filed 8/7/2020	9	PA003290-PA003306
55	Amended Answer to Third Amended Complaint [Uni-Ter Claims Services Corp.], filed 8/7/2020	9	PA003307-PA003323
56	Order Denying Motion for Leave to File Fourth Amended Complaint, filed 8/10/2020	9	PA003324-PA003329
57	Motion for Partial Reconsideration of Motion	9	PA003330-

	for Leave, filed 8/14/2020		PA003361
58	Opposition to Motion for Partial Reconsideration, filed 8/24/2020	9, 10	PA003362-PA003515
59	Reply to Motion for Partial Reconsideration, filed 8/25/2020	10	PA003516-PA003525
60	Transcript re: hearing held on 8/26/2020 re: all pending motions	10	PA003526-PA003548
61	Motion for Stay Pending Petition, filed 8/28/2020	10	PA003549-PA003625
62	Opposition to Motion for Stay, filed 9/1/2020	10	PA003626-PA003630
63	Motion to Certify Judgment as Final, filed 9/3/2020	10	PA003631-PA003641
64	Transcript re: hearing held on 9/3/2020 re: all pending motions	10	PA003642-PA003659
65	Opposition to Motion to Certify Judgment as Final [Directors'], filed 9/8/2020	10	PA003660-PA003662
66	Opposition to Motion to Certify Judgment as Final [Uni-Ter], filed 9/8/2020	10	PA003663-PA003675
67	Notice of Entry of Order Denying Motion for Partial Reconsideration, filed 9/10/2020	10	PA003676-PA003690
68	Notice of Entry of Order Granting Motion to Stay, filed 9/17/2020	10	PA003691-PA003702
69	Order Granting Judgment on the Pleadings, filed 8/13/2020	10	PA003703-PA003707

### Alphabetical Index

Doc No.	Description	Vol.	Bates Nos.
55	Amended Answer to Third Amended	9	PA003307-

	Complaint [Uni-Ter Claims Services Corp.], filed 8/7/2020		PA003323
54	Amended Answer to Third Amended Complaint [Uni-Ter Underwriting Management Corp.], filed 8/7/2020	9	PA003290-PA003306
18	Answer to Third Amended Complaint [Directors'], filed 10/21/2016	3	PA001929-PA001952
53	Answer to Third Amended Complaint [U.S. Re Corporation], filed 8/7/2020	9	PA003274-PA003289
1	Complaint, filed 12/23/2014	1	PA000001-PA000133
39	Court Minutes re: Motion to Lift Stay, 7/11/2019	7	PA002898-PA002899
34	Court Minutes re: Motion to Stay Pending Petition, 3/14/2019	7	PA002864-PA002865
8	Decision and Order, filed 5/4/2016	2	PA000723-PA000732
6	First Amended Complaint, filed 4/1/2016	1	PA000178-PA000696
31	Joinder to Motion for Stay Pending Petition, filed 3/11/2019	7	PA002813-PA002822
42	Limited Opposition to Motion for Clarification [Directors'], filed 4/8/2020	7	PA002916-PA002920
43	Limited Opposition to Motion for Clarification [Uni-Ter], filed 4/9/2020	7	PA002921-PA002940
41	Motion for Clarification, filed 4/6/2020	7	PA002906-PA002915
19	Motion for Judgment on the Pleadings, filed 8/14/2018	3, 4	PA001953-PA002232
48	Motion for Leave to File Fourth Amended Complaint, filed 7/2/2020	7	PA002982-PA003013

57	Motion for Partial Reconsideration of Motion for Leave, filed 8/14/2020	9	PA003330-PA003361
24	Motion for Reconsideration, filed 11/29/2018	6	PA002726-PA002744
30	Motion for Stay Pending Petition, filed 3/8/2019	6	PA002799-PA002812
61	Motion for Stay Pending Petition, filed 8/28/2020	10	PA003549-PA003625
63	Motion to Certify Judgment as Final, filed 9/3/2020	10	PA003631-PA003641
2	Motion to Dismiss, filed 12/11/2015	1	PA000134-PA000146
7	Motion to Dismiss First Amended Complaint, filed 4/18/2016	2	PA000697-PA000723
36	Motion to Lift Stay, filed 7/2/2019	7	PA002869-PA002886
67	Notice of Entry of Order Denying Motion for Partial Reconsideration, filed 9/10/2020	10	PA003676-PA003690
17	Notice of Entry of Order Denying Motion to Dismiss First Amended Complaint, filed 10/11/2019	3	PA001924-PA001928
40	Notice of Entry of Order Denying Motion to Lift Stay, filed 8/12/2019	7	PA002900-PA002905
5	Notice of Entry of Order Granting in Part and Denying in Part Motion to Dismiss, filed 2/26/2016	1	PA000172-PA000177
68	Notice of Entry of Order Granting Motion to Stay, filed 9/17/2020	10	PA003691-PA003702
45	Notice of Entry of Order re: Motion for Clarification, filed on 4/28/2020	7	PA002955-PA002960
47	Notice of Entry of Order re: Motion for	7	PA002972-

	Clarification, filed 6/30/2020		PA002981
20	Opposition to Motion for Judgment on the Pleadings, filed 9/19/2018	4, 5	PA002233-PA002584
49	Opposition to Motion for Leave to File Fourth Amended Complaint [Directors'], filed 7/17/2020	7	PA003014-PA003044
50	Opposition to Motion for Leave to File Fourth Amended Complaint [Unit-Ter], filed 7/17/2020	8	PA003045-PA003072
58	Opposition to Motion for Partial Reconsideration, filed 8/24/2020	9, 10	PA003362-PA003515
25	Opposition to Motion for Reconsideration, filed 12/27/2018	6	PA002745-PA002758
62	Opposition to Motion for Stay, filed 9/1/2020	10	PA003626-PA003630
32	Opposition to Motion for Stay Pending Petition, filed 3/12/2019	7	PA002823-PA002856
65	Opposition to Motion to Certify Judgment as Final [Directors'], filed 9/8/2020	10	PA003660-PA003662
66	Opposition to Motion to Certify Judgment as Final [Uni-Ter], filed 9/8/2020	10	PA003663-PA003675
3	Opposition to Motion to Dismiss, filed 1/15/2016	1	PA000147-PA000162
9	Opposition to Motion to Dismiss First Amended Complaint, filed 5/5/2016	2	PA000733-PA000820
37	Opposition to Motion to Lift Stay, filed 7/9/2019	7	PA002887-PA002892
23	Order Denying Motion for Judgment on the Pleadings, filed 11/2/2018	6	PA002723-PA002725
56	Order Denying Motion for Leave to File Fourth Amended Complaint, filed 8/10/2020	9	PA003324-PA003329

29	Order Denying Motion for Reconsideration, filed 2/11/2019	6	PA002795-PA002798
69	Order Granting Judgment on the Pleadings, filed 8/13/2020	10	PA003703-PA003707
35	Order Granting Motion for Stay, filed 4/4/2019	7	PA002866-PA002868
21	Reply to Motion for Judgment on the Pleadings, filed 10/4/2018	6	PA002585-PA002700
51	Reply to Motion for Leave to file Fourth Amended Complaint, filed 7/21/2020	8	PA003073-PA003245
59	Reply to Motion for Partial Reconsideration, filed 8/25/2020	10	PA003516-PA003525
26	Reply to Motion for Reconsideration, filed 1/4/2019	6	PA002759-PA002772
33	Reply to Motion for Stay Pending Petition, filed 3/13/2019	7	PA002857-PA002863
10	Reply to Motion to Dismiss First Amended Complaint, filed 5/19/2016	2	PA000821-PA000831
38	Response to Motion to Lift Stay, filed 7/10/2019	7	PA002893-PA002897
28	Scheduling Order, filed 1/29/2019	6	PA002792-PA002794
11	Second Amended Complaint, filed 6/13/2016	2	PA000832-PA001353
16	Second Supplement to Motion to Dismiss First Amended Complaint, filed 9/2/2016	3	PA001920-PA001923
12	Supplemental Motion to Dismiss First Amended Complaint, filed 7/18/2016	2	PA001354-PA001358
13	Third Amended Complaint, filed 8/5/2016	2, 3	PA001359-PA001887

4	Transcript re: Directors' Motion to Dismiss, hearing held on 1/27/2016	1	PA000163-PA000171
22	Transcript re: hearing held on 10/11/2018 re: all pending motions	6	PA002701-PA002722
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44	Transcript re: hearing held on 4/10/2020 re: Motion for Clarification	7	PA002941-PA002954
46	Transcript re: hearing held on 6/18/2020 re: Motion for Clarification	7	PA002961-PA002971
52	Transcript re: hearing held on 7/23/2020 re: all pending motions	8	PA003246-PA003273
60	Transcript re: hearing held on 8/26/2020 re: all pending motions	10	PA003526-PA003548
64	Transcript re: hearing held on 9/3/2020 re: all pending motions	10	PA003642-PA003659
14	U.S. Re Corporation's Answer to Third Amended Complaint, filed 8/12/2016	3	PA001888-PA001903
15	Uni-Ter Claims Services Corp.'s Answer to Third Amended Complaint, filed 8/12/2016	3	PA001904-PA001919

**CERTIFICATE OF SERVICE**

I certify that I am an employee of HUTCHISON & STEFFEN, LLC and that on this date **APPENDIX TO PETITION FOR A WRIT OF MANDAMUS VOLUME 3 OF 10** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

George F. Ogilvie III, Esq. (3352)  
McDonald Carano LLP  
2300 West Sahara Ave., Ste. 1200  
Las Vegas, NV 89102

*Attorney for Uni-Ter Defendants*

Angela T. Nakamura Ochoa, Esq.  
(10164)  
Lipson Neilson  
9555 Hillwood Dr., 2<sup>nd</sup> Floor  
Las Vegas, NV 89134

*Attorney for Director Defendants*

Further, a copy was mailed via U.S. Mail to the following:

The Honorable Nancy Allf  
Eighth Judicial District Court  
Regional Justice Center  
200 Lewis Avenue  
Department XXVII  
Las Vegas, Nevada 89155

DATED this 28<sup>th</sup> day of September, 2020.

*/s/ Kaylee Conradi*

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An employee of Hutchison & Steffen, PLLC



267. In violation of such duties, U.S. RE intentionally failed to find appropriate reinsurance because the deductible rates were consistently too high. This is shown by the fact that reinsurance did not come into play at all in the early years. Indeed, the Board approved commutation of the 2007 treaty only 10 days into 2008.

268. As a proximate result, Plaintiff has been damaged in an amount in excess of \$10,000, the exact amount to be proven at trial in this matter.

269. Plaintiff has retained the undersigned law firm to represent her in this matter, and is obligated to pay it a reasonable attorney's fee and costs, which it is entitled to recover herein.

WHEREFORE, Plaintiff prays for relief and judgment as follows:

A. For actual damages sustained by Plaintiff in an amount in excess of \$10,000 in an amount to be more specifically established at trial in accordance with proof;

B. For reasonable attorney's fees pursuant to statute or as special damages, or as provided in the agreement between the parties;

C. For pre-judgment and post-judgment interest; and

D. For such other and further relief at law or in equity as the Court may deem just and proper.

DATED this 5th day of August, 2016.

FENNEMORE CRAIG, P.C.

By: /s/ Brenoch Wirthlin

JAMES L. WADHAMS, ESQ.

Nevada Bar No. 1115

BRENOCH WIRTHLIN, ESQ.

Nevada Bar No. 10282

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Attorneys for Plaintiff Commissioner of  
Insurance For the State of Nevada

## CERTIFICATE OF SERVICE

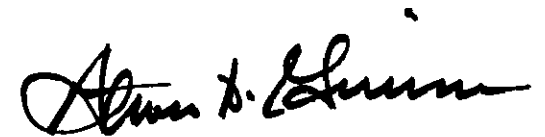
Pursuant to NRCP 5(b), I hereby certify that I am an employee of Fennemore Craig, P.C., and that on the 5th day of August, 2016, service of **THIRD AMENDED COMPLAINT** was made on the following counsel of record and/or parties by electronic transmission to all parties appearing on the electronic service list in Odyssey E-File & Serve (Wiznet) as follows:

		Select All	Select None		
Attorney General's Office					
Name	Email	<input type="checkbox"/>	<input type="checkbox"/>	Select	
Joanna Grigoriev	jgrigoriev@ag.nv.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
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Nevada Attorney General	wiznetfilings@ag.nv.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Fennemore Craig, P.C.					
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Kevin Hejmanowski	khejmanowski@fclaw.com	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	
Lipson Neilson Cole Seltzer & Garin					
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Nevada Division of Insurance					
Name	Email	<input type="checkbox"/>	<input type="checkbox"/>	Select	
Terri Verbrugghen	verbrug@doi.nv.gov	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	

/s/

An Employee of Fennemore Craig, P.C.

**Exhibits to Third Amended Complaint, [PA001407-PA001887], intentionally omitted.**



CLERK OF THE COURT

1 **ANAC**  
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10 *Attorneys for Defendants Uni-Ter Underwriting*  
11 *Management Corp., Uni-Ter Claims Services*  
12 *Corp., and U.S. RE Corporation*

13 **DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

14 COMMISSIONER OF INSURANCE FOR  
THE STATE OF NEVADA AS RECEIVER  
15 OF LEWIS AND CLARK LTC RISK  
RETENTION GROUP, INC.,

16 Plaintiff,

17 vs.

18 ROBERT CHUR, STEVE FOGG, MARK  
19 GARBER, CAROL HARTER, ROBERT  
HURLBUT, BARBARA LUMPKIN, JEFF  
20 MARSHALL, ERIC STICKELS, UNI-TER  
UNDERWRITING MANAGEMENT CORP.  
21 UNI-TER CLAIMS SERVICES CORP., and  
U.S. RE CORPORATION, DOES 1-50,  
22 inclusive; and ROES 51-100, inclusive,

23 Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

**DEFENDANT U.S. RE**  
**CORPORATION'S ANSWER TO**  
**THIRD AMENDED COMPLAINT**

24  
25 U.S. RE CORPORATION ("U.S. RE"), by and through its counsel of record, George F.  
26 Ogilvie III of McDONALD CARANO WILSON LLP and Jon M. Wilson of BROAD AND CASSEL, as  
27 and for its Answer to the Third Amended Complaint filed herein on behalf of Plaintiff  
28 COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS RECEIVER OF

McDONALD • CARANO • WILSON LLP  
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA  
PHONE (702) 873-4100 • FAX (702) 873-9966

LEWIS AND CLARK LTC RISK RETENTION GROUP, INC. ("Plaintiff"), admits, denies, and responds as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Answering paragraph 1 of the Third Amended Complaint, U.S. RE states, on information and belief, that L&C was formed in 2003. U.S. RE admits the remainder of the allegation set forth therein.

2. Answering paragraph 2 of the Third Amended Complaint, U.S. RE admits only that the Nevada Division of Insurance ("DOI") filed a Receivership Action related to L&C in 2012 with case number A-12-672047-B and that an Order of Liquidation was entered in that action on February 28, 2013. With respect to the allegations in paragraph 2 regarding the terms of the Order of Liquidation, U.S. RE submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 2 that mischaracterizes the terms of said document.

3. Answering paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 29 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

4. Answering paragraph 26 of the Third Amended Complaint, U.S. RE admits only that it is a reinsurance broker and denies each and every remaining allegation set forth therein.

5. Answering paragraph 27 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter Underwriting Management Corp. ("Uni-Ter UMC") is presently a wholly owned subsidiary of U.S. RE and denies each and every remaining allegation set forth therein.

6. Answering paragraph 28 of the Third Amended Complaint, U.S. RE denies each and every allegation set forth therein.

**GENERAL ALLEGATIONS**

7. Answering paragraphs 30, 35, 36, 42, 65, 118, and 211 of the Third Amended Complaint, U.S. RE admits the allegation set forth therein.

8. Answering paragraph 31 of the Third Amended Complaint, U.S. RE admits that L&C expanded its area of operation over the years, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 31 and, on that basis, denies each and every remaining allegation set forth therein.

9. Answering paragraphs 32, 34, 39, 55, 56, 58, 59, 76, 89, 90, 91, 92, 93, 94, 99, 101, 104, 105, 107, 108, 113, 114, 115, 116, 117, 120, 121, 122, 126, 130, 145, 148, 164, 168, 170, 203, 205, and 206 of the Third Amended Complaint, U.S. RE denies each and every allegation set forth therein.

10. Answering paragraph 33 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter UMC and Uni-Ter Claims Services Corp. ("Uni-Ter CS") were retained as managers of L&C and denies each and every remaining allegation set forth therein.

11. Answering paragraphs 37, 57, 63, 71, 72, 100, 132, 169, 174, 177, 178, 179, 181, and 210 of the Third Amended Complaint, U.S. RE lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

12. Answering paragraph 38 of the Third Amended Complaint, U.S. RE admits that L&C was managed by Uni-Ter UMC. U.S. RE also admits that Uni-Ter UMC also sent out offering memoranda and offering documents, but qualifies such response by noting that such actions were within the normal course of business for a risk retention group.

13. Answering paragraph 40 of the Third Amended Complaint, U.S. RE admits only that Uni-Ter UMC has organized five risk retention groups.

14. Answering paragraph 41 of the Third Amended Complaint, U.S. RE submits that Uni-Ter UMC's services to L&C are set forth in the 2004 and 2011 Management Agreements and that the terms of these documents speak for themselves, refers the Court to these documents for their complete and exact contents, and denies each and every allegation set forth in

1 paragraph 41 that mischaracterizes the terms of said document.

2 15. Answering paragraph 43 of the Third Amended Complaint, U.S. RE admits only  
3 that Uni-Ter UMC entered into the 2004 Management Agreement. With respect to the  
4 allegations in paragraph 43 regarding the terms of the 2004 Management Agreement, U.S. RE  
5 submits that the terms of this document speak for themselves, refers the Court to the document  
6 for its complete and exact contents, and denies each and every allegation set forth in paragraph  
7 43 that mischaracterizes the terms of said document.

8 16. Answering paragraphs 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 61, 62, 66, 67,  
9 68, 69, 70, 74, 75, 96, 97, 98, 109, 110, 111, 112, 123, 124, 125, 127, 131, 133, 134, 135, 136,  
10 137, 138, 140, 141, 142, 143, 144, 149, 150, 151, 152, 156, 157, 158, 160, 162, 167, 171, 172,  
11 173, 175, 176, 180, 182, 183, 187, 188, 189, 191, 196, 197, 198, 199, 200, 201, 202, and 204 of  
12 the Third Amended Complaint, U.S. RE submits that the terms of the documents referenced in  
13 these paragraphs speak for themselves, refers the Court to those documents for their complete  
14 and exact contents, and denies each and every allegation set forth in said paragraphs that  
15 mischaracterizes the terms of those documents.

16 17. Answering paragraph 60 of the Third Amended Complaint, U.S. RE submits that  
17 the terms of the “contracts at issue” referenced in said paragraph speak for themselves, refers  
18 the Court to this document for its complete and exact contents, and denies each and every  
19 allegation set forth in paragraph 60 that mischaracterizes the terms of said document. U.S. RE  
20 denies each and every remaining allegation set forth in paragraph 60.

21 18. Answering paragraph 64 of the Third Amended Complaint, U.S. RE admits only  
22 that Uni-Ter UMC and Uni-Ter CS entered into the 2011 Management Agreement. With  
23 respect to the allegations in paragraph 64 regarding the terms of the 2011 Management  
24 Agreement, U.S. RE submits that the terms of this document speak for themselves, refers the  
25 Court to the document for its complete and exact contents, and denies each and every allegation  
26 set forth in paragraph 64 that mischaracterizes the terms of said document. U.S. RE denies each  
27 and every remaining allegation set forth in paragraph 64.

28

1           19.     Answering paragraph 73 of the Third Amended Complaint, U.S. RE admits only  
2     that Lewis & Clark LTC Risk Retention Group, Inc. (“L&C”) and U.S. RE entered into a  
3     Broker of Record Letter Agreement. With respect to the allegations in paragraph 73 regarding  
4     the terms of the Broker of Record Letter Agreement, U.S. RE submits that the terms of this  
5     document speak for themselves, refers the Court to the document for its complete and exact  
6     contents, and denies each and every allegation set forth in paragraph 73 that mischaracterizes  
7     the terms of said document.

8           20.     Answering paragraph 77 of the Third Amended Complaint, U.S. RE admits only  
9     that the 2004 and 2011 Management Agreements exist and submits that the terms of these  
10    documents speak for themselves, refers the Court to the documents for their complete and exact  
11    contents, and denies each and every allegation set forth in paragraph 77 that mischaracterizes  
12    the terms of said documents.

13          21.     Answering paragraph 78 of the Third Amended Complaint, U.S. RE admits only  
14    that Uni-Ter UMC and Uni-Ter CS are presently wholly owned subsidiaries of U.S. RE.

15          22.     Answering paragraph 79, 80, 82, 86, 87, and 88 of the Third Amended  
16    Complaint, U.S. RE submits that, to the extent referenced, the terms of the Broker of Record  
17    Letter Agreement speak for themselves, refers the Court to the Broker of Record Letter  
18    Agreement for its complete and exact contents, and denies each and every allegation set forth in  
19    said paragraphs that mischaracterizes the terms of the Broker of Record Letter Agreement. U.S.  
20    RE further denies each and every remaining allegation set forth in said paragraphs.

21          23.     Answering paragraphs 81, 83, and 85 of the Third Amended Complaint, U.S. RE  
22    states that the allegations contained in said paragraphs call for legal conclusions to which no  
23    response is required.

24          24.     Answering paragraph 84 of the Third Amended Complaint, U.S. RE states that,  
25    to the extent paragraph 84 calls for a legal conclusion, no response is required. U.S. RE denies  
26    each and every remaining allegation set forth therein.

27          25.     Answering paragraph 95 of the Third Amended Complaint, U.S. RE admits only  
28    that it procured certain reinsurance treaties. With respect to the allegations in paragraph 95



1 regarding the terms of certain alleged treaties, U.S. RE submits that the terms of those  
2 documents speak for themselves, refers the Court to those documents for their complete and  
3 exact contents, and denies each and every allegation set forth in paragraph 95 that  
4 mischaracterizes the terms of said documents.

5         26. Answering paragraph 102 of the Third Amended Complaint, U.S. RE lacks  
6 sufficient knowledge or information to form a belief as to whether Sanford Elsass (“Elsass”)  
7 and Donna Dalton sent a memorandum. With respect to the allegations in paragraph 102  
8 regarding the terms of said memorandum, U.S. RE submits that the terms of this document  
9 speak for themselves, refers the Court to the document for its complete and exact contents, and  
10 denies each and every allegation set forth in paragraph 102 that mischaracterizes the terms of  
11 said document.

12         27. Answering paragraph 103 of the Third Amended Complaint, U.S. RE admits  
13 only that Praxis was hired and denies each and every remaining allegation set forth therein.

14         28. Answering paragraph 106 of the Third Amended Complaint, U.S. RE admits  
15 only that a report from Praxis dated September 15, 2011 exists. With respect to the allegations  
16 in paragraph 106 regarding the terms of said report, U.S. RE submits that the terms of this  
17 document speak for themselves, refers the Court to the document for its complete and exact  
18 contents, and denies each and every allegation set forth in paragraph 106 that mischaracterizes  
19 the terms of said document. U.S. RE denies each and every remaining allegation set forth in  
20 paragraph 106.

21         29. Answering paragraph 119 of the Third Amended Complaint, U.S. RE admits  
22 only that Elsass and employees of the Uni-Ter entities provided reports about the company to  
23 the Board members. U.S. RE denies each and every remaining allegation set forth in paragraph  
24 119.

25         30. Answering paragraph 128 of the Third Amended Complaint, U.S. RE admits  
26 only that Uni-Ter established loss reserves for the company. With respect to the allegations in  
27 paragraph 128 regarding the September 14, 2005 Minutes, U.S. RE submits that the terms of  
28 this document speak for themselves, refers the Court to the document for its complete and exact

1 contents, and denies each and every allegation set forth in paragraph 128 that mischaracterizes  
2 the terms of said document. U.S. RE denies each and every remaining allegation set forth in  
3 paragraph 128.

4 31. Answering paragraph 129 of the Third Amended Complaint, U.S. RE lacks  
5 sufficient knowledge or information to form a belief as to whether the Audit Committee was  
6 established at the February 10, 2006 meeting of the Board. With respect to the allegations in  
7 paragraph 129 regarding the February 10, 2006 Minutes, which are not attached to the  
8 Complaint, U.S. RE submits that the terms of this document speak for themselves, refers the  
9 Court to the document for its complete and exact contents, and denies each and every allegation  
10 set forth in paragraph 129 that mischaracterizes the terms of said document. U.S. RE denies  
11 each and every remaining allegation set forth in paragraph 129.

12 32. Answering paragraph 139 of the Third Amended Complaint, U.S. RE denies that  
13 the December 2, 2009 Minutes are attached as Exhibit 17 to the Third Amended Complaint.  
14 With respect to the allegations in paragraph 139 addressing the terms of the December 2, 2009  
15 Minutes, U.S. RE submits that the terms of documents referenced therein speak for themselves,  
16 refers the Court to those documents for their complete and exact contents, and denies each and  
17 every allegation set forth in said paragraphs that mischaracterizes the terms of those documents.

18 33. Answering paragraphs 146, 153, 154, 155, 159, 163, 192, 193, 194, and 195 of  
19 the Third Amended Complaint, U.S. RE submits that, with respect to the allegations in said  
20 paragraphs addressing the terms of certain documents, the terms of documents referenced  
21 therein speak for themselves, refers the Court to those documents for their complete and exact  
22 contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes  
23 the terms of those documents. U.S. RE denies each and every remaining allegation set forth in  
24 said paragraphs.

25 34. Answering paragraph 147 of the Third Amended Complaint, U.S. RE admits  
26 only that William Fishlinger ("Fishlinger") was retained in 2011 to perform claims review.  
27 With respect to the allegations in paragraph 147 regarding the terms of the December 28, 2011  
28 Minutes, U.S. RE submits that the terms of this document speak for themselves, refers the

1 Court to the document for its complete and exact contents, and denies each and every allegation  
2 set forth in paragraph 147 that mischaracterizes the terms of said document.

3 35. Answering paragraph 161 of the Third Amended Complaint, U.S. RE admits the  
4 first sentence of this paragraph, but lacks sufficient knowledge or information to form a belief  
5 as to the truth of the remaining allegations set forth in paragraph 161 and, on that basis, denies  
6 each and every remaining allegation set forth therein.

7 36. Answering paragraph 165 of the Third Amended Complaint, U.S. RE submits  
8 that, with respect to the allegations addressing the Annual Statement and Quarterly statement,  
9 such documents speak for themselves, refers the Court to those documents for their complete  
10 and exact contents, and denies each and every allegation set forth in paragraph 165 that  
11 mischaracterizes the terms of those documents. U.S. RE lacks sufficient knowledge or  
12 information to form a belief as to the truth of the remaining allegations set forth in paragraph  
13 165 and, on that basis, denies each and every remaining allegation set forth therein.

14 37. Answering paragraph 166 of the Third Amended Complaint, U.S. RE admits  
15 only that Uni-Ter was the underwriter for Sophia Palmer. U.S. RE lacks sufficient knowledge  
16 or information to form a belief as to the truth of the remaining allegations set forth in paragraph  
17 31 and, on that basis, denies each and every remaining allegation set forth therein.

18 38. Answering paragraph 184 of the Third Amended Complaint, U.S. RE lacks  
19 sufficient knowledge or information to form a belief as to whether the board package for the  
20 September 2011 meeting included the September 2011 Praxis Report. With respect to the  
21 allegations in paragraph 184 regarding the terms of the 2011 Praxis Report, U.S. RE submits  
22 that the terms of this document speak for themselves, refers the Court to the document for its  
23 complete and exact contents, and denies each and every allegation set forth in paragraph 184  
24 that mischaracterizes the terms of said document.

25 39. Answering paragraph 185 of the Third Amended Complaint, U.S. RE lacks  
26 sufficient knowledge or information to form a belief as to whether the board package for the  
27 September 2011 meeting included a power point from Milliman. With respect to the allegations  
28 in paragraph 185 regarding the power point, U.S. RE submits that the terms of this document

1 speak for themselves, refers the Court to the document for its complete and exact contents, and  
2 denies each and every allegation set forth in paragraph 185 that mischaracterizes the terms of  
3 said document. U.S. RE further denies each and every remaining allegation set forth in  
4 paragraph 185.

5 40. Answering paragraph 186 of the Third Amended Complaint, U.S. RE lacks  
6 sufficient knowledge or information to form a belief as to whether Milliman provided a  
7 preliminary draft of certain schedules. With respect to the allegations in paragraph 186  
8 regarding these drafts, U.S. RE submits that the terms of those document speak for themselves,  
9 refers the Court to the documents for their complete and exact contents, and denies each and  
10 every allegation set forth in paragraph 186 that mischaracterizes the terms of said documents.

11 41. Answering paragraph 190 of the Third Amended Complaint, U.S. RE lacks  
12 sufficient knowledge or information to form a belief as to whether Milliman provided a  
13 preliminary draft of certain schedules. With respect to the allegations in paragraph 190  
14 regarding these drafts, U.S. RE submits that the terms of those document speak for themselves,  
15 refers the Court to the documents for their complete and exact contents, and denies each and  
16 every allegation set forth in paragraph 190 that mischaracterizes the terms of said documents.

17 42. Answering paragraph 207 of the Third Amended Complaint, U.S. RE admits  
18 only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended  
19 Complaint. U.S. RE submits that the terms of this document speak for themselves, refers the  
20 Court to this document for its complete and exact contents, and denies each and every  
21 allegation set forth in paragraph 207 that mischaracterizes the terms of said document.

22 43. Answering paragraph 208 of the Third Amended Complaint, U.S. RE admits  
23 only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended  
24 Complaint and submits that the terms of this document for themselves, refers the Court to this  
25 document for its complete and exact contents, and denies each and every allegation set forth in  
26 paragraph 208 that mischaracterizes the terms of said document.

27 44. Answering paragraph 209 of the Third Amended Complaint, U.S. RE denies the  
28 allegations of “captive manager.” U.S. RE admits the remainder of the allegation set forth

1 therein.

2 45. Answering paragraph 212 of the Third Amended Complaint, U.S. RE states that,  
3 with respect to the allegations in paragraph 212 regarding Fishlinger's report, U.S. RE submits  
4 that the terms of this document speak for themselves, refers the Court to this document for its  
5 complete and exact contents, and denies each and every allegation set forth in paragraph 212  
6 that mischaracterizes the terms of said document. U.S. RE lacks sufficient knowledge or  
7 information to form a belief as to the truth of the remaining allegations set forth in paragraph  
8 212 and, on that basis, denies each and every remaining allegation set forth therein.

9 46. Answering paragraph 213 of the Third Amended Complaint, U.S. RE lacks  
10 sufficient knowledge or information to form a belief as to the truth of the allegations regarding  
11 assumptions made by the Board. With respect to the allegations in paragraph 213 regarding  
12 Praxis's July 2012 report, U.S. RE submits that the terms of this document speak for  
13 themselves, refers the Court to the document for its complete and exact contents, and denies  
14 each and every allegation set forth in paragraph 213 that mischaracterizes the terms of said  
15 document.

16 47. Answering paragraph 214 of the Third Amended Complaint, U.S. RE admits  
17 only that Fishlinger performed a second review, which reported conclusions speak for  
18 themselves. U.S. RE further admits that an additional review of the case reserves occurred.  
19 U.S. RE denies each and every remaining allegation set forth in paragraph 60.

20 48. Answering paragraph 215 of the Third Amended Complaint, U.S. RE lacks  
21 sufficient knowledge or information to form a belief as to the truth of the allegations regarding  
22 whether Milliman booked its estimate of reserves at 6/30 and 12/31 of each year, based on its  
23 own analysis. With respect to the allegations in paragraph 215 regarding Milliman's June 30,  
24 2012 analysis, U.S. RE submits that the terms of this document speak for themselves, refers the  
25 Court to the document for its complete and exact contents, and denies each and every allegation  
26 set forth in paragraph 215 that mischaracterizes the terms of said document.

27 **CLAIMS**

28 49. Answering paragraph 216 of the Third Amended Complaint, U.S. RE repeats,

1 realleges, and incorporates each of its admissions, denials and/or other responses to the  
2 allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

3 **FIRST CLAIM FOR RELIEF**

4 **(Gross Negligence of the Former Officers and Directors of L&C)**

5 50. Answering paragraphs 217–234 of the Third Amended Complaint, U.S. RE  
6 states that the First Claim for Relief is not directed at U.S. RE, and, therefore, no response to  
7 said paragraphs is required.

8 **SECOND CLAIM FOR RELIEF**

9 **(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)**

10 51. Answering paragraphs 235–240 of the Third Amended Complaint, U.S. RE  
11 states that the Second Claim for Relief is not directed at U.S. RE, and, therefore, no response to  
12 said paragraphs is required.

13 **THIRD CLAIM FOR RELIEF**

14 **(Negligent Misrepresentation by Uni-Ter UMC)**

15 52. Answering paragraphs 241–248 of the Third Amended Complaint, U.S. RE  
16 states that the Third Claim for Relief is not directed at U.S. RE, and, therefore, no response to  
17 said paragraphs is required.

18 **FOURTH CLAIM FOR RELIEF**

19 **(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)**

20 53. Answering paragraphs 249–255 of the Third Amended Complaint, U.S. RE  
21 states that the Third Claim for Relief is not directed at U.S. RE, and, therefore, no response to  
22 said paragraphs is required.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Breach of Fiduciary Duty Against U.S. RE)**

25 54. Answering paragraph 257 of the Third Amended Complaint, U.S. RE repeats,  
26 realleges, and incorporates each of its admissions, denials and/or other responses to the  
27 allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

28 55. Answering paragraphs 258, 259, and 262 of the Third Amended Complaint, U.S.

1 RE admits only that L&C and U.S. RE entered into a Broker of Record Letter Agreement, the  
2 terms of which speak for themselves, and U.S. RE refers the Court to this document for its  
3 complete and exact contents and denies each and every allegation set forth in these paragraphs  
4 that mischaracterizes the terms of said document. U.S. RE denies each and every remaining  
5 allegation set forth in these paragraphs.

6 56. Answering paragraphs 260, 264, 265, 266, 267, and 268 of the Third Amended  
7 Complaint, U.S. RE denies each and every allegation set forth therein.

8 57. Answering paragraphs 261 and 263 of the Third Amended Complaint, U.S. RE  
9 states that the allegations contained in said paragraphs call for legal conclusions to which no  
10 response is required

11 58. Answering paragraph 269 of the Third Amended Complaint, U.S. RE lacks  
12 sufficient knowledge or information to form a belief as to Plaintiff's fee arrangement with its  
13 attorneys. U.S. RE denies that Plaintiff is entitled to recover attorney's fees and costs.

14 59. U.S. RE denies each and every remaining allegation set forth in the Third  
15 Amended Complaint to which a specific admission, denial or other response is not set forth  
16 herein, including Plaintiff's prayers for relief.

17 60. U.S. RE has been forced to retain the services of attorneys and other  
18 professionals to defend itself in connection with the Third Amended Complaint, and should be  
19 awarded its reasonable attorneys' fees, costs of suit, and other expenses incurred in connection  
20 with this matter.

## 21 **AFFIRMATIVE DEFENSES**

### 22 **FIRST AFFIRMATIVE DEFENSE**

23 Plaintiff's claim against U.S. RE is barred, in whole or in part, because the Third  
24 Amended Complaint fails to state a cause of action against U.S. RE upon which relief can be  
25 granted.

### 26 **SECOND AFFIRMATIVE DEFENSE**

27 Plaintiff's claim against U.S. RE is barred, in whole or in part, because U.S. RE owed  
28 L&C no duties outside those explicitly set forth in the Broker of Record Letter Agreement.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claim against U.S. RE is barred, in whole or in part, because U.S. RE has not breached any duty, contractual, fiduciary, or otherwise, owed to Plaintiff or L&C.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because U.S. RE did not engage in any willful, fraudulent, intentional, or any other behavior resulting in a breach of any fiduciary duty owed to Plaintiff or L&C.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against U.S. RE is barred, in whole or in part, because of a lack of causation. Plaintiff has not suffered any injury or harm as a result of any action or omission of U.S. RE.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against U.S. RE is barred, in whole or in part, because the alleged damages were the result of intervening and superseding conduct of others, including but not limited to L&C acting through the Board.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against U.S. RE is barred, in whole or in part, by the fact that U.S. RE faithfully executed instructions provided by the Board.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against U.S. RE is barred, in whole or in part, by the applicable statute of limitations.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against U.S. RE is barred, in whole or in part, because L&C ratified U.S. RE's actions.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against U.S. RE is barred, in whole or in part, because any action taken or decision made by U.S. RE was within its sound business judgment.



**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against U.S. RE is barred, in whole or in part, because U.S. RE reasonably believed in good faith that its actions were lawful, necessary and justified.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against U.S. RE is barred, in whole or in part, because Plaintiff has failed to mitigate its alleged damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff has waived its right to seek damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may be barred by other affirmative defenses enumerated in or allowed under NRCP 8(c). U.S. RE hereby reserves the right to amend this list of Affirmative Defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses.

WHEREFORE, having fully responded to the Third Amended Complaint, U.S. RE respectfully prays as follows:

A. That Plaintiff take nothing by virtue of its Third Amended Complaint, that the Third Amended Complaint be dismissed with prejudice as it relates to U.S. RE, and that the Court enter judgment in favor of U.S. RE;

B. For an award of reasonable attorneys' fees and costs incurred in connection with this litigation; and

1 C. For such other and further relief as the Court deems fair and just under the  
2 circumstances.

3 DATED this 12th day of August, 2016.

4  
5 McDONALD CARANO WILSON LLP

6 By: /s/ George F. Ogilvie III  
7 George F. Ogilvie III, Esq.  
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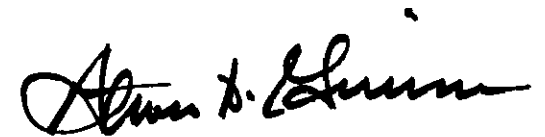
12 *Attorneys for Defendants Uni-Ter*  
13 *Underwriting Management Corp., Uni-Ter*  
14 *Claims Services Corp., and U.S. RE*  
15 *Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of August, 2016, this document was Electronically Served to all parties of record via this Court's electronic filing system to all parties listed on the E-SERVICE MASTER LIST.

By: /s/ Kathy Barrett  
An employee of McDonald Carano Wilson

366290



CLERK OF THE COURT

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10 *Attorneys for Defendants Uni-Ter Underwriting*  
11 *Management Corp., Uni-Ter Claims Services*  
12 *Corp., and U.S. RE Corporation*

13 **DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

14 COMMISSIONER OF INSURANCE FOR  
THE STATE OF NEVADA AS RECEIVER  
15 OF LEWIS AND CLARK LTC RISK  
RETENTION GROUP, INC.,

16 Plaintiff,

17 vs.

18 ROBERT CHUR, STEVE FOGG, MARK  
19 GARBER, CAROL HARTER, ROBERT  
HURLBUT, BARBARA LUMPKIN, JEFF  
20 MARSHALL, ERIC STICKELS, UNI-TER  
UNDERWRITING MANAGEMENT CORP.  
21 UNI-TER CLAIMS SERVICES CORP., and  
U.S. RE CORPORATION, DOES 1-50,  
22 inclusive; and ROES 51-100, inclusive,

23 Defendants.

Case No. A-14-711535-C

Dept. No.: XXVII

**DEFENDANT UNI-TER CLAIMS**  
**SERVICES CORP.'S ANSWER TO**  
**THIRD AMENDED COMPLAINT**

24  
25 UNI-TER CLAIMS SERVICES CORP. ("Uni-Ter CS"), by and through its counsel of  
26 record, George F. Ogilvie III of McDONALD CARANO WILSON LLP and Jon M. Wilson of  
27 BROAD AND CASSEL, as and for its Answer to the Third Amended Complaint filed herein on  
28 behalf of Plaintiff COMMISSIONER OF INSURANCE FOR THE STATE OF NEVADA AS

RECEIVER OF LEWIS AND CLARK LTC RISK RETENTION GROUP, INC. (“Plaintiff”),  
admits, denies, and responds as follows:

**PARTIES, JURISDICTION AND VENUE**

1. Answering paragraph 1 of the Third Amended Complaint, Uni-Ter CS states, on information and belief, that L&C was formed in 2003. Uni-Ter CS admits the remainder of the allegation set forth therein.

2. Answering paragraph 2 of the Third Amended Complaint, Uni-Ter CS admits only that the Nevada Division of Insurance (“DOI”) filed a Receivership Action related to L&C in 2012 with case number A-12-672047-B and that an Order of Liquidation was entered in that action on February 28, 2013. With respect to the allegations in paragraph 2 regarding the terms of the Order of Liquidation, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 2 that mischaracterizes the terms of said document.

3. Answering paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, and 29 of the Third Amended Complaint, Uni-Ter CS lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

4. Answering paragraph 26 of the Third Amended Complaint, Uni-Ter CS admits only that U.S. RE Corporation (“U.S. RE”) is a reinsurance broker and denies each and every remaining allegation set forth therein.

5. Answering paragraph 27 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter Underwriting Management Corp. (“Uni-Ter UMC”) is presently a wholly owned subsidiary of U.S. RE and denies each and every remaining allegation set forth therein.

6. Answering paragraph 28 of the Third Amended Complaint, Uni-Ter CS denies each and every allegation set forth therein.

**GENERAL ALLEGATIONS**

7. Answering paragraphs 30, 35, 36, 42, 63, 65, 100, 118, and 211 of the Third Amended Complaint, Uni-Ter CS admits the allegation set forth therein.

8. Answering paragraph 31 of the Third Amended Complaint, Uni-Ter CS admits that L&C expanded its area of operation over the years, but lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in paragraph 31 and, on that basis, denies each and every remaining allegation set forth therein.

9. Answering paragraphs 32, 34, 39, 55, 56, 58, 59, 76, 89, 90, 91, 92, 93, 94, 99, 101, 104, 105, 107, 108, 113, 114, 115, 116, 117, 120, 121, 122, 126, 130, 145, 148, 164, 168, 170, 203, 205, and 206 of the Third Amended Complaint, Uni-Ter CS denies each and every allegation set forth therein.

10. Answering paragraph 33 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter UMC and Uni-Ter CS were retained as managers of L&C and denies each and every remaining allegation set forth therein.

11. Answering paragraphs 37, 57, 132, 169, 174, 177, 178, 179, 181, and 210 of the Third Amended Complaint, Uni-Ter CS lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in said paragraphs and, on that basis, denies each and every allegation set forth therein.

12. Answering paragraph 38 of the Third Amended Complaint, Uni-Ter CS admits that L&C was managed by Uni-Ter UMC. Uni-Ter CS also admits that Uni-Ter UMC also sent out offering memoranda and offering documents, but qualifies such response by noting that such actions were within the normal course of business for a risk retention group.

13. Answering paragraph 40 of the Third Amended Complaint, Uni-Ter CS admits only that Uni-Ter UMC has organized five risk retention groups and denies each and every remaining allegation set forth therein.

14. Answering paragraph 41 of the Third Amended Complaint, Uni-Ter CS submits that Uni-Ter UMC's services to L&C are set forth in the 2004 and 2011 Management Agreements and that the terms of these documents speak for themselves, refers the Court to

1 these documents for their complete and exact contents, and denies each and every allegation set  
2 forth in paragraph 41 that mischaracterizes the terms of said document.

3 15. Answering paragraph 43 of the Third Amended Complaint, Uni-Ter CS admits  
4 only that Uni-Ter UMC entered into the 2004 Management Agreement. With respect to the  
5 allegations in paragraph 43 regarding the terms of the 2004 Management Agreement, Uni-Ter  
6 CS submits that the terms of this document speak for themselves, refers the Court to the  
7 document for its complete and exact contents, and denies each and every allegation set forth in  
8 paragraph 43 that mischaracterizes the terms of said document.

9 16. Answering paragraphs 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 61, 62, 66, 67,  
10 68, 69, 70, 74, 75, 96, 97, 98, 109, 110, 111, 112, 123, 124, 125, 127, 131, 133, 134, 135, 136,  
11 137, 138, 140, 141, 142, 143, 144, 149, 150, 151, 152, 156, 157, 158, 160, 162, 167, 171, 172,  
12 173, 175, 176, 180, 182, 183, 187, 188, 189, 191, 196, 197, 198, 199, 200, 201, 202, and 204 of  
13 the Third Amended Complaint, Uni-Ter CS submits that the terms of the documents referenced  
14 in these paragraphs speak for themselves, refers the Court to those documents for their complete  
15 and exact contents, and denies each and every allegation set forth in said paragraphs that  
16 mischaracterizes the terms of those documents.

17 17. Answering paragraph 60 of the Third Amended Complaint, Uni-Ter CS submits  
18 that the terms of the “contracts at issue” referenced in said paragraph speak for themselves,  
19 refers the Court to this document for its complete and exact contents, and denies each and every  
20 allegation set forth in paragraph 60 that mischaracterizes the terms of said document. Uni-Ter  
21 CS denies each and every remaining allegation set forth in paragraph 60.

22 18. Answering paragraph 64 of the Third Amended Complaint, Uni-Ter CS admits  
23 only that Uni-Ter UMC and Uni-Ter CS entered into the 2011 Management Agreement. With  
24 respect to the allegations in paragraph 64 regarding the terms of the 2011 Management  
25 Agreement, Uni-Ter CS submits that the terms of this document speak for themselves, refers  
26 the Court to the document for its complete and exact contents, and denies each and every  
27 allegation set forth in paragraph 64 that mischaracterizes the terms of said document. Uni-Ter  
28 CS denies each and every remaining allegation set forth in paragraph 64.

1           19.     Answering paragraph 71 of the Third Amended Complaint, Uni-Ter CS admits  
2 only that not less than \$1,000,000.00 in management fees were received in 2011 and denies  
3 each and every remaining allegation set forth therein.

4           20.     Answering paragraph 72 of the Third Amended Complaint, Uni-Ter CS admits  
5 that Milliman did the work alleged; however, on information and belief, such work was done  
6 for and on behalf of L&C. To the extent the allegations of paragraph 72 are inconsistent with  
7 this, such allegations are denied.

8           21.     Answering paragraph 73 of the Third Amended Complaint, Uni-Ter CS admits  
9 only that Lewis & Clark LTC Risk Retention Group, Inc. (“L&C”) and U.S. RE entered into a  
10 Broker of Record Letter Agreement. With respect to the allegations in paragraph 73 regarding  
11 the terms of the Broker of Record Letter Agreement, Uni-Ter CS submits that the terms of this  
12 document speak for themselves, refers the Court to the document for its complete and exact  
13 contents, and denies each and every allegation set forth in paragraph 73 that mischaracterizes  
14 the terms of said document.

15           22.     Answering paragraph 77 of the Third Amended Complaint, Uni-Ter CS admits  
16 only that the 2004 and 2011 Management Agreements exist and submits that the terms of these  
17 documents speak for themselves, refers the Court to the documents for their complete and exact  
18 contents, and denies each and every allegation set forth in paragraph 77 that mischaracterizes  
19 the terms of said documents.

20           23.     Answering paragraph 78 of the Third Amended Complaint, Uni-Ter CS admits  
21 only that Uni-Ter UMC and Uni-Ter CS are presently wholly owned subsidiaries of U.S. RE.

22           24.     Answering paragraph 79, 80, 82, 86, 87, and 88 of the Third Amended  
23 Complaint, Uni-Ter CS submits that, to the extent referenced, the terms of the Broker of Record  
24 Letter Agreement speak for themselves, refers the Court to the Broker of Record Letter  
25 Agreement for its complete and exact contents, and denies each and every allegation set forth in  
26 said paragraphs that mischaracterizes the terms of the Broker of Record Letter Agreement.  
27 Uni-Ter CS further denies each and every remaining allegation set forth in said paragraphs.

28           25.     Answering paragraphs 81, 83, and 85 of the Third Amended Complaint, Uni-Ter



1 CS states that the allegations contained in said paragraphs call for legal conclusions to which no  
2 response is required.

3 26. Answering paragraph 84 of the Third Amended Complaint, Uni-Ter CS states  
4 that, to the extent paragraph 84 calls for a legal conclusion, no response is required. Uni-Ter  
5 CS denies each and every remaining allegation set forth therein.

6 27. Answering paragraph 95 of the Third Amended Complaint, Uni-Ter CS admits  
7 only that U.S. RE procured certain reinsurance treaties. With respect to the allegations in  
8 paragraph 95 regarding the terms of certain alleged treaties, Uni-Ter CS submits that the terms  
9 of those documents speak for themselves, refers the Court to those documents for their  
10 complete and exact contents, and denies each and every allegation set forth in paragraph 95 that  
11 mischaracterizes the terms of said documents.

12 28. Answering paragraph 102 of the Third Amended Complaint, Uni-Ter CS admits  
13 only that on or around this time Sanford Elsass (“Elsass”) and Donna Dalton sent a  
14 memorandum. With respect to the allegations in paragraph 102 regarding the terms of said  
15 memorandum, Uni-Ter CS submits that the terms of this document speak for themselves, refers  
16 the Court to the document for its complete and exact contents, and denies each and every  
17 allegation set forth in paragraph 102 that mischaracterizes the terms of said document.

18 29. Answering paragraph 103 of the Third Amended Complaint, Uni-Ter CS admits  
19 only that Praxis was hired and denies each and every remaining allegation set forth therein.

20 30. Answering paragraph 106 of the Third Amended Complaint, Uni-Ter CS admits  
21 only that a report from Praxis dated September 15, 2011 exists. With respect to the allegations  
22 in paragraph 106 regarding the terms of said report, Uni-Ter CS submits that the terms of this  
23 document speak for themselves, refers the Court to the document for its complete and exact  
24 contents, and denies each and every allegation set forth in paragraph 106 that mischaracterizes  
25 the terms of said document. Uni-Ter CS denies each and every remaining allegation set forth in  
26 paragraph 106.

27 31. Answering paragraph 119 of the Third Amended Complaint, Uni-Ter CS admits  
28 only that Elsass and employees of the Uni-Ter entities provided reports about the company to

1 the Board members. Uni-Ter CS denies each and every remaining allegation set forth in  
2 paragraph 119.

3 32. Answering paragraph 128 of the Third Amended Complaint, Uni-Ter CS admits  
4 only that Uni-Ter established loss reserves for the company. With respect to the allegations in  
5 paragraph 128 regarding the September 14, 2005 Minutes, Uni-Ter CS submits that the terms of  
6 this document speak for themselves, refers the Court to the document for its complete and exact  
7 contents, and denies each and every allegation set forth in paragraph 128 that mischaracterizes  
8 the terms of said document. Uni-Ter CS denies each and every remaining allegation set forth in  
9 paragraph 128.

10 33. Answering paragraph 129 of the Third Amended Complaint, Uni-Ter CS lacks  
11 sufficient knowledge or information to form a belief as to whether the Audit Committee was  
12 established at the February 10, 2006 meeting of the Board. With respect to the allegations in  
13 paragraph 129 regarding the February 10, 2006 Minutes, which are not attached to the  
14 Complaint, Uni-Ter CS submits that the terms of this document speak for themselves, refers the  
15 Court to the document for its complete and exact contents, and denies each and every allegation  
16 set forth in paragraph 129 that mischaracterizes the terms of said document. Uni-Ter CS denies  
17 each and every remaining allegation set forth in paragraph 129.

18 34. Answering paragraph 139 of the Third Amended Complaint, Uni-Ter CS denies  
19 that the December 2, 2009 Minutes are attached as Exhibit 17 to the Third Amended Complaint.  
20 With respect to the allegations in paragraph 139 addressing the terms of the December 2, 2009  
21 Minutes, Uni-Ter CS submits that the terms of documents referenced therein speak for  
22 themselves, refers the Court to those documents for their complete and exact contents, and  
23 denies each and every allegation set forth in said paragraphs that mischaracterizes the terms of  
24 those documents.

25 35. Answering paragraphs 146, 153, 154, 155, 159, 163, 192, 193, 194, and 195 of  
26 the Third Amended Complaint, Uni-Ter CS submits that, with respect to the allegations in said  
27 paragraphs addressing the terms of certain documents, the terms of documents referenced  
28 therein speak for themselves, refers the Court to those documents for their complete and exact

1 contents, and denies each and every allegation set forth in said paragraphs that mischaracterizes  
2 the terms of those documents. Uni-Ter CS denies each and every remaining allegation set forth  
3 in said paragraphs.

4 36. Answering paragraph 147 of the Third Amended Complaint, Uni-Ter CS admits  
5 only that William Fishlinger (“Fishlinger”) was retained in 2011 to perform claims review.  
6 With respect to the allegations in paragraph 147 regarding the terms of the December 28, 2011  
7 Minutes, Uni-Ter CS submits that the terms of this document speak for themselves, refers the  
8 Court to the document for its complete and exact contents, and denies each and every allegation  
9 set forth in paragraph 147 that mischaracterizes the terms of said document.

10 37. Answering paragraph 161 of the Third Amended Complaint, Uni-Ter CS admits  
11 the first sentence of this paragraph, but lacks sufficient knowledge or information to form a  
12 belief as to the truth of the remaining allegations set forth in paragraph 161 and, on that basis,  
13 denies each and every remaining allegation set forth therein.

14 38. Answering paragraph 165 of the Third Amended Complaint, Uni-Ter CS  
15 submits that, with respect to the allegations addressing the Annual Statement and Quarterly  
16 statement, such documents speak for themselves, refers the Court to those documents for their  
17 complete and exact contents, and denies each and every allegation set forth in paragraph 165  
18 that mischaracterizes the terms of those documents. Uni-Ter CS lacks sufficient knowledge or  
19 information to form a belief as to the truth of the remaining allegations set forth in paragraph  
20 165 and, on that basis, denies each and every remaining allegation set forth therein.

21 39. Answering paragraph 166 of the Third Amended Complaint, Uni-Ter CS admits  
22 only that Uni-Ter was the underwriter for Sophia Palmer. Uni-Ter CS lacks sufficient  
23 knowledge or information to form a belief as to the truth of the remaining allegations set forth  
24 in paragraph 31 and, on that basis, denies each and every remaining allegation set forth therein.

25 40. Answering paragraph 184 of the Third Amended Complaint, Uni-Ter CS admits  
26 only that the board package for the September 2011 meeting included the September 2011  
27 Praxis Report. With respect to the allegations in paragraph 184 regarding the terms of the 2011  
28 Praxis Report, Uni-Ter CS submits that the terms of this document speak for themselves, refers

1 the Court to the document for its complete and exact contents, and denies each and every  
2 allegation set forth in paragraph 184 that mischaracterizes the terms of said document.

3 41. Answering paragraph 185 of the Third Amended Complaint, Uni-Ter CS admits  
4 only that the board package for the September 2011 meeting included a power point from  
5 Milliman. With respect to the allegations in paragraph 185 regarding the power point, Uni-Ter  
6 CS submits that the terms of this document speak for themselves, refers the Court to the  
7 document for its complete and exact contents, and denies each and every allegation set forth in  
8 paragraph 185 that mischaracterizes the terms of said document. Uni-Ter CS further denies  
9 each and every remaining allegation set forth in paragraph 185.

10 42. Answering paragraph 186 of the Third Amended Complaint, Uni-Ter CS admits  
11 only that Milliman provided a preliminary draft of certain schedules. With respect to the  
12 allegations in paragraph 186 regarding these drafts, Uni-Ter CS submits that the terms of those  
13 document speak for themselves, refers the Court to the documents for their complete and exact  
14 contents, and denies each and every allegation set forth in paragraph 186 that mischaracterizes  
15 the terms of said documents.

16 43. Answering paragraph 190 of the Third Amended Complaint, Uni-Ter CS admits  
17 only that Milliman provided a preliminary draft of certain schedules. With respect to the  
18 allegations in paragraph 190 regarding these drafts, Uni-Ter CS submits that the terms of those  
19 document speak for themselves, refers the Court to the documents for their complete and exact  
20 contents, and denies each and every allegation set forth in paragraph 190 that mischaracterizes  
21 the terms of said documents.

22 44. Answering paragraph 207 of the Third Amended Complaint, Uni-Ter CS admits  
23 only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended  
24 Complaint. Uni-Ter CS submits that the terms of this document speak for themselves, refers  
25 the Court to this document for its complete and exact contents, and denies each and every  
26 allegation set forth in paragraph 207 that mischaracterizes the terms of said document.

27 45. Answering paragraph 208 of the Third Amended Complaint, Uni-Ter CS admits  
28 only that the Action dated October 5, 2011 is attached as Exhibit 22 to the Third Amended

1 Complaint and submits that the terms of this document for themselves, refers the Court to this  
2 document for its complete and exact contents, and denies each and every allegation set forth in  
3 paragraph 208 that mischaracterizes the terms of said document.

4 46. Answering paragraph 209 of the Third Amended Complaint, Uni-Ter CS denies  
5 the allegations of “captive manager.” Uni-Ter CS admits the remainder of the allegation set  
6 forth therein.

7 47. Answering paragraph 212 of the Third Amended Complaint, Uni-Ter CS states  
8 that, with respect to the allegations in paragraph 212 regarding Fishlinger’s report, Uni-Ter CS  
9 submits that the terms of this document speak for themselves, refers the Court to this document  
10 for its complete and exact contents, and denies each and every allegation set forth in paragraph  
11 212 that mischaracterizes the terms of said document. Uni-Ter CS lacks sufficient knowledge  
12 or information to form a belief as to the truth of the remaining allegations set forth in paragraph  
13 212 and, on that basis, denies each and every remaining allegation set forth therein.

14 48. Answering paragraph 213 of the Third Amended Complaint, Uni-Ter CS lacks  
15 sufficient knowledge or information to form a belief as to the truth of the allegations regarding  
16 assumptions made by the Board. With respect to the allegations in paragraph 213 regarding  
17 Praxis’s July 2012 report, Uni-Ter CS submits that the terms of this document speak for  
18 themselves, refers the Court to the document for its complete and exact contents, and denies  
19 each and every allegation set forth in paragraph 213 that mischaracterizes the terms of said  
20 document.

21 49. Answering paragraph 214 of the Third Amended Complaint, Uni-Ter CS admits  
22 only that Fishlinger performed a second review, which reported conclusions speak for  
23 themselves. Uni-Ter CS further admits that an additional review of the case reserves occurred.  
24 Uni-Ter CS denies each and every remaining allegation set forth in paragraph 60.

25 50. Answering paragraph 215 of the Third Amended Complaint, Uni-Ter CS lacks  
26 sufficient knowledge or information to form a belief as to the truth of the allegations regarding  
27 whether Milliman booked its estimate of reserves at 6/30 and 12/31 of each year, based on its  
28 own analysis. With respect to the allegations in paragraph 215 regarding Milliman’s June 30,

2012 analysis, Uni-Ter CS submits that the terms of this document speak for themselves, refers the Court to the document for its complete and exact contents, and denies each and every allegation set forth in paragraph 215 that mischaracterizes the terms of said document.

## **CLAIMS**

51. Answering paragraph 216 of the Third Amended Complaint, Uni-Ter CS repeats, realleges, and incorporates each of its admissions, denials and/or other responses to the allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

### **FIRST CLAIM FOR RELIEF**

#### **(Gross Negligence of the Former Officers and Directors of L&C)**

52. Answering paragraphs 217–234 of the Third Amended Complaint, Uni-Ter CS states that the First Claim for Relief is not directed at Uni-Ter CS, and, therefore, no response to said paragraphs is required.

### **SECOND CLAIM FOR RELIEF**

#### **(Deepening of the Insolvency of L&C Caused by the Former Directors and Officers)**

53. Answering paragraphs 235–240 of the Third Amended Complaint, Uni-Ter CS states that the Second Claim for Relief is not directed at Uni-Ter CS, and, therefore, no response to said paragraphs is required.

### **THIRD CLAIM FOR RELIEF**

#### **(Negligent Misrepresentation by Uni-Ter UMC)**

54. Answering paragraphs 241–248 of the Third Amended Complaint, Uni-Ter CS states that the Third Claim for Relief is not directed at Uni-Ter CS, and, therefore, no response to said paragraphs is required.

### **FOURTH CLAIM FOR RELIEF**

#### **(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)**

55. Answering paragraph 249 of the Third Amended Complaint, Uni-Ter CS repeats, realleges, and incorporates each of its admissions, denials and/or other responses to the allegations set forth in the paragraphs referenced therein as if set forth at length and in full.

1           56.     Answering paragraphs 250, 251, 253, and 255 of the Third Amended Complaint,  
2     Uni-Ter CS denies each and every allegation set forth therein.

3           57.     Answering paragraph 252 of the Third Amended Complaint, Uni-Ter CS admits  
4     only that the January 10, 2008 Board Meeting Minutes are attached as Exhibit 14 to the Third  
5     Amended Complaint. Uni-Ter CS submits that the terms of this document speak for  
6     themselves, refers the Court to this document for its complete and exact contents, and denies  
7     each and every allegation set forth in paragraph 252 that mischaracterizes the terms of said  
8     document.

9           58.     Answering paragraph 254 of the Third Amended Complaint, Uni-Ter CS  
10    submits that the terms of the emails referenced in this paragraph speak for themselves, refers  
11    the Court to those documents for their complete and exact contents, and denies each and every  
12    allegation set forth in paragraph 254 that mischaracterizes the terms of said documents.  
13    Further, Uni-Ter CS denies that the February 2, 2012 Minutes are attached as Exhibit 26 to the  
14    Third Amended Complaint; however, Uni-Ter CS submits that the terms of the February 2,  
15    2012 Minutes speak for themselves, refers the Court to that document for their complete and  
16    exact contents, and denies each and every allegation set forth in paragraph 254 that  
17    mischaracterizes the terms of said document.

18          59.     Answering paragraph 255 of the Third Amended Complaint, Uni-Ter CS lacks  
19    sufficient knowledge or information to form a belief as to Plaintiff's fee arrangement with its  
20    attorneys. Uni-Ter CS denies that Plaintiff is entitled to recover attorney's fees and costs.

21                   **FIFTH CLAIM FOR RELIEF**

22                   **(Breach of Fiduciary Duty Against U.S. RE)**

23          60.     Answering paragraphs 257–269 of the Third Amended Complaint, Uni-Ter CS  
24    states that the Fifth Claim for Relief is not directed at Uni-Ter CS, and, therefore, no response  
25    to said paragraphs is required.

26          61.     Uni-Ter CS denies each and every remaining allegation set forth in the Third  
27    Amended Complaint to which a specific admission, denial or other response is not set forth  
28    herein, including Plaintiff's prayers for relief.

62. Uni-Ter CS has been forced to retain the services of attorneys and other professionals to defend itself in connection with the Third Amended Complaint, and should be awarded its reasonable attorneys' fees, costs of suit, and other expenses incurred in connection with this matter.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because the Third Amended Complaint fails to state a cause of action against Uni-Ter CS upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because Uni-Ter CS owed L&C no duties outside those explicitly set forth in the 2011 Management Agreement.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because Uni-Ter CS has not breached any duty, contractual, fiduciary, or otherwise, owed to Plaintiff or L&C.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Uni-Ter CS did not engage in any willful, fraudulent, intentional, or any other behavior resulting in a breach of any fiduciary duty owed to Plaintiff or L&C.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because of a lack of causation. Plaintiff has not suffered any injury or harm as a result of any action or omission of Uni-Ter CS.

#### **SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because the alleged damages were the result of intervening and superseding conduct of others, including but not limited to L&C acting through the Board.



**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, by the fact that Uni-Ter CS faithfully executed instructions provided by the Board.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, by the applicable statute of limitations.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because L&C ratified Uni-Ter CS's actions.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because any action taken or decision made by Uni-Ter CS was within its sound business judgment.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because Uni-Ter CS reasonably believed in good faith that its actions were lawful, necessary and justified.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Uni-Ter CS is barred, in whole or in part, because Plaintiff has failed to mitigate its alleged damages.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff has waived its right to seek damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may be barred by other affirmative defenses enumerated in or allowed under NRCP 8(c). Uni-Ter CS hereby reserves the right to amend this list of Affirmative Defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses.

WHEREFORE, having fully responded to the Third Amended Complaint, Uni-Ter CS respectfully prays as follows:

A. That Plaintiff take nothing by virtue of its Third Amended Complaint, that the Third Amended Complaint be dismissed with prejudice as it relates to Uni-Ter CS, and that the Court enter judgment in favor of Uni-Ter CS;

B. For an award of reasonable attorneys' fees and costs incurred in connection with this litigation; and

C. For such other and further relief as the Court deems fair and just under the circumstances.

DATED this 12<sup>th</sup> day of August, 2016.

McDONALD CARANO WILSON LLP

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Corporation*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12th day of August, 2016, this document was Electronically Served to all parties of record via this Court's electronic filing system to all parties listed on the E-SERVICE MASTER LIST.

By: /s/Kathy Barrett  
An employee of McDonald Carano Wilson

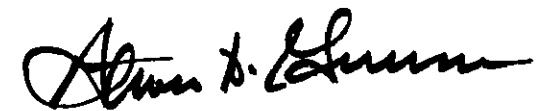
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Jeff Marshall, and Eric Stickels*



CLERK OF THE COURT

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

COMMISSIONER OF INSURANCE FOR  
THE STATE OF NEVADA AS RECEIVER  
OF LEWIS AND CLARK LTC RISK  
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK  
GARBER, CAROL HARTER, ROBERT  
HURLBUT, BARBARA LUMPKIN, JEFF  
MARSHALL, ERIC STICKELS, UNI-TER  
UNDERWRITING MANAGEMENT  
CORP., UNI-TER CLAIMS SERVICES  
CORP., and U.S. RE CORPORATION;  
DOES 1-50, inclusive; and ROES 51-100,  
inclusive,

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**DEFENDANTS ROBERT CHUR, STEVE  
FOGG, MARK GARBER, CAROL  
HARTER, ROBERT HURLBUT,  
BARBARA LUMPKIN, JEFF  
MARSHALL, AND ERIC STICKELS'  
SECOND SUPPLEMENT TO THE  
MOTION TO DISMISS  
FIRST AMENDED COMPLAINT**

**Hearing Date: 9/15/16**

**Hearing Time: 10:30 a.m.**

Defendants ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL  
HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, and ERIC  
STICKELS (collectively BOD) by and through its counsel of record at the law firm of

Lipson, Neilson, Cole, Seltzer & Garin, P.C., hereby submits its Second Supplement to the Motion to Dismiss First Amended Complaint.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On July 18, 2016, Defendants filed their Supplement to the Motion to Dismiss First Amended Complaint to reflect the changes made to Plaintiff's Second Amended Complaint and to request that the Court incorporate the arguments from the Motion to Dismiss First Amended Complaint to dismiss the Second Amended Complaint.

Before a response was due to the Supplement to the Motion to Dismiss First Amended Complaint, Plaintiff advised of its intent to file a Third Amended Complaint to fix errors in the numbering of the exhibits. The parties therefore stipulated to Plaintiff filing a Third Amended Complaint.

The original Motion to Dismiss First Amended Complaint is supplemented for a second time to now seek dismissal of the Third Amended Complaint, as it relates to the BOD. The body of the Third Amended Complaint has not changed since the Second Amended Complaint. The prior citations in support of the dismissal of the Second Amended Complaint need not be modified, except to the extent that it reflects the Third Amended Complaint (the paragraphs and relevant exhibits numbers are unchanged).

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1     **II.     CONCLUSION**

2             Based on the foregoing, Defendants ROBERT CHUR, STEVE FOGG, MARK  
3     GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF  
4     MARSHALL, and ERIC STICKELS respectfully request this Court dismiss Plaintiff's  
5     Third Amended Complaint, as it relates to them, specifically Plaintiff's First and Second  
6     Causes of Action.

7             DATED this 21<sup>st</sup> day of September, 2016.

8                             **LIPSON, NEILSON, COLE, SETLZTER &**  
9                             **GARIN, P.C.**

10  
11                            By: 

12                            Joseph P. Garin, Esq. (Bar No. 6653)  
13                            Angela T. Nakamura Ochoa, Esq. (Bar No. 10164)  
14                            9900 Covington Cross Dr., Suite 120  
15                            Las Vegas, NV 89148

16                            *Attorneys for Defendants/Third-Party*  
17                            *Plaintiffs Robert Chur, Steve Fogg,*  
18                            *Mark Garber, Carol Harter,*  
19                            *Robert Hurlbut, Barbara Lumpkin,*  
20                            *Jeff Marshall, and Eric Stickels*

**CERTIFICATE OF SERVICE**

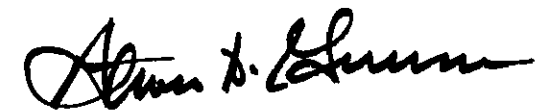
Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 2<sup>nd</sup> day of September, 2016, I electronically transmitted the foregoing **DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' SECOND SUPPLEMENT TO THE MOTION TO DISMISS FIRST AMENDED COMPLAINT** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

James L. Wadhams, Esq.  
Karl L. Nielson, Esq.  
Brenoch, Wirthlin, Esq.  
**FENNEMORE CRAIG, P.C.**  
300 S. Fourth St., Suite 1400  
Las Vegas, NV 89101  
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[bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
*Attorneys for Plaintiff*

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James W. Bradshaw, Esq.  
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[jriesenmy@mcdonaldcarano.com](mailto:jriesenmy@mcdonaldcarano.com)  
*Attorneys for Defendants U.S. RE Corporation,  
Uni-Ter Underwriting Management Corp.  
and Uni-Ter Claims Services Corp.*



Employee of  
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.



CLERK OF THE COURT

1 **NEOJ**  
2 **JAMES L. WADHAMS, ESQ.**  
3 Nevada Bar No. 1115  
4 **BRENOCH WIRTHLIN, ESQ.**  
5 Nevada Bar No. 10282  
6 **FENNEMORE CRAIG, P.C.**  
7 300 South Fourth Street, Suite 1400  
8 Las Vegas, Nevada 89101  
9 Telephone: (702) 692-8000  
10 Facsimile: (702) 692-8099  
11 [knielson@fclaw.com](mailto:knielson@fclaw.com); [bwirthlin@fclaw.com](mailto:bwirthlin@fclaw.com)  
12 *Attorneys for Plaintiff Commissioner of Insurance*  
13 *For the State of Nevada*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 COMMISSIONER OF INSURANCE FOR  
11 THE STATE OF NEVADA AS RECEIVER  
12 OF LEWIS AND CLARK LTC RISK  
RETENTION GROUP, INC.,

13 Plaintiff,

14 vs.

15 ROBERT CHUR, STEVE FOGG, MARK  
16 GARBER, CAROL HARTER, ROBERT  
17 HURLBUT, BARBARA LUMPKIN, JEFF  
18 MARSHALL, ERIC STICKELS, UNI-TER  
19 UNDERWRITING MANAGEMENT CORP.,  
UNI-TER CLAIMS SERVICES CORP., and  
U.S. RE CORPORATION; DOES 1-50,  
inclusive; and ROES 51-100, inclusive;

20 Defendants.

Case No.: A-14-711535-C

Dept No.: 27

**NOTICE OF ENTRY OF ORDER  
DENYING DEFENDANTS ROBERT  
CHUR, STEVE FOGG, MARK GARBER,  
CAROL HARTER, ROBERT HURLBUT,  
BARBARA LUMPKIN, JEFF  
MARSHALL, AND ERIC STICKELS'  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT**

21  
22 PLEASE TAKE NOTICE that an Order Denying Defendants Robert Chur, Steve Fogg,  
23 Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels'  
24 Motion to Dismiss First Amended Complaint was entered by the Court on October 10, 2016.

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A copy of which is attached hereto.

DATED this 11<sup>th</sup> day of October, 2016.

**FENNEMORE CRAIG, P.C.**

By: /s/ Brenoch Wirthlin  
JAMES L. WADHAMS, ESQ.  
Nevada Bar No. 1115  
BRENOCH WIRTHLIN, ESQ.  
Nevada Bar No. 10282  
300 South Fourth Street, Suite 1400  
Las Vegas, Nevada 89101  
Telephone: (702) 692-8000  
Facsimile: (702) 692-8099  
knielson@fcclaw.com  
bwirthlin@fcclaw.com  
*Attorneys for Plaintiff Commissioner of*  
*Insurance For the State of Nevada*

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Fennemore Craig, P.C. and that on October 11,  
3 2016, service of the foregoing NOTICE OF ENTRY OF ORDER DENYING  
4 DEFENDANTS ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER,  
5 ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC  
6 STICKELS' MOTION TO DISMISS FIRST AMENDED COMPLAINT was made on the  
7 following counsel of record and/or parties via the Court's electronic filing system as follows:

8 George F. Ogilvie III, Esq.  
9 James W. Bradshaw, Esq.  
10 Jeffry S. Riesenmy, Esq.  
11 McDonald Carano Wilson LLP  
12 2300 West Sahara Avenue, Suite 1200  
13 Las Vegas, NV 89102  
14 [gogilvie@mcdonaldecarano.com](mailto:gogilvie@mcdonaldecarano.com)  
[jbradshaw@mcdonaldecarano.com](mailto:jbradshaw@mcdonaldecarano.com)  
[jriesenmy@mcdonaldecarano.com](mailto:jriesenmy@mcdonaldecarano.com)  
*Attorneys for Defendants*  
*Uni-Ter Underwriting Management Corp.,*  
*Uni-Ter Claims Services Corp. and U.S. RE Corporation*

15 Joseph P. Garin, Esq.  
16 Angela T. Nakamura Ochoa, Esq.  
17 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.  
18 9900 Covington Cross Drive, Suite 120  
19 Las Vegas, NV 89144  
20 [jgarin@lipsonneilson.com](mailto:jgarin@lipsonneilson.com)  
[aocchoa@lipsonneilson.com](mailto:aocchoa@lipsonneilson.com)  
*Attorneys for Defendants/Third-Party Plaintiffs*  
*Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut,*  
*Barbara Lumpkin, Jeff Marshall, and Eric Stickels*

21 and by depositing a true and correct of the same via U.S. Mail, postage prepaid addressed as  
22 follows:

23 Jon M. Wilson, Esq.  
24 Broad and Cassel  
25 2 South Biscayne Blvd., 21<sup>st</sup> Floor  
26 Miami, FL 33131  
*Attorneys for Defendants*  
*Uni-Ter Underwriting Management Corp.,*  
*Uni-Ter Claims Services Corp. and U.S. RE Corporation*

27 /s/ Adrina Harris  
28 An employee of Fennemore Craig, P.C.

2 ORIGINAL

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CLERK OF THE COURT

1 **ORDER**  
2 JAMES L. WADHAMS, ESQ.  
3 Nevada Bar No. 1115  
4 BRENOCH WIRTHLIN, ESQ.  
5 Nevada Bar No. 10282  
6 FENNEMORE CRAIG, P.C.  
7 300 South Fourth Street, Suite 1400  
8 Las Vegas, Nevada 89101  
9 Telephone: (702) 692-8000  
10 Facsimile: (702) 692-8099  
11 [bwirthlin@felaw.com](mailto:bwirthlin@felaw.com)  
12 *Attorneys for Plaintiff Commissioner of Insurance*  
13 *For the State of Nevada*

8 DISTRICT COURT OF NEVADA  
9 CLARK COUNTY, NEVADA

11 COMMISSIONER OF INSURANCE FOR  
12 THE STATE OF NEVADA AS RECEIVER  
13 OF LEWIS AND CLARK LTC RISK  
14 RETENTION GROUP, INC.,

14 Plaintiff,

15 vs.

16 ROBERT CHUR, STEVE FOGG, MARK  
17 GARBER, CAROL HARTER, ROBERT  
18 HURLBUT, BARBARA LUMPKIN, JEFF  
19 MARSHALL, ERIC STICKELS, UNI-TER  
20 UNDERWRITING MANAGEMENT CORP.,  
21 UNI-TER CLAIMS SERVICES CORP., and  
22 U.S. RE CORPORATION,; DOES 1-50,  
23 inclusive; and ROES 51-100, inclusive;

21 Defendants.

Case No.: A-14-711535-C

Dept No.: 27

**ORDER DENYING DEFENDANTS  
ROBERT CHUR, STEVE FOGG, MARK  
GARBER, CAROL HARTER, ROBERT  
HURLBUT, BARBARA LUMPKIN, JEFF  
MARSHALL, AND ERIC STICKELS'  
MOTION TO DISMISS FIRST  
AMENDED COMPLAINT**

Date of Hearing: September 15, 2016

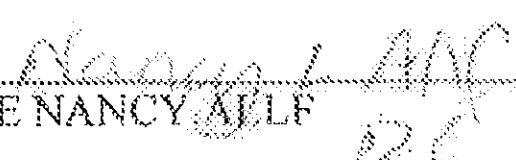
Time of Hearing: 10:30 a.m.

22  
23 Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
24 Lumpkin, Jeff Marshal and Eric Stickels' Motion to Dismiss First Amended Complaint was heard  
25 on September 15, 2016. In attendance were Angela Ochoa, Esq. on behalf of Defendants Robert  
26 Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal  
27 and Eric Stickels and Brenoch Wirthlin, Esq. on behalf of Plaintiff, Commissioner of Insurance  
28 for the State of Nevada as Receiver for the Lewis & Clark Risk Retention Group, Inc..

1 The Honorable Nancy Alf presiding, and the Court having heard oral argument, reviewed  
2 the pleadings and papers on file herein including, Plaintiff's opposition and supplement thereto,  
3 Defendants' supplement to their motion and reply thereto, and being fully advised in the premises  
4 and for good cause appearing,

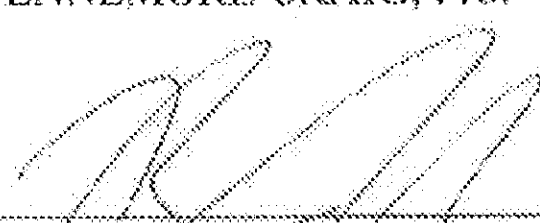
5 THE COURT HEREBY ORDERS that Defendants Robert Chur, Steve Fogg, Mark  
6 Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshal and Eric Stickels' Motion  
7 to Dismiss First Amended Complaint is DENIED.

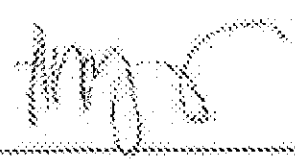
8 DATED this 6<sup>th</sup> day of Sept, 2016.

9  
10   
JUDGE NANCY ALF

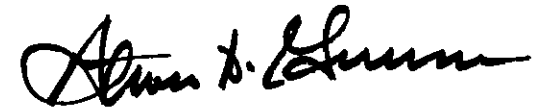
11  
12 Submitted by:  
13 FENNEMORE CRAIG, P.C.

Approved as to Form and Content:  
LIPSON, NEILSON, COLE, SELTZER &  
GARIN, P.C.

14   
15  
16 James Wadhams, Esq. (NV Bar No. 1115)  
17 Brenoch Wirthlin, Esq. (NV Bar No. 10282)  
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18 Attorneys for Plaintiff

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20 Joseph P. Garin, Esq. (NV Bar No. 6653)  
Angela Ochoa, Esq. (NV Bar No. 10164)  
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Las Vegas, NV 89144  
Attorneys for Defendants Robert Chur, Steve  
Fogg, Mark Garber, Carol Harter, Robert  
Hurlbut, Barbara Lumpkin, Jeff Marshall &  
Eric Stickels

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CLERK OF THE COURT

**ANS**  
**LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.**  
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*Attorneys for Defendants/Third-Party  
Plaintiffs Robert Chur, Steve Fogg,  
Mark Garber, Carol Harter,  
Robert Hurlbut, Barbara Lumpkin,  
Jeff Marshall, and Eric Stickels*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

COMMISSIONER OF INSURANCE FOR  
THE STATE OF NEVADA AS RECEIVER  
OF LEWIS AND CLARK LTC RISK  
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK  
GARBER, CAROL HARTER, ROBERT  
HURLBUT, BARBARA LUMPKIN, JEFF  
MARSHALL, ERIC STICKELS, UNI-TER  
UNDERWRITING MANAGEMENT CORP.,  
UNI-TER CLAIMS SERVICES CORP., and  
U.S. RE CORPORATION; DOES 1-50,  
inclusive; and ROES 51-100, inclusive,

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**DEFENDANTS**  
**ROBERT CHUR, STEVE FOGG,**  
**MARK GARBER, CAROL HARTER,**  
**ROBERT HURLBUT,**  
**BARBARA LUMPKIN,**  
**JEFF MARSHALL, AND**  
**ERIC STICKELS'**  
**ANSWER TO**  
**THE THIRD AMENDED**  
**COMPLAINT**

Defendants ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL  
HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, and ERIC  
STICKELS (collectively "Answering Defendants") by and through its counsel of record at  
the law firm of Lipson, Neilson, Cole, Seltzer & Garin, P.C., hereby responds to the  
Third Amended Complaint as follows:

**PARTIES, JURISDICTION AND VENUE**

1  
2 1. As to paragraph 1 of the Third Amended Complaint, Answering  
3 Defendants admits that L&C was formed in Nevada as a risk retention group, and that it  
4 provided general and professional insurance to skilled nursing facilities. As to the  
5 remainder of the allegations, Answering Defendants are without knowledge or  
6 information sufficient to form a belief as to the truth of the allegations contained therein  
7 and therefore deny the same. The Nevada Secretary of State website shows that L&C  
8 filed its governing documents on December 15, 2013.

9 2. As to paragraph 2 of Third Amended Complaint, Answering Defendants  
10 admit that the Nevada Division of Insurance filed a Receivership Action for L&C in  
11 November, 2012 and was assigned case number A-12-672047-B in the Eighth Judicial  
12 District Court of Nevada, in Clark County, and an Order of Liquidation was entered on  
13 February 28, 2013. To the extent Plaintiff purports to recite the contents of a written  
14 document, the document is the best evidence and speaks for itself. Insofar as the  
15 allegations are inconsistent with the document, those allegations are denied.  
16 Answering Defendants lack knowledge or information sufficient to form a belief as to the  
17 truth of the remaining allegations contained therein and denies the same.

18 3. As to paragraph 3 of the Third Amended Complaint, Answering  
19 Defendants admit that Robert Chur served as a director of L&C at the time the  
20 Receivership Action was filed. As to the remainder of the allegations contained therein,  
21 Answering Defendants lack knowledge or information sufficient to form a belief as to the  
22 truth of the remaining allegations contained therein.

23 4. As to paragraph 4 of the Third Amended Complaint, Answering  
24 Defendants admit that Robert Chur resides in Williamsville, New York.

25 5. As to paragraph 5 of the Third Amended Complaint, Answering  
26 Defendants admit that Robert Chur served as President of ElderWood Senior Care. As  
27 to the remainder of the allegations contained therein, Answering Defendants lack  
28

1 knowledge or information sufficient to form a belief as to the truth of the remaining  
2 allegations contained therein.

3 6. As to paragraph 6 of the Third Amended Complaint, Answering Defendants admit  
4 that Steve Fogg served as a director of L&C at the time the Receivership Action was  
5 filed. As to the remainder of the allegations contained therein, Answering Defendants  
6 lack knowledge or information sufficient to form a belief as to the truth of the remaining  
7 allegations contained therein.

8 7. As to paragraph 7 of the Third Amended Complaint, Answering Defendants  
9 admit.

10 8. As to paragraph 8 of the Third Amended Complaint, Answering Defendants admit  
11 that Steve Fogg served as Chief Financial Officer of Marquis Companies. As to the  
12 remainder of the allegations contained therein Answering Defendants lack knowledge or  
13 information sufficient to form a belief as to the truth of the remaining allegations  
14 contained therein.

15 9. As to paragraph 9 of the Third Amended Complaint, Answering Defendants admit  
16 that Mark Gerber served as a director of L&C at the time the Receivership Action was  
17 filed. As to the remainder of the allegations contained therein, Answering Defendants  
18 lack knowledge or information sufficient to form a belief as to the truth of the remaining  
19 allegations contained therein.

20 10. As to paragraph 10 of the Third Amended Complaint, Answering Defendants  
21 admit.

22 11. As to paragraph 11 of the Third Amended Complaint, Answering Defendants  
23 admit that Mark Garber served as Chief Financial Officer of Pinnacle Healthcare, Inc.  
24 As to the remainder of the allegations contained therein Answering Defendants lack  
25 knowledge or information sufficient to form a belief as to the truth of the remaining  
26 allegations contained therein.

27 ///

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1       12. As to paragraph 12 of the Third Amended Complaint, Answering Defendants  
2 admit that Carol Harter served as a director of L&C at the time the Receivership Action  
3 was filed. As to the remainder of the allegations contained therein, Answering  
4 Defendants lack knowledge or information sufficient to form a belief as to the truth of the  
5 remaining allegations contained therein.

6       13. As to paragraph 13 of the Third Amended Complaint, Answering Defendants  
7 admit.

8       14. As to paragraph 14 of the Third Amended Complaint, Answering Defendants  
9 admit that Carol Harter was associated with the University of Nevada Las Vegas. As to  
10 the remainder of the allegations contained therein, Answering Defendants lack  
11 knowledge or information sufficient to form a belief as to the truth of the remaining  
12 allegations contained therein.

13       15. As to paragraph 15 of the Third Amended Complaint, Answering Defendants  
14 admit that Robert Hurlbut served as a director of L&C at the time the Receivership  
15 Action was filed. As to the remainder of the allegations contained therein, Answering  
16 Defendants lack knowledge or information sufficient to form a belief as to the truth of the  
17 remaining allegations contained therein.

18       16. As to paragraph 16 of the Third Amended Complaint, Answering Defendants  
19 admit.

20       17. As to paragraph 17 of the Third Amended Complaint, Answering Defendants  
21 admit that Barbara Lumpkin served as a director of L&C at the time the Receivership  
22 Action was filed. As to the remainder of the allegations contained therein, Answering  
23 Defendants lack knowledge or information sufficient to form a belief as to the truth of the  
24 remaining allegations contained therein.

25       18. As to paragraph 18 of the Third Amended Complaint, Answering Defendants  
26 admit.

27       ///

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1 19. As to paragraph 19 of the Third Amended Complaint, Answering Defendants  
2 admit that Barbara Lumpkin served as an Associate Executive Director of the Florida  
3 Nurses Association. As to the remainder of the allegations contained therein,  
4 Answering Defendants lack knowledge or information sufficient to form a belief as to the  
5 truth of the remaining allegations contained therein.

6 20. As to paragraph 20 of the Third Amended Complaint, Answering Defendants  
7 admit.

8 21. As to paragraph 21 of the Third Amended Complaint, Answering Defendants  
9 admit.

10 22. As to paragraph 22 of the Third Amended Complaint, Answering Defendants  
11 admit.

12 23. As to paragraph 23 of the Third Amended Complaint, Answering Defendants  
13 admit.

14 24. As to paragraph 24 of the Third Amended Complaint, Answering Defendants  
15 admit.

16 25. As to paragraph 25 of the Third Amended Complaint, Answering Defendants  
17 admit that Eric Stickels was associated with Oneida Savings Bank. As to the remainder  
18 of the allegations contained therein, Answering Defendants lack knowledge or  
19 information sufficient to form a belief as to the truth of the remaining allegations  
20 contained therein.

21 26. As to paragraph 26, 27, 28 and 29, Answering Defendants lack knowledge or  
22 information sufficient to form a belief as to the truth of the remaining allegations  
23 contained therein.

24 27. As to paragraph 30 of the Third Amended Complaint, Answering Defendants  
25 admit.

26 ///

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1       28. As to paragraph 31 of the Third Amended Complaint, Answering Defendants  
2 admits that it expended the areas in which it wrote policies. As to the remainder of the  
3 allegations, Answering Defendants lack knowledge or information sufficient to form a  
4 belief as to the truth of the remaining allegations contained therein.

5       29. As to paragraph 32 of the Third Amended Complaint, Answering Defendants  
6 deny.

7       30. As to paragraph 33 of the Third Amended Complaint, Answering Defendants  
8 admit.

9       31. As to paragraph 34 of the Third Amended Complaint, Answering Defendants  
10 deny.

11       32. As to paragraph 35 of the Third Amended Complaint, Answering Defendants  
12 admit.

13       33. As to paragraph 36 of the Third Amended Complaint, Answering Defendants  
14 admit.

15       34. As to paragraph 37 of the Third Amended Complaint, Answering Defendants  
16 lack knowledge or information sufficient to form a belief as to the truth of the remaining  
17 allegations contained therein.

18       35. As to paragraph 38 of the Third Amended Complaint, Answering Defendants  
19 lack knowledge or information sufficient to form a belief as to the truth of the remaining  
20 allegations contained therein.

21       36. As to paragraph 39 of the Third Amended Complaint, Answering Defendants  
22 admit that it wrote professional liability policies to Sophia Palmer. As to the claim that it  
23 wrote general liability policies, Answering Defendants deny such characterization as the  
24 insureds were not facilities.

25       37. As to paragraph 40 of the Third Amended Complaint, Answering Defendants  
26 admit that they were advised that Uni-Ter UMC had created other risk retention groups.  
27 As to the remaining allegations Answering Defendants lack knowledge or information  
28 sufficient to form a belief as to the truth of the remaining allegations contained therein.

1       38. As to paragraph 41 of the Third Amended Complaint, Answering Defendants  
2 admit that in summary, Uni-Ter was to manage L&C, including handling underwriting,  
3 risk management, claims handling and regulatory compliance. To the extent Plaintiff  
4 purports to recite the contents of a written document, the document is the best evidence  
5 and speaks for itself. Insofar as the allegations are inconsistent with the document,  
6 those allegations are denied. Answering Defendants lack knowledge or information  
7 sufficient to form a belief as to the truth of the remaining allegations contained therein.

8       39. As to paragraph 42 of the Third Amended Complaint, Answering Defendants  
9 admit.

10       40. As to paragraphs 43, 44, 45, 46, 47, 48, 49 and 50 of the Third Amended  
11 Complaint, Answering Defendants admit that the parties entered into the 2004  
12 Management Agreement. To the extent Plaintiff purports to recite the contents of a  
13 written document, the document is the best evidence and speaks for itself. Insofar as  
14 the allegations are inconsistent with the document, those allegations are denied.

15       41. As to paragraphs 51, 52, 53 and 54, of the Third Amended Complaint,  
16 Answering Defendants admit that the parties entered into amendments to the 2004  
17 Management Agreement. To the extent Plaintiff purports to recite the contents of a  
18 written document, the document is the best evidence and speaks for itself. Insofar as  
19 the allegations are inconsistent with the document, those allegations are denied.

20       42. As to paragraph 55 of the Third Amended Complaint, Answering Defendants  
21 admit that in and around 2009, at Uni-Ter's recommendation, it accepted multi-site  
22 skilled nursing facilities as policyholders of L&C. Answering Defendants deny that  
23 Sophia Palmer was a multi-site operator, and that "multiple" multi-site operators were  
24 accepted into the risk retention group.

25       43. As to paragraph 56 of the Third Amended Complaint, Answering Defendants  
26 admit.

27       ///

28       ///

1       44. As to paragraph 57 of the Third Amended Complaint, Answering Defendants  
2 lack sufficient information to form a belief as to the truth of the allegation contained  
3 therein. To the extent Plaintiff purports to recite the contents of a written document, the  
4 document is the best evidence and speaks for itself. Insofar as the allegations are  
5 inconsistent with the document, those allegations are denied.

6       45. As to paragraphs 58 and 59 of the Third Amended Complaint, Answering  
7 Defendants deny.

8       46. As to paragraph 60 of the Third Amended Complaint, Answering Defendants  
9 admit that the multi-site operators were larger than the original participants, were  
10 comprised of multi-facilities and thus had more claims. As to the remainder of the  
11 allegations, Answering Defendants are without sufficient information to form a belief as  
12 to the truth of the allegation contained therein and therefore denies the same.

13       47. As to paragraphs 61, 62 and 63 of the Third Amended Complaint, to the extent  
14 Plaintiff purports to recite the contents of a written document, the document is the best  
15 evidence and speaks for itself. Insofar as the allegations are inconsistent with the  
16 document, those allegations are denied.

17       48. As to paragraph 64 of the Third Amended Complaint, Answering Defendants  
18 admit to the entry of the 2011 Management Agreement. To the extent Plaintiff purports  
19 to recite the contents of a written document, the document is the best evidence and  
20 speaks for itself. Insofar as the allegations are inconsistent with the document, those  
21 allegations are denied.

22       49. As to paragraph 65 of the Third Amended Complaint, Answering Defendants  
23 lack sufficient information to form a belief as to the truth of the allegation contained  
24 therein.

25       50. As to paragraphs 66, 67, 68, 68, 69, and 70 of the Third Amended Complaint, to  
26 the extent Plaintiff purports to recite the contents of a written document, the document is  
27 the best evidence and speaks for itself. Insofar as the allegations are inconsistent with  
28 the document, those allegations are denied.

1        51. As to paragraph 71 of the Third Amended Complaint, Answering Defendants  
2 lack sufficient information to form a belief as to the truth of the allegation contained  
3 therein.

4        52. As to paragraph 72 of the Third Amended Complaint, Answering Defendants  
5 understood Milliman was engaged to perform work on behalf of L&C. Insofar as Plaintiff  
6 asserts that Milliman was working for Uni-Ter, Answering Defendants lack sufficient  
7 information to form a belief as to the truth of the allegation contained therein.

8        53. As to paragraph 73, 74, and 75 of the Third Amended Complaint, to the extent  
9 Plaintiff purports to recite the contents of a written document, the document is the best  
10 evidence and speaks for itself. Insofar as the allegations are inconsistent with the  
11 document, those allegations are denied.

12        54. As to paragraph 76 of the Third Amended Complaint, Answering Defendants  
13 understands that an insurance producer such as U.S. RE owes certain duties to its  
14 client as set forth in common law and contract. As to the remainder of the allegations,  
15 Answering Defendants are without sufficient information to form a belief as to the truth  
16 of the allegation contained therein.

17        55. As to paragraphs 77 and 78 of the Third Amended Complaint, Answering  
18 Defendants admit.

19        56. As to paragraphs 79 and 80 of the Third Amended Complaint, Answering  
20 Defendants admit that an agreement was entered into with US RE. To the extent  
21 Plaintiff purports to recite the contents of a written document, the document is the best  
22 evidence and speaks for itself. Insofar as the allegations are inconsistent with the  
23 document, those allegations are denied.

24        57. As to paragraph 81 of the Third Amended Complaint, Answering Defendants  
25 state that the allegations call for legal conclusion to which no response is required.

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1       58. As to paragraph 82 of the Third Amended Complaint, Answering Defendants  
2 admit that US RE was retained to act as L&C's agent. To the extent Plaintiff purports to  
3 recite the contents of a written document, the document is the best evidence and  
4 speaks for itself. Insofar as the allegations are inconsistent with the document, those  
5 allegations are denied.

6       59. As to paragraphs 83, 84, and 85 of the Third Amended Complaint, Answering  
7 Defendants state that the allegations call for legal conclusion to which no response is  
8 required.

9       60. As to paragraphs 86, 87, and 88 of the Third Amended Complaint, Answering  
10 Defendants admit that US RE was retained to act as L&C's agent. To the extent  
11 Plaintiff purports to recite the contents of a written document, the document is the best  
12 evidence and speaks for itself. Insofar as the allegations are inconsistent with the  
13 document, those allegations are denied.

14       61. As to paragraph 89 of the Third Amended Complaint, Answering Defendants  
15 admit that US RE was retained to act as L&C's agent with respect to the procurement of  
16 insurance, as to the remainder of the allegations Answering Defendants lack sufficient  
17 information to form a belief as to the truth of the allegation contained therein.

18       62. As to paragraphs 90 and 91 of the Third Amended Complaint, Answering  
19 Defendants lack sufficient information to form a belief as to the truth of the allegation  
20 contained therein.

21       63. As to paragraph 92 of the Third Amended Complaint, Answering Defendants  
22 lack sufficient information to form a belief as to the truth of the allegation contained  
23 therein. Answering Defendants were represented that re-insurance was obtained for  
24 years. Prior to the Rehabilitation, Answering Defendants understood US RE did not  
25 obtain re-insurance as was represented that L&C could not be insured.

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1       64. As to paragraph 93 of the Third Amended Complaint, Answering Defendants  
2 state that US RE represented that re-insurance was in place for years. As to the  
3 remainder of the allegations, Answering Defendants lack sufficient information to form a  
4 belief as to the truth of the allegations.

5       65. As to paragraph 94 of the Third Amended Complaint, Answering Defendants  
6 state that the re-insurance obtained were represented as appropriate for L&C. As to the  
7 remainder of the allegations Answering Defendants lack sufficient information to form a  
8 belief as to the truth of the allegation contained therein.

9       66. As to paragraph 95 of the Third Amended Complaint, Answering Defendants  
10 state that to the extent Plaintiff purports to recite the contents of a written document, the  
11 document is the best evidence and speaks for itself. Insofar as the allegations are  
12 inconsistent with the document, those allegations are denied.

13       67. As to paragraph 96 of the Third Amended Complaint, Answering Defendants  
14 lack sufficient information to form a belief as to the truth of the allegation contained  
15 therein.

16       68. As to paragraphs 97 and 98 of the Third Amended Complaint, Answering  
17 Defendants state that to the extent Plaintiff purports to recite the contents of a written  
18 document, the document is the best evidence and speaks for itself. Insofar as the  
19 allegations are inconsistent with the document, those allegations are denied.

20       69. As to paragraph 99 of the Third Amended Complaint, Answering Defendants  
21 deny.

22       70. As to paragraph 100 of the Third Amended Complaint, Answering Defendants  
23 are without sufficient information to form a belief as to the truth of the allegation.

24       71. As to paragraph 101 of the Third Amended Complaint, Answering Defendants  
25 were advised that losses identified in September 2011 were due to a number of factors  
26 including the multi-site operators and increased claims. As to the remainder of the  
27 allegations, Answering Defendants lack sufficient information to form a belief as to the  
28 truth of the allegation.

72. As to paragraph 102 of the Third Amended Complaint, Answering Defendants received a memorandum purporting to come from Sanford Elsass and Donna Dalton. As to the remainder of the allegations, Answering Defendants submit that the document is the best evidence and speaks for itself. Insofar as the allegations are inconsistent with the document, those allegations are denied.

73. As to paragraph 103 of the Third Amended Complaint, Answering Defendants admits the same.

74. As to paragraphs 104 and 105 of the Third Amended Complaint, Answering Defendants deny.

75. As to paragraphs 106 and 107 of the Third Amended Complaint, Answering Defendants lack sufficient information to form a belief as to the truth of the allegation.

76. As to paragraph 108 of the Third Amended Complaint, Answering Defendants deny.

77. As to paragraph 109 of the Third Amended Complaint, Answering Defendants are without sufficient information to form a belief as to the truth of the allegation.

78. As to paragraph 110, 111 and 112 Third Amended Complaint, Answering Defendants state that to the extent Plaintiff purports to recite the contents of a written document, the document is the best evidence and speaks for itself. Insofar as the allegations are inconsistent with the document, those allegations are denied.

79. As to paragraph 113 of the Third Amended Complaint, Answering Defendants deny.

80. As to paragraphs 114, 115 and 116 of the Third Amended Complaint, Answering Defendants are without sufficient information to form a belief as to the truth of the allegation.

81. As to paragraph 117 of the Third Amended Complaint, Answering Defendants deny.



1       82. As to paragraph 118 of the Third Amended Complaint, Answering Defendants  
2 admit that the Board generally met once per quarter until September 2012 and that Uni-  
3 Ter was contracted to maintain the minutes. As to the remainder of the allegations,  
4 Answering Defendants are without sufficient information to form a belief as to the truth  
5 of the allegation.

6       83. As to paragraph 119 of the Third Amended Complaint, Answering Defendant  
7 are without sufficient information to form a belief as to the truth of the allegation.

8       84. As to paragraph 120 of the Third Amended Complaint, Answering Defendants  
9 admit that they followed many recommendations that were made by Mr. Elsass and  
10 upon the information provided by him and contracted vendors. As to the remainder of  
11 the allegations contained therein, Answering Defendants are without sufficient  
12 information to form a belief as to the truth of the allegation.

13       85. As to paragraphs 121 and 122 of the Third Amended Complaint, Answering  
14 Defendants deny.

15       86. As to paragraph 123 of the Third Amended Complaint, Answering Defendants  
16 are without sufficient information to form a belief as to the truth of the allegation.

17       87. As to paragraphs 124 and 125 of the Third Amended Complaint, Answering  
18 Defendants are without sufficient information to form a belief as to the truth of the  
19 allegations contained therein. To the extent Plaintiff purports to recite the contents of a  
20 written document, the document is the best evidence and speaks for itself. Insofar as  
21 the allegations are inconsistent with the document, those allegations are denied.

22       88. As to paragraph 126 of the Third Amended Complaint, Answering Defendants  
23 deny.

24       89. As to paragraphs 127, 128 and 129 of the Third Amended Complaint, Answering  
25 Defendants are without sufficient information to form a belief as to the truth of the  
26 allegations contained therein. To the extent Plaintiff purports to recite the contents of a  
27 written document, the document is the best evidence and speaks for itself. Insofar as  
28 the allegations are inconsistent with the document, those allegations are denied.

1       90. As to paragraph 130 of the Third Amended Complaint, Answering Defendants  
2 admit that the auditing committee did not do a separate and independent audit from  
3 those done by contracted vendors of L&C. As to the remainder of the allegations,  
4 Answering Defendants are without sufficient information to form a belief as to the truth  
5 of the allegation.

6       91. As to paragraph 131 of the Third Amended Complaint, Answering Defendants  
7 are without sufficient information to form a belief as to the truth of the allegations  
8 contained therein. To the extent Plaintiff purports to recite the contents of a written  
9 document, the document is the best evidence and speaks for itself. Insofar as the  
10 allegations are inconsistent with the document, those allegations are denied.

11       92. As to paragraph 132 of the Third Amended Complaint, Answering Defendants  
12 are without sufficient information to form a belief as to the truth of the allegation.

13       93. As to paragraphs 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, and 143 of  
14 the Third Amended Complaint, Answering Defendants are without sufficient information  
15 to form a belief as to the truth of the allegations contained therein. To the extent Plaintiff  
16 purports to recite the contents of a written document, the document is the best evidence  
17 and speaks for itself. Insofar as the allegations are inconsistent with the document,  
18 those allegations are denied.

19       94. As to paragraph 144 of the Third Amended Complaint, Answering Defendants  
20 admit having met on or about October 5, 2011, in which they approved capital  
21 contributions. To the extent Plaintiff purports to recite the contents of a written  
22 document, the document is the best evidence and speaks for itself. Insofar as the  
23 allegations are inconsistent with the document, those allegations are denied.

24       95. As to paragraphs 145 and 146 of the Third Amended Complaint, Answering  
25 Defendants deny.

26       96. As to paragraph 147 of the Third Amended Complaint, Answering Defendants  
27 admit that they understood William Fishlinger was retained to provide a claims review  
28 for L&C, as to the remainder of the allegations, Answering Defendants are without

1 sufficient information to form a belief as to the truth of the allegation. To the extent  
2 Plaintiff purports to recite the contents of a written document, the document is the best  
3 evidence and speaks for itself. Insofar as the allegations are inconsistent with the  
4 document, those allegations are denied.

5 97. As to paragraph 148 of the Third Amended Complaint, Answering Defendants  
6 deny.

7 98. As to paragraph 149 of the Third Amended Complaint, Answering Defendants  
8 are without sufficient information to form a belief as to the truth of the allegations  
9 contained therein. To the extent Plaintiff purports to recite the contents of a written  
10 document, the document is the best evidence and speaks for itself. Insofar as the  
11 allegations are inconsistent with the document, those allegations are denied.

12 99. As to paragraphs 150 and 151 of the Third Amended Complaint, Answering  
13 Defendants are without sufficient information to form a belief as to the truth of the  
14 allegations contained therein.

15 100. As to paragraph 152 of the Third Amended Complaint, Answering Defendants  
16 are without sufficient information to form a belief as to the truth of the allegations  
17 contained therein. To the extent Plaintiff purports to recite the contents of a written  
18 document, the document is the best evidence and speaks for itself. Insofar as the  
19 allegations are inconsistent with the document, those allegations are denied.

20 101. As to paragraph 153 of the Third Amended Complaint, Answering Defendants  
21 specifically deny the allegation that they failed to exercise a slight degree of diligence  
22 and care regarding the information from Mr. Elsass. As to the remainder of the  
23 allegations, to the extent Plaintiff purports to recite the contents of a written document,  
24 the document is the best evidence and speaks for itself. Insofar as the allegations are  
25 inconsistent with the document, those allegations are denied.

26 102. As to paragraph 154 of the Third Amended Complaint, Answering Defendants  
27 deny having failed to exercise the slightest degree of care regarding information  
28 reported by Elsass. As to the remainder of the allegations, to the extent Plaintiff purports

1 to recite the contents of a written document, the document is the best evidence and  
2 speaks for itself. Insofar as the allegations are inconsistent with the document, those  
3 allegations are denied.

4 103. As to paragraph 155 of the Third Amended Complaint, Answering Defendants  
5 deny having been indifferent to their legal obligations. As to the remainder of the  
6 allegations, Answering Defendants are without sufficient information to form a belief as  
7 to the truth of the allegations therein.

8 104. As to paragraphs 156, 157 and 158 of the Third Amended Complaint,  
9 Answering Defendants are without sufficient information to form a belief as to the truth  
10 of the allegations therein.

11 105. As to paragraph 159 of the Third Amended Complaint, Answering Defendants  
12 deny that there were clear indications that Uni-Ter and U.S. RE were providing  
13 inaccurate and/or incomplete information to L&C and deny having any obligation to  
14 verify the information provided by Uni-Ter and U.S. R.E. As to the remainder of the  
15 allegations, Answering Defendants are without sufficient information to form a belief as  
16 to the truth of the allegations therein.

17 106. As to paragraph 160 of the Third Amended Complaint, Answering Defendants  
18 state that to the extent Plaintiff purports to recite the contents of a written document, the  
19 document is the best evidence and speaks for itself. Insofar as the allegations are  
20 inconsistent with the document, those allegations are denied.

21 107. As to paragraphs 161 and 162 of the Third Amended Complaint, Answering  
22 Defendants are without sufficient information to form a belief as to the truth of the  
23 allegations therein.

24 108. As to paragraph 163 of the Third Amended Complaint, Answering Defendants  
25 deny being grossly negligent, or failing to inform itself. As to the remainder of the  
26 allegations, Answering Defendants are without sufficient information to form a belief as  
27 to the truth of the allegations therein.

28

109. As to paragraph 164 of the Third Amended Complaint, Answering Defendants deny the allegations therein.

110. As to paragraphs 165, 166, 167, 168, and 169 of the Third Amended Complaint, Answering Defendants are without sufficient information to form a belief as to the truth of the allegations therein.

111. As to paragraph 170 of the Third Amended Complaint, Answering Defendants deny the allegations therein.

112. As to paragraphs 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190 and 191 of the Third Amended Complaint, Answering Defendants are without sufficient information to form a belief as to the truth of the allegations therein.

113. As to paragraphs 192, 193, 194 of the Third Amended Complaint, Answering Defendants deny having failed to exercise a slight degree of care with Uni-Ter's opinions. As to the remainder of the allegations, Answering Defendants are without sufficient information to form a belief as to the truth of the allegations therein.

114. As to paragraphs 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, and 206 of the Third Amended Complaint, Answering Defendants are without sufficient information to form a belief as to the truth of the allegations therein.

115. As to paragraphs 207, 208 and 209 of the Third Amended Complaint, Answering Defendants admit.

116. As to paragraph 210 of the Third Amended Complaint, Answering Defendants admit that at one time Stickels was President of Oneida Savings Bank. As to the remainder of the allegations, Answering Defendants deny.

117. As to paragraphs 211, 212, 213, 214 and 215 of the Third Amended Complaint, Answering Defendants are without sufficient information to form a belief as to the truth of the allegations therein.

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**CLAIMS**

118. As to paragraph 216 of the Third Amended Complaint, Answering Defendants incorporate their answers to paragraphs 1 through 215 as if fully set forth herein.

**FIRST CLAIM FOR RELIEF**

**(Gross Negligence of the Former Officers and Directors of L&C)**

119. As to paragraph 217 of the Third Amended Complaint, Answering Defendants incorporate their answers to paragraphs 1 through 216 as if fully set forth herein.

120. As to paragraphs 218 and 219 of the Third Amended Complaint, Answering Defendants respond that the allegations call for legal conclusion to which no response is required.

121. As to paragraphs 220 and 221 of the Third Amended Complaint, Answering Defendants deny the allegations therein.

122. As to paragraphs 222, 223 and 224 of the Third Amended Complaint, Answering Defendants are without sufficient information to form a belief as to the truth of the allegations therein.

123. As to paragraph 225 of the Third Amended Complaint, Answering Defendants respond that the allegations call for legal conclusion to which no response is required.

124. As to paragraph 226 of the Third Amended Complaint, Answering Defendants deny the allegations therein.

125. As to paragraph 227 of the Third Amended Complaint, Answering Defendants are without sufficient information to form a belief as to the truth of the allegations therein.

126. As to paragraph 228 and 229 of the Third Amended Complaint, Answering Defendants deny the allegations therein.

127. As to paragraph 230 of the Third Amended Complaint, Answering Defendants deny having known that Uni-Ter, U.S. RE was providing incomplete or inaccurate information. As to the remainder of the allegations, Answering Defendants are without sufficient information to form a belief as to the truth of the allegations therein.

128. As to paragraphs 231, 232, 233 and 234 of the Third Amended Complaint, Answering Defendants deny the allegations therein.

## **SECOND CLAIM FOR RELIEF**

### **(Deepening the Insolvency of L&C Caused by the Former Directors and Officer)**

129. As to paragraphs 235 of the Third Amended Complaint, Answering Defendants incorporate their answers to paragraphs 1 through 234 as if fully set forth herein.

130. As to paragraphs 236, 237, 238, 239 and 240 of the Third Amended Complaint, Answering Defendants deny the allegations therein.

## **THIRD CLAIM FOR RELIEF**

### **(Negligent Misrepresentation by Uni-Ter UMC)**

As to paragraphs 241 through 248 of the Third Amended Complaint, Answering Defendants state that the Claim for Relief is not directed at Answering Defendants. Therefore, no response is required.

## **FOURTH CLAIM FOR RELIEF**

### **(Breach of Fiduciary Duty by Uni-Ter UMC and Uni-Ter CS)**

As to paragraphs 249 through 256 of the Third Amended Complaint, Answering Defendants state that the Claim for Relief is not directed at Answering Defendants. Therefore, no response is required.

**FIFTH CLAIM FOR RELIEF**

**(Breach of Fiduciary Duty Against U.S. RE)**

As to paragraphs 257 through 269 of the Third Amended Complaint, Answering Defendants state that the Claim for Relief is not directed at Answering Defendants. Therefore, no response is required.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's claim against Answering Defendants is barred, in whole or in part, because the Third Amended Complaint fails to state a cause of action against Answering Defendants upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claim against Answering Defendants is barred, in whole or in part, because Answering Defendants have not breached any duty, contractual, fiduciary, or otherwise, owed to Plaintiff or L&C.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Answering Defendants did not engage in any willful, fraudulent, intentional, or any other behavior resulting in a breach of any fiduciary duty owed to Plaintiff or L&C.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Answering Defendants is barred, in whole or in part, because of a lack of causation. Plaintiff has not suffered any injury or harm as a result of any action or omission of Answering Defendants.

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**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Answering Defendants is barred, in whole or in part, because the alleged damages were the result of intervening and superseding conduct of others.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Answering Defendants is barred, in whole or in part, by the applicable statute of limitations.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Answering Defendants is barred for failure to join indispensable parties.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Answering Defendants is barred, in whole or in part, because any action taken or decision made by Answering Defendants was within its sound business judgment.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Answering Defendants is barred, in whole or in part, because Answering Defendants reasonably believed in good faith that its actions were lawful, necessary and justified.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claim against Answering Defendants is barred, in whole or in part, because Plaintiff has failed to mitigate its alleged damages.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Plaintiff has waived its right to seek damages.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, due to discharge in bankruptcy.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims may be barred by other affirmative defenses enumerated in or allowed under NRCP 8(c). Answering Defendant hereby reserves the right to amend this list of Affirmative Defenses to add new defenses should discovery or investigation reveal facts giving rise to such defenses should discovery or investigation reveal facts giving rise to such defenses.

**WHEREFORE**, having fully responded to the Third Amended Complaint, Answering Defendants respectfully prays as follows:

1. That Plaintiff take nothing by virtue of its Third Amended Complaint, that the Third Amended Complaint be dismissed with prejudice as it relates to the Answering Defendants, and that the Court enter judgment in favor of the Answering Defendants;

2. For an award of reasonable attorneys' fees and costs incurred in connection with this litigation; and

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3. For such other and further relief as the Court deems fair and just under the circumstances.

Dated this 21<sup>st</sup> day of October, 2016.

**LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.**

By:

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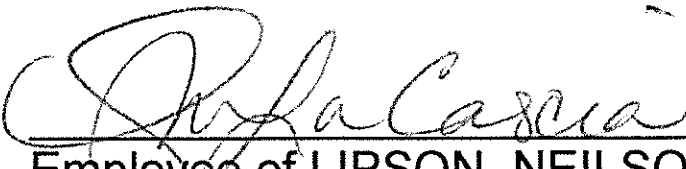
(702) 382-1500 FAX: (702) 382-1512

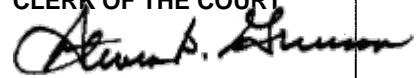
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 21st day of October, 2016, I electronically transmitted the foregoing Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels' Answer to Plaintiff's Third Amended Complaint, to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

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For Case

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Plaintiffs Robert Chur, Steve Fogg,  
Mark Garber, Carol Harter,  
Robert Hurlbut, Barbara Lumpkin,  
Jeff Marshall, and Eric Stickels*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

COMMISSIONER OF INSURANCE FOR  
THE STATE OF NEVADA AS RECEIVER  
OF LEWIS AND CLARK LTC RISK  
RETENTION GROUP, INC.,

Plaintiff,

vs.

ROBERT CHUR, STEVE FOGG, MARK  
GARBER, CAROL HARTER, ROBERT  
HURLBUT, BARBARA LUMPKIN, JEFF  
MARSHALL, ERIC STICKELS, UNI-TER  
UNDERWRITING MANAGEMENT  
CORP., UNI-TER CLAIMS SERVICES  
CORP., and U.S. RE CORPORATION;  
DOES 1-50, inclusive; and ROES 51-100,  
inclusive,

Defendants.

CASE NO.: A-14-711535-C

DEPT. NO.: 27

**ROBERT CHUR, STEVE FOGG,  
MARK GARBER, CAROL HARTER,  
ROBERT HURLBUT, BARBARA  
LUMPKIN, JEFF MARSHALL, AND  
ERIC STICKELS' MOTION FOR  
JUDGMENT ON THE PLEADINGS  
PURSUANT TO NRCP 12(C)**

Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara  
Lumpkin, Jeff Marshall, and Eric Stickels by and through their counsel, Lipson Neilson,  
P.C. hereby file their Motion for Judgment on the Pleadings, pursuant to NRCP 12(c).

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1 This motion is based upon the attached memorandum of points and authorities,  
2 the pleadings and papers on file with this Court, and any oral argument this Court may  
3 allow at the hearing on this motion.

4 DATED this 14<sup>th</sup> day August, 2018.

5 LIPSON NEILSON, P.C.

6 By:

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8 Joseph P. Garin, Esq. (Bar No. 6653)  
9 Angela T. Nakamura Ochoa, Esq. (Bar No. 10164)  
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14 *Mark Garber, Carol Harter,*  
15 *Robert Hurlbut, Barbara Lumpkin,*  
16 *Jeff Marshall, and Eric Stickels*

Lipson Neilson, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500 FAX: (702) 382-1512

**NOTICE OF MOTION**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that counsel for Defendants will bring the foregoing ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C) on for hearing before the above-entitled Court, on the 19 day of September, 2018, at the hour of 9:00 a.m. in Department 27, of the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada, or as soon thereafter as counsel may be heard.

DATED this 14<sup>th</sup> day of August, 2018.

LIPSON NEILSON P.C.

By: Angela T. Nakamura Ochoa

Joseph P. Garin, Esq. (6653)  
Angela T. Nakamura Ochoa, Esq. (10164)  
9900 Covington Cross Dr., Suite 120  
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*Attorneys for Defendants/Third-Party  
Plaintiffs Robert Chur, Steve Fogg,  
Mark Garber, Carol Harter,  
Robert Hurlbut, Barbara Lumpkin,  
Jeff Marshall, and Eric Stickels*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels (collectively, the "Directors") are former directors of Lewis & Clark, LTC Risk Retention Group, Inc. ("L&C"), a risk retention group for skilled nursing facilities that is now in receivership. Plaintiff is the Commissioner of Insurance for the State of Nevada, as L&C's Receiver. Plaintiff filed this lawsuit against the Directors for gross negligence and deepening insolvency.

On January 27, 2016, the Directors moved to dismiss Plaintiff's claims. The Court granted the Directors' motion, but allowed Plaintiff to file an amended complaint. After Plaintiff filed an amended complaint, the Directors once again moved to dismiss. On September 15, 2016, the Court partially denied the Directors' motion to dismiss, holding that Nevada's business judgment rule did not protect against claims of gross negligence (which the Court also held Plaintiff had adequately pled), but that deepening insolvency is not a separate cause of action. The pleadings closed and discovery opened, with one remaining cause of action — a claim against the Directors for gross negligence.

When the Court decided the Directors' motion to dismiss the amended complaint, the 2003 version of Nevada Revised Statutes ("NRS") 78.138<sup>1</sup> was in effect and the Supreme Court of Nevada's 2006 *Shoen* decision (which relied on Delaware case law) was viewed by many as holding that Nevada's business judgment rule did not apply to claims of gross negligence. See, Plaintiff's Opposition Brief, filed January 15, 2016.

After the Court decided the Directors' motion to dismiss the amended complaint, the Nevada Legislature retroactively amended NRS 78.138. This June 2017 amendment makes two things clear. First, directors of a Nevada corporation cannot be personally liable unless they engage in intentional misconduct, fraud or a knowing violation of the law. Second, case law from other jurisdictions, such as the Delaware

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<sup>1</sup> NRS 78.138 is the statutory codification of the "business judgment rule."



1 case law cited in *Shoen*, cannot supplant or erode the protections of NRS 78.138.

2 The Nevada Legislature has spoken: directors of a Nevada corporation cannot  
3 be personally liable for any conduct short of intentional misconduct, fraud or a knowing  
4 violation of the law. Gross negligence is not intentional misconduct, fraud or a knowing  
5 violation of the law, and the Directors are entitled to judgment on Plaintiff's sole  
6 remaining claim.

## 7 8 **II. PROCEDURAL HISTORY**

9 On December 23, 2014, Plaintiff sued the Directors for gross negligence and  
10 deepening insolvency. The Directors moved to dismiss these claims on the bases that  
11 (a) NRS 78.138 required intentional misconduct, fraud or a knowing violation of the law  
12 for personal liability to attach; and (b) deepening insolvency was not a cause of action.  
13 On February 25, 2016, this Court dismissed the gross negligence claim without  
14 prejudice and held that the claim for deepening insolvency was derivative of the claim  
15 for gross negligence and not a separate cause of action.

16 After Plaintiff filed an amended complaint, the Directors once again moved to  
17 dismiss. On September 15, 2016, the Court partially denied Directors' motion to  
18 dismiss, holding that Nevada's business judgment rule did not protect against claims of  
19 gross negligence and that Plaintiff had adequately pleaded a claim for gross negligence.

20 Thereafter, Plaintiff filed a Second Amended Complaint and the operative  
21 complaint, the Third Amended Complaint. On October 21, 2016, the Directors filed their  
22 Answer. The case is set for trial in August 2019.

## 23 **III. LEGAL STANDARD**

24 Nevada Rule of Civil Procedure Rule 12(c) allows any party to move for  
25 judgment on the pleadings "after the pleadings are closed but within such time as not  
26 to delay the trial." Nev. R. Civ. P. 12(c). Such motions are "designed to provide a  
27 means of disposing of cases when material facts are not in dispute and a judgment on  
28 the merits can be achieved on the content of the pleadings." *Duff v. Lewis*, 114 Nev.

1 564, 568, 958 P.2d 82, 85 (1998) (citing *Bernard v. Rockhill Dev. Co.*, 103 Nev. 132,  
2 135, 734 P.2d 1238, 1241 (1987)).

3 A district court must decide a Rule 12(c) motion based solely on the pleadings.  
4 See *Lovelock Lands v. Lovelock Land & Dev. Co.*, 54 Nev. 1, 7 P.2d 593, 594 (1932).  
5 If matters outside of the pleadings are presented to the court, "the motion shall be  
6 treated as one for summary judgment and disposed of as provided in Rule 56..." Nev.  
7 R. Civ. P. 12(c).

#### 8 **IV. MATERIAL FACTS NOT IN DISPUTE**

9 1. L&C was a Nevada corporation formed in and around 2003. Third  
10 Amended Complaint, ¶ 30.

11 2. L&C's Articles of Incorporation filed on December 15, 2003 states in  
12 pertinent part that, "[t]he personal liability of the directors of the corporation is hereby  
13 eliminated to the fullest extent permitted by the General Corporation Law of the State  
14 of Nevada, as the same may be amended and supplemented." Articles, attached  
15 hereto as Exhibit A.  
16

#### 17 **V. LEGAL ARGUMENT**

18 Directors and officers of a Nevada corporation cannot be personally liable for a  
19 breach of fiduciary duty unless the breach involves intentional misconduct, fraud or a  
20 knowing violation of the law. NRS 78.138. Plaintiff does not allege intentional  
21 misconduct, fraud or a knowing violation of the law. Rather, Plaintiff merely alleges the  
22 Directors were grossly negligent in taking or failing to take certain actions as members  
23 of the L&C board. Even if all of Plaintiff's allegations are true (they are not), gross  
24 negligence cannot support a claim for personal liability against the Directors. Therefore,  
25 the Directors are entitled to judgment as a matter of law.

##### 26 1. A Brief Legislative History of NRS 78.138

27 In 2001, Nevada's Legislature decided it wanted to "win business" from  
28 Delaware. To do so, the Legislature provided more protections to directors and officers

1 of Nevada corporations. 2001 Legis. History for SB 577, pp. 6-8 (Senator James  
2 remarking on Nevada's business laws and offering a substantial additional feature to  
3 make Nevada attractive in limiting liability to breach of fiduciary duty and the breach  
4 arising out of intentional misconduct, fraud or knowing violation of the law) (attached  
5 hereto as Exhibit B).

6 During a May 22, 2001 Committee Meeting, Michael Bonner said he believed  
7 Nevada could be more attractive than Delaware by being more predictable and  
8 enhancing liability protection. *Id.* at pp. 16-17. During a May 25, 2001 Committee  
9 Meeting, the Committee Members of the Senate Committee on Judiciary further  
10 discussed the importance of increasing the protections of directors and officers and also  
11 considered the use of "or" instead of the final version of breach of fiduciary duty "and"  
12 finding of intentional, fraudulent conduct. *Id.* at pp. 131-133. (A lobbyist from the Nevada  
13 Trial Lawyers expressed his concern regarding the use of "or" versus "and.") Ultimately,  
14 the Nevada legislature rejected that consideration and required that personal liability  
15 would only attach when there was a breach of fiduciary duty and intentional or  
16 fraudulent act, giving every potential director or officer a greater sense of predictability.

17 In 2006, the Supreme Court of Nevada decided *Shoen v. SAC Holding Corp.*,  
18 122 Nev. 621, 137 P.3d 1171 (2006). The *Shoen* decision was important for a number  
19 of reasons, but one passage is particularly relevant here: "With regard to the duty of  
20 care, the business judgment rule does not protect the gross negligence of uninformed  
21 directors and officers." *Id.* at 1184. Many interpreted this passage, which cited the  
22 Supreme Court of Delaware's *Aronson* decision for authority, as holding that NRS  
23 78.138 does not protect Nevada directors and officers who were grossly negligent and  
24 breached their fiduciary duties.

25 In June 2017, dissatisfied with the Nevada courts' interpretation and application  
26 of NRS 78.138, the Legislature amended the statute, declaring that:

- 27 1. It is important to the economy of this State, and to domestic corporations,  
28 their directors and officers, and their stockholders, employees, creditors and  
other constituencies, for the laws governing domestic corporations to be clear  
and comprehensible.

2. The laws of this State govern the incorporation and internal affairs of a domestic corporation and the rights, privileges, powers, duties and liabilities, if any, of its directors, officers and stockholders.
3. The plain meaning of the laws enacted by the Legislature in this title, including, without limitation, **the fiduciary duties and liability of the directors and officers of a domestic corporation set forth in NRS 78.138 and 78.139, must not be supplanted or modified by laws or judicial decisions from any other jurisdiction.**
4. The directors and officers of a domestic corporation in exercising their duties under NRS 78.138 and 78.139, may be informed by the laws and judicial decisions of other jurisdiction and the practices observed by business entities in any such jurisdiction, but the failure or refusal of a director or officer to consider, or to conform the exercise of his or her powers to the laws, judicial decisions or practices of another jurisdiction does not constitute or indicate a breach of a fiduciary duty. NRS 78.138, attached hereto as Exhibit C.

(Emphasis added).

2. NRS 78.138 precludes monetary claims against directors and officers absent intentional/fraudulent acts or a knowing violation of the law.

When the language of a statute is plain and its meaning clear, courts must apply the statute as written. *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007). As amended in 2017, NRS 78.138 could not be clearer:

1. The fiduciary duties of directors and officers are to exercise their respective powers in good faith and with a view to the interests of the corporation.

...

3. Except as otherwise provided in subsection 1 of NRS 78.139, 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. A director or officer is not individually liable for damages as a result of an act or failure to act in his or her capacity as a director or officer except under circumstances described in subsection 7.

...

7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270, 668.045 and 694A.030, or unless the articles of incorporation or an amendment thereto, **in each case filed on or after October 1, 2003** provided for greater individual liability, a director or officer is not individually liable to the corporation or its stockholders or creditors for any damages as a result of any act or failure to act in his or her capacity as a director or officer unless:

- (a) The trier of fact determines that the presumption established by subsection 3 has been rebutted; **and**
- (b) it is proven that:

(1) The director's or officer's act or failure to act constituted a breach of his or her fiduciary duties as a director or officer; **and**

(2) Such breach involved intentional misconduct, fraud or a knowing violation of law.

8. This section applies to all cases, circumstances and matters unless otherwise provided in the articles of incorporation, or an amendment thereto, including, without limitation, any change or potential change in control of the corporation.

(Emphasis added).

In short, NRS 78.138 states that in every case filed after October 1, 2003 (this case was filed in 2014), a Nevada officer or director "is not individually liable ... for a breach of his or her fiduciary duties ... unless ... such breach involved intentional misconduct, fraud or a knowing violation of law." *Id.* The term "gross negligence" is not even mentioned in NRS 78.138.

### 3. NRS 78.138 Applies to Plaintiff's Claim for Gross Negligence

Prior to the 2017 amendment to NRS 78.138, the Directors moved to dismiss Plaintiff's gross negligence claim on the basis that NRS 78.138 requires intentional misconduct, fraud or a knowing violation of the law for personal liability to attach.

The Court declined to dismiss Plaintiff's gross negligence claim, citing to the Supreme Court of Nevada's 2006 *Shoen* decision, which in turn cited Delaware law for the proposition that "the business judgment rule does not protect the gross negligence of uninformed directors." *Id.* at 1184.

Before the June 2017 amendment to NRS 78.138, some debated whether *Shoen* conflicted with the statutory protections afforded under NRS 78.138. With the June 2017 amendment to NRS 78.138, the Nevada Legislature purposefully ended that debate.

Since June 2017, other District courts have also concluded that a Nevada officer or director cannot be personally liable for anything less than fraud. See, e.g., *In re Parametric Sound Corp.*, 2018 WL 1867909 (2018). Similarly, this Court in *In re*

1 *Newport Corp. Shareholder Litigation*, 2018 WL 1475469 (2018), recently applied the  
2 statutory protections of Nevada's business judgment rule as written, and as the  
3 Legislature intended.

4 4. Lewis & Clark's Governing Documents do Not Create a Lower Level of  
5 Liability

6 None of the exceptions to the protections afforded under NRS 78.138 apply here.  
7 NRS 35.230 concerns liability of a corporation's directors when judgment of ouster is  
8 rendered; NRS 90.660 concerns the sale of a security; NRS 91.250 concerns liability of  
9 principals and agents with respect to commodities or investments; NRS 452.220 and  
10 452.270 concerns liability surrounding cemeteries; NRS 668.045 concerns with liability  
11 for bank officers and agents; and NRS 694A.030 has to do with liability for the unfair  
12 use of information. Here, Plaintiff's only claim is that the Directors were grossly  
13 negligent in acting or failing to act as directors of L&C, a risk retention group.

14 Additionally, nothing in L&C's Articles of Incorporation expands director liability.  
15 In fact, the Articles of Incorporation filed on December 15, 2003 do the exact opposite:  
16 "The personal liability of the directors of the corporation is hereby eliminated to the  
17 fullest extent permitted by the General Corporation Law of the State of Nevada, as the  
18 same may be amended and supplemented." Articles, attached hereto as Exhibit A.

19 ///

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**VI. CONCLUSION**

This Court had held that deepening insolvency is not a cause of action and the Nevada Legislature has now confirmed that the Directors cannot be personally liable for allegations of gross negligence. Accordingly, Defendants Robert Chur, Steve Fogg, Mark Garber, Carol Harter, Robert Hurlbut, Barbara Lumpkin, Jeff Marshall, and Eric Stickels respectfully request the Court grant this motion and enter judgment in their favor.

Dated this 14<sup>th</sup> day of August, 2018.

LIPSON NEILSON, P.C.

By:   
\_\_\_\_\_  
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*Attorneys for Defendants/Third-Party  
Plaintiffs Robert Chur, Steve Fogg,  
Mark Garber, Carol Harter,  
Robert Hurlbut, Barbara Lumpkin,  
Jeff Marshall, and Eric Stickels*

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 14<sup>th</sup> day of August, 2018, I electronically transmitted the foregoing **ROBERT CHUR, STEVE FOGG, MARK GARBER, CAROL HARTER, ROBERT HURLBUT, BARBARA LUMPKIN, JEFF MARSHALL, AND ERIC STICKELS' MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO NRCP 12(C)** to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal to the following Odyssey E-File & Serve registrants:

### **E-Service Master List For Case**

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\_\_\_\_\_  
Employee of LIPSON NEILSON, P.C.



**EXHIBIT “A”**

**EXHIBIT “A”**



DEAN HELLER  
Secretary of State  
206 North Carson Street  
Carson City, Nevada 89701-4299  
(775) 684 5708  
Website: secretaryofstate.biz

FILED # 031080-2003

DEC 15 2003

IN THE OFFICE OF  
DEAN HELLER, SECRETARY OF STATE

## Articles of Incorporation (PURSUANT TO NRS 78)

Important: Read attached instructions before completing form.

ABOVE SPACE IS FOR OFFICE USE ONLY 156819

1. <b>Name of Corporation:</b>	LEWIS & CLARK LTC RISK RETENTION GROUP INC.		
2. <b>Resident Agent Name and Street Address:</b> <small>(must be a Nevada address where process may be served)</small>	VERNON E. LEVENTY 832 WILLON ST. RENO NEVADA 89502 City State Zip Code		
3. <b>Shares:</b> <small>(number of shares authorized to issue)</small>	Number of shares with par value: 1,000,000 Par value: \$ 1.00 Number of shares without par value: _____		
4. <b>Names &amp; Addresses of Board of Directors/Trustees:</b> <small>(attach additional page if there is more than 3 directors/trustees)</small>	1. JAMES T. LEVENTY 832 WILLON ST. RENO NV 89509 City State Zip Code 2. MARK S. GAUBER 1077 GARWAY LOOP SPRINGFIELD OR 97477 City State Zip Code 3. THOMAS H. GRAY P.O. Box 5128 EUGENE WA 98206 City State Zip Code		
5. <b>Purpose:</b> <small>(optional-see instructions)</small>	The purpose of this Corporation shall be: CAPTIVE INSURER		
6. <b>Names, Address and Signature of Incorporator:</b> <small>(attach additional page if there is more than 1 incorporator)</small>	VERNON E. LEVENTY 832 WILLON ST. RENO NV 89502 City State Zip Code		
7. <b>Certificate of Acceptance of Appointment of Resident Agent:</b>	I hereby accept appointment as Resident Agent for the above named corporation. Authorized Signature of R.A. or On Behalf of R.A. Company Date Dec. 15, 2003		

This form must be accompanied by appropriate fees. See attached fee schedule.

Nevada Secretary of State Form 78 ARTICLES.2003  
Revised on: 11/21/03

CONFIDENTIAL

PA001966  
LC-USRE-0214156

ARTICLES OF INCORPORATION  
OF  
LEWIS & CLARK LTC RISK RETENTION GROUP, INC.

State of Nevada  
Division of Insurance  
APPROVED

Date December 15, 2003

By [Signature]

We, the persons hereinafter named as incorporators, for the purpose of associating to establish a corporation, under the provisions and subject to the requirements of Title 7, Chapter 78 of Nevada Revised Statutes, and the acts amendatory thereof, and hereinafter sometimes referred to as the General Corporation Law of the State of Nevada, do hereby adopt and make the following Articles of Incorporation:

**FIRST:** The name of the corporation (hereinafter called the corporation) is Lewis & Clark LTC Risk Retention Group, Inc.

**SECOND:** The name of the corporation's resident agent in the State of Nevada is Vernon E. Leverty, and the street address of the said resident agent where process may be served on the corporation is Reno Gould House, 832 Willow Street, Reno, Nevada 89502. The mailing address and the street address of the said resident agent are identical.

**THIRD:** The number of shares the corporation is authorized to issue is 1,000,000, all of which are of a par value of \$1.00 dollar each. All of said shares are of one class and are designated as Common Stock.

No holder of any of the shares of any class of the corporation shall be entitled as of right to subscribe for, purchase, or otherwise acquire any shares of any class of the corporation which the corporation proposes to issue or any rights or options which the corporation proposes to grant for the purchase of shares of any class of the corporation or for the purchase of any shares, bonds, securities, or obligations of the corporation which are convertible into or exchangeable for, or which carry any rights, to subscribe for, purchase, or otherwise acquire shares of any class of the corporation; and any and all of such shares, bonds, securities, or obligations of the corporation, whether now or hereafter authorized or created, may be issued, or may be reissued or transferred if the same have been reacquired and have treasury status, and any and all of such rights and options may be granted by the Board of Directors to such persons, firms, corporations, and associations, and for such lawful consideration, and on such terms, as the Board of Directors in its discretion may determine, without first offering the same, or any thereof, to any said holder.

**FOURTH:** The governing board of the corporation shall be styled as a "Board of Directors," and any member of said Board shall be styled as a "Director."

The number of members constituting the first Board of Directors of the corporation is six; and the name and the post office box or street address, either residence or business, of each of said members are as follows:

NAME

ADDRESS

James T. Leverty	Reno Gould House 832 Willow Street Reno, NV 89502
Mark S. Garber	1077 Gateway Loop Suite A Springfield, OR 98477
Thomas H. Gray	P.O. Box 5128 Everett, WA 98206
Karen S. Hyatt	5102 Scenic Drive Yakima, WA 98908
M. Kathrine Julin	16088 N.E. 85th St. Redmond, WA 98052
Jeff C. Marshall	7330 N.E. Bothell Way Kenmore, WA 98028

The number of directors of the corporation may be increased or decreased in the manner provided in the Bylaws of the corporation; provided, that the number of directors shall never be less than one. In the interim between elections of directors by stockholders entitled to vote, all vacancies, including vacancies caused by an increase in the number of directors and including vacancies resulting from the removal of directors by the stockholders entitled to vote which are not filled by said stockholders, may be filled by the remaining directors, though less than a quorum.

**FIFTH:** The names and the post office boxes or street addresses, either residence or business, of the incorporators signing these Articles of Incorporation are as follows:

NAME

ADDRESS

Jeff C. Marshall	7330 N.E. Bothell Way Kenmore, WA 98028
Vernon E. Leverty	Reno Gould House 832 Willow St. Reno, Nevada 89502
William Ginn	Reno Gould House 832 Willow St. Reno, Nevada 89502

**SIXTH:** The corporation shall have perpetual existence.

**SEVENTH:** The personal liability of the directors of the corporation is hereby eliminated to the fullest extent permitted by the General Corporation Law of the State of Nevada, as the same may be amended and supplemented.

**EIGHTH:** The corporation shall, to the fullest extent permitted by the General Corporation Law of the State of Nevada, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said Law from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said Law, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

**NINTH:** The nature of the business of the corporation and the objects or the purposes to be transacted, promoted, or carried on by it are as follows:

To engage in every aspect of the casualty insurance business and risk management business as it relates to long term care facilities, to the extent permitted and in accordance with the Captive Laws of the State of Nevada and The Federal Risk Retention Act of 1986, as amended from time to time.

To such extent as a corporation organized under the General Corporation Law of the State of Nevada may now or hereafter lawfully do, to do, either as principal or agent and either alone or in connection with other corporations, firms, or individuals, all and everything necessary, suitable, convenient, or proper for, or in connection with, or incident to, the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated, or designed directly or indirectly to promote the interests of the corporation or to enhance the value of its properties; and in general to do any and all things and exercise any and all powers, rights, and privileges which a corporation may now or hereafter be organized to do or to exercise under the General Corporation Law of the State of Nevada or under any act amendatory thereof, supplemental thereto, or substituted therefor.

The foregoing provisions of this Article shall be construed both as purposes and powers and each as an independent purpose and power. The foregoing enumeration of specific purposes and powers shall not be held to limit or restrict in any manner the purposes and powers of the corporation, and the purposes and powers herein specified shall, except when otherwise provided in this Article, be in no wise limited or restricted by reference to, or inference from, the terms of any provision of this or any other Article of these Articles of Incorporation; provided, that the corporation shall not carry on any business or exercise any power in any state, territory, or country which under the laws thereof the corporation may not lawfully carry on or exercise.

**TENTH:** The corporation reserves the right to amend, alter, change, or repeal any provision contained in these Articles of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, we do hereby execute these Articles of Incorporation on the date indicated below.

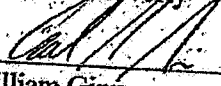
Dated: December 5, 2003

Dated: December 7, 2003

Dated: December 7, 2003

  
Jeff C. Marshall

  
Vernon E. Leverty

  
William Ginn

STATE OF Washington  
COUNTY OF King ) SS:

On this 5th of December, 2003, personally appeared before me, a Notary Public in and for the State and County aforesaid, Jeff C. Marshall, known to me to be the person described in and who executed the foregoing Articles of Incorporation, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned..

WITNESS my hand and official seal, the day and year first above written.

  
Notary Public

(Notarial Seal)

STATE OF )  
COUNTY OF ) SS:

On this 8<sup>th</sup> day of Dec, 2003, personally appeared before me, a Notary Public in and for the State and County aforesaid, Vernon E. Levery, known to me to be the person described in and who executed the foregoing Articles of Incorporation, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal, the day and year first above written.



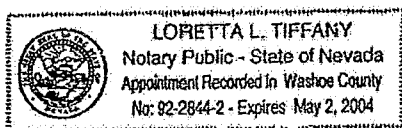
*Loretta L. Tiffany*  
Notary Public

(Notarial Seal)

STATE OF )  
COUNTY OF ) SS:

On this 8<sup>th</sup> day of Dec, 2003, personally appeared before me, a Notary Public in and for the State and County aforesaid, William Ginn, known to me to be the person described in and who executed the foregoing Articles of Incorporation, and who acknowledged to me that he executed the same freely and voluntarily and for the uses and purposes therein mentioned.

WITNESS my hand and official seal, the day and year first above written.



*Loretta L. Tiffany*  
Notary Public

(Notarial Seal)

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**EXHIBIT “B”**

**EXHIBIT “B”**



# 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	<u>May-22-2001</u>	Discussed as BDR
Senate Judiciary	<u>May-24-2001</u>	Discussed as BDR
Senate Judiciary	<u>May-25-2001</u>	Amend, and do pass as amended
Senate Finance	<u>May-26-2001</u>	Mentioned No Jurisdiction
Senate Judiciary	<u>May-26-2001</u>	Rescind
Senate Judiciary	<u>May-26-2001</u>	Amend, and do pass as amended
Assembly Judiciary	<u>May-30-2001</u>	No Action
Assembly Ways and Means	<u>May-31-2001</u>	Mentioned no jurisdiction
Assembly Judiciary	<u>Jun-01-2001</u>	Amend, and do pass as amended
Senate Judiciary	<u>Jun-03-2001</u>	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. ✓

PA001973

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

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**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 Committee on Judiciary  
May 22, 2001  
Page 2

**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 "situated" 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.

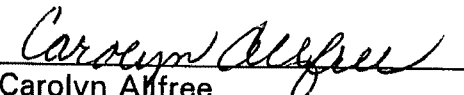
Senator McGinness asked whether the secretary of state's office has some sort of due process in place for determining net worth pursuant to section 31, subsection 4, of BDR 7-1547. Mr. Heller said his office is currently ministerial and accepts documents filed and signed under penalty of perjury, and would

Senate Committee on Judiciary  
May 22, 2001  
Page 25

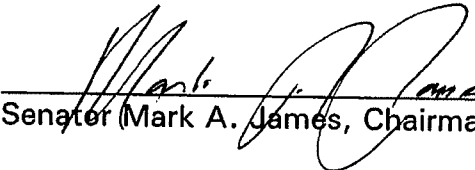
have to put the language of the bill into place administratively. Chairman James stated whatever process the secretary of state's office puts into place would certainly comply with applicable procedural requirements, due process, and the rights of taxpayers.

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	Less than 500 corporations registered in Nevada will pay maximum fee.
\$25,600,000	\$50,000	
\$51,200,000	\$50,000	

**3471**

EXHIBIT C Senate Committee on Judiciary

Date: 5-22-01 Page PA002002

Examples of Companies Allocated Net Worth Subject to Business Franchise Fee

Store/Company	Number of Stores:		Total <sup>1</sup>	Total Net Worth <sup>2</sup> (Millions \$'s)	Net Worth:		Estimated Business Franchise Fee
	In Nevada <sup>1</sup>	Number of Stores: Total <sup>1</sup>			Allocated in Nevada <sup>3</sup> (Millions \$'s)		
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 <sup>4</sup>	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 <sup>5</sup>							
Nevada First Bank				\$1,674.0		\$11.1	\$38,883
First National Bank of Nevada Holding Company						\$15.4	\$50,000
Wells Fargo <sup>6</sup>						\$14.5	\$50,000
Wells Fargo Bank Nevada National Association <sup>7</sup>				\$26.5		\$0.7	\$2,330
Park Place Entertainment <sup>8</sup>						\$725.5	\$50,000
Stations Casino, Inc.				\$3,740.0		\$428.7	\$50,000
						\$288.9	\$50,000

Number of stores obtained from information provided in annual 10-K filings with the Securities and Exchange Commission.

at worth amounts taken from financial statements of annual 10-K filings with the Securities and Exchange Commission.

total Net Worth allocated to Nevada based on the percentage of the total number of stores located in Nevada.

Target Corporation includes Target, Mervyn's, and Marshall Fields Stores

Number of store information not available from annual 10-K report. Nevada's population as a percent of U.S. population was used to allocate

total Net Worth.

Information on Wells Fargo from National Information Center (Federal Reserve Board).

at worth was allocated using total assets of Nevada banks as percent of total assets of Wells Fargo & Company

Information from National Information Center (Federal Reserve Board). Represents Net Worth of Wells Fargo branch banks in Nevada.

at Worth Allocated to Nevada based on square footage of Nevada casinos as percentage of total square footage at all properties.

Information obtained from annual 10-K filings with the Securities and Exchange Commission.

3472

**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.**

**3473**



## Franchise Fee Estimate by Asset Size

<b>Size of Total Assets (000's)</b>	<b>Estimated Nevada Assets</b>	<b>Estimated Nevada Net Worth</b>	<b>Estimated Nevada Corporation s</b>	<b>Estimated Nevada Net Worth Per Corporation</b>	<b>Estimated New Tax Revenue</b>
<b>Total</b>	<b>231,207,565</b>	<b>79,471,096</b>	<b>131,882</b>	<b>602,591</b>	<b>52,040,532</b>
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	2,651,402
\$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	272,698,067	12,623,800

3474

PA0020052

**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.

Senate Committee on Judiciary  
May 24, 2001  
Page 2

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.

Senate Committee on Judiciary  
May 24, 2001  
Page 3

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

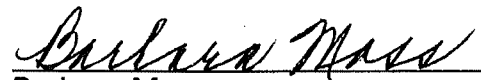
national average. She noted there was no funding mechanism in the bill, but it was a move to at least address why it has not been done, and seek sources of revenue to make it possible. Senator Titus said the Democrats followed it up with a letter to the majority leader requesting full-blown hearings 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.

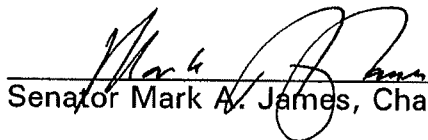
Senate Committee on Judiciary  
May 24, 2001  
Page 5

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)

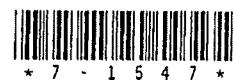
FISCAL NOTE: Effect on Local Government: No.

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:

- 1     **Section 1.** Chapter 78 of NRS is hereby amended by adding thereto the provisions set forth  
2 as sections 2 and 3 of this act.
- 3     **Sec. 2. 1.** *Except as otherwise provided by specific statute, no stockholder, director or*  
4 *officer of a corporation formed under the laws of this state is individually liable for a debt or*  
5 *liability of the corporation, without regard to whether a court determines that the stockholder,*



1 *director or officer should be considered the alter ego of the corporation or that the corporate*  
2 *fiction of a separate entity should be disregarded for any other reason, unless:*

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

5 *(b) A court of competent jurisdiction finds by clear and convincing evidence that:*

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

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

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

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

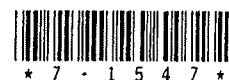
13 *Sec. 3. 1. Except as otherwise provided in this section, the fee for filing the initial or*  
14 *annual list required to be paid pursuant to NRS 78.150 must be determined as follows:*

15 *If the amount of the net worth of the corporation in Nevada is:*

16 *Not more than \$40,000..... \$150*

17 *More than \$40,000..... \$150, plus an amount equal*  
18 *to 0.35 percent of its net*  
19 *worth in Nevada in excess of*  
20 *\$40,000*

21 *2. The maximum fee that may be charged pursuant to this section is \$50,000 per year.*





1       3. To determine the net worth of a corporation in Nevada for the purposes of this section,  
2       the dollar amount of the assets of the corporation that are situated in or allocated to this state  
3       must be divided by the dollar amount of the total assets of the corporation, and the result of  
4       that calculation must be multiplied by the dollar amount of the total net worth of the  
5       corporation.

6       4. If the secretary of state determines that the amount of any fee paid pursuant to  
7       subsection 1 is not based on the true net worth of the corporation in Nevada, he may compute  
8       and determine the amount required to be paid upon the basis of:

9       (a) The information required to be filed pursuant to NRS 78.150; and

10       (b) Any other information obtained by the secretary of state from any source.

11       5. In addition to any other penalty provided by law, any corporation that fails to pay the  
12       fee provided for in this section is liable for the payment of a penalty equal to treble the  
13       difference between the amount paid and the amount that was required to be paid by this  
14       section.

15       Sec. 4. NRS 78.037 is hereby amended to read as follows:

16       78.037 The articles of incorporation may also contain {:

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

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



~~1 (b) The payment of distributions in violation of NRS 78.300.~~

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

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

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

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

9 Sec. 5. NRS 78.138 is hereby amended to read as follows:

10 78.138 1. Directors and officers shall exercise their powers in good faith and with a view  
11 to the interests of the corporation.

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

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

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



1 (c) A committee on which the director or officer relying thereon does not serve, established  
2 in accordance with NRS 78.125, as to matters within the committee's designated authority and  
3 matters on which the committee is reasonably believed to merit confidence,  
SH but a director or officer is not entitled to rely on such information, opinions, reports, books of  
5 account or statements if he has knowledge concerning the matter in question that would cause  
6 reliance thereon to be unwarranted.

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

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

- 11 (a) The interests of the corporation's employees, suppliers, creditors and customers;  
12 (b) The economy of the state and nation;  
13 (c) The interests of the community and of society; and  
14 (d) The long-term as well as short-term interests of the corporation and its stockholders,  
15 including the possibility that these interests may be best served by the continued independence of  
16 the corporation.

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

19 6. The provisions of subsections 4 and 5 do not create or authorize any causes of action  
20 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;*



1 (f) *The amount of its assets reported pursuant to paragraph (e) that are situated in or*  
2 *allocated to this state;*

3 (g) *The total net worth of the corporation as reported on its federal income tax return for*  
4 *the preceding calendar year; and*

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

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

10 1.

11 3. *Each list required by subsection 1 or 2 must be accompanied by an affidavit that the*  
12 *corporation has complied with the provisions of chapter 364A of NRS.*

13 4. Upon filing ~~{a list of officers and directors,}~~ *the list required by subsection 1 or 2, the*  
14 *corporation shall pay to the secretary of state {a fee of \$85.*

15 ~~—4.}~~ *the fee prescribed by section 3 of this act.*

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



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

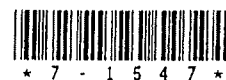
4     ~~{6-}~~ 7. An annual list for a corporation not in default which is received by the secretary of  
5 state more than 60 days before its due date shall be deemed an amended list for the previous year  
6 and does not satisfy the requirements of subsection 2 for the year to which the due date is  
7 applicable.

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

12     Sec. 7. NRS 78.155 is hereby amended to read as follows:

13     78.155 If a corporation has filed the initial or annual list ~~{of officers and directors and~~  
14 ~~designation of resident agent}~~ in compliance with NRS 78.150 and has paid the appropriate fee  
15 for the filing, the canceled check received by the corporation constitutes a certificate authorizing  
16 it to transact its business within this state until the last day of the month in which the anniversary  
17 of its incorporation occurs in the next succeeding calendar year. If the corporation desires a  
18 formal certificate upon its payment of the initial or annual fee, its payment must be accompanied  
19 by a self-addressed, stamped envelope.

20     Sec. 8. NRS 78.170 is hereby amended to read as follows:



1 78.170 1. Each corporation required to make a filing and pay the fee prescribed in NRS  
2 78.150 to 78.185, inclusive, *and section 3 of this act* which refuses or neglects to do so within  
3 the time provided shall be deemed in default.

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

6 **Sec. 9.** NRS 78.180 is hereby amended to read as follows:

7 78.180 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall  
8 reinstate a corporation which has forfeited its right to transact business under the provisions of  
9 this chapter and restore to the corporation its right to carry on business in this state, and to  
10 exercise its corporate privileges and immunities, if it:

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

12 (b) Pays to the secretary of state:

13 (1) The annual filing fee and penalty set forth in NRS ~~[78.150 and]~~ 78.170 *and section 3*  
14 *of this act* for each year or portion thereof during which its charter was revoked; and

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

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

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

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



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

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

6 **Sec. 10.** NRS 78.215 is hereby amended to read as follows:

7 78.215 1. A corporation may issue and dispose of its authorized shares for such  
8 consideration as may be prescribed in the articles of incorporation or, if no consideration is so  
9 prescribed, then for such consideration as may be fixed by the board of directors.

10 2. ~~If a consideration is prescribed for shares without par value, that consideration must not~~  
11 ~~be used to determine the fees required for filing articles of incorporation pursuant to NRS~~  
12 ~~78.760.~~

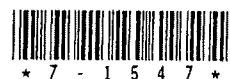
13 ~~—3.]~~ Unless the articles of incorporation provide otherwise, shares may be issued pro rata and  
14 without consideration to the corporation's stockholders or to the stockholders of one or more  
15 classes or series. An issuance of shares under this subsection is a share dividend.

16 ~~[4.]~~ 3. Shares of one class or series may not be issued as a share dividend in respect of  
17 shares of another class or series unless:

18 (a) The articles of incorporation so authorize;

19 (b) A majority of the votes entitled to be cast by the class or series to be issued approve the  
20 issue; or

21 (c) There are no outstanding shares of the class or series to be issued.





1     ~~{5-}~~ 4. If the board of directors does not fix the record date for determining stockholders  
2 entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

3     Sec. 11. NRS 78.300 is hereby amended to read as follows:

4     78.300 1. The directors of a corporation shall not make distributions to stockholders  
5 except as provided by this chapter.

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

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

19     Sec. 12. NRS 78.7502 is hereby amended to read as follows:

20     78.7502 1. A corporation may indemnify any person who was or is a party or is threatened  
21 to be made a party to any threatened, pending or completed action, suit or proceeding, whether



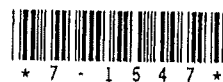
1 civil, criminal, administrative or investigative, except an action by or in the right of the  
2 corporation, by reason of the fact that he is or was a director, officer, employee or agent of the  
3 corporation, or is or was serving at the request of the corporation as a director, officer, employee  
4 or agent of another corporation, partnership, joint venture, trust or other enterprise, against  
5 expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and  
6 reasonably incurred by him in connection with the action, suit or proceeding if he ~~acted~~ :

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

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

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

17 2. A corporation may indemnify any person who was or is a party or is threatened to be  
18 made a party to any threatened, pending or completed action or suit by or in the right of the  
19 corporation to procure a judgment in its favor by reason of the fact that he is or was a director,  
20 officer, employee or agent of the corporation, or is or was serving at the request of the  
21 corporation as a director, officer, employee or agent of another corporation, partnership, joint



1 venture, trust or other enterprise against expenses, including amounts paid in settlement and  
2 attorneys' fees actually and reasonably incurred by him in connection with the defense or  
3 settlement of the action or suit if he ~~acted~~ :

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

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

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

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

18 Sec. 13. NRS 78.760 is hereby amended to read as follows:

19 78.760 ~~[1.]~~ The fee for filing articles of incorporation is ~~[prescribed in the following~~  
20 ~~schedule:~~



1 If the amount represented by the total number of shares provided for in the articles  
2 or agreement is:

3 \$25,000 or less ..... \$125

4 Over \$25,000 and not over \$75,000 ..... 175

5 Over \$75,000 and not over \$200,000 ..... 225

6 Over \$200,000 and not over \$500,000 ..... 325

7 Over \$500,000 and not over \$1,000,000 ..... 425

8 Over \$1,000,000:

9 — For the first \$1,000,000 ..... 425

10 — For each additional \$500,000 or fraction thereof ..... 225

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

12 — (a) The original filing of articles of incorporation;

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

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

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

19 — (b) The product of the number of shares multiplied by \$1, regardless of any lesser amount  
20 prescribed as the value or consideration for which shares may be issued and disposed of, if only  
21 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.~~



1 ~~3. The fee for filing a certificate or an amended certificate pursuant to NRS 78.1955 is \$75.]~~  
2 *is \$125.*

3 Sec. 15. NRS 78.767 is hereby amended to read as follows:

4 78.767 ~~{1.}~~ The fee for filing a certificate of restated articles of incorporation ~~{that does~~  
5 ~~not increase the corporation's authorized stock is \$75.~~

6 ~~2. The fee for filing a certificate of restated articles of incorporation that increases the~~  
7 ~~corporation's authorized stock is the difference between the fee computed pursuant to NRS~~  
8 ~~78.760 based upon the total authorized stock of the corporation, including the proposed increase,~~  
9 ~~and the fee computed pursuant to NRS 78.760 based upon the total authorized stock of the~~  
10 ~~corporation, excluding the proposed increase. In no case may the amount be less than \$75.] is~~  
11 *\$125.*

12 Sec. 16. NRS 78.780 is hereby amended to read as follows:

13 78.780 1. The fee for filing a certificate of extension of corporate existence of any  
14 corporation is ~~{an amount equal to one fourth of the fee computed at the rates specified in NRS~~  
15 ~~78.760 for filing articles of incorporation.}~~ *\$175.*

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

18 Sec. 17. NRS 78.785 is hereby amended to read as follows:

19 78.785 1. The fee for filing a certificate of change of location of a corporation's registered  
20 office and resident agent, or a new designation of resident agent, is ~~[\$15.]~~ *\$30.*

21 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.



1     **Sec. 18.** Chapter 80 of NRS is hereby amended by adding thereto a new section to read as  
2 follows:

3     **1. Except as otherwise provided in this section, the fee for filing the initial or annual list**  
4 **required to be paid pursuant to NRS 80.110 must be determined as follows:**

5     **If the amount of the net worth of the foreign corporation in Nevada is:**

6     **Not more than \$40,000..... \$150**

7     **More than \$40,000..... \$150, plus an amount equal**  
8 **to 0.35 percent of its net**  
9 **worth in Nevada in excess of**  
10 **\$40,000**

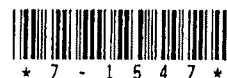
11    **2. The maximum fee that may be charged pursuant to this section is \$50,000 per year.**

12    **3. To determine the net worth of a foreign corporation in Nevada for the purposes of this**  
13 **section, the dollar amount of the assets of the foreign corporation that are situated in or**  
14 **allocated to this state must be divided by the dollar amount of the total assets of the**  
15 **corporation, and the result of that calculation must be multiplied by the dollar amount of the**  
16 **total net worth of the corporation.**

17    **4. If the secretary of state determines that the amount of any fee paid pursuant to**  
18 **subsection 1 is not based on the true net worth of the foreign corporation in Nevada, he may**  
19 **compute and determine the amount required to be paid upon the basis of:**

20    **(a) The information required to be filed pursuant to NRS 80.110; and**

21    **(b) Any other information obtained by the secretary of state from any source.**





1       5. *In addition to any other penalty provided by law, any foreign corporation that fails to*  
2 *pay the fee provided for in this section is liable for the payment of a penalty equal to treble the*  
3 *difference between the amount paid and the amount that was required to be paid by this*  
4 *section.*

5       Sec. 19. NRS 80.050 is hereby amended to read as follows:

6       80.050 1. Except as otherwise provided in subsection ~~[3,]~~ 2, foreign corporations shall pay  
7 the same fees to the secretary of state as are required to be paid by corporations organized  
8 pursuant to the laws of this state. ~~[, but the amount of fees to be charged must not exceed:~~

9 ~~—(a) The sum of \$25,000 for filing documents for initial qualification; or~~

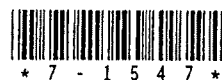
10 ~~—(b) The sum of \$25,000 for each subsequent filing of a certificate increasing authorized~~  
11 ~~capital stock.~~

12 ~~—2. If the corporate documents required to be filed set forth only the total number of shares of~~  
13 ~~stock the corporation is authorized to issue without reference to value, the authorized shares shall~~  
14 ~~be deemed to be without par value and the filing fee must be computed pursuant to paragraph (b)~~  
15 ~~of subsection 3 of NRS 78.760.~~

16 ~~—3.]~~ 2. Foreign corporations which are nonprofit corporations and do not have or issue shares  
17 of stock shall pay the same fees to the secretary of state as are required to be paid by nonprofit  
18 corporations organized pursuant to the laws of this state.

19       ~~[4.]~~ 3. The fee for filing a notice of withdrawal from the State of Nevada by a foreign  
20 corporation is ~~[\$30.]~~ \$60.

21       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]~~ *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



1 NRS 80.110 to 80.170, inclusive, *and section 18 of this act* which has not become delinquent,  
2 the blank forms to be completed and filed with him. Failure of any corporation to receive the  
3 forms does not excuse it from the penalty imposed by the provisions of NRS 80.110 to 80.170,  
4 inclusive ~~[,]~~, *and section 18 of this act.*

5 4. An annual list for a corporation not in default which is received by the secretary of state  
6 more than 60 days before its due date shall be deemed an amended list for the previous year and  
7 does not satisfy the requirements of subsection 1 for the year to which the due date is applicable.

8 Sec. 21. NRS 80.120 is hereby amended to read as follows:

9 80.120 If a corporation has filed the initial or annual list ~~[of officers and directors and~~  
10 ~~designation of resident agent]~~ in compliance with NRS 80.110 and has paid the appropriate fee  
11 for the filing, the canceled check received by the corporation constitutes a certificate authorizing  
12 it to transact its business within this state until the last day of the month in which the anniversary  
13 of its qualification to transact business occurs in the next succeeding calendar year. If the  
14 corporation desires a formal certificate upon its payment of the initial or annual fee, its payment  
15 must be accompanied by a self-addressed, stamped envelope.

16 Sec. 22. NRS 80.150 is hereby amended to read as follows:

17 80.150 1. Any corporation required to make a filing and pay the fee prescribed in NRS  
18 80.110 to 80.170, inclusive, *and section 18 of this act* which refuses or neglects to do so within  
19 the time provided, is in default.

20 2. For default there must be added to the amount of the fee a penalty of ~~[\$15.]~~ \$50, and  
21 unless the filing is made and the fee and penalty are paid on or before the first day of the ninth



1 month following the month in which filing was required, the defaulting corporation by reason of  
2 its default forfeits its right to transact any business within this state. The fee and penalty must be  
3 collected as provided in this chapter.

4 **Sec. 23.** NRS 80.170 is hereby amended to read as follows:

5 80.170 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall  
6 reinstate a corporation which has forfeited or which forfeits its right to transact business under  
7 the provisions of this chapter and restore to the corporation its right to transact business in this  
8 state, and to exercise its corporate privileges and immunities if it:

9 (a) Files with the secretary of state a list ~~[of officers and directors]~~ as provided in NRS  
10 80.110 and 80.140; and

11 (b) Pays to the secretary of state:

12 (1) The annual filing fee and penalty set forth in NRS ~~[80.110 and]~~ 80.150 *and section 18*  
13 *of this act* for each year or portion thereof that its right to transact business was forfeited; and

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

15 2. If payment is made and the secretary of state reinstates the corporation to its former rights  
16 , he shall:

17 (a) Immediately issue and deliver to the corporation so reinstated a certificate of  
18 reinstatement authorizing it to transact business in the same manner as if the filing fee had been  
19 paid when due; and

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



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

4        4. If the right of a corporation to transact business in this state has been forfeited pursuant to  
5 the provisions of NRS 80.160 and has remained forfeited for a period of 5 consecutive years, the  
6 right is not subject to reinstatement.

7        **Sec. 24.** NRS 81.060 is hereby amended to read as follows:

8        81.060 1. The articles of incorporation must be:

9        (a) Subscribed by three or more of the original members, a majority of whom must be  
10 residents of this state.

11        (b) Filed, together with a certificate of acceptance of appointment executed by the resident  
12 agent of the corporation, in the office of the secretary of state in all respects in the same manner  
13 as other articles of incorporation are filed.

14        2. If a corporation formed under NRS 81.010 to 81.160, inclusive, is authorized to issue  
15 stock, there must be paid to the secretary of state for filing the articles of incorporation ~~[the fee~~  
16 ~~applicable to the amount of authorized stock of the corporation which the secretary of state is~~  
17 ~~required by law to collect upon the filing of articles of incorporation which authorize the~~  
18 ~~issuance of stock.] a fee of \$175.~~

19        3. The secretary of state shall issue to the corporation over the great seal of the state a  
20 certificate that a copy of the articles containing the required statements of facts has been filed in  
21 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.*



1     4. *If the secretary of state determines that the amount of any fee paid pursuant to*  
2     *subsection 1 is not based on the true net worth of the limited-liability company in Nevada, he*  
3     *may compute and determine the amount required to be paid upon the basis of:*

4         (a) *The information required to be filed pursuant to NRS 86.263; and*

5         (b) *Any other information obtained by the secretary of state from any source.*

6     5. *In addition to any other penalty provided by law, any limited-liability company that*  
7     *fails to pay the fee provided for in this section is liable for the payment of a penalty equal to*  
8     *treble the difference between the amount paid and the amount that was required to be paid by*  
9     *this section.*

10    Sec. 26. NRS 86.263 is hereby amended to read as follows:

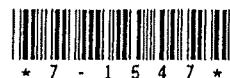
11    86.263 1. A limited-liability company shall, on or before the ~~[last]~~ first day of the second  
12    month ~~[in which the anniversary date of its formation occurs,]~~ after the filing of its articles of  
13    organization with the secretary of state, file with the secretary of state, on a form furnished by  
14    him, a list ~~[containing:]~~ that contains:

15         (a) The name of the limited-liability company;

16         (b) The file number of the limited-liability company, if known;

17         (c) The names and titles of all of its managers or, if there is no manager, all of its managing  
18    members;

19         (d) The mailing or street address, either residence or business, of each manager or managing  
20    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.~~





1 ~~—4.] the fee prescribed by section 25 of this act.~~

2 5. The secretary of state shall, 60 days before the last day for filing the list required by  
3 subsection ~~[1.]~~ 2, cause to be mailed to each limited-liability company required to comply with  
4 the provisions of this section, which has not become delinquent, a notice of the fee due under  
5 subsection ~~[3.]~~ 4 and a reminder to file a list ~~[of managers or managing members or a certification~~  
6 ~~of no change.]~~ *required by subsection 2.* Failure of any company to receive a notice or form does  
7 not excuse it from the penalty imposed by law.

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

11 ~~[6.]~~ 7. An annual list for a limited-liability company not in default received by the secretary  
12 of state more than 60 days before its due date shall be deemed an amended list for the previous  
13 year.

14 **Sec. 27.** NRS 86.266 is hereby amended to read as follows:

15 86.266 If a limited-liability company has filed the *initial or* annual list ~~[of managers or~~  
16 ~~members and designation of a resident agent]~~ in compliance with NRS 86.263 and has paid the  
17 appropriate fee for the filing, the canceled check received by the limited-liability company  
18 constitutes a certificate authorizing it to transact its business within this state until the last day of  
19 the month in which the anniversary of its formation occurs in the next succeeding calendar year.  
20 If the company desires a formal certificate upon its payment of the annual fee, its payment must  
21 be accompanied by a self-addressed, stamped envelope.



1      **Sec. 28.** NRS 86.272 is hereby amended to read as follows:

2      86.272    1. Each limited-liability company required to make a filing *as required by NRS*  
3      ~~86.263~~ and pay the fee prescribed in ~~[NRS 86.263]~~ *section 25 of this act* which refuses or  
4      neglects to do so within the time provided is in default.

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

7      **Sec. 29.** NRS 86.276 is hereby amended to read as follows:

8      86.276    1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall  
9      reinstate any limited-liability company which has forfeited its right to transact business under the  
10     provisions of this chapter and restore to the company its right to carry on business in this state,  
11     and to exercise its privileges and immunities, if it:

12     (a) Files with the secretary of state the list required by NRS 86.263; and

13     (b) Pays to the secretary of state:

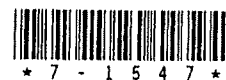
14     (1) The annual filing fee and penalty set forth in NRS ~~[86.263 and]~~ 86.272 *and section 25*  
15     *of this act* for each year or portion thereof during which its charter has been revoked; and

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

17     2. When the secretary of state reinstates the limited-liability company, he shall:

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

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



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

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

6        **Sec. 30.** NRS 86.561 is hereby amended to read as follows:

7        86.561 1. The secretary of state shall charge and collect for:

8        (a) Filing the original articles of organization, or for registration of a foreign company,  
9 ~~[\$125;]~~ \$175;

10        (b) Amending or restating the articles of organization, or amending the registration of a  
11 foreign company, ~~[\$75;]~~ \$125;

12        (c) Filing the articles of dissolution of a domestic or foreign company, ~~[\$30;]~~ \$60;

13        (d) Filing a statement of change of address of a records or registered office, or change of the  
14 resident agent, ~~[\$15;]~~ \$30;

15        (e) Certifying articles of organization or an amendment to the articles, in both cases where a  
16 copy is provided, ~~[\$10;]~~ \$20;

17        (f) Certifying an authorized printed copy of this chapter, ~~[\$10;]~~ \$20;

18        (g) Reserving a name for a limited-liability company, \$20;

19        (h) Executing, filing or certifying any other document, ~~[\$20;]~~ \$40; and

20        (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*



1 *partnership, and the result of that calculation must be multiplied by the dollar amount of the*  
2 *total net worth of the partnership.*

3 *4. If the secretary of state determines that the amount of any fee paid pursuant to*  
4 *subsection 1 is not based on the true net worth of the registered limited-liability partnership in*  
5 *Nevada, he may compute and determine the amount required to be paid upon the basis of:*

6 *(a) The information required to be filed pursuant to NRS 87.510; and*

7 *(b) Any other information obtained by the secretary of state from any source.*

8 *5. In addition to any other penalty provided by law, any registered limited-liability*  
9 *partnership that fails to pay the fee provided for in this section is liable for the payment of a*  
10 *penalty equal to treble the difference between the amount paid and the amount that was*  
11 *required to be paid by this section.*

12 **Sec. 32.** NRS 87.440 is hereby amended to read as follows:

13 **87.440** 1. To become a registered limited-liability partnership, a partnership shall file with  
14 the secretary of state a certificate of registration stating each of the following:

15 (a) The name of the partnership.

16 (b) The street address of its principal office.

17 (c) The name of the person designated as the partnership's resident agent, the street address  
18 of the resident agent where process may be served upon the partnership and the mailing address  
19 of the resident agent if it is different than his street address.

20 (d) The name and business address of each managing partner in this state.

21 (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.



1     **Sec. 34.** NRS 87.470 is hereby amended to read as follows:

2     87.470 The registration of a registered limited-liability partnership is effective until:

3         1. Its certificate of registration is revoked pursuant to NRS 87.520; or

4         2. The registered limited-liability partnership files with the secretary of state a written notice  
5 of withdrawal executed by a managing partner. The notice must be accompanied by a fee of  
6 ~~[\$30.]~~ \$60.

7     **Sec. 35.** NRS 87.490 is hereby amended to read as follows:

8     87.490 1. If a registered limited-liability partnership wishes to change the location of its  
9 principal office in this state or its resident agent, it shall first file with the secretary of state a  
10 certificate of change that sets forth:

11         (a) The name of the registered limited-liability partnership;

12         (b) The street address of its principal office;

13         (c) If the location of its principal office will be changed, the street address of its new  
14 principal office;

15         (d) The name of its resident agent; and

16         (e) If its resident agent will be changed, the name of its new resident agent.

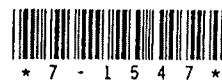
17     The certificate of acceptance of its new resident agent must accompany the certificate of change.

18         2. A certificate of change filed pursuant to this section must be:

19             (a) Signed by a managing partner of the registered limited-liability partnership; and

20             (b) Accompanied by a fee of ~~[\$15.]~~ \$30.

21     **Sec. 36.** NRS 87.510 is hereby amended to read as follows:



1        87.510 1. A registered limited-liability partnership shall ~~[annually,]~~, *on or before the first*  
2 *day of the second month after the filing of its certificate of registration with the secretary of*  
3 *state, and annually thereafter* on or before the last day of the month in which the anniversary  
4 date of the filing of its certificate of registration ~~[of limited partnership]~~ with the secretary of  
5 state occurs, file with the secretary of state, on a form furnished by him, a list ~~[containing:]~~ *that*  
6 *contains:*

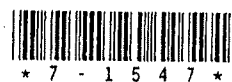
7        (a) The name of the registered limited-liability partnership;  
8        (b) The file number of the registered limited-liability partnership, if known;  
9        (c) The names of all of its managing partners;  
10       (d) The mailing or street address, either residence or business, of each managing partner;  
11 ~~[and]~~

12       (e) *The total assets of the registered limited-liability partnership as reported on its federal*  
13 *income tax return for the preceding calendar year;*

14       (f) *The amount of its assets reported pursuant to paragraph (e) that are situated in or*  
15 *allocated to this state;*

16       (g) *The total net worth of the limited-liability partnership as reported on its federal income*  
17 *tax return for the preceding calendar year; and*

18       (h) The signature of a managing partner of the registered limited-liability partnership  
19 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*  
2     *registered limited-liability partnership has complied with the provisions of chapter 364A of*  
3     *NRS.*

4     2. Upon filing the list ~~[of managing partners,]~~ *required by subsection 1*, the registered  
5     limited-liability partnership shall pay to the secretary of state ~~[a fee of \$85.]~~ *the fee prescribed*  
6     *by section 31 of this act.*

7     3. The secretary of state shall, at least 60 days before the last day for filing the annual list  
8     required by subsection 1, cause to be mailed to the registered limited-liability partnership a  
9     notice of the fee due pursuant to subsection 2 and a reminder to file the annual list ~~[of managing~~  
10    ~~partners.]~~ *required by subsection 1*. The failure of any registered limited-liability partnership to  
11    receive a notice or form does not excuse it from complying with the provisions of this section.

12    4. If the list to be filed pursuant to the provisions of subsection 1 is defective, or the fee  
13    required by subsection 2 is not paid, the secretary of state may return the list for correction or  
14    payment.

15    5. An annual list that is filed by a registered limited-liability partnership which is not in  
16    default more than 60 days before it is due shall be deemed an amended list for the previous year  
17    and does not satisfy the requirements of subsection 1 for the year to which the due date is  
18    applicable.

19    Sec. 37. NRS 87.520 is hereby amended to read as follows:

20    87.520 1. A registered limited-liability partnership that fails to comply with the provisions  
21    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.

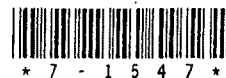
**Sec. 38.** NRS 87.530 is hereby amended to read as follows:

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*



1 *this state must be divided by the dollar amount of the total assets of the partnership, and the*  
2 *result of that calculation must be multiplied by the dollar amount of the total net worth of the*  
3 *partnership.*

4 4. *If the secretary of state determines that the amount of any fee paid pursuant to*  
5 *subsection 1 is not based on the true net worth of the limited partnership in Nevada, he may*  
6 *compute and determine the amount required to be paid upon the basis of:*

7 (a) *The information required to be filed pursuant to NRS 88.395; and*

8 (b) *Any other information obtained by the secretary of state from any source.*

9 5. *In addition to any other penalty provided by law, any limited partnership that fails to*  
10 *pay the fee provided for in this section is liable for the payment of a penalty equal to treble the*  
11 *difference between the amount paid and the amount that was required to be paid by this*  
12 *section.*

13 Sec. 41. NRS 88.395 is hereby amended to read as follows:

14 88.395 1. A limited partnership shall ~~annually,~~ *on or before the first day of the second*  
15 *month after the filing of its certificate of limited partnership with the secretary of state, and*  
16 *annually thereafter* on or before the last day of the month in which the anniversary date of the  
17 filing of its certificate of limited partnership occurs, file with the secretary of state, on a form  
18 furnished by him, a list ~~containing:~~ *that contains:*

19 (a) The name of the limited partnership;

20 (b) The file number of the limited partnership, if known;

21 (c) The names of all of its general partners;



1 (d) The mailing or street address, either residence or business, of each general partner; ~~{and}~~

2 (e) *The total assets of the limited partnership as reported on its federal income tax return*  
3 *for the preceding calendar year;*

4 (f) *The amount of its assets reported pursuant to paragraph (e) that are situated in or*  
5 *allocated to this state;*

6 (g) *The total net worth of the limited partnership as reported on its federal income tax*  
7 *return for the preceding calendar year; and*

8 (h) The signature of a general partner of the limited partnership certifying that the list is true,  
9 complete and accurate.

10 *Each list filed pursuant to this subsection must be accompanied by an affidavit that the limited*  
11 *partnership has complied with the provisions of chapter 364A of NRS.*

12 2. Upon filing the list ~~{of general partners,}~~ *required by subsection 1,* the limited  
13 partnership shall pay to the secretary of state ~~{a fee of \$85,}~~ *the fee prescribed by section 40 of*  
14 *this act.*

15 3. The secretary of state shall, 60 days before the last day for filing the *annual* list required  
16 by subsection 1, cause to be mailed to each limited partnership required to comply with the  
17 provisions of this section which has not become delinquent a notice of the fee due pursuant to the  
18 provisions of subsection 2 and a reminder to file the annual list. Failure of any limited  
19 partnership to receive a notice or form does not excuse it from the penalty imposed by NRS  
20 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:



1 88.410 1. Except as otherwise provided in subsections 3 and 4, the secretary of state may:

2 (a) Reinstate any limited partnership which has forfeited its right to transact business; and

3 (b) Restore to the limited partnership its right to carry on business in this state, and to  
4 exercise its privileges and immunities,

5H upon the filing with the secretary of state of the list required pursuant to NRS 88.395, and upon  
6 payment to the secretary of state of the annual filing fee and penalty set forth in NRS ~~88.395~~  
7 ~~and~~ 88.400 *and section 40 of this act* for each year or portion thereof during which the  
8 certificate has been revoked, and a fee of ~~[\$50]~~ \$200 for reinstatement.

9 2. When payment is made and the secretary of state reinstates the limited partnership to its  
10 former rights, he shall:

11 (a) Immediately issue and deliver to the limited partnership a certificate of reinstatement  
12 authorizing it to transact business as if the filing fee had been paid when due; and

13 (b) Upon demand, issue to the limited partnership one or more certified copies of the  
14 certificate of reinstatement.

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

18 4. If a limited partnership's certificate has been revoked pursuant to the provisions of this  
19 chapter and has remained revoked for a period of 5 years, the certificate must not be reinstated.

20 Sec. 44. NRS 88.415 is hereby amended to read as follows:





1 88.415 The secretary of state, for services relating to his official duties and the records of  
2 his office, shall charge and collect the following fees:

3 1. For filing a certificate of limited partnership, or for registering a foreign limited  
4 partnership, ~~[\$125.]~~ \$175.

5 2. For filing a certificate of amendment of limited partnership or restated certificate of  
6 limited partnership, ~~[\$75.]~~

7 ~~—3. For filing a reinstated certificate of limited partnership, \$50.~~

8 ~~—4. For filing the annual list of general partners and designation of a resident agent, \$85.~~

9 ~~—5.] \$125.~~

10 3. For filing a certificate of a change of location of the records office of a limited  
11 partnership or the office of its resident agent, or a designation of a new resident agent, ~~[\$15.]~~

12 ~~—6.] \$30.~~

13 4. For certifying a certificate of limited partnership, an amendment to the certificate, or a  
14 certificate as amended where a copy is provided, ~~[\$10]~~ \$20 per certification.

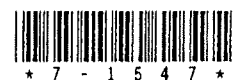
15 ~~—[7.] 5.~~ For certifying an authorized printed copy of the limited partnership law, ~~[\$10.]~~

16 ~~—8.] \$20.~~

17 6. For reserving a limited partnership name, or for executing, filing or certifying any other  
18 document, \$20.

19 ~~[9.]~~ 7. For copies made at the office of the secretary of state, \$1 per page.

20 ~~[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  
2 chapter.

3 **Sec. 45.** Chapter 88A of NRS is hereby amended by adding thereto a new section to read as  
4 follows:

5 *1. Except as otherwise provided in this section, the fee for filing the initial or annual list*  
6 *required to be paid pursuant to NRS 88A.600 must be determined as follows:*

7 *If the amount of the net worth of the business trust in Nevada is:*

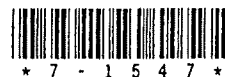
8 *Not more than \$40,000..... \$150*

9 *More than \$40,000..... \$150, plus an amount equal*  
10 *to 0.35 percent of its net*  
11 *worth in Nevada in excess of*  
12 *\$40,000*

13 *2. The maximum fee that may be charged pursuant to this section is \$50,000 per year.*

14 *3. To determine the net worth of a business trust in Nevada for the purposes of this*  
15 *section, the dollar amount of the assets of the business trust that are situated in or allocated to*  
16 *this state must be divided by the dollar amount of the total assets of the business trust, and the*  
17 *result of that calculation must be multiplied by the dollar amount of the total net worth of the*  
18 *business trust.*

19 *4. If the secretary of state determines that the amount of any fee paid pursuant to*  
20 *subsection 1 is not based on the true net worth of the business trust in Nevada, he may*  
21 *compute and determine the amount required to be paid upon the basis of:*



1 (a) *The information required to be filed pursuant to NRS 88A.600; and*

2 (b) *Any other information obtained by the secretary of state from any source.*

3 5. *In addition to any other penalty provided by law, any business trust that fails to pay the*  
4 *fee provided for in this section is liable for the payment of a penalty equal to treble the*  
5 *difference between the amount paid and the amount that was required to be paid by this*  
6 *section.*

7 Sec. 46. NRS 88A.600 is hereby amended to read as follows:

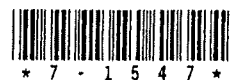
8 88A.600 1. A business trust formed pursuant to this chapter shall ~~{annually,}~~ , *on or*  
9 *before the first day of the second month after the filing of its certificate of trust with the*  
10 *secretary of state, and annually thereafter* on or before the last day of the month in which the  
11 anniversary date of the filing of its certificate of trust with the secretary of state occurs, file with  
12 the secretary of state , on a form furnished by him , a list signed by at least one trustee  
13 ~~{containing the}~~ *that contains:*

14 (a) *The name and mailing address of its resident agent and at least one trustee [-];*

15 (b) *The total assets of the business trust as reported on its federal income tax return for the*  
16 *preceding calendar year;*

17 (c) *The amount of its assets reported pursuant to paragraph (b) that are situated in or*  
18 *allocated to this state; and*

19 (d) *The total net worth of the business trust as reported on its federal income tax return for*  
20 *the preceding calendar year.*



SH Each list filed pursuant to this subsection must be accompanied by an affidavit that the  
2 business trust has complied with the provisions of chapter 364A of NRS.

3 2. Upon filing the list, the business trust shall pay to the secretary of state ~~the fee of \$85.~~  
4 ~~—2.] the fee prescribed by section 45 of this act.~~

5 3. The secretary of state shall, 60 days before the last day for filing the annual list required  
6 by subsection 1, cause to be mailed to each business trust which is required to comply with the  
7 provisions of NRS 88A.600 to 88A.660, inclusive, *and section 45 of this act* and which has not  
8 become delinquent, the blank forms to be completed and filed with him. Failure of a business  
9 trust to receive the forms does not excuse it from the penalty imposed by law.

10 ~~[3.]~~ 4. An annual list for a business trust not in default which is received by the secretary of  
11 state more than 60 days before its due date shall be deemed an amended list for the previous  
12 year.

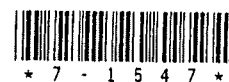
13 Sec. 47. NRS 88A.630 is hereby amended to read as follows:

14 88A.630 1. Each business trust required to file the ~~[annual]~~ list and pay the fee prescribed  
15 in NRS 88A.600 to 88A.660, inclusive, *and section 45 of this act* which refuses or neglects to do  
16 so within the time provided shall be deemed in default.

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

19 Sec. 48. NRS 88A.650 is hereby amended to read as follows:

20 88A.650 1. Except as otherwise provided in subsection 3, the secretary of state shall  
21 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

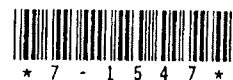
(b) Upon demand, issue to the business trust one or more certified copies of the certificate of reinstatement.

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:

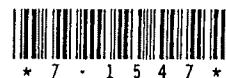
88A.900 The secretary of state shall charge and collect the following fees for:

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 *the difference between the amount paid and the amount that was required to be paid by this*  
2 *section.*

3 **Sec. 51.** NRS 89.210 is hereby amended to read as follows:

4 89.210 1. Within 30 days ~~[following]~~ *after* the organization of a professional association  
5 under this chapter, the association shall file with the secretary of state a copy of the articles of  
6 association, duly executed, and shall pay at that time a filing fee of ~~[\$25.]~~ *\$175*. Any such  
7 association formed as a common law association before July 1, 1969, shall file, within 30 days  
8 ~~[of]~~ *after* July 1, 1969, a certified copy of its articles of association, with any amendments  
9 thereto, with the secretary of state, and shall pay at that time a filing fee of \$25. A copy of any  
10 amendments to the articles of association adopted after July 1, 1969, must also be filed with the  
11 secretary of state within 30 days after the adoption of such amendments. Each copy of  
12 amendments so filed must be certified as true and correct and be accompanied by a filing fee of  
13 ~~[\$10.]~~ *\$125*.

14 2. The name of such a professional association must contain the words "Professional  
15 Association," "Professional Organization" or the abbreviations "Prof. Ass'n" or "Prof. Org." The  
16 association may render professional services and exercise its authorized powers under a fictitious  
17 name if the association has first registered the name in the manner required under chapter 602 of  
18 NRS.

19 **Sec. 52.** NRS 89.250 is hereby amended to read as follows:

20 89.250 1. A professional association shall, *on or before the first day of the second month*  
21 *after the filing of its articles of association with the secretary of state, and annually thereafter*





1 on or before the last day of the month in which the anniversary date of its organization occurs in  
2 each year, furnish a statement to the secretary of state ~~[showing the]~~ *that contains:*

3 (a) *The names and residence addresses of all members and employees in ~~[such association]~~*  
4 *and the association;*

5 (b) *The total assets of the professional association as reported on its federal income tax*  
6 *return for the preceding calendar year;*

7 (c) *The amount of its assets reported pursuant to paragraph (b) that are situated in or*  
8 *allocated to this state; and*

9 (d) *The total net worth of the professional association as reported on its federal income tax*  
10 *return for the preceding calendar year.*

11 *Each list filed pursuant to this subsection must be accompanied by an affidavit that the*  
12 *professional association has complied with the provisions of chapter 364A of NRS.*

13 2. *The professional association* shall certify that all members and employees are licensed to  
14 render professional service in this state.

15 ~~[2.]~~ 3. The statement must:

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

18 (b) Be signed by the chief executive officer of the association.

19 ~~[3.]~~ 4. Upon filing the ~~[annual]~~ statement required by this section, the association shall pay  
20 to the secretary of state ~~[a fee of \$15.~~

21 ~~—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:

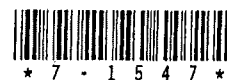
89.256 1. Except as otherwise provided in subsections 3 and 4, the secretary of state shall reinstate any professional association which has forfeited its right to transact business under the provisions of this chapter and restore the right to carry on business in this state and exercise its privileges 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:

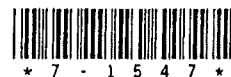
92A.210 The fee for filing articles of merger, articles of exchange or articles of termination is ~~[\$125.]~~ \$175.

**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,



1 and shall set a date for a meeting of the units' owners to consider ratification of the budget not  
2 less than 14 nor more than 30 days after mailing of the summary. Unless at that meeting a  
3 majority of all units' owners or any larger vote specified in the declaration reject the budget, the  
4 budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the  
5 periodic budget last ratified by the units' owners must be continued until such time as the units'  
6 owners ratify a subsequent budget proposed by the executive board.

7 **Sec. 58.** NRS 600.340 is hereby amended to read as follows:

8 600.340 1. A person who has adopted and is using a mark in this state may file in the  
9 office of the secretary of state, on a form to be furnished by the secretary of state, an application  
10 for registration of that mark setting forth, but not limited to, the following information:

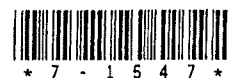
11 (a) Whether the mark to be registered is a trade-mark, trade name or service mark;

12 (b) A description of the mark by name, words displayed in it ~~it~~ or other information;

13 (c) The name and business address of the person applying for the registration and, if it is a  
14 corporation, limited-liability company, limited partnership or registered limited-liability  
15 partnership, the state of incorporation or organization;

16 (d) The specific goods or services in connection with which the mark is used and the mode or  
17 manner in which the mark is used in connection with those goods or services and the class as  
18 designated by the secretary of state which includes those goods or services;

19 (e) The date when the mark was first used anywhere and the date when it was first used in  
20 this state by the applicant or his predecessor in business which must precede the filing of the  
21 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:



1        600.360 1. The registration of a mark is effective for 5 years from the date of registration  
2 and, upon application filed within 6 months before the expiration of that period, on a form to be  
3 furnished by the secretary of state, the registration may be renewed for a successive period of 5  
4 years. A renewal fee of ~~[\$25.]~~ \$50, payable to the secretary of state, must accompany the  
5 application for renewal of the registration.

6        2. The registration of a mark may be renewed for additional successive 5-year periods if the  
7 requirements of subsection 1 are satisfied.

8        3. The secretary of state shall give notice to each registrant when his registration is about to  
9 expire. The notice must be given within the year next preceding the expiration date, by writing to  
10 the registrant's last known address.

11       4. All applications for renewals must include a statement that the mark is still in use in this  
12 state.

13       **Sec. 61.** NRS 600.370 is hereby amended to read as follows:

14       600.370 1. A mark and its registration are assignable with the good will of the business in  
15 which the mark is used, or with that part of the good will of the business connected with the use  
16 of and symbolized by the mark. An assignment must:

17       (a) Be in writing;

18       (b) Be signed and acknowledged by the registrant or his successor or a member of the firm or  
19 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,



1 director or officer has actually committed fraud in connection with the debt or liability in  
2 question.

3 **Sec. 65.** Sections 2, 4, 5, 11, 12, 57 and 64 of this act do not apply to any cause of action  
4 that accrues before the effective date of this section.

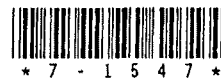
5 **Sec. 66.** Notwithstanding the provisions of section 67 of this act to the contrary, the  
6 amendatory provisions of sections 3, 6, 18, 20, 25, 26, 31, 36, 40, 41, 45, 46, 50 and 52 of this  
7 act do not apply to the filing of the list of an entity, or the fee for that filing, before August 1,  
8 2001, except that an entity whose anniversary date for the 2001 calendar year falls on or after  
9 August 1, 2001, shall comply with those sections as added or amended by this act, even if the  
10 filing is made before August 1, 2001.

11 **Sec. 67.** 1. This section and sections 1 to 7, inclusive, 11, 12, 18, 20, 21, 25, 26, 27, 31,  
12 36, 40, 41, 45, 46, 50, 52, 57, and 64, 65 and 66 of this act become effective upon passage and  
13 approval.

14 2. Sections 8, 9, 10, 13 to 17, inclusive, 19, 22, 23, 24, 28, 29, 30, 32 to 35, inclusive, 37,  
15 38, 39, 42, 43, 44, 47, 48, 49, 51, 53 to 56, inclusive, and 58 to 63, inclusive, of this act become  
16 effective:

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

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



1  
2  
3 **TEXT OF REPEALED SECTION**  
4  
5

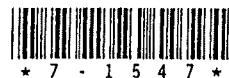
6 **78.770 Filing fees: Articles of merger; articles of exchange.**

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

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

16 3. -- In no case may the amount paid be less than \$125, and in no case may the amount paid  
17 pursuant to subsection 2 exceed \$25,000.

18 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 MCGINNISSE

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)

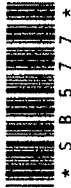
FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

EXPLANATION - Matter in *bolded italics* is new; matter between brackets ~~permitted 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:

- 1 Section 1. Chapter 78 of NRS is hereby amended by adding thereto a  
2 new section to read as follows:  
3 *1. Except as otherwise provided by specific statute, no stockholder,  
4 director or officer of a corporation formed under the laws of this state is  
5 individually liable for a debt or liability of the corporation, without  
6 regard to whether a court determines that the stockholder, director or  
7 officer should be considered the alter ego of the corporation or that the  
8 corporate fiction of a separate entity should be disregarded for any other  
9 reason, unless:*  
10 *(a) Otherwise provided in an agreement to which the stockholder,*  
11 *director or officer is a party; or*  
12 *(b) A court of competent jurisdiction finds by clear and convincing*  
13 *evidence that:*  
14 *(1) The corporation is influenced and governed by the stockholder,*  
15 *director or officer;*



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(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.

~~Any~~ any provision, not contrary to the laws of this state ~~to~~ 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 ~~to 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:

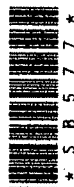
78.138 1. Directors and officers shall exercise their powers in good faith and with a view to the interests of the corporation.

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.



\* 5 8 5 7 7 \*

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;

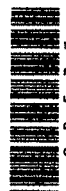
(d) The mailing or street address, either residence or business, of each officer and director listed, following the name of the officer or director; and

(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:



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(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.

4-1 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.

4-1 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.

4-1 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.

4-1 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.

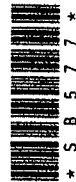
Sec. 6. NRS 78.170 is hereby amended to read as follows:

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:

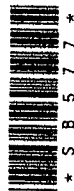
78.300 1. The directors of a corporation shall not make distributions to stockholders except as provided by this chapter.

2. ~~Not~~ Except as otherwise provided in subsection 3 and NRS 78.138, in case of any ~~fraudulent 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, ~~that~~ *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~~ *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.*

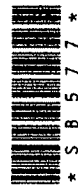
Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent 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



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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.

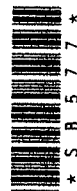
4. The secretary of state shall calculate filing fees pursuant to this section with respect to shares with a par value of less than one-tenth of a cent as if the par value were one-tenth of a cent.

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.*



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**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 ~~§75.1~~ **\$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 ~~§75.1~~ **\$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 ~~§30.1~~ **\$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 ~~§15.1~~ **\$30.**

2. The fee for certifying articles of incorporation where a copy is provided is ~~§10.1~~ **\$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 ~~§10.1~~ **\$20.**

4. The fee for certifying an authorized printed copy of the general corporation law as compiled by the secretary of state is ~~§10.1~~ **\$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 ~~§15.1~~ **\$30.**

7. The fee for executing a certificate of corporate existence which lists the previous documents relating to the corporation is ~~§20.1~~ **\$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 ~~§20.1~~ **\$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 ~~§78.770.1~~ **924.210** 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.



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**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 ~~§30.1~~ **\$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 ~~§1~~ **a list**, on a form furnished by him, ~~that contains:~~

(a) ~~The names of its president, secretary and treasurer or their equivalent, and all of its directors~~ ~~and~~ **;**

(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.**

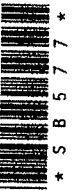
2. Upon filing ~~the list and designation~~ **;**

(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



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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 \$15.00, 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 for reinstatement.

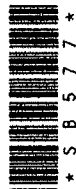
2. If payment is made and the secretary of state reinstates the corporation to its former rights, he shall:

(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



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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 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.

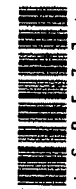
4. Upon filing the list of managers or managing members:

(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.

5. The secretary of state shall, 60 days before the last day for filing the list required by subsection 1, 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 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.

6. If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective or the fee required by subsection 4 is not paid, the secretary of state may return the list for correction or payment.



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1 ~~6.7~~ 7. An annual list for a limited-liability company not in default  
2 received by the secretary of state more than 60 days before its due date  
3 shall be deemed an amended list for the previous year.

4 Sec. 21. NRS 86.266 is hereby amended to read as follows:

5 86.266 If a limited-liability company has filed the *initial* or annual list  
6 ~~of managers or members and designation of a resident agent~~ in  
7 compliance with NRS 86.263 and has paid the appropriate fee for the  
8 filing, the canceled check received by the limited-liability company  
9 constitutes a certificate authorizing it to transact its business within this  
10 state until the last day of the month in which the anniversary of its  
11 formation occurs in the next succeeding calendar year. If the company  
12 desires a formal certificate upon its payment of the annual fee, its payment  
13 must be accompanied by a self-addressed, stamped envelope.

14 Sec. 22. NRS 86.272 is hereby amended to read as follows:

15 86.272 1. Each limited-liability company required to make a filing  
16 and pay the fee prescribed in NRS 86.263 which refuses or neglects to do  
17 so within the time provided is in default.

18 2. For default there must be added to the amount of the fee a penalty of  
19 ~~\$15.50~~ \$50. The fee and penalty must be collected as provided in this  
20 chapter.

21 Sec. 23. NRS 86.276 is hereby amended to read as follows:

22 86.276 1. Except as otherwise provided in subsections 3 and 4, the  
23 secretary of state shall reinstate any limited-liability company which has  
24 forfeited its right to transact business under the provisions of this chapter  
25 and restore to the company its right to carry on business in this state, and to  
26 exercise its privileges and immunities, if it:

27 (a) Files with the secretary of state the list required by NRS 86.263; and  
28 (b) Pays to the secretary of state:

29 (1) The ~~annual~~ filing fee and penalty set forth in NRS 86.263 and  
30 86.272 for each year or portion thereof during which its charter has been  
31 revoked; and

32 (2) A fee of ~~\$50.50~~ \$200 for reinstatement.

33 2. When the secretary of state reinstates the limited-liability company,  
34 he shall:

35 (a) Immediately issue and deliver to the company a certificate of  
36 reinstatement authorizing it to transact business as if the filing fee had been  
37 paid when due; and

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

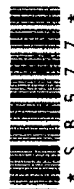
40 3. The secretary of state shall not order a reinstatement unless all  
41 delinquent fees and penalties have been paid, and the revocation of the  
42 charter occurred only by reason of failure to pay the fees and penalties.

43 4. If a company's charter has been revoked pursuant to the provisions  
44 of this chapter and has remained revoked for a period of 5 consecutive  
45 years, the charter must not be reinstated.

46 Sec. 24. NRS 86.561 is hereby amended to read as follows:

47 86.561 1. The secretary of state shall charge and collect for:

48 (a) Filing the original articles of organization, or for registration of a  
49 foreign company, ~~\$125.50~~ \$175;



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1 (b) Amending or restating the articles of organization, or amending the  
2 registration of a foreign company, ~~\$75.50~~ \$150;

3 (c) Filing the articles of dissolution of a domestic or foreign company,  
4 ~~\$30.50~~ \$60;

5 (d) Filing a statement of change of address of a records or registered  
6 office, or change of the resident agent, ~~\$15.50~~ \$30;

7 (e) Certifying articles of organization or an amendment to the articles,  
8 in both cases where a copy is provided, ~~\$10.50~~ \$20;

9 (f) Certifying an authorized printed copy of this chapter, ~~\$10.50~~ \$20;

10 (g) Reserving a name for a limited-liability company, \$20;

11 (h) Executing, filing or certifying any other document, ~~\$20.50~~ \$40; and

12 (i) Copies made at the office of the secretary of state, \$1 per page.

13 2. The secretary of state shall charge and collect at the time of any  
14 service of process on him as agent for service of process of a limited-  
15 liability company, \$10 which may be recovered as taxable costs by the  
16 party to the action causing the service to be made if the party prevails in  
17 the action.

18 3. Except as otherwise provided in this section, the fees set forth in  
19 NRS 78.785 apply to this chapter.

20 Sec. 25. NRS 87.440 is hereby amended to read as follows:

21 87.440 1. To become a registered limited-liability partnership, a  
22 partnership shall file with the secretary of state a certificate of registration  
23 stating each of the following:

24 (a) The name of the partnership.

25 (b) The street address of its principal office.

26 (c) The name of the person designated as the partnership's resident  
27 agent, the street address of the resident agent where process may be served  
28 upon the partnership and the mailing address of the resident agent if it is  
29 different than his street address.

30 (d) The name and business address of each managing partner in this  
31 state.

32 (e) A brief statement of the professional service rendered by the  
33 partnership.

34 (f) That the partnership thereafter will be a registered limited-liability  
35 partnership.

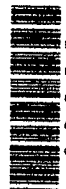
36 (g) Any other information that the partnership wishes to include.

37 2. The certificate of registration must be executed by a majority in  
38 interest of the partners or by one or more partners authorized to execute  
39 such a certificate.

40 3. The certificate of registration must be accompanied by a fee of  
41 ~~\$125.50~~ \$175.

42 4. The secretary of state shall register as a registered limited-liability  
43 partnership any partnership that submits a completed certificate of  
44 registration with the required fee.

45 5. The registration of a registered limited-liability partnership is  
46 effective at the time of the filing of the certificate of registration.



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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

1 a managing partner, that its certificate of registration is revoked and the  
2 amount of any fees and penalties that are due.

3 Sec. 31. NRS 87.530 is hereby amended to read as follows:

4 87.530 1. Except as otherwise provided in subsection 3, the secretary  
5 of state shall reinstate the certificate of registration of a registered limited-  
6 liability partnership that is revoked pursuant to NRS 87.520 if the  
7 registered limited-liability partnership:

8 (a) Files with the secretary of state the information required by NRS  
9 87.510; and

10 (b) Pays to the secretary of state:

11 (1) The fee required to be paid by that section;

12 (2) Any penalty required to be paid pursuant to NRS 87.520; and

13 (3) A reinstatement fee of ~~§50~~ **\$200**.

14 2. Upon reinstatement of a certificate of registration pursuant to this  
15 section, the secretary of state shall:

16 (a) Deliver to the registered limited-liability partnership a certificate of  
17 reinstatement authorizing it to transact business retroactively from the date  
18 the fee required by NRS 87.510 was due; and

19 (b) Upon request, issue to the registered limited-liability partnership one  
20 or more certified copies of the certificate of reinstatement.

21 3. The secretary of state shall not reinstate the certificate of registration  
22 of a registered limited-liability partnership if the certificate was revoked  
23 pursuant to NRS 87.520 at least 5 years before the date of the proposed  
24 reinstatement.

25 Sec. 32. NRS 87.550 is hereby amended to read as follows:

26 87.550 In addition to any other fees required by NRS 87.440 to  
27 87.540, inclusive, and 87.560, the secretary of state shall charge and collect  
28 the following fees for services rendered pursuant to those sections:

29 1. For certifying documents required by NRS 87.440 to 87.540,  
30 inclusive, and 87.560, ~~§10~~ **\$20** per certification.

31 2. For executing a certificate verifying the existence of a registered  
32 limited-liability partnership, if the registered limited-liability partnership  
33 has not filed a certificate of amendment, ~~§15~~ **\$30**.

34 3. For executing a certificate verifying the existence of a registered  
35 limited-liability partnership, if the registered limited-liability partnership  
36 has filed a certificate of amendment, ~~§20~~ **\$40**.

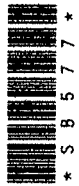
37 4. For executing, certifying or filing any certificate or document not  
38 required by NRS 87.440 to 87.540, inclusive, and 87.560, ~~§20~~ **\$40**.

39 5. For any copies made by the office of the secretary of state, \$1 per  
40 page.

41 6. For examining and provisionally approving any document before  
42 the document is presented for filing, \$100.

43 Sec. 33. NRS 88.395 is hereby amended to read as follows:

44 88.395 1. A limited partnership shall ~~annually~~, **on or before the**  
45 **first day of the second month after the filing of its certificate of limited**  
46 **partnership with the secretary of state, and annually thereafter** on or  
47 before the last day of the month in which the anniversary date of the filing  
48 of its certificate of limited partnership occurs, file with the secretary of  
49 state, on a form furnished by him, a list ~~containing~~ **that contains:**



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1 (a) The name of the limited partnership;

2 (b) The file number of the limited partnership, if known;

3 (c) The names of all of its general partners;

4 (d) The mailing or street address, either residence or business, of each  
5 general partner; and

6 (e) The signature of a general partner of the limited partnership  
7 certifying that the list is true, complete and accurate.

8 **Each list filed pursuant to this subsection must be accompanied by an**  
9 **affidavit that the limited partnership has complied with the provisions of**  
10 **chapter 364A of NRS.**

11 2. Upon filing ~~the list of general partners~~:

12 (a) **The initial list required by subsection 1, the limited partnership**  
13 **shall pay to the secretary of state a fee of \$165.**

14 (b) **Each annual list required by subsection 1, the limited partnership**  
15 **shall pay to the secretary of state a fee of \$85.**

16 3. The secretary of state shall, 60 days before the last day for filing  
17 ~~the~~ **each annual** list required by subsection 1, cause to be mailed to each  
18 limited partnership required to comply with the provisions of this section  
19 which has not become delinquent a notice of the fee due pursuant to the  
20 provisions of subsection 2 and a reminder to file the annual list. Failure of  
21 any limited partnership to receive a notice or form does not excuse it from  
22 the penalty imposed by NRS 88.400.

23 4. If the list to be filed pursuant to the provisions of subsection 1 is  
24 defective or the fee required by subsection 2 is not paid, the secretary of  
25 state may return the list for correction or payment.

26 5. An annual list for a limited partnership not in default that is received  
27 by the secretary of state more than 60 days before its due date shall be  
28 deemed an amended list for the previous year and does not satisfy the  
29 requirements of subsection 1 for the year to which the due date is  
30 applicable.

31 Sec. 34. NRS 88.400 is hereby amended to read as follows:

32 88.400 1. If a corporation has filed the list in compliance with NRS  
33 88.395 and has paid the appropriate fee for the filing, the canceled check  
34 received by the limited partnership constitutes a certificate authorizing it to  
35 transact its business within this state until the anniversary date of the filing  
36 of its certificate of limited partnership in the next succeeding calendar year.  
37 If the limited partnership desires a formal certificate upon its payment of  
38 the annual fee, its payment must be accompanied by a self-addressed,  
39 stamped envelope.

40 2. Each limited partnership which refuses or neglects to file the list and  
41 pay the fee within the time provided is in default.

42 3. For default there must be added to the amount of the fee a penalty of  
43 ~~§15~~ **\$50**, and unless the filings are made and the fee and penalty are paid  
44 on or before the first day of the ninth month following the month in which  
45 filing was required, the defaulting limited partnership, by reason of its  
46 default, forfeits its right to transact any business within this state.

47 Sec. 35. NRS 88.410 is hereby amended to read as follows:

48 88.410 1. Except as otherwise provided in subsections 3 and 4, the  
49 secretary of state may:



\* S B 5 7 7 \*

(a) Reinstatement 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 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 \$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.

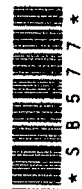
4. For certifying a certificate of limited partnership, an amendment to the certificate, or a certificate as amended where a copy is provided, \$10 per \$20 per certification.

5. For certifying an authorized printed copy of the limited partnership law, \$10.

8. For reserving a limited partnership name, or for executing, filing or certifying any other document, \$20.

7. For copies made at the office of the secretary of state, \$1 per page.

8. For filing a certificate of cancellation of a limited partnership, \$30. \$60.



\* S B 5 7 7 \*

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 ~~featuring~~ 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.*

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.

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:

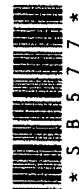
(a) Files with the secretary of state the list ~~and designation~~ required by NRS 88A.600; and

(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:



\* S B 5 7 7 \*

(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.**

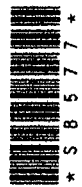
12. Examining and provisionally approving a document before the document is presented for filing, **\$100.**

13. Copying a document on file with him, for each page, **\$1.**

Sec. 41. NRS 89.210 is hereby amended to read as follows:

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 ~~left~~ **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



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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:

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 ~~each 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.

(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.}~~ **\$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:

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.

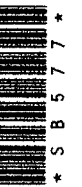
2. For default, there must be added to the amount of the fee a penalty of ~~§5.}~~ **\$50.** The fee and penalty must be collected as provided in this chapter.

Sec. 44. NRS 89.256 is hereby amended to read as follows:

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:



\* S B 5 7 7 \*



(1) The ~~fees~~ 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



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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 exchange or articles of termination is \$125.~~

1. ~~Except as otherwise provided in this section, the fee for filing articles of merger, articles of exchange or articles of termination is \$125.~~

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.~~

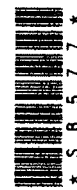
4. ~~The fee for filing articles of merger of two or more domestic or foreign corporations must not be less than \$325. The amount paid pursuant to subsection 3 must not exceed \$25,000.~~

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 116.3103]~~ 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



\* S B 5 7 7 \*

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.



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(2) Access to his computer data base on which records are stored.

13. 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 \$500, \$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



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1 inaccurate in any respect without materially altering the mark, the  
2 registrant shall promptly file in the office of the secretary of state a  
3 certificate, signed by the registrant or his successor or by a member of the  
4 firm or an officer of the corporation or association to which the mark is  
5 registered, correcting the statement.

6 2. Upon the filing of a certificate of amendment or judicial decree of  
7 amendment and the payment of a filing fee of ~~§30.1~~ \$60, the secretary of  
8 state shall issue, in accordance with NRS 600.350, an amended certificate  
9 of registration for the remainder of the period of the registration.

10 Sec. 51. NRS 600.360 is hereby amended to read as follows:

11 600.360 1. The registration of a mark is effective for 5 years from  
12 the date of registration and, upon application filed within 6 months before  
13 the expiration of that period, on a form to be furnished by the secretary of  
14 state, the registration may be renewed for a successive period of 5 years. A  
15 renewal fee of ~~§25.1~~ \$50, payable to the secretary of state, must  
16 accompany the application for renewal of the registration.

17 2. The registration of a mark may be renewed for additional successive  
18 5-year periods if the requirements of subsection 1 are satisfied.

19 3. The secretary of state shall give notice to each registrant when his  
20 registration is about to expire. The notice must be given within the year  
21 next preceding the expiration date, by writing to the registrant's last known  
22 address.

23 4. All applications for renewals must include a statement that the mark  
24 is still in use in this state.

25 Sec. 52. NRS 600.370 is hereby amended to read as follows:

26 600.370 1. A mark and its registration are assignable with the good  
27 will of the business in which the mark is used, or with that part of the good  
28 will of the business connected with the use of and symbolized by the mark.  
29 An assignment must:

30 (a) Be in writing;

31 (b) Be signed and acknowledged by the registrant or his successor or a  
32 member of the firm or an officer of the corporation or association under  
33 whose name the mark is registered; and

34 (c) Be recorded with the secretary of state upon the payment of a fee of  
35 ~~§50.1~~ \$100 to the secretary of state who, upon recording the assignment,  
36 shall issue in the name of the assignee a certificate of assignment for the  
37 remainder of the period of the registration.

38 2. An assignment of any registration is void as against any subsequent  
39 purchaser for valuable consideration without notice, unless:

40 (a) The assignment is recorded with the secretary of state within  
41 3 months after the date of the assignment; or

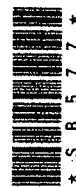
42 (b) The assignment is recorded before the subsequent purchase.

43 Sec. 53. NRS 600.395 is hereby amended to read as follows:

44 600.395 The fee for filing a cancellation of registration pursuant to  
45 NRS 600.390 is ~~§25.1~~ \$50.

46 Sec. 54. NRS 78.770 is hereby repealed.

47 Sec. 55. It is the intent of the legislature in enacting section 1 of this  
48 act to codify the equitable doctrine of the common law known as "piercing  
49 the corporate veil," "alter ego" or "disregarding the corporate fiction." In



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1 codifying this equitable doctrine, the legislature intends for the provisions  
2 of section 1 of this act to preempt entirely the equitable doctrine as it exists  
3 in the common law on the effective date of section 1 of this act. Further, it  
4 is the intent of the legislature to change the equitable doctrine, pursuant to  
5 section 1 of this act, so that a stockholder, director or officer of a  
6 corporation may not be made individually liable for a debt or liability of  
7 the corporation unless, among other findings, the court finds that the  
8 stockholder, director or officer has actually committed fraud in connection  
9 with the debt or liability in question.

10 Sec. 56. Sections 1, 2, 3, 8, 9, 47 and 55 of this act do not apply to any  
11 cause of action that accrues before the effective date of this section.

12 Sec. 57. Notwithstanding the provisions of section 59 of this act to the  
13 contrary, the amendatory provisions of section 42 of this act do not apply  
14 to the filing of the statement of a professional association, or the fee for  
15 that filing, before August 1, 2001, except that a professional association  
16 whose anniversary date for the 2001 calendar year falls on or after August  
17 1, 2001, shall comply with that section as amended by this act, even if the  
18 filing is made before August 1, 2001.

19 Sec. 58. The state treasurer shall transfer any balance remaining  
20 unexpended on June 30, 2001, in the account for special services of the  
21 secretary of state to the state general fund.

22 Sec. 59. 1. This section and sections 1, 2, 3, 8, 9, 47, 55, 56 and  
23 57 of this act become effective upon passage and approval.

24 2. Sections 4 to 7, inclusive, 10 to 41, inclusive, 43 to 46, inclusive,  
25 49 to 54, inclusive, and 58 of this act become effective:

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

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

30 3. Section 48 of this act becomes effective at 12:01 a.m. on July 1,  
31 2001.

32 4. Section 42 of this act becomes effective:

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

36 (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.



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**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

Senate Committee on Judiciary  
May 25, 2001  
Page 2

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.

Senate Committee on Judiciary  
May 25, 2001  
Page 15

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

Senate Committee on Judiciary  
May 25, 2001  
Page 22


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.

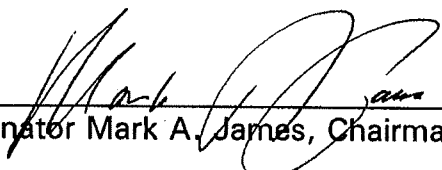
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Chairman James announced he would present Senate Bill 577 on the Senate Floor. He adjourned the meeting at 4:58 p.m.

RESPECTFULLY SUBMITTED:

  
Ann Bednarski,  
Committee Secretary

APPROVED BY:

  
Senator Mark A. James, Chairman

DATE: 5-30-01

## 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 for 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~~]

3576



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*

**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"

Presented by Nevada Trial Lawyers May 25, 2001

Section 1. Chapter 78 of NRS is hereby amended by adding thereto a  
1-2 new section to read as follows:

1-3 ~~1. Except as otherwise provided by specific statute, no stockholder,~~  
1-4 ~~director or officer of a corporation formed under the laws of this state is~~  
1-5 ~~individually liable for a debt or liability of the corporation, without~~  
1-6 ~~regard to whether a court determines that the stockholder, director or~~  
1-7 ~~officer should be considered the alter ego of the corporation or that the~~  
1-8 ~~corporate fiction of a separate entity should be disregarded for any other~~  
1-9 ~~reason, unless:~~

1-10 ~~(a) Otherwise provided in an agreement to which the~~  
~~stockholder,~~

1-11 ~~director or officer is a party; or~~

1-12 ~~(b) A court of competent jurisdiction finds by clear and~~  
~~convincing~~

1-13 ~~evidence that:~~

1-14 ~~(1) The corporation is influenced and governed by the~~  
~~stockholder,~~

1-15 ~~director or officer;~~

3579

2-1 ~~(2) There is such unity of interest and ownership that the~~  
2-2 ~~corporation and the stockholder, director or officer are~~  
2-3 ~~inseparable from~~

2-4 ~~each other; and~~

2-5 ~~(3) Adherence to the corporate fiction of a separate entity~~  
2-6 ~~would~~

2-7 ~~sanction fraud.~~

2-8 ~~2. For a court to make a finding in satisfaction of~~  
2-9 ~~subparagraph (3)~~

2-10 ~~of paragraph (b) of subsection 1, the court must find that the~~

2-11 ~~stockholder, director or officer has committed fraud in~~  
2-12 ~~connection with~~

2-13 ~~the debt or liability of the corporation.~~

2-14 Sec. 2. NRS 78.037 is hereby amended to read as follows:

2-15 78.037 The articles of incorporation may also contain:

2-16 1. A provision eliminating or limiting the personal liability of a

2-17 director or officer to the corporation or its stockholders for damages for

2-18 breach of fiduciary duty as a director or officer, but such a provision must

2-19 not eliminate or limit the liability of a director or officer for:

2-20 (a) Acts or omissions which involve intentional misconduct, fraud or a

2-21 knowing violation of law; or

2-22 (b) The payment of distributions in violation of NRS 78.300.

2-23 2. Any ~~any~~ provision, not contrary to the laws of this state~~, for~~ :

2-24 1. For the management of the business and for the conduct of the

2-25 affairs of the corporation~~, and any provision creating,~~ ;

2-26 2. Creating, defining, limiting or regulating the powers of the

2-27 corporation or the rights, powers or duties of the directors, ~~and~~ the

2-28 officers or the stockholders, or any class of the stockholders, or the

2-29 holders

2-30 of bonds or other obligations of the corporation~~, or governing~~ ; or

2-31 3. Governing the distribution or division of the profits of the

2-32 corporation.

2-33 Sec. 3. NRS 78.138 is hereby amended to read as follows:

2-34 78.138 1. Directors and officers shall exercise their powers in good

2-35 faith and with a view to the interests of the corporation.

2-36 2. In performing their respective duties, directors and officers are

2-37 entitled to rely on information, opinions, reports, books of account or

2-38 statements, including financial statements and other financial data, that

2-39 are

2-34 prepared or presented by:

2-35 (a) One or more directors, officers or employees of the corporation  
2-36 reasonably believed to be reliable and competent in the matters prepared  
or

2-37 presented;

2-38 (b) Counsel, public accountants, *financial advisers, valuation advisers,*  
2-39 *investment bankers* or other persons as to matters reasonably believed to  
2-40 be within the preparer's or presenter's professional or expert competence;  
2-41 or

2-42 (c) A committee on which the director or officer relying thereon does  
2-43 not serve, established in accordance with NRS 78.125, as to matters  
within

2-44 the committee's designated authority and matters on which the committee  
2-45 is reasonably believed to merit confidence,

2-46 but a director or officer is not entitled to rely on such information,  
2-47 opinions, reports, books of account or statements if he has knowledge  
2-48 concerning the matter in question that would cause reliance thereon to be  
2-49 unwarranted.

**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.

Senate Committee on Finance  
May 26, 2001  
Page 28

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.

Senate Committee on Judiciary  
May 26, 2001  
Page 2

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.

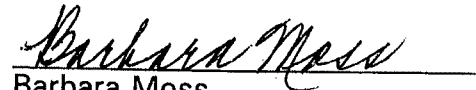
SENATOR MCGINNESS SECONDED THE MOTION.

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

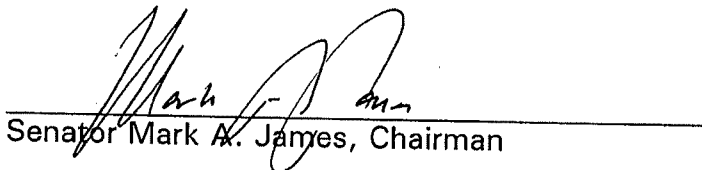
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The meeting was adjourned at 2:43 p.m.

RESPECTFULLY SUBMITTED:

  
Barbara Moss,  
Committee Secretary

APPROVED BY:

  
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.

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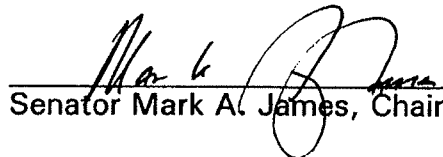
Senate Committee on Judiciary  
May 26, 2001  
Page 2

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

5-26-01

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: