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HOUSE BILL 375
45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002
INTRODUCED BY
Luciano "Lucky" Varela

AN ACT
RELATING TO NONPROFIT CORPORATIONS; PROVIDING THAT, UPON THE
DISSOLUTION OF CERTAIN DOMESTIC NONPROFIT CORPORATIONS OR UPON
THE WITHDRAWAL OF CERTAIN FOREIGN DOMESTIC CORPORATIONS,
CERTAIN ASSETS ARE REQUIRED TO REMAIN IN NEW MEXICO FOR FUTURE
NONPROFIT ACTIVITIES.

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

Section 1. Section 53-8-48 NMSA 1978 (being Laws 1975,
Chapter 217, Section 48, as amended) is amended to read:

"53-8-48. DISTRIBUTION OF ASSETS. --The assets of a
corporation in the process of dissolution shall be applied and
distributed as follows:

A. all liabilities and obligations of the
corporation shall be paid and discharged, or adequate
provision shall be made therefor;

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1 B. assets held by the corporation upon condition
2 requiring return, transfer or conveyance, which condition
3 occurs by reason of the dissolution, shall be returned,
4 transferred or conveyed in accordance with such requirements;

5 C. assets received and held by the corporation
6 subject to limitations permitting their use only for
7 charitable, religious, eleemosynary, benevolent, educational
8 or similar purposes, but not held upon a condition requiring
9 return, transfer or conveyance by reason of the dissolution,
10 shall be transferred or conveyed to the New Mexico health
11 trust fund or to one or more nonprofit domestic [or foreign]
12 corporations, nonprofit societies or nonprofit organizations
13 engaged in activities in New Mexico substantially similar to
14 those of the dissolving corporation, pursuant to a plan of
15 distribution adopted as provided in the Nonprofit Corporation
16 Act;

17 D. other assets, if any, shall be distributed in
18 accordance with the provisions of the articles of
19 incorporation or the bylaws, but in no event may any member,
20 former member, director, former director, officer or former
21 officer receive directly or indirectly any distribution or
22 portion of a distribution of any assets; and

23 E. any remaining assets may be distributed to such
24 persons, nonprofit societies, nonprofit organizations or
25 nonprofit domestic or foreign corporations whether for profit

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1 or nonprofit as may be specified in a plan of distribution
2 adopted as provided in the Nonprofit Corporation Act. "

3 Section 2. Section 53-8-56 NMSA 1978 (being Laws 1975,
4 Chapter 217, Section 56) is amended to read:

5 "53-8-56. PROCEDURE IN LIQUIDATION OF CORPORATION BY
6 COURT. --

7 A. In proceedings to liquidate the assets and
8 affairs of a corporation, the district court shall have the
9 power to issue injunctions; to appoint a receiver or receivers
10 pendente lite, with such powers and duties as the court, from
11 time to time, may direct; and to take such other proceedings
12 as may be requisite to preserve the corporate assets wherever
13 situated and carry on the affairs of the corporation until a
14 full hearing can be had.

15 B. After a hearing had upon such notice as the
16 district court may direct to be given to all parties to the
17 proceedings and to any other parties in interest designated by
18 the court, the court may appoint a liquidating receiver or
19 receivers with authority to collect the assets of the
20 corporation. The liquidating receiver or receivers shall have
21 authority, subject to the order of the court, to sell, convey
22 and dispose of all or any part of the assets of the
23 corporation wherever situated, either at public or private
24 sale. The order appointing the liquidating receiver or
25 receivers shall state their powers and duties. The powers and

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1 duties may be increased or diminished at any time during the
2 proceedings.

3 C. The assets of the corporation or the proceeds
4 resulting from a sale, conveyance or other disposition thereof
5 shall be applied and distributed as follows:

6 (1) all costs and expenses of the court
7 proceedings and all liabilities and obligations of the
8 corporation shall be paid, satisfied and discharged, or
9 adequate provision shall be made therefor;

10 (2) assets held by the corporation upon
11 condition requiring return, transfer or conveyance, which
12 condition occurs by reason of the dissolution or liquidation,
13 shall be returned, transferred or conveyed in accordance with
14 the requirements;

15 (3) assets received and held by the
16 corporation subject to limitations permitting their use only
17 for charitable, religious, eleemosynary, benevolent,
18 educational or similar purposes, but not held upon a condition
19 requiring return, transfer or conveyance by reason of the
20 dissolution or liquidation, shall be transferred or conveyed
21 to the New Mexico health trust fund or to one or more domestic
22 [~~or foreign~~] corporations, societies or organizations engaged
23 in activities in New Mexico substantially similar to those of
24 the dissolving or liquidating corporation as the court may
25 direct;

. 140771. 1

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1 (4) other assets, if any, shall be
2 distributed in accordance with the provisions of the articles
3 of incorporation or the bylaws to the extent that the articles
4 of incorporation or bylaws determine the distributive right of
5 members, or any class or classes of members, or provide for
6 distribution to others; and

7 (5) any remaining assets may be distributed
8 to such persons, societies, organizations or domestic or
9 foreign corporations, whether for profit or not for profit,
10 specified in the plan of distribution adopted as provided in
11 the Nonprofit Corporation Act, or where no plan of
12 distribution has been adopted, as the court may direct.

13 D. The district court shall have power to allow,
14 from time to time, as expenses of the liquidation,
15 compensation to the receiver or receivers and to attorneys in
16 the proceeding and to direct the payment thereof out of the
17 assets of the corporation or the proceeds of any sale or
18 disposition of the assets.

19 E. A receiver of a corporation appointed under the
20 provisions of this section shall have authority to sue and
21 defend in all courts in his own name as receiver of the
22 corporation. The district court appointing the receiver shall
23 have exclusive jurisdiction of the corporation and its
24 property, wherever situated. "

25 Section 3. Section 53-8-77 NMSA 1978 (being Laws 1975,

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1 Chapter 217, Section 77) is amended to read:

2 "53-8-77. WITHDRAWAL OF FOREIGN CORPORATION. --

3 A. A foreign corporation authorized to conduct
4 affairs in New Mexico may withdraw from this state upon
5 procuring from the ~~[corporation]~~ public regulation commission
6 a certificate of withdrawal. In order to procure the
7 certificate of withdrawal, the foreign corporation shall
8 deliver to the ~~commission~~ an application for withdrawal, which
9 shall set forth:

10 (1) the name of the corporation and the state
11 or country under the laws of which it is incorporated;

12 (2) that the corporation is not conducting
13 affairs in New Mexico;

14 (3) that the corporation surrenders its
15 authority to conduct affairs in New Mexico;

16 (4) that the corporation revokes the
17 authority of its registered agent in New Mexico to accept
18 service of process and consents that service of process in any
19 action, suit or proceeding based upon any cause of action
20 arising in this state during the time the corporation was
21 authorized to conduct affairs in this state may thereafter be
22 made on the corporation by service thereof on the secretary of
23 state; ~~[and]~~

24 (5) a post office address to which the
25 ~~[corporation]~~ public regulation commission may mail a copy of

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1 any process against the corporation that may be served on him;
2 and

3 (6) that the corporation has disposed of its
4 New Mexico assets pursuant to Subsection C of this section.

5 B. The application for withdrawal shall be made on
6 forms prescribed and furnished by the [~~corporation~~] public
7 regulation commission and shall be executed by the corporation
8 by its president or a vice president and by its secretary or
9 an assistant secretary or, if the corporation is in the hands
10 of a receiver or trustee, shall be executed on behalf of the
11 corporation by the receiver or trustee.

12 C. Upon the withdrawal of a foreign corporation,
13 the New Mexico assets received and held by the corporation
14 subject to limitations permitting their use only for
15 charitable, religious, eleemosynary, benevolent, educational
16 or similar purposes, but not held upon a condition requiring
17 return, transfer or conveyance by reason of the dissolution,
18 shall be transferred or conveyed to the New Mexico health
19 trust fund or to one or more nonprofit domestic corporations,
20 nonprofit societies or nonprofit organizations engaged in
21 activities in New Mexico substantially similar to those of the
22 withdrawing corporation. As used in this subsection, "New
23 Mexico assets" means real property and equipment used by the
24 corporation for its activities in New Mexico and acquired, for
25 the most part, with proceeds generated from its activities in

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New Mexico. "

Section 4. A new section of the Nonprofit Corporation Act is enacted to read:

"[NEW MATERIAL] NEW MEXICO HEALTH TRUST FUND--CREATED--
PURPOSE.--The "New Mexico health trust fund" is created in the state treasury. The fund shall consist of money transferred or conveyed to the fund and gifts, bequests and grants made to the fund. Earnings of the fund shall be credited to the fund and balances in the fund shall not revert or be transferred to any other fund. Money in the fund shall be subject to appropriation by the legislature to benefit the health care of New Mexico residents. "