

1 HOUSE BILL 599

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CORPORATIONS; REQUIRING CORPORATIONS TO APPOINT A
12 CERTAIN NUMBER OF WOMEN AS DIRECTORS; ADDING A REPORTING
13 REQUIREMENT; PROVIDING PENALTIES.

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

16 SECTION 1. Section 53-8-18 NMSA 1978 (being Laws 1975,
17 Chapter 217, Section 18, as amended) is amended to read:

18 "53-8-18. NUMBER AND ELECTION OF DIRECTORS.--

19 A. The number of directors of a corporation shall
20 be not less than three. Subject to that limitation, the number
21 of directors shall be fixed by, or determined in the manner
22 provided in, the articles of incorporation or the bylaws. The
23 number of directors may be increased or decreased from time to
24 time by amendment to, or in the manner provided in, the
25 articles of incorporation or the bylaws, unless the articles of

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1 incorporation provide that a change in the number of directors
2 shall be made only by amendment of the articles of
3 incorporation. No decrease in number shall have the effect of
4 shortening the term of any incumbent director. If the number
5 of directors is not fixed by, or determined in a manner
6 provided in, the articles of incorporation or the bylaws, the
7 number shall be the same as that stated in the articles of
8 incorporation.

9 B. The board of directors of each domestic
10 corporation shall be composed of at least:

11 (1) one female director if the number of
12 directors is four or fewer;

13 (2) two female directors if the number of
14 directors is five; and

15 (3) three female directors if the number of
16 directors is six or more.

17 ~~[B-]~~ C. The directors constituting the first board
18 of directors shall be named in the articles of incorporation
19 and shall hold office until the first annual election of
20 directors or for such other period as may be specified in the
21 articles of incorporation or the bylaws. Thereafter, directors
22 shall be elected or appointed in the manner and for the terms
23 provided in the articles of incorporation or the bylaws. In
24 the absence of a provision fixing the term of office, the term
25 of office of a director shall be one year.

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1 ~~[G-]~~ D. Directors may be divided into classes and
2 the terms of office of the several classes need not be uniform.
3 Each director shall hold office for the term for which ~~[he]~~ the
4 director is elected or appointed and until ~~[his]~~ the director's
5 successor is elected or appointed and qualified.

6 ~~[D-]~~ E. A director may be removed from office
7 pursuant to any procedure provided in the articles of
8 incorporation or the bylaws."

9 **SECTION 2.** A new section of the Nonprofit Corporation Act
10 is enacted to read:

11 "[NEW MATERIAL] FAILURE TO APPOINT AND MAINTAIN WOMEN ON
12 BOARD OF DIRECTORS--PENALTIES.--

13 A. If a domestic corporation fails to appoint or
14 maintain the required number of female directors, the secretary
15 of state shall notify the corporation of its delinquency by
16 letter to the corporation's principal office.

17 B. If a domestic corporation does not correct a
18 delinquency within sixty days from the date the letter is
19 mailed, the secretary of state may impose the following
20 administrative penalties:

21 (1) for a first violation, an amount not to
22 exceed five thousand dollars (\$5,000); and

23 (2) for a second or subsequent violation, an
24 amount not to exceed ten thousand dollars (\$10,000).

25 C. Appeals from decisions of the secretary of state

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1 regarding the assessment of an administrative penalty shall be
2 to the district court pursuant to the provisions of Section
3 39-3-1.1 NMSA 1978."

4 SECTION 3. Section 53-11-36 NMSA 1978 (being Laws 1967,
5 Chapter 81, Section 35, as amended) is amended to read:

6 "53-11-36. NUMBER AND ELECTION OF DIRECTORS.--

7 A. The number of directors of a corporation shall
8 consist of one or more members. The number of directors shall
9 be fixed by, or in the manner provided in, the articles of
10 incorporation or the bylaws. The number of directors may be
11 increased or decreased from time to time by amendment to, or in
12 the manner provided in, the articles of incorporation or the
13 bylaws, but no decrease shall have the effect of shortening the
14 term of any incumbent director. If the number of directors is
15 not fixed by, or in the manner provided in, the bylaws or the
16 articles of incorporation, the number shall be the same as the
17 number of directors constituting the initial board of
18 directors.

19 B. The board of directors of each domestic
20 corporation shall be composed of at least:

21 (1) one female director if the number of
22 directors is four or fewer;

23 (2) two female directors if the number of
24 directors is five; and

25 (3) three female directors if the number of

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1 directors is six or more.

2 C. The names and addresses of the members of the
3 first board of directors shall be stated in the articles of
4 incorporation. Such persons shall hold office until the first
5 annual meeting of shareholders and until their successors have
6 been elected and qualified. At the first annual meeting of
7 shareholders and at each annual meeting thereafter, the
8 shareholders shall elect directors to hold office until the
9 next succeeding annual meeting, except in case of the
10 classification of directors as permitted by the Business
11 Corporation Act. Each director shall hold office for the term
12 for which the director is elected and until a successor has
13 been elected and qualified."

14 SECTION 4. A new section of the Business Corporation Act
15 is enacted to read:

16 "[NEW MATERIAL] FAILURE TO APPOINT AND MAINTAIN WOMEN ON
17 BOARDS OF DIRECTORS--PENALTIES.--

18 A. If a domestic corporation fails to appoint or
19 maintain the required number of female directors, the secretary
20 of state shall notify the corporation of its delinquency by
21 letter to the corporation's principal office.

22 B. If a domestic corporation does not correct a
23 delinquency within sixty days from the date the letter is
24 mailed, the secretary of state may impose the following
25 administrative penalties:

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1 (1) for a first violation, an amount not to
2 exceed five thousand dollars (\$5,000); and

3 (2) for a second or subsequent violation, an
4 amount not to exceed ten thousand dollars (\$10,000).

5 C. Appeals from decisions of the secretary of state
6 regarding the assessment of an administrative penalty shall be
7 to the district court pursuant to the provisions of Section
8 39-3-1.1 NMSA 1978."

9 SECTION 5. Section 53-2-4 NMSA 1978 (being Laws 1905,
10 Chapter 79, Section 123, as amended) is amended to read:

11 "53-2-4. CORPORATIONS--COMPILATION.--The [~~public~~
12 ~~regulation commission~~] secretary of state shall compile
13 annually from the records of [~~its~~] the secretary of state's
14 office a complete list, in alphabetical order, of:

15 A. the original and amended certificates of
16 incorporation filed during the preceding year, together with:

17 (1) the location of the principal office in
18 this state of the corporations affected;

19 (2) the name of the agent in charge;

20 (3) the amount of the authorized capital
21 stock;

22 (4) the amount of stock with which business is
23 to be commenced; and

24 (5) the date of filing the certificate and the
25 period for which the corporation is to continue;

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1 B. each domestic corporation organized pursuant to
2 the Nonprofit Corporation Act that failed to appoint or
3 maintain the required number of female directors required
4 pursuant to Section 53-8-18 NMSA 1978; and

5 C. each domestic corporation organized pursuant to
6 the Business Corporation Act that failed to appoint or maintain
7 the required number of female directors required pursuant to
8 Section 53-11-36 NMSA 1978."

9 SECTION 6. Section 53-5-2 NMSA 1978 (being Laws 1978,
10 Chapter 9, Section 1, as amended) is amended to read:

11 "53-5-2. CORPORATE AND SUPPLEMENTAL REPORTS.--

12 A. Pursuant to rules that the secretary of state
13 adopts to implement this section, a domestic or foreign
14 corporation that is not exempted shall file in the office of
15 the secretary of state within thirty days after the date on
16 which its certificate of incorporation or its certificate of
17 authority, as the case may be, is issued by the secretary of
18 state, and biennially thereafter on or before the fifteenth day
19 of the fourth month following the end of its taxable year, a
20 corporate report in the form prescribed and furnished to the
21 corporation not less than thirty days prior to such reporting
22 date, by the secretary of state, and signed and sworn to by the
23 chair of the board, president, vice president, secretary,
24 principal accounting officer or authorized agent of the
25 corporation, showing among other information prescribed by the

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1 secretary of state:

2 (1) the current status of:

3 (a) the name of the corporation;

4 (b) the mailing address and: 1) street
5 address if within a municipality; or 2) rural route number and
6 box number or the geographical location, using well-known
7 landmarks, if outside a municipality, of the corporation's
8 registered office in this state and the name of the agent upon
9 whom process against the corporation may be served;

10 (c) the names and addresses of all the
11 directors and officers of the corporation and when the term of
12 office of each expires;

13 (d) the address of the corporation's
14 principal place of business within the state and, if a foreign
15 corporation, the address of its registered office in the state
16 or country under the laws of which it is incorporated and the
17 principal office of the corporation, if different from the
18 registered office; and

19 (e) the date for the next annual meeting
20 of the shareholders for the election of directors; ~~and~~

21 (2) the corporation's taxpayer identification
22 number issued by the revenue processing division of the
23 taxation and revenue department; and

24 (3) the number of female directors of the
25 corporation if the corporation is a domestic corporation

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1 pursuant to the Nonprofit Corporation Act or the Business
2 Corporation Act.

3 B. When the secretary of state receives a report
4 required to be filed by a corporation under the Corporate
5 Reports Act, the secretary of state shall determine if the
6 report conforms to the requirements of this section. If the
7 secretary of state finds that the report conforms, it shall be
8 filed. If the secretary of state finds that the report does
9 not conform, the secretary of state shall promptly return the
10 report to the corporation for any necessary corrections, in
11 which event the penalties prescribed in the Corporate Reports
12 Act for failure to file the report in the time provided shall
13 not apply if the report is corrected and returned to the
14 secretary of state within thirty days from the date on which it
15 was mailed to the corporation by the secretary of state.

16 C. The secretary of state may refuse to file a
17 corporate report or a supplemental report received from a
18 corporation that has not paid all fees, including penalties and
19 interest due and payable, to the secretary of state at the time
20 of filing. However, if the corporation and the secretary of
21 state are engaged in any adversary proceeding over the
22 assessment of any fees, the secretary of state shall file the
23 report of the corporation upon its submission to the secretary
24 of state.

25 D. A supplemental report shall be filed with the

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1 secretary of state within thirty days if, after the filing of
2 the corporate report required under the Corporate Reports Act,
3 a change is made in:

4 (1) the mailing address, street address, rural
5 route number and box number or the geographical location of its
6 registered office in this state and the name of the agent upon
7 whom process against the corporation may be served;

8 (2) the name or address of any of the
9 directors or officers of the corporation or the date when the
10 term of office of each expires; or

11 (3) its principal place of business within or
12 without the state."

13 SECTION 7. Section 53-5-4 NMSA 1978 (being Laws 1959,
14 Chapter 181, Section 4, as amended) is amended to read:

15 "53-5-4. EXEMPT CORPORATIONS.--The following corporations
16 [~~shall be~~] are exempt from filing a report pursuant to the
17 Corporate Reports Act:

18 A. state banks or insurance companies incorporated
19 under the laws of New Mexico;

20 B. insurance companies [~~which~~] that are
21 incorporated under the laws of the United States, other states
22 or foreign countries and [~~which~~] that are licensed to transact
23 business in the state of New Mexico;

24 C. national banks; and

25 D. nonprofit corporations, except as required in

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1 Paragraph (3) of Subsection A of Section 53-5-2 NMSA 1978."

2 **SECTION 8. TEMPORARY PROVISION--DOMESTIC NONPROFIT**
3 CORPORATIONS INCORPORATED BEFORE JULY 1, 2019--NUMBER OF FEMALE
4 DIRECTORS.--If the board of directors of a domestic nonprofit
5 corporation incorporated before July 1, 2019 is not composed of
6 the number of female directors required pursuant to Section
7 53-8-18 NMSA 1978, the domestic nonprofit corporation shall, by
8 December 31, 2019, increase the number of female directors to
9 meet that requirement in the manner provided in Subsection A of
10 Section 53-8-18 NMSA 1978.

11 **SECTION 9. TEMPORARY PROVISION--DOMESTIC BUSINESS**
12 CORPORATIONS INCORPORATED BEFORE JULY 1, 2019--NUMBER OF FEMALE
13 DIRECTORS.--If the board of directors of a domestic business
14 corporation incorporated before July 1, 2019 is not composed of
15 the number of female directors required pursuant to Section
16 53-11-36 NMSA 1978, the domestic business corporation shall, by
17 December 31, 2019, increase the number of female directors to
18 meet that requirement in the manner provided in Subsection A of
19 Section 53-11-36 NMSA 1978.

20 **SECTION 10. EFFECTIVE DATE.--**The effective date of the
21 provisions of this act is July 1, 2019.