

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 202

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

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

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

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

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

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

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

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 53-8-37 NMSA 1978 (being Laws 1975,
7 Chapter 217, Section 37, as amended) is amended to read:

8 "53-8-37. ARTICLES OF AMENDMENT.--The articles of
9 amendment shall be executed by the corporation by two
10 authorized officers of the corporation and shall set forth:

11 A. the name of the corporation and, if different,
12 include any name under which it proposes to transact business
13 in New Mexico;

14 B. the amendment so adopted;

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

16 (1) a statement setting forth the date of the
17 meeting of members at which the amendment was adopted, that a
18 quorum was present at the meeting and that the amendment
19 received at least two-thirds of the votes that members present
20 at the meeting or represented by proxy were entitled to cast;
21 or

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

25 D. if there are no members, or no members entitled

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1 to vote thereon, a statement of such fact, the date of the
2 meeting of the board of directors at which the amendment was
3 adopted and a statement of the fact that the amendment received
4 the vote of a majority of the directors in office."

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

7 "53-8-66. CORPORATE NAME OF FOREIGN CORPORATION.--No
8 certificate of authority shall be issued to a foreign
9 corporation unless the corporate name of the corporation and,
10 if different, the name under which it proposes to transact
11 business in New Mexico:

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

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

23 C. shall be expressed in English letters."

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

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1 "53-12-2. ARTICLES OF INCORPORATION.--

2 A. The articles of incorporation shall set forth:

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

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

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

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

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

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

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1 relative rights and preferences as between series;

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

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

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

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

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

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

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

24 (3) the minimum consideration for any
25 authorized shares or class of shares; and

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

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

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

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

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

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

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

25 (b) willful misconduct or recklessness

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

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

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

16 "53-13-1. RIGHT TO AMEND ARTICLES OF INCORPORATION.--A
17 corporation may amend its articles of incorporation from time
18 to time in as many respects as may be desired, so long as its
19 articles of incorporation, as amended, contain only such
20 provisions as might be lawfully contained in original articles
21 of incorporation at the time of making the amendment and, if a
22 change in shares or the rights of shareholders, or an exchange,
23 reclassification or cancellation of shares or rights of
24 shareholders is to be made, provisions as may be necessary to
25 effect the change, exchange, reclassification or cancellation.

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1 In particular, and without limitation upon the general power of
2 amendment, a corporation may amend its articles of
3 incorporation from time to time to:

4 A. change its corporate name and, if different,
5 include any name under which it proposes to transact business
6 in New Mexico;

7 B. change its period of duration;

8 C. change, enlarge or diminish its corporate
9 purposes;

10 D. increase or decrease the aggregate number of
11 shares or shares of any class [~~which~~] that the corporation has
12 authority to issue;

13 E. provide or eliminate any provision with respect
14 to the minimum consideration for any shares or class of shares;

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

17 G. change the designation of all or any part of its
18 shares, whether issued or unissued, and to change the
19 preferences, limitations and [~~the~~] relative rights in respect
20 of all or any part of its shares, whether issued or unissued;

21 H. change the shares of any class, whether issued
22 or unissued, into a different number of shares of the same
23 class or into the same or a different number of shares of other
24 classes;

25 I. create new classes of shares having rights and

1 preferences, either prior and superior or subordinate and
2 inferior, to the shares of any class then authorized, whether
3 issued or unissued;

4 J. cancel or otherwise affect the right of the
5 holders of the shares of any class to receive dividends [~~which~~]
6 that have accrued but have not been declared;

7 K. divide any preferred or special class of shares,
8 whether issued or unissued, into series and fix and determine
9 the designation of the series and the variations in the
10 relative rights and preferences as between the shares of the
11 series;

12 L. authorize the board of directors to establish,
13 out of authorized but unissued shares, series of any preferred
14 or special class of shares and fix and determine the relative
15 rights and preferences of the shares of any series so
16 established;

17 M. authorize the board of directors to fix and
18 determine the relative rights and preferences of the authorized
19 but unissued shares of series theretofore established in
20 respect of which either the relative rights and preferences
21 have not been fixed and determined or the relative rights and
22 preferences theretofore fixed and determined are to be changed;

23 N. revoke, diminish or enlarge the authority of the
24 board of directors to establish series out of authorized but
25 unissued shares of any preferred or special class and fix and

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1 determine the relative rights and preferences of the shares of
2 any series so established; or

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

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

8 "53-17-3. CORPORATE NAME OF FOREIGN CORPORATION.--

9 A. No certificate of authority shall be issued to a
10 foreign corporation unless the corporate name of the
11 corporation and, if different, the name under which it proposes
12 to transact business in New Mexico:

13 (1) contains the word "corporation",
14 "company", "incorporated" or "limited" or contains an
15 abbreviation of one of these words or the corporation, for use
16 in this state, adds at the end of its name one of these words
17 or an abbreviation thereof;

18 (2) does not contain any word or phrase
19 [~~which~~] that indicates or implies that it is organized for any
20 purpose other than one or more of the purposes contained in its
21 articles of incorporation or that it is authorized or empowered
22 to conduct a business [~~which~~] that a corporation organized
23 under the Business Corporation Act is not permitted to
24 transact; and

25 (3) is not the same as, or confusingly similar

1 to, the name of any domestic corporation existing under the
2 laws of this state or any foreign corporation authorized to
3 transact business in this state or a name the exclusive right
4 to which is, at the time, reserved in the manner provided in
5 the Business Corporation Act or the name of a corporation
6 [~~which~~] that has in effect a registration of its name as
7 provided in the Business Corporation Act.

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

12 (1) a resolution of its board of directors
13 adopting a fictitious name for use in transacting business in
14 this state, which fictitious name is not confusingly similar to
15 the name of any domestic corporation or of any foreign
16 corporation authorized to transact business in this state or to
17 any name reserved or registered as provided in the Business
18 Corporation Act; [~~or~~]

19 (2) the written consent of such other
20 corporation or holder of a reserved or registered name to use
21 the same or confusingly similar name and one or more words are
22 added to make such name distinguishable from such other name;
23 or

24 (3) a certified copy of a final decree of a
25 court of competent jurisdiction establishing the prior right of

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1 such foreign corporation to the use of such name in this
2 state."

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

5 "53-19-3. NAME.--

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

13 B. A limited liability company name shall be
14 distinguishable from the name of any:

15 (1) limited liability company, limited
16 partnership or corporation existing under the laws of this
17 state;

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

20 (3) name reserved under Section 53-19-4 NMSA
21 1978.

22 C. The provisions of Subsection B of this section
23 do not apply if the applicant files with the [~~commission~~]
24 secretary of state a certified copy of a final decree of a
25 court establishing the prior right of the limited liability

1 company to use such name in this state."

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

4 "53-19-11. AMENDMENT AND RESTATEMENT OF ARTICLES OF
5 ORGANIZATION.--

6 A. The articles of organization of a limited
7 liability company are amended when articles of amendment are
8 filed with the [~~commission~~] secretary of state or at any later
9 date or time specified in the articles of amendment if there
10 has been substantial compliance with the requirements of the
11 Limited Liability Company Act. The articles of amendment shall
12 set forth:

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

16 (2) the date that the articles of organization
17 were filed; and

18 (3) the amendments of the articles of
19 organization.

20 B. The articles of organization may be amended in
21 any respect desired, so long as the articles of organization,
22 as amended, contain only provisions that may be lawfully
23 contained in articles of organization at the time of making the
24 amendment.

25 C. The articles of organization shall be amended to

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1 reflect any change in the name of the limited liability
2 company, the latest date on which the limited liability company
3 is to dissolve or whether the limited liability company is to
4 be managed by members or managers.

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

15 SECTION 9. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2021.