

1 SENATE BILL 168

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

3 INTRODUCED BY

4 Clemente Sanchez

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10 AN ACT

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

13
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~~]
8 secretary of state a certified copy of a final decree of a
9 court establishing the prior right of the limited liability
10 company to use such name in this state."

11 SECTION 6. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2019.

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