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## Nevada Legislature Reinforces Internal Affairs Doctrine and Emphasizes Transparency in 2017 Business Law Amendments

The 79th Session of the Nevada Legislature enacted several meaningful amendments to Title 7 of the Nevada Revised Statutes (NRS), which governs business entities, including corporations, limited liability companies and limited partnerships. The changes became effective as of October 1, 2017.

### **Internal Affairs Doctrine and the Fiduciary Duties of Corporate Directors and Officers**

Nevada has long distinguished itself from other popular corporate domiciles, primarily Delaware, by codifying the fiduciary duties of corporate directors and officers. The provisions of Nevada's fiduciary duties statutes, NRS 78.138 and 78.139, provide a concise and accessible framework for corporate leaders, without the need to consult and decipher an ever-growing body of case law. However, it is not uncommon for case law from other jurisdictions (including cases embodying principles previously and repeatedly rejected by the Nevada Legislature in the NRS) to be misapplied to Nevada corporations. In Senate Bill No. 203, the Nevada Legislature took a clear policy position to address this issue and help ensure that Nevada corporations will, in fact, be governed by the law of their chosen domicile.

Under Senate Bill No. 203, new provisions are added to NRS Chapter 78, governing for-profit corporations, expressly stating:

- The laws of the State of Nevada govern the incorporation and internal affairs of a Nevada corporation and the rights, privileges, powers, duties and liabilities, if any, of its directors, officers and stockholders.
- The plain meaning of the laws enacted by the Nevada Legislature in the NRS, 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.
- While directors and officers of a Nevada corporation may be informed by the laws and judicial decisions of other jurisdictions and the practices observed by business entities in any such jurisdiction, 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.

The remainder of the bill clarifies, confirms and bolsters existing Nevada law under NRS 78.138 and 78.139 regarding the fiduciary duties of corporate directors and officers, the general applicability of the business judgment rule (even in the change of control context) and the strict requirements necessary to establish personal liability on the part of a corporate director or officer.

### **Initial and Annual Lists**

Other amendments to NRS Title 7 impact transparency regarding the management of Nevada business entities. Under the new legislation:

- An entity organized under the laws of the State of Nevada must file its initial list at the time that the domestic entity files its organizational documents with the Secretary of State.

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- A foreign entity must file the initial list at the time that the foreign entity registers with the Secretary of State to transact business in this State.

However, if an entity files an amended list within 60 days after the filing of its initial list, the Secretary of State must not charge a fee for filing that amended list. While this may not be particularly burdensome for LLCs, whose initial members (if member-managed) or initial managers (if manager-managed) must have been named in the articles of organization, a practical difficulty could result for corporations, which now must list initial officers at the time of the filing of the articles of incorporation, essentially requiring the initial officers to be elected at the time of the corporation's formation, rather than later at the initial board meeting or by an organizational board consent.

### **Series LLCs**

NRS Chapter 86, governing limited liability companies (LLCs), has been amended with respect to several matters relating to series LLCs. The amendments:

- Require an LLC, if the company intends to create one or more series, to include in its articles of organization a statement to that effect;
- Clarify that a series may purchase, own and convey property in the name of the series, as an asset of the series;
- Specify the persons who are authorized to bind a series to an instrument or record providing for the acquisition, mortgage or disposition of property by the series;
- Expand the powers of a series to authorize a series to sue and be sued in its own name, make contracts in its own name and purchase, own and convey property;
- Clarify that the liabilities of a series are enforceable only against the assets of that series and not against the assets of the company or any other series if: (1) the articles of organization contain a statement indicating that the company is authorized to have one or more series; (2) separate and distinct records are maintained for each series and the assets associated with each series are held and accounted for separately; and (3) the articles of organization or operating agreement indicate that the liabilities with respect to a particular series are enforceable against only the assets of that series;
- Provide that if the articles of organization or operating agreement of an LLC create one or more series, the company's registered agent is deemed to be the registered agent of any series of the company.

NRS Chapter 602 has also been amended to provide that a series of an LLC is deemed to be doing business under an assumed name if the name of the series does not indicate that it is a series and identify the name of the LLC.

### **Other Notable Amendments**

Other amendments include:

- Elimination of the exemption from obtaining a state business license (and related fee) for motion picture companies; and
- Prohibition of a person from adopting a fictitious name which imitates or causes another person to reasonably believe the fictitious name is the name of, or a name associated with, a government, governmental agency,

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political subdivision of a government, federally recognized Indian tribe or nation or any other governmental entity found within this State, another state or the United States.

The corporate transactional and litigation lawyers in Brownstein Hyatt Farber Schreck's Las Vegas and Reno offices understand the distinctive aspects and advantages of Nevada's business laws and possess broad experience in the application of Nevada's business laws to a wide range of corporate matters, whether in the boardroom or the courtroom. In addition, Brownstein has a proven track record of helping clients navigate the maze of politics and policy in Nevada, across the West and in Washington, D.C. We understand that successful representation means our clients need advocates who understand both complex legal issues and the intricacies of political issues and opportunities. Our deep background representing clients before the Office of the Governor, the Nevada Legislature, the Nevada Attorney General's Office, and the Nevada Department of Taxation, among other administrative agencies, gives us the experience to develop and execute winning strategies on behalf of our clients.

If you have any questions about how Nevada's business laws could affect you, or how Nevada may provide an advantageous alternative to other jurisdictions, please contact [Ellen Schulhofer](#), [Albert Kovacs](#), [Kirk Lenhard](#), [Mitch Langberg](#) or [Alisa Nave-Worth](#).

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