

1 SENATE BILL 254

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Clemente Sanchez

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9  
10 AN ACT

11 RELATING TO BUSINESS ENTITIES; PROVIDING FOR THE REGISTRATION  
12 OF ALTERNATE BUSINESS ENTITY NAMES.

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 53-8-7 NMSA 1978 (being Laws 1975,  
16 Chapter 217, Section 7) is amended to read:

17 "53-8-7. CORPORATE NAME.--The corporate name and, if  
18 different, the name under which the corporation proposes to  
19 transact business in New Mexico, shall not:

20 A. [~~shall not~~] contain any word or phrase [~~which~~]  
21 that indicates or implies that it is organized for any purpose  
22 other than one or more of the purposes contained in its  
23 articles of incorporation; and

24 B. [~~shall not~~] be the same as, or confusingly  
25 similar to, the name of any corporation, whether for profit or

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1 not for profit, existing under the laws of New Mexico, or any  
2 foreign corporation, whether for profit or not for profit,  
3 authorized to transact business or conduct affairs in New  
4 Mexico, or a corporate name reserved or registered as permitted  
5 by the laws of New Mexico."

6 SECTION 2. Section 53-8-66 NMSA 1978 (being Laws 1975,  
7 Chapter 217, Section 66) is amended to read:

8 "53-8-66. CORPORATE NAME OF FOREIGN CORPORATION.--No  
9 certificate of authority shall be issued to a foreign  
10 corporation unless the corporate name of the corporation and,  
11 if different, the name under which it proposes to transact  
12 business in New Mexico:

13 A. shall not contain any word or phrase [~~which~~  
14 that indicates or implies that it is organized for any purpose  
15 other than one or more of the purposes contained in its  
16 articles of incorporation;

17 B. shall not be the same as, or confusingly similar  
18 to, the name of any corporation, whether for profit or not for  
19 profit, existing under the laws of New Mexico, or foreign  
20 corporation, whether for profit or not for profit, authorized  
21 to transact business or conduct affairs in this state, or a  
22 corporate name reserved or registered as permitted by the laws  
23 of this state; and

24 C. shall be expressed in English letters."

25 SECTION 3. Section 53-12-2 NMSA 1978 (being Laws 1967,

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1 Chapter 81, Section 50, as amended) is amended to read:

2 "53-12-2. ARTICLES OF INCORPORATION.--

3 A. The articles of incorporation shall set forth:

4 (1) the name of the corporation and, if  
5 different, the name under which it proposes to transact  
6 business in New Mexico;

7 (2) the period of duration, if other than  
8 perpetual;

9 (3) the purpose for which the corporation is  
10 organized, which may include the transaction of any lawful  
11 business for which corporations may be incorporated under the  
12 Business Corporation Act;

13 (4) the aggregate number of shares that the  
14 corporation has authority to issue and, if the shares are to be  
15 divided into classes, the number of shares of each class;

16 (5) if the shares are to be divided into  
17 classes, the designation of each class and a statement of the  
18 preferences, limitations and relative rights in respect of the  
19 shares of each class;

20 (6) if the corporation is to issue the shares  
21 of any preferred or special class in series, the designation of  
22 each series and a statement of the variations in the relative  
23 rights and preferences as between series, insofar as they are  
24 to be fixed in the articles of incorporation and a statement of  
25 any authority to be vested in the board of directors to

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1 establish series and fix and determine the variations in the  
2 relative rights and preferences as between series;

3 (7) any provision limiting or denying to  
4 shareholders the preemptive right to acquire unissued shares or  
5 securities convertible into such shares or carrying a right to  
6 subscribe to or acquire shares;

7 (8) the address of its initial registered  
8 office and the name of its initial registered agent at the  
9 address;

10 (9) the names and addresses of the persons who  
11 have consented to serve as directors until the first annual  
12 meeting of shareholders or until their successors are elected  
13 and qualify; and

14 (10) the name and address of each  
15 incorporator.

16 B. In addition to provisions required therein, the  
17 articles of incorporation may also contain provisions not  
18 inconsistent with law regarding:

19 (1) the direction of the management of the  
20 business and the regulation of the affairs of the corporation;

21 (2) the definition, limitation and regulation  
22 of the powers of the corporation, the directors and the  
23 shareholders, or any class of the shareholders, including  
24 restrictions on the transfer of shares;

25 (3) the minimum consideration for any

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1 authorized shares or class of shares; and

2 (4) any provision that, under the Business  
3 Corporation Act, is required or permitted to be set forth in  
4 the bylaws.

5 C. It is not necessary to set forth in the articles  
6 of incorporation any of the corporate powers enumerated in the  
7 Business Corporation Act.

8 D. The articles of incorporation may set forth any  
9 provision that the incorporators elect to set forth for the  
10 regulation of the internal affairs of the corporation.

11 E. The articles of incorporation may provide that a  
12 director shall not be personally liable to the corporation or  
13 its shareholders for monetary damages for breach of fiduciary  
14 duty as a director unless:

15 (1) the director has breached or failed to  
16 perform the duties of the director's office in compliance with  
17 Subsection B of Section 53-11-35 NMSA 1978; and

18 (2) the breach or failure to perform  
19 constitutes:

20 (a) negligence, willful misconduct or  
21 recklessness in the case of a director who has either an  
22 ownership interest in the corporation or receives as a director  
23 or as an employee of the corporation compensation of more than  
24 two thousand dollars (\$2,000) from the corporation in any  
25 calendar year; or

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1 (b) willful misconduct or recklessness  
2 in the case of a director who does not have an ownership  
3 interest in the corporation and does not receive as director or  
4 as an employee of the corporation compensation of more than two  
5 thousand dollars (\$2,000) from the corporation in any calendar  
6 year.

7 Such a provision in the articles of incorporation shall,  
8 however, only eliminate the liability of a director for action  
9 taken as a director or any failure to take action as a director  
10 at meetings of the board of directors or of a committee of the  
11 board of directors or by virtue of action of the directors  
12 without a meeting pursuant to Section 53-11-43 NMSA 1978, on or  
13 after the date when such provision in the articles of  
14 incorporation becomes effective."

15 SECTION 4. Section 53-17-3 NMSA 1978 (being Laws 1967,  
16 Chapter 81, Section 105, as amended) is amended to read:

17 "53-17-3. CORPORATE NAME OF FOREIGN CORPORATION.--

18 A. No certificate of authority shall be issued to a  
19 foreign corporation unless the corporate name of the  
20 corporation and, if different, the name under which it proposes  
21 to transact business in New Mexico:

22 (1) contains the word "corporation",  
23 "company", "incorporated" or "limited" or contains an  
24 abbreviation of one of these words or the corporation, for use  
25 in this state, adds at the end of its name one of these words

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1 or an abbreviation thereof;

2 (2) does not contain any word or phrase  
3 [~~which~~] that indicates or implies that it is organized for any  
4 purpose other than one or more of the purposes contained in its  
5 articles of incorporation or that it is authorized or empowered  
6 to conduct a business [~~which~~] that a corporation organized  
7 under the Business Corporation Act is not permitted to  
8 transact; and

9 (3) is not the same as, or confusingly similar  
10 to, the name of any domestic corporation existing under the  
11 laws of this state or any foreign corporation authorized to  
12 transact business in this state or a name the exclusive right  
13 to which is, at the time, reserved in the manner provided in  
14 the Business Corporation Act or the name of a corporation  
15 [~~which~~] that has in effect a registration of its name as  
16 provided in the Business Corporation Act.

17 B. The provisions of Paragraph (3) of Subsection A  
18 of this section shall not apply if the foreign corporation  
19 applying for a certificate of authority files with the  
20 [~~commission~~] secretary of state any one of the following:

21 (1) a resolution of its board of directors  
22 adopting a fictitious name for use in transacting business in  
23 this state, which fictitious name is not confusingly similar to  
24 the name of any domestic corporation or of any foreign  
25 corporation authorized to transact business in this state or to

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1 any name reserved or registered as provided in the Business  
2 Corporation Act; ~~or~~

3 (2) the written consent of such other  
4 corporation or holder of a reserved or registered name to use  
5 the same or confusingly similar name and one or more words are  
6 added to make such name distinguishable from such other name;  
7 or

8 (3) a certified copy of a final decree of a  
9 court of competent jurisdiction establishing the prior right of  
10 such foreign corporation to the use of such name in this  
11 state."

12 SECTION 5. Section 53-19-3 NMSA 1978 (being Laws 1993,  
13 Chapter 280, Section 3, as amended) is amended to read:

14 "53-19-3. NAME.--

15 A. The name of a limited liability company and, if  
16 different, the name under which it proposes to transact  
17 business in New Mexico, shall be stated in its articles of  
18 organization and shall contain the words "limited liability  
19 company" or "limited company" or the abbreviation "L.L.C.",  
20 "LLC", "L.C." or "LC". The word "limited" may be abbreviated  
21 as "ltd." and the word "company" may be abbreviated as "co."

22 B. A limited liability company name shall be  
23 distinguishable from the name of any:

24 (1) limited liability company, limited  
25 partnership or corporation existing under the laws of this

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1 state;

2 (2) foreign limited liability company or  
3 corporation authorized to transact business in this state; and

4 (3) name reserved under Section 53-19-4 NMSA  
5 1978.

6 C. The provisions of Subsection B of this section  
7 do not apply if the applicant files with the commission a  
8 certified copy of a final decree of a court establishing the  
9 prior right of the limited liability company to use such name  
10 in this state."

11 SECTION 6. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2018.