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Business Associations and Professions; Takeover Bids- Requirements for Corporations

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counsel¹⁸ prior to the revocation of the right of the foreign corporation to transact business in Nevada.¹⁹

18. *Id.* §233B.121 3.

19. *See id.* §§80.030 3, 233B.121.

Business Associations and Professions; takeover bids— requirements for corporations

N.R.S. §§78.030, 78.035, 78.283, 78.780, 78.3771, 78.3772 (amended).
SB 359 (Committee on Judiciary); STATS 1981, Ch 417
(*Effective May 30, 1981*)
SB 438 (Committee on Judiciary); STATS 1981, Ch 748

The regulation of takeover bids¹ under existing Nevada law requires the disclosure of specified information² by the offeror prior to initiating a takeover bid by filing a statement with the resident agent³ of the offeree corporation.⁴ Prior to the enactment of Chapter 417, the statement had to be filed at least thirty days before the making of a takeover bid.⁵ Chapter 417 now provides for the statement, *and a public announcement* of the material included in the statement,⁶ to be made at least *twenty* days before the making of a takeover bid.⁷ The offeror may not specify at this time, however, the amount of securities sought or the consideration that will be offered for the securities.⁸ A statement detailing the amount of consideration and the number of securities sought, however, must be filed with the resident agent of the offeree corporation at least four business days before the takeover bid is made.⁹

Chapter 417 also revises certain time requirements relating to the takeover bid.¹⁰ Prior law specified that shares deposited by offerees in

1. *See generally* N.R.S. §78.377.

2. *Id.* §78.3771 1(a), (b), (c), (e), (f) (requires disclosure of the name, address, and business experience of the offeror and each business associate of the offeror; requires disclosure of the terms and conditions of the bid, the source of the money or other consideration to be used in making the bid, the number of offeror's presently owned shares, and information concerning additional contracts, arrangements, or understandings with any person with respect to securities of the offeree corporation).

3. *See generally id.* §§78.090, 78.095.

4. *Id.* §78.3771 1.

5. *See id.*

6. *See id.*

7. *See id.*

8. *See id.* §78.3771 1(b).

9. *See id.* §78.3771 2.

10. *See id.* §78.3772.

response to a takeover bid, either with the offeror corporation itself or in a specified depository,¹¹ had to be deposited no more than thirty-five days from the date of the first invitation to deposit shares.¹² Chapter 417 now allows a minimum of ten and a maximum of sixty days for the deposit.¹³ In contrast to the ten day period allowed by prior law for the withdrawal of deposited shares,¹⁴ an offeree or his or her attorney-in-fact may now withdraw shares deposited pursuant to a takeover bid at any time within seven days from the date of the first invitation to deposit shares.¹⁵ This results in an apparent anomaly since an offeree who *must* deposit shares ten days after the first invitation to deposit is inherently foreclosed from withdrawing those shares at any time after seven days from the invitation to deposit. Under existing law, if a greater number of shares are deposited in response to a takeover bid than are requested by the offeror, unless the offeror is required or willing to purchase a certain number, the amount of shares purchased by the offeror must be taken on a pro-rata basis according to the number of shares deposited within ten days after the first publication of the takeover bid.¹⁶ Chapter 417 expressly authorizes the offeror to purchase the excess shares within a longer period of time if specified in the takeover bid or in an amendment to the bid.¹⁷

Chapter 748 also amends the statutory definition of treasury shares, which are defined as those shares issued and thereafter reacquired by the corporation.¹⁸ These shares do not carry voting or dividend rights, and are not counted as outstanding shares for any purpose.¹⁹ Shares either directly or indirectly acquired by the corporation or a wholly owned subsidiary of the corporation are now also considered treasury shares.²⁰

In addition, Chapter 748 reduces the number of persons needed for the creation of a corporation from not less than three to one or more.²¹ Finally, existing law requires a \$20 fee for filing a certificate of dissolution of a corporation.²² Chapter 748 expressly makes this fee payable whether dissolution occurs before or after the payment of capital and

11. See STATUTES OF NEVADA 1979, c. 409, §5, at 717 (amending N.R.S. §78.3772).

12. See *id.*

13. N.R.S. §78.3772 1.

14. STATUTES OF NEVADA 1979, c. 409, §5, at 717.

15. N.R.S. §78.3772 2.

16. STATUTES OF NEVADA 1979, c. 409, §5, at 717.

17. N.R.S. §78.3772 3.

18. *Id.* §78.283 1.

19. See *id.* §78.283 2.

20. See *id.* §78.283 1.

21. Compare *id.* §78.030 1 with STATUTES OF NEVADA 1979, c. 280, §71, at 394.

22. See STATUTES OF NEVADA 1951, c. 275, §1, at 394 (amending N.R.S. §78.780).

beginning of business.²³

23. N.R.S. §78.780 2.

Business Associations and Professions; motor vehicle franchises

N.R.S. §§482.36351, 482.3636, 482.36365, 482.36415, 482.3642 (repealed); §§482.— - 482.— (new); §§482.36311, 482.3634, 482.36411, 482.36425 (amended).

SB 543 (Committee on Commerce and Labor); STATS 1981, Ch 383

Prior to the enactment of Chapter 383, a manufacturer¹ or distributor of motor vehicles could not terminate, refuse to continue, or modify a dealer's franchise² unless the dealer gave written consent³ or was given notice.⁴ Similarly, existing law provides that a manufacturer or distributor may not enter into a franchise establishing an additional dealership within the relevant market area⁵ of another dealer of the same line and make of automobile without giving written notice to each dealer of that line and make within the relevant market area and the Director of the Department of Motor Vehicles (hereinafter referred to as the Director).⁶ Prior law allowed the dealer to apply to the district court for an injunction restraining any change in the franchise agreement after receiving notice of the intended action from the manufacturer or the distributor.⁷ At the hearing the manufacturer or distributor had the burden of proving that good cause existed for the termination, modification,⁸ establishment, or relocation of a franchise.⁹

In *Desert Chrysler-Plymouth v. Chrysler Corporation*,¹⁰ the Nevada Supreme Court found that various statutory provisions allowing the district courts to determine whether good cause existed for a manufacturer's or distributor's intended termination, modification, establish-

1. N.R.S. §482.060 (definition of manufacturer).

2. *Id.* §482.36323 (definition of franchise).

3. *See* STATUTES OF NEVADA 1977, c. 295, §9, at 554 (enacting N.R.S. §482.36351).

4. *See id.*

5. *See* N.R.S. §482.3634 (definition of relevant market area). *Compare id. with* STATUTES OF NEVADA 1977, c. 295, §7, at 554 (enacting N.R.S. §482.3634) (Chapter 383 restricts the relevant market area to the area within a radius of 10 miles of an existing dealer who sells vehicles of the same line and make).

6. N.R.S. §482.— 1(a), (b).

7. *See* STATUTES OF NEVADA 1977, c. 295, §11, at 554 (enacting N.R.S. §482.3636).

8. *See id.*

9. *See id.* 1977, c. 295, §12, at 555 (enacting N.R.S. §482.36365).

10. 95 Nev. 640, 600 P.2d 1189 (1979).