

1 AN ACT
2 RELATING TO BUSINESS ENTITIES; PROVIDING FOR THE REGISTRATION
3 OF ALTERNATE BUSINESS ENTITY NAMES.
4

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

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

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

11 A. contain any word or phrase that indicates or
12 implies that it is organized for any purpose other than one
13 or more of the purposes contained in its articles of
14 incorporation; and

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

22 SECTION 2. Section 53-8-37 NMSA 1978 (being Laws 1975,
23 Chapter 217, Section 37, as amended) is amended to read:

24 "53-8-37. ARTICLES OF AMENDMENT.--The articles of
25 amendment shall be executed by the corporation by two

1 authorized officers of the corporation and shall set forth:

2 A. the name of the corporation and, if different,
3 include any name under which it proposes to transact business
4 in New Mexico;

5 B. the amendment so adopted;

6 C. if there are members entitled to vote thereon:

7 (1) a statement setting forth the date of
8 the meeting of members at which the amendment was adopted,
9 that a quorum was present at the meeting and that the
10 amendment received at least two-thirds of the votes that
11 members present at the meeting or represented by proxy were
12 entitled to cast; or

13 (2) a statement that the amendment was
14 adopted by a consent in writing signed by all members
15 entitled to vote with respect thereto; and

16 D. if there are no members, or no members entitled
17 to vote thereon, a statement of such fact, the date of the
18 meeting of the board of directors at which the amendment was
19 adopted and a statement of the fact that the amendment
20 received the vote of a majority of the directors in office."

21 SECTION 3. Section 53-8-66 NMSA 1978 (being Laws 1975,
22 Chapter 217, Section 66) is amended to read:

23 "53-8-66. CORPORATE NAME OF FOREIGN CORPORATION.--No
24 certificate of authority shall be issued to a foreign
25 corporation unless the corporate name of the corporation and,

1 if different, the name under which it proposes to transact
2 business in New Mexico:

3 A. shall not contain any word or phrase that
4 indicates or implies that it is organized for any purpose
5 other than one or more of the purposes contained in its
6 articles of incorporation;

7 B. shall not be the same as, or confusingly
8 similar to, the name of any corporation, whether for profit
9 or not for profit, existing under the laws of New Mexico, or
10 foreign corporation, whether for profit or not for profit,
11 authorized to transact business or conduct affairs in this
12 state, or a corporate name reserved or registered as
13 permitted by the laws of this state; and

14 C. shall be expressed in English letters."

15 SECTION 4. Section 53-12-2 NMSA 1978 (being Laws 1967,
16 Chapter 81, Section 50, as amended) is amended to read:

17 "53-12-2. ARTICLES OF INCORPORATION.--

18 A. The articles of incorporation shall set forth:

19 (1) the name of the corporation and, if
20 different, the name under which it proposes to transact
21 business in New Mexico;

22 (2) the period of duration, if other than
23 perpetual;

24 (3) the purpose for which the corporation is
25 organized, which may include the transaction of any lawful

1 business for which corporations may be incorporated under the
2 Business Corporation Act;

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

6 (5) if the shares are to be divided into
7 classes, the designation of each class and a statement of the
8 preferences, limitations and relative rights in respect of
9 the shares of each class;

10 (6) if the corporation is to issue the
11 shares of any preferred or special class in series, the
12 designation of each series and a statement of the variations
13 in the relative rights and preferences as between series,
14 insofar as they are to be fixed in the articles of
15 incorporation and a statement of any authority to be vested
16 in the board of directors to establish series and fix and
17 determine the variations in the relative rights and
18 preferences as between series;

19 (7) any provision limiting or denying to
20 shareholders the preemptive right to acquire unissued shares
21 or securities convertible into such shares or carrying a
22 right to subscribe to or acquire shares;

23 (8) the address of its initial registered
24 office and the name of its initial registered agent at the
25 address;

1 (9) the names and addresses of the persons
2 who have consented to serve as directors until the first
3 annual meeting of shareholders or until their successors are
4 elected and qualify; and

5 (10) the name and address of each
6 incorporator.

7 B. In addition to provisions required therein, the
8 articles of incorporation may also contain provisions not
9 inconsistent with law regarding:

10 (1) the direction of the management of the
11 business and the regulation of the affairs of the
12 corporation;

13 (2) the definition, limitation and
14 regulation of the powers of the corporation, the directors
15 and the shareholders, or any class of the shareholders,
16 including restrictions on the transfer of shares;

17 (3) the minimum consideration for any
18 authorized shares or class of shares; and

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

22 C. It is not necessary to set forth in the
23 articles of incorporation any of the corporate powers
24 enumerated in the Business Corporation Act.

25 D. The articles of incorporation may set forth any SJC/SB 202
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1 provision that the incorporators elect to set forth for the
2 regulation of the internal affairs of the corporation.

3 E. The articles of incorporation may provide that
4 a director shall not be personally liable to the corporation
5 or its shareholders for monetary damages for breach of
6 fiduciary duty as a director unless:

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

10 (2) the breach or failure to perform
11 constitutes:

12 (a) negligence, willful misconduct or
13 recklessness in the case of a director who has either an
14 ownership interest in the corporation or receives as a
15 director or as an employee of the corporation compensation of
16 more than two thousand dollars (\$2,000) from the corporation
17 in any calendar year; or

18 (b) willful misconduct or recklessness
19 in the case of a director who does not have an ownership
20 interest in the corporation and does not receive as director
21 or as an employee of the corporation compensation of more
22 than two thousand dollars (\$2,000) from the corporation in
23 any calendar year.

24 Such a provision in the articles of incorporation shall,
25 however, only eliminate the liability of a director for

1 action taken as a director or any failure to take action as a
2 director at meetings of the board of directors or of a
3 committee of the board of directors or by virtue of action of
4 the directors without a meeting pursuant to Section 53-11-43
5 NMSA 1978, on or after the date when such provision in the
6 articles of incorporation becomes effective."

7 SECTION 5. Section 53-13-1 NMSA 1978 (being Laws 1967,
8 Chapter 81, Section 55, as amended) is amended to read:

9 "53-13-1. RIGHT TO AMEND ARTICLES OF INCORPORATION.--A
10 corporation may amend its articles of incorporation from time
11 to time in as many respects as may be desired, so long as its
12 articles of incorporation, as amended, contain only such
13 provisions as might be lawfully contained in original
14 articles of incorporation at the time of making the amendment
15 and, if a change in shares or the rights of shareholders, or
16 an exchange, reclassification or cancellation of shares or
17 rights of shareholders is to be made, provisions as may be
18 necessary to effect the change, exchange, reclassification or
19 cancellation. In particular, and without limitation upon the
20 general power of amendment, a corporation may amend its
21 articles of incorporation from time to time to:

22 A. change its corporate name and, if different,
23 include any name under which it proposes to transact business
24 in New Mexico;

25 B. change its period of duration;

1 C. change, enlarge or diminish its corporate
2 purposes;

3 D. increase or decrease the aggregate number of
4 shares or shares of any class that the corporation has
5 authority to issue;

6 E. provide or eliminate any provision with respect
7 to the minimum consideration for any shares or class of
8 shares;

9 F. exchange, classify, reclassify or cancel all or
10 any part of its shares, whether issued or unissued;

11 G. change the designation of all or any part of
12 its shares, whether issued or unissued, and to change the
13 preferences, limitations and relative rights in respect of
14 all or any part of its shares, whether issued or unissued;

15 H. change the shares of any class, whether issued
16 or unissued, into a different number of shares of the same
17 class or into the same or a different number of shares of
18 other classes;

19 I. create new classes of shares having rights and
20 preferences, either prior and superior or subordinate and
21 inferior, to the shares of any class then authorized, whether
22 issued or unissued;

23 J. cancel or otherwise affect the right of the
24 holders of the shares of any class to receive dividends that
25 have accrued but have not been declared;

1 K. divide any preferred or special class of
2 shares, whether issued or unissued, into series and fix and
3 determine the designation of the series and the variations in
4 the relative rights and preferences as between the shares of
5 the series;

6 L. authorize the board of directors to establish,
7 out of authorized but unissued shares, series of any
8 preferred or special class of shares and fix and determine
9 the relative rights and preferences of the shares of any
10 series so established;

11 M. authorize the board of directors to fix and
12 determine the relative rights and preferences of the
13 authorized but unissued shares of series theretofore
14 established in respect of which either the relative rights
15 and preferences have not been fixed and determined or the
16 relative rights and preferences theretofore fixed and
17 determined are to be changed;

18 N. revoke, diminish or enlarge the authority of
19 the board of directors to establish series out of authorized
20 but unissued shares of any preferred or special class and fix
21 and determine the relative rights and preferences of the
22 shares of any series so established; or

23 O. limit, deny or grant to shareholders of any
24 class the preemptive right to acquire additional shares of
25 the corporation, whether then or thereafter authorized."

1 SECTION 6. Section 53-17-3 NMSA 1978 (being Laws 1967,
2 Chapter 81, Section 105, as amended) is amended to read:

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

4 A. No certificate of authority shall be issued to
5 a foreign corporation unless the corporate name of the
6 corporation and, if different, the name under which it
7 proposes to transact business in New Mexico:

8 (1) contains the word "corporation",
9 "company", "incorporated" or "limited" or contains an
10 abbreviation of one of these words or the corporation, for
11 use in this state, adds at the end of its name one of these
12 words or an abbreviation thereof;

13 (2) does not contain any word or phrase that
14 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 or that it is authorized or
17 empowered to conduct a business that a corporation organized
18 under the Business Corporation Act is not permitted to
19 transact; and

20 (3) is not the same as, or confusingly
21 similar to, the name of any domestic corporation existing
22 under the laws of this state or any foreign corporation
23 authorized to transact business in this state or a name the
24 exclusive right to which is, at the time, reserved in the
25 manner provided in the Business Corporation Act or the name

1 of a corporation that has in effect a registration of its
2 name as provided in the Business Corporation Act.

3 B. The provisions of Paragraph (3) of Subsection A
4 of this section shall not apply if the foreign corporation
5 applying for a certificate of authority files with the
6 secretary of state any one of the following:

7 (1) a resolution of its board of directors
8 adopting a fictitious name for use in transacting business in
9 this state, which fictitious name is not confusingly similar
10 to the name of any domestic corporation or of any foreign
11 corporation authorized to transact business in this state or
12 to any name reserved or registered as provided in the
13 Business Corporation Act;

14 (2) the written consent of such other
15 corporation or holder of a reserved or registered name to use
16 the same or confusingly similar name and one or more words
17 are added to make such name distinguishable from such other
18 name; or

19 (3) a certified copy of a final decree of a
20 court of competent jurisdiction establishing the prior right
21 of such foreign corporation to the use of such name in this
22 state."

23 SECTION 7. Section 53-19-3 NMSA 1978 (being Laws 1993,
24 Chapter 280, Section 3, as amended) is amended to read:

25 "53-19-3. NAME.--

1 A. The name of a limited liability company and, if
2 different, the name under which it proposes to transact
3 business in New Mexico shall be stated in its articles of
4 organization and shall contain the words "limited liability
5 company" or "limited company" or the abbreviation "L.L.C.",
6 "LLC", "L.C." or "LC". The word "limited" may be abbreviated
7 as "ltd." and the word "company" may be abbreviated as "co.".

8 B. A limited liability company name shall be
9 distinguishable from the name of any:

10 (1) limited liability company, limited
11 partnership or corporation existing under the laws of this
12 state;

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

16 (3) name reserved under Section 53-19-4 NMSA
17 1978.

18 C. The provisions of Subsection B of this section
19 do not apply if the applicant files with the secretary of
20 state a certified copy of a final decree of a court
21 establishing the prior right of the limited liability company
22 to use such name in this state."

23 SECTION 8. Section 53-19-11 NMSA 1978 (being Laws 1993,
24 Chapter 280, Section 11) is amended to read:

25 "53-19-11. AMENDMENT AND RESTATEMENT OF ARTICLES OF

1 ORGANIZATION.--

2 A. The articles of organization of a limited
3 liability company are amended when articles of amendment are
4 filed with the secretary of state or at any later date or
5 time specified in the articles of amendment if there has been
6 substantial compliance with the requirements of the Limited
7 Liability Company Act. The articles of amendment shall set
8 forth:

9 (1) the name of the limited liability
10 company and, if different, include any name under which it
11 proposes to transact business in New Mexico;

12 (2) the date that the articles of
13 organization were filed; and

14 (3) the amendments of the articles of
15 organization.

16 B. The articles of organization may be amended in
17 any respect desired, so long as the articles of organization,
18 as amended, contain only provisions that may be lawfully
19 contained in articles of organization at the time of making
20 the amendment.

21 C. The articles of organization shall be amended
22 to reflect any change in the name of the limited liability
23 company, the latest date on which the limited liability
24 company is to dissolve or whether the limited liability
25 company is to be managed by members or managers.

1 D. Articles of organization may be restated at any
2 time. Restated articles of organization shall be filed with
3 the secretary of state and shall be designated as such in the
4 heading and shall state either in the heading or in an
5 introductory paragraph the limited liability company's
6 present name and, if it has been changed, all of its former
7 names and the date of the filing of its articles of
8 organization. Restated articles of organization shall
9 supersede the original articles of organization and all prior
10 amendments and restatements."

11 SECTION 9. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2021. _____

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